

NEWSLETTER

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# Monthly Bulletin





02

*Doing Business in India*

03-05

*Featured Article*

06-09

*Legal & Regulatory Updates*

10

*Off Beat Section*

11

*Notable Recognitions*

# DOING BUSINESS IN INDIA

We are pleased to share our e-book titled

***"Doing Business in India"***



Please scan the **QR code** above or [Click Here](#) to download the e-book.

Alternatively, you may write to us at [info@clasislaw.com](mailto:info@clasislaw.com)

The book intends to give the readers an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.

# FEATURED ARTICLE



## ALIGNING SMALL COMPANY THRESHOLDS WITH MSME POLICY: INDIA'S PATH FROM INFORMALITY TO CORPORATISATION

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### Introduction

In recent years, the Government of India has consistently pursued a policy objective of formalising the business activity, strengthening corporate governance and facilitating scalable growth for businesses. Recent amendments to the Companies Act, 2013 and the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act") in thresholds of small companies represent two interlinked pillars of this strategy. The recent revision in the definition and threshold limits of a "small company" under the Companies Act, 2013, when viewed alongside the upward revision of MSME thresholds, reflects a clear and coordinated policy direction.

This article examines the alignment between these two legal frameworks, analyses how the government is encouraging unregistered and non-corporate MSMEs to enter the corporate ecosystem and highlights the regulatory advantages of the small company framework when compared with both non-corporate MSMEs and non-small companies.

### Evolution of the small company concept under the Companies Act, 2013

The concept of a small company was introduced under the Companies Act, 2013 to recognise that smaller corporate entities require differentiated regulatory treatment. The objective was to reduce compliance burden while preserving the discipline, transparency and legal certainty inherent in the corporate form. Over time, the government has periodically revised the capital and turnover thresholds to reflect economic growth and evolving business realities.

### Revised thresholds for small companies

The Ministry of Corporate Affairs ("MCA"), by notifying the Companies (*Specification of Definition Details*) Amendment Rules, 2025 on December 1, 2025, revised the thresholds for classification of a small company under the Companies Act, 2013.

Particulars	Earlier Thresholds (up to Nov 30, 2025)	Revised Thresholds (from Dec 1, 2025)
Paid-up Share Capital	Not exceeding INR 40 Million	Not exceeding INR 100 Million
Turnover	Not exceeding INR 400 Million	Not exceeding INR 1000 Million

# FEATURED ARTICLE

## Revision of MSME thresholds and policy rationale

Under the MSMED Act, the government has revised the MSME classification thresholds for through a Notification dated March 21, 2025, effective April 1, 2025, substantially widening MSME coverage.

Category of Enterprise	Earlier Thresholds (up to March 31, 2025)	Revised Thresholds (effective April 1, 2025)
Micro Enterprise	Investment up to INR 10 Million and Turnover up to INR 50 Million	Investment up to INR 25 Million and Turnover up to INR 100 Million
Small Enterprise	Investment up to INR 100 Million and Turnover up to INR 500 Million	Investment up to INR 250 Million and Turnover up to INR 1 Billion
Medium Enterprise	Investment up to INR 500 Million and Turnover up to INR 2500 Million	Investment up to INR 1250 Million and Turnover up to INR 5 Billion

The stated rationale behind these revisions is to encourage scale, remove the fear of losing benefits upon growth and improve access to institutional credit, incentives and government procurement opportunities.

Importantly, MSME registration applies across all forms of business entities, sole proprietorships, partnerships, limited liability partnerships, Hindu Undivided Family, co-operative societies and companies can all be registered as MSMEs. While this flexibility supports inclusion and early-stage formalisation, it also raises a structural question: if MSME benefits are available irrespective of legal form, what incentives enterprises to adopt the corporate structure?

The answer lies in the interaction between MSME incentives and the expanded small company framework.

## MSME registration as an entry point to formalisation

For a significant segment of unregistered businesses, particularly proprietorships and informal partnerships, MSME registration enables access to priority sector lending, collateral-free credit, interest subvention, market access support and government tenders.

However, MSME registration is primarily a policy and financial classification. It does not alter the underlying legal structure of the enterprise, nor does it address issues such as limited liability, ownership continuity, or governance stability. As enterprises grow in scale and complexity, these structural considerations assume greater importance.

## Corporatisation as a structural progression

The corporate form introduces legal and governance attributes that MSME registration alone does not. These includes: (i) limited liability protection for shareholders protects personal assets against business liabilities; (ii) separate legal personality enhances contractual certainty and credit relationships; (iii) access to institutional funding and equity infusion broadens growth capital options; and (iv) governance continuity through structured succession, board systems and legal clarity.

