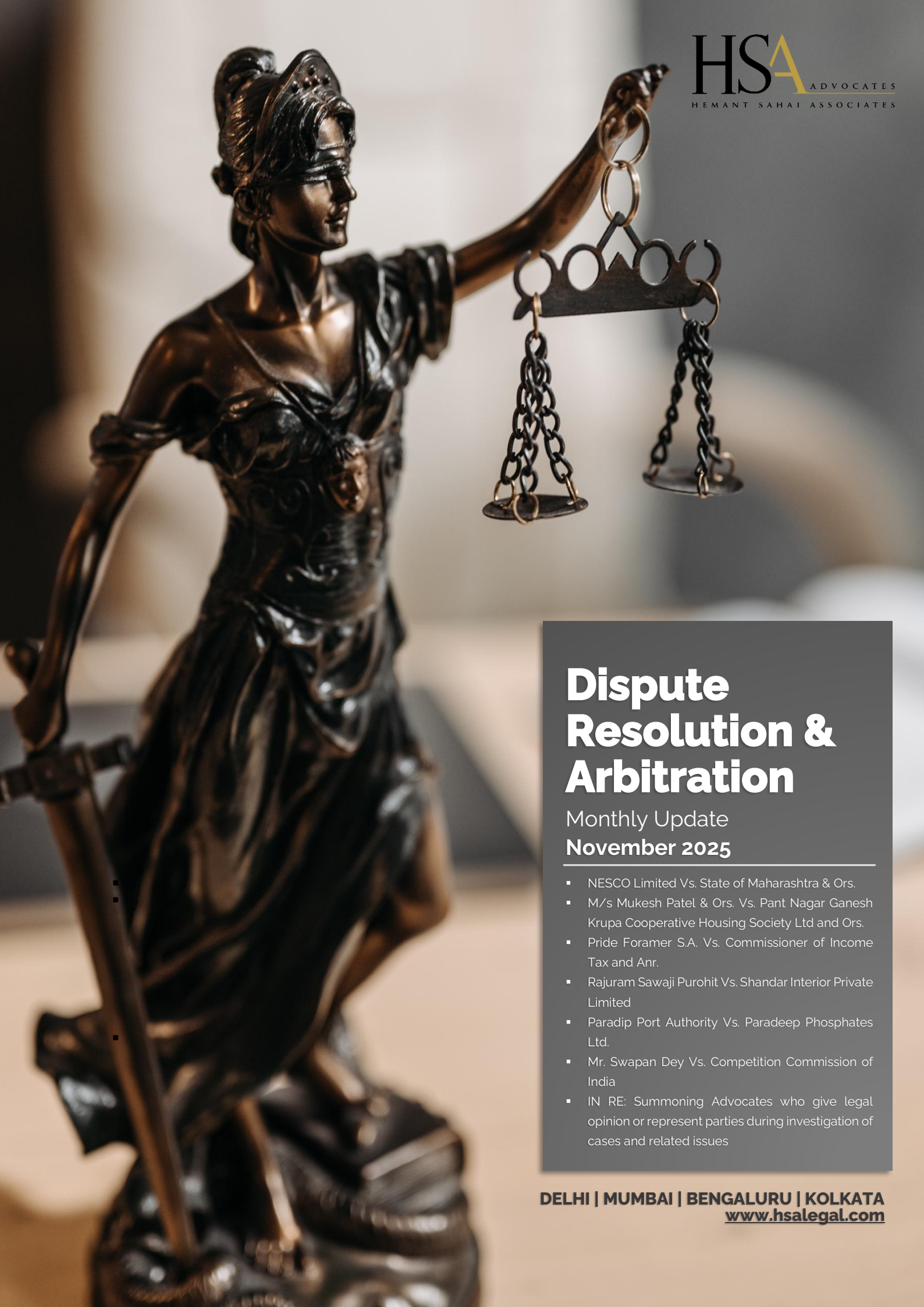

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Dispute Resolution & Arbitration

