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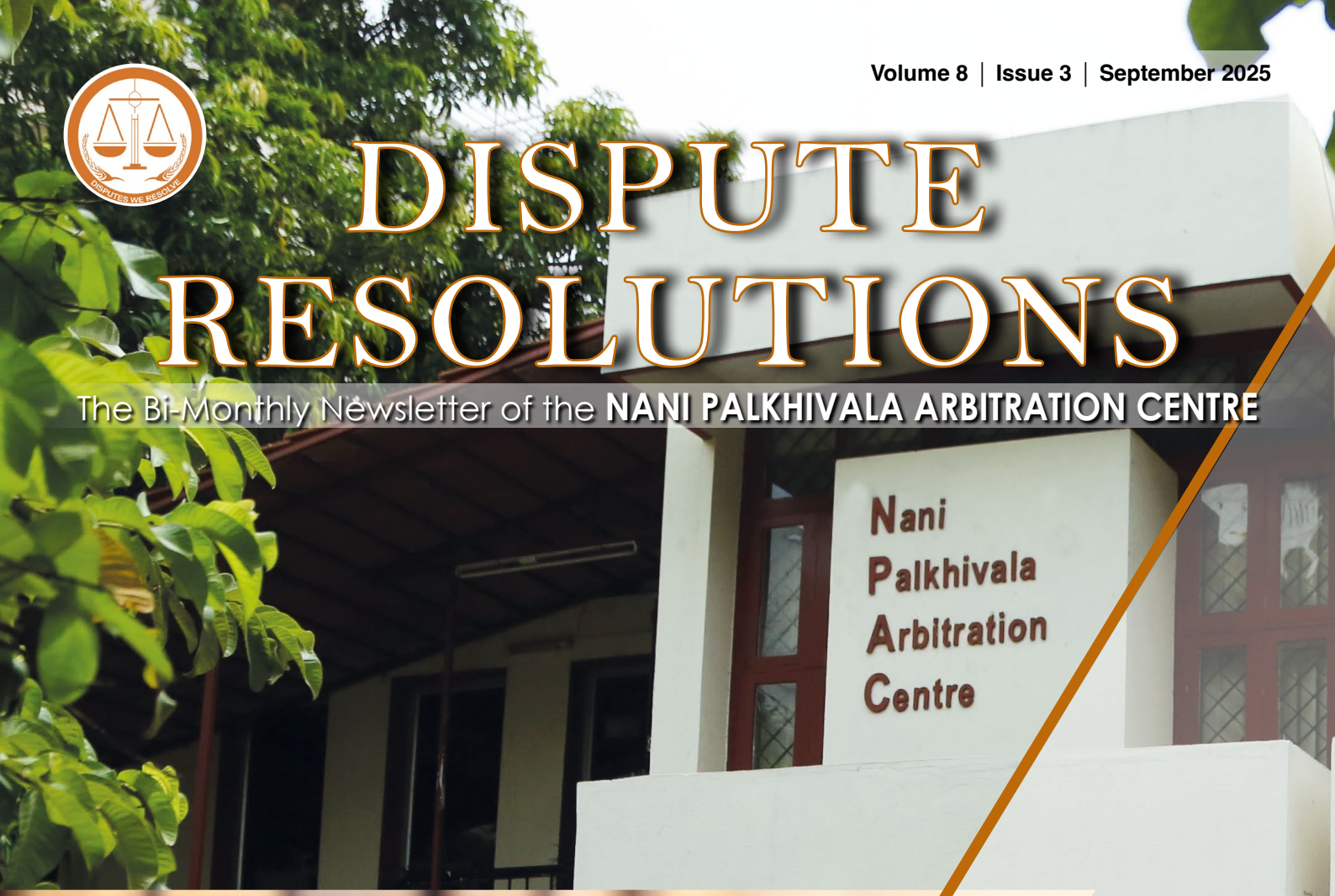
DISPUTE RESOLUTIONS

The Bi-Monthly Newsletter of the **NANI PALKHIVALA ARBITRATION CENTRE**



NPAC 16th Annual International Conference, 2025 – Fireside Chat and Inaugural Session

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LEGAL UPDATES

Supreme Court clarifies Arbitration under Section 11 of the SARFAESI Act, 2002: No written Agreement required due to presumption under Section 11 of the Act

In a significant judgment impacting arbitration in financial disputes, the Hon'ble Supreme Court has ruled that an explicit written arbitration agreement is not required between parties under Section 11 of the SARFAESI Act, 2002 (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002). The decision was rendered in ***Bank of India vs. M/s Sri Nangli Rice Mills Pvt. Ltd. & Ors. (2025 INSC 765)***, where the Hon'ble Supreme Court upheld that the statute itself creates a legal fiction by deeming the existence of consent for arbitration or conciliation between specified parties, namely banks, financial institutions, Asset Reconstruction Companies, and qualified buyers, when disputes pertain to securitization, reconstruction, or non-payment of dues.

