

SAGUS SPEAKS



This Newsletter covers key Regulatory & Policy Updates, Government Notifications and Judicial Pronouncements.

REGULATORY AND POLICY UPDATES

RBI notifies RBI (Pre-Payment Charges on Loans) Directions, 2025.

Reserve Bank of India (“RBI”) by notification dated 02.07.2025¹ notified the RBI (Pre-Payment Charges on Loans) Directions, 2025 (“RBI Pre-Payment Charges Directions”) to regulate activities of all commercial banks (excluding payment banks), cooperative banks, Non-Banking Finance Companies (“NBFCs”), and All India Financial Institutions (“AIFIs”) (collectively the “Regulated Entities” or “REs”) concerning levy of pre-payment charges in case of loans sanctioned to Micro and Small Enterprises (“MSEs”) and inclusion of restrictive clauses in loan agreements to deter borrowers from

refinancing their loans from another lender either for availing lower rates of interest or better terms of service.

The salient features of the RBI Pre-Payment Charges Directions are as follows:

- i. Applicability: The RBI Pre-Payment Charges Directions shall apply to all loans (both demand and term loans) and advances sanctioned or renewed after 01.01.2026.
- ii. Floating rate loans and advances: The RBI Pre-Payment Charges Directions stipulate the following conditions to be complied with by REs on all floating loans and advances:

¹ RBI notifies RBI (Pre-Payment Charges on Loans) Directions, 2025.

- a) No pre-payment charges shall be levied on loans granted for purposes other than business purposes, to individuals.
- b) Commercial banks (excluding Small Finance Banks (“SFB”), Regional Rural Bank (“RRB”), and local area bank), tier 4 Primary (Urban) Cooperative Banks (“PUCB”), NBFC-upper layer, and AIFI shall not levy pre-payment charges on loans granted for business purposes to individuals and MSEs (with or without co-obligant(s)).
- c) SFB, RRB, Tier-3 PUCB, state cooperative banks, central cooperative banks, and NBFC-middle layer shall not levy any pre-payment charges for loans granted for business purposes to individuals and MSEs with sanctioned limits upto INR 50 Lakhs.
- d) The exemption from pre-payment charges shall be applicable irrespective of the source of funds being used for partial or full pre-payment and without any lock-in period.
- e) In case of loans with a combination of fixed and floating interest rates, the RBI Pre-Payment Directions shall be applicable to such loans which have a floating interest rate at the time of pre-payment.
- iii. **Term Loans:** In case of term loans, pre-payment charges to be levied by the RE shall be based on the amount being prepaid.
- iv. **Cash Credit/Overdraft Facilities:** In case of cash credit/ overdraft facilities, closure of facilities before the due date, pre-payment charges payable shall be levied on an amount not exceeding the sanctioned limits. In case the borrower intimates the RE of their intention not to renew the facility before the period stipulated in the loan agreement and the facility is closed on the due date, no pre-payment charges shall be applicable.
- v. The RE shall not levy any retrospective fees/charges that it had waived off earlier at the time of pre-payment of loans.
- vi. The RE shall disclose the applicability of the pre-payment charges in the sanction letter, loan agreement, and key facts statement and the RE shall not levy any undisclosed pre-payment charges.

IBBI notifies Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025.

The Insolvency and Bankruptcy Board of India (“IBBI”) notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2025 (“Fifth Amendment Regulations”) by notification dated 04.07.2025² to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“Principal CIRP Regulations”). The Fifth Amendment Regulations came into force on the date of its publication in the Official Gazette i.e., 05.07.2025.

The Fifth Amendment Regulations, *inter alia*, provide for the following key changes:

- i. Regulation 36(2) of the Principal CIRP Regulations has been amended to insert a new clause (ha) requiring disclosure of details of: (a) all identified avoidance transactions as stipulated under Chapter III of the Insolvency and Bankruptcy Code, 2016 (“IBC”); (ii) fraudulent or wrongful trading as stipulated under Chapter VI of the IBC; and (iii) preferential and other transactions as required under Regulation 35A of the Principal CIRP Regulations.
- ii. Regulation 38 of the Principal CIRP Regulations has been amended to insert sub-regulation (2A), which bars a resolution plan from assigning any avoidance transactions or fraudulent/wrongful trading claims that were not:
 - a) disclosed in the information memorandum; and
 - b) intimated to all prospective resolution applicants as required under Regulation 35A(3A) before the last date for submission of resolution plans.

