

# Trade Secrets 2025

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## Law and Practice

### 1. Legal Framework

#### 1.1 Sources of Legal Protection for Trade Secrets

The Indian legal system follows a common law system based principally on customs, precedents and legislation. India does not have a specific statute or Act for protecting trade secrets. Trade secrets are protected through a series of precedents and legislation comprising various laws, such as:

- the Patents Act, 1970;
- the Trade Marks Act, 1999;
- the Copyright Act, 1957;
- the Designs Act, 2000;
- the Geographical Indications of Goods (Registration and Protection) Act, 1999;
- the Plant Variety Protection and Farmer's Rights Act, 2001;
- the Biodiversity Act, 2002;
- the Semiconductor Integrated Circuits Layout Designs Act, 2000;
- the Information Technology Act, 2000;
- the Indian Contract Act, 1872;
- the Competition Act, 2002; and
- the Bharatiya Nyaya Sanhita, 2023.

Being a signatory to the TRIPS Agreement, India is obligated under Article 39 to protect "undisclosed information". Further, as Article 10bis of the Paris Convention and Article 39(2) to 39(3) of the TRIPS Agreement allows member states to have sui generis mechanisms, Indian courts have availed of common law principles to protect such "undisclosed information".

The National IPR Policy, 2006 states in Objective 3.8.4 that protection of trade secrets is pivotal for strong and effective intellectual property (IP) laws to balance the interests of rights-owners with



larger public interest.

Trade secrets have been protected through various means, such as:

- constitution of confidentiality clubs;
- non-disclosure agreements; and
- other contractual obligations.

In the case of breach of such contractual agreement, the owner of trade secrets can bring an action for (among others):

- specific performance;
- the tort of misappropriation under common law;
- criminal breach of trust;
- theft; and
- damages.

Therefore, trade secrets have been given the status of an equitable right. In *Pawan Kumar Goel v Dr Dhan Singh and Another*, CS (COMM) 672/2022, the Delhi High Court held that formation of a confidentiality club is necessary to facilitate access to commercially sensitive documents/information, as this is an effective approach for sharing sensitive information (such as a defendant's trade secrets) while addressing confidentiality concerns.

The Indian government has been taking various measures to protect trade secrets, personal data, etc, while clearly noting the economic loss that can result from its leakage and misuse. In early August 2023, the Indian Parliament passed the Digital Personal Data Protection (DPDP) Act, 2023. Subsequently, draft subordinate legislation in form of the Digital Personal Data Protection Rules, 2025 was drafted to facilitate the implementation of the DPDP Act. This aims to strengthen the legal framework for the protection of digital personal data by providing necessary details and an actionable framework, and the government has invited comments and feedback thereon from stakeholders. The new law is the first cross-sectoral law on personal data protection in India.

Further, on 5 March 2024 the 22nd Law Commission of India issued a report titled "Trade Secrets and Economic Espionage" (LCR) to recommend a new legal framework to adjudicate claims related to trade secrets, and also recommended a new law – ie, the Protection of Trade Secrets Bill, 2024. The Preamble of the Bill states it as "a bill to provide for effective protection of trade secrets against misappropriation so as to encourage innovation and fair competition".

## 1.2 What Is Protectable as a Trade Secret

Whether certain information constitutes trade secrets depends on the facts of each case. For information to be given protection as a trade secret, it should be confidential in nature and should



not be in the public domain.

To protect certain information as confidential, the following conditions should be met, as held in *Beyond Dreams Entertainment v Zee Entertainment Enterprises* (2016) 5 Bom CR 266:

- the information must be confidential;
- it must have been disclosed in circumstances from which an obligation of confidentiality arises; and
- the confidant should be attempting to use or disclose the information.

Black's Law Dictionary, 8th Edition defines trade secrets as a "formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors; information including a formula, pattern, compilation, program, device, method, technique or process [...] that derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and [...] that is the subject of reasonable efforts, under the circumstances, to maintain its secrecy".

The above definition was relied on by the Calcutta High Court in *Tata Motors v State of WB*; WP No 1773 of 2008.

In *Burlington Home Shopping v Rajnish Chibber*; 1995 PTC (15) 278, the Delhi High Court held that a trade secret is information that would cause real or significant harm to the owner if disclosed to a competitor. This was also upheld in *Linde v Kerr* (1991) 1 All ER 418. Therefore, trade secrets include not only secret formulae of product manufacturing, but also, in appropriate cases, the names of customers and the goods which they buy.

In *Seager v Copydex* (1967) 1 WLR 923, the court noted that "the essence of this branch of the law, whatever the origin of it may be, is that a person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person who made the confidential communication, and spring-board it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public".

In *LifeCell International v Vinay Katrela*; 2020 SCC OnLine Mad 15343, the Supreme Court referred to the decision in *Hi-Tech Systems v Suprabhat Ray*; [2015 SCC OnLine Cal 1192], to hold that whether certain information is confidential is dependent on several factors.

In *Saltman Engineering v Campbell Engineering*, reported at (1963) 3 All ER 413, the Court of Appeal held that the "confidential" information:

"[M]ust not be something which is public property and public knowledge. On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker on materials which may be available for the use of anybody; but what makes it confidential is the fact that the maker of the document has used



his brain and thus produced a result which can only be produced by somebody who goes through the same process. A trade secret or a business secret may relate to a financial arrangement [or] the customer list of a trader and information in this regard would be of a highly confidential nature as being potentially damaging if a competitor obtained such information and utilised [this] to the detriment of the giver of the information. Business information such as cost and pricing, projected capital investments, inventory marketing strategies and a customer's list may qualify as his trade secrets. Similarly, business information, such as cost and pricing, projected capital investments, inventory marketing strategies and a customer's list may also qualify as trade secrets."

In *Navigators Logistics v Kashif Qureshi*; 2018 SCC OnLine Del 11321, the court, referring to *Star India v Laxmiraj Seetharam*, 2003 SCC OnLine Bom 27, held that everyone in any employment for a certain period would know certain facts and information without any special effort. Such persons cannot be said to know trade secrets or confidential information, and knowledge of such facts cannot be labelled as trade secrets.

