

NEWSLETTER

FEBRUARY, 2026



# Monthly Bulletin



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



**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



## WHEN POSH COMPLAINTS FAIL: BOMBAY HIGH COURT CLARIFIES LIMITS OF POSH COMMITTEE JURISDICTION AND DISCIPLINARY POWERS

Written By :  
Vikas Khurana, Associate Partner

In *Dr. Mohinder Kumar v. The Chairman, NABARD Head Office & Anr.* (Bombay High Court, 12 January 2026)[1], the Court has delivered an important ruling delineating the statutory limits of Central Complaints Committees (**POSH Committee**) constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**").

The ruling underscores two fundamental principles: (i) a POSH Committee has a narrowly defined jurisdiction confined to sexual harassment, and (ii) disciplinary authorities cannot mechanically impose penalties solely on the basis of committee observations once the committee itself records that no sexual harassment is made out.

### 1. Background

Dr. Mohinder Kumar, an Assistant General Manager (later retired) of NABARD, was posted in the Department of Economic Analysis and Research (DEAR), Mumbai. Over several years, he raised internal complaints alleging workplace disturbance caused by certain colleagues during office hours. In November 2019, to substantiate his grievance, he recorded short videos of group conversations among staff members and forwarded them to senior management.

Subsequently, female staff members submitted complaints alleging discomfort and harassment arising from the act of video recording. These complaints were referred to the POSH Committee under the POSH Act. Importantly, the complaints did not allege sexual advances, sexually coloured remarks, demands for sexual favours, or any conduct of an explicitly sexual nature.

After inquiry, the POSH Committee categorically held that the complaint did not amount to "sexual harassment" under the POSH Act. However, the committee nevertheless recommended that the employer take suitable disciplinary action under the NABARD (Staff) Rules, 1982, treating the conduct as objectionable from a disciplinary standpoint. Acting solely on this recommendation, the competent authority imposed a minor penalty of "Reprimand". Consequently, a petition was filed before the Bombay High Court to challenge the recommendation of the POSH Committee and action taken by the disciplinary authority.

### 2. Issues Before the Court

(a) Whether a POSH Committee under the POSH Act has jurisdiction to recommend disciplinary action once it concludes that allegations of sexual harassment are not proved; and

# FEATURED ARTICLE

(b) Whether a disciplinary authority can impose a penalty solely on the basis of such a recommendation, without independent application of mind or initiation of separate disciplinary proceedings.

## 3. Statutory Framework

The Court examined the scheme of the POSH Act, particularly Section 13. Section 13(2) expressly provides that where the POSH Committee concludes that allegations against the respondent are not proved, it *shall recommend that no action is required to be taken in the matter*. The Court also considered Rule 45A of the NABARD (Staff) Rules, 1982, which mirrors the definition of sexual harassment under the POSH Act and reinforces that disciplinary consequences under service rules must be rooted in legally sustainable findings.

## 4. Key Findings and Reasoning

The High Court held that:

(a) A POSH Committee constituted under the POSH Act is a statutory body with limited jurisdiction, confined strictly to examining whether alleged conduct amounts to sexual harassment as defined under the Act.

(b) Once the POSH Committee records a finding that sexual harassment is not proved, its statutory role comes to an end. It cannot travel beyond Section 13(2) to recommend disciplinary action for general misconduct or breach of workplace discipline.

(c) Any recommendation by the Committee to impose punishment for conduct unrelated to sexual harassment is ultra vires the POSH Act.

(d) The disciplinary authority committed a serious error in imposing a penalty of “Reprimand” solely on the basis of the Committee’s recommendation, without issuing a show-cause notice, conducting an independent inquiry, or applying its own mind.

The Court emphasised that such mechanical reliance amounts to abdication of statutory responsibility by the disciplinary authority.

## 5. Decision

The Bombay High Court:

(a) Quashed the recommendation of the Committee dated 30 June 2020; and

(b) Set aside the penalty order dated 24 September 2020 imposing the punishment of “Reprimand”.

## 6. Implications

This judgment carries significant implications for employers across sectors:

**(a) Clear demarcation of roles:** POSH Committees must confine themselves strictly to sexual harassment inquiries and outcomes contemplated under the Act.

# FEATURED ARTICLE

**(b) No backdoor discipline via POSH:** Employers cannot use POSH proceedings as a proxy to address general misconduct or workplace discipline when sexual harassment is not established.

**(c) Independent disciplinary process mandatory:** If an employer believes that certain conduct (though not sexual harassment) warrants disciplinary action, it must initiate a separate process under applicable service rules, ensuring due process, notice, and independent evaluation.

## 7. Conclusion

The decision in *Dr. Mohinder Kumar v. The Chairman, NABARD Head Office & Anr.* is a timely and authoritative reminder that the POSH Act is a special legislation with a focused objective. While ensuring a safe and dignified workplace for women remains paramount, the statutory safeguards cannot be diluted or expanded beyond legislative intent.

The judgment reinforces the importance of procedural discipline, jurisdictional clarity, and balanced compliance ensuring that POSH mechanisms are neither trivialised nor misused, and that disciplinary powers are exercised strictly in accordance with law.

