



Luthra *and* Luthra
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It gives us immense pleasure to circulate the October 2025 edition of the Luthra and Luthra Law Offices India's Dispute Resolution Newsletter. In this edition, we have primarily focused on the recent legal developments in the fields of Criminal Laws, Arbitration, Insolvency Laws etc. Accordingly, we have covered key judgments passed by the Hon'ble Supreme Court and High Court(s) during September 2025. We hope you enjoy reading our Newsletter.

SUPREME COURT

Supreme Court clarifies that breach of Section 269SS of Income Tax Act not a defense in Cases under section 138 NI Act and issues guidelines for speedy disposal of cheque bounce cases

The Supreme Court in *Sanjay Bwtart v. Kishore S. Borcar & Anr*,¹ reaffirmed that once the execution of a cheque is admitted, presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881 ("NI Act") automatically arise in favour of the complainant. These presumptions are rebuttable, but the burden lies on the accused to produce cogent evidence showing that the cheque was not issued in discharge of a legally enforceable debt or liability. Mere assertions regarding the complainant's financial incapacity does not suffice.

The Court clarified that a transaction violating Section 269SS of the Income Tax Act, 1961, which prohibits advance of loans through cash above certain sums, does not become illegal or unenforceable for the purpose of Section 138 proceedings. Breach of the said provision invites only a tax penalty and cannot negate the presumption of a legally enforceable debt under the NI Act. The Court further observed that some courts err by requiring complainants to prove the existence of the debt from the outset, contrary to the statutory scheme which mandates presumptions in favour of the holder of the cheque.

Recognizing the quasi-criminal and primarily compensatory nature of Section 138 proceedings, the Court issued the following procedural and substantive directions to expedite and streamline the disposal of cheque bounce cases:

1. **Summons Service:** Summons must be served not only through traditional means but also through dasti (personal service), email, WhatsApp, and other electronic methods as permitted under the BNSS, 2023. Complainants must provide verified contact details and file an affidavit of service, subject to action for false affidavits.
2. **Online Payment Mechanism:** Every District Court must establish secure QR codes or UPI links for direct payment of the cheque amount by the accused, enabling quick compounding and closure of cases upon payment confirmation.
3. **Complaint Synopsis Format:** Each complaint must begin with a structured synopsis containing cheque particulars, dishonour details, statutory notice particulars, and the relief sought, to facilitate efficient judicial processing.
4. **Compounding and Settlement:** The Hon'ble Court observed:
 - a) If the accused pays the cheque amount before recording of defence evidence, the Trial Court may permit compounding without any cost.
 - b) If payment is made after defence evidence but before judgment, compounding may be allowed on deposit of 5% of the cheque amount with the Legal Services Authority or other designated body.

¹ Sanjay Bwtart v. Kishore S. Borcar & Anr, (2025) INSC 1158.



- c) If the payment is made before the Sessions Court or High Court in revision or appeal, compounding may be allowed on payment of 7.5% of the cheque amount as costs.
- d) If the cheque amount is tendered before the Supreme Court, the cost would increase to 10% of the Cheque Amount.
- e) Courts are encouraged to suggest compounding wherever the accused is willing to pay per these guidelines. Where financial institutions or complainants insist on full settlement beyond the cheque amount, the Magistrate may advise the accused to plead guilty and consider exercising powers under Sections 255(2) or 255(3) Cr.P.C., Section 278 BNSS, 2023, or grant benefit under the Probation of Offenders Act, 1958.

These reforms aim to reduce pendency and ensure efficient enforcement of the NI Act's objective of promoting financial discipline and credibility of cheques.

State Electricity Regulator Commission's Approval Mandatory for Power purchase Agreements and Tariff fixation under Section 86(1)(b) of the Electricity Act, 2003.

The Supreme Court in *M/s. KKK Hydro Power Ltd. v. Himachal Pradesh State Electricity Board Ltd.*², expounded the scope of Section 86(1)(b) of the Electricity Act, 2003 ("**Electricity Act**"), holding that a generating company and a distribution licensee cannot, by private agreement, execute a Power Purchase Agreement ("**PPA**") or fix tariff for the supply of electricity within a State without the prior review and approval of the State Electricity Regulatory Commission ("**the Commission**").

The Court observed that Section 86(1)(b) of the Electricity Act expressly mandates the Commission to regulate the electricity purchase and procurement process of distribution licensees, including the price at which electricity shall be procured. The Hon'ble Court noted that the statutory mandate imposes a positive obligation on the Commission to review and approve all PPAs and tariffs, and excludes the possibility of tariff determination or modification through mutual arrangement between private parties. The Court noted that both the PPA and the price fixed therein are subject to the Commission's control, and its approval operates as a condition precedent to their legal validity. Therefore, any PPA or supplementary agreement executed unilaterally or privately, without the Commission's approval, are unenforceable. The Court thus clarified that tariff fixation and approval of PPAs are not matters of private discretion but mandatory statutory functions falling within the exclusive jurisdiction of the Commission under Section 86(1)(b) of the Electricity Act.

Supreme Court Lays Down Four Step test for Exercise of High Court's Inherent Powers under Section 482 CrPC for Quashing of Criminal Proceedings

The Supreme Court in *Pradeep Kumar Kesarwani v. State of Uttar Pradesh & Anr.*³, comprehensively interpreted the scope of inherent powers of the High Courts under Section 482 of the Code of Criminal Procedure, 1973 ("**CrPC**") for Quashing of Criminal Proceedings, emphasizing that such powers must be exercised to prevent abuse of the process of law and to secure the ends of justice.