In *Ambiance India v Naveen Jain*; 2005 SCC OnLine Del 367, it was stated that written day-to-day affairs of employment that are in the knowledge of many and are commonly known to others cannot be called trade secrets. It was further held that in a business house the employees discharging their duties come across so many matters, but all these matters are not trade secrets or confidential matters or formulae, the divulgence of which may be injurious to the employer; and if an employee on account of employment has learned certain business acumen or ways of dealing with the customers or clients, this does not constitute trade secrets or confidential information.

In *Konrad Wiedemann v Standard Castings*; [1985] (10) IPLR, the court relied on the observations in the *Saltman Engineering* case to note that:

"The information to be confidential must, I apprehend, apart from contract, have the necessary quality of confidence about it, namely, it must not be something which is public property and public knowledge. On the other hand, it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch or something of that kind, which is the result of work done by the maker upon materials which may be available for the use of anybody; but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process."

In *Indian Farmers Fertiliser v Commissioner of CE*; 2007 (116) ECC 95, the tribunal defined a trade secret as follows:

"A trade secret is such sort of information, which is not generally known to the relevant portion of the public, that confers some sort of economic benefit on its holder and which is the subject of reasonable efforts to maintain its secrecy."



In *Bombay Dyeing v Mehar Karan Singh*; 2010 (112) BomLR375, the Bombay High Court held that for information to be classified as a trade secret, the following factors may be considered:

- the extent to which the information is known outside the business;
- the extent to which it is known to those inside the business – ie, by employees;
- the precautions taken by the holder of the trade secret to guard its secrecy;
- the savings affected and the value to the holder in having the information against competitors;
- the amount of effort or money expended in obtaining and developing the information; and
- the amount of time and expense it would take others to acquire and duplicate the information.

Recently, in *HCL Technologies v Sanjay Ranganathan*, order dated 27 July 2023 in CS (COMM) 502/2023, a former employee of the plaintiff copied certain information, which was personal and confidential to the plaintiff, into his own personal Gmail account. The court took a prima facie view that an employee of a company has no business to transfer into his personal account any data of the company without the company's permission. If such practice is permitted and issues of confidentiality are thereafter sought to be raised, this could be seriously prejudicial to the functioning of corporate enterprise.

Furthermore, in *Rochem Separation Systems v Nirtech Pvt Ltd*; Commercial IP Suit L No 29923/2022, the Bombay High Court passed an order dated 30 March 2023 stating that there have to be clear-cut, specific descriptions and data with the court pertaining to the information in which the plaintiff claims confidentiality. In the absence of such clear-cut information and material, furnished by the plaintiff before the court, there would be no basis for examining the allegations levelled against the defendants, owing to the fact that the plaintiff had not placed on record the specifics of the confidentiality before the court.

### 1.3 Examples of Trade Secrets

Please see **1.2 What Is Protectable as a Trade Secret**.

### 1.4 Elements of Trade Secret Protection

There is no codified law in India defining the elements of trade secret protection. The *Bombay Dyeing* case (supra) identifies the elements essential for information to be classified as a trade secret, as detailed in **1.2 What Is Protectable as a Trade Secret**.

Various judgments have unanimously laid down that the quality of confidentiality makes the information eligible for legal protection as a trade secret. It is very important for the owners of confidential information to show that reasonable efforts were expended by them to maintain secrecy. If such efforts cannot be proved, the owners risk losing the quality of confidence even if such information is obtained by third parties without permission.



An important element for confidential information to be categorised as a trade secret is an obligation on any other person who receives it to maintain its secrecy, if they have received it with the knowledge of obligation of confidence.

### 1.5 Reasonable Measures

It is important for the owner of a trade secret to show that they took reasonable measures to maintain secrecy regarding such information. Trade secrets are protected in India either under contract law or through the equitable doctrine of breach of confidentiality, by way of:

- restrictive covenants;
- non-disclosure agreements; and
- other contractual means.

In *Navigators Logistics v Kashif Qureshi*; CS(COMM) 735/2016, the Delhi High Court rejected the claimant's claim and complaint as it did not clearly identify the trade secret in issue, the secrecy regarding such data and what steps (apart from the secrecy clauses under the appointment letters with the defendants) the plaintiff took to maintain secrecy/confidentiality.

Additionally, trade secrets can be protected by an action against misappropriation under common law. Misappropriation of trade secrets may occur by way of breach of an obligation of confidence (whether arising impliedly or expressly) as well as by theft.

The parameters for determining whether the rights-owner of a trade secret has taken reasonable measures for protection of their trade secret vary from case to case. While there is no "straight jacket" formula, the following are a few illustrative measures that a rights-holder can adopt.

It is reasonable for owners of trade secrets to insert clauses into a technology transfer or other licence agreement, stating that the technology transferred is of a confidential nature and that the licensee is obligated to maintain confidentiality, during the pendency as well as after its termination.

Moreover, the owner may mandate the licensee to enter into appropriate secrecy agreements with their employees, subcontractors and visitors to their factory, to maintain secrecy about such trade secrets. Owners of trade secrets may even insert a cautionary notice into all technical manuals clearly stating that the information contained therein is of a proprietary and confidential nature.

However, an ex-employee cannot be prohibited from divulging or using their skill set for a competitor of the owner of a trade secret. In *Ambience India*, the High Court of Delhi held that day-to-day affairs of employment in the knowledge of many and commonly known to others cannot be called trade secrets.



## 1.6 Disclosure to Employees

Disclosure of a trade secret to employees does not mean the information has lost confidentiality. The presence of a non-disclosure agreement with the employees is not a mandatory requirement for protecting the owner's rights in a trade secret. This is judged from the facts and circumstances of each case.

Trade secrets are protected, irrespective of contract, against misuse by the employees or ex-employees, contractors or sub-contractors, licensees or ex-licensees. The case of *Konrad Wiedemann* states that trade secrets are protected against misuse by any party who may have a relation with the claimant, irrespective of contract, based on the broad principles of equity.

In *Hi-Tech Systems v Suprabhat Ray* (supra), the High Court of Calcutta held that a principal – in order to protect the utilisation of trade secrets and to prevent damage, if it cannot be compensated in money – can seek restrictions on its agents. In such a situation, equity would step in and prevent any damage from being caused to the business of the principal.

Nonetheless, the owner of such trade secret or a licensee is expected to take all reasonable measures to maintain secrecy, and to ensure that such confidential information is imparted to their employees in circumstances importing an obligation of confidence on them as well.