CLASIS LAW  
\*\*\*\*\*

## FOOTNOTES :

[1] WP No. 1635 of 2021, 2026: BHC-OS :1445-DB (Bombay High Court Jan. 12, 2026)

*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

## ARBITRAL CLAIMS REMAIN MAINTAINABLE DESPITE ABSENCE OF SECTION 21 NOTICE UNDER THE ARBITRATION AND CONCILIATION ACT, 1996

### Introduction

In *M/s Bhagheeratha Engineering Ltd. v. State of Kerala*[1], the Supreme Court of India addressed significant questions concerning the arbitral tribunal's jurisdiction and the procedural requirement of issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 ("A&C Act"). The judgment holds significant importance in arbitration jurisprudence as it addresses whether a party can be barred from raising disputes before an arbitral tribunal merely due to the absence of a separate notice for invoking arbitration, especially in circumstances where arbitration proceedings have already been initiated by the opposing party.

### Brief Facts of the Case

The dispute arose out of four road maintenance contracts awarded to M/s Bhagheeratha Engineering Ltd ("Appellant") by State of Kerala ("Respondent") under the Kerala State Transport Project through competitive bidding, which incorporated a multi-tier dispute resolution mechanism requiring disputes to be first examined by the Engineer, thereafter referred to an Adjudicator, and subsequently referred to arbitration under the Arbitration and Conciliation Act, 1996. During the execution of the contracts, certain disputes arose between the parties relating to price adjustment for bitumen and POL, entitlement to escalation during the extended contract period, determination of price of bitumen for calculation purposes, and payment of interest for delayed payments. The Appellant referred these disputes to the Adjudicator, who partly allowed the claims by deciding two disputes in favour of the Appellant and rejecting the remaining two disputes.

The Respondent-State expressed dissatisfaction with the Adjudicator's decision and indicated its intention to refer one of the disputes to arbitration by appointing its arbitrator. Although the Appellant initially objected to the invocation of arbitration on the ground that it was beyond the contractual timeline, it subsequently nominated its arbitrator while reserving its rights to raise additional disputes before the arbitral tribunal. The Respondent also objected to the appellant being allowed to file the claim petition with regard to all the issues which, according to the respondent, led to enlargement of the jurisdiction. The Tribunal was constituted and, after adjudicating the application under Section 16 of the Arbitration Act, it was held that Tribunal has the jurisdiction to consider all disputes arising out of the contract. By award dated 29 June 2006, the Tribunal allowed all four disputes in favour of the Appellant and granted monetary relief along with interest. Being aggrieved by Arbitrators award, the Respondent challenged the award. The award was set aside by the District Court under Section 34, and the High Court upheld the decision primarily on the ground that the Appellant had not independently issued a notice under Section 21 of the Arbitration Act to raise additional disputes, leading to the present appeal before the Supreme Court.

# LEGAL UPDATES

## Observations of the Court

The Supreme Court held that the High Court had erred in restricting the scope of arbitration to a single dispute. The Court observed that the arbitration clause in the contract was broadly worded and covered all disputes arising out of or connected with the agreement. It further noted that the Respondent itself had sought to invalidate the entire Adjudicator's decision before the arbitral tribunal and had withheld payments citing pendency of arbitration. Such conduct, according to the Court, demonstrated that the respondent intended to reopen all disputes and could not subsequently limit the jurisdiction of the arbitral tribunal. The Court reiterated that a party cannot be permitted to take advantage of its own procedural lapses and that conduct of the parties can result in waiver of procedural requirements.

The Court further clarified the scope and object of Section 21 of the Arbitration and Conciliation Act, holding that the provision is primarily procedural and intended to determine the commencement of arbitration proceedings for limitation purposes. The Court emphasised that issuance of a separate notice under Section 21 by each party is not mandatory where arbitration proceedings have already been initiated and the arbitral tribunal has been validly constituted. It was further held that unless the arbitration agreement expressly restricts adjudication to specifically referred disputes, the arbitral tribunal is empowered to adjudicate all claims and counterclaims arising from the contractual relationship. The Supreme Court therefore upheld the arbitral award and reaffirmed the pro-arbitration approach aimed at ensuring comprehensive and effective dispute resolution.

## Conclusion

The Supreme Court allowed the appeal and set aside the judgment of the Kerala High Court, thereby upholding the arbitral award in its entirety. The judgment reinforces the pro-arbitration approach adopted by Indian courts and clarifies that arbitral jurisdiction cannot be curtailed on technical procedural grounds, particularly where arbitration has been validly invoked and the arbitration clause is broadly framed. The decision further affirms that the issuance of a notice under Section 21 of the A&C Act is primarily procedural and relates to determination of limitation, and that absence of such notice does not automatically bar a party from raising claims or counterclaims before an arbitral tribunal. The ruling significantly strengthens the principle that arbitration is intended to provide an efficient and comprehensive dispute resolution mechanism and that party conduct and contractual intent must be given due weight while determining the scope of arbitral proceedings.