This restriction under sub-regulation 2A of Regulation 38 of the Principal CIRP Regulations shall not apply to resolution plans already submitted to the Adjudicating Authority as per the IBC prior to commencement of the Fifth Amendment Regulations.

² [IBBI notifies Insolvency and Bankruptcy Board of India \(Insolvency Resolution Process for Corporate Persons\) \(Fifth Amendment\) Regulations, 2025.](#)

GOVERNMENT NOTIFICATIONS

MCA notifies the Companies (Listing of Equity Shares in Permissible Jurisdictions) Amendment Rules, 2025.

The Ministry of Corporate Affairs (“MCA”) by notification dated 03.07.2025³, has issued the Companies (Listing of Equity Shares in Permissible Jurisdictions) Amendment Rules, 2025 (“Amendment Rules”) to amend the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 (“Principal Rules”). The Amendment Rules shall come into force from 04.07.2025.

As per Rule 4(4) of the Principal Rules, an unlisted public company intending to list securities on permitted stock exchanges is required to file the prospectus for such listing, with the Registrar in e-Form LEAP-1, within seven days of the prospectus being finalised and filed with the stock exchanges. The Amendment Rules have substituted the existing Form LEAP-1 (as specified in the Second Schedule of the Principal Rules).

MCA notifies the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025.

MCA by notification dated 07.07.2025⁴, issued the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025 (“CSR Amendment Rules”) to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014 (“CSR Principal Rules”). The CSR Amendment Rules shall come into force from 14.07.2025.

Rule 4(2) of the CSR Principal Rules provide that every entity required to comply with provisions of Section 135 of the Companies Act, 2013 for carrying out CSR activities must register itself with the Central Government by filing the e-form No. CSR-1 with the Registrar. The CSR Amendment Rules have substituted the existing e-form No. CSR-1.

JUDICIAL PRONOUNCEMENTS

High Court of Delhi held that the power under Section 151 of CPC has to be exercised with caution and circumspection.

The High Court of Delhi through its judgment dated 01.07.2025 in *Communication Components Antenna Inc. v. Ace Technologies Corp. and Ors.*⁵ held that Section 151 of Code of Civil Procedure, 1908 (“CPC”) gives sufficient

and wide discretionary power to the court, however, there is no doubt that a general provision of law like Section 151 of CPC is to be exercised sparingly by the court with caution and circumspection.

In the present case, the Communication Components Antenna Inc. (“Communication Components”) filed a suit seeking permanent injunction restraining Ace Technologies Corp (“Ace Technologies”) from infringing upon its patent in India. While the suit was at the stage of recording of evidence, Communication Components filed an application under Section 151 of CPC seeking a direction to Ace Technologies to deposit bank guarantee in the court. Communication Components argued that by the time present suit is decided, Ace Technologies would not be in a financial position to satisfy any decree of this court, considering the fact that it had lost more than 64.90% of its share value.

The High Court held that while exercising power under Section 151 of CPC, the court may be faced with a situation where granting an interim relief to an affected party may tantamount to granting final relief itself, when faced with such a situation, it will be relevant for the court to consider if it will be too late when the time comes for granting final relief, no execution will be possible despite decree in its favour.

Further, the High Court held that under such circumstances, the court has to be convinced/persuaded by the affected party that there is (a) *prima facie* case in its favour, (b) balance of convenience lies in its favour and (c) irreparable harm, loss and injury will be caused to the effected party. In the present case, the High Court directed Ace Technologies to deposit 25% of the amount claimed by Communication Components as damages, considering the depreciating financial position of Ace Technologies.

High Court of Delhi clarifies scope for amending Section 34 petitions beyond limitation period.

The High Court of Delhi through its judgment dated 01.07.2025 in *Raheja Developers Limited v. Ahluwalia Contractors India Ltd.*⁶ held that an application to amend a petition under Section 34 of the Arbitration and Conciliation Act (“A&C Act”) is permissible once the original filing is found to be within the prescribed limitation period, however if the amendment is intended to regularise an otherwise *non est* filing, the same may not be permissible.