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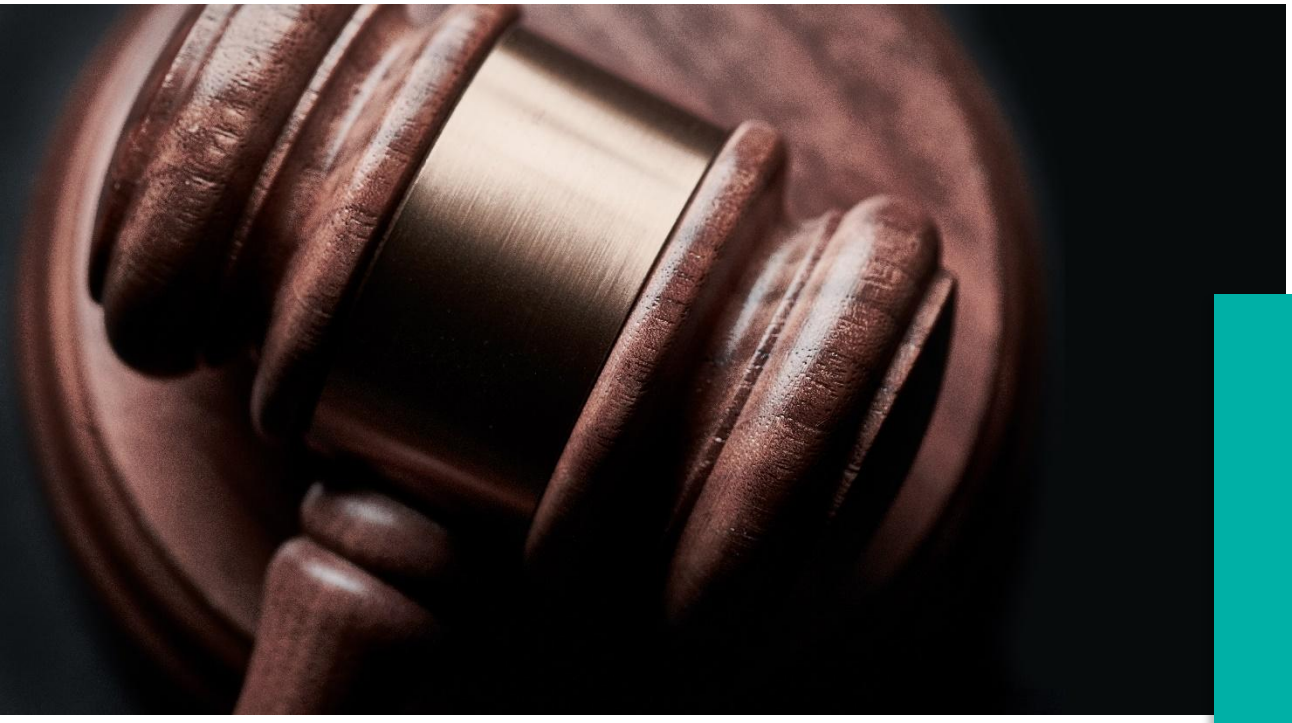
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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NESCO Limited Vs. State of Maharashtra & Ors.

Writ Petition No. 1018 of 2017

Introduction

- In a significant verdict safeguarding property rights under Article 300A of the Constitution, the Bombay High Court has set aside the State Government's decision to acquire private land belonging to NESCO Limited in Goregaon (East) under Section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act"). The Court held that the acquisition was arbitrary, illegal, and unconstitutional, observing that the authorities had ignored the preferential right of the landowner to undertake redevelopment of its property before resorting to compulsory acquisition.
- The ruling reaffirms judicial disapproval of the mechanical use of acquisition powers under the Slum Act and will likely influence how redevelopment projects on private lands are handled across Mumbai.

Facts of the Case

- NESCO Limited, owner of private land at CTS Nos. 176 (Part) and 184, admeasuring approximately 1,512 sq. meters in Goregaon (East), challenged the State's notification dated April 21, 2016, acquiring its land under Section 14(1) of the Slum Act.
- The land had earlier been declared a slum rehabilitation area based on a proposal from a society of slum dwellers. NESCO contended that as the lawful owner, it had a preferential right to redevelop the property, which was ignored by the Slum Rehabilitation Authority (SRA) and the Housing Department. It alleged that the acquisition was conducted without due notice, proper hearing, or adherence to statutory safeguards.
- The petition also challenged the meagre compensation of INR 12 lakh offered by the SRA and the subsequent possession notice issued by the Deputy Collector in August 2017.

Background facts

- The case arose against the backdrop of recurring disputes under the Slum Act, where private landowners allege misuse of acquisition powers to benefit developers and societies.
- NESCO relied on prior rulings such as:
  - Indian Cork Mills Pvt. Ltd. v. State of Maharashtra (2018), Bishop John Rodrigues v. State of Maharashtra (2004), and the Supreme Court's recent decisions in Tarabai Nagar Co-op. Housing Society (Proposed) v. State of Maharashtra (2025) and Saldanha Real Estate Pvt. Ltd. v. Bishop John Rodrigues (2025).
  - All these cases established that private landowners have a preferential right to redevelop slum-declared land, and such rights cannot be overridden by automatic acquisition proposals from slum societies or developers.
  - In this case, it was undisputed that NESCO's land was private property protected under Article 300A. The Court noted that the State failed to issue a notice inviting the landowner to submit a redevelopment proposal as required under Section 13(1) of the Slum Act before initiating acquisition under Section 14.
  - Interestingly, during the proceedings, the slum society itself filed an affidavit supporting NESCO, admitting that it had been misled by the earlier developer and now wished to collaborate with NESCO for redevelopment through Gyan Buildtech Pvt. Ltd.

Findings of the Court

- The Division Bench of Justices G.S. Kulkarni and Aarti Sathe allowed NESCO's petition, declaring the acquisition proceedings illegal and unconstitutional.
- The Court held:
  - Preferential Rights Ignored:

    The authorities failed to recognize the landowner's preferential right to redevelop its land, a right firmly recognized in Indian Cork Mills and upheld by the Supreme Court in Tarabai Nagar and Saldanha Real Estate.
  - Procedural Violations:

    No valid notice or opportunity was given to the landowner to submit a redevelopment scheme before initiating acquisition.
  - Abuse of Power:

    The Court strongly criticized the "mechanical and draconian" exercise of acquisition powers by the SRA and the State, observing that such actions were often influenced by unscrupulous developers acting for private gain.
  - Reiteration of Judicial Principles:

    The Bench reaffirmed that acquisition under the Slum Act is not equivalent to acquisition for a public purpose under the Land Acquisition Act. Its purpose is private rehabilitation and must not override constitutional rights.
- Quoting the Supreme Court in Saldanha Real Estate Pvt. Ltd., the Court warned:
  - "The SRA and its CEO appear to have abandoned their public duty to uphold the Rule of Law… Actions of a public authority motivated by extraneous profit interests of private builders are highly depreciable."
  - Ultimately, the Court allowed the petition in terms of prayer clauses as mentioned in the plaint and effectively quashed the acquisition notification, the SRA's award, and possession directions.

