

BRIEF BITES

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SEP 2025

Legal Updates, Insights and Summary Judgements

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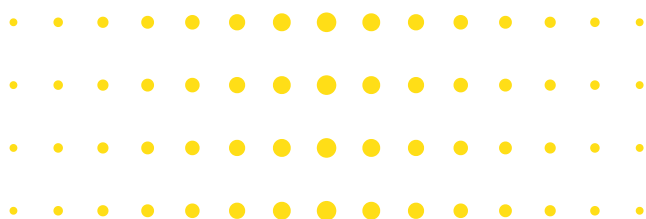
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Recent Judgements

CIVIL

Dharam Singh & Ors. v. State of U.P. & Anr., Civil Appeal No. 8558 of 2018.



The Supreme Court in the present case dealt with the issue of whether long-serving daily wage employees, engaged continuously by a public authority to perform perennial functions, could be denied regularisation on the pretext of financial constraints and the absence of sanctioned posts.

The matter arose from the engagement of the Appellants between 1989 and 1992 by the U.P. Higher Education Services Commission ("**Commission**"), a statutory body responsible for teacher recruitment in the State. The Appellants, five Class-IV employees and one Driver, discharged ministerial and support duties for decades, initially as daily wagers and later on consolidated pay. The Commission itself resolved in 1991 and 1999 to create posts in the relevant cadres and repeatedly sought sanction from the State, which rejected the proposals in 1999 and again in 2003 citing financial constraints and a ban on new posts.

Aggrieved by the State's decision, the Appellants filed Writ Petition before the Allahabad High Court seeking quashing of the State's refusals. Though the High Court initially directed reconsideration and payment of minimum pay scale in 2002, it eventually dismissed the petition in 2009 on the ground that there were no rules or vacancies for regularisation and that *Secretary, State of Karnataka v. Umadevi*[1] barred such relief. A Division Bench dismissed the Special Appeal in 2017, affirming the view that the Appellants were only daily wagers with no right to regularisation.

[1] *Secretary, State of Karnataka & Others. vs. Umadevi & Others*, 3 (2006) 4 SCC 1

Subsequently, the Appellants approached the Supreme Court, where the court found that both the Single Judge and Division Bench of the High Court misdirected themselves by treating the dispute as a bare claim for regularisation, overlooking the Appellants' principal challenge to the arbitrariness of the State's repeated refusals to sanction posts despite acknowledged need and continuous engagement. The Court held that the State's generic reliance on financial constraints did not meet the constitutional standard of reasonableness, particularly when the Commission itself had pressed for posts and the work in question was demonstrably perennial. It noted that evidence, including RTI replies and un rebutted affidavits, established the existence of vacancies and showed that similarly situated workers in the same Commission had been regularised earlier, making the denial discriminatory.

The Court emphasized that Umadevi (supra) cannot be deployed as a shield to justify indefinite precarious engagements and that public institutions cannot evade constitutional obligations by outsourcing or temporary labelling where the work is of permanent nature. Accordingly, the Court quashed the State's refusals of 1999 and 2003 and directed full regularisation of all appellants with effect from 24 April 2002, the date of the High Court's earlier order.

Sincere Securities (P) Ltd. v. Chandrakant Khemka, 2025 SCC Online SC 1608

In the instant case, the Supreme Court ruled on the interpretation of the moratorium under Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). The Court held that this provision, which prohibits the recovery of property occupied by a corporate debtor during a Corporate Insolvency Resolution Process ("**CIRP**"), is not an absolute bar. It does not prevent the return of a property if the Committee of Creditors ("**CoC**") and the Resolution Professional ("**RP**"), in their commercial wisdom, decide that retaining the property is financially unviable and not in the best interest of the corporate debtor.

The dispute arose after Nandini Impex Private Limited ("**Corporate Debtor**") availed loans from the Sincere Securities (P) Ltd ("**Appellants**"), which were secured by two portions of a property in New Delhi. Upon default, the Corporate Debtor executed conveyance deeds transferring title to the appellants but simultaneously entered into Leave and License Agreements to retain possession by paying monthly rent. After defaulting on rent, the appellants terminated the agreements. Subsequently, UCO Bank initiated CIRP against the Corporate Debtor, and the appellants' claims as operational creditors were admitted. The CoC, consisting solely of UCO Bank, along with the RP, concluded that retaining the high-rent property was not feasible for the Corporate Debtor's limited operations. Consequently, the CoC decided to hand over possession to the appellants.

