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COMMUNIQUE

JANUARY 2025

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COURTS THIS MONTH

- The Hon'ble Supreme Court, in the case of *the State of Uttar Pradesh vs. R.K. Pandey (Civil Appeal No. 10212 of 2014)*, held that the existence of an arbitration agreement is a prerequisite for an award to be enforceable in the eyes of the law. The Bench comprising of Chief Justice Sanjiv Khanna, Justice Sanjay Kumar, and Justice R. Mahadevan observed "*An arbitration agreement is a sine qua non for arbitration proceedings, as arbitration fundamentally relies on the principle of party autonomy; - the right of parties to choose arbitration as an alternative to court adjudication. In this sense, 'existence' of the arbitration agreement is a prerequisite for an award to be enforceable in the eyes of law.*"

Reference: 'Existence' Of Arbitration Agreement Is A Prerequisite For An Award To Be Enforceable In The Eyes Of Law: Supreme Court

- The Hon'ble Supreme Court, in the case of *Indian Evangelical Lutheran Church Trust Association vs. Sri. Bala & Co. (Civil Appeal No. 1525 of 2023)*, held that under Article 113 of the Schedule to the Limitation Act 1963 ("**the Act**"), a suit must be instituted within three years of the date from which the right to sue accrues, and not from the date of occurrence of an event as stated in Article 54 of the same schedule. The Court further stated that the words 'rights to sue' ordinarily mean the right to seek relief by legal proceedings, and it only accrues when the course of action arises to prosecute to obtain relief by legal means. The Division Bench comprising Justice B.V. Nagarathna and Justice N. Kotiswar Singh observed "*The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. Article 113 of the Schedule to the Limitation Act provides for a suit to be instituted within three years from the date when the right to sue accrues and not on the happening of an event as stated in Article 54 of the Schedule to the Limitation Act.*"

Reference: A Suit Must Be Instituted Within 3 Yrs From The Date The Right To Sue Accrues, Not From The Occurrence Of The Event: SC

- The Hon'ble Supreme Court, in the case of *Principal Commissioner of Income Tax-4 vs. M/s. Jupiter Capital Pvt. Ltd. (Special Leave Petition No. 63 of 2025)*, held that a reduction in the share capital of a subsidiary company leading to a reduction in the shareholding of an assessee falls under 'sale, exchange, or relinquishment of the asset' as per Section 2(47) of the Income Tax Act, 1961. The Court further stated that when share capital is reduced due to a decrease in the face value of shares, the preference shareholders' rights to dividends, their share capital, and their entitlement to share in the distribution of net assets upon liquidation are proportionally extinguished to the extent of the reduction in capital. The Division Bench comprising Justice J.B. Pardiwala and Justice R. Mahadevan observed "*Section 2(47) of the Income Tax Act, 1961, which is an inclusive definition, inter alia, provides that relinquishment of an asset or extinguishment of any right therein amounts to a transfer of a capital asset. While the taxpayer continues to remain a shareholder of the company even with the reduction of share capital, it could not be accepted that there was no extinguishment of any part of his right as a shareholder qua the company.*"

Reference: Income Tax Act | Reduction In Share Capital Of Subsidiary Company Leading To Reduction Of Assessee's Shareholding Constitutes Transfer: S

- The Hon'ble Supreme Court, in the case of *Sanjay Dutt vs. the State of Haryana (Criminal Appeal No. 11 of 2025)*, stated that mere authorisation of an act at the behest of the company or the exercise of a supervisory role over certain actions or activities of the company is not enough to render a director vicariously liable. The Court further clarified that vicarious liability would arise only if



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other were specific and substantiated allegations attributing a particular role or conduct to the directors sufficient enough to attract the provisions and by extension, the offence itself. The Division Bench comprising Justice J.B. Pardiwala and Justice R. Madhavan observed *"A director may be vicariously liable only if the company itself is liable in the first place and if such director personally acted in a manner that directly connects their conduct to the company's liability. Mere authorization of an act at the behest of the company or the exercise of a supervisory role over certain actions or activities of the company is not enough to render a director vicariously liable. There must exist something to show that such actions of the director stemmed from their personal involvement and arose from actions or conduct falling outside the scope of its routine corporate duties."*