HSA
Viewpoint

This judgment marks a major milestone in protecting private property rights within Mumbai's slum rehabilitation regime.

For Landowners: The Court's ruling reaffirms that private ownership and the right to redevelop one's own land cannot be extinguished arbitrarily. Authorities must first invite landowners to submit redevelopment proposals and only resort to acquisition if those rights are declined or extinguished.

For the SRA and the State: The judgment underscores the need for procedural fairness and transparency. The Court's admonition to the SRA to avoid "collusion and connivance" with developers is a reminder that public powers must not be abused for private gain.

For Developers and Societies: The verdict also sends a cautionary message that rehabilitation projects must be pursued lawfully and collaboratively, respecting the rights of landowners and slum dwellers alike.

For Urban Governance: By reaffirming the constitutional limits of the Slum Act, the Court protects the delicate balance between development and the rule of law, ensuring that social welfare objectives do not override basic property and due process rights.

M/s Mukesh Patel & Ors. Vs. Pant Nagar Ganesh Krupa Cooperative Housing Society Limited and Ors.

2025:BHC-OS:18704

Background facts

- M/s. Mukesh Patel ("Applicant") and Pant Nagar Ganesh Krupa Cooperative Housing Society Ltd ("Respondent No.1") entered into a Development Agreement dated October 15, 2010 ("Agreement"). The Agreement contained an arbitration clause.
- Thereafter, Respondent No.1 was merged into Shubham Ambience Co-Operative Housing Society ("Respondent No.3"), thereby transferring any existing privity or obligations under the Agreement to Respondent No.3.
- The Agreement was terminated on February 8, 2019, pursuant to a resolution passed by the member of the Society on December 15, 2018.
- Following such termination, a public advertisement was issued for appointment of a new developer, resulting in the appointment of Avvad Spaces LLP ("Respondent No. 2") on November 8, 2022. The appointment was subsequently ratified by a Special General Body Meeting held on February 19, 2023.
- The Applicant argued that the Agreement continues to subsist even after its termination, as certain members allegedly continued to receive transit rent under the Agreement.
- In view of the above, the Application has filed an Application under Section 11 of the Arbitration and Conciliation Act, 1996 ("Act') seeking appointment of an Arbitral Tribunal in relation to disputes arising from the Agreement executed between the Applicant and Respondent No. 1.
- In the said Application, the Applicant asserts that Respondent No. 2, though a non-signatory to the Agreement, must be included as a party to the proceedings by applying principles governing non-signatory participation in arbitration.

Issue(s) at hand?

- Whether Respondent No. 2 a non-signatory to the Agreement containing the arbitration Clause, can be treated as a veritable party in the arbitration proceedings?

Findings of the Court

- At the outset, the Hon'ble Court reiterated that its inquiry was confined to whether the Respondent No. 2 i.e. subsequent developer could be treated as a veritable party to the arbitration proceedings since its jurisdiction was limited to examination of the existence of an arbitration agreement between the parties. Unless a prima facie basis for binding the non-signatory was demonstrated, the matter could not be left to the arbitral tribunal for adjudication making Respondent No.2 a party to the arbitration proceeding.
- The Hon'ble Court found no material evidence that the Respondent No.2 had any contractual or legal nexus with the Agreement. The Hon'ble Court held the development agreement entered into between Respondent No.2 and Respondent No. 3 is a completely different agreement and is not connected with the Agreement of the Appellant. Accordingly, the Hon'ble Court held that the Agreement was not assigned or novated to Respondent No.3.
- The Hon'ble Court held that the Applicant's reliance on an isolated passage from the judgement in the case of ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji & Co. Pvt. Ltd.[1] ("ASF Buildtech") was misconceived, as the said judgment merely built upon the law declared in case of Cox and Kings Ltd. v. SAP India Pvt. Ltd.[2] ("Cox and Kings"), which recognized the limited application of the "group of companies" doctrine. The Hon'ble Court held that the concept of a "veritable party" permits a non-signatory to be treated as a signatory to the arbitration agreement only when there exists clear and demonstrable proximity between the parties, such as through common ownership, management, control, or participation in a composite transaction.
- The Hon'ble Court further held that a long-terminated Agreement cannot be invoked to compel a completely unconnected third party to participate in arbitration proceedings merely because the subject matter of the new agreement happens to be the same. The Hon'ble Court observed that judgments such as Cox and Kings and ASF Buildtech must be read contextually and not in fragments, emphasizing that the doctrines of "group of companies," "alter ego," or "composite transaction" are applicable only when the factual matrix reveals real interdependence between

HSA
Viewpoint

The judgement reaffirmed the fundamental principle that arbitration is rooted in the consent of parties, and that no party can be compelled to arbitrate without its express or implied consent.

The Hon'ble Court rightly distinguished the judgment in the case of ASF Buildtech and Cox and Kings from the present case, clarifying that these precedents cannot be invoked in isolation to the facts and circumstances of the cases in hand, to extend arbitration to non-signatories.

The judgement clarifies that concept of "veritable party" cannot be stretched to rope in unrelated third parties who are non-signatories to the arbitration agreement, merely because they have subsequent dealings concerning the same property or project.