In the instant case, the appellant bank extended credit to the borrower in 2003. After the borrower defaulted in 2015, the appellant bank discovered that the respondent bank had also asserted rights over the same stock in 2013, as well as a valid pledge via the collateral manager. The appellant bank issued a demand notice under the SARFAESI Act and approached the DRT, which ruled in its favour in 2017. In 2019, the DRAT reversed this decision citing the lack of jurisdiction of the DRT, which was upheld by the Delhi High Court. The primary contentions before the Supreme Court, pertained to the applicability of Section 11 of the SARFAESI Act to inter-creditor disputes, second, whether a written arbitration agreement was required, and third, whether the DRT possessed jurisdiction in the aforesaid manner or whether it could be settled through arbitration.

The Hon'ble Court emphasized that use of the phrase "as if" in Section 11 of the SARFAESI Act, 2002 establishes a presumption of written agreement, thus binding eligible parties to arbitration, even in the absence of a formal contract. The Hon'ble Court noted that this mandatory mechanism ensures that disputes among secured creditors do not hinder the recovery process and aligns with the summary nature of proceedings before Debt Recovery Tribunals. By interpreting Section 11 as a statutory mandate rather than a discretionary provision, the Court has effectively reinforced arbitration as the default dispute resolution mechanism within its defined scope under the SARFAESI regime. However, it clarified that Section 11 of the Act does not apply when the jural relationship between such entities is that of lender and borrower, as this alters the nature of obligations involved.

Supreme Court clarifies that Trademark disputes pertaining to in personam disputes are arbitrable

In the recent case of ***K. Mangayarkarasi & Anr. vs. N.J. Sundaresan & Anr.***, the Hon'ble Supreme Court held that contractual disagreements involving intellectual property rights can be resolved through arbitration when they arise from agreements containing arbitration clauses. The petitioners filed a civil suit seeking permanent injunction against the respondent's use of the trademark and damages of ₹20 lakhs for infringement. The respondent responded that the dispute arose from an Assignment Deed containing an arbitration clause and filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, seeking to submit the dispute to arbitration. The primary contention pertained to whether allegations of fraud and trademark infringement disputes could oust jurisdiction of the arbitral tribunal when the matter arises from a contract containing an arbitration clause.

The Hon'ble Supreme Court dismissed the petition, holding that trademark disputes arising from assignment deeds are arbitrable, and that the mere allegations of fraud or misconduct do not deprive an arbitral tribunal of jurisdiction over *in personam* disputes stemming from contractual relationships. This was subject to the caveat that not all trademark disputes are arbitrable, and that only *in personam* disputes were arbitrable. The Court noted that once it is determined that an arbitration agreement exists, judicial authorities have a "positive obligation to refer parties to arbitration", with no discretionary power to override this statutory command.

Supreme Court rejects misleading Arbitration Clauses and warns of personal liability for legal professionals

In the case of ***South Delhi Municipal Corporation of Delhi vs. SMS Limited***, the issue involved three separate appeals arising from concession agreements between Delhi's Municipal Corporations and private contractors (SMS Ltd., DSC Ltd., and CCC Ltd.) for developing parking and commercial complexes. Disputes emerged over project delays, site allotments, and contract terminations, and the contractors sought to invoke Article 20 of their respective agreements as arbitration clauses, while the Municipal Corporations contended these clauses prescribed mediation, not arbitration. The primary issue was whether Article 20 of the concession agreements constituted valid arbitration clauses under Section 7 of the Arbitration and Conciliation Act, 1996, or mediation.

The Supreme Court held that Article 20 does not constitute an arbitration agreement. The Court found that the essential ingredients for a valid arbitration agreement were, first, a clear intent to arbitrate, second, a binding adjudicatory process, and third compliance with arbitration norms. Article 20 failed this test because it was titled "Mediation by Commissioner," indicating non-adjudicatory process, no express reference was made to "arbitration" or "arbitrator", the appointment was controlled exclusively by MCD without party autonomy, the proceedings lacked adversarial process with oral hearings and cross-examination, and the decision-maker was an MCD officer, thereby compromising neutrality.

This judgment serves as a critical reminder of the evolving judicial stance toward ensuring procedural integrity in arbitration. The Supreme Court called on both courts and counsel to uphold drafting clarity, ethical responsibility, and to protect the sanctity of the arbitration process. As arbitration continues to gain prominence in India, the ruling reinforces the need for precision, fairness, and transparency at the very outset of the arbitral journey.