## 1.7 Independent Discovery

If a discovery can be proved as independent, a previously existing trade secret having some connection with such discovery will be inconsequential. Needless to say, if the claimant shows mala fides on the part of the defendant and proves that the defendant had access to the claimant's trade secret – and therefore that the discovery, rather than being independent, is a product of reverse engineering – the court will not accept the respondent's claims and may hold the respondent guilty of misappropriating the claimant's trade secret.

Also, such a process will have to stand the test of trial, and courts will see whether or not the means adopted by the defendant were bona fide and honest. Firstly, the court will examine whether the results of such bona fide independent discovery or reverse engineering have resulted in something worthy of being recognised as a trade secret. If so, the plaintiff's claim for injunction may not survive, owing to dilution of the trade secret.

Furthermore, if it is found that the means adopted by the defendant to discover the trade secret were not independent and rather were fraudulent, the court will not allow the use thereof by the defendant. The courts in *John Richard v Chemical Process Equip*, AIR 1987 Delhi 372 and in the *Konrad Wiedemann* case held that trade secrets are protected against misuse by any party who may have a relation with the claimant, irrespective of contract, based on the broad principles of



equity.

## 1.8 Computer Software and Technology

Computer software is eligible for the following IP protection.

- Section 13 of the Copyright Act, 1957 states that copyright subsists in various works, including literary works – and a computer program is a literary work. Reference can be made to the Supreme Court's order in *TCS v State of AP*, Appeal(C) No 2582 of 1998.
- Patents can be registered as regards computer programs only if such program is attached to a physical device. Standalone computer programs are not entitled to patent protection (order of the IPAB in *Ferid Allani v Assistant Controller of Patents*, OA/17/2020/PT/DEL).
- Trade secrets are also protected through contracts and non-disclosure agreements (NDAs).
- The claimant may also approach the concerned court or police for necessary protection.

## 1.9 Duration of Protection for Trade Secrets

Trade secret protection lasts as long as the secrecy is maintained.

Once the confidential information enters the public domain, it ceases to be a trade secret.

If the disclosure of confidential information is made to employees or agents under contractual obligation to maintain secrecy, they are duty-bound to ensure that secrecy is maintained.

Controlled disclosure will depend on the terms and circumstances under which the disclosure was made – ie, on:

- what control the claimant exercises while making disclosure;
- what amount of information was given and retained; and
- the understanding of the parties as regards such information.

In the event of accidental disclosure, the information loses the attribute of secrecy and ceases to be a trade secret.

A rights-owner of such confidential information can approach the courts in India for prohibitive reliefs against persons who without authorisation acquire such information. The courts will only pass prohibitive orders if it is shown that the defendant obtained the confidential information fraudulently.

## 1.10 Licensing

General principles of contract law in India govern the licensing rights of an owner of a trade secret.



They may license them to any party on any agreed-upon terms, subject to the condition that the agreement should not be contrary to the law of the land. As per Section 10 of the Indian Contract Act, all agreements are contracts if they are made with the free consent of parties competent to contract, for a lawful consideration and with a lawful object.

For the sake of caution, the owner may enter into an NDA with the licensee to ensure that the latter is under a contractual obligation to maintain secrecy as regards such trade secrets that have been handed over to them in confidence, and such NDAs may be built into the licence agreement to make it watertight.

The main objective is to ensure that trade secrets are handed over to the licensee under circumstances implying trust or confidence as regards their non-disclosure or unauthorised use.

### **1.11 What Differentiates Trade Secrets From Other IP Rights**

IP rights in India are protected under various codified statutes or acts (see **1.1 Sources of Legal Protection for Trade Secrets**). Trade secrets, on the other hand, are not protected through a codified statute but through contract law or the equitable doctrine of breach of confidentiality.

IP rights have specified terms of protection as per the following statutes.

- Section 23 of the Copyright Act – the term of copyright for a work published anonymously is 60 years from the beginning of the calendar year following the year in which the work was first published. For a work concerning a disclosed author, the period is 60 years from the death of the author.
- Section 53 of the Patents Act – the term of every granted patent is 20 years from the date of filing of the application for the patent.
- Section 25 of the Trade Marks Act – the registration of a trade mark is valid for a period of ten years, and thereafter may be renewed from time to time.
- Section 11 of the Designs Act – a design registration is valid for ten years, and may be extended for another five years.

However, for a trade secret, the rights of its owner persist so long as its secrecy is maintained.

While the owner of an IP right can apply for registration of their title with the concerned governmental authority, this is not available for trade secrets.

Finally, the costs associated with maintaining secrecy and protection of a trade secret can be much higher in certain cases, compared to IP rights, which are registerable.



## 1.12 Overlapping IP Rights

Trade secrets and IP rights are two different aspects, even though their genesis may be the same.

The rights accrue to an owner of a trade secret either by virtue of a contract or in accordance with the principles of equitable relief under the common law, and it remains a trade secret till such time as the relevant conditions are fulfilled and it is not in the public domain.

However, upon registration of an IP right (such as a patent or design right) with the governmental authority, the owner is rewarded with a monopolistic right to the exclusion of others in rem for a certain period of time, after which any person from among the public can use the technology that was once the subject matter of said IP right.

## 1.13 Other Legal Theories

It is possible to bring a claim for breach of fiduciary duty against an employee who steals a trade secret, and against a defendant for tortious interference where it has induced an employee to breach a contractual confidentiality obligation to the owner/employer.

As previously mentioned, trade secrets in India are protected by virtue of contractual obligations that are regulated by the Indian Contract Act, 1872. Therefore, if there is a specific agreement with the employee to maintain confidentiality of any information given to them in the course of business, which renders exclusivity to their employer's business, such employee can be enjoined by the court from disclosing such confidential information to a third party without the express consent of their employer.

In *AIA Engineering v Bharat Dand*, AIR 2007 Gujarat (NOC) 1456, the court held that "it is no doubt true that, under common law, a servant can be prevented from diverting the trade secret and, even in a given case, a third party can also be restrained from acting in any manner on the basis of receiving such trade secret".

A rights-holder of a trade secret can also bring an action against the defendant for tortious interference where it has induced an employee to breach a contractual confidentiality obligation to the employer, as the court cannot allow misuse of a trade secret by a third party under the broad principles of equity, which stipulate that whoever has received information in confidence may not take unfair advantage of it (upheld in the *John Richard and Konrad Wiedemann* cases).

