NEWSLETTER

NOVEMBER, 2025

CLASIS LAW

Monthly Bulletin

TOLSTOY HOUSE, 4TH FLOOR, TOLSTOY MARG,
NEW DELHI – 110001, INDIA TEL : +91 11 4213 0000

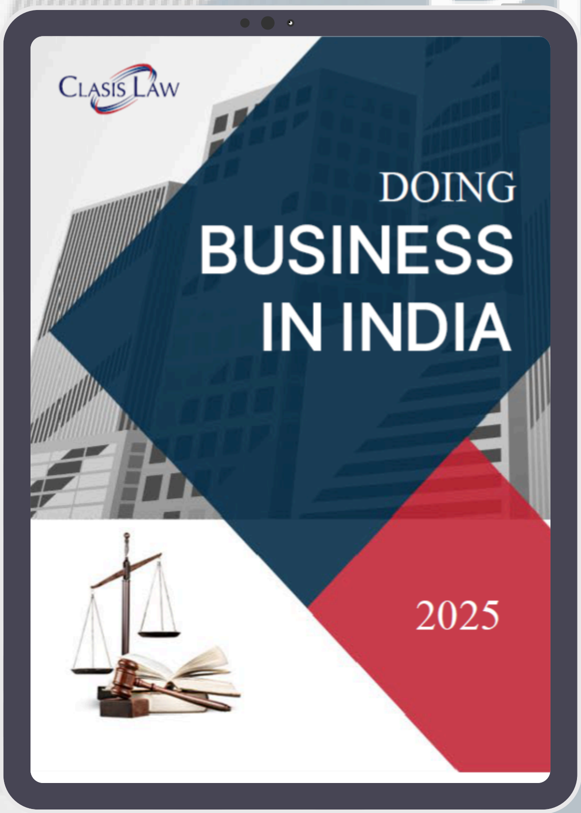
Clasis Law

Table of Contents

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

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

GHAR WAPSI – THE GROWING TREND OF REVERSE FLIPPING FOR INDIAN STARTUPS

Written By
Poonam Upreti, Senior Associate
Ridam Gupta, Associate

Flipping, or externalization, is a process of transferring the entire ownership of an Indian Company to an overseas entity, accompanied by a transfer of intellectual property rights and data owned by the Indian company. Common destinations for this move include Singapore, the Cayman Islands, the United States, and the United Kingdom. This strategy enables companies to capitalize on favourable tax policies, access a broader pool of international investors, expand into larger markets and benefit from more favourable regulatory environments.

Recently, however, there has been a shift toward reverse flipping, where overseas start-ups are shifting their domicile to India. Companies are now attracted to India for various reasons such as India's favourable economic policies (tax breaks, funding assistance), expanding domestic market, growing investor confidence in the country's start-up ecosystem, an expanding digital infrastructure and a large consumer market. Additionally, lower regulatory compliance and growing investor interest have made India a more appealing place for business. This trend shows how companies are leveraging India's improving business environment for better growth and financial opportunities.

Ways of Reverse Flipping:

There are two main methods for reverse flipping (i) Inbound Merger and (ii) Share Swap Arrangement.

1. **Inbound Merger:** In this method, a [i]foreign company merges with its wholly-owned subsidiary situated in India, with the Indian wholly owned subsidiary absorbing the foreign company's assets and operations. The shareholders of the foreign company receive shares in the Indian company. This approach is often straightforward but requires careful legal and regulatory management.
2. **Share Swap Arrangement:** This involves shareholders of the foreign company swapping their shares for shares in the Indian company. It offers flexibility but may involve complex negotiations and regulations around valuation and fairness of the exchange.

Regulatory Considerations for Reverse Flipping:

To carry out cross-border mergers and acquisitions (M&A), companies are required to follow the guidelines of Section 234 of the Companies Act, 2013, and other related rules. For an inbound merger, prior approval from the Reserve Bank of India (**"RBI"**) is required, as well as compliance with sections 230 to 232 of the Companies Act, 2013. The process also involves approval from the company's board of directors, members, and creditors, along with a final approval from the National Company Law Tribunal (**"NCLT"**). Additionally, the foreign company is also required to submit a declaration in form CAA-16, if the foreign company is from a country sharing a land border with India.

In share swap arrangement, the shareholders of the foreign entity transfer their shares in the Indian company. In exchange, the Indian entity issues shares to the shareholders of the overseas holding company and the post the swap, the Overseas holding is liquidated.