³ MCA notifies The Companies (Listing of Equity Shares in Permissible Jurisdictions) Amendment Rules, 2025.

⁴ MCA notifies The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025.

⁵ I.A. 36658/2024 in CS(COMM) 1222/2018.

⁶ O.M.P. (COMM) 415/2024 in I.A. 44283/2024.

In the present case, Raheja Developers Ltd. (“Raheja”) filed an application to add new grounds and documents. Raheja argued that the proposed amendment raises a purely legal ground pertaining to lack of inherent jurisdiction of the arbitral tribunal (“AT”) to pass the award. Further, the plea of inherent jurisdiction of AT being *functus officio* at the time of passing of award can be taken at any stage of proceedings.

The High Court relied on the judgment of the Supreme Court in *State of Maharashtra v. Hindustan Construction*⁷ wherein the Supreme Court held that if the foundational pleadings for a ground sought to be amended do exist in the original petition, the grounds based on such pleadings can be incorporated by way of the amendment. The High Court held that amendment sought by way of present application are purely legal in nature supported by the foundational facts pleaded in Section 34 petition. Thus, High Court allowed the amendment sought by Raheja.

High Court of Delhi held that arbitrator does not have discretion to fix seat of arbitration in case of exclusive jurisdiction clause.

The High Court of Delhi, by its judgement dated 01.07.2025 in *M/s Viva Infraventure Pvt. Ltd. v. New Okhla Industrial Development Authority*⁸ held arbitrator’s discretion to determine the seat of arbitration cannot override the exclusive jurisdiction clause in the underlying agreement.

In the present case, the dispute arose between the parties, and the sole arbitrator was appointed. The sole arbitrator by the procedural order changed the seat of the arbitration to Delhi from Gautam Budha Nagar. Thereafter, petition was filed seeking extension of the mandate of the sole arbitrator. New Okhla Industrial Development Authority argued that Delhi High Court does not have jurisdiction in the matter as the court of Gautam Budha Nagar has the exclusive jurisdiction as per the agreement between the parties.

The Court held that where an agreement contains an exclusive jurisdiction clause covering the arbitration clause, the court identified in the exclusive jurisdiction clause will be deemed to have supervisory jurisdiction over the seat of arbitration. When the parties agree to vest exclusive jurisdiction in a particular court for any dispute arising out of the arbitration clause, it must be presumed that they intended that court only have supervisory control.

⁷(2010) 4 SCC 518

⁸ O.M.P. (MISC.)(COMM.) 606 of 2024.

⁹ RFA (COMM) 182 of 2023.

The High Court of Delhi held that TDS deposit extends the limitation under the Limitation Act, 1963.

The High Court of Delhi through its judgment dated 02.07.2025, in *Planet Advertising Private Limited. v. M/s Ambience Private Limited & Ors.*⁹ held that deposit of TDS is payment to the income tax authorities on account of debt which Ambience Private Limited (“Ambience”) owes to Planet Advertising Private Limited (“Planet Advertising”). It would extend the period of limitation and a fresh cause of action would arise.

The High Court relied on the Judgement of Delhi High Court in *Ansal Housing Ltd. v Samyak Projects Private Limited*¹⁰ to held that although deposit of TDS may not act as an acknowledgement of debt by Ambience, since it being a payment made by Ambience on account of a debt owed to Planet Advertising, would lead to a fresh period of limitation being computed as per the Limitation Act, 1963 from the date when the deposit of TDS was made.

NCLAT holds that unadjusted trade advance constitutes financial debt under Section 5(8) of IBC.

The National Company Law Appellate Tribunal (“NCLAT”), New Delhi Bench, through its judgment dated 03.07.2025 in *Akzo Nobel India Ltd. v. Stan Cars Pvt. Ltd.*¹¹ held that unadjusted trade advance would amount to financial debt under Section 5(8) of IBC.

In the present case, the parties entered into an agreement wherein Akzo Nobel India Ltd. (“Akzo”) and Stan Cars Pvt. Ltd (“Stan”) entered into an agreement wherein Akzo extended trade advance to Stan. As per the agreement between the parties, trade advance remaining shall be deemed to be loan extended by Akzo to Stan in respect of which an interest @ 1% per month shall be paid by Stan to Akzo.

