

# WCC WATCH

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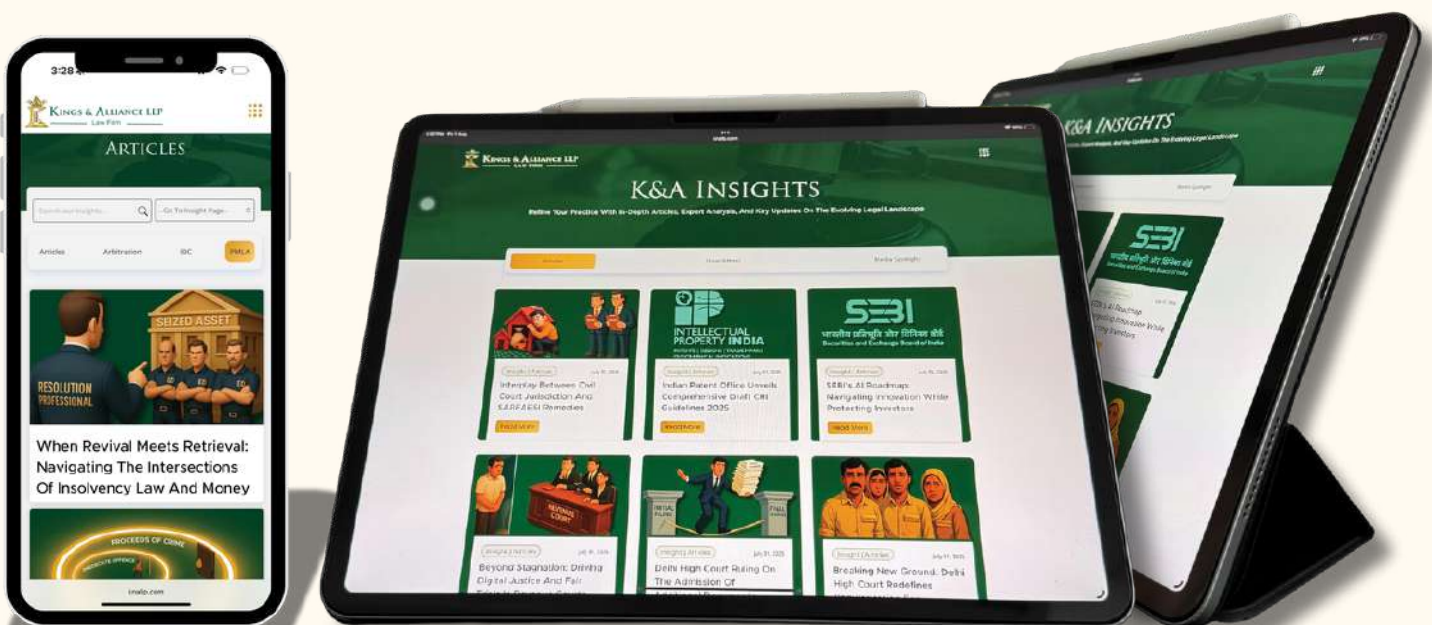
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***Seizure Sans Sanction***, this month our Cover Story, reveals a legal landscape defined by the judiciary's assertive defense of individual rights against stringent state powers and a strong push for commercial resolution over punitive action. Our In-Depth Analysis focuses squarely on the PMLA, highlighting the landmark Delhi High Court ruling that firmly upholds the constitutional right to property (Article 300A) by demanding strict procedural compliance from the Enforcement Directorate (ED) regarding seized assets. This is complemented by critical analysis challenging the ED's 94% conviction claims and a judicial decision that reasserts the "bail is the rule" norm, especially where arbitrary arrests or inordinate trial delays are present. In the commercial sphere, the Supreme Court is reshaping the Negotiable Instruments (NI) Act, moving towards a rehabilitative justice model: we analyze rulings that prioritize amicable settlements and extend the benefit of the Probation of Offenders Act to convicts, even as the Court simultaneously stresses that a mere typographical error in a demand notice is fatal to a case. Finally, this issue brings you up to speed on crucial Case Law Updates—clarifying the NCLT's lack of jurisdiction over PMLA attachments, the limited locus standi for NI Act complaints, and setting the GST liability trigger for JDAs to the actual property conveyance—alongside essential Regulatory Updates outlining the GST Council's Strategic Tax Reforms for energy and digital growth, and the impending Income Tax Bill, 2025, which promises a major overhaul for taxpayer clarity and global alignment.

