NEWSLETTER

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1. **Finance Act, 2026 Reshapes Reassessment Litigation - Supreme Court Remands JAO Cases to High Courts** *By Apoorv Agarwal*

On April 10, 2026, the Supreme Court disposed of a large batch of appeals arising from the jurisdictional controversy over whether reassessment notices under Section 148 and orders under Section 148A(d) could be issued by the Jurisdictional Assessing Officer ('JAO') or vested exclusively in the faceless mechanism, a conflict rooted in the Finance Act, 2021's overhaul of Sections 147–151 and the CBDT's E-Assessment of Income Escaping Assessment Scheme, 2022, which had produced conflicting High Court rulings. Rather than deciding the question on merits, the Court took note of Section 147A inserted by the Finance Act, 2026 with retrospective effect from April 1, 2021, which clarifies that the 'Assessing Officer' for purposes of Sections 148 and 148A means an officer other than the NFAC or a faceless unit and set aside the impugned judgments solely on the ground that their legislative basis had changed, remanding all matters to the respective High Courts for fresh consideration, including on the constitutional validity and retrospective operation of the amendment itself. The Assessees were permitted four weeks to amend their petitions, proceedings were directed to remain stayed, and disposal was requested by September 30, 2026. The litigation now shifts from statutory interpretation to constitutional questions (i.e.) whether Parliament may retrospectively nullify judicial decisions, whether retrospective validating statutes withstand scrutiny, and what the broader limits of delegated fiscal legislation are.

2. Interplay Between IBC and SARFAESI: Conflict or Complement?

By Apoorv Agarwal

The relationship between the Insolvency and Bankruptcy Code, 2016 ("IBC") and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI") is not one of conflict, but of statutory complementarity. While the IBC provides collective and time-bound insolvency resolution framework focused on value maximisation and equitable treatment of creditors, SARFAESI enables secured creditors to enforce security interests swiftly with minimal judicial intervention.The intersection between the two becomes significant upon commencement of the Corporate Insolvency Resolution Process ("CIRP"), when the moratorium under Section 14 of the IBC bars enforcement proceedings under SARFAESI against the corporate debtor. The objective of such moratorium as recognised by the Supreme Court in Kiran Gupta v. State Bank of India (W.P.(C) 7230/2020) is to reserve the Corporate Debtor as a going concern during resolution process. Nevertheless, SARFAESI is not rendered otiose by the IBC. Outside CIRP, and even in liquidation, Section 52 of the IBC preserves their option either to realise security interests independently or participate in the distribution mechanism under Section 53. The Supreme Court in India Resurgence ARC Pvt. Ltd. v. Amit Metaliks Ltd. (Civil Appeal No. 1700/2021) clarified that dissenting secured creditors cannot enforce their entire security interest outside an approved resolution plan, while in DBS Bank v. Ruchi Soya Industries Ltd. (Civil Appeal No. 9133/2019), the Supreme Court reaffirmed their entitlement to the liquidation value attributable to such security interests. Any inconsistency between the two enactments ultimately stands resolved by Section 238 of the IBC, which grants overriding effect to the Code. Thus, while the IBC assumes primacy during insolvency proceedings, SARFAESI continues to remain an effective recovery mechanism outside that limited sphere, reflecting a legislative intent to ensure both statues operate harmoniously within India's broader insolvency and debt recovery framework.

3. "Successor in Interest" Can Invoke Arbitration: Delhi High Court Appoints Three-Member Tribunal Despite Objections of Privity of Contract

Case Background: Tavasya SSF (C/o Tavasya Capital Managers LLP) v. Ministry of External Affairs & Anr. [ARB.P. 1589/2025]
Bench: Justice Harish Vaidyanathan Shankar
Date of Decision: 20.04.2026

By Apoorv Agarwal

The dispute arose from an EPC Agreement dated 31.03.2017, which was originally entered into between the Ministry of External Affairs and a joint venture comprising M/s. C&C Constructions Limited ("C&C") and M/s. Engineering Projects (India) Limited ("EPIL"); following a transfer of assets under a Sale Certificate dated 06.08.2024, the Petitioner Tavasya SSF claimed to have acquired C&C's rights and sought to invoke the arbitration clause contained in the EPC Agreement entered between MEA and the Joint Venture of C&C-EPIL. Objections raised by the Respondents' included that the EPC Agreement defined "parties" as C&C and EPIL, whereas the Petitioner was not privy to the original EPC Agreement, and since Respondent No. 2 had raised serious objections to invocation of the arbitration clause, the element of consent that is central to arbitral reference was found to be absent. In submissions made by the Petitioner's learned counsel, strong reliance was placed on the narrow scope of judicial scrutiny under Section 11 of the Arbitration and Conciliation Act, 1996 ("Act"), arguing that this Court functions essentially as a "Referral Court" and cannot undertake an elaborate adjudicatory exercise akin to conducting a mini-trial; the recital under the EPC Agreement describing parties which explicitly stated that the expression "Constructor" shall include "its successors and permitted assigns",