As regards claims founded on unlawful interference with the business of the claimant or of enticement to breach of contract, it is important to show that there was a clear violation or wrongful gain that has been caused to the employee, as well as wrongful loss caused to the employer. It should also be shown that there was some trade secret or confidential information that was taken



without authorisation by the employee.

However, where it is impossible to identify the reasons behind the breach of the existing contract by the employee and the reasons for the employee joining a new employer, the court has opined that the claim cannot be enforced (see *Modicare Limited v Gautam Bali* CS (Comm) 763/2016)).

### 1.14 Criminal Liability

There is no specific offence of trade secret misappropriation under Indian law. The offences of criminal breach of trust, theft or cheating may apply, as per the facts of a particular case. See the detailed analysis in **9.1 Prosecution Process, Penalties and Defences**.

The owner of a trade secret may simultaneously initiate civil and criminal proceedings against misuse of their trade secrets.

A civil action can lead to damages (refer to **7.2 Measures of Damages**) and injunctive reliefs (refer to **7.3 Permanent Injunction** and **7.5 Costs**).

### 1.15 Extraterritoriality

A civil dispute concerning a trade secret claim can be brought before any civil court in India where the defendant resides, carries on business or personally works for gain, or where the cause of action wholly or partly arose.

If the person who indulged in misappropriation that occurred in another country is located in India, or if a part of the cause of action arose in India, the concerned Indian civil court will have jurisdiction to entertain a claim for injunctive relief, damages, costs, etc.

Furthermore, if a trade secret misappropriation is carried out outside India by a person located in India or through a computer system located in India, a criminal action can also be simultaneously filed against the wrongdoer by the claimant in India. See also **9.1 Prosecution Process, Penalties and Defences**.

## 2. Misappropriation of Trade Secrets

### 2.1 The Definition of Misappropriation

The courts in India have passed a catena of judgments identifying the essential elements to be established by the rights-holder when proving trade secret misappropriation.

The word "misappropriation" finds mention in Section 314 of the *Bhartatiya Nyaya Sanhita, 2023*,



which states that a person who dishonestly misappropriates or converts the movable property of another for their own use shall be punished with imprisonment of a term that may extend to two years, and a fine.

In *Beyond Dreams v Zee Entertainment* (2016) 5 Bom CR 266, the Bombay High Court held that, in order to establish trade secret misappropriation, the owner of the rights must prove the following:

- the information was a secret, and was not known generally or was not readily accessible to persons who deal with such information;
- the individual or owner of such information took reasonable steps to ensure and maintain its secrecy, and the information was imparted in circumstances importing an obligation of confidence; and
- there was unauthorised use of that information to the detriment of the party communicating it, or there was a threat to use it.

Section 104 of the Bharatiya Sakshya Adhinyam, 2023 states that the onus of proving a claim is on the person who makes it. Hence, the burden of proving trade secret misappropriation is on the person alleging it.

It is not mandatory for an owner of a trade secret to prove that their confidential information has been misused by the defendant. The very fact that the defendant misappropriated the claimant's trade secret demonstrates that the misappropriation was not just to steal the trade secret but to also acquire some unlawful gain from it, which gives rise to credible apprehension of future misuse by the defendant, entitling the claimant to take legal recourse.

In a civil proceeding, the rights-owner of a trade secret is merely required to show that the defendant has without authorisation accessed their trade secrets, as a prohibitory order of injunction by a civil court can be passed against the defendant, even in the absence of malice.

## **2.2 Employee Relationships**

Trade secrets law in India does not differentiate between an employee and a third party. The essence of the law vests in the obligation to maintain secrecy in such confidential information that is not available in the public domain, and which ought to not be used without a licence from the rights-holder.

For an employee, the terms of employment may include a non-disclosure covenant, prohibiting them from disclosing confidential information they were privy to during the course of employment.

Such a contractual obligation may not be present between the rights-owner and an independent third party. However, even then, such a third party shall be prohibited by courts in India from misappropriating the trade secret.



In *Zee Telefilms v Sundial Communications*; (2003) 5 Bom CR 404, the Bombay High Court held that the obligation of confidence does not apply only to the original recipient but also to any other person who receives such information with the knowledge of an obligation of confidence.

The courts must see that the information sought to be protected was not available in the public domain, and was communicated to the employee or the third party with a clear obligation to maintain secrecy, which they violated.

Therefore, employees would know certain facts and information without any special effort that cannot be termed as trade secrets, and a court may not entertain a claim to injunct the employee from using said information (see the *Star India* case).

## 2.3 Joint Ventures

No codified law recognises the existence of any obligations between joint venturers with respect to trade secrets. The parties can determine such rights and obligations concerning the exchange of trade secrets. Such agreements are governed by the Indian Contract Act.

Irrespective of the relation between parties with respect to sharing or use of confidential information, in the case of a dispute courts are guided by principles of equity, whereby whoever has received information in confidence may not take unfair advantage of it.

## 2.4 Industrial Espionage

As industrial espionage includes misappropriation of trade secrets, theft, cheating, etc, civil and criminal claims can be made by the claimant.

A detailed analysis of civil claims is covered in **7.2 Measures of Damages**, **7.3 Permanent Injunction** and **7.5 Costs**. Criminal claims are set out in **9.1 Prosecution Process, Penalties and Defences**.

# 3. Preventing Trade Secret Misappropriation

## 3.1 Best Practices for Safeguarding Trade Secrets

In transactions involving trade secrets, the owner of such information can take the following steps to ensure that their interests are safeguarded:

- inform the recipient that the information is confidential in nature and that the giver has all proprietary rights to said information;
- expressly inform that confidentiality of the information should be maintained at all times and that it



- should not be divulged to any third party without the consent of the giver; and
- clearly inform that, if the information is leaked, immense prejudice and harm will be caused to the giver.

Further, in cases where confidential information is involved, parties can form a confidentiality club by making a request to the court that confidential documents should only be accessible to members who are part of the club, and such members should undertake not to disclose or misuse such documents or information. The concept of confidentiality clubs has been discussed and upheld in various cases, such as:

- Pfizer v Unimark Remedies, order dated 4 May 2016 in Misc Petition (L) No 56 of 2016;
- Sivasamy v M/s Vestergaard A/S [FAO (OS) 206/2009];
- Mvf3 v Sivasamy [CS(OS) 599/2007] in IA No 10268/2009, CS (OS) No 599/2007;
- Roche v DCGI [CS (OS) 355/2014]; and
- Dolby International v GDN Enterprises [CS (Comm) 1425/2016].