\*\*\*\*\*

## FOOTNOTES :

[1] *M/s Bhagheeratha Engineering Ltd. v. State of Kerala* [Civil Appeal No. 39 of 2026]

# COMPILED REGULATORY UPDATES

1. The Reserve Bank of India (“**RBI**”) has notified the Foreign Exchange Management (Guarantees) Regulations, 2026, in supersession of the Foreign Exchange Management (Guarantees) Regulations, 2000. The Regulations govern guarantees involving persons resident in India and persons resident outside India and prohibit a person resident in India from being a party, as principal debtor, surety, or creditor, to a guarantee involving a non-resident except in accordance with the Regulations or with the permission of the RBI.
  - The Regulations provide exemptions for guarantees undertaken by branches of authorised dealer banks outside India or in an IFSC, irrevocable payment commitments issued by authorised dealers acting as custodian banks for registered foreign portfolio investors, and guarantees given in accordance with the Foreign Exchange Management (Overseas Investment) Regulations, 2022. A person resident in India may act as surety, principal debtor, or obtain guarantees in its favour subject to prescribed conditions. The Regulations prescribe reporting requirements for guarantees and subsequent changes thereto and provide for a late submission fee in case of delayed reporting.
2. On January 16, 2026, the Reserve Bank of India (“**RBI**”) issued press release announcing the issuance of Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026 and Directions on Export and Import of Goods and Services, which will come into force from October 01, 2026. The new regulations are principle-based and aimed at promoting ease of doing business, particularly for small exporters and importers, and to enable authorised dealers to provide quicker and more efficient services to their customers.
3. On January 16, 2026, SEBI issued press release announcing the issuance of circulars on the Single Window Automatic and Generalised Access for Trusted Foreign Investors (“**SWAGAT-FI**”) framework for Foreign Portfolio Investors (“**FPIs**”) and Foreign Venture Capital Investors (“**FVCIs**”). Under the SWAGAT-FI framework, SEBI has simplified compliance for SEBI-registered FPIs and FVCIs by introducing a unified registration process and reducing repeated documentation and compliance requirements. These benefits are available to both existing and new eligible FPIs. The SWAGAT-FI framework was introduced through amendments to the SEBI (FPI) Regulations, 2019 and SEBI (FVCI) Regulations, 2000.

# COMPILED REGULATORY UPDATES

4. SEBI enacted the SEBI (Stock Brokers) Regulations, 2026, repealing and replacing the SEBI (Stock Brokers) Regulations, 1992 (“Regulations”). The Regulations set out a structured registration pathway and also clarify the operational flexibility. The Regulations further strengthen the governance by requiring detailed books/records, appointment of a compliance officer, and core investor protection controls. The regulations simultaneously set out the responsibilities and obligations of the stock brokers and the code of conduct.
5. SEBI on 08 January, 2026, notified a circular on Compliance reporting formats for Specialized Investment Funds (“SIF”) wherein it specified that all reporting requirements applicable to mutual funds under the SEBI (Mutual Funds) Regulations, 1996, the Master Circular for Mutual Funds dated June 27, 2024, and any other circulars or guidelines issued thereunder, shall also apply to SIF. The circular also modified the formats of compliance test reports and half-yearly trustee reports.
6. SEBI introduced enacted the (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2026 for targeted reforms primarily aimed at rationalising compliance obligations for debt-listed entities while strengthening investor protection. SEBI vide the Amendment revised the threshold for classification as a High Value Debt Listed Entity from ₹1,000 crore to ₹5,000 crore of outstanding listed non-convertible debt. The Amendment reflect SEBI’s continuing approach of balancing ease of doing business with improved transparency, governance standards and investor safeguards within the listed debt framework.

\*\*\*\*\*

# OFF BEAT SECTION

# WORLD CANCER DAY

On **4 February 2026**, the world came together to observe **World Cancer Day**, a global initiative dedicated to raising awareness about cancer, promoting prevention, and advocating for equitable access to care. Established in 2000 during the **World Summit Against Cancer for the New Millennium** in Paris, this day has grown into one of the most important annual health awareness events worldwide.

The Union for International Cancer Control continues to lead the campaign, bringing together governments, healthcare professionals, non-profits, communities, and individuals in a unified effort against one of the leading causes of death globally. The 2025–2027 theme, **“United by Unique”**, places people at the centre of cancer care, emphasizes that while every person’s experience with cancer is deeply personal and unique, the global community remains united in the shared goal of reducing cancer’s burden. This people-centric approach underscores the importance of compassionate care, personalized support, and policies that reflect individual needs and lived experiences.

**World Cancer Day 2026** highlighted key priorities such as cancer prevention through lifestyle changes, importance of early detection and screening, and the need for stronger health systems that ensure access to timely treatment and care. For organizations and workplaces, this day reminds us of the role we can play in fostering health-aware environments, supporting regular check-ups, promoting healthy habits, and building policies that consider the wellbeing of employees and their families.



# Notable Recognitions & Accolades



LEXOLOGY

Legal Influencer



Q2 | 2022