Let's dive in!

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## COVER STORY

04

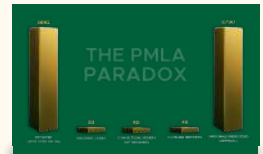
The Custody Conundrum: Upholding Property Rights in the Age of PMLA Enforcement



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# COVER STORY

## The Custody Conundrum: Upholding Property Rights in the Age of PMLA Enforcement



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*Balance between the state's power to combat financial crime and an individual's constitutional right to property under Article 300A*

Imagine a government agency, armed with vast powers to combat financial crime, seizing a person's property—be it cash, documents, or digital devices—under the suspicion of its link to illegal activities. This is the scene set by the Prevention of Money Laundering Act (PMLA). While the power of search and seizure is a necessary tool for law enforcement to investigate and prosecute, it is a formidable one that directly impacts a person's right to property, a constitutional right under Article 300A. The delicate balance between this state power and the fundamental rights of citizens is often a point of contention, especially when the seized property is held for extended periods without a clear, legally sound basis. This very predicament forms the core of a recent landmark judgment by the Delhi High Court.

In the case of Directorate Of Enforcement Through Assistant Director Delhi Vs. Rajesh Kumar Agarwal, a division bench comprising Justice Subramonium Prasad and Justice Harish Vaidyanathan Shankar delivered a meticulously crafted judgment that sided with the accused. The court's decision isn't just a technical win; it's a profound affirmation of the principle that state power, particularly when it encroaches upon an individual's property rights, must be exercised with scrupulous care and within the confines of the law. The court held that the retention of seized property without strict adherence to the procedural safeguards laid out in the PMLA would be a grave violation of the law's very essence. This article will delve into the detailed jurisprudence upon which this impeccable judgment is based, exploring how the court's reasoning reinforces the delicate balance...



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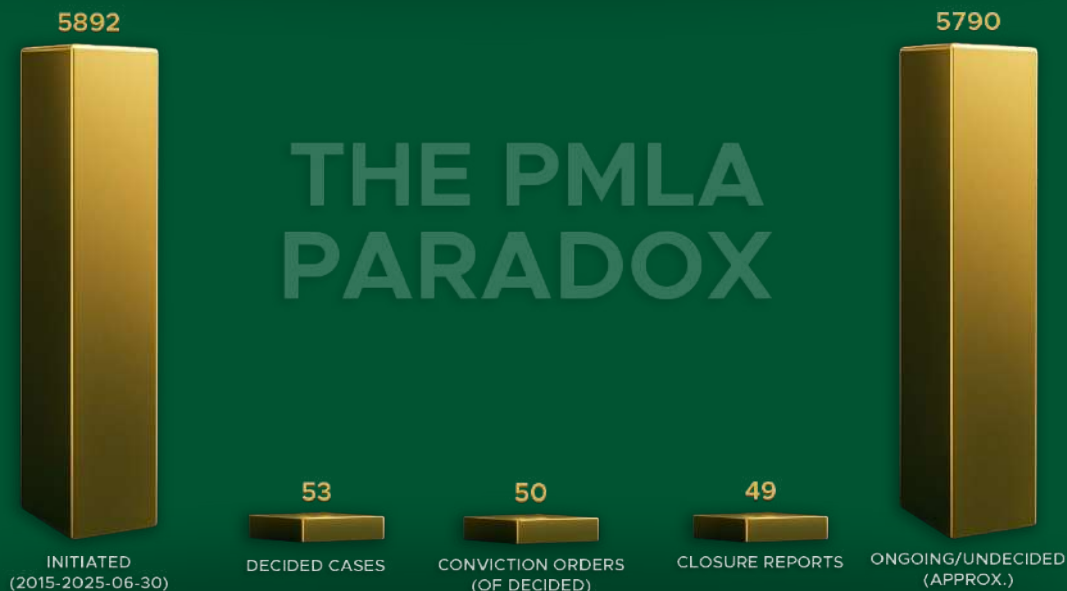
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# PIVOTAL ISSUES