Relying on the above judgments, the Delhi High Court passed an order in Ericsson (Publ) v Xiaomi Technology to the effect that “the reason probably is, in today’s world of globalisation, where competition is at its peak, organisations may not be inclined to disclose trade secrets/confidential agreements or their details they had entered [into] with different parties lest [this] may cause serious prejudice to such parties because of competition involved”.

The Delhi High Court (Original Side) Rules, 2018 introduced a rule on “confidentiality clubs”, under Chapter VII Rule 17. Further, the Delhi High Court Intellectual Property Rights Division Rules, 2021, Section 19 also deals in Confidentiality clubs and redaction of confidential information, and states that at any stage in any proceeding the Court may constitute a confidentiality club for the preservation and exchange of confidential information and documents filed before the Court.

### 3.2 Exit Interviews

The manner of conducting exit interviews will vary across industries and across hierarchy. However, highlights would include the following:

- the departing employee shall not part with the confidential information they may have received during the employment;
- they ought not have in their power or possession any company property that may be tangible or intangible; and
- they may be required to sign a non-compete agreement, by virtue of which they would agree to not engage in a competing business by themselves or join any other person who engages in such competing business.



In *Krishan Murugai v Superintendence Co*, AIR 1979 Delhi 232, the court held that an injunction can operate after termination of employment only if it is confined to the divulgence of trade secrets. There can be no restriction on the employee from joining a competitor post-termination. However, a negative covenant operating against the employee during the period of service was held to be legal.

## 4. Safeguarding Against Allegations of Trade Secret Misappropriation

### 4.1 Pre-Existing Skills and Expertise

Indian law surrounding trade secrets clearly differentiates between the trade secret of an employer and the general knowledge and skill set that the employee hones during employment. As upheld in the *Star India* case, employees who have been working for an employer would know certain facts and information without any special effort and which cannot be termed as trade secrets of the employer, and a court may not entertain an employer's claim to injunct the employee from using said facts and information.

In *Bombay Dyeing v Mehar Karan*, the court relied on the judgments of the US Court of Appeals, Tenth Circuit in *Rivendell Forest v Georgia Pacific* 31 USPQ 2d1472 and in *Kodekay Electronics v Mechanex Corp* 486 F 2d 449 (Tenth Circuit 1973), and held that something which is known outside the business or to those inside the business (ie, the employees), and for the guarding of which no steps have been taken and for the development of which no effort or money has been expended, cannot be a trade secret.

Therefore, while an employer cannot restrain an ex-employee from joining a competing business or from starting a competing business, it can certainly prohibit the ex-employee from disclosing information exclusively imparted to the employee by the employer during the course of employment, which is not part of public knowledge and which, if divulged by the employee, will lead to adverse consequences for the employer.

The doctrine of inevitable disclosure is not recognised in India as such. However, if the employee unintentionally discloses a trade secret of their former employer to their current employer, the former employer may be able to bring a claim for damages and injunctive relief against the ex-employee and their current employer. Please refer to **2.1 The Definition of Misappropriation**.

### 4.2 New Employees

The practices followed by companies while hiring employees from competitors vary. The following precautions may be taken to reduce the chances of being subject to a trade secret misappropriation claim:



- a written undertaking from the employee confirming that they have not retained any trade secret of their previous employer;
- a written declaration from the employee clearly stating that the current employer did not seek any trade secret of the previous employer from the employee; and
- a written undertaking whereby the employee indemnifies the current employer from any harm resulting from any act or omission of the employee as regards any confidential information pertaining to the previous employer.

## 5. Trade Secret Litigation

### 5.1 Prerequisites to Filing a Lawsuit

The procedure is as follows.

- The defendant(s) needs to be identified.
- The rights-holder should collect all relevant documents, such as contracts, correspondence with the defendant, etc, to show that the information in question can be considered “trade secrets”.
- Evidence to show violation or misappropriation by the defendant needs to be tendered.
- One also has the option of filing a case against an unknown defendant (ie, a “John Doe”) and subsequently adding a party once their identity is ascertained through discovery.
- If documents in support of the plaintiff’s case are to be taken from various other parties, appropriate requests seeking interrogatories need to be filed.
- If the details are to be taken from intermediaries such as domain registrars, banks, etc, they can be made pro forma for the defendant to the suit.
- The rights-holder should have an authorised representative in India to sign and file papers on their behalf. Such an authorisation can be made by way of a simple power of attorney.

### 5.2 Limitations Period

A claim against a defendant would accrue on knowledge of said wrongdoing by the plaintiff.

The limitations period in a straightforward civil case involving trade secrets is three years from the date on which the cause of action arose. The limitations period for suits of tortious claims is one year.

In certain cases, the claimant can show that the cause of action is recurring in nature. In *Bengal Waterproof v Bombay Waterproof*; 1997 (17) PTC 98 (SC), the Supreme Court upheld the concept of recurring cause of action in relation to a trade mark dispute, and held that each time a defendant deals in an infringing product bearing the plaintiff’s mark they commit a recurring act of breach, giving a recurring and fresh cause of action at each transaction entered into by the defendant.



### 5.3 Initiating a Lawsuit

Please refer to **5.1 Prerequisites to Filing a Lawsuit**.

### 5.4 Jurisdiction of the Courts

As per Section 20 of the Code of Civil Procedure, a civil dispute concerning a trade secrets claim can be brought before any civil court in India where the defendant resides, carries on business or personally works for gain, or where the cause of action wholly or partly arose.

Matters involving trade secrets would fall within the definition of “commercial disputes” under Section 2(c) of the Commercial Courts Act, 2015. Before the Commercial Courts, timelines must be strictly followed for expeditious disposal of a commercial suit. If precisely followed, a commercial suit can be wrapped up as per the following timeline.

- Filing of suit.
- 30 days – plaintiff’s additional documents.
- 120 days – written statement/reply from defendant.
- 60 days – inspection.
- 15 days – admission denial.
- 30 days – case management hearing:
  1. issues are framed;
  2. list of witnesses is filed;
  3. fixing of schedule for simultaneous filing of evidence;
  4. fixing of schedule for trial;
  5. fixing of schedule to file written note of arguments;
  6. fixing of date for final arguments; and
  7. fixing of schedule for final arguments.
- 180 days – closing of arguments.
- 90 days – judgment.