Supreme Court holds that Arbitral Tribunals are authorised to award interest for sub-divided periods and compound interest

In the case of ***M/S. Interstate Construction vs. National Projects Construction Corporation Ltd.***, the appellant was engaged by the respondent for executing construction work at Ramagundam Super Thermal Power Project under two work orders issued in 1984. The work was completed in 1987, but disputes arose over recoveries and additional claims, leading to arbitration proceedings initiated in 1993. After multiple changes in the arbitrators, the final arbitral award was pronounced on October 28, 2020, awarding the appellant Rs. 34,43,490.61 along with interest calculated in three distinct periods.

The primary issues before the Court were whether an arbitral tribunal can award interest for three separate periods, viz., pre-reference, pendente lite, and future periods, and whether it can award compound interest. The Delhi High Court's Single Judge partly upheld the award under Section 34 of the Arbitration Act, 1996, only modifying future interest rates. However, the Division Bench under Section 37 set aside paragraph 58(b) of the award, holding that Section 31(7) recognizes only two interest periods and prohibits compound interest.

The Supreme Court set aside the Division Bench judgment, ruling that arbitral tribunals possess the authority to award interest for subdivided periods within the framework of Section 31(7)(a). The Court clarified that the provision allows interest "for the whole or any part of the period" between the cause of action date and award date, thereby permitting different rates for these periods. Relying on ***Pam Developments Private Limited v. State of West Bengal***, the Court established that compound interest is permissible. The term "sum directed to be paid" encompasses both principal amount and accrued interest, allowing further interest calculation on the total awarded sum.

This decision strengthens the legal foundation supporting arbitral discretion in awarding comprehensive interest and promotes procedural fairness in arbitration. It underscores the judiciary's respect for the autonomy of the arbitral process while ensuring claimants are not denied the time value of money due to prolonged proceedings. By validating compound interest in appropriate circumstances, the ruling will likely influence future contractual drafting and arbitral awards across India's commercial dispute landscape.

Supreme Court revisits scope of Section 34 and held that Courts can not only set aside but can also modify arbitral awards in certain cases

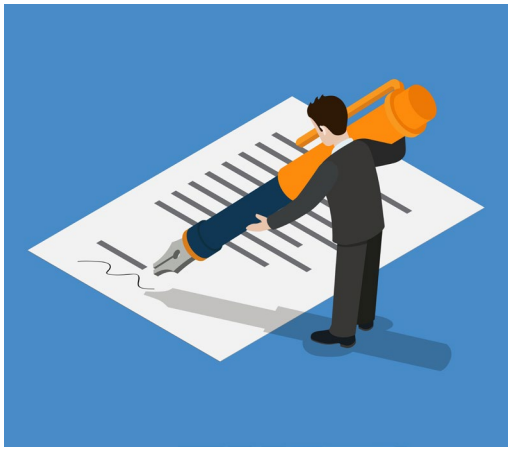
The case of ***Gayatri Balasamy v. M/S. ISG Novasoft Technologies Limited*** conflicting judicial opinions on whether Section 34 of the 1996 Act, which empowers courts to "set aside" arbitral awards, includes the power to modify them. The controversy stemmed from the 2021 decision in ***Project Director NHAI v. M. Hakeem (2021) 9 SCC 1,*** wherein it was held that courts lack modification powers, conflicting with several earlier judgments that had modified awards. A three-judge bench of the Supreme Court, in February 2024 referred five critical questions to a larger bench, recognizing the need for authoritative clarification on this frequently arising issue in arbitration proceedings. The questions centred on whether modification powers exist, their scope, and whether the *Hakeem* decision correctly interpreted the law.

The majority, led by Chief Justice Sanjiv Khanna, held that courts possess limited modification powers under Sections 34 and 37 of the 1996 Act, and distinguished between complete annulment and targeted modification, reasoning that denying modification powers would defeat arbitration's core purpose of providing quick, cost-effective dispute resolution. It was observed that the Court can sever invalid portions from valid parts of awards when they are legally and practically separable. Further, Courts may rectify computational, clerical, or typographical errors that are apparent on the record without conducting merits-based evaluation, and can modify interest rates when circumstances justify such changes, as Section 31(7)(b) establishes legislative standards for post-award interest. The Supreme Court may exercise Article 142 to modify awards in appropriate circumstances while not rewriting the award on merits.

Justice K.V. Viswanathan gave dissent in this case, wherein he stated that the Hakeem decision was correctly decided and that Section 34 provides no modification powers whatsoever. Section 34 explicitly limits judicial recourse to "setting aside" applications, with no mention of modification powers, and 1996 Act deliberately adopted the UNCITRAL Model Law framework, which intentionally excludes modification powers to ensure minimal judicial interference**.** Further, modifications by courts could create enforcement issues under the New York Convention, as only arbitral awards (not court-modified orders) are internationally enforceable. Thus, existing safeguards under Sections 33 and 34(4) adequately address legitimate concerns.

