

ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration

NOV
2025



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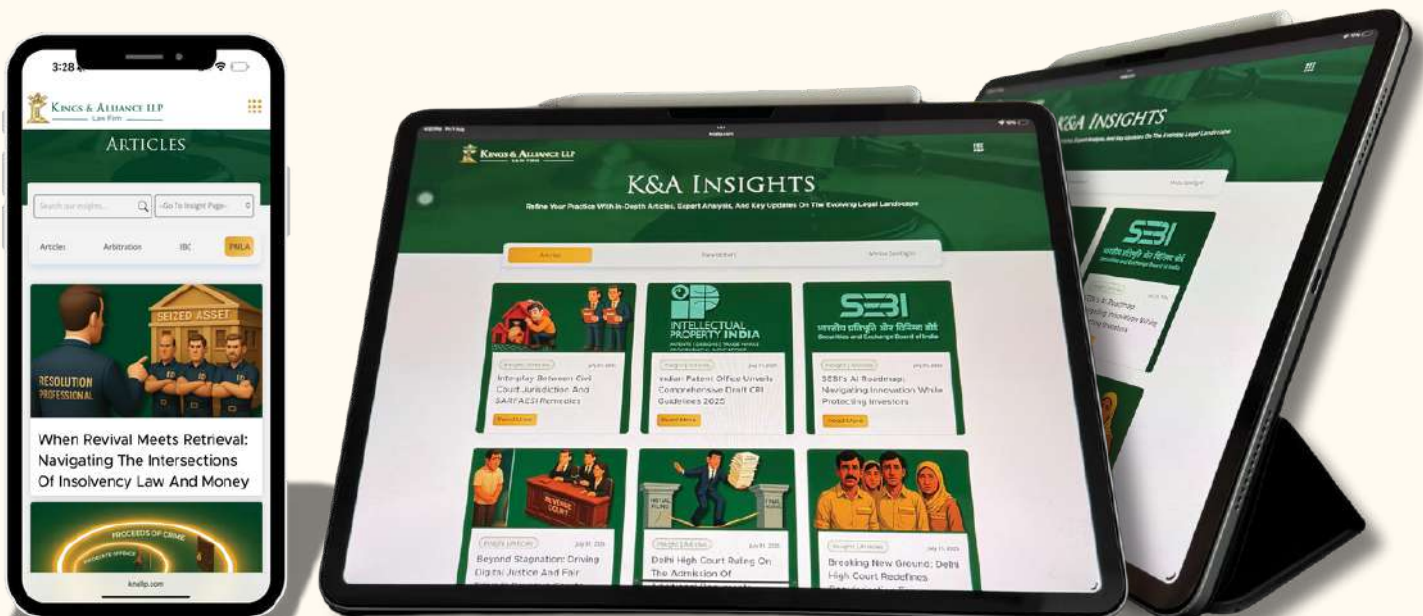


When the Letter of the Law Battles the Soul of Intent, this month our Cover Story explores a crucial juncture in arbitration law: the balancing act between strict technicality and the spirit of the law: Our cover story further plunges into how the commencement of arbitration isn't strictly defined by the formal issuance of a Section 21 notice; rather, a court can proceed if the respondent already had demonstrable, substantive knowledge of the intent to arbitrate, upholding the principle of 'substance over form.'

This edition of Arbitra also brings you up to speed on other pivotal developments across the arbitration landscape. We highlight how the Bombay High Court strongly reaffirmed the personal liability shield for partners in an LLP against the firm's arbitral award, while the Calcutta High Court brought procedural clarity by permitting a single legal challenge for a unified arbitral award that settles multiple distinct contract references. Addressing post-award concerns, the Gujarat High Court affirmed the right to claim a higher statutory rate of interest if the award remains silent on the matter. On the highest level, the Supreme Court utilized the COVID-19 pandemic exclusion to preserve an otherwise time-barred application for arbitrator appointment, safeguarding the right to arbitrate. Our updates further detail key rulings, including strict limits on challenging foreign awards and judicial acceptance of 100% deposit conditions for staying awards, concluding with China's significant 2025 arbitration reform efforts.