Both methods of reverse flipping come with challenges. The share swap arrangement can lead to substantial tax liabilities. Inbound mergers can face significant delays due to NCLT approval backlogs, making the process longer and more expensive. The merger of Pine Labs' Singapore entity into its Indian counterpart, got complicated due to multiple regulatory approvals across different countries.

To promote the concept of reverse flipping, recently, the Ministry of Corporate Affairs (**"MCA"**) amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. This change introduced a new sub-rule for inbound mergers, requiring both the foreign holding company and its wholly owned Indian subsidiary to obtain prior approval from the RBI. The Indian subsidiary must then file an application with the Central Government (**"Regional Director"**) for restructuring under Section 233 of the Act instead of submitting application under section 230-232 of the Act where the application is entertained and finalised by NCLT. This amendment aims to simplify the process and encourage reverse flipping by offering a faster approval route.

The Economic Survey of 2022-23 highlighted that the ease of accessing capital, changes in regulations around round-tripping, and India's maturing capital markets have slowed down traditional flipping and encouraged reverse flipping. To further promote reverse flipping, the survey suggested simplifying processes for startups, reducing taxation on employee stock options (ESOPs), and streamlining tax procedures to reduce legal uncertainty.

In line with these recommendations, the government introduced measures such as the removal of Angel Tax, changes to Long-Term Capital Gains tax, and reduced corporate tax rates. The new regulatory amendments are expected to facilitate reverse flipping by speeding up approvals for inbound mergers, particularly for small companies and holding-subsidiary structures. This simplified approach removes the need for NCLT involvement and only requires approval from the Regional Directors.

Conclusion:

The government's efforts to streamline regulations and encourage investment in India are fostering the trend of reverse flipping. By simplifying the approval process and removing certain regulatory hurdles, India is positioning itself as a more attractive place for companies to relocate their headquarters, ultimately helping them grow and access greater financial opportunities.

[1] As per the explanation provided under section 234 of the Companies Act, 2013, a foreign company means any company or body corporate incorporated outside India whether having a place of business in India or not.

PROTECTION UNDER MORATORIUM INAPPLICABLE TO TERMINATION OF CONTRACTS ARISING INDEPENDENTLY OF INSOLVENCY

Introduction

In a recent decision[1], the National Company Law Appellate Tribunal (hereinafter referred as **"NCLAT"**) revisited the contours of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as **"IBC"**), and the jurisdictional reach of the Adjudicating Authority under Section 60(5)(c).

Facts of the Case

Dugal Associates Private Limited (hereinafter referred as **"Corporate Debtor/CD"**) entered into a contract with Bhadohi Industrial Development Authority (hereinafter referred as **"BIDA"**) on October 7, 2016 for execution of building construction works valued at approximately ₹6.41 crores. The project was required to be completed by October 2017. However, continuous delays prompted BIDA to issue multiple warnings, show-cause notices, and extensions between 2017 and 2019. Further inspections by the Public Works Department and IIT-BHU highlighted deficiencies in execution of the construction works under the contract, leading to sustained dissatisfaction on BIDA's part. Consequently, on 28.01.2020 BIDA terminated the contract, blacklisted the CD, and forfeited the security deposit, EMD, retention amounts, and other dues. During the same time, a Section 9 insolvency petition was filed by a third-party operational creditor was admitted by the National Company Law Tribunal (hereinafter referred as **"NCLT"**) on 11.12.2019, triggering the moratorium under Section 14.

The issue came to light when the Liquidator of the CD (hereinafter referred as **"Appellant"**) challenged the order of the NCLT upholding the termination of the construction contract and the blacklisting of the CD by BIDA arguing that the NCLT failed to provide cogent reasons for upholding the termination. Further, the Appellant also alleged that approximately 90% of the physical work had been completed on the project and the termination and blacklisting were directly triggered by the insolvency proceedings, which is in violation of the moratorium imposed under Section 14. Consequently, the blacklisting prevented potential resolution applicants from submitting plans, ultimately leading to liquidation of the CD.

Observations of the Court

The NCLAT noted that BIDA had, well before the commencement of CIRP, issued repeated notices, extensions, and warnings to the Corporate Debtor regarding delays and deficiencies. The termination therefore represented the culmination of a prolonged contractual dispute and was not motivated by the insolvency of the CD. Further, the NCLAT placed reliance on Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain,[2] reiterating that moratorium does not prevent termination of contracts based on genuine, pre-insolvency breaches. Termination can be restrained only if the contract is central to CIRP and its loss would cause corporate death of the debtor, however, such circumstances were not present in the case at hand.