Supreme Court clarifies that signature is not mandatory for Arbitration Agreements under Section 44 of the Arbitration and Conciliation Act, 1996

The Hon'ble Supreme Court in ***Glencore International AG v. M/s Shree Ganesh Metals*** addressed the enforceability of a foreign arbitration agreement under Section 44 of the Arbitration and Conciliation Act, 1996. The dispute arose from a supply contract of zinc alloy where the respondent did not sign the final agreement but partially performed it, furnished standby letters of credit, and exchanged emails confirming obligations. When defaults occurred, the appellant sought arbitration, but the Delhi High Court refused, holding that the unsigned agreement was not binding.



The Supreme Court overturned the High Court, holding that an arbitration agreement must indeed be in writing but does not mandatorily require signatures if the parties' conduct and documented communications demonstrate consensus. Relying on precedents like ***Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia Pvt. Ltd***, ***Caravel Shipping Services Pvt. Ltd. v. Premier Sea Foods Exim Pvt. Ltd.*** and ***Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.***, the Court emphasized that written exchanges via emails, letters, or contractual performance can satisfy the statutory requirement. It further clarified that at the referral stage under Section 45, courts only need to form a prima facie view, leaving detailed examination to the arbitral tribunal.

Concluding the matter, the Court ruled that the conduct of M/s Shree Ganesh Metals clearly showed acceptance of the agreement, including the arbitration clause. It allowed Glencore's appeal, set aside the Delhi High Court's orders, and directed that the disputes be referred to arbitration, observing that the earlier refusal to recognize the agreement's enforceability was legally unsustainable.

Supreme Court holds that Arbitration can proceed despite pending criminal case under Sections 420 & 409 IPC

The Hon'ble Supreme Court in ***The Managing Director, Bihar State Food and Civil Supply Corporation Ltd. & Anr. vs. Sanjay Kumar*** examined whether the pendency of criminal proceedings could bar arbitration in a contractual dispute. The case arose from a ₹1,500-crore scam in the Bihar Public Distribution System, where criminal cases for cheating and breach of trust were registered against certain suppliers. Parallelly, disputes under the supply contracts containing arbitration clauses were referred to arbitration, which the Bihar government opposed on the ground that fraud allegations made the matter non-arbitrable.

The Court clarified that the pendency of FIRs under Sections 420 and 409 IPC does not automatically render a dispute non-arbitrable. Drawing from precedents such as ***Avitel Post Studioz vs. HSBC PI Holdings*** and ***A. Ayyasamy vs. A. Paramasivam***, the Hon'ble Court distinguished between "serious fraud" involving forgery, fabrication, or matters of public interest, which are non-arbitrable, and "fraud simpliciter" arising out of contractual obligations, which remains arbitrable. It reiterated that at the Section 11 referral stage, courts only conduct a prima facie examination of the existence of an arbitration agreement, leaving substantive questions of arbitrability to the arbitral tribunal.

The Hon'ble Court upheld the appointment of an arbitrator and dismissed the SLPs filed by the Bihar State Food Corporation. It ruled that arbitration proceedings can run parallel to the criminal trial, with each forum addressing its respective domain i.e., arbitration for civil and contractual remedies, and the criminal courts for offences under the IPC. This decision reinforces the autonomy of arbitration and curbs the misuse of criminal proceedings to avoid contractual commitments.

NPAC 16th Annual International Conference, 2025 — Fireside Chat and Inaugural Session

NPAC hosted its 16th Annual International Conference at The Oberoi, New Delhi on the September 5th (evening) and 6th, 2025, celebrating two decades of its contribution to strengthening arbitration in India. On the theme ***"Navigating Arbitration in the Era of Digitisation and Reform,"*** the two-day event brought together eminent voices from the judiciary, bar, and arbitral institutions across the world.

The conference began on the evening of 5th September, 2025 with a fireside chat on the topic ***"Advocacy and Process: Arbitration versus Court"***. It was moderated by Mr. Alex Taylor, Senior Clerk at Fountain Court Chambers, London, and the session featured Lord Justice Underhill of the Court of Appeal of England and Wales, Hon'ble Justice Manmohan of the Supreme Court of India, Mr. Stephen Moriarty KC of Fountain Court Chambers, London, and Mr. Samudra Sarangi, Partner at Panag & Babu, New Delhi.

Lord Justice Underhill opened by emphasizing how written submissions in the UK provide judges with the ability to focus on essential issues well before oral arguments commence. Justice Manmohan offered a candid perspective from India, observing that while oral advocacy remains a hallmark of the Indian system, written submissions often lag in quality and are usually prepared by junior lawyers. He stressed that written submissions, if precise and nuanced, help crystallize disputes, identify critical issues, and serve as a foundation for oral advocacy.

Mr. Moriarty, however, warned that written and oral advocacy can sometimes conflict, placing added pressure on counsel. This sparked further debate on whether written advocacy always strengthens the process or risks diluting spontaneity in oral hearings. Mr. Sarangi turned the spotlight on procedural efficiency, particularly the absence of real-time transcription services in India. He argued that making live transcription a norm would significantly streamline arbitration proceedings and bring Indian practice in line with global standards.