Let's dive in.

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The Tug-of-War Between Technicality and Reality: Redefining the Commencement of Arbitration



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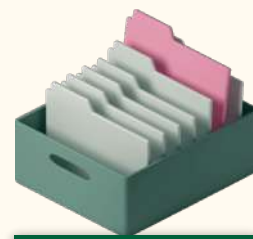
SC Upholds Right to Arbitrate: Disqualified Appointing Authority and COVID-19 Extension in Section 11(6)



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The Dawn of Modernity: China's Landmark 2025 Arbitration Reform



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COVER STORY

The Tug-of-War Between Technicality and Reality:
Redefining the Commencement of Arbitration

ARBITRATION



The court's role in the referral stage is a limited, prima facie check—a gatekeeper role

How far can a court stretch the principle of 'substance over form' when it comes to the technicalities of arbitration law? Imagine a scenario where a business dispute is raging, with multiple court filings clearly indicating one party's intent to take the matter to arbitration. Both sides have actively engaged with the dispute's nature and the possibility of arbitration. Yet, one party later argues that the subsequent application to appoint an arbitrator is invalid simply because the initial formal NIA under Section 21 of the A&C Act, was never issued. Does the technical omission of a formal notice override the demonstrable fact that the other party was fully aware of the dispute being referred to arbitration?

The Rajasthan High Court Jaipur Bench, in a significant ruling in *Sinsinwar Construction Company v. The Chief General Manager, BSN* by Justice Anoop Kumar Dhand, tackled this precise issue, holding that a petition under Section 11 of the A&C Act for the appointment of an arbitrator would be maintainable even in the absence of a formal Section 21 NIA, provided the Respondents were already well-aware of the dispute being referred to arbitration.

This pivotal decision arose from a dispute where the Respondents sought to dismiss the Section 11 petition, asserting its non-maintainability due to the lack of a valid Section 21 notice. The Petitioners, conversely, argued that the Respondents' full knowledge of the entire dispute—evidenced, in part, by the fact that the trial court returned the Petitioner's plaint under Order VII Rule 10 of the CPC only after the Respondent filed a Section 8...



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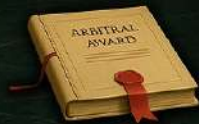
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PIVOTAL ISSUES

The Art of Severance: How Courts Edit Arbitral Awards to Uphold Justice and Limit Partner Risk



erroneous imposition of joint and several liability on the Designated Partners was an element that is eminently capable of being severed to save the Impugned Award.



Could the financial troubles of a company force its partners to personally empty their own pockets to cover the debt? This core legal question, critical for businesses structured as a LLP, was recently addressed by the Bombay High Court. In a significant ruling, the Court categorically stated that partners of an LLP cannot be held personally liable to satisfy an arbitral award, even as it upheld the underlying award requiring the LLP itself to pay over ₹88 lakh in unpaid dues. This decision arose from a dispute between Proteus Ventures LLP and Archilab Designs, where an arbitral tribunal had wrongly fastened joint and several liability on the LLP's designated partners.

The Bombay High Court judgment in Proteus Ventures LLP Versus Archilab Designs, delivered by Justice Somasekhar Sundaresan, not only clarified the shield of liability inherent in the LLP structure but also affirmed that an arbitral award should not be set aside merely because the arbitrator is not a lawyer and the reasoning lacks a "trained legal mind's" style. The ensuing article will delve into the legal principles underpinning this judgment, exploring the distinct nature of the LLP and the scope of judicial review over arbitral awards.

When a company faces financial distress, can its partners be forced to dip into their personal savings? This question strikes at the very heart of the Limited Liability Partnership (LLP) structure, a cornerstone of modern business law designed to encourage entrepreneurship by mitigating personal risk. The Bombay High Court, in considering the challenge to the...



