# Dispute Resolution & ADR

Monthly Newsletter
April 2025

www.foxandmandal.co.in
**BENGALURU | KOLKATA | MUMBAI | NEW DELHI**

## TABLE OF CONTENTS

# 3-fold test to determine the law governing an international arbitration clause

## Disortho SAS v. Meril Life Sciences Pvt Ltd

Supreme Court of India | 2025 SCC OnLine SC 570

The Supreme Court's ruling marks a significant step in clarifying the law governing arbitration agreements in cross-border contracts by introducing a 3-fold test – considering the express choice of law, any implied choice (typically the law governing the contract), and the system with the closest and most real connection to the dispute. This judgment not only reduces ambiguity in interpreting inconsistent or conflicting dispute resolution clauses but also aligns Indian arbitration jurisprudence with global standards by referencing UK and Singapore precedents. The Court's emphasis on coherence between the governing law of the main contract and the arbitration clause enhances commercial certainty and predictability. For stakeholders, this decision serves as a vital reminder to expressly define the applicable law of the arbitration agreement at the drafting stage to prevent procedural disputes. It also reinforces the supervisory jurisdiction of Indian Courts where Indian law governs the contract, even if the arbitration is seated abroad.

### SUMMARY OF FACTS

Disortho SAS (Disortho) (incorporated in Colombia) and Meril Life Science Pvt Ltd (Meril) (incorporated in India) entered into an agreement for the distribution of medical products in Colombia (Agreement).

Clause 16 provided that the Agreement would be governed by Indian laws and all matters pertaining to or arising from the Agreement shall be subject to the Courts in Gujarat, India. On the other hand, Clause 18 provided that any dispute or claim under the Agreement shall be resolved by conciliation and arbitration under the aegis of the Center for Arbitration and Conciliation of the Bogotá Chamber of Commerce, Colombia (CCB) and the award shall be in Colombian law.

Disputes arose between the parties and Disortho approached the Supreme Court of India seeking the appointment of an arbitral tribunal in terms of the Agreement. Meril opposed the request contending that the Agreement does not grant jurisdiction to the Courts in India to appoint the arbitral tribunal.

### DECISION OF THE COURT

The Supreme Court noted the divergence of international and domestic opinion on the appropriate test to determine the jurisdiction in cross-border arbitrations due to the interaction of 3 distinct legal systems:

- *Lex contractus:* The law governing the substantive contractual issues.
- *Lex arbitri:* The law governing the arbitration clause/agreement and the performance of the arbitration.
- *Lex fori:* The law governing the procedural aspects of arbitration proceedings.

*Lex arbitri* serves as a guiding principle in case of inconsistent, unclear, or conflicting dispute resolution clauses in the main agreement. The Court cautioned against distinguishing between the law governing the arbitration clause (concerning the validity, scope, and interpretation of the arbitration clause) and the law governing the performance of the arbitration (concerning the jurisdiction and powers of the supervisory Court) as they are inherently intertwined under *lex arbitri* and involve issues of overlap.

The law of the chosen seat would govern the arbitration in case of a standalone arbitration agreement. However, an arbitration clause contained in the main agreement would generally be governed by *lex contractus* unless there is an indication to the contrary (for example, if *lex contractus* renders the dispute inarbitrable).

For this determination, the Court must follow a 3-fold test – primarily considering any express choice of law, in the absence of which, any implied choice, such as *lex contractus*, may be considered, and in the absence of both, the Court may determine the closest and most real connection to the dispute as the governing law.

Applying the above principles, the Court held that Clause 18 would not diminish the supervisory powers of Indian Courts as Indian law (*lex contractus*) would govern the arbitration agreement. However, the arbitration would be conducted in Bogota as per the procedural rules of CCB.

# LLP bound by arbitration clause despite not being signatory to the agreement

**Kartik Radia v. BDO India LLP**

Bombay High Court | 2025 SCC OnLine Bom 445

The Bombay High Court has held that a Limited Liability Partnership (**LLP**) can be bound by an arbitration agreement despite not being a signatory to the LLP agreement. This decision is important, given the significant role of arbitration as a preferred dispute resolution mechanism for commercial disputes as it ensures speed, confidentiality, and finality – elements essential for maintaining business continuity and trust among stakeholders. LLPs can no longer escape arbitration merely by relying on technical non-signatory arguments, especially where the dispute arises from the affairs of the LLP itself. It reinforces the idea that where the LLP is intrinsically connected to the subject matter of the partnership agreement, it cannot remain a passive bystander. Businesses are advised to carefully draft their partnership agreements, clearly outlining the scope and applicability of arbitration clauses, and to consider including the LLP explicitly as a party to such clauses to avoid future disputes over arbitrability.

