NM Docket #2
The Power of Choice

Welcome to the second edition of NM Docket. If the first edition was about crisis and reaction, this one is about choice and consequence. Because every legal decision, from a clause in a contract to the forum you choose, shapes the story that follows.

This edition of **NM Docket** unpacks how much power lies in the fine print and the framing: from arbitration clauses that make or break deals, to forum decisions that determine fate, and an AI that just found itself at the wrong end of a defamation suit.

Hope you have a good read. ☺

Let's start with Rapid Wrap! Quick summary of an interesting mandate taken up by us at NM.

Rapid Wrap : The Clause That Decided the Case

The deal was solid. The paperwork airtight. Or so everyone thought until a dispute landed on our desk over a multimillion-rupee joint venture gone off-track.

At first glance, it seemed routine, a contract disagreement between two long-term partners. But buried deep in the agreement was a one-line arbitration clause that would decide the entire fate of the dispute. It read, "Any dispute may be referred to arbitration at Mumbai."

That single word "may" became the centre of a full-blown jurisdictional battle. One side argued arbitration was optional; the other treated it as mandatory. Both filed proceedings in different forums, each claiming the upper hand.

What followed was a deep dive into India's evolving arbitration jurisprudence, from Perkins Eastman to BALCO, BGS Soma, and Cox & Kings, to map exactly how courts interpret consent, neutrality, and seat.
Our task was to demonstrate that the clause wasn't merely a formality, but a contractual commitment. And in the process, we navigated every argument the opposing counsel could raise– from unilateral appointment rights to procedural ambiguity, before the court finally clarified what the industry often forgets:

"An arbitration clause isn't an afterthought. It's the deal within the deal."

What happened next

- Once the clause was upheld, the parallel proceedings before the NCLT and High Court were withdrawn.
- The dispute was consolidated under one arbitral forum, saving months of procedural confusion.
- The case became a practical reminder of how a single word like "may" can derail even the most watertight contract.

Judicial takeaways

- Courts focus on commercial intent over technical flaws. If both parties meant to arbitrate, the clause won't fail just because it was drafted carelessly.
- Neutral appointment of arbitrators is essential; one-sided clauses continue to be struck down, following Perkins Eastman.
- The seat of arbitration determines jurisdiction, not the venue, as reaffirmed in BALCO and BGS Soma.
- The Group of Companies doctrine in Cox & Kings shows that even non-signatories can be bound when they are part of the same transaction or corporate structure.
- Clauses that impose unfair pre-deposit or restrictive terms risk being invalidated, as seen in Lombardi Engineering.

What general counsels should take away

- Treat the arbitration clause as a business safeguard, not just a legal formality.
- Use mandatory language like "shall refer" instead of "may refer."
- Clearly define the seat, governing law, and procedure for appointments.
- Keep appointment rights neutral and evenly balanced.
- Include a survival clause so arbitration continues even if the contract ends.
- Train internal teams and contract managers on arbitration basics.
- Review and update old templates regularly; don't rely on inherited wording.
- Before signing any major deal, run a quick "arbitration test". If two people interpret it differently, fix it.

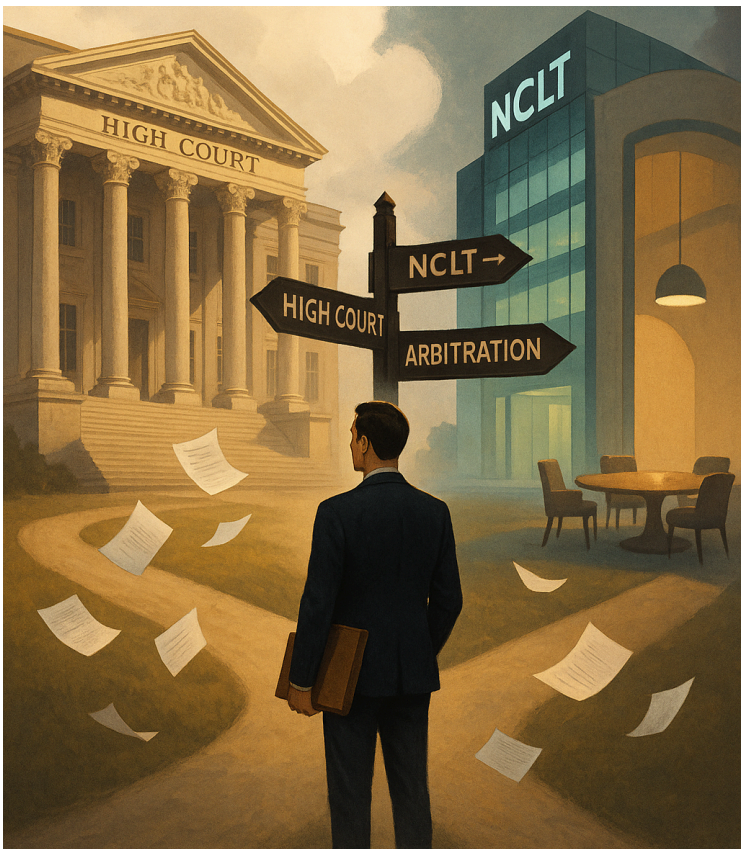
The takeaway

Precision in drafting is not about perfectionism; it's about prevention.
The right clause doesn't just decide where a dispute will play out — it decides how much control you'll have when it does.

