ORBIT'S LEGAL PULSE

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Incorporated Insights

A New Chapter in Housing Finance: India Lists Its First Residential Mortgage-Backed Securities.

For the first time ever, Residential Mortgage-Backed Securities (RMBS) have been listed on the National Stock Exchange (NSE). It might sound technical, but the implications are far-reaching. This isn't just a financial innovation, it's a foundational shift that could change how housing is funded in India.

So, what does that really mean?

RMBS: What Are We Talking About?

Imagine what will happen when a bank or housing finance company that has given out thousands of home loans. And these loans, once disbursed, the bank or the housing Finance company has to wait for the repayment of such loan as the waiting period for such loan invariably goes more than 20 years. In this scenario, the Bank or the Housing Finance company's capital got locked up.

With the advent of RMBS, now lender could bundle those loans, turn them into tradeable financial products, and sell them to investors. That's essentially what RMBS are. It frees up money for lenders, letting them issue more loans, faster.

This concept has been around for decades in the U.S. and Europe. Now, India is officially in the game.

Some Illustrated Example of Such Loan by Banks/ Housing Finance Companies

The First Deal: LIC Housing Finance Steps Up:

Taking cue from RMBS, **LIC Housing Finance,** has raised **₹1,000** crore by issuing 20-year RMBS carrying a 7.26% annual coupon (paid monthly). These securities carry top-tier AAA (Structured Obligation) ratings from CRISIL and CARE.

The issuance was fully subscribed, signalling strong interest and belief in the future of housing finance in India.

Why This Is a Big Deal

This isn't just about one company raising money. It's about opening up a whole new funding channel.

According to the National Housing Bank (NHB), which played a key role in this through its new RMBS Development Company (RDCL), the estimated capital could be visualised between ₹10,000 crore and ₹20,000 crore to be raised this financial year alone through RMBS transactions. This can be done through just 7 to 10 issuances of such tradeable securities.

NHB is anticipating to "create a sustainable flow of long-term capital" and attracting big institutional players—like insurance firms and pension funds—into housing finance.

That means more capital for lenders and more access to affordable home loans for people across the country, especially those in underserved regions or lower-income brackets.

What This Could Mean for the Average Indian Homebuyer

More capital flowing to housing finance companies means more loans, better terms, and broader access. This could be especially meaningful for families in Tier-2 and Tier-3 cities who are often left out of the traditional credit system.

In other words, RMBS might not just be a new acronym—it could be part of the solution to making the dream of homeownership more affordable and accessible for millions of Indians.

Looking Ahead

Following the success of this first listing, experts expect other housing finance players to follow suit. The NHB has already signalled plans to raise up to ₹60,000 crore through bonds in FY26—up from ₹48,000 crore last year.

This isn't a one-time event. It's the start of a larger trend. One that could reshape how India builds, finances, and lives in homes.

SEBI simplifies Rights Issues to Boost Faster Fundraising

Significant amendments have been made by Securities and Exchange Board of India (SEBI) under the S**EBI (Issue of Capital and Disclosure Requirements) Regulations, 2018** ("Regulation") to the right issue framework vide amendment dated 3rd March, 2025 along with a circular dated 11th March, 2025. The amendment has given a revised faster timeline for completion of the process of right issue for listed companies, streamlining the rights issue process and making it preferred option for fund raising. It has proposed a significant change to Chapter III of the Regulation. **Chapter III** of the Regulation deals with the framework for the right issue of shares by a listed company of aggregate value of INR 500 million or more. One of the major change is removal of threshold for the right issue. The previous threshold of INR 500 million or more under Regulation 60 has been eliminated. The previous requirement of filing the Draft letter of Offer (DLOF) with SEBI for review has also been removed. Now, the issuer can directly submit the DLOF to the stock exchange for its listing and the stock exchanges are required to conclude the review within the next three days, thereby reducing the timeline for completion of the issue. However, the issuer has to file the Letter of Offer (LOF) with SEBI. Apart from this, the requirement of appointment of merchant banker and obtention of due diligence certificate from the merchant banker under Regulation 70 has been removed. The issuer has been made responsible for performing the duties of the merchant banker like checking with all the required compliances, conducting due diligence thereby reducing dependency on third party and reducing the costs required for the same. As a part of the new framework, Regulation 85 has been amended to reduce the timeline for completion of the right issue process to 23 working days thereby enhancing the efficiency and faster fund raising by way of right issue.

