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AUTHORS:

SHIKHA GINODIA, PARTNER

GAURAV SURYAVANSHI, SENIOR ASSOCIATE

1.NCLAT CLARIFIES NON-APPLICABILITY OF RAINBOW PAPERS TO CENTRAL EXCISE DUES:CGST NOT A SECURED CREDITOR UNDER SECTION 11E OF CENTRAL EXCISE ACT

In a significant judgment of Supreme Court in 2022, interpreting the scope of State Tax Officer v. Rainbow Papers Ltd. the Hon'ble National Company Law Appellate Tribunal **("NCLAT")**, Principal Bench, New Delhi, in GST and Central Excise Angul Division, Rourkela GST Commissionerate v. Shri Dinesh Sood and Ors.[1] [Company Appeal (AT) (Insolvency) No. 495 of 2025 decided on 30 June, 2025], ruled that claims filed under Section 11E of the Central Excise Act, 1944 cannot be treated as 'secured debt' in the context of the Insolvency and Bankruptcy Code, 2016. The judgment draws a clear distinction between the Gujarat VAT Act, which was under consideration in Rainbow Papers (Supra), and Section 11E of the Central Excise Act, which includes a statutory carve-out expressly subordinating excise claims to IBC proceedings.

The case arose in the context of the CIRP of Bindals Sponge Industries Ltd., where the CGST Department **("Appellant")** had filed claims totalling over ₹24.26 crores towards excise and service tax dues. Initially admitted as operational debt, the Appellant later sought parity with secured creditors, especially the State GST Department, whose allocation under the Resolution Plan had been increased from 2.71% to 29.61% following Rainbow Papers (Supra). In contrast, CGST's share was left at 2.69%, prompting the Appellant to seek modification of the plan under Section 30(2) of the IBC through IA No. 2537/2024. The NCLT rejected the application, prompting the present appeal before NCLAT.

Issues:

1. Whether the Central Excise Department can be treated as a secured creditor under Section 11E of the Central Excise Act in light of the Rainbow Papers (Supra) judgment.
2. Whether treating the CGST and State GST Departments differently in the Resolution Plan amounts to discriminatory treatment, violating Section 30(2)(b) of the IBC.

The core argument advanced by the Appellant was that *Rainbow Papers (Supra)* had laid down the proposition that statutory dues owed to any government authority qualify as secured debt by operation of law, and that this principle was binding under Article 141 of the Constitution. The Appellant submitted that treating CGST and State GST differently in the Resolution Plan was discriminatory, particularly when both sets of claims fell within the same class of operational creditors under Section 53 of the IBC.

However, the Hon'ble Appellate Tribunal found no merit in these contentions. The Hon'ble Appellate Tribunal held that Section 11E of the Central Excise Act expressly excludes its application in insolvency contexts. It provides that the Government's charge shall apply *"save as otherwise provided"* under the IBC, SARFAESI Act, Companies Act, and RDDBFI Act. This, the Hon'ble Bench ruled, meant that no first charge can exist in the face of an IBC proceeding. In contrast, the Gujarat VAT Act's Section 48, interpreted in Rainbow Papers (Supra), contained no such exception, allowing for the creation of a first charge by operation of law.

The Hon'ble Appellate Tribunal also addressed the issue of discriminatory treatment. Relying on the Supreme Court's judgment in CoC of Essar Steel v. Satish Kumar Gupta (2020) 8 SCC 531, the Hon'ble Appellate Tribunal reiterated that equitable treatment under IBC applies only to creditors within the same class, and not across distinct categories such as secured and unsecured creditors. Since the State GST Department's dues were backed by a statutory first charge under Section 55 of the Odisha VAT Act (which is *pari materia* to Section 48 of Gujarat VAT Act), it was entitled to be treated as a secured creditor, unlike the CGST Department, whose claim under Section 11E was subordinate to the IBC framework.

Further, the Hon'ble Appellate Tribunal rejected the argument that all government dues are automatically secured, emphasizing that secured status under IBC requires creation of security interest, either contractually or by operation of law, and not merely by the fact of being a statutory demand. This was consistent with the Supreme Court's observations in *Sundaresh Bhatt v. CBIC (2023) 1 SCC 472*, which held that the IBC overrides customs and tax statutes in case of conflict, including where those statutes include first charge provisions subject to IBC carveouts.

In conclusion, the Hon'ble Appellate Tribunal dismissed the appeal, holding that the CGST Department was correctly treated as an unsecured operational creditor and could not claim parity with the State GST Department. The Hon'ble Appellate Tribunal observed that *Rainbow Papers (Supra)* had no application to claims filed under Section 11E of the Central Excise Act due to the fundamental structural difference in the legislative scheme.

[1] Company Appeal (AT) (Insolvency) No. 495 of 2025

2.VIDARBHA IS AN EXCEPTION, NOT THE RULE — NCLAT EMPHASIZES MANDATORY ADMISSION UNDER SECTION 7 WHERE DEBT AND DEFAULT ARE ESTABLISHED – NCLAT NEW DELHI

In the matter of *Edelweiss Asset Reconstruction Company Ltd. v. Takshashila Heights India Pvt. Ltd.*[2], the Principal Bench of the National Company Law Appellate Tribunal ("NCLAT"), New Delhi, adjudicated on the scope of judicial discretion available to the Adjudicating Authority under Section 7(5)(a) of the Insolvency and Bankruptcy Code, 2016. The Hon'ble Appellate Tribunal emphasized that once a financial debt and default are established, the application must be admitted, and reliance on the Vidarbha Industries ruling to deny admission was legally untenable.

The appeal was preferred by Edelweiss Asset Reconstruction Company Ltd. challenging the order dated 06.02.2024 passed by the NCLT, Ahmedabad Hon'ble Bench. The NCLT had dismissed the Appellant's Section 7 application seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, Takshashila Heights India Pvt. Ltd., despite the admitted default.

The debt in question arose from two term loan facilities amounting to Rs.93.54 crore, originally sanctioned by ECL Finance Ltd. and subsequently assigned to EARCL in May 2022. The account was declared a Non-Performing Asset on 30.12.2021. Despite granting restructuring terms through a settlement letter dated 23.05.2023, the Corporate Debtor committed further default. The Financial Creditor then filed the Section 7 application supported by record of default through NESL.

The NCLT, however, rejected the petition, observing that the intention of the Appellant appeared to be for recovery purposes and invoked Vidarbha Industries Power Ltd. v. Axis Bank Ltd. to exercise discretion under Section 7(5)(a), citing that the Corporate Debtor remained a going concern and should not be pushed into insolvency.

