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## **Supreme Court of India clarifies trigger for indemnity in consent awards: absolute liability crystallises upon deposit**

In the recent case of *VPS Healthcare Private Limited and Anr. vs. Prabhat Kumar Srivastava and Anr.*<sup>1</sup>, the Supreme Court of India (“**Supreme Court**”) clarified the principles of contractual construction regarding indemnity clauses within a consent award. The Supreme Court held that an indemnifier’s obligation is triggered immediately when the indemnity holder incurs an absolute liability, such as a compelled court deposit. It cannot be deferred under the guise of awaiting final appellate confirmation unless strictly dictated by the entire contractual text.

The Supreme Court set aside a judgment of the Delhi High Court which had deferred the execution of a consent award passed by the Singapore International Arbitration Centre (“**SIAC**”). The High Court had erroneously ruled that the indemnifier (the Promoters) was not obligated to discharge the financial liability until the underlying disputed award was confirmed by the ‘Highest Court of Appeal’. The Supreme Court’s ruling underscores the sanctity of literal construction in commercial contracts and reinforces the rights of indemnity holders against contingent delays.

### **Brief facts**

VPS Healthcare Private Limited and Medeor Hospitals Limited (“**VPS**”) acquired Rockland Hospitals (later renamed Medeor) from its original promoters, Prabhat Kumar Srivastava and Rishi Srivastava (“**Promoters**”). Disputes between the parties were settled via a compromise deed dated February 2, 2019, which culminated in a SIAC consent award dated March 1, 2019.

Under Paragraph 32(a) of the consent award, the Promoters undertook to defend certain pending litigations, including an arbitration claim by Ernst and Young (“**EY**”) against Medeor. The clause stipulated that the Promoters would “ensure that no liability in regard to the said litigation is recovered from VPS” by any forum. Another limb of the clause stated that if any liability is confirmed by the ‘Highest Court of Appeal’, the Promoters would discharge it within 30 (thirty) days.

Subsequently, an arbitral award was passed in favour of EY for INR 10,00,00,000 (Indian Rupees ten crore) plus interest. To stay the execution of this award, the Delhi High Court directed Medeor to deposit the awarded amount. VPS was compelled to deposit INR 15,86,17,808 (Indian Rupees fifteen crore eighty-six lakh seventeen thousand eight hundred and eight) to protect its assets. VPS then sought to enforce the SIAC consent award against the Promoters to recover this amount. The Promoters resisted, arguing that their obligation to pay would only arise 30 (thirty) days after the EY award was confirmed by the Supreme Court of India. The Delhi High Court agreed with the Promoters and deferred enforcement.

<sup>1</sup> 2026 INSC 361 (decided on April 13, 2026)

## Issue

Whether the obligation of the Promoters to indemnify VPS under the consent award was triggered immediately upon the compelled deposit of the awarded amount, or if it was deferred until the underlying liability was confirmed by the ‘Highest Court of Appeal’?

## Key precedents analysed

The Supreme Court relied on and analysed several key precedents to reach its conclusion. Notably, it examined how these past judgments apply to the present case.

### *Khetarpal Amarnath vs. Madhukar Pictures*<sup>2</sup>

**Relevance and application:** Relied upon by the Supreme Court to interpret the scope of Sections 124<sup>3</sup> and 125<sup>4</sup> of the Indian Contract Act, 1872 (“**Indian Contract Act**”), and establish the exact trigger point for an indemnity claim.

**Relevant paragraphs:** The Supreme Court explicitly extracted and relied upon paragraphs 25, 26, and 27 of this judgment. These paragraphs lay down the principle that statutory provisions for indemnity are not exhaustive and that an indemnity holder has a cause of action to call upon the indemnifier the moment a liability incurred becomes absolute, even before actual damages are paid out. The Supreme Court applied this to rule that VPS’s compelled court deposit constituted an absolute liability triggering the indemnity obligation.

### *Annaya Kocha Shetty vs. Laxmibai Narayan Satose*<sup>5</sup>

**Relevance and application:** Relied upon to establish the governing rules of contractual construction for interpreting the terms of the Consent award.