## SUMMARY OF FACTS

Kartik Radia, a former partner of BDO India LLP (BDO), was expelled from BDO by Milind Kothari, the managing partner.

Kartik sought initiation of arbitration proceedings against BDO and Milind against his expulsion from BDO and the high-handed behaviour and misconduct of Milind.

This request was opposed on the ground that BDO was not party to the arbitration agreement which only covered disputes *inter se* the partners of BDO.

The issue before the Bombay High Court was whether disputes between an LLP and its partners could be covered by the arbitration agreement contained in the main agreement to which the LLP is not a signatory.

## DECISION OF THE COURT

The Bombay High Court rejected the absolute proposition that an LLP can never be a party to arbitration proceedings under an agreement to which it is not a signatory.

Since the arbitration agreement covers the rights and liabilities of the partners of BDO as well as matters concerning the interpretation and application of the LLP agreement, it would include any matter in any way relating to the business and affairs of the LLP. Hence, BDO must be made a party to the arbitration.

The Court held that since item 14 of the First Schedule to the LLP Act, 2008 provides for partnership disputes to be referred to arbitration, an LLP would have to be made a party even if it is not a signatory to the partnership agreement as item 14 would create a deemed statutory arbitration agreement.

Further, as per the LLP Act, every partner acts as an agent of the LLP and the LLP is liable for the acts of its partners. As the challenge to Kartik's expulsion would entail an examination of the injury to the LLP, if any, caused by his conduct, it necessitated the impleadment of the LLP itself.

# Second FIR maintainable to uncover a broader criminal conspiracy

### State of Rajasthan v. Surendra Singh Rathore

Supreme Court of India | 2025 SCC OnLine SC 358

---

The Supreme Court's ruling provides critical guidance on the maintainability of a subsequent First Information Report (**FIR**), particularly where fresh facts or a wider conspiracy come to light – principles with direct relevance to the Prevention of Money Laundering Act, 2002 (**PMLA**). While this empowers investigative agencies to pursue broader trails of economic crime without procedural hurdles, it also underscores the need for corporate stakeholders and PMLA-accused entities to adopt a proactive litigation and compliance strategy. Entities must be vigilant to the possibility of successive Enforcement Case Information Reports (**ECIRs**) arising from evolving factual matrices and ensure robust documentation, internal audits, and timely legal intervention to prevent repetitive or overbroad prosecutions.

---

## SUMMARY OF FACTS

An FIR was registered against a Rajasthan Government officer for demanding a bribe for the renewal of the Complainant's license for sale of bio-diesel (First FIR).

Subsequently, another FIR was registered against the same officer for indulging in taking bribes over a particular period of time for the grant/renewal of licenses to run bio-fuel pumps (Second FIR).

The officer sought quashing of the Second FIR before the Rajasthan High Court under Section 482 of the Criminal Procedure Code, 1973 (CrPC) on the ground that no fresh incident was disclosed in it, and a second FIR in respect of allegations connected to the First FIR, already registered, ought to be quashed for being irregular.

The High Court allowed the prayer and quashed the Second FIR. Aggrieved, the prosecution approached the Supreme Court.

## DECISION OF THE COURT

While deciding whether the registration of a subsequent FIR is legally permissible, the Court analysed various judicial precedents and set out the different circumstances under which a subsequent FIR may be maintainable:

- Counter-complaint or rival version: When the subsequent FIR is a counter-complaint or presents a rival version of a set of facts in reference to an incident for which an earlier FIR is already registered.
- Different ambit: When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.
- Larger conspiracy: When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.
- Previously unknown facts or circumstances: When investigation and/or persons related to the incident bring to light facts or circumstances that were unknown at the time of registration of the initial FIR.
- Separate incident: Where the subsequent FIR pertains to a separate incident, whether or not involving a similar offence.