Further, the NCLAT also stated that moratorium under Section 14 is applicable for the continuity of essential goods/services provided to the CD. On the contrary, in the present case, the CD was a service provider, not a recipient of services. Therefore, the termination of the construction contract did not fall within the ambit of Section 14.

The NCLAT also distinguished the present case from Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta[3] on facts, emphasizing that a termination is hit by Section 14 only if it is triggered by the insolvency itself. The NCLT has power to intervene in only such instances where termination is solely on grounds of insolvency and the contract is indispensable to CIRP. Further, the NCLAT also reiterated the ruling laid down in Gujarat Urja, and cautioned the NCLT to avoid reviving the expansive protective regime akin to Section 22 of SICA.

The NCLAT while upholding the NCLT's decision concurred that the NCLT lacked jurisdiction to modify or reverse the termination. Since the termination was validly grounded in contractual performance issues, the NCLT could not assume the role of a civil court to examine the merits of contractual termination. Consequently, the appeal was dismissed as devoid of merit.

Conclusion

The NCLAT's decision reaffirms the narrow scope of the moratorium under Section 14 and the limited jurisdiction of the NCLT under Section 60(5)(c). The NCLAT's analysis reiterates that insolvency proceedings cannot be used as a shield against consequences of pre-existing contractual breaches. The termination of the contract by BIDA was held to be a legitimate exercise of its contractual rights, based on long-standing performance failures, and not motivated by the CIRP. This ruling reinforces jurisprudential clarity by drawing a sharp boundary between the protection under moratorium and ordinary contractual consequences, thereby maintaining the delicate balance between insolvency law and contractual obligations.

FOOTNOTES :

[1] Pradeep Upadhyay (Liquidator of Dugal Associates Private Limited) vs. Bhadohi Industrial Development Authority, Company Appeal (AT) (Insolvency) No. 1152 of 2025.
[2] Civil Appeal No. 3045 of 2020.
[3] Civil Appeal No. 9241 of 2019; (2021) 7 SCC 209; 2021 SCC ONLINE SC 194.

1. IFSCA seeks public feedback on regulatory framework for differential distribution in venture capital and restricted schemes to foster blended finance

The International Financial Services Centres Authority has issued Consultation paper on Regulatory Framework for differential distribution in Restricted Schemes and Venture Capital Schemes to facilitate blended finance and other fund structures.

The consultation paper seeks public comments on a proposal to enable blended finance and other innovative fund structures in the IFSC(s). The proposal involves allowing differential distribution in Venture Capital Schemes (Part A) and Restricted Schemes (Part B) under the IFSCA (Fund Management) Regulations, 2025. This initiative aims to enhance flexibility in fund management and attract diverse investment models, fostering growth and innovation in the financial ecosystem. Stakeholders and public are invited to provide their insights to inform the development of the regulatory framework.

2. RBI Notification on Investment in Corporate Debt Securities by Persons Resident Outside India

On October 3, 2025, the RBI issued the notification on Investment in Corporate Debt Securities by Persons Resident Outside India ("PROI") through Special Rupee Vostro Accounts ("SRVAs"). The RBI has amended the framework governing the investment of rupee surplus balances held in SRVAs by PROI. In addition to Central Government securities (including Treasury Bills), SRVA balances may now be invested in non-convertible debentures/bonds and commercial papers issued by Indian companies. Accordingly, the Master Direction – Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025 ("Master Direction") has been updated.

3. Draft External Commercial Borrowing Framework by RBI

The RBI issued the Draft External Commercial Borrowing Framework under Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, proposing amendments to the existing ECB framework.

Salient features of proposed regulations are as follow:

a. The borrowing limits are proposed to be linked to a borrower's financial strength and ECB are proposed to be raised at market determined interest rates.
b. The end-use restrictions and Minimum Average Maturity requirements are proposed to be simplified.
c. The borrower and lender base eligible for ECB transactions is being expanded to enhance opportunities of credit flow for productive commercial use.

Reporting requirements are being simplified to ease compliance obligations.

4. Draft "Foreign Exchange Management (Establishment in India of a branch or office) Regulations, 2025

RBI issued the Draft "Foreign Exchange Management (Establishment in India of a branch or office) Regulations, 2025." Salient features of proposed regulations are as follow :

a. The eligibility criteria for establishment of a place of business in India, are proposed to be relaxed.
b. The draft proposals offer greater operational freedom by shifting from prescriptive to a principle-based framework, which is expected to result in greater operational freedom.
c. The process for closure of non-compliant and inactive branch/office, are proposed to be simplified.