Reference: Mere Authorisation Of An Act At The Behest Of A Company Is Not Enough To Render Director Vicariously Liable

- The Hon'ble Supreme Court, in the case of *Vijay Prabhu vs. S.t. Lajapathie (Special Leave Petition (C) No. 25246 of 2023)*, stated that under Section 12(3) of the Specific Relief Act, 1963 ("**the Act**") relinquishment can be made at any stage of the litigation including the appellate stage. The Court further added that the provision becomes applicable only when a party is not able to perform the whole of what he had promised for any reason. The Division Bench comprising Justice J.B. Pardiwala and Justice R. Madhavan observed *"The power to grant partial relief, from the very language of Section 12(3) of the Act is discretionary with the court to be exercised keeping in view the facts and circumstances of each case and the rights and interests of the parties involved. Section 12(3) of the Act can be invoked only where the terms of contract permit segregation of rights and interests of parties in the property. ... A bare perusal of the aforesaid provision contained in Section 12 of the Act makes it clear that it is not open to the High Court to direct*

specific performance of a part of contract except otherwise provided in the section in absence of any of the exigencies available under the provisions of sub-sections (2), (3) and (4) of Section 12 so as to decree the suit."

Reference: Sec.12(3) Specific Relief Act | Relinquishment Can Be Made At Appellate Stage Also: SC.

- The Hon'ble Supreme Court, in the case of *Sunkari Tirumala Rao vs. Penki Aruna Kumari (Special Leave Petition (C) No. 30442 of 2019)* held that a partner of an unregistered firm cannot enforce a contractual right against another partner due to bar under Section 69 of the Partnership Act, 1932 ("**the Act**"), which prescribes the effects of non-registration. The Court further held that the bar is applicable even prior to the commencement of business, but does not extend to suits for dissolution, rendition of accounts, or realization of property of a dissolved firm. The Division Bench comprising Justice J.B. Pardiwala and Justice R. Madhavan observed *"It is evident from a reading of sub-sections (1) and (2) of Section 69 that it assumes a mandatory character. Section 69(1) prohibits a suit amongst the partners of an unregistered partnership firm, for the enforcement of a right either arising from a contract or conferred by the Act, unless the suit amongst the partners is in the nature of dissolution of the partnership firm and/or rendition of accounts. Section 69(2) prohibits the institution of a suit by an unregistered firm against third persons for the enforcement of a right arising from a contract. As a consequence, a suit filed by an unregistered partnership firm and all proceedings arising thereunder, which fall within the ambit of Section 69 would be without jurisdiction."*

Reference: S. 69 Partnership Act | Partner Of Unregistered Firm Can't File Suit For Recovery Against Other Partners: SC



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- The Hon'ble Supreme Court, in the case of *U Sudheera vs. C Yashoda (Civil Appeal No. 567 of 2025)* asserted that High Courts cannot pass interim orders in a second appeal under Order 41 Section 100 of the Civil Procedure Code 1908 ("**CPC**") without the framing of substantial questions of law. The Court further stated that the High Court has the power to grant interim orders to preserve the subject matter and avoid multiplicity of proceedings under Section 151 of the CPC, but the same should not be in violation of the express mandates in other provisions including Section 100 of the CPC. The Division Bench comprising Justice J.B. Pardiwala and Justice R. Madhavan observed "*This Court has categorically held that the High Court acquires jurisdiction to deal with the second appeal on merits only when it frames a substantial question of law as required to be framed under Section 100 CPC; and it cannot grant an interim order, without framing substantial question of law. ... if the High Court is prima facie of the view that the substantial question of law involved would not require much time for disposal, the court is bound to frame the substantial question of law at the stage of admission and then order short notice. The High Court cannot use its inherent power under Section 151 in violation of the express mandates in other provisions of the Code.*"

Reference: High Courts Cannot Pass Interim Order In Second Appeal Without Framing Substantial Question Of Law: SC

- The Hon'ble Supreme Court, in the case of *S Shobha vs. Muthoot Finance (Special Leave Petition (C) Nos. 2625-2627 of 2025)* ruled that writ petitions under Article 226 of the Constitution of India is not maintainable against Non Banking Financial Company (NBFCs), since private companies' banking business does not constitute a public function. The Court also added that merely because a statute requires a company to do a particular thing or follow a certain rule, it does not constitute the attribute of a real statutory body against whom writ

petitions can be entertained. The Division Bench comprising Justice J.B. Pardiwala and Justice R. Mahadevan observed "*A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connected with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.*"