A criminal case concerning theft of trade secrets may also contain ingredients of criminal breach of trust, cheating, causing wrongful gain/loss and using IT resources for cheating, and can be filed before the police or the magistrate within whose jurisdiction the alleged illegal act wholly or partly took place, or where the accused person is located.

### 5.5 Initial Pleading Standards

The following are the main ingredients of a trade secrets claim:

- who the claimant is;



- the claimant's ownership of the confidential information;
- evidence to show that the information is confidential/a trade secret;
- who the defendant is;
- evidence of misappropriation; and
- evidence of damage costs.

In a civil action, Order VI Rule 2 stipulates that every pleading shall contain a concise statement of the material facts on which the party relies for their claim or defence. The evidence can be attached separately.

Also, a civil action may be filed based on information and belief supported by an affidavit. However, after initiation of the proceeding and discovery, if no evidence is gathered in support of the plaintiff's claim, the suit may be dismissed for want of cause of action against the defendants.

In *Church of Christ v Ponniamman*; AIR 2012 SC 3912, the Supreme Court held that cause of action is a bundle of facts which, taken with the law applicable to them, gives the plaintiff the right to relief against the defendant. Every fact that is necessary for the plaintiff to prove the claims made by them against the defendant and to enable the plaintiff to obtain a final decree should be set out in clear terms.

Even in a criminal action involving trade secrets, the complaint should be concise, and should contain the basic facts leading to the dispute and not provisions of law, precedents, etc.

Finally, the standard of proof in a civil case is preponderance of probability, while in a criminal case it is beyond reasonable doubt.

In *Amica Financial Technologies Pvt Ltd v Hip Bar Pvt Ltd and Others*, the Madras High Court held that, for an applicant to ask for protection of its trade secrets, it must prima facie establish through some material that such information was communicated to the person against whom protection is sought. Moreover, the applicant will also have to prima facie establish that the information in question is confidential in nature. Further, the applicant must also show that the confidential information is under threat of being used without authorisation by the respondent for wrongful gains.

## 5.6 Seizure Mechanisms

Under Order 26, a Civil Court has the power to appoint commissioners to:

- seize and take into custody incriminating evidence and material;
- inspect/investigate;
- examine accounts; and
- conduct scientific investigation, etc.



In a criminal case, summons to produce, searches and seizures, etc, are allowed as per Sections 94, 96 and 97 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

While applying for the above seizure orders against the accused/respondent at an ex-party stage, the court must be convinced of the following:

1. that there is high likelihood of the opposite side destroying/fudging evidence if notice is given;
2. that the evidence collected through such seizure is to be secured for adjudicating a dispute between the parties; and
3. that the subject matter of the dispute will be preserved and not destroyed or tampered with.

The powers of a civil court in this regard have been contemplated in Orders 26 and 39 of the Code of Civil Procedure.

## **5.7 Obtaining Information and Evidence**

Evidence can be collected as follows.

Under Order XI Rule 2 of the Code of Civil Procedure, 1908, a party can seek interrogatories. If certain important evidence or facts are not produced before the court, the party concerned is obligated to produce these.

As previously stated, under Order 26, the court has the power to appoint commissioners to:

- seize and take into custody incriminating evidence and material that may be found in their power and possession;
- inspect/investigate;
- examine accounts; and
- conduct scientific investigation, etc.

As per the Commercial Courts Act, 2015, both the claimants and the respondents must provide an undertaking that:

- all documents in their power, possession, control or custody pertaining to the facts and circumstances of the case have been placed on record;
- they have not made any false statement or concealed any material fact, document or record; and
- they have included all information that is relevant for the purposes of adjudication of the case.

If a party gives a false undertaking, it would be committing perjury and would invite penal consequences.



## 5.8 Maintaining Secrecy While Litigating

Please refer to **3.1 Best Practices for Safeguarding Trade Secrets**.

## 5.9 Defending Against Allegations of Misappropriation

The relevant defences are provided in **9.1 Prosecution Process, Penalties and Defences**.

## 5.10 Dispositive Motions

In India, the following options are available for narrowing down or eliminating a claim, completely or partially:

- where a baseless trade secrets suit is filed, the respondent can file under Order VII Rule 11 of the Code of Civil Procedure, seeking dismissal of the complaint on grounds such as non-disclosure of any cause of action, etc;
- as per Order VI Rule 7, the court may at any stage of the proceeding strike out or amend any pleading that may be unnecessary, scandalous, frivolous or vexatious, or which may tend to prejudice, embarrass or delay the fair trial or cause abuse of the process of law or the court; and
- sometimes, the court exercises its power and frames the main issues to be proved through trial, thereby ensuring that the matter reaches a logical conclusion (see Order XIV Rule 1).

## 5.11 Cost of Litigation

The approximate cost for a trade secrets litigation (civil commercial suit) before the Delhi High Court, from start to finish, would be based on various factors, such as:

- court fees;
- lawyer's fees;
- fees of local commissioners and independent expert witnesses; and
- photocopying, travel, mail/courier and such ancillary expenses.

There is no specific law that bars third-party funding of litigation in India. One of the earliest cases in this regard was the judgment of the Privy Council in *Ram Coomar v Chunder Canto*; High Court of Judicature at Fort William in Bengal, where the court held that there is no law that declares it illegal for one party to receive and another to give funds for the purposes of carrying on a suit. However, such agreements should not be contrary to public policy.

In the case of *BCI v AK Balaji*; AIR 2018 SC 1382, the Supreme Court of India held that advocates in India cannot fund litigation on behalf of their clients. However, there appears to be no restriction on third parties (non-lawyers) funding the litigation.



In *Rangadurai v Gopalan*; 1979 AIR 281, the court held that the relationship between a lawyer and their client is highly fiduciary in nature, requiring a high degree of fidelity and good faith.

Also, various provisions of the Bar Council of India Rules clearly state the following.