The Appellants filed an application before the National Company Law Tribunal ("**NCLT**"), which directed the RP to deliver possession. However a suspended director of the Corporate Debtor, appealed to the National Company Law Appellate Tribunal ("**NCLAT**"), which set aside the NCLT's order. The NCLAT held that Section 14(1)(d) of the IBC creates a bar on the recovery of property by an owner during CIRP and remanded the matter for fresh consideration. The appellants, supported by the CoC and the RP, challenged the NCLAT's decision before the Supreme Court. They argued that the decision to surrender the property was a commercial one, taken in the best interest of the CIRP, and should be respected. The CoC relied on the Supreme Court's decision in *K. Sashidhar v. Indian Overseas Bank*[1], to assert that the commercial wisdom of the CoC is paramount and non-justiciable.

The Supreme Court allowed the appeal, setting aside the NCLAT's order and restoring the NCLT's decision. The Court distinguished the case from a standard recovery action by an owner, noting that here the desire to return the property originated from the CoC and the RP themselves, based on sound financial considerations. The Court held that the purpose of Section 14(1)(d) is to protect the Corporate Debtor's assets for a successful resolution, not to compel it to retain a financially burdensome property against the CoC's commercial wisdom.

Reaffirming the principle laid down in *K. Sashidhar*, the Court emphasized that the CoC's commercial decision to surrender the property must be given primacy. The RP was directed to expeditiously hand over the property to the appellants.

[1] *K. Sashidhar v. Indian Overseas Bank* (2019) 12 SCC 150

ARBITRATION

Bharat Heavy Electrical Ltd. (BHEL) vs. Xiamen Longking Bulk Material Science & Engg. Co. Ltd., O.M.P. (COMM) 529/2020

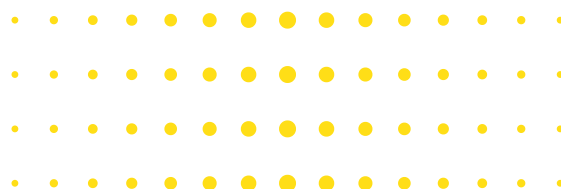


In the instant case, the Delhi High Court set aside an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 ("**the Act**"). The Court held that an arbitrator, being a creature of the contract, cannot rewrite its terms or travel beyond its express provisions.

The dispute arose from a contract awarded by Bharat Heavy Electricals Ltd. ("**BHEL**") to Xiamen Longking Bulk Material Science & Engg. Co. Ltd. ("**Xiamen**"), a Chinese company. As part of its bid, Xiamen submitted a Project Execution Methodology ("**PEM**"), explicitly undertaking to establish a project office in India and open an Indian bank account to execute the Indian component of the contract. Based on this assurance, BHEL issued Letters of Award ("**LoAs**"). However, Xiamen failed to establish the office or open the bank account and instead proposed using the account of an associated Indian company. BHEL refused, insisting on strict adherence to the PEM.

Following this impasse, Xiamen sent an email stating it could not continue the project unless its proposal was accepted. BHEL treated this as a repudiation of the contract, terminated the agreement by invoking the "risk and cost" clause, and subsequently initiated recovery proceedings for the additional costs incurred. In response, Xiamen invoked arbitration, claiming costs for bid preparation, design, travel, and loss of profit. BHEL filed a counterclaim for the risk and cost amount. The learned arbitrator found BHEL's termination wrongful and awarded Rs. 13,65,000/- to Xiamen for the cost of preparing 65 drawings.

BHEL challenged the award before the High Court, primarily on three grounds. **First**, the award was perverse and against the contract, as the arbitrator ignored the mandatory precondition of opening an Indian office and bank account stipulated in the PEM. **Second**, Xiamen's refusal to perform its obligation amounted to a repudiation of the contract under Section 39 of the Indian Contract Act, 1872, justifying the termination. **Third**, the arbitrator violated principles of natural justice by relying on an alternative payment method (Letter of Credit) which was never pleaded or argued by either party.



The High Court sided with BHEL, ruling that the arbitrator had indeed rewritten the contract by treating a mandatory precondition as optional. Citing landmark cases like *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*^{1]}, the Court held that a unilateral alteration of a contract by an arbitrator breaches the fundamental principles of justice. The Court found that by introducing the possibility of payment via a Letter of Credit (a point not argued by either party) the arbitrator had violated the principles of natural justice under Section 18 of the Act, as BHEL was denied an opportunity to present its case on this issue. The Court set aside the arbitral award in its entirety, finding it to be in conflict with the fundamental policy of Indian law as per Section 34(2)(b)(ii) of the Act.

^{1]} *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131

ARBITRATION

Managing Director Bihar State Food and Civil Supply Corporation Ltd. & Anr. v. Sanjay Kumar, 2025 SCC OnLine SC 1604.

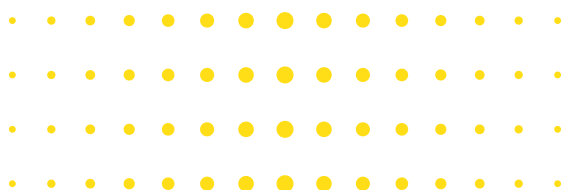


The Supreme Court in the present case addressed the arbitrability of disputes involving allegations of large-scale fraud and criminal misconduct in the context of public procurement contracts.