The NCLAT set aside the impugned order and held that *Vidarbha (Supra)* was rendered in a limited factual context involving regulatory receivables and cannot be treated as a general principle applicable to all Section 7 petitions. The Hon'ble Appellate Tribunal reaffirmed the binding nature of the precedents in *Innoventive Industries Ltd. v. ICICI Bank*, *E.S. Krishnamurthy v. Bharath Hi Tech Builders Pvt. Ltd.*, and *M. Suresh Kumar Reddy v. Canara Bank*, where the Supreme Court had made it unequivocally clear that upon proof of debt and default, admission is mandatory.

The Hon'ble Appellate Tribunal clarified that the so-called "discretion" under Section 7(5)(a) is extremely narrow and exists only for verification of the factual matrix. If the conditions of financial debt and default are met, the Adjudicating Authority cannot refuse admission based on business viability, commercial interest, or broader economic factors.

The Hon'ble Appellate Tribunal also rejected the contention that simultaneous invocation of SARFAESI and DRT remedies implied that the Appellant was abusing the IBC process. It held that multiple legal remedies can operate concurrently and that the IBC remains an independent and overarching remedy that need not await the outcome of other proceedings.

Importantly, the NCLAT criticized the NCLT's reasoning that the Financial Creditor's intent was recovery-driven. The Hon'ble Appellate Tribunal clarified that the motive of the creditor is irrelevant so long as the statutory preconditions under Section 7 are satisfied. Unless there is proof of malicious intent or fraud as envisaged under Section 65 of the IBC, the application cannot be rejected on such subjective grounds.

The Hon'ble Appellate Tribunal further held that objections raised by unrelated third parties, including a housing society representing allottees of a completed tower, were legally unsustainable at the admission stage. Such entities do not have locus to intervene at the threshold under Section 7. It also observed that the Corporate Debtor's argument of being a "going concern" was no defence to an application under Section 7. Being operational or viable cannot shield a debtor from CIRP once the default threshold is crossed. On a comprehensive reading of the facts and the precedents, the NCLAT held that the application was complete in all respects and that the NCLT had erred in law by considering extraneous factors.

The NCLAT accordingly allowed the appeal, set aside the impugned order of the NCLT, and directed that CIRP be initiated against Takshashila Heights India Pvt. Ltd.

[2] Company Appeal (AT) (Insolvency) No. 2261 of 2024

3.UNINCORPORATED JOINT VENTURES NOT SUBJECT TO CIRP UNDER IBC: NCLAT HOLDS SECTION 9 INAPPLICABLE TO NON-CORPORATE PERSONS

In a notable decision reinforcing the scope and applicability of the Insolvency and Bankruptcy Code, 2016, the Hon'ble National Company Law Appellate Tribunal **("NCLAT")**, Principal Bench, New Delhi, in *Gagan Chhabra v. SMS Vishwa JV*[3] [Company Appeal (AT) (Insolvency) No. 1749 of 2024, decided on 30th June 2025], held that an application under Section 9 of the IBC is not maintainable against an unincorporated joint venture, since such an entity does not qualify as a "corporate person" within the meaning of Section 3(7) of the Code.

The Appellant, an advocate by profession, had rendered legal services to SMS Vishwa JV, a joint venture formed contractually between three corporate entities: SMS Paryavaran Ltd., Vishwa Infrastructures & Services Pvt. Ltd., and Harish Chander & Company. Alleging non-payment of professional fees totalling Rs. 2.49 Crore, the Appellant issued a demand notice under Section 8 and thereafter filed an application under Section 9 of the IBC seeking initiation of CIRP against the JV.

The Hon'ble NCLT, New Delhi Bench, had dismissed the petition, although the original grounds of dismissal related to limitation and pre-existing dispute, the Appellant challenged the decision before the Hon'ble NCLAT on the premise that he was an operational creditor with a valid claim. The Hon'ble NCLAT, however, decided the matter on a more fundamental jurisdictional issue, the maintainability of a Section 9 application against an unincorporated JV.

Issue was whether an application under Section 9 of the IBC can be initiated against a joint venture that is not a company, LLP, or otherwise incorporated under Indian corporate law?

The Hon'ble Appellate Tribunal unequivocally held that the IBC permits insolvency proceedings only against a "corporate debtor", which must necessarily fall within the definition of a "corporate person" under Section 3(7) of the Code. A "corporate person" includes a company, a LLP, or any other person incorporated with limited liability under any law. Since SMS Vishwa JV was not registered or incorporated as a separate legal entity, it lacked the juristic character of a corporate person. Crucially, the Hon'ble Appellate Tribunal rejected the contention that the presence of corporate constituents in the joint venture could extend corporate status to the JV itself. It emphasized that a contractual joint venture without separate incorporation does not attain legal personality, and cannot be treated as a debtor capable of undergoing insolvency resolution under the IBC.

The Hon'ble Appellate Tribunal further noted that the Appellant had already participated in CIRP proceedings of the constituent entities, SMS Paryavaran Ltd. and Vishwa Infrastructures & Services Pvt. Ltd., by filing similar claims. One of the claims had been admitted while the other was rejected. The Hon'ble Appellate Tribunal held that attempting to proceed simultaneously against the unincorporated JV amounted to claim duplication and procedural abuse, which the Code does not countenance. They also clarified that even if dues were genuinely payable to the Appellant, the appropriate recourse would lie before a civil court or arbitral forum, and not through the IBC, which is a special statute applicable only to debt resolution involving corporate entities. The appeal was accordingly dismissed.

[3] Company Appeal (AT) (Insolvency) No. 1749 of 2024

4.IBC PROCEEDINGS ARE NOT CIVIL SUITS: NCLAT UPHOLDS PERMISSIBILITY OF AMENDMENT TO SECTION 7 APPLICATION

In *Swaminarayan Diamonds Pvt. Ltd. v. Canara Bank[4]* [Company Appeal (AT) (Insolvency) No. 885 of 2025, decided on 23 June 2025], the Hon'ble National Company Law Appellate Tribunal **("NCLAT")**, Principal Bench, New Delhi, reiterated the fundamental legal principle that proceedings under the Insolvency and Bankruptcy Code, 2016 are not akin to ordinary civil litigation and must be approached through a distinct and commercial lens. This arose in an appeal challenging an NCLT order allowing amendment of Form 1 in a Section 7 application to correct the date of default.

The Appellant argued that such amendment altered the foundational facts of the case and prejudiced the Respondent, particularly since the liberty to amend was granted without a formal application and without affording the Appellant a pre-decisional hearing. However, the Hon'ble Appellate Tribunal dismissed these contentions and upheld the Adjudicating Authority's order. The Hon'ble Bench emphasized that Section 7 applications under IBC are filed in statutory form and not as elaborate pleadings like civil suits, and therefore, the threshold for allowing amendments must be interpreted accordingly.