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Project Finance meets Artificial Intelligence

Recently State Bank of India, one of India's largest public sector banks, announced the establishment of a project finance unit particularly for emerging sectors such as Artificial Intelligence, fintech, and e-commerce. The initiative intends to diversify the project finance portfolio along with the traditional infrastructure projects to align with India's evolving economic landscape.

This step is much appreciated; however this will attract the legal and regulatory complexities revolving around AI. Though we are moving towards the AI era, still no comprehensive regulatory framework exists in India. Such inclusion of AI in the project finance sector as proposed led to compliance related to various domains. Since, AI systems rely mainly on data, which are majorly personal or sensitive in nature. And accordingly, project finance contracts should ensure that both borrowers and lenders should comply with applicable provisions of law, for example Digital Personal Data Protection Act, 2023. So, these contracts may also include representations and warranties to affirm the ethical and lawful processing of such data.

Further, AI algorithms are tangible assets and to include this in the arrangement clauses of IP ownership, licensing rights. Also, AI systems are vulnerable to data breach and manipulation, and thus financing terms may include cybersecurity compliance as a condition precedent. Lastly, since the AI landscape is still evolving andtherefore project finance contracts should incorporate adaptive legal clauses that address the possible AI specific regulations during the loan tenure.

From a financial structuring perspective, AI projects differ from the traditional infrastructure projects due to their intangible assets and uncertain revenue models. Banks and Financial Institutions may need to consider hybrid instruments; credit enhancement to manage risk effectively. Legal due diligence framework will also need to evolve incorporating evaluations of algorithim performance, data government practices, and ethical considerations.

While SBI initiative is a commendable step to support high growth industries it is crucial that financial institutions develop the legal and institutional capacity to manage the unique associated with AI. If these complexities are addressed proactively project finance can serve as the catalyst for India's innovation ecosystem fostering economic development while ensuring financial and regulatory compliance.

Constitutional Bench Judgment-Revisiting Section 34 Limited Judicial Modification of Arbitral Awards

In ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 171 SC*****, a five-judge Constitution Bench** of the Supreme Court, by a 4:1 majority, held that courts have limited power to modify Arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996.

This decision overruled the earlier view in M. Hakeem case, which had denied any such power. The Bench clarified that while the Act emphasizes minimal judicial interference, modifications are permissible in narrowly defined situations to ensure justice. The key issue was whether courts could modify arbitral awards under Sections 34 and 37, and to what extent. The ratio decidendi is that limited modification is within the court's jurisdiction when necessary to balance equity and the integrity of the arbitral process.

Background facts:

Gayatri Balasamy was appointed Vice President at ISG Novasoft Technologies Ltd. on 27 April 2006 but resigned within three months, alleging sexual harassment by the CEO, Krishna Srinivasan. Despite the allegations, the company did not accept her resignation and later issued her three termination letters. In response, Balasamy filed criminal complaints against the CEO and another executive, while ISG filed counter-cases for defamation and extortion. The Supreme Court eventually referred the dispute to arbitration, which awarded her ₹2 crore in compensation. Dissatisfied, she approached the Madras High Court, where a single judge increased the award by ₹1.6 crore in 2014. However, a Division Bench reduced this enhancement to ₹50,000 in 2019, calling it excessive. Balasamy then filed a Special Leave Petition before the Supreme Court, which led to a landmark ruling by a five-judge Constitution Bench addressing both her compensation and the broader issue of whether courts can modify Arbitral awards under Section 34 of the Arbitration Act.