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PIVOTAL ISSUES

The Power of Consolidation: Why One Arbitration Award Can Settle Many Disputes



Is a single challenge permissible when a party successfully weaves together multiple distinct legal disputes into one consolidated proceeding, culminating in a single, composite arbitral award? This precise question lay at the heart of a recent, significant ruling by the Calcutta High Court in *Damodar Valley Corporation Vs. AKA Logistics Private Limited*. A bench led by Justice Shampa Sarkar unequivocally held that a single petition under Section 34 of the Arbitration Act, is maintainable to challenge a composite arbitral award that disposes of multiple underlying references.

This judgment arose from a dispute between Damodar Valley Corporation (DVC) and AKA Logistics, involving five separate contracts for coal handling, where, despite five distinct initial references, the parties consented to an analogous hearing resulting in a single award. The core legal issue was whether DVC's single Section 34 petition challenging this unified award was valid, or if AKA Logistics' objection, insisting on five separate petitions, should prevail. This article will delve into the underlying legal principles and the rationale that informed the High Court's decisive pronouncement on this critical procedural aspect of arbitration law. The court did not hesitate to hold that where the learned arbitrator and the parties themselves understood the proceeding to be one composite proceeding—a fact evidenced by the parties' consent to an analogous hearing—and the arbitrator proceeded to pass a composite award, a single challenge is entirely permissible. This position stems from the fundamental principle that the award is to be treated as one adjudication, an indivisible...



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PIVOTAL ISSUES

The Unmerged Claim: How Non-Adjudication Preserves the Right to Statutory Interest in Arbitration proceedings



When an arbitral tribunal is silent on the rate of interest payable after the award is made, should the decree holder be deprived of the higher rate stipulated by statute? The interpretation of Section 31(7)(b) of the Arbitration Act often presents a complex juncture in post-award execution proceedings. In a significant pronouncement, the Gujarat High Court, through a bench led by Justice Maulik J. Shelat, recently settled this intricate question in *Shah Enterprise Versus State Of Gujarat*, holding that the doctrine of merger does not preclude a decree holder from claiming post-award interest at 18% per annum under the said section, even when the award itself is silent on the matter. This ruling came in a review application stemming from a dispute involving Shah Enterprises and the State of Gujarat.

The core issue before the Court was whether the Principal District Judge correctly rejected a review application that sought to rectify an earlier order granting only 16% interest, contrary to the statutory mandate of 18%. The High Court decisively quashed the lower court's order, asserting that an "error apparent on the face of the record" had occurred by failing to apply the correct statutory rate. This article will delve into the underlying legal principles, particularly concerning the doctrine of merger and the mandatory nature of Section 31(7)(b), which formed the basis of this crucial judgment. The argument presented by the Learned AGP introduced a direct challenge based on the crucial legal principle known as the Doctrine of Merger. This doctrine, in its conventional application, posits that "when a superior judicial forum—in an appeal or revision—modifies, reverses, or affirms a decision...

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PIVOTAL ISSUES

SC Upholds Right to Arbitrate: Disqualified Appointing Authority and COVID-19 Extension in Section 11(6)



The arbitration agreement must be interpreted in a purposive manner, but not literally so as to enable the parties to pursue the intended dispute redressal mechanism of contract.



The Supreme Court of India, recently in the case of Offshore Infrastructures Limited v. M/S Bharat Petroleum Corporation Limited, adjudicated upon the crucial interplay between the limitation period for seeking the appointment of an arbitrator and the statutory impact of the COVID-19 pandemic on such timelines. The Court addressed the High Court of Madhya Pradesh's refusal to appoint an arbitrator under Section 11(6) of Arbitration Act, primarily on the ground that the application was time-barred. The pivotal questions before the Court were whether the benefit of the COVID-19 extension order could save the otherwise time-barred application, and whether the substantive right to arbitration survived despite the contractual appointment procedure, being rendered void by the 2015 amendments to the Act.