Importantly, the Hon'ble Appellate Tribunal relied on the Hon'ble Supreme Court's decision in D*ena Bank v. C. Shivakumar Reddy*, (2021) 10 SCC 330, where it was held that amendments to a Section 7 application, or the submission of additional documents, are permissible at any time prior to the final admission or rejection of the application. The Hon'ble Apex Court had further clarified that applications under Section 7 are not governed by the strict procedural rigors of the Civil Procedure Code and must be interpreted in a pragmatic and facilitative manner, keeping in mind the objectives of timely resolution of default.

The Hon'ble Appellate Tribunal held that the IBC confers a duty upon the Adjudicating Authority to ascertain the existence of debt and default, and if these are established, it is bound to admit the application. In this case, the amendment was merely clarificatory, with the corrected date of default (10.04.2024) falling within limitation and not materially altering the cause of action. Moreover, the Appellant was granted an opportunity to respond to the amended application, and thus no prejudice was caused.

The Hon'ble Appellate Tribunal underscored that the role of the Adjudicating Authority is to facilitate resolution, not to dismiss cases on technicalities, and that procedural flexibility is vital under the IBC scheme. Rigid civil law standards would frustrate the objective of speedy and efficient resolution of insolvency cases. Consequently, the appeal was dismissed, and the matter was remanded to the Hon'ble NCLT for expeditious adjudication under Section 7.

This decision reinforces the principle that IBC is a unique code focused on commercial resolution, and courts must be guided by the economic substance rather than procedural form, allowing latitude where required to further the Code's objectives.

[4] Company Appeal (AT) (Insolvency) No. 885 of 2025

5.MORATORIUM UNDER SECTION 96 TRIGGERS ON FIRST SECTION 95 FILING, SUBSEQUENT APPLICATIONS BY OTHER CREDITORS BARRED: NCLAT CHENNAI

In *Indian Bank v. K R Tirumuruhan*[5] the National Company Law Appellate Tribunal **("NCLAT")**, Chennai Bench, was required to decide whether a second insolvency application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 against a personal guarantor was maintainable where an earlier application by another financial creditor was already pending.

The Appellant, Indian Bank, had filed its Section 95 application before the Hon'ble NCLT, Chennai Bench, against Mr. K R Tirumuruhan **("Personal Guarantor")**. However, the Hon'ble NCLT, by order dated 06.01.2025 in CP (IB) No. 80/2024, dismissed the application as infructuous, on the ground that another financial creditor, IDBI Trusteeship Services Ltd. had already initiated similar proceedings against the same personal guarantor in CP (IB) No. 785/2020.

Challenging the Hon'ble NCLT's ruling, the Appellant argued that its statutory entitlement to file an insolvency application under Section 95 of the IBC could not be extinguished solely on account of pendency of proceedings initiated by another creditor. It was submitted that every financial creditor is independently entitled to seek recourse under the Code.

The Hon'ble Appellate Tribunal, however, observed that the issue was not res integra. It had already been considered in *Indian Bank v. T. Prabhakar* [Comp App (AT) (CH) (Ins) No. 121/2025], where the Hon'ble Tribunal had ruled that the moratorium under Section 96 is triggered upon the filing of the first Section 95 application, thereby staying all other proceedings against the same personal guarantor until the pending application is resolved.

Relying on this earlier decision, the Hon'ble Appellate Tribunal reaffirmed that the moratorium under Section 96(1)(b) of the IBC operates automatically from the date of filing of an application under Section 95. It held that the bar is clear and applies uniformly, prohibiting multiple and simultaneous insolvency proceedings against the same individual, even if initiated by different financial creditors.

The Hon'ble Appellate Tribunal emphasized that permitting parallel applications would defeat the IBC's scheme of coordinated and consolidated resolution in the case of personal guarantors. It noted that the legislative intent behind Section 96 is to prevent a fragmented insolvency process and avoid duplication of proceedings against the same person. Observing that the Appellant's grievance stemmed from delays in the adjudication of the earlier application, the Hon'ble Appellate Tribunal did not find grounds to interfere with the NCLT's order. However, it directed the Adjudicating Authority to expedite disposal of the pending application filed by IDBI Trusteeship Services Ltd. in CP(IB) No. 785/2020.
Accordingly, the appeal was dismissed, while urging the NCLT to proceed expeditiously with the earlier filed Section 95 petition, in line with the IBC's objective of timely resolution.

[5] Company Appeal (AT) (CH) (Insolvency) No.150 of 2025

6.WITHDRAWAL OF VOLUNTARY LIQUIDATION PERMITTED UNDER RULE 11: NCLT CHANDIGARH RECOGNISES INHERENT JURISDICTION TO REVERSE VOLUNTARY LIQUIDATION WHERE STATUTORY SILENCE EXISTS AND NO PREJUDICE IS CAUSED

In a notable precedent on the interplay between the NCLT's inherent powers and the framework of voluntary liquidation under the Insolvency and Bankruptcy Code, 2016 ("IBC"), the Hon'ble National Company Law Tribunal, Chandigarh Bench, in *ENEL Green Power India Pvt. Ltd. v. Mr. Suman Kumar Verma*[6] [CP (IB) No. 3(CH)/2024, decided on 01 July 2025], allowed the recall of a voluntary liquidation process initiated under Section 59 of the IBC, by invoking its inherent powers under Rule 11 of the NCLT Rules, 2016. Despite the absence of any specific statutory mechanism under the IBC or the Voluntary Liquidation Process Regulations, 2017 for such recall, the Hon'ble Tribunal held that judicial intervention is permissible where the process has not reached an irreversible stage, and no prejudice is caused to creditors or third parties.

The application pertained to *Enel Vayu (Project 2) Pvt. Ltd.*, a wholly-owned subsidiary of ENEL Green Power India Pvt. Ltd., which had been voluntarily placed into liquidation pursuant to a shareholder resolution. Upon reassessment, and prior to any asset distribution, the stakeholders unanimously resolved to withdraw the liquidation, citing improved commercial prospects. There were no pending creditor claims, and the Liquidator raised no objection.

Issues:

1. Whether the National Company Law Hon'ble Tribunal can exercise its inherent powers under Rule 11 of the NCLT Rules, 2016 to permit the withdrawal of a voluntary liquidation process initiated under Section 59 of the IBC, 2016 in the absence of an express enabling provision.
2. Whether the absence of creditor claims and unanimous stakeholder consent justify judicial recall of voluntary liquidation before the process attains finality.
3. Whether the equitable power of the Hon'ble Tribunal can be invoked to reverse a non-insolvency driven winding-up where continuation of liquidation serves no commercial or public interest.

In its detailed reasoning, the Hon'ble Tribunal acknowledged the legislative silence under the IBC and the Voluntary Liquidation Regulations on the possibility of withdrawing a voluntary liquidation process once it has formally commenced. However, the Hon'ble Tribunal clarified that statutory silence is not to be construed as prohibition, especially in scenarios where the liquidation is premature, reversible, and non-prejudicial.