Reference: Writ Petition Not Maintainable Against NBFC; Private Company's Banking Business Not 'Public Function'

High Courts:

- *The High Court of Madras, in the case of Dharamshi K. Patel & Anr. vs. Indian Bank & Ors.(WP.No. 712 of 2024)* , pointed out that the proviso to Section 10-A of the Insolvency and Bankruptcy Code, 2016 does not apply in cases where the default continues beyond the moratorium period. The Court further observed that Section 10-A of the IBC only imposes a temporary moratorium, suspending the initiation of the Corporate Insolvency Resolution Process ("**CIRP**"). The Division Bench comprising of Justice S.S. Sundar and Justice P. Dhanabal observed "*Since proviso to Section 10-A mandate that no application shall ever be filed for initiation of CIRP of the Corporate Debtor for the default occurring during the moratorium period,...However, the proviso cannot be extended to cases where the default is continued beyond the moratorium period...the embargo contained in Section 10-A must receive a purposive construction which will advance the object which was sought to be achieved by enacting the provision.*"



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Reference: <https://www.livelaw.in/ibc-cases/madras-high-court-proviso-section-10-a-ibc-doesnt-bar-cirp-applications-default-continues-beyond-moratorium-period-282571>.

- The High Court of Delhi, in the case of *Tefcil Breweries Limited vs. Alfa Laval (India) Limited (O.M.P. (Comm) No. 479 of 2018)*, opined that the date of receipt of modified award would be taken as the disposal date for the purpose of Section 34(3) of the Arbitration and Conciliation Act, 1996 (“**the Act**”), even in cases where application under Section 33 of the Act has been filed. The Court also stated that taking the date of receipt of the corrected award as the starting point and not as the date of disposal would actually go contrary to the plain reading of Section 34(3) of the Act. The Single-Judge Bench of Justice Subramonium Prasad observed “...where an application under Section 33 of the Arbitration and Conciliation Act, 1996 has not been filed in which case the legislature was conscious enough to state that it would be the date of the receipt of the award whereas, in the case where an application under Section 33 of the Arbitration and Conciliation Act, 1996 has been filed, the legislation was conscious enough to lay down that the date of disposal would be the starting point for calculation of limitation.”

Reference: [Date Of Receipt Of Corrected Award Would Be Taken As Disposal Date U/S 34\(3\) Of Arbitration Act, Even When Application U/S 33 Has Been Filed: Delhi HC](#)

- The High Court of Bombay, in the case of *Shreegopal Barasia vs. M/s. Creative Homes (Arbitration Petition No. 131 of 2024)*, held that under Section 11 of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”), referral courts solely restrict its scrutiny to assessing the existence of an agreement. The Court further added that issues involving both questions of fact and law, particularly those related to the substance of the existence of an arbitration agreement rather than its form, such as whether there was a written agreement,

should be determined solely by the arbitral tribunal. The Single judge bench consisting Justice Somasekhar Sundaresan observed “All these are matters of evidence that only the Arbitral Tribunal would need to deal with. Be that as it may, these are prima facie observations only to repel the contention that an existential question about the agreement exists, and that too by reason of not being executed by a validly authorised person. I am not dissuaded, presiding over proceedings under Section 11 of the Act, from referring the disputes in these proceedings to arbitration.”

Reference: [Referral Court U/S. 11 A&C Act Should Restrict Its Scrutiny Solely To Existence An Agreement: Bombay HC](#)

- The High Court of Madhya Pradesh, in the case of *Gokul Bansal vs. Vipin Goyal (Arbitration Case No. 44 of 2021)* ruled that matters related to the Partnership Act, 1932 and partnership deeds involving third-party rights cannot be referred to arbitration and the individuals who are not signatories to a partnership deed cannot be subject to the proceedings or bound by an award which arises from such deed. The Single Judge Bench comprising of Justice Anand Pathak observed “It is indeed true that scope of enquiry having the trappings of adjudication is limited at the stage of application under Section 11 of the Act of 1996, but Court can certainly determine existence of arbitration agreement and to enquire whether there is prima facie arbitration dispute or not... in the considered opinion of this Court when matter relates to Partnership Act and partnership deed and third-party rights are also involved then it cannot be referred to arbitration. Applicant may resort to other remedy in accordance with law.”