The Bench, composed of Justice Dipankar Datta and Justice Augustine George Masih, primarily held that the application for the appointment of an arbitrator was within the period of limitation due to the exclusion of the COVID-19 pandemic period. The Court also confirmed its power to appoint an arbitrator even when the procedure in the arbitration clause had become invalid due to statutory amendments under the Arbitration Act. The dispute arose from a contract awarded by the Respondent to the Appellant for work at a Refinery, which was completed on January 31, 2018. The final bill was raised on March 20, 2018, and the amount was due on April 21, 2018. The Appellant issued a notice for the appointment of an arbitrator on June 14, 2021, which the Respondent refused...



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SIGNIFICANT CASE LAWS

Rajasthan HC Enforces GAFTA London Award, Citing Strict Limits on 'Public Policy' Challenge Under Section 48

The Rajasthan High Court in *Kingsroad Handelsges Versus Raj Grow Impex LLP* dismissed objections raised by Raj Grow Impex LLP against the enforcement of a foreign arbitral award, emphasizing the extremely narrow scope of interference under Section 48 of the Arbitration and Conciliation Act, 1996. The dispute arose from three contracts for the supply of Whole Yellow Peas between Kingsroad Handelsges (Petitioner) and Raj Grow Impex LLP (Respondent), which led to an award by the Grain and Feed Trade Association (GAFTA), London, in favor of the Petitioner for over USD 999,000. The Respondent's subsequent appeal was also dismissed, and the award amount was enhanced. After the Respondent failed to comply, the Petitioner sought enforcement in India. The Respondent objected, primarily arguing the foreign award violated Indian Public Policy and involved transactions that caused losses to the Indian Exchequer.

The court, relying on Supreme Court precedents like *Shri Lal Mahal* and *Renusagar*, held that it cannot sit in appeal on the findings of the Arbitral Tribunal or review the foreign award on its merits, as the grounds for refusal under Section 48 are limited and do not include patent illegality as applicable under Section 34 for domestic awards. Justice Anoop Kumar Dhand reiterated the narrow interpretation of 'public policy' consistent with the New York Convention, stating that Indian courts cannot afford a "second look" at foreign awards, and only a demonstrable, clear violation of the fundamental policy of Indian law, interest of India, or justice or morality can be a ground for refusing enforcement. The judgment concluded that the award-holder, having won before both the tribunal and appellate tribunals, should not "feel that he has won the battle but lost the war" due to frivolous objections at the enforcement stage.



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SIGNIFICANT CASE LAWS

Orissa HC Held That Full Deposit of Award Amount Can Be Condition for Stay Under Section 36(3) of Arbitration Act

The Orissa High Court, in the case of Director, Land Records & Surveys Govt. of Odisha & Anr. versus Sylvesa Infotech Pvt. Ltd., upheld the condition of directing a 100% deposit of the awarded amount as a prerequisite for granting a stay of the arbitral award under Section 36(3) of the Arbitration and Conciliation Act, 1996. The dispute arose from a contract between the Director, Land Records & Surveys (State of Odisha) and Sylvesa Infotech Pvt. Ltd. for the installation of computer systems. Following contract termination and subsequent arbitration, the tribunal awarded ₹7,46,45,227/- with interest to Sylvesa Infotech. The State challenged this award under Section 34 but objected to the High Court's order conditioning the stay upon the full deposit, arguing it was onerous and arbitrary.

The court held that post-2015 amendments, a domestic arbitral award remains executable as a decree unless stayed conditionally. The court ruled that where an award is in the nature of a money decree, a direction for a 100% deposit is neither punitive nor excessive but is legally valid and consistent with Supreme Court jurisprudence (e.g., Srei Infrastructure Finance Ltd and Manish), serving to secure the award-holder's interest during the challenge's pendency. The court further clarified that its supervisory jurisdiction under Article 227 is limited to correcting jurisdictional errors or patent perversities and cannot re-appraise or substitute the discretionary order passed by the Commercial Court.