The Hon'ble Bench emphasized that the liquidation in question was not driven by insolvency or statutory non-compliance, but rather was a commercial restructuring decision. Given that the company was solvent, and that no creditor rights had crystallized, the Hon'ble Tribunal found that allowing the company to exit liquidation aligned with the objectives of the Code.

In invoking Rule 11, which permits the Hon'ble Tribunal to pass orders "to meet the ends of justice" or to "prevent abuse of process," the NCLT held that such powers can be exercised in voluntary liquidation cases that are fact-specific and exceptional in nature. The Hon'ble Bench stressed that Rule 11 is not a substitute for legislative gaps, but may be invoked where procedural rigidity would result in injustice or frustrate the Code's commercial purpose.

"In the absence of express statutory prohibition, the NCLT retains inherent jurisdiction under Rule 11 of the NCLT Rules, 2016 to permit withdrawal of a voluntary liquidation process under Section 59 of the IBC, provided that the liquidation has not reached an irreversible stage and no prejudice is caused to creditors or stakeholders."

The Hon'ble Bench accordingly exercised its inherent jurisdiction under Rule 11, which enables the Hon'ble Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of process and emphasized that such powers must be sparingly used and limited to fact-specific, exceptional scenarios.

[6] Company Petiton (IB) No. 3 (CH) of 2024

7.INSOLVENCY APPLICATION FILED BY PERSONAL GUARANTOR UNDER SECTION 94 HELD MAINTAINABLE – NCLT INDORE

In a significant ruling, the National Company Law Tribunal **("NCLT")**, Indore Special Bench, in *Prashant Kumar Gupta v. Punjab National Bank*[7] [CP(IB)/71(MP)/2022, order dated 23 June 2025], held that a personal guarantor is entitled to voluntarily initiate an Insolvency Resolution Process **("IRP")** against himself under Section 94 of the Insolvency and Bankruptcy Code, 2016 **("IBC")**, provided the statutory requirements are met.

The application was filed by Mr. Prashant Kumar Gupta, personal guarantor to M/s P K Global Power Pvt. Ltd., who had guaranteed credit facilities extended by Punjab National Bank. Following default and invocation of the personal guarantee, the applicant sought to commence IRP against himself. The IRP, after due examination under Section 99, recommended admission of the petition, confirming existence of default and absence of repayment.

Key Issues Before the Hon'ble Tribunal were:

1. Whether an application filed by a personal guarantor under Section 94 of the IBC is maintainable for initiating insolvency proceedings against himself?
2. Whether the existence of default and invocation of guarantee, absent any CIRP against the principal borrower, satisfies the conditions under Section 100?

The Hon'ble Tribunal held that a personal guarantor is legally entitled to initiate insolvency proceedings against himself under Section 94 of the Insolvency and Bankruptcy Code, 2016. It observed that the scheme of the Code expressly permits such voluntary initiation, provided the statutory prerequisites—such as existence of debt, default, and procedural compliance—are fulfilled. Emphasizing the autonomy of the personal guarantor's liability, the Hon'ble Tribunal reaffirmed that under Section 128 of the Indian Contract Act, 1872, the guarantor's obligation is co-extensive with that of the principal borrower. Once a guarantee is invoked and payment is not made, the liability crystallizes, irrespective of whether a Corporate Insolvency Resolution Process **("CIRP")** has been initiated against the corporate debtor.

The Hon'ble Tribunal also took note of the recommendation filed by the IRP under Section 99, which confirmed that the debt remained unpaid, that the personal guarantor had not responded to notices, and that the procedural and documentary requirements under the Code had been met. Although there was some delay in the IRP's filing, the Hon'ble Tribunal condoned it in view of the difficulties faced in obtaining financial records. Importantly, the Hon'ble Tribunal relied on the judgment of the Hon'ble Supreme Court in *Dilip B. Jiwrajka v. Union of India*, which upheld the constitutional validity of the personal guarantor framework under the IBC, thereby fortifying the permissibility of such applications.

In light of the above findings, the Hon'ble Tribunal admitted the application under Section 100 of the Code a and declared a moratorium under Section 101. It appointed a new Resolution Professional in place of the earlier IRP and issued directions to commence the insolvency resolution process in accordance with the statutory provisions.

The Hon'ble Tribunal, finding no bar to admission, admitted the petition under Section 100 and declared a moratorium under Section 101, thereby protecting the personal guarantor from all legal actions during the resolution period. It appointed a new Resolution Professional and issued detailed directions for conducting the process.

[7] Company Petition (IB) No. 71(MP) of 2022

8.TAX DUES UNDER GST LAWS DO NOT CONSTITUTE "OPERATIONAL DEBT" WITHIN THE MEANING OF SECTION 5(21) OF THE IBC – NCLT AHMEDABAD

In *State Tax Officer v. Vinod*[8], the National Company Law Tribunal **("NCLT")**, Ahmedabad Bench, was called upon to determine whether outstanding liabilities under the Goods and Services Tax laws could be treated as "operational debt" under Section 5(21) of the Insolvency and Bankruptcy Code, 2016 ("IBC") and thereby entitle the tax authority to participate as an operational creditor in an ongoing Corporate Insolvency Resolution Process ("CIRP").

The claim was filed by the State Tax Officer against Mr. Vinod Tarachand Agarwal **("Corporate Debtor")**, during the pendency of CIRP proceedings. The Officer contended that the unpaid GST dues, being statutory in nature and arising from the business operations of the debtor, ought to fall within the scope of "operational debt" and be admitted accordingly.

The primary issue before the Hon'ble Tribunal was whether such statutory dues, arising under an enactment and not pursuant to any agreement for the supply of goods or services, could be brought within the definition of "operational debt" as contemplated under Section 5(21) of the IBC. The said provision defines operational debt to include claims arising from the provision of goods or services, including employment, or a debt in respect of the payment of dues under any law and payable to the government or local authority.

Upon consideration, the Hon'ble Tribunal examined the context in which government dues may qualify as operational debt. It held that for any liability payable to the State to be classified as an operational debt, it must be integrally connected to the operational functioning of the Corporate Debtor i.e., it must relate to goods or services provided to the debtor or involve statutory liabilities that stem from such a provision.

The Hon'ble Tribunal found that the GST dues in question were purely statutory in nature and arose not from any bilateral arrangement or contractual engagement between the State Tax Officer and the Corporate Debtor, but from the Corporate Debtor's failure to comply with tax obligations imposed by law. It held that in the absence of any underlying transaction for the provision of goods or services, such dues could not satisfy the test laid down under Section 5(21).

