

COMPANY

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ANM GLOBAL'S FINANCIAL FORUM

IBC NEWSLETTER

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1 Burden to prove ownership lies with the entity asserting exclusion of assets from the liquidation estate- NCLAT New Delhi.

The NCLAT, New Delhi, in the case of *Reliance Realty Limited vs Anup Kumar and Anr.*¹ has held that assets in possession and beneficial use of a corporate debtor are presumed to form part of its liquidation estate unless the particular claimant establishes, through registered and contemporaneous documentary evidence, that ownership lies elsewhere.

In the present case, Independent TV Limited, the Corporate Debtor was undergoing liquidation proceedings under the IBC, where the Liquidator took possession of certain assets that were being used by Independent TV Limited, treating them as part of the liquidation estate. The Appellant, Reliance Realty Limited claimed ownership over some of these assets, asserting that they were merely leased or licensed to the Corporate Debtor and thus could not be included in the liquidation estate under Section 36(4)(a)(i) of the IBC. The Liquidator rejected the said contention and included the assets for sale through e-auction, which was later participated in by M/s. Shree Sai Baba Ship Breaking Co.

The Appellant submitted that the assets in question were never owned by the Corporate Debtor and they were only in its temporary possession under a lease or license arrangement with RRL. Such assets are excluded from the liquidation estate under Section 36(4) of the IBC as they are held in trust or under contractual custody of another. The Appellant further contended that the Liquidator had acted beyond his authority under Section 35 of the IBC by including third-party assets and that the NCLT failed to consider evidence, including agreements and internal communications, showing that ownership rested with RRL.

The Respondent, viz the Liquidator contended that the assets were continuously used, possessed, and controlled by the Corporate Debtor and reflected in its audited financial statements as its own fixed assets. Further, the

Appellant failed to provide registered ownership documents to substantiate its claim since the agreements relied on were unregistered, executed post-default, and lacked credibility. Citing Section 35(1)(b) of the IBC, the Liquidator argued that it is entitled to take custody of all assets “belonging to or in possession of the Corporate Debtor.”

The NCLAT observed that on account of the fact that the Appellant had not produced any registered document evidencing ownership, nor any record from a public authority (like a municipal or revenue record) supporting its title, the Appellant cannot claim any title or ownership on the said assets. The NCLAT also emphasized that IBC is not a forum to adjudicate title disputes. Issues of ownership require detailed examination of evidence, which can only be undertaken by a civil court.

Accordingly, the NCLAT held that when a party asserts that an asset in possession of the Corporate Debtor belongs to it, the onus of proving ownership rests upon that party. Mere assertions or unregistered documents are insufficient. Possession and beneficial use of an asset by a Corporate Debtor raise a presumption of ownership of the Corporate Debtor unless rebutted by credible, registered, and contemporaneous evidence.

2. When the creditors in a class voted on a resolution plan, as per provisions of the IBC, the vote of the majority of the said creditors in a class has to be treated and the minority has to sail with the decision of the majority- NCLAT New Delhi

The National Company Law Appellate Tribunal, in the case of *Harjit Ahluwalia vs. Udayraj Patwardhan & Ors.*² has reinforced the settled law on the majority vote on a resolution plan as against the minority vote amongst the members of the COC.

In the present case, during CIRP of the Corporate Debtor, M/s. IndiaNet Services Pvt. Ltd, a Resolution Plan was set out before the COC, which was evaluated

[1] Company Appeal (AT) (Insolvency) No. 900 of 2025

[2] Company Appeal (AT) (Insolvency) No. 551 of 2024

and approved by the CoC. The NCLT directed the RP to seek clarifications from the Resolution Applicant regarding certain compliance requirements and submit the final version of the plan. Subsequently, the Resolution Applicant submitted a revised plan after the CIRP period had expired, which was accepted by the RP and placed before the CoC.

Out of 183 homebuyers approving the Resolution Plan in the CoC, the Appellant along with 92 homebuyers filed the present Appeal and objected the Resolution Plan, arguing that once the statutory CIRP period under Section 12 of the IBC had lapsed, the RP could not entertain or place any new or revised plan before the CoC. The NCLT rejected the said objections, leading to the appeal before the NCLAT.