Issues at hand:

- Whether the powers of the Court Under Sections 34 and 37 of the Arbitration and Conciliation Act 1996 will include the power to modify an Arbitral award?
- If the power to modify the award is available, whether such power can be exercised only where the award is severable, and a part thereof can be modified?
- Whether the power to set aside an award Under Section 34 of the Act, being a larger power, will include the power to modify an arbitral award and if so, to what extent?
- Whether the power to modify an award can be read into the power to set aside an award Under Section 34 of the Act?

Findings of the court:

In the present case, the Supreme Court delivered a significant ruling regarding the extent of judicial intervention in arbitral awards under the Arbitration and Conciliation Act, 1996. The majority held that courts have the authority to partially set aside an Arbitral award if only a portion of it is flawed, provided the flawed portion is severable from the rest of the award and does not affect its core outcome. This prevents the need to annul the entire award due to one defective part, thereby safeguarding the valid findings of the Arbitral tribunal.

The Court further observed that although Section 34 of the Arbitration Act does not explicitly empower

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courts to modify Arbitral awards, a limited power of modification is implied within it. This implied power is necessary to avoid the undue delay and cost associated with sending parties back to Arbitral Tribunal for minor corrections. However, this modification power is strictly confined to rectifying manifest errors such as computational mistakes, clerical or typographical errors, and other obvious mistakes apparent on the face of the award. The Court clarified that courts cannot re-evaluate the merits or substance of the arbitral decision. Additionally, the judgment clarified the distinction between situations where the court can directly modify the award and where it should remit the matter back to the Arbitrator under S**ection 34(4).** If the issue is straightforward and involves a clear error, the court may make the correction itself. However, if the issue is debatable or involves deeper analysis, the court should refer the matter back to the Arbitrator for rectification. Notably, the Court stated that such a request for remand may be made **orally** and need not necessarily be in writing. With regard to interest, the Supreme Court held courts are permitted to modify the **post-award interest** under **Section 31(7)(b)** of the Act, especially where the Arbitrator has not specified it or where the default rate appears excessive. However, **pendente lite interst,** interest awarded for the period during arbitration—cannot be altered by courts, as it pertains to the substance of the award. Moreover, the Court reaffirmed its special powers under Article 142 of the Constitution, which allows it to modify arbitral awards in exceptional cases to do complete justice between the parties. Nevertheless, it emphasized that this power must be exercised with caution and must not be used to rewrite or interfere with the merits of the award.

In his dissenting opinion, Justice K.V. Vishwanathan argued that Section 34 of the Arbitration and Conciliation Act, 1996 does not empower courts to modify Arbitral awards, cautioning that such an interpretation contradicts the Act's intent to limit judicial interference. He emphasized that allowing courts to alter interest components risks undermining the principles of finality and minimal intervention central to the arbitration regime.

Our point of view:
The Supreme Court's decision in Gayatri Balasamy v. ISG Novasoft Technologies Ltd. represents a landmark shift in India's arbitration jurisprudence by reading a limited power of modification into Section 34 of the Arbitration and Conciliation Act, 1996. The Court held that in cases where only a part of the arbitral award is flawed and severable, courts may modify or strike down just that portion, instead of setting aside the entire award. This interpretation aims to reduce unnecessary re-arbitration, delays, and costs, especially when the error is obvious and non-substantive—such as typographical or computational mistakes.

Further, under Section 37, which governs appeals from orders under Section 34, the Court extended similar powers of modification and remand to Appellate courts. This widens judicial oversight, allowing appellate courts to intervene more flexibly. However, such an expansion raises concerns about undermining the principles of minimal judicial interference and finality that are central to Arbitration. While this judgment may provide effective relief in specific cases, it also introduces the risk of Courts overstepping into the merits of arbitral decisions. The long-term challenge will be to apply this discretionary power with restraint to safeguard Arbitration Tribunal's integrity, autonomy, and efficiency as an alternative dispute resolution mechanism.