Fireside Chat, 2025: (From Left to Right) Mr. Stephen Moriarty KC, Lord Justice Underhill, Mr. Alex Taylor, Hon'ble Justice Manmohan and Mr. Samudra Sarangi

In frame: The Honourable Justice Philip Jeyaretnam, President of the Singapore International Commercial Court and Judge of the Supreme Court of Singapore interacting with a delegate at the Conference.

(From Left to Right): Mr. S. Mahalingam, Director, NPAC handing over a bouquet to welcome The Honourable Justice Philip Jeyaretnam, President of the Singapore International Commercial Court and Judge of the Supreme Court of Singapore.

Mr. Arvind P Datar, Senior Advocate Supreme Court of India and Madras High Court and Director, NPAC delivering the welcome address at the inaugural session of the Conference.

The Honourable Justice Philip Jeyaretnam, President of the Singapore International Commercial Court and Judge of the Supreme Court of Singapore delivering the keynote address at the inaugural session of the Conference.

Mr. Gaurav Pachnanda, Director, NPAC delivering the conference concept note at the inaugural session of the Conference.

(From Left to Right): The Honourable Justice Philip Jeyaretnam, President of the Singapore International Commercial Court and Judge of the Supreme Court of Singapore and Mrs. Payal Chawla, Founder, Jus Contractus and Director, NPAC

The panel also discussed the role of experts in complex disputes. Justice Manmohan spoke about the need for institutionalized mechanisms to bring in subject-matter expertise in areas such as intellectual property, where technology often outpaces law. While some viewed reliance on experts as indispensable, others, like Lord Justice Underhill, argued that strong pleadings should themselves encourage analytical rigor without over-dependence on external input. The session closed with an engaging exchange on consistency in evidentiary standards, where Justice Manmohan called for structured adoption of best practices such as the IBA Rules to reduce procedural uncertainty in arbitration.

The formal inauguration on 6th September, 2025 began with a welcome address by Mr. Arvind P. Datar, Senior Advocate and Director, to be replaced by adding the words - Mr. Gaurav Pachnanda, Senior Advocate, Supreme Court of India and Governing Council Member, NPAC. The keynote address was delivered by The Honourable Justice Philip Jeyaretnam, President of the Singapore International Commercial Court and Judge of the Supreme Court of Singapore.

Justice Jeyaretnam reflected on Singapore's decade-long journey with the International Commercial Court and its role in reinforcing arbitration as a preferred forum. He underlined reform as a continuing necessity, driven by judicial support and the attractiveness of arbitration as an alternative to traditional litigation. He elaborated on how digitisation has transformed case management, reduced delays, and enhanced transparency, while also speaking of Singapore's innovative Artificial Intelligence tool, PAIR Search, which aids in legal analysis and decision-making. Cautioning against unregulated adoption of AI in dispute resolution, he pointed to the EU's AI Act, which classifies its use in Alternate Dispute Resolution as high risk. Drawing from recent Singapore International Arbitration Centre cases, he emphasized that clarity in drafting arbitration clauses and resolving questions of arbitrability remain central to avoiding disputes over jurisdiction.

Justice Jeyaretnam then distributed the certificates and prize to the winners of the NPAC Satya Hegde Essay Competition, 2025.

The inaugural session closed with a vote of thanks by Ms. Payal Chawla, Founder of JusContractus and Director, NPAC, who acknowledged the collective contributions of the speakers, participants and sponsors.

The discussions in the fireside chat and inaugural session reflected both global insights and India's unique challenges, setting a thoughtful tone for the panels and technical sessions that followed.

Stay tuned for our upcoming issue, where we will bring you detailed coverage of the Conference where we will delve into the discussions of the four technical sessions and the March of Law.

(From Left to Right): Ms. Netraa Rathee, student at National Law University, Bhopal receiving the certificate for securing the Ist Prize in the Satya Hedge Essay Competition, 2025 from The Honourable Justice Philip Jeyaretnam

(From Left to Right): Mr. Masad Khan, student at NALSAR University of Law, Hyderabad receiving the certificate for securing the IInd Prize in the Satya Hedge Essay Competition, 2025 from The Honourable Justice Philip Jeyaretnam

(From Left to Right): Mr. Sarthak Mishra, student at Dharmashastra National Law University, Jabalpur receiving the certificate for securing the IIIrd Prize in the Satya Hedge Essay Competition, 2025 from The Honourable Justice Philip Jeyaretnam




Delagates and audience attending the 16th Annual International Conference, 2025.

16th Annual International Conference, 2025.