The Appellants also contended that allowing a new or revised plan post the expiry of CIRP timelines violates the statutory framework and the principle of time-bound resolution under the IBC. Moreover, it is further submitted that there was suppression of several facts by the Resolution Professional due to which, vote which were given by the homebuyers were not after knowing the full facts.

The Respondent/Resolution Professional contended that the revised plan was submitted only to comply with the directions of the NCLT and did not amount to a fresh plan under Section 30(6) of the IBC. The revisions were merely clarificatory and technical, made to address deficiencies noted by the Adjudicating Authority. The CoC, being the commercial decision-maker, was within its rights to evaluate and approve such modifications. Further, the Resolution Plan has been approved by 96.56% vote share of the creditors in class and out of 183 homebuyers who had filed the application before the Adjudicating Authority, 72 people voted in favour of the Resolution Plan.

The NCLAT examined the sequence of events and held that the revised plan submitted after the CIRP period was only an amendment to the original plan, made

pursuant to the directions of the Adjudicating Authority. It was not a case of entertaining a new plan post-expiry, but of complying with judicial directions to cure deficiencies.

The NCLAT noted that Section 12 of the IBC indeed prescribes a strict 330-day limit (including extensions and litigation period), but where the Adjudicating Authority itself has permitted submission of clarifications, such action cannot be termed illegal. Further, the 96.56% vote of the creditors in a class and 72 homebuyers, has to be affirmed and the minority has to sail with the decision of the majority. Accordingly, the Appeal was dismissed.

3. NCLT cannot interfere or question the commercial wisdom of CoC and remit the Resolution Plan for reconsideration unless there are express violation of Section 30(2) of I & B Code, 2016- NCLAT Chennai

The NCLAT, in the case of *Bhooguru Constructions Pvt. Ltd. vs. Prakash Construction Co. & Ors.*³ reaffirmed the settled law on the commercial wisdom of the Committee of Creditors whilst holding that the proceedings resorted to by the Appellant, seeking for a re-run of the Resolution Process under garb of a faulty Information Memorandum, were initiated with the malafide intent to derail the process.

The Appellant, a Prospective Resolution Applicant (PRA) who failed to submit a Resolution Plan within the prescribed timeline, sought to set aside the Corporate Insolvency Resolution Process (CIRP) and demand a re-run of the CIRP of the Corporate Debtor Manjeera Retail Holding Pvt. Ltd, on the grounds that the Information Memorandum (IM) was defective and incomplete. The Resolution Plan submitted by M/s. Lulu International shopping malls Private Limited (Respondent No. 3) was approved by the Committee of Creditors (CoC) which led to the Appellant to file an application with the NCLT, Hyderabad for setting aside the Resolution Plan of Respondent No. 3.

The NCLT whilst dismissing the application filed by the Appellant held that the defects alleged in Information

[3] Comp App (AT) (CH) (Ins) No.379/2025

Memorandum are not material enough to warrant issue of Form G afresh, and that no grounds have been made out to show violation of Section 30(2) of I & B Code. Hence, the Appellant / Applicant has no locus to challenge the Resolution Plan.

The finding of the NCLT was subsequently challenged before the NCLAT. Considering the course of the proceedings before the NCLT and the observation in the impugned order, the NCLAT held that the Appellant had failed to submit the Resolution Plan within the time period prescribed thereunder. Hence, the Appellant will have no locus as such to seek for a revision in the Information Memorandum. Additionally, the NCLAT held that there was no occasion or ground to differ from the stand taken by the NCLT and the NCLAT cannot interfere or question the commercial wisdom of CoC and remit the Resolution Plan for reconsideration unless there are express violation of Section 30(2) of I & B Code, 2016. Accordingly, the Appeal was dismissed as not maintainable.