Green Bonds: A Growing Landscape in India

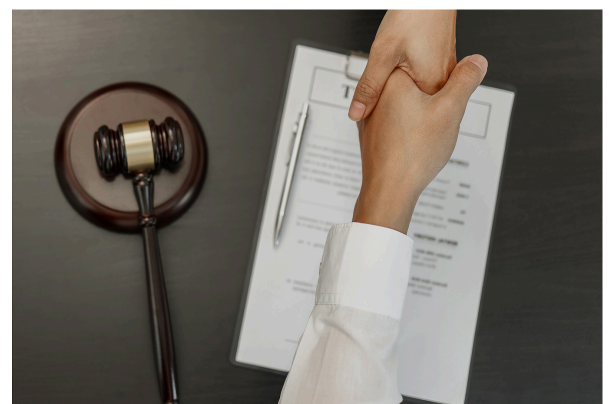
Green bonds are debt instruments used to raise money for projects pertaining to the environment or climate change.

Green bonds differ from conventional bonds as they are intended exclusively for financing or refinancing environmental projects that have a positive impact on the environment or climate, such as the use of renewable energy, energy-efficient transportation, clean energy, sustainable water management, and the reduction of greenhouse gas emissions. The Indian government created the Framework for Sovereign Green Bonds in 2023, and SEBI released green bond rules in 2017, both of which align with the worldwide ICMA guidelines. India released the first tranche of its INR 80 billion sovereign bond on January 25, 2023. This is a major shift in the nation's commitment to increasing the production of renewable energy and lowering its carbon intensity.

Foreign investment in sovereign green bonds was made possible by the Reserve Bank of India (RBI). The number of possible investors is supposed to increase by this introduction. Increased liquidity from a larger investor base may help make green bonds more appealing to both domestic and global investors. India is now engaged in the construction of numerous infrastructural projects. These initiatives can be funded with green bonds, which will assist the nation in achieving its sustainability objectives.

In order to guarantee its constant and transparent issuance, India's green bonds require a standardized structure. Green bonds are becoming more and more popular in India; investors are still not fully aware of the advantages of making green bond investments. This is because there is a dearth of knowledge and awareness regarding green bonds in India, where they are still relatively new. According to SEBI's data on green debt securities, 15 Indian corporates issued green bonds totalling Rs. 4,539 crore between 2017 and September 2022.

The government should keep encouraging the use of green bonds and foster an atmosphere that will support their expansion. This will support India's transition to a more sustainable and greener future. Additionally, financial institutions must maintain their current momentum and take the lead in promoting sustainability initiatives and the issue of green bonds.



Rules for registration & regulation of Foreign Lawyers and Law Firms

The Bar Council of India (BCI), recognizing the increasing globalization of legal services and cross-border legal work, has introduced rules to allow foreign lawyers and law firms to to practice in India in specific, regulated areas. These include the practice of foreign law, advising on diverse international legal issues in non-litigious matters, and appearing in International

Arbitration proceedings. According to the BCI, this liberalization will not harm Indian lawyers; instead, it will enhance opportunities for young advocates and emerging Indian law firms, contributing to the overall growth of the legal sector. The BCI further notes that no specific conditions have been imposed on foreign law firms regarding the employment of Indian lawyers or para-legals.

The BCI also supports the use of modern technology to improve access to justice and streamline legal practice. However, it has clarified that while artificial intelligence (AI) may assist courts in limited ways, the concept of "robot lawyers" is not suitable for India, particularly considering that the majority of the 2.5 million practicing advocates work in district and rural courts across the country.

Registration of Foreign Lawyers and Law Firms in India: Eligibility and Conditions:

India's regulatory framework, as governed by the Bar Council of India (BCI), mandates strict compliance for foreign legal professionals seeking to operate within the country. Under the relevant Rules, foreign lawyers and foreign law firms are prohibited from practicing law in India unless registered with the BCI. This rule equally applies to Indian Advocates and Law firms seeking recognition as foreign entities under applicable provisions.