The NCLAT held that as per the agreement between the parties the trade advance gets converted into a debt with time value of money in case of default by Stan, so the underlying agreement between the parties shows that the time value of money ingrained in the debt in case of default by Stan.

NCLAT held that Section 10A of IBC does not prohibit parties from entering into a valid debt restructuring arrangement.

NCLAT through its judgment dated 09.07.2025 in *Gangadhar A. v. Catalyst Trusteeship Ltd. & Ors.*¹² held that there is no provision under Section 10A of the IBC that

¹⁰ 2023 SCC OnLine Del 2387

¹¹ Company Appeal (AT) (Insolvency) No. 1294 of 2023.

¹² Company Appeal (AT) (Insolvency) No. 698 of 2025.

prohibits parties from entering into a valid debt restructuring arrangement during or after Section 10A suspension period.

Further, NCLAT held that Section 10A was introduced to provide temporary relief during COVID-19 pandemic which did not curtail the substantive contractual rights of parties to restructure their debts.

APTEL sets aside WBERC order for violation of principles of natural justice.

The Appellate Tribunal for Electricity (“APTEL”) through its judgment dated 04.07.2025 in the matter of *Surya Alloy Industries Ltd. v. WBERC and Anr.*¹³ held that Regulation 2.14.1 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 (“Business Regulations”) does not exclude the applicability of the Rule of Natural Justice of ‘one who hears must decide’.

APTEL held that the principle of ‘one who hears must decide’, being a fundamental tenet of quasi-judicial decision-making, is applicable to the functioning of West Bengal Electricity Regulatory Commission (“WBERC”), particularly when performing adjudicatory functions such as tariff determination and dispute resolution. Further, it was observed that the principle ensures fairness and transparency and is implicitly preserved unless expressly excluded, which is not the case under Regulation 2.14.1.

APTEL further held that Regulation 2.14.1 of the Business Regulations does not permit an order to be signed solely by a member who was not part of the full bench that originally heard the matter, once the other members have demitted office. APTEL clarified that Regulation 2.14.1 of the Business Regulations, when read as a whole, requires that the order be signed only by those members who heard and/or considered the matter. The exception permitting a new member to sign applies only if such member is appointed and contributes to fulfilling the quorum requirement. In the absence of such quorum, the order is not validly constituted and cannot be sustained in law.

APTEL noted that where one or more members who had heard the matter retired prior to signing the final order, the

proper course of action is to hear the matter *de novo* by a duly constituted bench satisfying the quorum. Further, it observed that continuation of proceedings and issuance of a final order by an incomplete quorum violates both Regulation 2.14.1 of the Business Regulations and the fundamental principles of natural justice, thereby rendering the order liable to be set aside.

APTEL affirms State Electricity Commission’s power to issue directions to PEDAs under Electricity Act, 2003.

APTEL by its judgment dated 10.07.2025 in a batch of appeals in the matter of *Punjab Energy Development Agency v. Punjab State Electricity Regulatory Commission & Ors.*¹⁴, held that State Electricity Regulatory Commission (“SECs”) are empowered to issue directions to State Nodal Agencies such as the Punjab Energy Development Agency (“PEDA”) under Electricity Act, 2003.

APTEL held that PEDAs, despite not being a generating company or licensee, can be impleaded as a party in regulatory proceedings before the Punjab State Electricity Regulatory Commission (“PSERC”) where PEDAs play a direct and substantial role in the renewable energy procurement process. This includes activities such as issuing Letters of Intent, securing performance guarantees, and executing implementation agreements with project developers.

APTEL further clarified that in many renewable energy projects, the functions of nodal agency such as PEDAs and the distribution licensee are closely intertwined, and the disputes often involve overlapping obligations under both the implementation agreement and power purchase agreement. It held that in such circumstances, it would be artificial to exclude the nodal agency from regulatory proceedings simply because it is not a signatory to the power purchase agreement.

The APTEL accordingly upheld the directions issued by PSERC to PEDAs while confirming that where a nodal agency is functionally involved in the implementation and procurement process, it is subject to regulatory oversight and bound by directions issued by the SECs.

¹³ Appeal No. 267 of 2023.

¹⁴ Appeal Nos. 286 of 2015, 328 of 2016, 280 of 2017, 371 of 2017, 398 of 2017, 329 of 2017, and 214 of 2020.

ABOUT SAGUS LEGAL

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