4. The Adjudicating Authority is only required to see whether a notice of dispute was issued and if the defence raised is a plausible contention requiring further investigation, as opposed to a spurious or moonshine dispute unsupported by evidence- NCLAT New Delhi

The NCLAT in the case of *Puneet Kumar Suspended Board of Director of NYSA Communications Pvt. Ltd vs Computer Junction Pvt. Ltd. & Anr.*⁴ reaffirmed that the legislative intent of Section 9 of IBC cannot be invoked by Operational Creditor when there is a dispute between the parties since Section 9 is not a proceeding for determining the contractual dispute between the parties.

The Appellant, a Suspended Director of the Corporate Debtor, primarily argued that the Section 9 application filed by the Operational Creditor (Computer Junction Pvt. Ltd.) should have been rejected due to a pre-existing dispute notice issued by the Appellant concerning the quality and deficiency of services. To the contrary,

Section 9 application was admitted by the NCLT wherein the Adjudicating Authority proceeded to examine the details of the contractual dispute. A notice of dispute having been issued by the Corporate Debtor with relevant details, the NCLT erred by adjudicating the merits of the contractual dispute between the parties, which is beyond its limited jurisdiction under Section 9 of the Insolvency and Bankruptcy Code (IBC).

The Respondent/Operational Creditor contended there was an undisputed debt of more than Rs. 1 lakh (the minimum threshold at the time), and the Corporate Debtor had previously taken a contradictory stand that there were "no deficiencies in services". Having taken this stand, the Corporate Debtor could not put the blame on the Operational Creditor.

The NCLAT held that the test for finding out existence of dispute, is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. Given the fact that the pre-existing dispute notice recorded issues pertaining to deficiency in services provided by Operational Creditor, the NCLT was only to look into as to whether notice of dispute has been issued by the Corporate Debtor and not to enter into dispute which has arisen out of the Facility Agreement between the parties and to examine the dispute on merits. Accordingly, the Appeal was allowed and the impugned order was set aside.

5. A claim for the refund of advance payment due to the non-supply of goods qualifies as an operational debt under Section 5(21) of the Code- NCLAT, New Delhi.

The Hon'ble NCLAT, in the case of *Rakesh Bhailalbhai Patel vs Vasundhara Seamless Stainless Tubes Private Limited*⁵ has held that an amount paid as advance consideration and a refund sought of the said amount constitutes an "Operational Debt" under Section 5(21) of the Insolvency and Bankruptcy Code, 2016 (IBC), when

[4] Company Appeal (AT) (Insolvency) No. 1353 of 2023

[5] Company Appeal (AT) (Ins.) No. 1695 of 2024

the said amount is reflected in the audited balance sheet of the corporate debtor as "advance from others" without any qualifying note by the auditor.

In the present case, an amount of Rs. 1 Crore was paid as an advance by the Operational Creditor B.N. Enterprises, under a Sale Agreement dated January 31, 2019, for availing the services of sale of machineries and scrap, from the Corporate Debtor, Vasundhara Seamless Stainless Tubes Private Limited. However, the Corporate Debtor failed to adhere to its contractual obligation to permit the removal of the scrap, or either provide permission to lift the material. The Corporate Debtor also did not return the advance payment made by the Operational Creditor under the Agreement. Accordingly, a demand notice under Section 8 of the Code was issued to the Corporate Debtor which was not responded and the same ultimately led to filing of Section 9 Petition by the Operational Creditor. Upon the Petition being heard, the same was admitted by the NCLT.

The Appellant, being the suspended director of the Corporate Debtor primarily submitted that the application was unsustainable as no "operational debt" existed under Section 5(21) of the IBC, arguing that the transaction was a one-time sale contract and the scrap was duly lifted, thereby concluding the contract. It contended that the demand letters spanning four years were fabricated, were an attempt to extend limitation, and thus showed a pre-existing dispute that barred admission. The Appellant also argued that balance sheet entries showing the amount as "Advance from others" were merely accounting disclosures due to non-receipt of GST details and not an acknowledgment of debt under the Limitation Act.