5. Draft "Reserve Bank of India (Lending to Related Parties) Directions, 2025

RBI has issued the Draft "Reserve Bank of India (Lending to Related Parties) Directions, 2025". The draft Directions apply to various regulated entities ("REs") including Commercial Bank, Small Finance Banks, and Non-Banking Financial Companies, among others.

The key features of the proposed framework include:

a. Introduction of scale-based materiality thresholds beyond which lending to related parties of a RE shall need approval of the Board or its Committee.
b. Exclusion of Independent Directors of other banks from the scope of 'related persons' of a RE for the purpose of these Directions.
c. Principle based exemption from Section 20 (1) (b) of the Banking Regulation Act, 1949 for certain types of loans.
d. Suitable supervisory reporting and disclosure requirements by REs on transactions with related parties.

6. Amendment in Securities Exchange Board of India (Issue of Capital and Disclosure Requirements), 2025

The Securities and Exchange Board of India ("SEBI") on October 31, 2025, has issued the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2025 amending SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations"). The regulations introduce specific changes to the allocation norms for anchor investors in public issues, as detailed in Schedule XIII, Part A, paragraph (10) of ICDR Regulations.

Key changes:

a. Sub-paragraph (c)(I) of paragraph (10) of Part A of Schedule XIII has been replaced. For main board public issues via book building, up to ₹ 250 crore of allocation to anchor investors the minimum number of investors is 2 and maximum is 15, each with a minimum allotment of ₹ 5 crore per investor; for allocations above ₹ 250 crore, a minimum of 5 and a maximum of 15 such investors are permitted for the first ₹ 250 crore and in addition 15 such investors for every additional ₹ 250 crore or part thereof, subject to a minimum allotment of ₹ 5 crore per investor.

b. Sub-paragraph (d) of paragraph (10) of Part A of Schedule XIII has been substituted to provide that 40 per cent of the anchor investor portion (within the limits specified in sub-paragraph (b)) shall be reserved as follows: (i) 33.33 per cent for domestic mutual funds; and (ii) 6.67 per cent for life insurance companies and pension funds. Any under-subscription in the reserved category in clause (ii) may be allocated to domestic mutual funds.

INTERNATIONAL DAY FOR PREVENTING THE EXPLOITATION OF THE ENVIRONMENT IN WAR AND ARMED CONFLICT

The international community observes the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict, each year on 6 November, a moment to recognize a critical yet overlooked dimension of global security: the environment as both a silent casualty and a potential catalyst of conflict. While human suffering typically takes centre stage in discussions of war, the environmental toll, from scorched forests and polluted waterways to devastated ecosystems, has long-term consequences that extend far beyond the battlefield.

Environmental destruction in conflict zones undermines livelihoods, destabilizes communities, and can accelerate resource scarcity, increasing the risk of further violence. Contaminated soil, landmines, and hazardous remnants of war impede reconstruction and pose ongoing threats to public health. In the recent years, climate change has further complicated this landscape, as competition over dwindling natural resources increasingly contributes to tensions in vulnerable regions.

This day highlights the evolving intersection of international humanitarian law, human rights law, and environmental protection. Existing frameworks, such as the Geneva Conventions and various environmental treaties, address certain aspects of wartime environmental protection, yet significant gaps remain. Accountability for environmental damage is difficult to enforce, and affected communities may have limited avenues for redress.

As we mark this important day, it becomes clear that safeguarding the environment during conflict is not only an ecological concern but a legal and humanitarian imperative. Strengthening global legal frameworks and accountability mechanisms is essential to ensuring that the environment is protected even in the most challenging circumstances.

Notable Recognitions & Accolades

LEADING FIRM
Legal500
ASIA PACIFIC
2025

ALB
INDIA
LAW AWARDS
2023
FINALIST
THOMSON REUTERS

INDIA BUSINESS LAW JOURNAL
AWARD WINNING LAW FIRM
2024
LAW ASIA

LEXOLOGY
Legal Influencer
Q2 | 2022

NOTABLE FIRM
BENCHMARK LITIGATION

asialaw
2023-24
OUTSTANDING FIRM

Forbes INDIA
Present
LEGAL POWERLIST 2023
in association with
legitquest
Information • Insight • Intelligence
ENLISTED AS THE
TOP LAW FIRM
(ABOVE 10 YEARS EXP.)