In support of its conclusion, the Hon'ble Tribunal relied on the judgment of the Hon'ble Supreme Court in State Tax Officer v. Rainbow Papers Ltd., where the apex court distinguished between dues that are inherently statutory and those arising from commercial transactions. The Hon'ble Tribunal also referred to *Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Co. Ltd.* and other authorities to affirm that only those liabilities having a direct nexus with operational activity qualify as operational debts.
The Hon'ble Tribunal further observed that expanding the definition of operational debt to include all forms of tax dues would dilute the commercial intent of the IBC and open the floodgates for various non-contractual sovereign claims to be admitted in the CIRP framework, contrary to the object and scheme of the Code.

Accordingly, the Hon'ble Tribunal dismissed the claim filed by the State Tax Officer, holding that the outstanding GST dues did not constitute operational debt within the meaning of the IBC. The ruling reiterates that sovereign dues, unless directly connected to the provision of goods or services, do not fall within the scope of Section 5(21) and are therefore not recoverable through the CIRP mechanism.

[8] Interlocutory Application No. 435(AHM) of 2025 in Company Petition (I.B) No. 123(AHM) of 2022

9. THE ADJUDICATING AUTHORITY, UNDER THE IBC, IS ONLY REQUIRED TO ASCERTAIN WHETHER A DISPUTE EXISTED PRIOR TO THE ISSUANCE OF THE DEMAND NOTICE UNDER SECTION 8, AND IS NOT MANDATED TO UNDERTAKE A FINAL ADJUDICATION ON THE MERITS OF SUCH DISPUTE. – NCLAT NEW DELHI

The Hon'ble NCLAT, New Delhi in ***Morex Corporation Ltd. Vs. Jindal Poly Films Ltd.[9]*** reiterated and observed that NCLT is only to take notice that a dispute was in existence prior to issue of Section 8 Demand Notice but is not required to enter into final adjudication with regard to existence of dispute.

The Appellant, Morex Corporation Ltd., entered into a business understanding with the Respondent, Jindal Poly Films Ltd., for the supply of non-woven fabric to be exported to a Chinese company. The shipping terms were on an FOB (Free On Board) basis, with strict timelines. The Appellant issued a purchase order on 12.03.2020, making advance payments of Rs.1.61 crore and Rs.1.38 crore. The delivery of goods was to be completed by 23.03.2020, but due to alleged production delays, the Respondent failed to deliver. Meanwhile, a ban notification dated 19.03.2020 was issued by the Government of India restricting the export of non-woven fabric due to COVID-19.

The Appellant terminated the contract on 01.04.2020, citing non-delivery of goods, and demanded a refund of the advance. After no response from the Respondent, the Appellant served a Demand Notice under Section 8 on 15.05.2020, followed by a Section 9 application before the NCLT, Allahabad, which was dismissed on the ground of a pre-existing dispute.

The Appellant contended that the Adjudicating Authority erroneously relied on unauthoritative documents and ignored key correspondence proving the Respondent's failure. Section 65 of the Indian Contract Act, 1872 mandated that the Respondent return the advance payment upon the failure of performance. The termination and demand for refund were legitimate, and the IBC remedy was justified.

The Respondent in its reply claimed that the termination of the contract was unilateral and illegal, made without consent and discussion. The Respondent had expressed willingness to sell locally or manufacture alternate fabric, showing bona fides. The Section 9 application was a misuse of the IBC, which is not meant for recovery of disputed contractual dues. The Appellant could have approached the Civil Court for appropriate remedies. The Respondent issued a detailed Notice of Dispute dated 20.05.2020, clearly denying liability and pointing out the illegality of the termination.

The Tribunal observed that the Corporate Debtor had clearly informed the Operational Creditor that the goods were already produced and stored in their warehouse. The Operational Creditor had neither denied nor disputed this claim at the relevant time, and in fact asked the Corporate Debtor to "keep the goods ready for 23.03.2020".

The Respondent's Notice of Dispute referred to the unilateral and illegal termination, thus qualifying as a pre-existing dispute as per Section 8(2)(a) and Section 9(5)(ii)(d) of IBC. Lastly, the Tribunal observed that the Adjudicating Authority rightly concluded that the dispute was genuine, not spurious, and hence, IBC proceedings were not maintainable in the context of a disputed debt. The Tribunal reiterated that IBC is not a substitute for a recovery mechanism, and insolvency should not be used to pressurize a solvent, going concern where a genuine commercial dispute exists

[9] Company Appeal (AT) (Insolvency) No. 768 of 2024

10. PMLA PROCEEDINGS CANNOT SURVIVE POST-RESOLUTION: NCLAT REAFFIRMS SUPREMACY OF IBC AND SECTION 32A

In *Directorate of Enforcement v. Anil Kohli Mittal (RP) [10]*, before the Hon'ble NCLAT Principal Bench, New Delhi, the Hon'ble Appellate Tribunal reaffirmed that once a resolution plan is approved, all attachments by the Directorate of Enforcement ("**ED**") under the Prevention of Money Laundering Act, 2002 ("**PMLA**") stand overridden by virtue of Section 32A of the IBC. The judgment continues the trend of harmonizing economic revival with legislative immunity from prosecution and confiscation under other laws.

The appeal was filed by the Resolution Professional ("**RP**") of Frost International Ltd., whose resolution plan had already been approved by the Adjudicating Authority under Section 31 of the IBC. The ED had attached certain assets of the Corporate Debtor on allegations of money laundering and refused to release them even after plan approval. The RP approached Hon'ble NCLAT seeking directions for lifting of the said attachments, contending that the successful resolution applicant should get a "clean slate" and uninterrupted possession of all assets.

The Issue before the Hon'ble Tribunal was whether the attachment of the Corporate Debtor's assets by the ED under the PMLA can survive post-approval of a resolution plan under the IBC.

The Hon'ble NCLAT unequivocally held that post-approval of the resolution plan under Section 31(1), the shield provided under Section 32A of the IBC kicks in with full force. The Bench relied on the Supreme Court's landmark ruling in Manish Kumar v. Union of India, (2021) 5 SCC 1 and Directorate of Enforcement v. Manoj Kumar Agarwal, 2023 SCC OnLine SC 1346, to reiterate that the object of Section 32A is to ensure that the new management of the Corporate Debtor is not saddled with past criminal liabilities or penal consequences.

The Hon'ble Appellate Tribunal held that continuation of ED attachment would be contrary to the resolution framework and the "fresh start" principle embedded in IBC. The statutory protection under Section 32A is not merely procedural but substantive, once the resolution plan is approved, criminal investigations and attachments pertaining to offences committed prior to the commencement of CIRP cannot be continued against the Corporate Debtor or its property, provided the incoming resolution applicant is not itself an accused.

The Hon'ble NCLAT also emphasized that the ED, despite being aware of the CIRP and resolution proceedings, neither challenged the resolution plan nor took recourse under Section 66 or 69 of the IBC. Having remained passive, the ED could not now object to the RP's demand for release of assets.