The Respondent No. 2 (Proprietor of the Operational Creditor) submitted that all statutory preconditions were satisfied, asserting that the debt arose from the provision of goods, which makes it an "operational debt". The Respondent No. 2 claimed that the Corporate Debtor defaulted by failing to permit the lifting of the material

or refund the advance, a fact evidenced by their acknowledged demand letters and the Corporate Debtor's audited balance sheets for FY 2020-21 and 2021-22, which continuously reflected the Rs. 1 Crore as a liability under "Advance from Others".

The NCLAT observed that the Operational Creditor satisfactorily established the existence of an "operational debt" and "default". The Tribunal held that a claim for the refund of advance payment due to the non-supply of goods qualifies as an operational debt under Section 5(21) of the Code. Furthermore, the NCLAT noted that the Corporate Debtor's audited balance sheets, which consistently reflected the Rs. 1 Crore as an advance liability without any qualification, constituted a clear and continuing acknowledgment of debt, thereby extending the limitation period. Regarding the dispute, the NCLAT concluded that a "pre-existing dispute" must be plausible and raised before the demand notice is issued, and a belated defence or an alleged proceeding filed after the initiation or hearing of the Section 9 application is insufficient to oust the NCLT's jurisdiction. Accordingly, the NCLAT affirmed the order of the NCLT and set aside the appeal.

6. CIRP is triggered upon establishment of debt and default above the statutory threshold, irrespective of partial loan disbursement- NCLAT New Delhi

The Hon'ble NCLAT, in the case of *Anmeet Kamal Agarwal Suspended Director of Supreme Transport Organisation Pvt. Ltd vs Axis Bank Ltd. & Anr.*⁶ affirmed the order of the NCLT, which observed that the fact that balance amount was not disbursed, cannot be ground to reject the section 7 application filed by the Financial Creditor.

In the present case, the Financial Creditor/Respondent had sanctioned a loan of Rs. 24.90 Cr. but the disbursement was only Rs. 12.50 Cr. The Appellant contended that the said loan was supported by an instrument of mortgage which was refused by the

[6] Comp. App. (AT) (Ins) No. 1216 of 2023 & I.A. No. 532, 6573 of 2024, 150 of 2025

Financial Creditor to be in possession of. It was also the Appellant's case that the worth of the Appellant is more than the claim amount and the Adjudicating Authority committed an error in admitting the application filed under Section 7.

The Financial Creditor/Respondent submitted that the disbursement of the loan was never disputed and debt and default was admitted by the Appellant. Further, an OTS proposal was also given by the Appellant even during the pendency of the proceedings before the Adjudicating Authority which was not accepted by the Financial Creditor, which itself indicate the existence of debt and default.

The NCLAT held that the disbursement was not denied, neither was the fact that amount repaid to the Financial Creditor. The submission of the Appellant that the worth of the Appellant is much more the amount claimed may not be relevant for the application for rejecting the application under Section 7 when debt and default of more than 1 Cr. is established. The fact that the Appellant has given OTS during the pendency of the CIRP and also submitted 12A proposal indicate the acceptance of debt and default. Accordingly, the NCLAT dismissed the Appeal basis the aforesaid observations.

7. Once plausibility of a pre-existing dispute is noticed and the dispute is not found to be prima facie spurious or hypothetical, the Adjudicating Authority is not required to enter into final adjudication, but reject the Section 9 Application- NCLAT New Delhi

The Hon'ble NCLAT, in the case of *Korea Trade Insurance Corporation (Ksure) vs Amrit Polychem Pvt. Ltd*⁷ dismissed the appeal filed by Korea Trade Insurance Corporation ("Ksure") seeking initiation of insolvency proceedings against Amrit Polychem Pvt. Ltd. (APL) on the grounds of pre-existing dispute thereby barring the invocation of Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC).