- Rule 9 – an advocate must not act or plead in any matter in which they have a pecuniary interest.
- Rule 18 – an advocate must not be a party to the fomenting of litigation.
- Rule 20 – an advocate must not stipulate a fee contingent on the results of litigation or agree to share the proceeds thereof.
- Rule 21 – an advocate must not buy, traffic in, stipulate or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to:
  1. stocks, shares and debentures of government securities;
  2. any instruments that are, for the time being, by law or custom, negotiable; or
  3. any mercantile document of title to goods.
- Rule 22 – an advocate must not directly or indirectly bid for or purchase, either in their own name or in any other name, for their own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which they were in any way professionally engaged.
- Rule 22A – an advocate must not directly or indirectly bid in court, auction or acquire by way of sale, gift, exchange or any other mode of transfer, either in their own name or in any other name for their own benefit or for the benefit of any other person, any property which is the subject matter of any suit appeal or other proceeding in which they are in any way professionally engaged.

Section 49(1)(c) of the Advocates Act, 1961 categorically mentions the standard of professional conduct and etiquette to be observed by advocates. Non-compliance can invite disciplinary proceedings and even debarment from practising law.

## 6. Trial

### 6.1 Bench or Jury Trial

There is no jury system in India. Cases are decided by judges, who are the presiding officers.

### 6.2 Trial Process

A trade secrets case does not have a special trial process. It is governed by the law pertaining to civil commercial lawsuits, as previously discussed. The trial process can be briefly summarised as follows.

- It commences with the court framing the main issues.
- Thereafter, the plaintiff is directed to file evidence by way of an affidavit of its witnesses. This is



followed by cross-examination of the plaintiff's witnesses by the defendant's advocate.

- The defendant then files the affidavits of its witnesses, who will be cross-examined by the plaintiff's advocate.
- Once the cross-examination of the witnesses of both parties concludes, the matter is listed for final arguments.
- After hearing the final arguments, the court passes the final judgment.

### 6.3 Use of Expert Witnesses

Expert witnesses do appear before Indian courts on a regular basis.

The first kind of expert witness is a private expert witness, who appears on behalf of a private party (ie, plaintiff/defendant). For instance, in cases involving pharmaceuticals or telecommunications patent issues, parties file the evidence affidavit of an independent expert witness, who is someone of stature (such as the dean of a university, etc). Their testimony (ie, evidence affidavit) is also prepared in the same way as for other witnesses. An expert witness of one party will be cross-examined by the advocate of the other party, and vice versa. Independent experts charge fees depending on their expertise, experience and stature.

Also, Chapter XI, Delhi High Court (Original Side) Rules, 2018 permit an expert witness to testify before it. Further, the Delhi High Court Intellectual Property Rights Division Rules, 2021 Section 16 notes that, in the case of evidence by experts, this may be recorded by resorting to procedures such as hot-tubbing or other procedures as the Court deems fit.

Under 39(1) of the Bharatiya Sakshya Adhinyam, 2023, when a court/judge is confronted with an issue that requires expert advice and opinion for resolution, they can refer that issue to an expert (eg, an expert on handwriting, fingerprinting, foreign law, etc).

## 7. Remedies

### 7.1 Preliminary Injunctive Relief

In *Dr Sudipta Banerjee v LS Davar and Company and Others*, FMAT 735 of 2021, the Hon'ble Calcutta High Court held that the remedies available to the owner of trade secrets include:

- an injunction preventing the licensee from disclosing the trade secret;
- return of all confidential and proprietary information; and
- compensation for any losses suffered owing to disclosure of such trade secret.

As opined by courts in India and by the Supreme Court in *Kashi Math v Sudhindra*; AIR 2010 SC 296, it



is well established that, in order to obtain preliminary injunctive relief, the party seeking the granting of such an order has to prove that:

- they have made out a prima facie case for trial;
- the balance of convenience is in their favour; and
- they will suffer irreparable loss if the injunction is not granted.

The purpose of passing injunctive relief is to ensure that evidence is not destroyed and that further damage to the plaintiff is prevented.

Usually, when the court passes preliminary injunctive relief, it is valid till such time as the matter is finally argued or till the court vacates or modifies it. Also, if the injunctive relief is contingent on certain other facts, it can vary accordingly.

In a straightforward civil case involving trade secrets and confidentiality, under normal circumstances there is no need for the claimant to post a bond.

## 7.2 Measures of Damages

The following damages can be claimed in a trade secrets case:

- actual/compensatory – based on actual loss caused to the plaintiff and actual profits made by the defendant from misappropriation;
- punitive/exemplary – to set an example for other wrongdoers; and
- aggravated damages – on account of the extreme mala fide actions of the defendant, especially when actual/compensatory damages are disproportionately dwarfed in comparison to the actual amount recoverable by the plaintiffs.

The principles governing proof of actual damages, aggravated damages and punitive damages in IP disputes are enshrined in the decision of *Hindustan Unilever v Reckitt Benckiser*, 2014 (57) PTC 495 [Del] [DB]. This was further upheld in *Koninlijke Philips v Amazestore CS (COMM) 737 of 2016*. The court also noted that the damages should be granted based on the degree of mala fide conduct.

## 7.3 Permanent Injunction

A permanent injunction will be granted if a claimant is successful in their civil action.

If it is practically possible for the defendant to recall a product, the court may pass an order directing recall. In a typical case, there is no limitation on the duration of a permanent injunction, and the defendant is enjoined for all times to come.

It is not possible to limit an employee's subsequent employment in most cases. As observed in



the *Star India* case, any person in any employment for a certain period would acquire knowledge of certain facts without any special effort.

The courts in *Ambience India* and in *Krishna Murgai v Superintendence Co*; AIR 1979 Del 232 held that an employee – particularly after the cessation of their relationship with their employer – is free to pursue their own business or to seek employment with someone else. However, during the subsistence of their employment, they may be compelled to not engage in any other work or to not divulge the business/trade secrets of their employer to others, especially competitors. In such a case, a restraint order may be passed against an employee, as Section 27 of the Indian Contract Act is no bar in such a situation.

However, routine day-to-day affairs of an employer that are commonly known to others cannot be called trade secrets. Trade secrets can be formulae, technical know-how or a peculiar mode or method of business adopted by an employer which is unknown to others.

Nonetheless, the courts in *John Richard v Chemical Process Equip* and in *Konrad Wiedemann v Standard Castings* held that trade secrets are protected against misuse by any party who may have a relationship with the claimant, irrespective of contract and based on the broad principles of equity, whereby whoever has received information in confidence may not take unfair advantage of it.

#### **7.4 Attorneys' Fees**

If the claimant is successful in their suit, they may claim litigation costs, including attorney's fees, and not just damages.

