BRIEF BITES

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ADVOCATES AND SOLICITORS

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Legal Updates, Insights and Summary Judgements

This update covers:

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Recent Judgements

CIVIL

North Eastern Development Finance Corporation Ltd. (NEDFI) vs. M/s L. Doulo Builders and Suppliers Co. Pvt. Ltd. (Civil Appeal No. 6492 of 2024)

In the instant case, the Supreme Court ruled that the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**the SARFAESI Act**") could not be invoked by a financial institution where no "security interest" was created in its favour. The Court held that the question of whether a lender is a "secured creditor" is a foundational requirement for invoking the SARFAESI Act. Furthermore, the Court found that the SARFAESI Act was not applicable in the State of Nagaland at the time the recovery action was initiated, due to the special constitutional provisions under Article 371A of the Constitution.

The appeal arose from a dispute concerning a loan agreement from 2001, where NEDFI (the Appellant) provided financial assistance to M/s L. Doulo Builders (the Respondent) to set up a cold storage unit in Nagaland. Due to local laws in Nagaland restricting the transfer of tribal land to non-tribals, a tripartite arrangement was made: the Respondent mortgaged its property to the Model Village Council, and the Council, in turn, executed a deed of guarantee in favour of NEDFI. When the Respondent defaulted, NEDFI initiated recovery proceedings under the SARFAESI Act, issuing a notice in 2011 and taking possession of the assets in 2019. The Gauhati High Court allowed the Respondent's writ petition, quashing the SARFAESI proceedings as being wholly illegal and without jurisdiction.

The Appellant (NEDFI) assailed this order before the Supreme Court, arguing that the High Court erred in entertaining the writ petition, as a statutory remedy was available under Section 17 of the SARFAESI Act. They contended that the SARFAESI Act could be invoked for debts that arose prior to the Act being made applicable to the financial institution. Citing *M.D. Frozen Foods Exports Private Limited v. Hero Fincorp,* they argued that the Act applies to all live and actionable debts at the time it becomes applicable to the institution.

The Respondent, the Company, countered that the entire action was without jurisdiction from its inception. It argued that no "security interest" as defined by Section 2(1)(zf) of the SARFAESI Act was ever created in favour of NEDFI, as the property was mortgaged to the Village Council, not the Appellant. Therefore, NEDFI was not a "secured creditor" and could not invoke the Act. Crucially, the Company contended that the SARFAESI Act was not even applicable in Nagaland when the notice was issued in 2011, as Article 371A of the Constitution barred its application without a state resolution, which was only passed in 2021.

The Supreme Court dismissed the appeal, affirming the High Court's order. The Court emphasized that the applicability of the SARFAESI Act in Nagaland was barred by Article 371A at the time of the recovery action, rendering the proceedings void. The Court further held that the creation of a "security interest" in favour of the creditor is a foundational requirement to be classified as a "secured creditor" and to invoke the SARFAESI Act. Since the undisputed fact was that the mortgage was in favour of the Council and not NEDFI, no security interest was created for the Appellant. The Court concluded that as the invocation of the Act was without jurisdiction, the argument to relegate the Company to an alternative remedy under Section 17 was not applicable.

ARBITRATION

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Hindustan Petroleum Corporation Ltd v. BCL Secure Premises Pvt. Ltd. (Civil Appeal No.14647 of 2025)

Date of Judgement - 09.12.2025

The Supreme Court of India in the case of *Hindustan Petroleum Corporation Ltd v. BCL Secure Premises Pvt. Ltd* addressed the invocation of an arbitration clause by a non-signatory subcontractor. The case arose from a tender floated by Hindustan Petroleum Corporation Ltd. ("**HPCL**") for a Tank Truck Locking System, which was awarded to AGC Networks Ltd. ("**AGC**"). The contract explicitly prohibited any subletting or assignment without HPCL's prior written consent. Despite this, AGC entered into a back-to-back subcontract with BCL Secure Premises Pvt. Ltd. ("**BCL**") for the project's execution. When disputes over non-payment arose between AGC and BCL, they entered into a "Settlement-cum-Assignment Agreement," which purported to assign AGC's receivables from HPCL to BCL. Relying on this, BCL directly invoked the arbitration clause in the original HPCL-AGC contract against HPCL. The Supreme Court overturned the High Court's decision to refer the matter to arbitration, ruling decisively that no arbitration agreement existed between HPCL and BCL.