In the present case, APL placed three purchase orders with J T Corporation (JTC), Korea, for the supply of certain chemicals. To safeguard against buyer default, JTC obtained insurance coverage from Korea Trade Insurance Corporation (Ksure). While APL paid for the second consignment, disputes arose regarding the first shipment, which APL claimed was not delivered, resulting in financial losses. Consequently, APL withheld payment for the third consignment to adjust against the alleged loss caused by non-delivery of the first shipment. Subsequently, Ksure reimbursed JTC under the insurance policy and obtained an assignment of the debt payable by APL through a Letter of Assignment. Thereafter, Ksure issued a demand notice under Section 8 of the IBC to APL. APL, however, disputed the claim, asserting the existence of prior losses and non-delivery of goods.

Ksure filed an application under Section 9 of the IBC before the NCLT, Mumbai Bench, seeking initiation of insolvency proceedings. The NCLT dismissed the petition, holding that there existed a pre-existing dispute between the parties prior to the issuance of the demand notice.

The Appellant argued that upon reimbursement to JTC under the insurance policy and subsequent assignment of debt, Ksure became the rightful operational creditor entitled to recover dues from APL. The appellant contended that the denial of liability by APL was unfounded and that the non-payment constituted an operational debt default under the IBC.

The Respondent, on the other hand asserted that there existed a clear pre-existing dispute between APL and JTC regarding the non-delivery of goods under the first purchase order. The Respondent argued that Ksure, having stepped into the shoes of JTC, was fully aware of the ongoing dispute at the time of assignment. The Respondent also contended that the Letter of Assignment was rendered invalid due to the disputed nature of the underlying transaction.

[7] Company Appeal (AT) (Insolvency) No. 1383 of 2023

The NCLAT observed that when there exists a plausible dispute prior to the issuance of the demand notice, the NCLT must reject a Section 9 application. Accordingly, the Appeal was set aside as not maintainable.

8. Insufficiency of stamping is a technical deficiency which can be cured and the same is not fatal to the maintainability of a Section 7 application- NCLT Mumbai

The NCLT Mumbai, in the case of *Prudent Arc Limited vs RBEP Entertainment Pvt Ltd*⁸ has reaffirmed that insufficiently stamped documents suffer from only a technical deficiency which cannot be a ground to reject an application under Section 7 of the Code.

In the present case, a Company Petition was preferred by the Central Bank of India, which was later on substituted with the present Financial Creditor on account of an assignment of debt. The Corporate Debtor had availed a loan of Rs. 50 crores. Collateral security documents were executed between the Original Lender and the Corporate Debtor for securing the said loan amount. On account of default in repayment of loan facilities by the Corporate Debtor, its loan account was declared as NPA on 29.02.2020 by the Original Lender. Pursuant to such declaration, the Original Lender issued loan recall letters dated 24.11.2020 to the Corporate Debtor and its Corporate Guarantor for repaying the outstanding amount including the interest overdue amount.

The Respondent/Corporate Debtor inter alia prima facie alleged that security documents relied upon by the Financial Creditor in the present Application are neither admissible nor enforceable, since these are insufficiently stamped, under the provisions of the Maharashtra Stamp Act, 1958.

The Tribunal held that insufficiency in stamping of loan documents is not relevant for admissibility of a petition under Section 7 of the Code and that objection as to stamping of documents cannot be determined in summary proceedings under Section 7 of the Code.

Relying upon the Supreme Court Judgement “*In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*”, the Tribunal reiterated that the purpose of the Stamp Act is to protect the interests of revenue and not to arm litigants with a weapon of technicality by which they can delay the adjudication of the dispute. Insufficiently stamped documents suffer from only a technical deficiency which cannot be a ground to reject an application under Section 7 of the Code. This is also based on the equitable principle that a person cannot take advantage of his own wrong.

Accordingly, the Tribunal held that issue of insufficient stamping is irrelevant and allowed the Company Petition.

[8] CP (IB) No.235/MB/2023



ANM ThinkPod

FIRM HIGHLIGHTS

Our Equity Partner, Anushree Rauta, was featured in ET BrandEquity's article, "Two-Minute Tales, Billion-dollar Bets." She shared her expert insights on the legal and regulatory landscape governing India's rapidly growing short-format video ecosystem.