Reference: [Matters Relating To Partnership Act & Partnership Deed Involving Third Party Rights Can't Be Referred To Arbitration: Madhya Pradesh HC](#)

- The High Court of Kerala, in the case of *Arunkumar vs. State of Kerala (Crl.A No. 1042 of 2023)* held that while Section 479 of Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”) provides that a first-time offender be released on bond if they have undergone detention for the period extending to one-third the maximum period of



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imprisonment for the offence committed, the benefit under this Section cannot be extended to convicts who committed crimes before the BNSS came into effect. The Single-Judge Bench of Justice C.S. Sudha observed "the crucial question is not whether Section 479 BNSS is applicable to appeal and revisions, but the question is whether retrospective effect of the provision can be given to convicted prisoners also. The Apex Court as per the aforesaid order (Re-Inhuman Conditions in 1382 Prisons W.P. (C)No.406/2013) has extended the benefit of the first proviso to Section 479 BNSS with retrospective effect only to under-trial prisoners. When the Apex Court is presently seized of the matter and is monitoring implementation of Section 479 BNSS, propriety demands that this Court refrain from interpreting and passing orders regarding its applicability to convicted prisoners retrospectively."

Reference: Benefit Of First Proviso To Section 479 BNSS Cannot Be Applied Retrospectively To Convicted Prisoners: Kerala High Court

- The High Court of Kerala, in the case of *Jayaprakash EP vs. Sheney P (RPFC No. 501 of 2023)*, held that even if a wife has a temporary job and earns an income, it does not negate her right to claim maintenance from her husband, as long as her income is insufficient to maintain the same standard of living she had during the marriage. The Court also stated that under Section 125 of the Criminal Procedure Code, 1973 ("CrPC") (now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023), a wife is entitled to seek maintenance for the expenses of a dependent child, even if the child has reached the age of majority. While distinguishing between Section 125 of the CrPC and Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, which requires parents to maintain an unmarried daughter unable to support herself, the Single Judge Bench of Justice Kauser Edappagath observed "*The husband who is capable of earning could not evade his lawful duty of*

maintaining his wife merely by stating that he is not presently employed. An able-bodied husband must be presumed to be capable of earning enough to support his family unless he can prove genuine inability with concrete evidence. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family and discharge his legal obligations for reasons beyond his control. ... The test is whether the wife is able to maintain herself more or less in the status in which her husband has maintained her. The wife is entitled to live the same standard of life as she lived along with the husband."

Reference: Wife Holding Temporary Job Not Ground To Deny Maintenance, Entitled To Same Standard Of Living As During Marriage: Kerala High Court

- The High Court of Madras, in the case of *M/s. Annai Angammal Arakkattalai vs. The Joint Commissioner of GST (WMP Nos. 22506 & 22507 of 2022)*, stated that mandatory registrations under the Goods and Services Tax Act, 2017, or any tax payments made following an inspection by government authorities cannot be considered voluntary conduct. The Single Judge Bench of Justice K. Kumaresh Babu observed "*there is a deliberate attempt to evade payment of tax by not registering himself under the Act and also issuing receipts as donation to the Trust. Only after the inspection they have agreed to pay the tax by registering themselves. This conduct cannot be said to be a voluntary conduct...Even though, such action is claimed to be a voluntary payment by the Assessee, it should be seen that the Assessee had attempted to evade payment of tax which is liable to be taxed and only pursuant to the inspection effected by the respondent, the Assessee had submitted himself for payment of tax and hence, the same cannot be said to be a voluntary payment and has been made only to wriggle out of the penal consequences"*

Reference: <https://www.livelaw.in/tax-cases/madras-high-court-gst-registration-payment-tax-after-inspection-not-voluntary-conduct-directs-assessee-pay-tax-282626>.