The Court's reasoning was grounded in several key legal principles. Primarily, it upheld the doctrine of privity of contract, noting that HPCL had only contracted with AGC and had never provided the written consent required to validate any assignment or subcontract to BCL. The Court applied the "veritable party" test, as laid down in Cox & Kings, and found that BCL was not a veritable party to the contract, as HPCL never intended to be bound by an agreement with BCL. It was clarified that the assignment of receivables does not automatically include the assignment of arbitration rights or other contractual obligations; the latter requires the express consent of the counterparty, which was absent here.

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ARBITRATION

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Mohan Lal Fatehpuria V. M/s Bharat Textiles & Ors. (2025 SCC Online SC 2754)

Date of Judgement - 10.12.2025

The Supreme Court of India, in the case of *Mohan Lal Fatehpuria v. M/s Bharat Textiles & Ors.,* addressed an appeal against a Delhi High Court order dated 22.04.2025. The High Court had refused to substitute a sole arbitrator but had extended his mandate by four months under Section 29A of the Arbitration and Conciliation Act, 1996 ("**the Act**"). The dispute arose from a partnership deed, leading to the High Court's appointment the sole arbitrator on 13.03.2020. After entering the reference, the arbitrator directed the parties to deposit various sums for administrative expenses, which the respondents challenged unsuccessfully in an earlier proceeding under Sections 14 and 15 of the Act. The arbitrator later adjourned the proceedings *sine die* on 31.08.2023.

The Supreme Court analyzed the timeline of the arbitration in detail, applying the provisions of Section 29A of the Act. It noted that the arbitrator entered the reference on 20.05.2020. After excluding the period affected by the COVID-19 pandemic, the Court calculated that the statutory twelve-month period for the arbitrator to deliver the award expired on 28.02.2023. The Court held that the arbitrator's mandate had terminated by operation of law, rendering him f*unctus officio.* The Court reasoned that the power to substitute an arbitrator under Section 29A(6) is a distinct remedy, separate from the grounds in Sections 14 and 15, and is specifically available when extending the arbitral timeline. It found that once an arbitrator's mandate has ceased to exist, his continuation is impermissible, and substitution is warranted to fulfil the Act's objective of expeditious dispute resolution.

Consequently, the Supreme Court concluded that the High Court had erred in extending the mandate of an arbitrator who was already *functus officio*. The Court allowed the appeals, quashed the High Court's order, and formally terminated the mandate of the original arbitrator. In his place, the Court appointed the substituted sole arbitrator. The newly appointed arbitrator was directed to continue the proceedings from the stage already reached and to conclude them within a period of six months.

CRIMINAL

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Supreme Court Clarifies Right to Speedy Trial and Limits of Pre-trial Detention

Arvind Dham v. Enforcement Directorate (2026 SCC OnLine SC 30)

The Supreme Court, in ***Arvind Dham v. Enforcement Directorate (2026 SCC Online SC 30),*** addressed the critical balance between the stringent bail conditions under the Prevention of Money Laundering Act (PMLA) and the fundamental right to a speedy trial, providing a significant clarification on the limits of pre-trial incarceration in complex economic offences. The challenge concerned the rejection of regular bail for the appellant, a former promoter and non-executive Chairman of Amtek Auto Ltd., who had been in custody since July 9, 2024, following allegations of a well-orchestrated scheme involving the diversion and siphoning of bank loans amounting to hundreds of crores. The central legal question was whether the mandatory "twin conditions" for bail under Section 45 of the PMLA could justify continued detention when the trial had not yet commenced and was unlikely to conclude in the foreseeable future.

