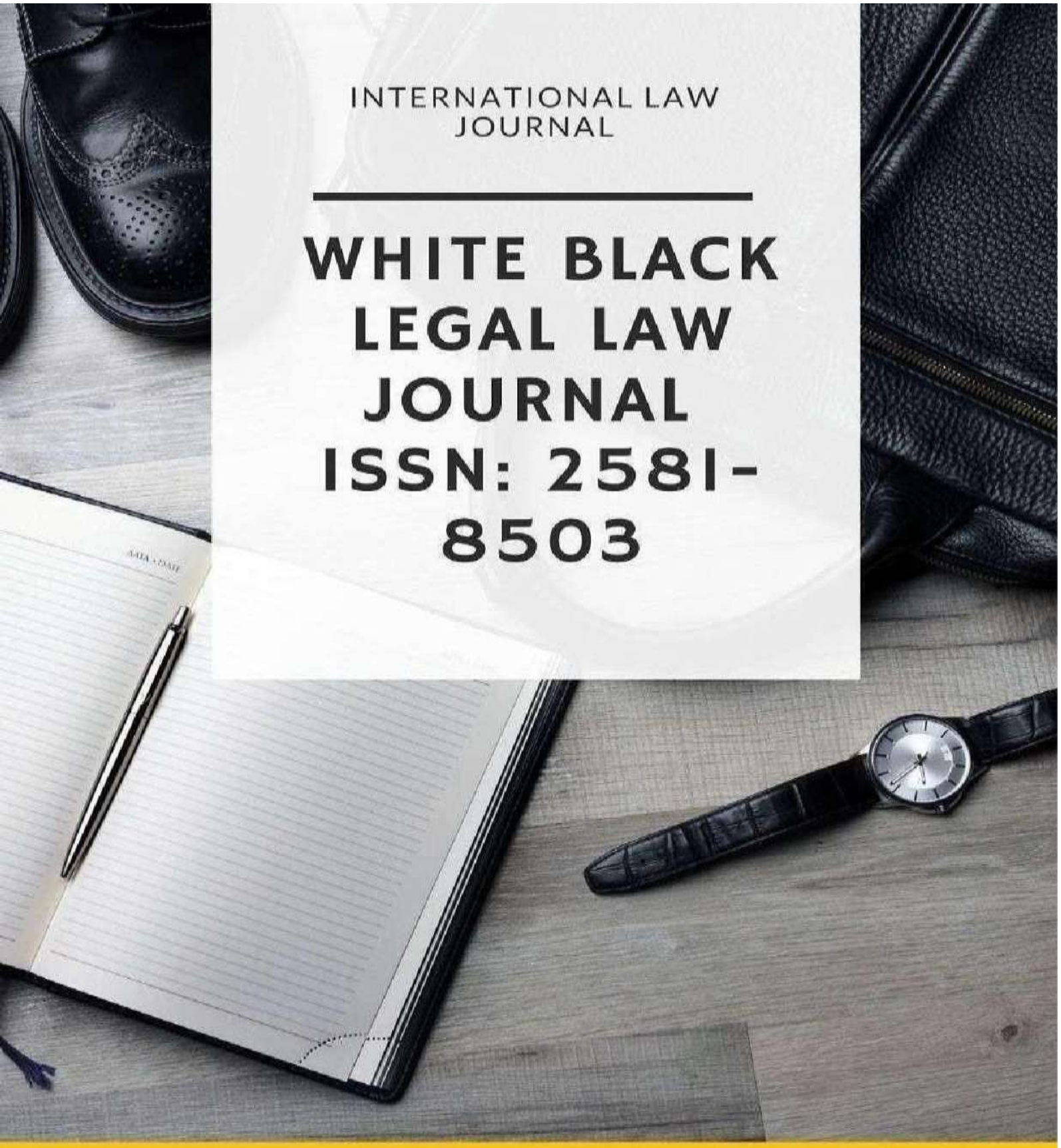

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RELATED PARTY TRANSACTION COMPLIANCE AND ECONOMIC POLICY: ASSESSING THE CONFLICT WITH EASE OF DOING BUSINESS