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NOTIFICATIONS / AMENDMENTS INSIGHTS

- The Reserve Bank of India (“**RBI**”) on January 20, 2025 has issued an updated Master Direction on Foreign Investment in India (“**Master Direction**”). Master Direction now clarifies the arrangements for direct investment under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“**NDI Rules**”), such as equity instrument swaps and deferred payment arrangements, are also allowed for downstream investments, as long as they comply with the NDI Rules. This resolves uncertainty about whether foreign-owned or controlled companies can use deferred payment arrangements for downstream investments. According to the NDI Rules, when equity instruments are transferred between an Indian resident and a non-resident, the buyer can defer up to twenty-five percent (25%) of the total consideration for a maximum of 18 (eighteen) months from the transfer agreement date.
- The Reserve Bank of India (“**RBI**”), on January 17, 2025 vide Notification No. RBI/2024-25/104 has mandated that all deposit accounts, safe custody articles, and safety lockers must have a nomination. Moreover, Financial institutions must raise awareness, modify account forms, and assist with claims. Progress will be reviewed by Customer Service Committees, with quarterly reports to the RBI starting March 31, 2025. Public awareness campaigns are also encouraged for full coverage.

Reference: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12769&Mode=0>

Reference: [Reserve Bank of India - Master Directions](#)

- The Reserve Bank of India (“**RBI**”), on January 14, 2025 vide **Notification No. FEMA 5(R)(5)/2025-RB**, has amended the Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025. The said amendment allows persons resident outside India with business interests in India to open and maintain a Special Non-Resident Rupee (“**SNRR**”) account not only with an authorized dealer in India but also with a branch of the dealer located outside India. Additionally, units in an International Financial Services Centre (“**IFSC**”) can now open an SNRR Account with an authorized dealer in India for business transactions outside the IFSC.

Reference: <https://website.rbi.org.in/web/rbi/-/notificationsforeign-exchange-management-deposit-fifth-amendment-regulations-2025>



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DEALS THIS MONTH

- Nuvoco Vistas Corp Limited ("**Nuvoco**") is set to acquire Vadraj Cement Limited ("**Vadraj**") under the Corporate Insolvency Resolution Process ("**CIRP**") for an undisclosed amount. Reportedly, Nuvoco plans to invest in refurbishing Vadraj's assets and improving its business operations. Nuvoco, one of the leading cement suppliers in India, is in the same industry as Vadraj Cement, which has a six-million-tonne grinding unit in Surat, Gujarat. This acquisition will increase Nuvoco's existing production capacity of 25 million tonnes by more than 20%.

Reference: <https://www.manufacturingtodayindia.com/nuvoco-vistas-to-acquire-vadraj-cement-in-corporate-insolvency-deal>

- Tata Consulting Engineers ("**TCE**") has acquired US-based CDI Engineering Solutions, expanding its presence in North America. TCE provides end-to-end engineering solutions, covering feasibility, design, execution, and operational support. CDI, a multi-disciplinary organization, offers engineering, architecture, and allied technical expertise across various markets. This acquisition aims to enhance TCE's capabilities in sustainability and innovation in sectors of clean energy and infrastructure.

Reference: <https://www.manufacturingtodayindia.com/tata-consulting-engineers-enters-north-america-with-cdi-engineering-acquisition>

- Reflex Sustainability Solutions Limited ("**RSSL**"), a solar energy solutions company and a subsidiary of Reflex Renewables & Infrastructure, has acquired a fifty-one percent (51%) stake in Vyzag Bio-Energy Fuel ("**Vyzag Bio**"). The deal is valued at approximately INR 2.90 crore. Vyzag Bio operates a compressed biogas ("**CBG**") plant in Visakhapatnam, producing 850 kg of CBG daily from municipal solid waste. This acquisition aims to strengthen RSSL's renewable energy portfolio and to support its commitment to sustainability by advancing waste-to-energy projects.


Reference: <https://www.manufacturingtodayindia.com/refex-renewables-acquires-51-stake-in-vyzag-bio>

- Samvardhana Motherson International Limited ("**Samvardhana**") will acquire the Brazilian auto component maker Baldi Industria e Comercio Ltd. ("**Baldi**"), with the deal valued at USD 7.8 million. Baldi specializes in wrapping solutions and soft-touch surfaces for automotive interiors, while Samvardhana, based in Noida, is an Indian multinational manufacturer of automotive components. This acquisition aims to strengthen Samvardhana's presence in South America and expand its capabilities in the region.


Reference: <https://www.manufacturingtodayindia.com/samvardhana-motherson-expands-reach-with-7-8m-baldi-industria-acquisition>



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