Clause 27.12 of the EPC Agreement which read as "This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns", and the Sale Certificate which recorded transfer of "all investments held by C&C Constructions Limited including the interest in the joint ventures" were also highlighted. The issue under adjudication was whether the purchaser of the rights of a JV partner can invoke an arbitration clause unilaterally without the consent of the other JV partner. In the analysis of the Hon'ble Court, Justice Harish Vaidynathan Shankar, after considering the rival submissions, emphasized the settled legal position that the jurisdiction under Section 11 of the Act is "extremely limited and circumscribed," affirming the Supreme Court's recent decision in Andhra Pradesh Power Generation Corporation Limited (APGENCO) v. Tecpro Systems Limited [(2026) 3 SCC 491]; the Court expressly noted that the expression "interest in the joint ventures", when read conjointly with Clause 27.12 and the recital describing parties, lent support to the prima facie view that even a purchaser of the rights of a JV partner can invoke the arbitration clause, even if it has not been formally replaced or substituted as a JV partner in the original agreement. In conclusion, the Delhi High Court's decision reinforces the well-settled principle that the referral court under Section 11 of the Act has a very limited power which is restricted to determining the existence of the arbitration clause in the Agreement on the basis of which the Section 11 Petition is filed, and in particular, the judgment clarifies that a purchaser of a JV partner's rights can invoke arbitration even without being formally replaced as a JV partner and without the consent of the other JV partner.

4. Supreme Court Reaffirms the Distinction Between Police Investigation under Section 156 (3) of Cr.P.C and Private Complaint under Section 200 of Cr.P.C

By Apoorv Agarwal

The Supreme Court's decision in Mohan Karthik & Ors. v. State of Tamil Nadu & Anr., SLP (Crl.) No. 18828 of 2025, clarifies that Section 156(3) Cr.P.C., now corresponding to Section 175(3) of BNSS, cannot be repeatedly invoked to revive criminal proceedings that have already been closed.

In this case, the complainant had first approached the Magistrate under Section 156(3) Cr.P.C. seeking registration of an FIR and police investigation. The application was dismissed, and the proceedings were closed. Since the complainant did not challenge that order, it attained finality. Thereafter, the High Court granted liberty to the complainant to pursue the remedy of filing a private complaint under Section 200 Cr.P.C., now corresponding to Section 223 of BNSS.

However, instead of filing a private complaint, the complainant again moved an application under Section 156(3) Cr.P.C. before the Magistrate. This time, the Magistrate directed registration of an FIR. The accused challenged the order, arguing that the second application was only an indirect attempt to reopen the earlier concluded proceedings.

The Hon'ble Supreme Court accepted this contention. The Bench comprising Hon'ble Justice M.M. Sundresh and Hon'ble Justice Nongmeikapam Kotiswar Singh held that although there may not be an express statutory bar on filing a second application under Section 156(3) Cr.P.C., the facts showed that the complainant was trying to revive a matter that had already attained finality. The Hon'ble Court held that such a course would amount to an indirect review of the earlier order.

The Hon'ble Court also distinguished Section 156(3) Cr.P.C. from Section 200 Cr.P.C. While Section 156(3) seeks police investigation before cognizance, Section 200 Cr.P.C. deals with private complaints before the Magistrate.

Accordingly, the Supreme Court set aside the orders directing registration of the FIR, but directed that the second Section 156(3) Cr.P.C application to be treated as a private complaint under Section 200 Cr.P.C.

5. Delhi High Court: Pendency of BFAR proceedings does not stall entire Assessment Process

By Apoorv Agarwal

The Delhi High Court in Mitsubishi Electric India Private Limited v. DCIT has held that the pendency of proceedings before the Board for Advance Rulings ('BFAR') does not automatically bar continuation of assessment proceedings on issues falling outside the scope of the advance ruling application, resolving a recurring conflict between the advance ruling mechanism and the Assessing Officer's jurisdiction to complete assessments within statutory timelines under Section 153. The dispute arose in assessment proceedings for AY 2023-24, where the Petitioner, having filed a BFAR application on whether expatriate salary reimbursements constituted 'fees for technical services' under Section 9(1)(vii) and the India-Japan DTAA, whether seconded employees created a permanent establishment, and whether Section 195 withholding obligations were attracted and sought to keep all pending assessment proceedings in abeyance under Section 245RR, including on wholly independent issues such as Sections 90/91 relief, Section 40(a)(ia) disallowances, ICDS adjustments, depreciation, and transfer pricing. The Assessing Officer rejected this request on the ground that those issues had no overlap with the BFAR reference, and the High Court agreed, holding that Section 245RR creates an issue-specific embargo and not a blanket stay of the entire assessment. The Court affirmed the Revenue's position that assessees cannot paralyse the assessment machinery through isolated BFAR references, a ruling of substantial significance for multinational corporations routinely invoking the advance ruling mechanism on permanent establishment, withholding tax, and income characterisation questions.