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SIGNIFICANT CASE LAWS

Inherent Power Upheld: Gujarat HC Rules on Dismissal for Non-Prosecution Under Arbitration Act

The Gujarat High Court, in the case of Gujarat Industrial Development Corporation Versus M/S The Indian Hume Pipe Company Ltd & Anr., held that negligence or inaction on the part of counsel cannot justify condonation of unexplained and long delay, and further ruled that the court is not prohibited from dismissing petitions under Section 34 for non-prosecution. The court upheld the rejection of GIDC's plea to restore its Section 34 applications, which were dismissed for non-prosecution in 2013.

The dispute arose because the Gujarat Industrial Development Corporation (GIDC) failed to appear and pursue its applications under Section 34, leading to their dismissal for non-prosecution in 2013. GIDC argued it relied entirely on its advocate, who failed to inform them, and contended that the Arbitration Act does not expressly allow dismissal for default. The court observed GIDC's lackadaisical approach, noting they only acted upon receiving an execution notice in 2015. Justice Maulik J. Shelat rejected the plea, stating that courts possess the inherent power to dismiss a matter for non-prosecution unless expressly barred. Citing the Supreme Court in *Rajneesh Kumar & Anr. v. Ved Prakash*, the rationale emphasized that counsel's negligence is insufficient to excuse inordinate delay, as litigants must remain vigilant of their own rights, adhering to the principle that the law assists the watchful.

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SIGNIFICANT CASE LAWS

No Writs for NH Award Disputes: Allahabad Court Mandates Section 34 Challenge for Section 3G Compensation

The Allahabad High Court, in the case of Ramashankar Yadav And Another versus Union Of India And 3 Others, held that a writ petition is not maintainable to challenge compensation awards issued under Section 3G of the National Highways Act, 1956 (NH Act), as the proper remedy is to file a statutory challenge under Section 34 of the Arbitration and Conciliation Act, 1996. The petitioners, who were landowners, challenged an arbitral award that enhanced their compensation for land acquired by the NHAI, claiming inadequate compensation. This challenge was made directly to the High Court under Article 226, bypassing the statutory mechanism.

The Bench of Justice Mahesh Chandra Tripathi and Justice Anish Kumar Gupta ruled that Section 3G(6) of the NH Act expressly mandates the application of the Arbitration Act, 1996, creating a complete statutory scheme for resolving compensation disputes through arbitration and subsequent challenge under Section 34. The rationale, supported by the Supreme Court's ruling in Commissioner of Income Tax v. Chhabil Dass Agarwal, was that allowing landowners to bypass this statutory remedy to contest factual matters like compensation rates would render the Arbitration Act redundant, defeat legislative intent, and flood the High Courts, thereby undermining the specialized arbitration machinery established by Parliament. The writ petition was dismissed, granting the petitioners liberty to pursue the Section 34 remedy.



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SIGNIFICANT CASE LAWS

The Kerala High Court Confirms Co-operative Arbitration Courts Can Direct Document Production Under Order XI Rule 14 CPC

The Kerala High Court, in the case of Thalapalam Service Co-operative Bank Ltd. versus Sebastian P. George, held that a Co-operative Arbitration Court conducting an election trial has the power to invoke Order XI Rule 14 of the Code of Civil Procedure (CPC) to compel a party to produce necessary documents. The Court was hearing a writ petition filed by the Co-operative Bank challenging an order by the Arbitration Court that directed the bank to produce voluminous documents, including the original Membership register and all election records.

Justice K. Babu clarified that under Section 70(3) of the Kerala Co-operative Societies Act, 1969, the Arbitration Court is bound to follow the CPC procedure for trials. Since the election petition alleged that around 2,000 ineligible voters from outside the jurisdiction were included in the voters' list, the requested documents were deemed relevant for adjudication. Therefore, the Court reasoned that because the Arbitration Court has the powers of a civil court, invoking the CPC provision to allow parties to lead relevant evidence is essential for dispute resolution based on the pleadings, and thus, the order compelling production was rightly passed. The writ petition was dismissed, confirming the original order without ruling on the election petition's merits.