# FEATURED ARTICLE

## Regulatory incentives under the expanded small company framework

To encourage non-corporate MSMEs to transition to the corporate form, and to provide compliance relief to existing companies brought within the revised thresholds, the expanded definition of a small company enables eligible entities to avail, *inter alia*, the following statutory relaxations:

- i. Board Meetings:** Only two Board meetings are required in a financial year, instead of four.
- ii. Financial Statements:** Exempt from preparing a cash flow statement.
- iii. Annual Return:** A simplified annual return in Form MGT-7A, which can be signed by a director where there is no Company Secretary.
- iv. Board's Report:** An abridged Board's Report with reduced disclosure requirements is sufficient.
- v. Penalty Framework:** Penalties for certain defaults are reduced to one-half of those applicable to other companies, subject to prescribed limits.
- vi. Dematerialisation of Shares:** Not required to dematerialise shares and may continue to hold them in physical form.

These relaxations reduce compliance costs without diluting the core principles of transparency, accountability and legal certainty associated with the corporate form.

## Small companies as a regulatory bridge

Viewed holistically, the small company framework functions as a regulatory bridge between informal business structures and full-scale corporate governance. It enables enterprises to adopt the corporate form without immediate exposure to the compliance intensity applicable to larger companies.

For MSMEs operating in non-corporate forms, the regime presents a viable pathway to corporatisation while retaining MSME benefits. For existing companies which will be covered after the revision in definition, it allows growth without immediately increasing the compliance burden.

## Conclusion

Read together, the revisions under the MSMED Act and the Companies Act, 2013 reflect a deliberate and sequenced policy approach to enterprise growth encouraging formalisation through MSME registration and facilitating a gradual transition to corporatisation as scale and complexity increase. The expansion of the small company thresholds plays a critical role by reducing compliance barriers at the early and growth stages of the corporate form, while preserving a graduated governance framework. For non-corporate MSMEs, this creates a strong case for voluntary corporatisation without loss of MSME benefits, and for existing companies, it provides regulatory headroom during growth. Collectively, these reforms advance the government's objective of building a resilient, transparent, and investment-ready business ecosystem.

*Disclaimer: This publication is intended for informational purposes only and does not purport to cover every aspect of the laws, regulations, or procedures relating to India's path from informality to corporatisation. This publication should not be construed as legal, financial, or professional advice. Readers are encouraged to seek appropriate professional guidance before making any decisions.*

# LEGAL UPDATES

## UNILATERAL APPOINTMENT OF ARBITRATORS IN PRE-2015 AGREEMENTS – REVISITING SECTION 12(5) OF ARBITRATION AND CONCILIATION ACT, 1996

### Introduction

In a recent decision,[1] the Supreme Court laid down a significant reaffirmation of the post-2015 arbitration jurisprudence governing arbitrator neutrality, party autonomy, and statutory ineligibility under the Arbitration and Conciliation Act, 1996 (hereinafter referred as “**the Act**”). This judgment revisits the scope and effect of Section 12(5) of the Act and its proviso, particularly in the context of unilateral appointment of a sole arbitrator pursuant to a pre-amendment arbitration clause. In doing so, the Court clarifies the interplay between contractual consent, waiver by conduct, and the mandatory nature of statutory disqualifications introduced by the Arbitration and Conciliation (Amendment) Act, 2015. The ruling is doctrinally important as it reinforces neutrality in arbitral appointments while delineating the narrow contours within which waiver of ineligibility may operate.

### Facts of the Case

Bhadra International (India) Pvt. Ltd. and its consortium partners (hereinafter referred as “**the appellants**”), entered into licence agreements with the Airports Authority of India (hereinafter referred as “**AAI**”) in 2010 for providing ground handling services at various airports. The agreements contained an arbitration clause empowering the Chairman of AAI to appoint a sole arbitrator in the event of dispute.

The dispute arose between the parties in 2015, following which the appellants invoked arbitration and requested AAI to appoint an

arbitrator in terms of the contractual clause. The arbitral proceedings commenced after the coming into force of the 2015 Amendment, which introduced Section 12(5) and the Seventh Schedule to the Act. A sole arbitrator was appointed by AAI, and the first procedural order recorded that neither party objected to the appointment. The parties participated fully in the proceedings, including seeking extensions of time under Section 29A of the Act. Ultimately, the arbitrator rendered a ‘nil’ award rejecting the claims and counterclaims.