The PMLA Paradox: How the ED's 94% Success Rate Masks a Judicial Crisis of Low Convictions and Delayed Justice



*successful in sentencing them almost without a trial for years together*

In a remarkable assertion of its operational success, the ED, India's premier financial crime-fighting agency, recently claimed a staggering conviction rate of over 94% under the stringent PMLA. This emphatic declaration, made during the 32nd quarterly conference of zonal officers in Srinagar on Monday, September 15, 2025, stated that the agency had secured convictions in 50 of the 53 cases decided by special PMLA courts, an achievement they believe underscores their effectiveness. Furthermore, the ED highlighted its role in facilitating the restitution of assets worth over ₹34,000 crore to victims. The conference itself, held in Jammu & Kashmir, was noted in an official release as a deliberate move to "restore confidence in the security environment" of the region.

The agency's internal focus, as discussed at the conference, is now squarely on fast-tracking cases, with the Director instructing zonal heads to expedite investigations and prosecution complaints. They even noted sending letters to registrars of all Chief Justices to consider the establishment of exclusive PMLA courts, following observations from the Supreme Court. Yet, amid this narrative of success and future streamlining, a parallel story is unfolding in the nation's highest judicial corridors—one of deep institutional concern and a stark statistical contradiction. This proclaimed success by the ED presents a profound statistical dichotomy when juxtaposed with the data shared by the government in Parliament. Minister of State for Finance, in a written statement to the Rajya Sabha, provided the judicial record from January 1, 2015, to June 30, 2025. During this 10-and-a-half-year period, the ED initiated 5,892 cases...

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# PIVOTAL ISSUES

## Beyond Conviction: Supreme Court Prioritizes Amicable Settlement under Section 138 of the NI Act



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*In matters of cheque dishonour, justice is best served not through punishment, but through resolution — where settlement, not sentencing, restores financial trust.*

The paradoxical legal quandary often arises in cases involving a dishonoured cheque and its implications. The debate further deepens with a two-part question: at what stage can the offense be compounded, and what is the role of a mutual settlement? This prompts a crucial discussion on the timeliness and legal validity of an amicable resolution in such cases.

A recent order of the Supreme Court of India highlights the same issue, the case of *Gian Chand Garg v. Harpal Singh & Anr.* held that an offence under Section 138 of the NI Act can be compounded at any stage, especially when parties have voluntarily reached a settlement. The division bench, comprising Justice Aravind Kumar and Justice Sandeep Mehta, emphasized that the primary nature of the offence is a civil wrong. It further highlighted the importance of amicable settlements and their primacy over protracted litigation in such cases. The focus of discussion was whether a conviction under Section 138 could be set aside after the parties had reached a voluntary and unconditional settlement, especially when a lower court had already upheld the conviction. This case arose from a complaint filed under the NI Act, following the dishonor of a cheque. The trial court convicted the appellant, a decision subsequently affirmed by the Additional Sessions Judge and the Punjab and Haryana High Court. The appellant's counsel argued that a compromise agreement had been reached, under which the respondent had accepted a sum in full and final settlement. The respondent's counsel corroborated this, stating they had no objection to the appellant's acquittal. An application to this effect was previously filed with the High...

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# PIVOTAL ISSUES

## From Inadvertence to Invalidity: The Supreme Court's Stern Warning on Demand Notices



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*Precision in the demand notice is not a suggestion but a strict, non-negotiable legal requirement*

The Supreme Court's recent and impactful judgment in *Kaveri Plastics v. Mahdoo Bawa Bahrudeen Noorul* (2025) has established a significant precedent for those navigating cheque dishonour cases. The ruling powerfully reinforces the principle that strict adherence to legal procedures is mandatory, even when faced with what may appear to be a trivial error. This landmark decision serves as a powerful reminder that in the domain of penal statutes, particularly Section 138 of the Negotiable Instruments Act, 1881 (NI Act), absolute precision is paramount, as a seemingly minor oversight can have fatal consequences for a legal case. The judgment underscores that even a minor lapse in drafting a demand notice can be the difference between a successful prosecution and the dismissal of a case.