Applying these principles, the Court held that since the First FIR pertains to a specific incident and the Second FIR pertains to the larger issue of widespread corruption in the concerned department, the Second FIR is much broader in its scope and would therefore be maintainable.

# Interim moratorium under IBC does not bar execution of NCDRC's penalty orders

**Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth**

Supreme Court of India | 2025 SCC OnLine SC 493

The Supreme Court has held that the interim moratorium imposed under Section 96 of the Insolvency and Bankruptcy Code, 2016 (**Code**) during personal insolvency does not stay the execution of penalties imposed for non-compliance of orders and directions passed under the Consumer Protection Act, 1986 (**erstwhile Act**) and the Consumer Protection Act, 2019 (**Act**). The decision reinforces that insolvency proceedings cannot be misused to evade regulatory accountability. By holding that such penalties are punitive and not in the nature of 'debt', it ensures that the deterrent function of consumer protection laws remains intact. This is particularly relevant in sectors like real estate, where personal guarantors and proprietors often face parallel proceedings across forums. Entities and individuals must now treat regulatory compliance and consumer redressal as non-negotiable, regardless of insolvency status. Legal and compliance teams should revisit their enforcement and risk management strategies to reflect this position, as personal insolvency proceedings will not shield defaulters from consumer-related liabilities.

## SUMMARY OF FACTS

The National Consumer Disputes Redressal Commission (NCDRC) passed an order in 2018 imposing 27 penalties on Saranga Anilkumar Aggarwal, the proprietor of a real estate firm, for non-compliance with its earlier directions to deliver possession of residential flats to homebuyers.

During the pendency of proceedings for execution of the above order, personal insolvency proceedings had been initiated against Saranga under Section 95 of the Code for being the personal guarantor to credit facilities extended to a related corporate debtor.

Saranga challenged the continuation of the execution proceedings despite the imposition of interim moratorium under Section 96 of the Code.

## DECISION OF THE COURT

The Supreme Court held that the interim moratorium under Section 96 does not extend to execution proceedings for penalties imposed under the Act.

The penalties imposed for non-compliance are regulatory and punitive in nature and do not constitute a 'debt' owed to the homebuyers. Penalty orders under Section 27 of the Act are punitive and aimed at enforcing compliance with NCDRC orders, not to recover financial dues.

Such liabilities arising from fines, penalties, and damages imposed by judicial or quasi-judicial bodies are treated as 'excluded debts' and are not protected under the moratorium provisions applicable to personal guarantors, which impose a stay on only the legal actions 'in respect of any debt'.

The Court emphasised that allowing a stay on regulatory penalties would defeat the purpose of consumer law, erode deterrence, and embolden defaulters to avoid compliance by invoking insolvency proceedings.

# Guidelines for determining compensation for land acquisition based on market value of adjacent land

**Manilal Shamalbhai Patel v. Officer on Special Duty (Land Acquisition)**

Supreme Court of India | 2025 SCC OnLine SC 634

---

In its recent decision, the Supreme Court laid down a structured approach to determine compensation for acquisition of land based on the market value of adjacent land. By outlining clear guidelines – such as deductions for undeveloped land and size-based adjustments – the Court ensures that compensation reflects the land's actual market value while accounting for practical limitations. This ruling is significant for both landowners and State authorities, as it introduces consistency and fairness in valuation, reducing reliance on arbitrary comparisons. The emphasis on development-related deductions is particularly relevant for agricultural or large tracts of land being repurposed for industrial or urban use. Authorities should adopt this methodology in future acquisitions to minimise litigation risks, while landowners should be aware that compensation may vary even when the adjacent land is priced higher.

---

## SUMMARY OF FACTS

The Government of Gujarat acquired certain land situated in Vadodara, Gujarat for public purposes.

Following the process under the Land Acquisition Act, 1894 (Act), notifications under Sections 4 and 6 were issued and the final award was passed by the Special Land Officer under Section 11 offering compensation at the rate of INR 11 per square metre.

Dissatisfied by the offer, the landowners approached the Reference Court under Section 18 of the Act, which enhanced the compensation to INR 30 per square metre.

The landowners, still dissatisfied, approached the High Court and thereafter the Supreme Court, relying on the INR 180 per square metre acquisition rate of an adjacent plot that was used for the construction of a petrol pump.