Aggrieved by the award, the appellants challenged the award under Section 34 of the Act. At a belated stage, by way of amendment, they raised an objection to the unilateral appointment of the arbitrator, contending that such appointment was rendered invalid by Section 12(5). The Single Judge of the Delhi High Court rejected this challenge, holding that the appellants had waived their right to object. The Division Bench affirmed this view in the appeal under Section 37, leading to the appeals before the Supreme Court.

### Observations of the Court

The Supreme Court undertook an extensive examination of the statutory scheme of Section 12, particularly sub-section (5), and its relationship with party autonomy and equal treatment under Section 18 of the Act. The Court reiterated that the 2015 Amendment crystallised the legislative intent to ensure independence and impartiality of arbitrators, especially at the stage of constitution of the arbitral tribunal.

# LEGAL UPDATES

The Court held that Section 12(5) operates notwithstanding any prior agreement to the contrary and renders ineligible any person whose relationship with a party or its counsel falls within the Seventh Schedule. Further, the Court reiterated that such ineligibility is not merely procedural but goes to the root of the arbitrator's jurisdiction, resulting in a *de jure* inability to act. Placing reliance on the precedence laid down in TRF Ltd.,<sup>[2]</sup> Bharat Broadband,<sup>[3]</sup> and Perkins Eastman,<sup>[4]</sup> the Court reaffirmed that a person who is himself ineligible cannot appoint or nominate another arbitrator, as the appointment process itself must be free from unilateral dominance and justifiable doubt.

On the issue of waiver, the Court adopted a strict construction of the proviso to Section 12(5). It held that waiver of statutory ineligibility can occur only through an "express agreement in writing" executed after disputes have arisen. Mere participation in arbitral proceedings, filing of pleadings, seeking extensions of time, or silence at the initial stages does not satisfy this statutory threshold. The Court clarified that consent recorded in a procedural order, does not render a conscious and explicit written waiver by both parties and thereby cannot be elevated to the status of an express agreement under the proviso.

The Court further observed that an objection to the ineligibility of an arbitrator may be raised even at the stage of proceedings under Section 34, given that such ineligibility strikes at the jurisdictional competence of the tribunal. The doctrine of waiver by conduct or acquiescence cannot override a mandatory statutory disqualification grounded in public policy considerations.

## Conclusion

This judgment reinforces the centrality of neutrality and fairness in arbitral appointments under Indian law. By strictly enforcing Section 12(5) and narrowly construing its proviso, the Supreme Court has sent a clear signal that statutory ineligibility cannot be diluted through implied consent or procedural acquiescence. The ruling underscores that party autonomy in arbitration is not absolute and must yield to mandatory safeguards designed to preserve the legitimacy of the arbitral process. It also serves as a cautionary precedent for public authorities and contracting parties relying on unilateral appointment clauses drafted prior to the 2015 Amendment. This judgment contributes to doctrinal clarity by reaffirming that fairness in arbitration begins at the stage of tribunal constitution and cannot be compromised by contractual convenience or belated waiver arguments.

## FOOTNOTES:

- [1] Bhadra International (India) Pvt. Ltd. v. Airports Authority of India [2026 INSC 6].
- [2] TRF Ltd. v. Energo Engineering Projects Ltd. [(2017) 8 SCC 377].
- [3] Bharat Broadband Network Ltd. v. United Telecoms Ltd. [(2019) 5 SCC 755].
- [4] Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd. [(2020) 20 SCC 760].