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QUOTED BY ET BRAND EQUITY : "TWO-MINUTE TALES, BILLION-DOLLAR BETS"



"We are witnessing a sharp uptick in deal requests. In fact, several leading platforms like Amazon, JioStar and Zee are now exploring and investing in this segment"

ANUSHREE RAUTA
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QUOTED BY THE ECONOMIC TIMES :
"DRAFT ONLINE GAMING RULES SET STAGE FOR CLEAN-UP, ESPORTS GROWTH"



"For brands and celebrities, the authority's published registry of valid and prohibited games could serve as a due diligence tool before endorsements."

The framework aims at transparency and consumer protection, but with heavier compliance costs and slower rollouts likely, its impact will hinge on how the Supreme Court's October hearing shapes the final law."

ANUSHREE RAUTA
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Our Equity Partner and Head of the Media, Entertainment & Gaming Practice, Anushree Rauta, was featured in The Economic Times article, "Draft online gaming rules set stage for clean-up, esports growth." She shared her insights on the evolving regulatory framework and its impact on India's growing online gaming and esports industry.

FIRM HIGHLIGHTS

The Game: You Never Play Alone, a gripping new Tamil series, released on 2nd October 2025. ANM Global is proud to have represented Applause Entertainment Private Limited, extending advisory and transactional support for the series, encompassing S&P, format acquisition, and the revenue agreement.



Search – The Naina Murder Case, a compelling Hindi series, releasing on 10th October 2025 on JioStar.



ANM Global is proud to have represented Applause Entertainment Private Limited and Applause Productions, providing advisory and transactional services, including cast and crew agreements, format acquisition, and the revenue agreement for the series.

FIRM HIGHLIGHTS

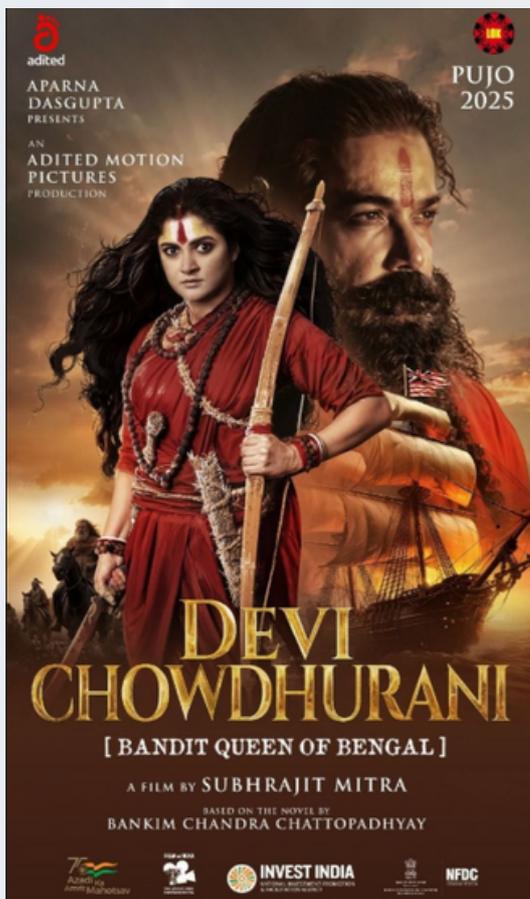
We are delighted to announce the appointment of Shaili B. as Director – Strategy & Client Relations at ANM Global. She will lead strategic growth initiatives, strengthen client engagement, and enhance the firm’s market presence.

We are delighted to announce the appointment of Shaili Bhat as Director – Strategy & Client Relations at ANM Global.



Shaili Bhat

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Devi Chowdhurani, a Bengali drama, released on 26th September 2025.

ANM Global is proud to have represented Adited Motionpictures LLP in drafting, negotiating, and executing the agreements for the production of the film and the exploitation of music rights in and to the film.

FIRM HIGHLIGHTS

Bison: Kaalamaadan, an original Tamil film dubbed in Hindi, Telugu, Malayalam, and Kannada, is set to release on 17th October 2025 across all major territories.

ANM Global is proud to have provided overall legal advisory for the film, including the drafting, reviewing, and negotiation of agreements.