The Court ruled that the right to a speedy trial, as enshrined under Article 21 of the Constitution, is not eclipsed by the nature of the offence and applies irrespective of the gravity of the crime. It was observed that the appellant had been in custody for approximately 16 months and 20 days, during which time no cognizance of the prosecution complaint had been taken, and the proceedings remained at the stage of scrutiny of documents. Consequently, the Court held that prolonged incarceration without reasonable progress in the trial converts pre-trial detention into a form of punishment, which cannot be countenanced under the constitutional framework.

Despite the serious nature of economic offences, the ruling sets a crucial precedent by explicitly stating that such crimes cannot be treated as a homogeneous class warranting a blanket denial of bail. The judgment highlighted that with 210 prosecution witnesses cited and a maximum sentence of only seven years, there was no likelihood of the trial concluding within a reasonable timeframe. The Court further determined that the delay in the trial was largely attributable to the respondent's own actions, specifically a stay of proceedings obtained in the High Court which lasted eight months before being withdrawn.

The Court also addressed specific allegations made by the Directorate of Enforcement regarding witness tampering and the dissipation of proceeds of crime. It found the allegation that the appellant had instructed a witness not to join the investigation to be "wholly incredulous," noting that the appellant was already in custody long before the individual in question was formally arrayed as a witness. Furthermore, the Court noted that no material link had been established between the appellant and the companies involved in the alleged disposal of immovable properties during his incarceration.

This judgment serves as a vital reminder that while statutory definitions and special acts provide rigorous frameworks for prosecution, the overarching constitutional duty to prevent indefinite detention requires the judiciary to prioritize the Right to Liberty when the state cannot ensure a timely trial. The appellant was thus ordered to be released on bail subject to terms fixed by the Trial Court, including the surrender of his passport and providing contact information to the Directorate of Enforcement.

Case Summary

RESTRICTION ON INPUT TAX CREDIT

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SECTION 16(2)(C) RESTRICTION ON INPUT TAX CREDIT READ DOWN BY TRIPURA HIGH COURT

1. FACTUAL MATRIX

1.1 The petitioner, a bona fide purchasing dealer, challenged the denial of Input Tax Credit (ITC) solely on the ground that the supplier failed to remit GST to the Government.
1.2 The petitioner had transacted with the selling dealer by taking all precautions as required by the Act and had already paid tax to the seller.
1.3 Section 16(2)(c) of the GST Act was being applied to deny ITC despite the purchasing dealer having fulfilled all compliance requirements from their end.
1.4 The revenue authorities denied ITC to the tune of Rs 1.11 Crores (approx.) based solely on the supplier's failure to deposit the tax collected with the Government.
1.5 The writ petition questioned the validity of Section 16(2)(c) as being arbitrary and contrary to the foundational GST principle of avoiding cascading taxation.

2. PETITIONER'S SUBMISSION

2.1 The petitioner argued that there is a failure by the Parliament, while enacting Section 16(2)(c) of the Act, to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the Act and those that have not.

2.2 It was contended that purchasing dealer cannot be asked to do the impossible, i.e., to identify a selling dealer who will not deposit with the Government, the tax collected by him from purchasing dealers, and avoid transacting with such selling dealers.

2.3 The petitioner pointed out that denying ITC results in double taxation as the purchaser has already paid tax to the seller.

2.4 Reliance was placed on:

- Delhi HC ruling in Quest Merchandising, affirmed by the Supreme Court in Arise India and Shanti Kiran;
- Gauhati HC's decisions in National Plasto Moulding and McLeod Russel India Ltd.

2.5 It was submitted that if the provision is not struck down, it should at least be read down to protect bona fide taxpayers, consistent with judicial precedents.