# COMPILED REGULATORY UPDATES

- The Securities and Exchange Board of India (“**SEBI**”) notified the SEBI (Share Based Employee Benefits and Sweat Equity) (Second Amendment) Regulations, 2025 which shall come into force after 30 days of publication in the official gazette. The key regulatory change in this amendment is the revision of the definition of “valuer” in Regulation 2 to align it with Section 247 of the Companies Act, 2013, mandating that valuations for employee share-based benefits be carried out only by independent registered valuers and phasing out merchant bankers from such valuation roles.
- SEBI notified an amendment to SEBI (Infrastructure Investment Trusts) Regulations, 2014, which provides the regulatory framework for registration, governance, disclosures, trusteeship and listing of Infrastructure Investment Trusts (“**InvITs**”) in India. The amendment refines investor classification norms for InvITs by revising the definition of “institutional investor” to require family trusts and SEBI registered intermediaries to have a net worth of over INR 500 crore, and by aligning the “qualified institutional buyer” definition with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 for uniformity.
- SEBI, vide its circular dated 18 December 2025, has modified the conditions to provide for reduction in the denomination of debt securities and non-convertible redeemable preference shares and accordingly, amendments were made in Chapter V (Denomination of issuance and trading of Non-Convertible Securities) of the Master Circular dated October 15, 2025. The amendment expands the scope of eligible instruments by allowing zero-coupon debt securities, having a fixed maturity and no structured obligations, to be issued at a reduced denomination of INR 10,000, in addition to interest-bearing instruments. The circular is aimed at enhancing retail participation and deepening the corporate debt market.
- The Insolvency and Bankruptcy Board of India (“**IBBI**”), vide Circular No. IBBI/CIRP/89/2025 dated 18 December, 2025, has introduced a modification utility system on its electronic portal allowing Insolvency Professionals to correct or update CIRP e-Forms already submitted, provided such modifications are authenticated via OTP and additionally no fee will apply if the form was initially filed and modified before its due date. Further, in accordance with 40B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, effective for forms due, the circular also notifies the commencement of the levy of a fee of INR 500 per form per calendar month of delay for CIRP forms submitted after the due date of 31 December, 2025.
- SEBI notified the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2025, amending certain provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The amendments introduce the term “valuer” into the regulatory framework and align valuation-related requirements under the Takeover Regulations with the valuation standards prescribed under Section 247 of the Companies Act, 2013. As a result, the

# COMPILED REGULATORY UPDATES

role of independent registered valuers is strengthened in the context of determining pricing parameters for open offers. Key amendments introduced under the notification include:

- Insertion of a new definition under Regulation 2 to define the term “valuer” with reference to Section 247 of the Companies Act, 2013.
- Replacement of references to “the acquirer and the manager to the open offer” with “an independent registered valuer” under Regulation 8 and Regulation 9.
- Introduction of transition provisions permitting the acquirer and the manager to the open offer, or independent merchant banker/chartered accountant (as applicable), to complete ongoing valuation assignments within nine months from the commencement of the amended regulations.
- Substitution of Regulation 8(16) to provide that SEBI may require valuation of shares by an independent registered valuer at the cost of the acquirer.
- Alignment of valuation eligibility norms by replacing earlier eligible entities (such as chartered accountants with ten years' experience) with registered valuers.

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# Republic Day 2026

Republic Day, observed on **26 January** each year, marks a defining moment in India's history, the adoption of the Constitution of India in 1950. As the nation celebrates its **77th Republic Day** in 2026, the occasion serves as a powerful reminder of the ideals and values that form the foundation of the Indian Republic. The Constitution stands as a testament to India's commitment to democracy, justice, liberty, equality, and fraternity. Carefully crafted after years of deliberation, it reflects the aspirations of a diverse nation and provides a robust framework for governance, rights, and responsibilities. More than a legal document, the Constitution is a living instrument that continues to guide the country through social, economic, and political change.

**History** - India became a republic on 26 January 1950, a date chosen to honour the Purna Swaraj Declaration of 1930, which called for complete independence from British rule. On this day, the Constitution of India, the world's longest written constitution came into force. Drafted by the Constituent Assembly under the leadership of Dr. B. R. Ambedkar, it laid the foundation for a democratic republic governed by the rule of law and constitutional values. The swearing in of Dr. Rajendra Prasad as India's first President marked the formal birth of the Indian Republic and the beginning of India's constitutional journey.

**Traditions** - Republic Day in New Delhi is celebrated with grandeur, featuring a spectacular parade at Kartavya Path (previously Rajpath), presided over by the President of India. The event includes a military display showcasing India's defence capabilities, cultural pageantry representing India's states and union territories, and awards honouring brave individuals with Gallantry and Padma Awards. Armed forces personnel march in an elaborate display of military might, while the parade, starting from Raisina Hill near Rashtrapati Bhavan, passes through iconic landmarks like India Gate and ends at the historic Red Fort. The celebration symbolizes India's unity in diversity and rich cultural heritage. Republic Day also includes an international dimension, with a chief guest from a friendly nation each year, reflecting India's commitment to global diplomacy. For 2026, President of the European Commission, Ursula Von Der Leyen and European Council, President Antonio Costa will be the chief guests. Republic Day is more than a celebration; it's a reaffirmation of India's democratic values and a call to honour the principles enshrined in its Constitution.

# Notable Recognitions & Accolades