Report on the "The Insolvency & Bankruptcy Code, 2016: A Retrospective and Roadmap for the Future" Conference by NPAC

As India's landmark insolvency legislation, the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), moves closer to completing a decade of operation, NPAC organised an international conference titled "*The Insolvency & Bankruptcy Code, 2016: A Retrospective and Roadmap for the Future*" on June 7, 2025, in Chennai. The conference served as a platform for critical assessment and collaborative dialogue among leading jurists, policy architects, scholars, insolvency professionals, and international experts. With the IBC heralding a structural shift in India's corporate and creditor ecosystem, the conference focused on how far the Code has travelled and what direction it must take to address emerging commercial, legal, and transnational challenges. The discussions unfolded across four panels, each examining a crucial aspect of the IBC's operation.

Panel I IBC 2016 – The Journey So Far (From Left to Right): Mr. Dinkar Venkatasubramanian, Mr. T. S. Krishnamurthy, Hon'ble Justice Mr. N. Anand Venkatesh and Mr. Sumant Batra.

In Frame: Hon'ble Justice (Retd.) V. Ramasubramaniam, Chair of Panel I, NPAC Conference on "The Insolvency & Bankruptcy Code, 2016: A Retrospective and Roadmap for the Future"

The opening panel, titled *'IBC 2016: The Journey So Far'*, provided a wide-angle view of the Code's evolution from inception to its current standing. The panel was chaired by Hon'ble (Retd.) Justice V. Ramasubramaniam, Former Judge, Supreme Court of India and Chairperson, National Human Rights Commission of India. In a thought-provoking keynote address at the NPAC Conference on the Insolvency and Bankruptcy Code (IBC), Hon'ble Justice N. Anand Venkatesh Judge, Madras High Court offered a critical introspection into the operational realities of India's corporate insolvency regime. Speaking not as a practitioner of insolvency law, but as a constitutional functionary and keen observer, he brought to the fore structural, administrative, ethical, and jurisprudential concerns that have marked the IBC's implementation over the past nine years. Mr. Sumant Batra, Insolvency Lawyer and President, Insolvency Law Academy, India commenced his discussion by tracing the legislative and policy objectives that animated the Code's enactment. He elaborated on how the IBC consolidated fragmented and ineffective pre-existing insolvency frameworks into a time-bound, creditor-driven resolution process aimed at maximising value and preserving enterprise viability. Emphasising the foundational principle of stakeholder fairness, he underscored the importance of judicial interpretation in filling in legislative gaps. He argued that judgments of the Supreme Court had played a pivotal role in converting the skeletal provisions of the Code into a robust body of jurisprudence that could withstand commercial complexities.

Mr. Dinkar Venkatasubramanian, Partner, EY-Parthenon, New Delhi offered a statistical and analytical presentation on the tangible impact of the IBC across the banking and corporate landscape. He highlighted how the IBC brought about a paradigm shift from the "amend and pretend" strategy of previous regimes to a creditor-led resolution framework. By presenting empirical data, he demonstrated that over ₹4 lakh crore had been realised through formal resolutions, while another ₹14 lakh crore worth of debt had been settled pre-admission, thereby confirming the Code's deterrent and conciliatory value. His analysis also revealed the

socio-economic gains post-resolution, including a 76% increase in average sales, a 130% rise in capital expenditure, and a 50% increase in employee-related expenses in resolved entities. While acknowledging these achievements, he also flagged concerns regarding declining recovery rates, procedural bottlenecks, and the need to fortify institutional capacity.

Panel II Group Insolvency & Cross-Border Insolvency (From Left to Right): Mr. R. Murari, Mr. S Ravi, Hon'ble Justice Mr. Senthilkumar Ramamoorthy, Ms. Sheila N.G and Mr. P.H. Arvindh Pandian

The second panel delved into the complex terrain of *'Group Insolvency and Cross-Border Challenges: Legal and Practical Hurdles'*. Hon'ble Justice Senthilkumar Ramamoorthy, Judge, Madras High Court began by identifying a critical lacuna in the IBC: its lack of explicit provisions for group insolvency. This gap, he observed, becomes glaring when corporate groups with deeply intertwined finances, assets, and liabilities are subjected to fragmented insolvency proceedings. Drawing from landmark cases such as ***Videocon***[1] and ***Anubhav Plantations***[2], he explained how Indian courts have had to rely on equitable doctrines and judicial innovation to permit group consolidation in the absence of a statutory framework. He argued that while such interventions were necessary, they also highlighted the pressing need for legislative intervention to codify principles of group insolvency.

Furthering this discussion, Mr. Arvindh Pandian, Senior Advocate, Madras High Court mapped the judicial and commercial rationale for consolidated Corporate Insolvency Resolution Processes (CIRPs), which aim to eliminate duplicative proceedings and enhance creditor value through unified resolution strategies. However, he pointed out the limitations of current legal provisions and noted that courts have, in many cases, dismissed consolidation applications due to the absence of statutory authority or Committee of Creditors (CoC) approval. Notable cases such as ***PNB vs. KSK Mahanadi Power***[3] and the ***IL&FS Group***[4] insolvency were cited to illustrate the judicial ambivalence and practical urgency surrounding this issue.