The Appellate Tribunal directed the ED to lift the attachments over the Corporate Debtor's assets and to cooperate in the smooth implementation of the resolution plan. This ruling provides further clarity on the interplay between IBC and PMLA, reinforcing that once a resolution plan is approved, Section 32A acts as a statutory bar against punitive actions related to past offences, unless the new management is complicit. The judgment strengthens the "clean slate" doctrine and sends a strong message to investigating authorities that non-participation in insolvency proceedings will not preserve their post-resolution claims.

[10]Company Appeal (AT) (Insolvency) No. 605 of 2025

11. ADJUDICATING AUTHORITY'S POWER TO DISMISS CIRP POST-SETTLEMENT IS SUBORDINATE TO SECTION 12A

In a notable decision *in Bizloan Pvt. Ltd. v. Amit Chandrashekhar[11]*, the NCLAT the Principal Bench of the National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi reiterated that once a Section 7 application is admitted and CIRP has commenced, any settlement between the financial creditor and corporate debtor can only be given effect to through a withdrawal under Section 12A of the IBC and not by simply recording the settlement and dismissing the proceedings.

Bizloan Pvt. Ltd. had filed a Section 7 application before the Adjudicating Authority, which was duly admitted and CIRP was initiated against the corporate debtor. However, shortly after admission, the parties entered into a settlement. The NCLT, Mumbai Bench, despite admission, dismissed the Section 7 application based on the post-admission settlement and directed closure of CIRP without invoking the mechanism under Section 12A. The Appellant (Resolution Professional) challenged this order, arguing that once CIRP had commenced, the only method to close the proceedings on settlement was via withdrawal under Section 12A with the approval of 90% of the Committee of Creditors ("**CoC**").

The Issue before the Hon'ble Tribunal was whether the Adjudicating Authority was correct in dismissing the admitted Section 7 application on the basis of a private settlement without resorting to Section 12A of the IBC.

The Appellate Tribunal held that the approach adopted by the NCLT was legally unsustainable. Once a Section 7 application is admitted, CIRP gets triggered and the corporate debtor is placed under a statutory process. The proceedings are no longer under the domain of the applicant alone; they now involve the CoC, and therefore cannot be unilaterally terminated. The correct procedure for withdrawal of such proceedings is under Section 12A, which mandates:

- A withdrawal application by the applicant,
- Approval of 90% voting share of the CoC, and
- Filing through the Resolution Professional.
-

The Hon'ble NCLAT emphasized that recording a post-admission settlement and dismissing the proceedings dehors Section 12A would amount to bypassing the statutory safeguards and stakeholder rights, especially of other creditors. It relied on the Supreme Court's decision in *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 and *Lalit Kumar Jain v. Union of India*, (2021) 9 SCC 321, which have laid down that post-admission settlements must follow the mechanism under Section 12A.

Accordingly, the order of the NCLT was set aside, and the matter was remanded back to the Adjudicating Authority to consider the settlement strictly under the framework of Section 12A. The NCLAT reiterated that CIRP proceedings, once triggered, cannot be undone through mere settlements between parties unless routed through the structured mechanism provided under the Code. The sanctity of the CoC and the collective creditor process must be upheld.

[11] Company Appeal (AT) (Insolvency) No. 210 of 2024 & Interlocutory Application No. 718 of 2024

12. INHERENT POWER UNDER RULE 11 OF NCLAT RULES CANNOT BE INVOKED TO RECALL ORDERS PASSED BY FRAUD OR WITHOUT JURISDICTION: NCLAT CHENNAI

In Mr. Ashique Ponnamparambath v. Reuben George Joseph [12], the Hon'ble NCLAT rejected an appeal challenging the dismissal of a recall application and reiterated that Rule 11 cannot be employed to re-agitate contested findings or substitute the remedy of appeal or review under the IBC framework.

The appellant, former Managing Director of Platino Classic Motors (India) Pvt. Ltd., had moved the NCLT Kochi Bench to recall an order dated 11.12.2024, alleging that the order was obtained by fraud and without jurisdiction, and that it incorrectly recorded his consent. The recall was filed under Rule 11 read with Rule 32 of the NCLT Rules, 2016. The NCLT, however, dismissed the application on the ground that the allegations raised involved disputed facts and matters of record, and could not be addressed within the narrow procedural scope of a recall jurisdiction.

On appeal, the NCLAT affirmed the reasoning of the Adjudicating Authority and held that Rule 11 is intended to address procedural gaps and cannot be invoked to reopen findings rendered after full participation in proceedings. The Tribunal further clarified that when the alleged fraud or lack of consent gives rise to mixed questions of fact and law, requiring evidentiary appreciation, the correct recourse is to file an appeal before the appropriate forum. It observed that the inherent powers under Rule 11 do not authorise a tribunal to undertake a substantive review of its own orders under the guise of recall, especially where the statutory framework already provides for appellate redress.

The NCLAT concluded that since the appellant had actively participated in the proceedings leading to the original order and failed to demonstrate a manifest jurisdictional error or procedural illegality apparent on the face of the record, the invocation of Rule 11 was misconceived. The appeal was accordingly dismissed, albeit without prejudice to the appellant's right to pursue appropriate remedies in law.

The bench observed that 'the inherent power provided under Rule 11 does not include within itself a power to override a statutory provision or a field which is already covered under law. Inherent powers can only be utilized only to fill up the vacuums, which are prevailing in the given procedural law, but they cannot act as a substitute to the process of law, which could have been exercised by Appellate forum.'

[12] Company Appeal (AT)(CH)(INS) No. 323 of 2025

13. SECURITY INTEREST ONCE WAIVED CANNOT BE REVIVED: CALCUTTA HIGH COURT EMPHASIZES ESTOPPEL AGAINST SECURED CREDITORS

In a recent ruling, the Calcutta High Court in *Arcl Organics Ltd. v. Stressed Asset Stabilization Fund & Ors[13].*, held that a secured creditor who had consciously and repeatedly waived its right to enforce a security interest cannot later revive such rights to claim priority in distribution under Section 13(9) of the SARFAESI Act, 2002. The judgment is a significant reaffirmation of the doctrine of election and estoppel, particularly in inter-creditor disputes involving multiple enforcement proceedings.

The dispute arose out of competing claims over the sale proceeds of a mortgaged property in Salt Lake, Kolkata. Originally owned by the borrower, the property was mortgaged to IFCI Ltd., which later assigned the debt to the Stressed Asset Stabilization Fund ("**SASF**"). The Petitioner, Arcl Organics Ltd., had acquired the asset in a court-mandated auction under a recovery certificate issued by the DRT in favor of Bank of Baroda. Although SASF had a registered mortgage, it had participated in earlier DRT proceedings and expressly stated that it would not claim the sale proceeds and would pursue recovery through independent SARFAESI action. Despite this, SASF later attempted to intervene and claim a share in the surplus sale proceeds realized from the DRT execution process.