**Relevant paragraphs:** The Supreme Court reproduced Paragraph 17 (including 17.1, 17.2, and 17.3) of this judgment. These paragraphs mandate that a contract must first be construed according to its plain, ordinary, and literal meaning (the literal rule). The Supreme Court used this precedent to emphasise that the High Court erred by jumping to a purposive construction when the literal reading of the consent award was unambiguous.

### *Suraj Mal Ram Niwas Oil Mills (P) Limited vs. United India Insurance Co. Limited*<sup>6</sup> and *Export Credit Guarantee Corporation of India Limited vs. Garg Sons International*<sup>7</sup>

**Relevance and application:** These were initially cited by the Promoters to argue that the commercial indemnity clause must be strictly construed to mean payment is only due post-highest court confirmation. However, the Supreme Court turned the ratio of these decisions against the Promoters to support VPS.

**Relevant paragraphs:** The Supreme Court relied on the overarching principles of strict construction from these decisions (specifically drawing from the rules reiterated in Paragraph 26 of *Suraj Mal* and Paragraphs 10 to 13 of *Export Credit*). These paragraphs state that the exact words used in commercial contracts must be given paramount importance, and courts are strictly prohibited from adding, deleting, or substituting words under the guise of

<sup>2</sup> 1955 SCC OnLine Bom 73

<sup>3</sup> Section 124 of the Indian Contract Act defines ‘Contract of Indemnity’ as an agreement where one person promises to compensate another for losses caused by their own actions or by the actions of someone else.

<sup>4</sup> Section 125 of the Indian Contract Act lists out the rights of the indemnity holder when sued. The Supreme Court interpreted Sections 124 and 125 of the Indian Contract Act as not being exhaustive of an indemnity holder’s rights. The court clarified that an indemnity holder does not need to wait until they have actually paid damages or suffered a loss out-of-pocket; the moment a liability is incurred and becomes absolute, they have an immediate cause of action to call upon the indemnifier to discharge that liability.

<sup>5</sup> 2025 SCC OnLine SC 758 / 2025 INSC 466

<sup>6</sup> (2010 10 SCC 567

<sup>7</sup> 2014 1 SCC 686

interpretation. The Supreme Court utilised this to fault the High Court for ignoring the plain and explicit words of the immediate obligation present in the fourth limb of the Compromise Deed.

## Findings and analysis

The Supreme Court allowed the enforcement petition based on the following key findings:

1. the Supreme Court deconstructed Paragraph 32(a) of the consent award into 5 (five) distinct limbs. It found that the Delhi High Court had erroneously focused solely on the fifth limb (payment within 30 (thirty) days of confirmation by the highest court) while entirely ignoring the fourth limb, wherein the Promoters unconditionally agreed to *“ensure that no liability... is recovered from [VPS] by the Forum”*;
2. the use of the word ‘ensure’ combined with the contractual definition of ‘Forum’ created an immediate, absolute obligation to insulate VPS from liability. The fifth limb (the 30 (thirty) day timeline) was construed merely as a backstop guarantee for an extreme scenario, not a prerequisite trigger for the indemnity;
3. the Supreme Court held that VPS’s liability became absolute when the High Court compelled Medeor to deposit INR 15,86,17,808 (Indian Rupees fifteen crore eighty-six lakh seventeen thousand eight hundred and eight) to stay the execution of the EY award. This deposit constituted a ‘recovery’ by a forum, squarely triggering the fourth limb of the agreement; and
4. the Supreme Court noted that the High Court’s interpretation created a paradox, which is, if liability only arose after confirmation by the Supreme Court, the Promoters could simply choose not to appeal to the Supreme Court, thereby perpetually avoiding their obligation. Such an interpretation would render the indemnity clause a nullity.

## Conclusion

The Supreme Court set aside the Delhi High Court’s judgment and directed the Promoters to pay or deposit the sum of INR 15,86,17,808 (Indian Rupees fifteen crore eighty-six lakh seventeen thousand eight hundred and eight) within 30 (thirty) days for the benefit of VPS.

The judgment reiterates the settled legal position. It reiterates the principle that if the indemnity holder incurs a liability, and if that liability is absolute, then he is entitled to call upon the indemnifier to save him from that liability and to pay it off. By enforcing the strict literal interpretation of commercial consent awards, this ruling provides significant comfort to parties seeking to enforce indemnity provisions, ensuring that indemnifiers cannot use ongoing appellate processes as a shield to evade clear, crystallised financial obligations.

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