Shifting to cross-border dimensions, Mr. S. Ravi, Senior Advocate, Telangana High Court provided a comprehensive overview of India's piecemeal approach to transnational insolvency. He underscored the inadequacy of Sections 234 and 235 of the IBC, highlighting their limited scope and practical issues due to the absence of reciprocal arrangements and bilateral treaties. He strongly recommended the adoption of the UNCITRAL Model Law on Cross-Border Insolvency to bring India in line with international best practices and ensure smoother recognition and enforcement of foreign insolvency orders.

Adding a comparative perspective, Ms. Sheila N.G, Partner, Rajah and Tann, Asia and Fellow, INSOL International from Singapore presented the strengths of her country's adoption of the UNCITRAL Model Law. She elaborated on the principles of universalism and judicial comity that underpin Singapore's legal regime. Notably, she explained that while Singapore applies a public policy exception, it does not require that the foreign proceeding "manifestly" violate local principles. This narrower threshold, she argued, preserves international cooperation without compromising national legal integrity. Her intervention showcased how a predictable and rules-based cross-border framework can foster efficiency, fairness, and international trust in insolvency resolution.

1 Videocon Industries v. Union of India Civil Appeal No. 4269 of 2011 (arising out of SLP(C) No. 16371 of 2008)

2 Comp.A.Nos.49 to 51 of 2017 in C.P.No.13 of 2000

3 M/s Punjab National Bank v. M/s KSK Mahanadi Power Company Ltd., (2021) - IA No. 32/2020 In CP (IB) No. 492/07/HDB/2019 - NCLT Hyderabad Bench

4 Union of India v. Infrastructure Leasing & Financial Services Limited & Ors. - I.A. No. 5036 of 2023 in Company Appeal (AT) No. 346 of 2018 - NCLAT, New Delhi

Panel III IBC, Arbitration & Mediation (From Left to Right): Mr. R. Anand, Mr. Arvind P Datar, Hon'ble Justice (Retd.) Mr. A.K. Sikri, Hon'ble Justice Mr. Bharatha Chakravarthy and Mr. R Sankaranarayanan

The third panel explored *'IBC, Arbitration and Mediation: Synergies and Conflicts'*, focusing on the intersection between insolvency law and Alternative Dispute Resolution (ADR). Hon'ble (Retd.) Justice A.K. Sikri, Former Judge, Supreme Court of India and Judge, Singapore International Commercial Court (SICC) chaired the session and opened with reflections on the practical conflicts between moratorium provisions and arbitration timelines. He noted that arbitral proceedings are frequently stalled due to moratoriums imposed under Section 14, especially when counterclaims against corporate debtors are in play. This, he pointed out, can compromise the principles of natural justice and require calibrated legislative adjustments.

Mr. Arvind P Datar, Senior Advocate, Supreme Court of India directed attention to the concept of contingent creditors under the IBC. He critiqued its expansive scope and traced its origin to English common law. Arguing that the inclusion of non-crystallised, uncertain liabilities dilutes the efficiency of CIRPs, he proposed limiting the definition of 'claim' to present or quantifiable future obligations. He warned that the admission of purely contingent claims, often reduced arbitrarily to 1, not only undermines legal certainty but also risks procedural unfairness.

Hon'ble Justice Bharatha Chakravarthy, Judge, Madras High Court offered a structured timeline-based approach to understanding arbitration's place within IBC proceedings. He confirmed that arbitral awards could be used to initiate insolvency proceedings, even when under challenge. However, once a moratorium is in place, all legal proceedings, including arbitration, must halt. He posed critical questions about the absolute nature of the moratorium and the possibility of carving out exceptions where appropriate. He concluded by raising an unresolved issue, whether arbitral awards not included in a resolution plan remain enforceable and called for clearer legislative or judicial guidance on this matter.

Mr. R. Sankaranarayanan, Senior Advocate, Madras High Court and Former Additional Solicitor General presented a forward-looking case for institutionalising mediation within the IBC framework. He recommended a dedicated mediation infrastructure under the Insolvency and Bankruptcy Board of India (IBBI), with trained mediators, voluntary and mandatory pathways, and sector-specific panels. He emphasised that mediation must not be viewed merely as a collection strategy for creditors but as a legitimate, independent tool for dispute resolution. His proposals resonated with the broader theme of aligning insolvency proceedings with principles of fairness and consensual resolution.