The Bihar State Food and Civil Supplies Corporation (**"the Corporation / the Appellant"**) had entered into agreements with rice millers (**"rice millers / Respondents"**) through which the millers had to return 67% of the customed milled paddy in the form of rice, with Clause 15 permitting recovery under the Bihar & Orissa Public Demands Recovery Act, 1914 (**"Recovery Act"**), and Clause 16 providing for arbitration in case of disputes. Within a year, disputes arose when the rice millers failed to deliver the agreed quantity of rice. The Corporation issued notices to rice millers and initiated recovery proceedings under the Recovery Act. Challenging these notices, the rice millers filed writ petitions before the Patna High Court, which held that arbitration was the appropriate remedy under the agreement. While the proceedings were pending a massive fraud came to light, involving misappropriation of nearly Rs.1500 crores which led to over 1200 FIRs' registration against millers across Bihar and parallel proceedings under the Prevention of Money Laundering Act, 2002 (**"PMLA"**).

Subsequently, the rice millers, in 2019, invoked the arbitration clause and filed petitions before the Patna High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of arbitrators which the High Court allowed in July 2020.. The Corporation appealed to the Supreme Court, arguing that the disputes were non-arbitrable because of serious fraud and therefore the arbitration was barred by the Recovery Act mechanism, and that the applications were filed beyond limitation.

The Supreme Court considered the scope of enquiry under Section 11(6A), which confines the referral court's role to examining the existence of an arbitration agreement. The court while reviewing its earlier judgments on issues of difference between "fraud simpliciter," which remains arbitrable, and "serious fraud" of such gravity that it raises public law implications and is therefore non-arbitrable.



The Court clarified that serious fraud arises only where either the arbitration agreement itself is impeached, or where allegations concern arbitrary, fraudulent, or mala fide conduct by the State or its instrumentalities impacting public interest.

Applying these principles, the Court held that the present disputes, though accompanied by criminal cases, essentially arose from contractual defaults under the milling agreements and therefore remained arbitrable. It emphasized that civil and criminal proceedings may proceed in parallel, and the existence of criminal charges does not ipso facto render the dispute non-arbitrable. The Court further left issues relating to limitation, jurisdictional objections, and the effect of the Recovery Act to be determined by the arbitral tribunal itself under Section 16.



CRIMINAL

Serious Fraud Investigation Office v. Aditya Sarda & Ors. [(2025) 256 Comp Cas 395; 2025 SCC OnLine SC 764]



Judgement

In a significant ruling, the Hon'ble Supreme Court in *Serious Fraud Investigation Office v. Aditya Sarda & Ors. [(2025) 256 Comp Cas 395; 2025 SCC Online SC 764]* has set aside anticipatory bail granted by the Punjab & Haryana High Court to several accused involved in the multi-crore **Adarsh Credit Co-operative Society (ACCSL)** scam. Delivered by a Bench comprising Justice Bela M. Trivedi and Justice Prasanna B. Varale, the judgment underscores the judiciary's stricter approach towards **white-collar crimes**, reaffirming that anticipatory bail in cases of severe economic offences cannot be granted routinely.

The case arose from a large-scale financial fraud involving **Adarsh Credit Co-operative Society Ltd.**, which had amassed deposits of over ₹9,253 crores from **20 lakh members**. The Serious Fraud Investigation Office (SFIO), acting on directions from the Ministry of Corporate Affairs, investigated **125 companies** linked to the Adarsh Group and found that **₹1,700 crores** were illegally diverted to group companies through forged documents, leading to an outstanding liability of **₹4,120 crores**.

The Special Court in Gurugram issued **ailable and non-ailable warrants** against several accused who repeatedly failed to appear. Proclamation proceedings under **Section 82 CrPC** were also initiated. Despite this, the High Court granted anticipatory bail in March and April 2023, which the SFIO challenged before the Supreme Court.

The Court held that **economic offences require stricter scrutiny** due to their impact on public funds and financial stability. It reiterated that anticipatory bail under **Section 438 CrPC** is an **extraordinary relief** and should be granted **sparingly**, especially when accused evade investigation or obstruct proceedings. The Court also emphasized that the High Court ignored the **mandatory conditions under Section 212(6) of the Companies Act, 2013**, making its orders legally unsustainable.



Setting aside the High Court's decision, the Supreme Court directed the accused to **surrender within one week**. Future bail applications, if any, will be decided on merits by the Special Court.

This ruling sends a clear message: **serious economic offences will be dealt with firmly**, and anticipatory bail will not shield those who evade legal processes. The judgment highlights the importance of strict compliance, transparency, and proactive risk management for businesses and corporate stakeholders.



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