The genesis of this landmark decision lies in a case where a cheque for ₹1,00,00,000/- was issued, but upon its dishonour, the complainant sent a demand notice that mistakenly demanded ₹2,00,00,000/-. This discrepancy, which the complainant claimed was a mere "typographical error" from a cut-and-paste command, became the central point of contention. The case highlighted the critical question of whether such an error could be overlooked in the interest of substantive justice. The Supreme Court, upholding the High Court's decision, quashed the criminal complaint, establishing a firm legal position on the matter. In its meticulous analysis, the Court dismantled the "typographical error" defence, leaving no room for leniency. The heart of the matter, it held, lay in the mandatory nature of the demand notice under Section 138 of the NI Act. The Court was unyielding in its...

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# PIVOTAL ISSUES

## Liberty as a Constitutional Safety Valve: Reclaiming the 'Bail is Rule' Norm from PMLA's Grip



“

*Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together*

In the dynamic landscape of criminal jurisprudence, a fundamental challenge persists: ensuring the equitable application of the law even amidst allegations of grave financial misconduct. When investigative agencies exhibit apparent inconsistencies in their pursuit of justice—selectively sparing those with reportedly deeper culpability—it inevitably raises questions about fairness and non-discrimination. This precise dilemma recently came under judicial scrutiny when the Delhi High Court granted bail to three individuals—Vipin Yadav, Ajay, and Rakesh Karwa—in a significant money laundering case. In its pronouncement, the court delivered a pointed observation, categorizing the ED's failure to arrest the alleged main accused with a graver role as "manifestly arbitrary."

The core issue before Justice Amit Mahajan was the bail application of the three accused who were implicated in a massive scheme that allegedly duped Indian citizens out of Rs. 641 crores through fake investment schemes and false jobs. A probe by the CBI had revealed that out of 937 bank accounts used in the fraud, 12 were managed and controlled by a group including the applicants. The court's decision to grant them relief was fundamentally premised on the principle of parity, reasoning that "the benefit of parity cannot be denied to the applicants" when the investigative agency had chosen not to proceed against other individuals with seemingly greater involvement, or even those named for arranging "mule accounts." This judicial intervention is far more than an isolated bail order; it acts as a critical reminder of the constitutional mandate against arbitrariness that binds all state organs...



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# SIGNIFICANT CASE LAWS

## Locus Standi under NI Act: Kerala High Court Clarifies Only 'Payee' or 'Holder in Due Course' Can Initiate Proceedings for Dishonored Cheque

In the significant ruling of *Arvind Singh Rajpoot v. M/S Intersight Holidays Pvt. Ltd. & Ors.*, the Kerala High Court recently clarified the legal standing required to initiate proceedings for the offense of a dishonored cheque under the Negotiable Instruments Act, 1881. The Single Judge Bench of Justice A. Badharudeen firmly established that a third party, who is neither the payee nor the holder in due course, cannot prosecute the drawer of a cheque under Section 138 of the Act.

The case involved three dishonored cheques issued in the name of 'Intersight Tours and Travels Pvt. Ltd.' for which legal notice and subsequent complaint were filed by a separate entity, 'Intersight Holidays Pvt. Ltd.,' which failed to prove it was the payee or holder in due course. The main point held by the Court is that the right to file a complaint for a dishonored cheque is strictly limited by Section 142(a) of the NI Act. This provision, the Court noted, is mandatory and specifies that only the "payee" or the "holder in due course" has the legal locus standi to lodge a complaint and that a person or entity that does not directly receive the cheque as payment or acquire it through a proper endorsement process has no right to bring a legal action.