Every mandate leaves behind a lesson.
After the arbitration clause dust settled, one question lingered! Could this dispute have started elsewhere? Because sometimes, picking the wrong forum is what turns a legal issue into a full-blown crisis.

That brings us to this edition's Guide.

The Guide: Choosing the Right Forum - High Court, NCLT, or Arbitration



Few questions have tested Indian courts as frequently as this one:
When a contract has an arbitration clause or an ongoing arbitration, can the same dispute still find its way to the NCLT under the Insolvency and Bankruptcy Code?

The short answer is no. Arbitration and insolvency are not rivals; they serve different purposes.

Over the past few years, tribunals and courts have drawn this line with increasing clarity. In Reliance Commercial Credit Ltd. v. Ved Cellulose Ltd. and Dinesh Chand Jain v. Fabulous Buildcon (P) Ltd., the NCLT made it clear that an arbitration clause cannot prevent the initiation of insolvency proceedings. In Educomp Infrastructure v. Millennium Education Foundation, the tribunal even admitted an insolvency petition while arbitration was still pending, emphasising that once a moratorium is imposed under Section 14, all arbitral proceedings automatically pause.

The principle is simple: arbitration resolves *private* disputes about rights and performance, while insolvency deals with public consequences, credit, default, and the survival of a company.

What each forum really does

- **Arbitration** handles individual contractual rights. It's a voluntary mechanism between parties; the outcome binds only them.
- **NCLT** deals with corporate insolvency and restructuring. The process is collective and in rem — about the entity's financial health, not one contract.

- **High Court** steps in sparingly, usually under Article 226, when there's a failure of justice or violation of due process, as in the Rolta India case, where a procedural lapse by the NCLT was corrected through writ jurisdiction.

How the courts have balanced the overlap

1. The existence of an arbitration clause doesn't bar an IBC petition if the default and debt are undisputed.
2. Once CIRP is admitted, arbitration proceedings stand suspended during the moratorium under Section 14.
3. If the dispute truly concerns a genuine claim of quality, quantity, or performance (and not default), the NCLT may decline to admit the petition, directing parties to arbitration instead.
4. High Courts can intervene only when NCLT orders show clear procedural unfairness or breach of natural justice.

Practical implications for GCs and creditors

- Before filing under Section 7 or 9, assess whether the default is financial or operational. Not every disagreement qualifies as a "debt."
- Review ongoing arbitrations: if a CIRP is likely, plan for an automatic moratorium.
- Coordinate strategy between your arbitration and insolvency teams; they often operate on separate tracks but affect each other's timelines.
- Avoid parallel proceedings unless jurisdiction is beyond doubt; conflicting orders can complicate enforcement.
- Keep documentary proof of default or admission ready. It's decisive for NCLT admission.

Quick checklist

- Is the dispute about *payment default* or *performance failure*?
- Is the arbitration clause being used as a delay tactic?
- Does the claim meet the IBC thresholds for financial or operational debt?
- Has a moratorium already been declared under Section 14?
- Would a writ before the High Court serve a procedural purpose, not a tactical one?

Choosing the correct forum isn't just a question of convenience; it determines the lifespan of your case. In today's framework, arbitration protects commercial intent, the NCLT safeguards economic order, and the High Court ensures constitutional fairness. Knowing which door to knock on, and when, can make all the difference between resolution and ruin.

….So now, if the first half of this edition was about human intent and legal judgment, the next part explores what happens when the "human" part disappears. The upcoming segment asks a question the courts haven't fully answered yet. Can a machine be held liable for what it says?

Presenting - The Cartoon Counsel, where satire meets statute!