The Court reasoned that summoning a person to face criminal trial on the basis of frivolous or vexatious allegations has serious consequences and therefore warrants judicial scrutiny at the threshold. It held that the High Court, when faced with a plea for quashing, must look beyond the face of the complaint and evaluate the overall circumstances, attending materials, and whether the allegations are supported by credible evidence.

² *M/s. KKK Hydro Power Ltd. v. Himachal Pradesh State Electricity Board Ltd.*, (2025) INSC 856, C.A No. 3005 of 2015.

³ *Pradeep Kumar Kesarwani v. State of Uttar Pradesh & Anr.*, (2025) INSC 880, Criminal Appeal No. 3831 of 2025.



To guide the exercise of this discretion for Quashing of Criminal Proceedings, the Court formulated a four-step test:

- (i) *Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?*
- (ii) *Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*
- (iii) *Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?*
- (iv) *Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice.*

The Court observed that if all these criteria are satisfied, the High Court’s judicial conscience must persuade it to quash the proceedings. The Court underscored that this structured approach ensures that the extraordinary power under Section 482 is used judiciously to protect individuals from malicious prosecution while upholding the integrity of the judicial process.

Borrower’s Right to redeem secured asset under section 13(8) SARFESI Act Ceases upon publication of Auction Sale Notice

The Supreme Court in *M. Rajendran v. KPK Oils & Proteins India Pvt. Ltd.*^[1], interpreted Section 13(8) of the SARFAESI Act, 2002 (“**SARFAESI Act**”), and Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 (“**SI Rules**”), clarifying the scope of a borrower’s right of redemption and the nature of the notice of sale (“**Notice**”). The Court held that a borrower’s right to redeem the secured asset subsists only until the date of publication of the notice of sale and stands extinguished thereafter.

Interpreting the expression “publication” in Section 13(8) of SARFAESI Act, the Court held, while examining Rule 8(6), proviso to Rule 8(6), Rule 8(7) and Rule 9(1) of the SI Rules, that the Notices referred to in the said Rules are one composite Notice and the Rules does not contemplate separate notices to be issued. The Court clarifies that the Notices referred to in the proviso to Rule 8(6), Rule 8(7) and Rule 9(1) of the SI Rules are only the manners of effectuating the notice of sale required under the Rules namely, service on the borrower, publication in newspapers, affixation on the property, and uploading on the website of the secured creditor. The Court further clarified that the 30 day period stipulated under Rule 9(1) of the SI Rules must be computed from the date on which the secured creditor completes these requirements, and the borrower’s right of redemption stands extinguished upon expiry of this period. Furthermore, the Court clarified that the service of such notice on the Borrower and publication of the same can occur on the same day, so long as the 30-day gap is maintained before the sale.

The Court emphasized that no sale of a secured asset can take place without first informing the borrower of the intention to sell. Irrespective of the mode of sale whether by tender, auction, or private agreement, a notice of the intended sale must mandatorily be served on the borrower. A valid “notice of sale,” therefore, exists only when the secured creditor has given the notice in all forms and manner

^[1] *M. Rajendran v. KPK Oils & Proteins India Pvt. Ltd.*, (2025) SCC Online SC 2036



required under the SARFAESI Rules and maintained a thirty-day gap from the later of the dates of service, publication, or affixation until the date of sale. Only upon such compliance does the borrower's right to redeem the secured asset stand extinguished.

High Court

Foreign Decree may be executed simultaneously in India and the Reciprocating Territory under Section 44A of CPC.

The Delhi High Court in *BNP Paribas Suisse SA v. Ashok Kumar Goel & Ors.*⁴, examined the interpretation of Section 44A of the Code of Civil Procedure, 1908 ("CPC") and specifically addressed whether a foreign decree from a reciprocating territory can be executed simultaneously in India and the country where it was passed. The Court held that simultaneous execution is legally permissible, as neither the text of Section 44A nor its legislative intent imposes any requirement that execution in India must await the exhaustion or completion of proceedings in the foreign jurisdiction.

The Court reasoned that the expression "*as if it had been passed by the District Court*" in Section 44A (1) of CPC creates a statutory fiction that places the foreign decree on the same footing as a domestic decree for all purposes of execution. This assimilation, it explained, extends to the rights and remedies available to a decree-holder under Sections 38 and 39 CPC, including the right to seek concurrent enforcement wherever the judgment debtor possesses assets. The Court rejected the contention that allowing parallel execution would lead to double recovery, clarifying that the decree-holder is entitled to pursue execution in multiple jurisdictions until the decree is satisfied, subject to adjustment or credit for any amount already realized elsewhere.

It emphasized that Section 44A of CPC is an enabling and facilitative provision meant to simplify transnational enforcement within the framework of reciprocity, not to create procedural hurdles. Therefore, once a foreign decree from a notified reciprocating territory meets the statutory preconditions under Section 44A, its execution in India can proceed concurrently with proceedings abroad, ensuring effective realization of decrees and promoting certainty in international commercial transactions.

⁴ *BNP Paribas Suisse SA v. Ashok Kumar Goel & Ors*, 2025 DHC 8496.



This bulletin is only for general informational purposes, and nothing in this bulletin could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this bulletin, please feel free to contact the Dispute Resolution team at the contact listed below. © Luthra and Luthra Law Offices India 2025. All rights reserved.

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