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SIGNIFICANT CASE LAWS

The Delhi High Court Confirmed Termination Under Section 32(2)(C) of the Arbitration Act When the Underlying Contract Lacks Enforceability

The Delhi High Court, in the case of Gaurav Aggarwal versus Richa Gupta, upheld an arbitral award that terminated proceedings under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996, on the ground that the Agreement to Sell (ATS) between the parties was unenforceable because it was unregistered and unstamped under Uttar Pradesh law. The dispute involved the attempted transfer of sub-leasedhold rights in a residential unit located in Uttar Pradesh for a consideration of Rs. 5 crore, of which Rs. 50,000 had been paid. The respondent, after termination by the petitioner, argued the ATS was void for lack of registration, leading the Tribunal to terminate the arbitration.

Justice Amit Bansal agreed with the Tribunal, holding that the ATS constituted a contract for sale of immovable property under Section 54 of the Transfer of Property Act (TPA). Given the 1976 amendment to the UP Registration Act, such agreements mandatorily require registration and stamping. Since the ATS was neither registered nor stamped, it was rendered unenforceable under Section 49 of the Registration Act, meaning the underlying contract was invalid in law. The Court concluded that since the contract itself was unenforceable, the Tribunal was entirely justified in terminating the arbitration proceedings; thus, no interference was warranted with the award under Section 34.



[VIEW JUDGEMENT](#)



SIGNIFICANT CASE LAWS

The Delhi High Court Held That Terminating an Arbitrator's Mandate Based Solely on Unsubstantiated Corruption Allegations Establishes a Risky Precedent

The Delhi High Court, in the case of National Highway Infrastructure Development Corporation Ltd (NHIDCL) versus NSPR VKJ JV & Ors., held that mere allegations of corruption or the pendency of an unverified complaint against an arbitrator cannot justify terminating the arbitrator's mandate under section 14 of the Arbitration and Conciliation Act, 1996 (Arbitration Act). The dispute arose from an EPC Agreement where NHIDCL sought to terminate the mandate of the presiding arbitrator based on unverified media reports alleging corruption dating back to 2016, and also citing an alleged biased procedural order.

Justice Jyoti Singh reasoned that the mandate termination under Section 14 requires a de jure ineligibility, which is an inherent disability strictly defined by the Seventh Schedule post the 2016 amendment. Since the corruption allegations stemmed from unverified complaints without any formal legal proceedings (like an FIR), they did not meet this high threshold. The Court stressed that allowing termination based on such uncorroborated claims would create a dangerous precedent, enabling unhappy parties to derail arbitration proceedings simply by leveling unfounded accusations. Thus, the petition was dismissed as the grounds did not warrant intervention.



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REGULATORY UPDATE:

The Dawn of Modernity: China's Landmark 2025 Arbitration Reform



The 17th session of the 14th National People's Congress Standing Committee achieved a significant milestone by passing the Amendment to the Arbitration Law of the People's Republic of China. Set to take effect on March 1, 2026, this revision marks the first comprehensive reform since the Act's original adoption in 1994, reflecting China's urgent need to modernize its dispute resolution framework and align with global arbitration practices.

The Amendment introduces several critical changes aimed at increasing efficiency, independence, and international compatibility: The term "arbitration institution" replaces the former "arbitration commission," officially reflecting the shift from an administrative/bureaucratic body to a charitable not-for-profit legal person. This change, stipulated in Article 13, emphasizes the independence of these institutions. While institutions are now recognized as non-profits, they remain under the registration and supervision of the administrative department of justice (Articles 14 and 26). To ensure transparency and professionalism, the Amendment mandates that at least two-thirds of the governing members must possess expertise in law, trade, economics, or scientific technology. Additionally, a minimum of one-third of the members must be replaced every five years to mitigate conflicts of interest. Modernizing Arbitration Procedure Article 22 excludes public servants, such as prosecutors and judges, from serving as arbitrators, while encouraging the inclusion...

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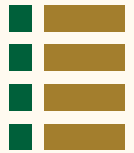
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