Eligibility Criteria for Registration:

The primary qualification for a foreign lawyer or law firm to register in India is the right to practice law in the foreign country of their primary qualification. If a lawyer intends to advise on the laws of multiple jurisdictions or international law, they must be duly qualified and authorized to do so in each respective area.

Application for Registration:

To apply for registration as a foreign lawyer or foreign law firm in India, the applicant must submit the following key documents as prescribed under the Rules:

1. **Certificate from the Government of India, specifically**
   - Ministry of Law & Justice,
   - Ministry of External Affairs and Trade (or any authorized authority),
   - A certificate confirming that an effective legal system exists in the applicant's primary and intended jurisdictions, and that there is no objection to their registration in India.
2. **Statement of Intent, detailing:**
   - The foreign jurisdictions and specific areas of foreign and international law the applicant intends to practice.
3. **Certificates from competent authorities in each of the jurisdictions listed in the statement, confirming:**
   - The applicant is legally entitled to practice law in those jurisdictions.
4. **Reciprocity Certificate, issued by the foreign government or competent authority, confirming:**
   - Indian advocates under the Advocates Act, 1961 are permitted to practice in those countries in a manner comparable to the rights granted under these Rules.
   - Relevant supporting laws and regulations should also be included.
5. **Proof of legal practice in the foreign country of primary qualification.**
6. **Certificate of Good Standing, affirming:**
   - No professional misconduct proceedings are pending against the applicant.
7. **No Objection Certificate (NOC) from the competent authority of the primary foreign jurisdiction, confirming:**
   - No objection to the applicant practicing law in India.
   - The applicant holds good standing within the foreign legal community.
8. **The Bar Council of India reserves the right to independently verify the documents or communicate with the relevant foreign authorities if necessary.**

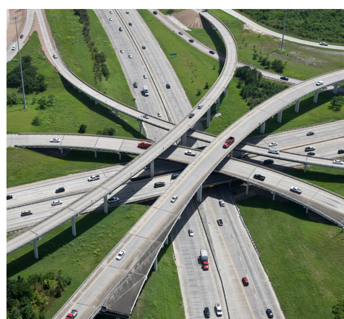
Fly-in, Fly-out Practice – Limited Exception:

Foreign lawyers are permitted to offer temporary legal advice in foreign, home jurisdiction, or international law in India without formal BCI registration, under the fly-in fly-out (FIFO) provision. However, advising on Indian law is strictly prohibited. No physical office or permanent presence is allowed, and their stay is limited to 60 days within a 12-month period from the date of first entry. Services may commence in India or abroad and must comply with ethical and regulatory norms, subject to the BCI's assessment.

Operational Mechanism – it's Nature & thereof :

Foreign lawyers and foreign law firms registered under the Rules are permitted to practice only in non-litigious areas of law in India, subject to specified conditions and limitations. They are considered Advocates under Sections 29, 30, and 33 of the Advocates Act 1961 only for acts allowed under these Rules, they are considered Advocates under Sections 29, 30, and 33 of the Advocates Act 1961 only for acts allowed under these Rules, but are not subject to disciplinary provisions outlined in Chapter V of the Bar Council of India's Notification dated 13th May 2025. The Bar Council of India (BCI) may cancel a foreign lawyer's registration for misconduct, as outlined in Chapter V of its notification dated 13 May 2025. Their practice is limited to areas such as corporate transactions, international arbitration, and advisory services on foreign and international law, provided on a reciprocal basis. They are strictly prohibited from appearing before Indian courts or Tribunals and from engaging in conveyancing, title investigations, or drafting documents for court proceedings. Indian advocates working with registered foreign law firms may assist in non-litigious foreign or international law matters and represent Clients in International forums but cannot claim additional rights beyond their enrolment. All foreign practitioners must register with the BCI and meet requirements related to qualification equivalence, exams, and non-litigious restrictions.

We welcome the Bar Council of India's progressive framework allowing the regulated entry of foreign legal practitioners. We believe this development will foster meaningful collaboration, elevate global legal standards, and open new opportunities for Indian lawyers to excel in an increasingly interconnected legal landscape.