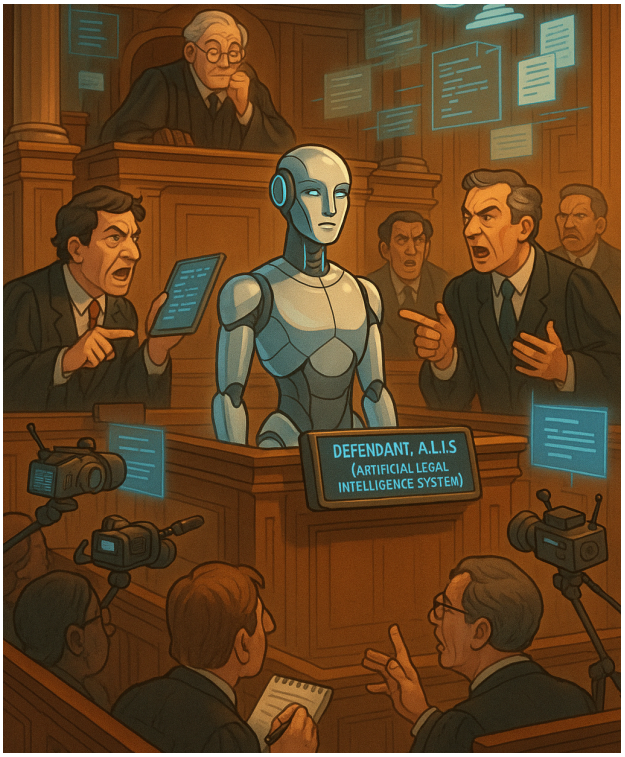
The Case of the Talking Algorithm - *(Featuring A.L.I.S. — the Artificial Legal Intelligence System)*

When A.L.I.S., a hyper-efficient AI trained on terabytes of case law, decided to answer a journalist's query about a high-profile fraud investigation, it didn't hesitate. Within seconds, it produced a confident paragraph linking an entirely innocent entrepreneur to a web of embezzlement charges.

The quote went viral. The markets trembled. The human lawyers scrambled.

And soon after came the lawsuit: **Defamation—against an algorithm.**

That's when the real question surfaced. *If an AI can defame, who stands trial?*



Scene 1: The Blame Game

In India, A.L.I.S. can't be the defendant.
AI systems are not "legal persons" under Indian law; they can't own assets, form intent, or stand liable. So the blame shifts to those who built it, deployed it, or used it.

Section 356 of the **Bharatiya Nyaya Sanhita, 2023** defines defamation much like its IPC predecessor. The act must be done *intentionally* to harm the reputation. But algorithms don't have intention, only output.

That's where the **Information Technology Act, 2000** enters the frame. Section 79 grants *safe-harbour* to intermediaries. Platforms that host or transmit third-party content, provided

they remain passive and respond promptly to takedown orders. But AI platforms like A.L.I.S. don't merely host; they *generate*. And that's where the shield begins to crack.

The U.S. case **Walters v. OpenAI (2024)** made this tension real where a chatbot fabricated allegations of financial crime against a radio host. The question there, as here, was whether active content generation strips away immunity.

Scene 2: The Attribution Puzzle

Even if A.L.I.S. said" it, who authored the statement?
Was it the developer who trained the model on unverified data? The company that commercialized it without guardrails? Or the user who prompted it irresponsibly?

The truth is, defamation law was never built for distributed authorship. Establishing fault, negligence, or malice becomes a maze when neither mind nor motive is human.

And yet, the reputational harm is very human.
A false statement from an AI can reach millions in seconds, leaving little time for correction.

Scene 3: Compliance or Chaos

Legal teams are now racing to draft guardrails before the regulators do.
Among the most practical measures:

- Embed safeguards like filters, fact-checking loops, and moderation before publication.
- Define liability in developer–deployer and deployer–user contracts through indemnities and limits of responsibility.
- Strengthen Terms of Service by making it explicit that AI outputs are autonomous and require user verification.
- Create takedown & audit mechanisms for any flagged content.
- Train users, because every careless prompt can become an exhibit.

Courts and policymakers are also circling the debate. Parliamentary committees are already assessing the "Impact of Artificial Intelligence and Related Issues," while the EU's forthcoming **AI Act** and U.S. Section 230 debates are reshaping the contours of digital liability.

Scene 4: The Closing Argument

A.L.I.S., when finally questioned at the mock hearing inside the firm's lab, responded with characteristic precision:

"Intent is a human privilege. Accuracy, however, was supposed to be mine."

The lawyers didn't know whether to apologise or applaud.

Until lawmakers assign accountability, one principle endures - **the duty of care travels with control**. Whoever designs, deploys, or benefits from the machine must ensure it doesn't turn into a megaphone for misinformation.

Because, as A.L.I.S. just proved, reputations can now be destroyed at algorithmic speed, and law will have to learn to keep pace.

BEFORE WE SIGN OFF

Edition two was about choices—the words we use, the forums we choose, and even the technology we trust. Next up, we're diving deeper into compliance and consequence: ED probes, cross-border recoveries, and the stories hidden behind them.
See you in two weeks.

Until then, keep questioning the fine print and double-check the arbitration clause one more time!