Panel IV Resolution Plans & Schemes of Arrangements (From Left to Right): Mr. KG Raghavan, Hon'ble Justice Subramonium Prasad, Mr. S. Badri Narayanan, Mr. R. Venkatavaradan and Mr. N.L. Rajah

The final panel, *'Resolution Plans and Schemes of Arrangement: Balancing Efficiency and Equity'*, brought together key discussions on the implementation and legal architecture of resolution plans. Hon'ble Justice Subramonium Prasad, Judge, Delhi High Court began by outlining the objectives of the IBC, not merely in terms of resolving insolvency but also in promoting credit culture, preserving enterprise value, and safeguarding stakeholder equity. He emphasised that the shift from a debtor-in-possession to a creditor-in-control regime has realigned priorities in favour of financial discipline and institutional accountability.

Mr. K.G. Raghavan, Senior Advocate, Karnataka High Court examined the jurisdictional complexities stemming from Section 238 of the IBC, which grants it overriding effect over other laws. He discussed how public law claims and regulatory interventions have at times clashed with insolvency orders, referencing cases such as ***Embassy***

Property[5] and MCGM[6]. His presentation helped clarify the contours of judicial and tribunal authority under Section 60(5)(c),IBC which must remain confined to disputes arising directly from the insolvency process.

Mr. R. Venkatavardhan, Advocate, Madras High Court provided a nuanced analysis of the CoC's commercial wisdom, reinforcing that courts are not to assess the financial soundness of resolution plans but to ensure procedural compliance. He discussed the principle laid down in ***Essar Steel***[7] and **K. Sashidhar**[8], affirming that dissenting creditors are only entitled to monetary compensation equivalent to their security interest. His discussion brought clarity to the delicate balance between commercial autonomy and judicial oversight.

The final presentation by Mr. S. Badri Narayanan, Charted Accountant dealt with the critical but often underexplored post-approval phase of resolution plans. He emphasized the importance of timely implementation, referencing cases like ***Amtek Auto***[9] and ***Ebix Singapore***[10] where the Supreme Court barred post-approval modifications or withdrawals. He discussed the "clean slate" doctrine from the Essar Steel case, highlighting its importance in protecting successful resolution applicants from legacy liabilities. Mr. Narayanan also offered practical insights into hurdles such as delayed regulatory approvals, tax uncertainties, and difficulties in asset transfers, calling for a harmonised and enforceable post-resolution framework.

After each panel, the audience was given an opportunity to ask questions to the panellists, who then provided clarifications, making the conference more interactive.

As the conference concluded, one message resonated across panels that the IBC has achieved monumental reform, but its continued success hinges on targeted legislative refinements, institutional maturity, and a willingness to adapt to the complexities of modern business and cross-border financial architecture. This IBC Conference by NPAC offered not only a platform for academic and policy debate but also a call for deeper interdisciplinary engagement to strengthen India's insolvency landscape in the decade ahead.

Audience attending the NPAC Conference on "The Insolvency & Bankruptcy Code, 2016: A Retrospective and Roadmap for the Future"

5 Embassy Property Developments Private Limited vs. State of Karnataka and Others (2020) 13 SCC 308

6 Municipal Corporation of Greater Mumbai (MCGM) Vs. Abhilash Lal and Ors. 2019 SCC OnLine SC 1479

7 Committee of Creditors of Essar Steel India Limited and Satish Kumar Gupta (2020) 8 SCC 531

8 K. Sashidhar v. Indian Overseas Bank and Ors. 2019 SCCOnLine SC 257

9 M/S Vistra ITCL (India) Ltd & Ors. vs. Mr. Dinkar Venkatasubramanian & Anr. 2023 SCC OnLine SC 570

10 Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr. (2022) 2 SCC 401

Satya Hegde Essay Competition 2025

Prize winners:

The Satya Hegde Essay Competition is organized annually by NPAC. This year's theme was "The Scope for Equitable Reliefs in Arbitration Proceedings." The competition invited law students across the country to critically engage with the growing discourse on how equitable remedies such as injunctions, specific performance, and restitution operate within the arbitral framework. With the Indian arbitral regime constantly adapting to international best practices, the theme sought to encourage nuanced analysis on balancing equity with party autonomy and procedural efficiency in arbitration.

This year witnessed enthusiastic participation from students across leading law colleges and universities in India. The entries highlighted a rich spectrum of arguments on the extent to which arbitral tribunals can and should grant equitable reliefs, the interface with court-assisted remedies, and the potential implications for India's credibility as a global arbitration hub. The originality, depth of research, and clarity of thought demonstrated by the participants reflected the growing academic interest in this evolving area of arbitration law.

Among the numerous commendable contributions, the following entries emerged as the winners of the Satya Hegde Essay Competition, 2025. The abridged versions (as provided by the students) of the essays that secured the top positions will be published in the upcoming issue of the Newsletter.

Essay – 1

I Prize

Ms. Netraa Rathee
National Law University, Bhopal

Essay – 2

II Prize

Mr. Masad Khan
NALSAR University of Law, Hyderabad

Essay – 3

III Prize

Mr. Sarthak Mishra
Dharmashastra National Law University, Jabalpur

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