A smarter Road to Infrastructure

Hybrid Annuity Model (**HAM**) was introduced way back in 2016, to attract private investment into the road construction sector by mitigating financial risks and financial feasibility. The model was introduced by combining the preexisting model i.e. Engineering Procurement and Construction (EPC)

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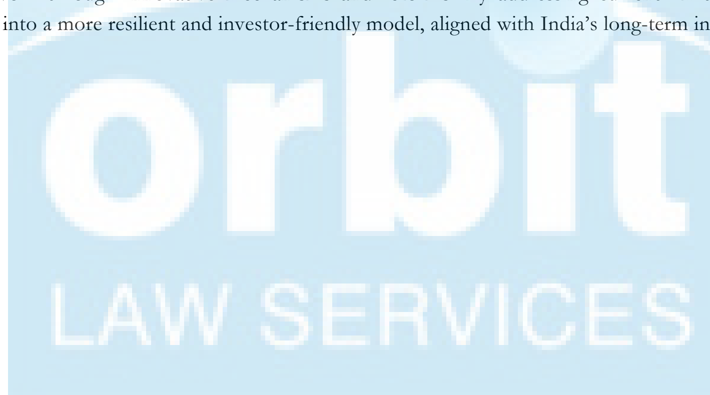
and Build- Operate- Transfer (BOT) model. As a standard practice, the government typically contributes 40% of the project cost upfront and the remaining 60% is financed by the private sector entity, which is subsequently repaid with interest over the period of time.

In recent times, there have been certain expenses that have increased the burden of HAM Project such as increased interest rate; escalating land acquisition costs; construction expenses etc. These factors are leading the National Highways Authority of India (NHAI) to rethink about the concerns in long term sustainability. If we talk about the legal complexities involved, HAM is governed by a Concession Agreement, which is a legally binding contract between the authority such as NHAI and a private concessionaire. The contract outlines the rights, responsibilities, and commitments of the Parties including timelines, payment, risk allocation, mechanism for dispute settlement etc. Further the contracts are subjected to environmental, public procurement laws, land acquisition statutes etc. and the annuity payments from the government are contractually guaranteed, subjected to performance, providing security to the private investors.

HAM's legal foundation lies in the transparent contracting, regulatory compliances, and clear demarcation of risk to the investors, and thus making it a viable model for infrastructure development. However, to attract private capital into the sector policymakers need to explore more into this hybrid model.

One of the key areas that could significantly enhance the value of this model is the introduction of performance base incentives from private developers. By incorporating benchmarks for timely completion quality of construction and adherence to safety and maintenance standards, the model can encourage greater efficiency and reduce cost and time overruns.

Another possible and promising step that can be taken is diversification of financing revenues. Currently, companies largely depends on banks and financial institutions for funding, which exposes them to risk in terms of interest rates. Therefore, the HAM can be improved by promoting alternative way or introducing new financing instruments such as Infrastructure Investment Trusts (InvITs; it enables direct investment of small funds from possible stakeholders/investors/financial institutions in infrastructure). These kinds of alternative instruments not only reduce dependency on bank credit but also bring financial stability to infrastructure sector. Currently, the fixed repayment mechanism fails to account for market volatility, which can adversely affect the financial health of concessionaires. Simultaneously, a organized and structured dispute resolution framework and body should be formulated that can help parties to resolve conflicts fast and fairly, thereby avoiding delayed legal battles that can halt projects and increase the costs.
At last it can be said that the future of road infrastructure is likely to depend on a pragmatic approach of finance, regulatory frameworks and active participation and collaboration between the private sector and public sector. And to strengthen the HAM and to ensure its long term viability, there is a pressing need to evolve its framework through innovative mechanisms and reforms. By addressing current limitations and adding these value-driven elements, HAM can be transformed into a more resilient and investor-friendly model, aligned with India's long-term infrastructure goals.



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