The judgement removes all ambiguities and makes it clear that subsequent developers, contractors, or assignees, having no legal or factual nexus with the original contracting parties, cannot be deemed as "veritable parties" to arbitration agreements in question, that was entered into prior in time.

[1] 2025 SCC OnLine SC 1016
[2] (2024) 4 SCC 1

the entities involved. The Hon'ble Court held that in the absence of such relationship, a non-signatory cannot be regarded as a veritable party under the Act.

- Applying these principles, the Hon'ble Court once again held that Respondent No. 2 was a completely independent developer appointed years after the termination of the Agreement and had no nexus of ownership, control, or privity with either the Applicants or Respondent No.3 under the earlier Agreement.
- Further the Hon'ble Court held that the reliance placed by the Applicant on Section 19(b) of the Specific Relief Act, 1963 was misplaced, as the provision had no relevance to the issue of privity to an arbitration agreement. The Hon'ble Court held that the right to seek specific relief under that provision could not substitute the foundational requirement of consent to arbitrate. The Hon'ble Court reaffirmed that consent either expressed or implied is the cornerstone of arbitration, and that a Court dealing with Section 11 Application under the Act, cannot compel a third party to arbitrate or even leave the issue open to be decided by the arbitral tribunal in the absence of such consent.
- Accordingly, the Hon'ble Court held that Respondent No.2 is not a veritable party and that arbitration could proceed only between the Applicant and the Respondent Nos.1 and 3.
- In view thereof, the Hon'ble Court appointed Mr. Snehal Shah, Senior Advocate, as the Sole Arbitrator to adjudicate the disputes and differences arising out of and in connection with the Agreement, if the Applicant is desirous of initiating arbitration against Respondent Nos. 1 and 3.

Pride Foramer S.A. Vs. Commissioner of Income Tax And Anr.

2025 INSC 1247

Background facts

- Pride Foramer S.A. ("Appellant") is a non-resident company incorporated in France and engaged in oil drilling activities. The Appellant was awarded a contract for drilling operations for the period from 1983 to 1993.
- Thereafter, the Appellant was awarded another contract for drilling operations in October 1998, which was formalized in January 1999.
- During the interregnum (period from 1993–1998), the Appellant maintained business correspondence with ONGC from its offices in Dubai and France, including submission of a bid for oil exploration in 1996. During that period, the Appellant also incurred administrative, audit, and consultancy expenses with the intention of continuing its business activities and pursuing tax refund claims before the Indian tax authorities.
- For the relevant assessment years (1996–1997, 1997–1998, and 1999–2000), the Appellant filed returns declaring 'NIL' income. The only income credited during this period was interest received on income tax refunds amounting to Rs 1,69,57,395/-, Rs 5,49,628/-, and Rs 11,29,957/- for the assessment years 1996-1997, 1997-1998 and 1999 to 2000, respectively.
- Against this income the Appellant claimed deductions towards business expenses and set-off of unabsorbed depreciation on furniture and fixtures brought forward from earlier years.
- The Assessing Officer ("AO") disallowed the deductions towards business expenses and carrying forward of unabsorbed depreciation for the relevant assessment years on the ground that the Appellant was not carrying any business during the relevant assessment years. This finding was upheld by the Commissioner of Income Tax (Appeals).
- Being aggrieved by the same the Appellant filed an appeal before the Income Tax Appellate Tribunal ("ITAT"), which reversed these findings, holding that the Appellant had not ceased its business operations but was merely experiencing a temporary lull in business activity. ITAT observed that the Appellant's correspondence with ONGC and the eventual awarding of contract to the Appellant in October 1998 demonstrated continuity of business intention.
- Being aggrieved by the order of ITAT, the income tax department filed an Appeal in the High Court. The High Court reversed the ITAT's decision, holding that in the absence of any office, permanent establishment, or ongoing contract in India during the relevant period, the Appellant could not be regarded as carrying on business in India and was therefore not entitled to the set-off claimed.
- The Appellant being aggrieved by the order of the High Court filed the present Appeal.

Issue(s) at hand?

- Whether, in the facts of the case, the Appellant can be said to have been carrying on business during the relevant period, so as to avail deduction of business expenditure under Section 37(1) read with Section 71 of the Income Tax Act, 1961 ("Act") and carry forward unabsorbed depreciation of previous years under Section 32(2) of the Act?'

Findings of the Court

- At the outset, the Hon'ble Court examined Section 32(2) and 37 of the Act and held that for availing the benefit of the said provisions the Appellant had to demonstrate that it was carrying on its business during the relevant assessment year.
- The Hon'ble Court held that the Appellant's failure to procure a contract or to maintain a permanent office in India does not by itself demonstrate cessation of business. The Hon'ble Court emphasized that the Appellant's conduct of continuing correspondence with ONGC, submitting bids, and incurring expenses related to business operations clearly indicated an intention to continue its business in India.
- The Hon'ble Court held that ITAT rightfully noted that the Appellant's business was going through a lean period and could be revived if proper circumstances arrived and hence the same must be termed as lull in business and not a complete cessation of the business.
- The Hon'ble Court further relied on the judgement in the case of CIT v. Malayalam Plantations Ltd[1], wherein it was held that the expression 'for the purpose of business' is wider in scope than the expression 'for the purpose of earning profits' and would encompass in its fold "many other acts incidental to the carrying on of a business".