The order is a significant one as it reinforces the fundamental principle of the NI Act: the legal process for a dishonored cheque is not a public matter but a private remedy available only to the direct parties involved in the transaction thereby preventing frivolous or unauthorized litigation by third parties. By quashing the proceedings in the case where the complainant failed to prove their status as a payee or holder in due course, the court has provided a crucial check on the misuse of the law and upheld the specific statutory requirements for a valid prosecution.



# SIGNIFICANT CASE LAWS

## NCLT's Jurisdiction Clarified: No Power Over PMLA Attachments

In a significant ruling, the NCLT, New Delhi Bench in the case of Vikram Kumar (RP) v. Directorate of Enforcement has clarified the jurisdictional boundaries between the Insolvency and Bankruptcy Code and the Prevention of Money Laundering Act. The bench held that the NCLT does not have the authority to adjudicate an order issued by the PMLA's adjudicating authority or to direct the Enforcement Directorate (ED) to release an attachment of property. The application, filed by a resolution professional, sought to stay the ED's proceedings and set aside a provisional attachment order, arguing that it hindered the Corporate Insolvency Resolution Process (CIRP) and violated the moratorium under Section 14 of the IBC.

The NCLT's decision was based on several key legal precedents and established principles that the NCLT cannot interfere with matters falling within the exclusive domain of other specialized laws like the PMLA. The bench also reiterated that the moratorium under Section 14 of the IBC does not apply to criminal or quasi-criminal proceedings under the PMLA, as confirmed in Varrsana Ispat Ltd. The salience of this order lies in its firm demarcation of the powers of the NCLT vis-à-vis the ED under the PMLA thereby reinforcing the principle of harmonious construction, allowing both statutes to operate in their respective fields without one overriding the other. This decision is crucial for all stakeholders in insolvency proceedings, as it clarifies that assets attached as "proceeds of crime" under the PMLA are beyond the NCLT's jurisdiction and must be contested through the dedicated legal channels provided within the PMLA itself.



[VIEW JUDGEMENT](#)



# SIGNIFICANT CASE LAWS

## Bombay High Court Rules No GST Liability on JDA Until Property Conveyance; Orders ₹7 Cr Refund to Developer

The Bombay High Court, in *M/s Provident Housing Ltd. v. Union of India* held that GST liability under a Joint Development Agreement (JDA) arises only upon the actual conveyance of property and not at the time of execution of the agreement. Justices Bharati Dangre and Nivedita P. Mehta observed as per the facts of the case that since the assessee (a real estate developer) became the owner of the property only upon conveyance, no tax liability arose when the JDA was executed prior to that. The Court emphasized that under the 2018 Notification, liability arises only when property is conveyed after construction, rendering the Revenue's earlier stand unsustainable.

The Court also addressed the procedural lapse in issuing demand notices, pointing out that even assuming the notices were under Sections 73 or 74 of the CGST Act, the statutory timelines had already lapsed. Given the Revenue's own admission and the applicable legal framework, the bench directed a refund of ₹7 crores to the assessee, along with 6% interest, to be paid within six weeks. This judgment sets a clear precedent on the timing of tax liability in JDAs and ensures protection against premature and invalid GST demands. It brings a much-needed certainty to the real estate sector and reinforces that tax liability is triggered only upon transfer of ownership, not merely on signing of a development agreement.



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# SIGNIFICANT CASE LAWS

## Bombay High Court Affirms Fundamental Right to Travel Abroad Despite Pending Tax Prosecution

In a notable ruling, the Bombay High Court in the case of *Sruti Vijaykumar v. Falgun Yogendra Shroff and anr.* held that facing prosecution under the Customs Act does not, by itself, justify a blanket restriction on foreign travel. Justice S.M. Modak observed that the right to travel abroad is a fundamental right, and cannot be curtailed solely because an individual is under investigation or facing trial, unless there is a concrete apprehension of evidence tampering or non-cooperation.