Issue

- Whether a secured creditor who has elected to stand outside the DRT recovery process and waived its rights to the sale proceeds can later reassert its claim under SARFAESI or common law.

The Hon'ble Court held that SASF was estopped from asserting any claim to the DRT sale proceeds, having repeatedly elected to stay out of the process. It observed that SASF, through multiple affidavits and communications, had unequivocally chosen to waive its security interest vis-à-vis the DRT proceedings, stating it would recover dues independently under SARFAESI. Once such election was made and acted upon by other parties, SASF could not approbate and reprobate. The Hon'ble Court rejected SASF's reliance on Section 13(9) of SARFAESI, holding that the provision contemplates coordination among secured creditors at the stage of enforcing a common security under SARFAESI, not post-facto claims against independent recoveries. It clarified that participation and express waiver in DRT proceedings constituted binding conduct.

The doctrine of estoppel by election, the Court noted, operates where a party, having two inconsistent rights, chooses one and acts upon it. Such an election forecloses later assertions of the alternative right if it would prejudice others or violate judicial discipline. Dismissing SASF's claim, the High Court held that Arcl Organics Ltd. was entitled to the surplus without interference from SASF. The judgment reinforces finality in execution proceedings and curbs opportunistic re-litigation by secured creditors who attempt to "stand outside the process" and then re-enter to claim proceeds. It highlights that creditors cannot reserve the right to enforce at will and must respect the procedural choices they make. Particularly in recovery contexts involving DRT and SARFAESI, strategic waivers or elections carry binding consequences, ensuring orderly distribution and legal certainty for auction purchasers and other creditors.

[13] CA 136 of 2017

India is in direct contravention of the moratorium under Section 14 of the IBC, which restricts institution or continuation of legal proceedings or actions against the corporate debtor. Since the Resolution Plan was already approved by the CoC and at its final stage, the notice of fraud classification could disrupt the resolution process, causing avoidable complications in implementation. The classification amounts to an 'action' against the corporate debtor, thereby invoking the protective shield of Section 14. The RP sought direction from the NCLT to quash the said notice and restrain the bank from proceeding with fraud classification till completion of CIRP.

The NCLT dismissed the Interlocutory Application, holding that Section 14 of the IBC does not prohibit banks from classifying an account as fraud. The moratorium envisaged under Section 14 applies to legal actions such as institution of suits, continuation of pending proceedings, or enforcement actions related to the assets of the corporate debtor. However, the classification of an account as fraud is an internal, administrative decision of the bank based on regulatory mandates and does not amount to enforcement or recovery proceedings against the corporate debtor. The NCLT's jurisdiction under Section 60(5) does not extend to reviewing or interfering with a bank's decision to label an account as fraudulent, especially when the classification is undertaken as per RBI's guidelines. Accordingly, the Interlocutory Application was dismissed by the Tribunal.

[14] A (I.B.C)/3028(MB)2025 (NEW IA) IN C.P. (IB)/530(MB)2020

15. INDIVIDUAL HOMEBUYER HAS NO LOCUS TO CHALLENGE OTHER CLAIMS UNDER SECTION 60(5): NCLT CHANDIGARH

The Hon'ble National Company Law Tribunal, Chandigarh Bench-I, in *Rajeev Khurana v. Sharvind Kumar, RP of Chandigarh Overseas Pvt. Ltd[15].*, dismissed an application filed by a homebuyer challenging the admission of claims of various other creditors. The Tribunal imposed a cost of ₹25,000 for frivolous and speculative litigation amounting to an abuse of the IBC process.

The Applicant, claiming to act on behalf of similarly placed homebuyers, sought multiple directions including the cancellation of alleged fraudulent claims admitted by the RP, a reconstitution of the creditor list, a forensic audit, and a stay on resolution plan adjudication. The RP opposed the maintainability of the application, citing the applicant's lack of locus and highlighting that similar issues had already been raised in other proceedings by suspended directors.

The Hon'ble Tribunal held that once a class of creditors (such as homebuyers) is represented in the Committee of Creditors through an Authorised Representative under Section 21(6A)(b) and Regulation 16A of the CIRP Regulations, no individual homebuyer can independently approach the Tribunal for issues concerning the claims of other stakeholders. The Tribunal emphasized that a single homebuyer cannot individually maintain an application before this Tribunal in matters relating to CIRP, especially where the issues pertain not to enforcement of his own rights or grievances, but seek dismissal or disqualification of claims of other creditors.

The Hon'ble Tribunal then noted that the applicant failed to furnish any power of attorney or concrete authorisation from other alleged homebuyers and had not previously raised objections with the RP or CoC. Further, the application was filed more than a year after CoC approval of the resolution plan dated 19 March 2024. The Tribunal characterized the filing as *malafide*, speculative, and a "gross abuse of process."

It also observed that the same issues had already been raised by suspended director Tejinder Pal Setia in IA No. 2105 of 2023 and that the present application appeared to be a coordinated attempt to derail the CIRP process. As the reliefs sought were speculative, vague, and unsubstantiated, based largely on alleged emails and "possibilities" of collusion, the application was summarily dismissed. Accordingly, the Tribunal imposed a cost of Rs. 25,000 on the applicant, payable to the Prime Minister's Relief Fund and dismissed the Petition.

[15]Interlocutory Application No. 603 of 2025 in Company Petition (IB) No. 248 of 2019