[1](1964) 53 ITR 140 (SC)

- In view of the same, the Hon'ble Court held that the High Court erred in holding that the Appellant was not carrying on business as it had no subsisting contract during the relevant period.
- The Hon'ble Court held that the High Court erred in concluding that the Appellant was not carrying on business in India merely because it had no permanent establishment and corresponded with ONGC from abroad. The Hon'ble Court observed that this interpretation was wholly fallacious and contrary to the scheme of the Act, which does not require a non-resident company to maintain a permanent office within India to be considered as carrying on business or to be chargeable to tax.
- The Hon'ble Court further clarified that a combined reading of Sections 4, 5(2), and 9(1)(i) of the Act makes it evident that a non-resident is liable to pay tax on any income deemed to accrue or arise in India. The Hon'ble Court held that concept of "permanent establishment," is relevant only for availing benefits under a DTAA and not for determining taxability under domestic law.
- Accordingly, the Hon'ble Court set aside the judgement of the High Court and directed the AO to pass fresh assessment orders for the relevant assessment years in terms of the ITAT orders.

HSA
Viewpoint

This judgment provides significant clarity on the interpretation of "carrying on business" under the Act, particularly in the context of non-resident entities. The judgment removes all ambiguities and makes it clear that the existence of a Permanent Establishment (PE) or an active contract is not a prerequisite for establishing the continuity or existence of business.

The decision affirms that a "temporary lull" in operations cannot be equated with business closure and recognizes the importance of assessing business continuity based on intent and conduct of the assessee.

The decision makes it clear that a non-resident company is not required to maintain a permanent office within India to be considered as carrying on business or to be chargeable to tax.

The decision also makes it clear that the concept of "permanent establishment," is relevant only for availing benefits under a DTAA and not for determining taxability under domestic law.

The judgment further reiterates that, for claiming deduction of business expenditure under Section 37(1) read with Section 71 of the Act, and for carrying forward unabsorbed depreciation under Section 32(2), the assessee must establish that it was actually engaged in the conduct of business during the relevant assessment year.

Rajuram Sawaji Purohit Vs. Shandar Interior Private Limited

MANU/MH/6475/2025

Background facts

- Parties executed an agreement for purchase of salvage material on November 29, 2011 ('Agreement'). Under the said Agreement the Appellant paid to the Respondent a security deposit of Rs. 51,38,000/- which is the subject of the legal proceedings.
- Initially, a Winding-up Petition was filed and thereafter Commercial Summary Suit was filed pursuant to which the Parties agreed to be referred to arbitration.
- An award was passed on June 6, 2022 ('Award') holding that the Appellant's claim was barred by limitation. Accordingly, the Appellant filed a Petition challenging the award under section 34.
- The said Petition was allowed, and the Award was set aside vide an order dated February 7, 2024. The Appellant further filed an Application for correction of the above order which was rejected by an order dated July 11, 2024.
- Pursuant to these proceedings, the Appellant filed the above Commercial Arbitration Application (L.) No. 25035 of 2024 under section 11, seeking appointment of arbitrator for a second round of proceedings. After this application, the Appellant also filed an Appeal under section 37 which is pending before the Bombay High Court.
- The Appellant asserted that they are entitled to re-initiate arbitration proceedings notwithstanding the pendency of the Section 37 appeal. Under Section 11, the Court must only examine if a valid arbitration agreement exists, it cannot venture into the issues of res judicata or limitation and the same ought to be determined by the Tribunal.
- The Respondent opposed the above application for arbitrator stating that there cannot be multiple sets of proceedings for the same issue and the Appellant's claims were time barred in any case. Further, any order in second round of arbitration could be conflicting with orders passed in the section 37 proceeding.

Issue(s) at hand?

- Whether the court could decline to appoint the arbitrator considering issues of res judicata or limitation at the stage of section 11?

Findings of the Court

- The Court relied on various judgments including *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd*[1]. wherein faced with a similar situation the Court appointed an arbitrator.
- Also referring to the Supreme Court judgment in *SBI General Insurance Company v. Krish Spinning*[2] it was held that all that mattered was the existence of a valid arbitration agreement and pendency of the Section 37 appeal could not be a bar to appointment of an arbitrator, and all other issues had to be argued and tried before the Arbitral Tribunal only. It was reiterated that jurisdiction of court under section 11 is restrained and the court '*cannot conduct an intricate evidentiary inquiry*' into questions of res judicata or limitation.
- The Court also took cognizance of the fact that second round of proceedings may be costly for the Respondent however the same could be appropriately dealt with by the Tribunal in their order for costs.

HSA
Viewpoint

Lately, Indian courts have passed many progressive judgments emphasising minimum court interference and enforcing a pro-arbitration stance. Even Delhi High Court in Hindustan Construction Company Ltd vs. Indian Strategic Petroleum Reserves Ltd held that the scope of inquiry in section 11 is limited. It has to be circumscribed to the prima facie existence of an arbitration agreement and issues like res judicata, and limitation should be left to the wisdom of the Arbitral Tribunal perhaps at the stage of a Section 16 Application contesting Jurisdiction of the Tribunal. The Bombay High Court judgment also rightly referring and relying upon a long line of judgments has adopted a consistent approach in the Section 11 application.

While it is appreciated that the courts have constantly taken a pro-arbitration approach, res judicata helps ensure conclusiveness of judgments, judicial efficacy and avoidance of contradictory rulings. When issues like res judicata are not considered it could lead to prolonged and multiple rounds of proceedings and inflict financial burden on parties.