The case pertains to an accused in a Directorate of Revenue Intelligence (DRI) investigation under Sections 135(1)(a) and 135(1)(b) of the Customs Act, who sought return of his passport and permission to attend an international event. The Trial Court had granted permission, which was challenged by the DRI. Further, the Court emphasized that the mere pendency of an investigation cannot justify restricting an accused's travel abroad. It held that the rights of the investigating agency must be balanced against the fundamental right of the accused to travel, especially when no risk of non-cooperation or evidence tampering is shown. Thus, the High Court, balancing the rights of the investigating agency and the accused, found no compelling reason to restrict the respondent's travel, particularly since he had complied with bail conditions and the investigation was still at a preliminary stage and dismissed the petition. This order reinforces that the right to travel cannot be curtailed arbitrarily and must be weighed against specific and credible concerns, setting an important precedent for cases involving economic offences and international mobility.



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# SIGNIFICANT CASE LAWS

## Himachal Pradesh High Court Upholds Acquittal of Forest Officer in Bribery Case

In a significant ruling, the Himachal Pradesh High Court in the case of State of H.P. v/s Hari Saran has upheld the acquittal of a Block Forest Officer accused of demanding and accepting a bribe. The bribe was allegedly sought for granting tree-felling permission and affixing an export hammer on timber. Justice Sushil Kukreja ruled that mere recovery of tainted money is not sufficient to establish guilt under the Prevention of Corruption Act, unless there is clear evidence of both demand and voluntary acceptance of the bribe.

In the instant case, the Vigilance Department had laid a trap and recovered the tainted notes from the accused, leading to charges under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. However, during trial and appeal, the Court found that key prosecution witnesses did not support the case and denied witnessing the pre-trap or post-trap procedures. Critically, there was no corroborative evidence showing that the accused made a specific demand or consciously accepted the money as illegal gratification. Upholding the trial court's decision, the High Court noted that the prosecution failed to prove the case beyond reasonable doubt, hence, was directed to furnish a personal bond of ₹50,000 with surety. The ruling underscores a vital safeguard in anti-corruption law—that mere possession of marked currency is not enough for conviction. The prosecution must prove the essential elements of demand and acceptance, ensuring that convictions under the Prevention of Corruption Act are not based on presumptions or procedural lapses. This decision strengthens due process protections for public servants accused of corruption.



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# SIGNIFICANT CASE LAWS

## Kerala High Court Clarifies Scope of Prior Sanction Under PC Act, Excluding Benami Transactions from 'Official Function' Protection

The Kerala High Court in the recent judgement of *V.J. Kurian v. State of Kerala and Anr.* observed centers on the interpretation and retrospective application of Section 17A of the Prevention of Corruption Act, 2018, which mandates prior government approval for police inquiry or investigation into corruption offenses by a public servant acting in an official capacity. The case arose from a challenge to a Special Judge's order for a "quick verification" regarding a complaint against the former Managing Director of Cochin International Airport Ltd. (CIAL) for the alleged transfer of ESOP shares of CIAL to a non-employee. The main law point held by the Kerala High Court is that purchasing shares as "benami" by a public servant or purchasing public property under a "benami" does not fall within the purview of Section 17A of the PC Act, 2018. This is significant because such acts are not considered part of the "discharge of official functions," thus potentially negating the requirement for prior approval under Section 17A for investigating these specific types of corruption. The Court also concurred with the Supreme Court's decision in *State of Rajasthan v. Tejmal Choudhary*, which held that Section 17A is not retrospective in nature, though it acknowledged the ongoing reference to a Constitution Bench on the retrospective applicability of the section following the split verdict in *Nara Chandrababu Naidu v. State of Andhra Pradesh*.

The salience of the order lies in its clarification on the scope of Section 17A, defining what actions of a public servant do not require prior sanction, specifically ring-fencing benami transactions outside its scope. Furthermore, by noting that the prosecution had already moved for prior approval and concluding that there was no need to interfere with the quick verification order, the Court affirmed that the investigation could proceed once the necessary sanction under Section 17A was obtained. This approach balances the anti-corruption mandate with the procedural safeguards intended by the 2018 amendment.