ANM Global is proud to be recognised in the asialaw 2025 Rankings.

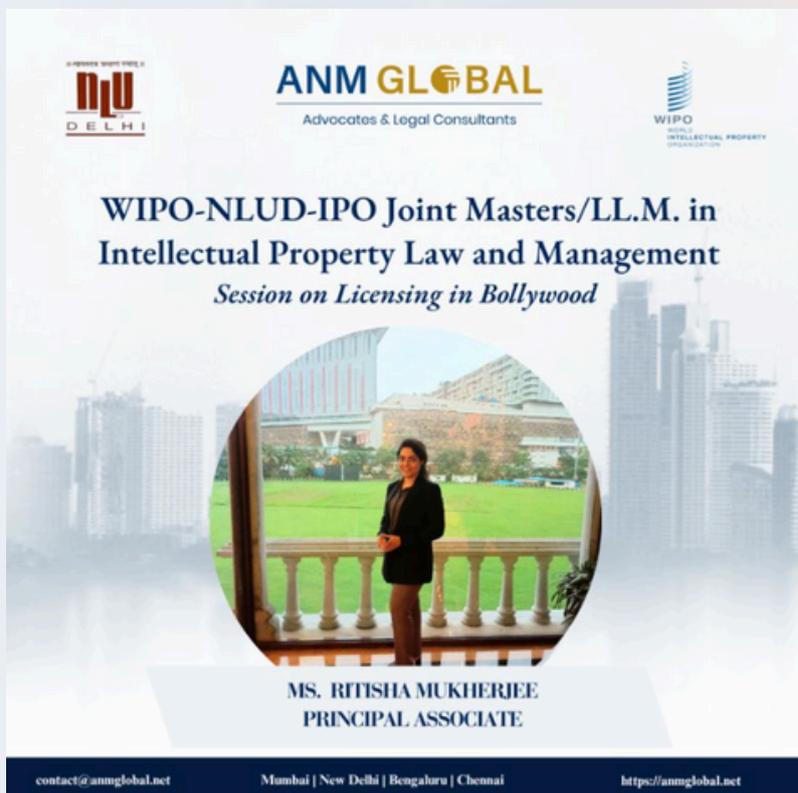
The Firm has earned accolades in Media & Entertainment and Intellectual Property, reflecting our deep expertise and commitment to delivering high-quality, client-focused legal services.

Anushree Rauta has been named a Notable Practitioner in Media & Entertainment, and Rahul Dhote has been named a Notable Practitioner in Intellectual Property.

The graphic displays the firm's legal rankings. At the top left is the ANM Global logo with the tagline 'Advocates & Legal Consultants'. To the right is the asialaw logo. Below these are the titles 'FIRM RANKINGS 2025-2026' and 'INDIVIDUAL RANKINGS 2025-2026'. Two award icons are shown: one for 'MEDIA & ENTERTAINMENT' with an 'OUTSTANDING' ranking, and one for 'INTELLECTUAL PROPERTY' with a 'RECOGNISED' ranking. Below the icons are circular portraits of Anushree Rauta and Rahul Dhote, with their names and titles: 'Anushree Rauta (Media & Entertainment) Notable Practitioner' and 'Rahul Dhote (Intellectual Property) Notable Practitioner'. At the bottom, the firm's contact information is listed: 'Mumbai | New Delhi | Bengaluru | Chennai', 'contact@anmglobal.net', and 'https://anmglobal.net'.

FIRM HIGHLIGHTS

Our Equity Partner and Head of the Media, Entertainment & Gaming Practice, Anushree Rauta, was featured in ETLegalWorld's article, "Playing by the Rules: India's Effort to Regulate Online Gaming Disputes." She shared her insights on the evolving regulatory framework and its impact on India's online gaming and esports landscape.



Ms. Ritisha Mukherjee, Principal Associate, was invited to speak at the prestigious World Intellectual Property Organization (WIPO) – National Law University, Delhi – IPO Joint Masters/LL.M. in Intellectual Property Law and Management Programme.

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