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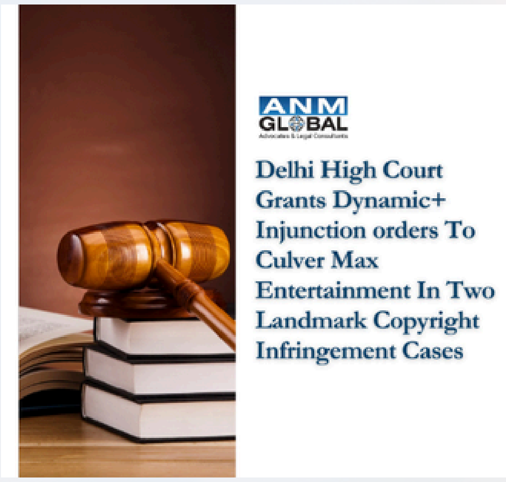
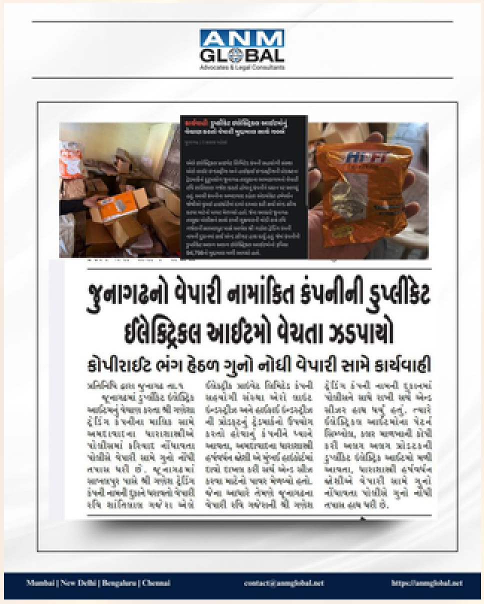
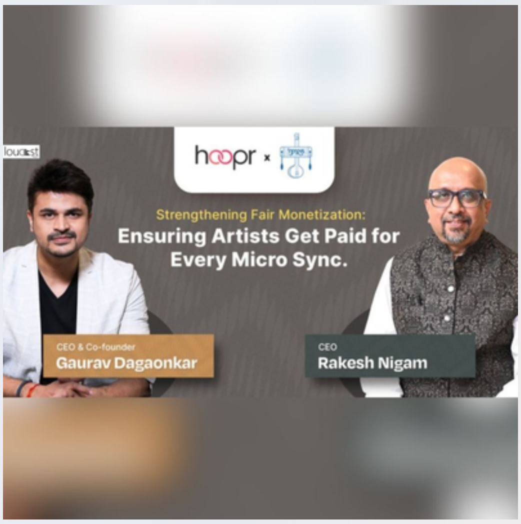


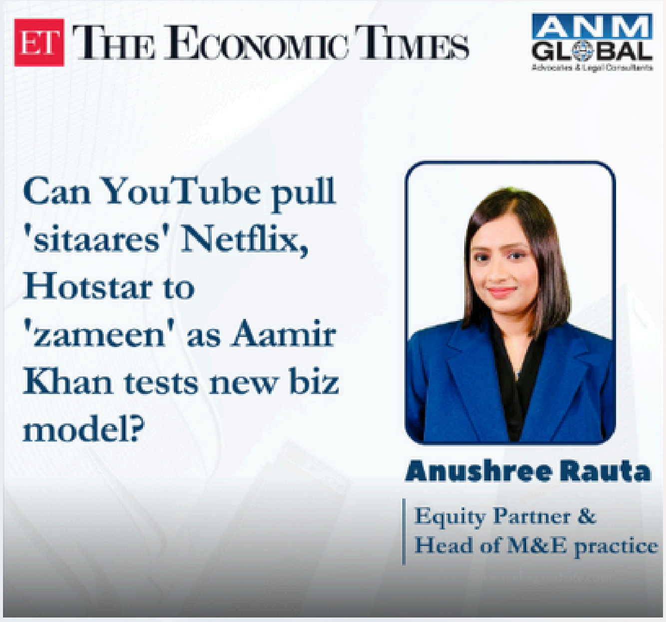
<u>**ANM Global successfully represented Culver Max Entertainment in securing landmark Dynamic+ injunctions from the Delhi High Court in two major copyright infringement cases, setting key precedents in the fight against online piracy.**</u>



<u>**ANM Global successfully represented AEROLITE INDUSTRIES and @Hi-fi Industries before the Hon'ble Bombay High Court in a trademark and copyright infringement case involving counterfeit electrical goods being sold under pirated "Hi-Fi" labels**</u>.

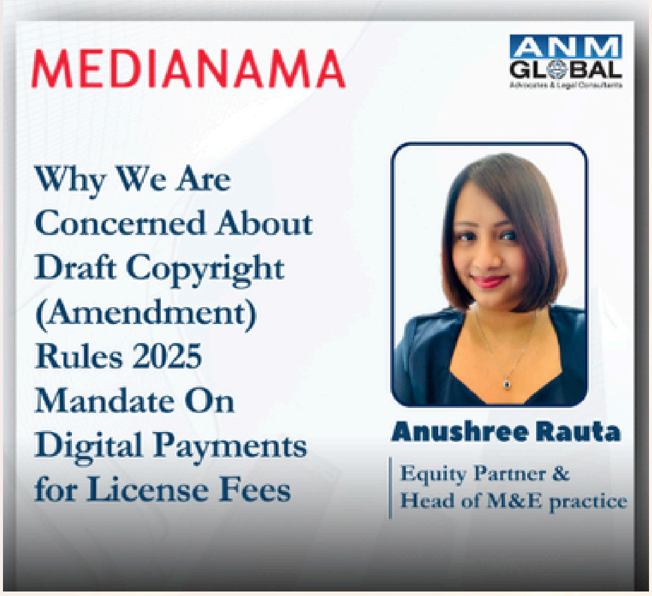


<u>**ANM Global acted as legal counsel to GSharp Media, advising on the structuring and negotiation of the agreement and providing robust legal and transactional support. The team ensured regulatory alignment, commercial clarity and a strategically sound framework for all stakeholders**</u>.



In a recent article by The Economic Times, Anushree Rauta, Head of Media & Entertainment Practice at ANM Global, shared her perspective on the economics driving these choices. She noted that digital rights continue to form a substantial part of a film's revenue recovery, often accounting for a majority share.

Anushree Rauta, Equity Partner and Head of Media & Entertainment practice at ANM Global, shared her insights on the regulatory gaps and raised important questions around the scope and clarity of the draft in MediaNama's recently published article discussing the implications of the draft Copyright (Amendment) Rules, 2025, particularly the mandate on digital payments for license fees.



AWARDS

TRADE MARK STAR 2025

Mr. Rahul Dhote, Partner at ANM Global, has been recognised as a 'Trade Mark Star 2025' by IP STARS (Managing IP's rankings publication).

This recognition is a testament to Rahul's consistent dedication, in-depth expertise, and client-focused approach in the field of intellectual property, particularly in trademark law. It further reinforces ANM Global's standing as a leading firm in IP practice.

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contact@anmglobal.net

ANM Global

+91 22 2287 3499; +91 22 4971 1084

OFFICES

MUMBAI

1. 7, floor 2nd, Nagin Mahal, Plot-82, Veer Nariman Road, Churchgate, Mumbai 400020.
   Ph: 022-2287 3499

2. 411/413, Dilkap Chambers, Off. Veera Desai Road, Fun Republic Lane, Andheri West,Mumbai - 400053
   Ph: 022-4971 1084

NEW DELHI

Awfis L29 - L34, 1st Floor, Connaught Place
New Delhi, 110001

BENGALURU

21/2, 1st Main Road,Opp Indian Overseas Bank,Gandhinagar, Bengaluru - 560009
Ph: 080-2350 9909

CHENNAI

715-A, 7th Floor,Spencer Plaza Suit No.1056,Mount Road, Anna Salai,
Chennai - 600002

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