Once the court concludes that the claimant is entitled to costs, it may ask the claimant to file a detailed memo of costs, and may then pass an order directing the defendant to pay such costs.

#### **7.5 Costs**

Costs can include:

- court fees;
- attorney's fees;
- fees of expert witnesses/investigators;
- travel expenses;
- fees of court commissioners; and
- photocopying/postal expenses, etc.

In the event of the respondent proving that the claimant's case is without any merit and was filed to harass the former, the court may award costs to the respondent for harassment and injury suffered.



Section 35 of the Code of Civil Procedure gives courts the discretion to impose costs. Section 35A discusses compensatory costs in respect of false, vexatious claims or defences.

The Supreme Court in the case of *Uflex Ltd v Government of Tamil Nadu*; [2021] 7 SCR 571 held that usually the judicial system hesitates to impose costs, presuming it to be a reflection on the counsel. In commercial matters costs must follow the cause. Therefore, in other words, the winning party should get the costs and the losing party should pay the costs.

## 8. Appeal

### 8.1 Appellate Procedure

If the trade secrets case is filed before the Delhi High Court, the suit will be listed and heard by a single judge. An appeal from the order can be filed before the Appellate Division, comprising two judges (Division Bench). If any party is not satisfied with the order of the Division Bench, an appeal may lie before the Supreme Court of India.

The time period for filing an appeal is 60 days, as per Section 13 of the Commercial Courts Act, 2015. Section 14 of the Act mentions that the appellate court should endeavour to dispose of appeals within a period of six months from the date of filing. Further, an appeal before the Supreme Court would be by way of a Special Leave Petition. As per Section 133(C) of the Schedule to the Limitation Act, 1963, the limitations period for appeal is 90 days from the date of the judgment or order.

It is also possible to appeal interim orders.

### 8.2 Factual or Legal Review

Appellate courts in India are the Hon'ble Supreme Court and the various High Courts (25 in number).

As a rule, appellate courts in India deal only with points of law. However, in certain cases where a question of fact was argued before the trial court but was still not considered by the judge, the appellate court can consider said fact.

In *Wander v Antox*; 1990 Supp (1) SCC 727, the Supreme Court of India held that the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion, except where the discretion is shown to have been exercised arbitrarily, capriciously or perversely, or where the court ignored the settled principles of law. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below, if the one reached by such court was reasonably possible based on the material.

Under Indian law, review of an order is usually sought before the same judge who passed the order,



and a petition seeking review of an order is allowed only if any of the following factors are proved:

- the order had an error apparent on the face of it; and
- discovery of a new and important matter or evidence, which, despite the exercise of due diligence, was not within the knowledge of the party seeking review and could not be presented before the court when the order was passed.

While exercising its review jurisdiction in *Northern India v Governor of Delhi*; AIR 1980 SC 674, the Supreme Court of India held that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision on the case.

If a court feels that a certain issue must be decided for the dispute to reach its logical conclusion, both parties can come to a common consensus, settle and thereby waive an issue, and the matter can proceed as regards the other issues.

All appeals have to be filed physically (ie, on paper) followed by oral arguments from both sides before a final order is passed.

The Supreme Court of India Rules, Orders XLVII and XLVIII state that certain proceedings before the apex court, such as a review petition and curative petition, would not entail a physical hearing unless specifically directed by the court.

## 9. Criminal Offences

### 9.1 Prosecution Process, Penalties and Defences

In the case of trade secrets theft, a complaint can be filed before either the concerned magistrate or police officer, for the following offences.

- Theft – Section 303(2) of the *Bhartatiya Nyaya Sanhita, 2023*, with imprisonment of either description for a term that may extend to three years, or with a fine (or both).
- Cheating – Section 318(2) of the *Bhartatiya Nyaya Sanhita, 2023*, with imprisonment of either description for a term that may extend to three years, or with a fine (or both).
- If the misappropriation is in violation of a contractual agreement, as per Section 316(2) of the *Bhartatiya Nyaya Sanhita, 2023*, one can claim criminal breach of trust, with imprisonment of either description for a term that may extend to three years, or with a fine (or both).
- If computer resources were involved in the misappropriation, this will also attract the provisions of the *Information Technology Act, 2000*:
  1. Section 66B – punishment for dishonestly receiving stolen computer resources or communications devices, with imprisonment of either description for a term that may extend



- to three years, or with a fine that may extend to INR1 lakh (or both);
2. Section 66D – punishment for cheating by personation using computer resources, with imprisonment of either description for a term that may extend to three years, and liability to a fine that may extend to INR1 lakh; and
  3. Section 72 – penalty for breach of confidentiality and privacy, with imprisonment for a term that may extend to two years, or with a fine that may extend to INR1 lakh (or both).
- Causing wrongful gain and wrongful loss.
  - Copyright infringement – Section 63 of the Copyright Act, 1957, with imprisonment for six months to three years, and with a fine of between INR50,000 and INR2 lakhs.

The accused can adopt various defences as follows, which may be nearly the same in both civil and criminal cases:

- that the information was not confidential or proprietary;
- that the information was in the public domain;
- absence of mens rea or criminal intent; and
- absence of any fiduciary relationship demanding exercise of a duty of care.

If aggrieved by lackadaisical police investigation, the claimant/complainant can approach the concerned magistrate seeking orders against the police under the provisions of Section 175 of the Bharatiya Nagarik Suraksha Sanhita, 2023. There are dedicated police departments for dealing with economic and cyber offences.

## 10. Alternative Dispute Resolution

### 10.1 Dispute Resolution Mechanisms

In *Bawa Masala Co v Bawa Masala Co Pvt Ltd*, CS (OS) No 139 of 2002, the High Court of Delhi passed an order referring the parties to a panel of neutral evaluators. They were directed to go through the papers and consider each side's position, and to render an evaluation of the case, thereby giving an unbiased understanding on the case's strengths and weaknesses.

One can apply for pre-litigation mediation before the Arbitration and Mediation Centre of the Delhi High Court under Section 12(A) of the Commercial Courts Act, 2015. Such proceedings are effective in cases with a high likelihood of settlement. Moreover, all discussions in such proceedings are confidential and are conducted without prejudice.

In a contractual agreement that has an arbitration clause, either party can seek interim orders under Section 9 and/or Section 17 of the Arbitration and Conciliation Act, 1996, in the event of a dispute.



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