However, as stated in the Bombay High Court judgment, tribunal can always impose costs for frivolous litigation, and it may be enough to deter such proceedings.

[1] 2023:INSC:850
[2] (2025) 3 SCC (Civ) 567

Paradip Port Authority Vs. Paradeep Phosphates Limited

2025 INSC 971 : 2025 SCC OnLine SC 1675

Background of the Disputes

- In 1985 the Appellant entered into a contract with the Respondent, then a Public Sector enterprises, for exclusive use of fertilizer berth at Paradip Port. The agreement fixed tariff rates and permitted future revisions only by mutual consents.
- However, in 1993, the Appellant issued a notification Under Section 48 to 52 of the Major Port Trust Act, 1963, revising tariffs unilaterally. The Respondent objected, asserting that this revision breached the contractual terms. Despite this, payments were made at the revised rates, and the disputed escalated into prolonged litigation.
- In 2000, the Respondent initiated a civil Suit challenging the 1993 notification. Subsequently, since both entities were public sector undertaking at the time, they opted for informal arbitration under supplementary agreement dated August 10, 2001. During this process, in February 2002, the Government of India divested its 76% shareholding in the Respondent, turning into private company, thus altering the disputes character.

Arbitral and Appellate Proceedings:

- By an Award dated December 27, 2002, the Arbitrator's held that the Appellant could not revise tariffs unilaterally and directed refund of excess charges collected from October, 1993 to March, 1999. For the later period, the parties were advised to approach Tariff Authority for Major Port (TAMP).
- The said Award was upheld on its subsequent challenge before the Appellate Authority (2009) and subsequently before the Orissa High Court (2023). Dissatisfied, the Appellant challenged the said Award both on legality and the High Courts affirmation, before the Hon'ble Supreme Court of India.

Issue(s) at hand?

- The Supreme Court had taken two Legal and two Factual issues at hand:
  - Whether a port authority can revise tariff rates unilaterally despite a contractual clause requiring mutual consent.
  - Whether the statutory provision of the Major Port Trusts Act, 1963 override the terms of a private contract.
  - What is the jurisdictional scope of TAMP in tariff determination.
  - Whether arbitration proceedings remained valid after privatization of the Respondent.
  - What appellate structure should exist for resolving technical tariff disputes under the Major Port Authorities Act, 2021.

Findings of the Court

- Statutory Supremacy over Contract:
  - The Court observed that while the 1985 agreement was binding, it could not override statutory provisions. Tariff fixation, being a public and regulatory function, is governed by law rather than private negotiation. The Court emphasized that once rates are notified under 1963 Act, they acquire statutory authority.
- Error in Arbitration and Appellate Findings:
  - The Arbitrator had incorrectly treated Clause 1 (mutual consent) as independent to Clause 19, which subjected the Respondent to all rules and regulations of the Port Authority. This selective interpretation, according to the Court, was inconsistent with settled contractual interpretation principles.
  - Further, both the Appellate Authority and the High Court provided inadequate reasoning and failed to analyse the statutory framework comprehensively.
- Role of TAMP as Expert Authority:
  - The Court highlighted that the tariff Authority for Major Port, established under 1963 Act, is the appropriate technical body to determined tariff-related disputes. Since tariff fixation involves cost analysis, service efficiency, and economic factors, it fall within the domain of experts, not judicial forums.
- Transition to the 2021 Act:
  - The Major Port Authorities Act, 2021 replaced the 1963 Act and envisaged an Adjudicatory Board for Tariff functions. However, as this board had not yet been constituted, TAMP

continued to exercise jurisdiction. The Court thus directed that the dispute be decided afresh by TAMP.

- Need for specialized Appellate Structure:
  - Drawing parallels with regulatory frameworks in electricity, telecom, and competition sectors, the Court recommended that an expert appellate body be created for port tariff matters to ensure technical review and reduce direct appeals to the Supreme Court. In doing so, the Court relied on precedents such as W.B. Electricity Regulatory Commission v. CESC Ltd.[1] and Roger Mathew v. South Indian Bank Ltd.[2], emphasizing that specialised tribunals should handle regulatory issues while judiciary ensures accountability and constitutional compliance.

HSA
Viewpoint

The judgement stands as a significant judicial pronouncement highlighting the symbiotic relationship between administrative law and judicial control in India's regulatory governance to the Contractual setup. The Supreme Court effectively balanced administrative autonomy with constitutional accountability, affirming that while specialized authorities like TAMP possess the technical expertise to perform regulatory and tariff-setting functions, their actions must remain anchored to the principles of natural justice. Thereby providing a decision to resolve a long-pending disputes but also providing a policy blue-print for restructuring port-related adjudicatory mechanism under the Major Prot Authority Act, 2021.

[1] (2002) 8 SCC 715
[2] (2020) 6 SCC 1

Mr. Swapan Dey Vs. Competition Commission of India

2025:BHC-OS:18704

Background of the Disputes

- Mr. Swapan Dev ("Appellant") is a CEO of a hospital providing free dialysis to patients under Pradhan Mantri National Dialysis Program ("PMNDP")
- Patients undergoing dialysis usually develop Iron Deficiency Anaemia ("IDA"). It is to be noted that Ferric Carboxymaltose ('FCM") injection is available for the treatment of IDA.
- The Appellant alleged that due to Vifor International (AG)'s ("Respondent No.2") anti-competitive and abusive conduct, FCM injections are neither accessible nor affordable for patients.
- Accordingly, the Appellant filed an information before the Competition Commission of India ("CCI") alleging that Respondent No. 2 had abused its dominant position by restricting the availability and affordability of FCM injections in India and hence under violated Sections 3 and 4 of the Competition Act, 2002 ("Act").
- The CCI, initially took cognizance of the information however, later on vide its order dated October 25th 2022, held that no prima facie case of violation under Sections 3 or 4 of the Act was made out.
- Being aggrieved by the order October 25th 2022, the Appellant filed the present appeal before the National Company Law Appellate Tribunal ("NCLAT") under Section 53B of the Act.