3. ISSUE

3.1 Whether Section 16(2)(c) of the GST Act can validly deny ITC to bona fide purchasing dealers solely on the ground that the supplier failed to remit GST to the Government, when the purchaser has already paid tax to the seller and has no control over supplier compliance.

4. HIGH COURT HELD

The Tripura High Court allowed the writ petition challenging denial of Input Tax Credit (ITC) solely on the ground that the supplier failed to remit GST to the Government. The Court's key findings and holdings are as follows:

4.1 Legislative Gap in Section 16(2)(c)

The Court held that there is a failure by the Parliament, while enacting Section 16(2)(c) of the Act, to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the Act and those that have not. Therefore, there is need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers.

4.2 Impossibility of Compliance

The Court held that purchasing dealer cannot be asked to do the impossible, i.e., to identify a selling dealer who will not deposit with the Government, the tax collected by him from purchasing dealers, and avoid transacting with such selling dealers.

4.3 Reliance on Precedents

Relying extensively on the Delhi HC ruling in Quest Merchandising as affirmed by the Supreme Court in Arise India and Shanti Kiran, and on Gauhati HC's decisions in National Plasto Moulding and McLeod Russel India Ltd., the Court held that the

reasoning as adopted by the Delhi High Court in Quest Merchandising India Pvt. Ltd. and M/s Shanti Kiran India (P) Ltd. as approved by the Supreme Court, should be adopted to the interpretation of Section 16(2)(c) of the Act.

4.4 Practical Impossibility

Referring to a slew of HC judgments where provision was held constitutional but refusing to read down the said provision, the Court observed that none of the above High Courts have looked at the practical impossibility for a purchaser to ensure that the seller pays the GST to the Government particularly when he has no means of checking the said fact.

4.5 Double Taxation Concerns

On double taxation, the Court found nothing in the language of the Act which expressly enables the respondents to tax a purchaser, who has already paid tax to the seller, a second time, by denying him ITC, in all situations. If that were to be so, there would be no concept of giving ITC at all in the Act.

4.6 Legislative Intent Behind ITC

The Court held that ITC is introduced to avoid double tax burden on a taxpayer under the GST regime. The Parliament, in our opinion, though intended it to be a benefit/concession, it had not intended to punish a taxpayer by denying him ITC if the transaction entered into by him with a seller/supplier is bona fide.

4.7 Reading Down Section 16(2)(c)

The Court declined to strike down Section 16(2)(c) as unconstitutional, reading down the said provision and holding it should be applied only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the revenue. This interpretation protects bona fide purchasing dealers while denying ITC only in cases of fraud or collusion.

4.8 Relief Granted

The Court allowed the Assessee to claim ITC to the tune of Rs 1.11 Crores (approx.), thereby providing substantive relief to the petitioner who had conducted bona fide transactions with the supplier.

W&B Comments:

Position leading to the present decision

Earlier judgments were divided some held that Section 16(2)(c) is absolute and ITC must be reversed if the supplier fails to pay tax, while others protected bonafide purchasers from reversal due to the supplier's default. The Press Release dated 04.05.2018 also clarified that ITC should not be automatically reversed, and recovery from purchasers should be limited to exceptional cases like missing dealers. The present judgment has now read down Section 16(2)(c), holding that ITC of bonafide purchasers cannot be reversed.

Way Forward:

This judgment provides significant relief to bonafide purchasers who have paid tax to suppliers and is likely to result in favourable outcomes in pending and future litigation.

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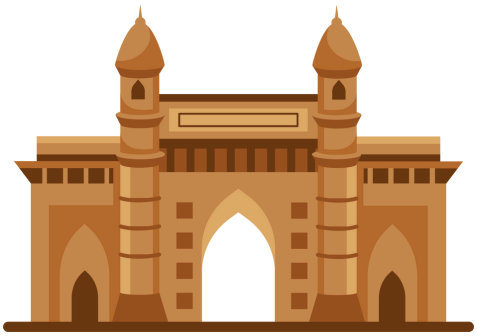

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