# SIGNIFICANT CASE LAWS

## Rehabilitative Approach for NI Act Cases: Supreme Court Allows Probation for Section 138 Convicts

The Supreme Court in the recent significant case of Sanjabij Tari v. Kishore S. Borcar & Anr. has unequivocally ruled that persons convicted under Section 138 of the Negotiable Instruments Act, 1881 are entitled to the benefit of the Probation of Offenders Act, 1958. The bench of Justices Manmohan and NV Anjaria emphasized that since a voluntary compromise can render the offence compoundable under Section 147 of the NI Act, a rehabilitative approach is warranted where a punitive sentence might be disproportionate, particularly since these cases often stem from business failures or temporary financial hardship. This judgment overrules the Kerala High Court's contrary decision in M.V. Nalinakshan v. M. Rameshan (2009), settling a significant legal conflict across the country.

The Court also provided guidance on facilitating settlements, directing Magistrates to suggest compounding if the accused is willing to pay the cheque amount as per the prescribed guidelines. Importantly, if the complainant (especially financial institutions) seeks payment beyond the cheque amount or insists on the settlement of entire outstanding dues, the Magistrate may suggest that the accused plead guilty. This maneuver enables the court to exercise its powers under the relevant provisions of the Cr.P.C./BNSS and extend the benefit of the Probation of Offenders Act, 1958, thereby promoting a resolution that balances justice with a rehabilitative outcome for the accused, thus prioritizing the restitutionary goal over pure punitive measures.



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# REGULATORY UPDATE:

GST Council's Strategic Tax Reforms Target Energy Independence and Digital Economy Growth

# GST

## GOODS AND SERVICE TAX

The **56th Goods and Services Tax (GST) Council meeting** represents a significant milestone in India's ongoing tax reform efforts. The simplification of the GST structure is a decisive and forward-looking action, demonstrating the government's commitment to achieving a "Good and Simple Tax" and its confidence in industry's role as a catalyst for economic expansion. A strategic adjustment in tax policy is evident through the increase in GST rates on coal and certain goods and services related to oil and gas exploration, alongside the rationalization of GST rates on renewable energy devices and key inputs like cement, marble, and wood products. This shift strategically promotes the adoption of renewable energy by making clean energy technologies more cost-effective and appealing to investors. This fiscal measure is directly aligned with the national goal of achieving energy independence by 2047. The strategy involves a large-scale transition to renewables, green hydrogen, nuclear energy, and increased domestic exploration of critical minerals, thereby reducing India's dependence on imported coal, oil, and gas. In summary, these reforms establish a robust and supportive fiscal framework for the power and energy sector, significantly enhancing its viability and long-term resilience. While the increase in GST on coal from 5% to 18% (replacing the previous INR400/ton cess) is not anticipated to materially impact thermal power costs, the reduction in GST on cement from 28% to 18% is expected to favorably affect infrastructure project costs. Crucially, the reduction in GST from 12% to 5% on various renewable energy...

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# REGULATORY UPDATE:

## The Corporate Compass: Navigating India's New Fast-Track Merger Landscape



In a landmark move poised to reshape India's corporate landscape, the Ministry of Corporate Affairs ("MCA") has unveiled the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 ("Amendment Rules"). These rules represent a decisive step towards streamlining corporate restructuring and fostering a more agile and business-friendly environment. By significantly broadening the scope of fast-track mergers under Section 233 of the Companies Act, 2013 ("Act"), the MCA aims to reduce the burden on the National Company Law Tribunals, shorten deal timelines, and provide greater clarity for businesses undertaking reorganisations.

The most impactful change introduced by the Amendment Rules is the substantial expansion of companies eligible for the fast-track route. This move signals a shift from a limited, prescriptive approach to a more inclusive one, opening the doors of this efficient mechanism to a larger swathe of the corporate world. The Amendment Rules now extend this benefit to several additional categories, which were previously compelled to undergo the time-consuming and resource-intensive NCLT-approved process. The newly eligible entities include: Unlisted Companies: A significant addition, allowing unlisted companies (excluding not-for-profit companies) to merge via the fast-track route, provided their total outstanding loans, debentures, or deposits don't exceed INR 200 Crores and they are not in default of repayment...

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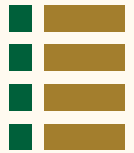
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