Issue(s) at hand?

- Whether the Competition Commission of India ("CCI") has the jurisdiction to examine allegations of anti-competitive conduct and abuse of dominant position in relation to a patented drug governed under the provisions of the Patents Act, 1970 ("Patents Act")?

Findings of the Court

- At the outset, NCLAT noted that CCI had examined the complaint of the Appellant on merits and held that prima facie no case existed, and had accordingly closed the matter vide impugned order dated October 25th, 2022.
- The NCLAT further observed that the patent on drug FCM had expired, and that it is now available in the public domain for manufacturing.
- The NCLAT held that Section 3(5) of the Act provides that the Act shall not restrict the right of any person to protect his rights under the Patents Act.
- The NCLAT relied on the judgement of the Delhi High Court in the case of *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India*[1] ("Telefonaktiebolaget"), wherein it was held that Patents Act will prevail over the Act.
- Further, the NCLAT relied on the judgement of the Supreme Court in the case of *Competition Commission of India v. Monsanto Holdings Private Ltd and Ors.*[2] ("Monsanto"), wherein the Supreme Court upheld the decision of the Delhi High Court in the case of Telefonaktiebolaget.
- In view of the above judgements, the NCLAT held that the CCI lacks the power to examine the allegations made against Respondent No.2. The NCLAT further held that the Patent Act will prevail over the Act in the facts of the present case.
- The NCLAT also noted that Section 3(5) of the Act provides protection to a person holding a patent to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting such rights.
- In view of the above, NCLAT held that there was no merit in the present appeal and accordingly dismissed the same.

HSA
Viewpoint

The judgment reaffirms the legal position that where the subject matter of a dispute pertains to the exercise of rights conferred under the Patents Act, the jurisdiction of the CCI stands excluded. The decision harmonizes the overlap between competition and patent law by emphasizing that issues relating to abuse of patent rights etc., arising from patented inventions must be adjudicated within the framework of the Patents Act.

By following the precedents laid down in the cases of Telefonaktiebolaget and Monsanto, the NCLAT has clarified that the CCI cannot invoke its jurisdiction merely because patent-related conduct appears to have anti-competitive implications. This judgment thus reinforces the supremacy of the Patents Act as a special legislation governing patent-related disputes and provides certainty to the pharmaceutical sector in balancing intellectual property rights with competition law principles.

[1] 2023 SCC OnLine Del 4078-LPA 247/2016
[2] SLP No. 25026/2023

IN RE: Summoning Advocates who give legal opinion or represent parties during investigation of cases and related issues

2025 SCC Online SC 2320, Judgment dated 31.10.2025

Background facts

- The matter arose from a reference made by a two-Judge Bench of the Hon'ble Supreme Court concerning a Special Leave Petition ("SLP") filed against a notice issued to an Advocate ("Petitioner/Advocate") under Section 179 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS, 2023").
- A loan agreement dispute led to a First Information Report ("FIR") being lodged at Odhav Police Station, Ahmedabad, Gujarat, under various provisions of BNSS, 2023, the Gujarat Money-Lenders Act, 2011 ("GMLA Act, 2011") and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC/ST Act, 1989"). The accused was arrested, and the Petitioner/Advocate filed a regular bail application in SLP (Crl.) Diary No.33845 of 2025, which was allowed.
- Subsequently, the Assistant Commissioner of Police ("Investigating Officer"/"I.O.") issued the impugned notice to the Petitioner/Advocate directing appearance within three days from the date of receipt of impugned notice to '*know true details of the facts and circumstances after making the inquiry*'. The notice did not specify any exceptions under Section 132 of the Bharatiya Sakshya Adhiniyam, 2023 ("BSA, 2023").
- The Petitioner/Advocate moved to the Hon'ble Gujarat High Court, which rejected the application on the ground that the Petitioner/Advocate did not respond to the summons and his non-cooperation resulted in the investigation being stalled. It was opined that there was no violation of fundamental rights, since the summoning was served under Section 179 of the BNSS, 2023.
- A two-Judge Bench of the Hon'ble Supreme Court who heard the S.L.P. against the order of the Hon'ble High Court were of the opinion that questions arise of utmost public importance and referred the matter to a larger Bench in Suo Motu Writ Petition (Criminal) No.2 of 2025 ("Suo Moto Writ Petition"), specifically noting concerns about attorney-client privilege under Section 132 of the BSA, 2023.

Issue(s) at hand?

- What are the circumstances under which an investigating agency can directly issue summons to question a counsel who is appearing for a party in a given case, especially under the rigour of Section 132 of the BSA, 2023?
- When an individual has an association with a case only as a lawyer advising the party, could the Investigating Agency/ Prosecuting Agency/ Police directly summon the lawyer for questioning?
- Assuming that the Investigating Agency/ Prosecuting Agency/Police has a case where the role of the individual is not merely as a lawyer but something more, even then, should they be directly permitted to summon or should judicial oversight be prescribed for those exceptional criteria of cases?