## DECISION OF THE COURT

The Supreme Court enhanced the compensation to INR 95 per square metre and developed a methodology for determining the compensation based on market value of the adjacent land:

- 5% increment per year due to the trend of rising prices.
- 30 to 50% deduction for undeveloped land which requires carving out open areas for road, sewage, water, green belt, and electric lines, thereby reducing the transferrable/saleable area to approximately 50% of the land acquired. This factor is particularly important in the acquisition of agricultural land which would require development before it is usable as an industrial site.
- 10% deduction since a large plot of land does not attract the same rate as a smaller plot.
- Since compensation is not based on an algebraic formula and cannot be accurately determined, some amount of guesswork is always permissible.

# Profit-based transactions not covered under the Consumer Protection Act, 2019

### Central Bank of India v. AD Bureau Advertising Pvt Ltd

Supreme Court of India | 2025 SCC OnLine SC 460

The Supreme Court has clarified that if the dominant purpose of a transaction is profit generation, the purchaser would not qualify as a ‘consumer’ under the Consumer Protection Act, 2019 (**Act**). This decision offers much-needed clarity for banks and corporates, confirming that entities availing financial services for commercial purposes cannot seek remedies under consumer law. It limits the potential for consumer litigation in business lending and reinforces that such disputes (based on transactions driven by profit motives) fall outside the ambit of consumer protection measures under the Act and must be pursued through appropriate civil forums. For banks, the ruling acts as a safeguard against consumer complaints in commercial matters and highlights the importance of aligning internal protocols and client communication with this legal position.

## SUMMARY OF FACTS

AD Bureau Advertising Pvt Ltd (Borrower) defaulted in the repayment of a loan facility availed from the Central Bank of India (Bank) to engage in the post-production of a movie, resulting in its account being classified as a non-performing asset.

Eventually, the Borrower and the Bank entered into a settlement and the Bank issued a ‘no-dues certificate’ and filed the requisite memo before the Debts Recovery Tribunal.

However, despite such actions, the Bank reported the Borrower to the Reserve Bank of India (RBI) as a defaulter causing the Borrower to face business losses.

Aggrieved, the Borrower approached the National Consumer Disputes Redressal Commission (NCDRC) against the Bank, where the Borrower was awarded compensation.

The Bank challenged the NCDRC’s order before the Supreme Court of India contending that the Borrower did not qualify as a ‘consumer’ under the Act.

## DECISION OF THE COURT

The Court examined the definition of ‘consumer’ under the Act and concluded that any person who purchases a good or service for a ‘commercial purpose’ is not a ‘consumer’ under the Act.

Further, ‘commercial purpose’ does not include the purchase of goods or services used exclusively as self-employment for earning a livelihood.

After analysing various judgments, the Court observed that any activity which entails business-to-business transactions between commercial entities and involves a purchase made with a direct nexus to generating profit would amount to a transaction made with commercial purpose.

The Court developed a test that any transaction made with the dominant purpose of profit generation would exclude the purchaser from the definition of ‘consumer’.

Even if the primary reason for the Borrower to avail of the loan facility from the Bank (post-production of a movie) was for advertising and increasing goodwill, the said activity was furthering the ultimate goal of profit generation, and the Borrower could not be considered a ‘consumer’.

FOX & MANDAL
SOLICITORS & ADVOCATES
Estd. 1896

## CONTRIBUTORS


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

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

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

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

**Kunal Vajani** | Jt. Managing Partner
kunal.vajani@foxandmandal.co.in

**Prashant Alai** | Senior Associate
prashant.alai@foxandmandal.co.in

**Abhinav Jain** | Associate
abhinav.jain@foxandmandal.co.in

**Afshaa Hakim** | Associate
afshaa.hakim@foxandmandal.co.in

**Shraddha Chirania** | Associate
shraddha.chirania@foxandmandal.co.in

**Tanika Rampal** | Assistant Manager
tanika.tampal@foxandmandal.co.in

**Shubhang Tandon** | Senior Associate
shubhang.tandon@foxandmandal.co.in

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

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

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


## OUR OFFICES

### BENGALURU
103, Embassy One, No. 8, Bellary Road
Bengaluru 560 032
**Email:** bengaluru@foxandmandal.co.in

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

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

### MUMBAI
105, Arcadia Building, 195 NCPA Marg
Nariman Point, Mumbai 400 021
**Email:** mumbai@foxandmandal.co.in

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