Findings of the Court

- **On Attorney-Client Privilege (Section 132 BSA, 2023)**:
  - The Hon'ble Supreme Court bench comprising of Hon'ble Chief Justice of India B.R. Gavai, Mr. Justice K. Vinod Chandran and Mr. Justice N.V. Anjaria emphasised that Sections 132 to 134 of BSA, 2023 confer a privilege on the client, obliging an Advocate not to disclose any professional communications made in confidence. This privilege can be invoked by the advocate on behalf of the client, even in the client's absence. The Hon'ble Court held that the privilege is not merely limited to an evidentiary rule but extends to fundamental rights, particularly the right against self-incrimination under Article 20(3) of the Constitution of India and the right to effective legal representation under Articles 14, 21, and 22(1) of the Constitution of India.
- **Exceptions to the Privilege:**
  - It was clarified that Section 132 of BSA, 2023 provides specific exceptions to the privilege: (a) Communication made in furtherance of any illegal purpose; (b) Any fact observed by the Advocate showing that any crime or fraud has been committed since the commencement of professional service.
  - These exceptions are well-defined and operate only under the following circumstances: (i) waiver or consent of the client; (ii) furthering an illegal purpose; or (iii) observing crime or fraud committed in the course of engagement.

- **On the need for Guidelines:**

  The Hon'ble Court was not persuaded to issue comprehensive guidelines in this matter. It distinguished the present case from the *Jacob Mathew v. State of Punjab (2005) 6 SCC 1* (which dealt with professional negligence and required peer review) and the *Vishaka v. State of Rajasthan AIR 1997 SC 3011* (which addressed a legislative vacuum on sexual harassment). The Hon'ble Court emphasised that there is no legislative vacuum in this case, as Section 132 of the BSA, 2023 itself provides sufficient guidelines and protections.

- **On Summoning Advocates**:

  The Hon'ble Court held that the investigating agency, prosecuting agency, or police cannot directly summon a lawyer appearing in a case to elicit the details of the case, unless there is something the Investigating Officer has knowledge of, and specific facts that falls under the exceptions to the privilege. In instances where the exceptions apply, the summons must adhere to the following conditions:

  (i) Explicitly specify the facts on which the exception is being invoked.
  (ii) Be issued only with approval and satisfaction of a hierarchical superior, not below the rank of Superintendent of Police;
  (iii) The satisfaction of the superior officer must be recorded in writing, mentioning the facts leading to the invocation of the exception.

- **On Judicial Oversight**:

  The Hon'ble Court held that sufficient judicial oversight is prescribed under Section 528 of the BNSS, 2023, which provides a remedy against illegal summons. The Hon'ble Court rejected proposals to form a committee of legal professionals to review the summons through a Magistrate, concluding that this would be unnecessary and counterproductive.

- **On Production of Documents**

  Further, it was held that Section 132 of BSA, 2023 does not extend privilege to documents held by an Advocate or client. However, it mandated safeguards for the production of such documents: (i) The production of documents must comply with Section 94 of the BNSS, 2023; (ii) Objections to the production or admissibility of documents must be heard by the Hon'ble Court; (iii) Advocates must produce documents, but they retain the right to contest their admissibility.

- **On In-house Counsel**

  The Hon'ble Court ruled that in-house counsels are not entitled to privilege under Section 132 BSA, 2023, as they are not practising advocates and lack the professional independence of external lawyers. The economic dependence of in-house counsel, their role in commercial matters, and their employment relationship undermine the autonomy required for attorney-client privilege. However, In-house counsels remain protected under Section 134 BSA, 2023, for confidential communications made to them, although not for communications with their employer.

- **On the Specific Summons in this Case**

  The Hon'ble Court set aside the summons issued in the present case, declaring it illegal and against the provisions of Section 132 of BSA, 2023. The Hon'ble Court strongly criticised the Gujarat High Court for refusing to interfere, calling its reasoning flawed and erroneous, and stated that the High Court's failure amounted to abdication of its inherent powers.

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Viewpoint

This Judgment serves as a significant reaffirmation of the fundamental importance of attorney-client privilege within the legal profession and the administration of justice. By construing Sections 132 to 134 of BSA, 2023, in consonance with Articles 14, 20(3), 21, and 22(1) of the Constitution of India, the Hon'ble Supreme Court has elevated this privilege from a mere rule of evidence to a constitutionally grounded safeguard ensuring the right to effective legal representation. The Hon'ble Supreme Court has appropriately delineated the limits of investigative authority, holding that the privilege cannot be undermined through summons or coercive investigative actions, save in narrowly circumscribed exceptional circumstances.

Furthermore, the Hon'ble Supreme Court's careful differentiation between practising advocates and in-house counsel aligns with international jurisprudence, particularly the Judgment of European Court of Justice (Grand Chamber) *Akzo Nobel Chemicals Ltd. v. European Commission (C-550/07 P, ECJ)*. The Judgment highlights that In-House counsel, unlike practising advocates, do not qualify as independent legal professionals. While in-house counsel may provide legal advice on both litigation and non-litigation matters, they are subject to the commercial and business strategies of their employer. As full-time, salaried employees, in-house counsel are inherently influenced by their employer's interests and are bound to protect those interests, which differentiates them from independent advocates who practice law autonomously.

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AT A GLANCE

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GLOBAL RECOGNITION

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