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ABSTRACT

The concept of Related Party Transactions in Companies Act, 2013, is dealt in section 188(1), providing a "safe harbour" exemption. This proviso promises on RPTs conducted in Ordinary Course of Business (OCoB) and on an Arm's-Length Basis (ALB) are exempt from strict board approval which promotes corporate efficiency for routine and fair dealings. The Statutory protection has been nullified by a structural lapse within the framework itself. There are two threats for the proviso, in which the primary threat comes not from SEBI's materiality rules, the secondary from the Indian judiciary itself, which has imposed standards that render the statutory language forensically unusable in litigation. This marks the judicial override of the legislative intent.

The courts and tribunals have imposed harsh historical and technical perfection tests. The Supreme Courts's ruling in Anuj Jain has replaced the OCoB standard with forensic "Habit" test, demanding proof of continuous corporate history and intention of the routine business documentation. Tribunals have converted the ALB requirements into a demand for technical perfection.

The later rulings such as Shailja Krishna (2025), the Judicial activism converts the statutory defense into a guaranteed vulnerability. The effective replacement of the flexible commercial ALB principle with a demand for flawless, pre-emptive valuation reports shifts the burden from demonstrating commercial justification to achieving forensic accounting perfection, disproportionately penalizing large, complex organizations where external valuation is costly, time-consuming, and inherently involves subjective judgment. This regulatory strictness imposes ex-ante compliance costs and it creates a chilling effect on original RPTs. It forces the

companies to claim unnecessary approvals for routine and daily transactions which erode the government's commitment towards the ease of doing business.

STATEMENT OF PROBLEM

The core issue is the breaking down of the balance created by the legislation under Section 188(1). This has caused burden for corporation management as the stringent dependence on the proviso no longer provides protection against avoidance proceedings. Also, the vagueness and non-statutory nature of the court imposed "Habit" test preclude the development of the objective, unified compliances, converting routine related party transactions from a matter of business judgement into a guaranteed subject of costly forensic scrutiny. This has created a situation which drives companies towards a defensive compliance, leading to unnecessary procedural delays and sacrificing the operational agility that the safe harbour was designed to protect. Consequently, the current regime fails to offer a clear distinction between genuine value-maximizing transactions and fraudulent value diversion, creating a punitive legal framework that fundamentally hinders the government's stated agenda for improving the ease of doing business for large corporate groups.

RESEARCH OBJECTIVES

1. To map the basic conflict between the legislative philosophy of section 188(1) and the forensic evidentiary standards applied by the judiciary
2. To analyse the judiciary techniques like Habit test and the Technical Flaw rule in landmark rulings to demonstrate their functions as evidentiary override that nullifies the protection.
3. To quantify the harm by calculating the breakdown of legal certainty and measuring the increased compliance and managerial burden imposed on listed entities by this override.
4. To assess how the present rigid RPT regulatory environmental conflicts with and actively undermines the policy commitments made by the Indian Government for ease of doing business.
5. To recommend harmonized legal reforms aimed to balance the original statutory intent and protect investor protection.

RESEARCH QUESTIONS

1. Whether the current judicial view prioritize forensic scrutiny than the intent of the managerial effectiveness and fairness?
2. Whether the statute for RPTs is practically isolated for daily transactions due to high compliance burden by SEBIs size-based materiality rules?
3. Whether the ruling in Anuj Jain constitutes an invalid judicial change that overrides and nullifies the statutory language?
4. Whether the demand of technical perfection in ALB is legally balanced and the implications for the burden on companies during litigation?
5. Whether the judicial overrule has created a measurable collapse of legal certainty and an excess rise in compliance costs, reducing managerial autonomy for listed companies?
6. Whether the implementation of balanced guidelines and statutory amendments is necessary to settle the goals of efficiency and investor protection?

RESEARCH METHODOLOGY

The Researcher adopts a doctrinal and analytical method. The analysis will point on the conflict of the legislative intent with the judicial philosophy expressed in rulings like *Anuj Jain*. Analytical method will examine the evidentiary mechanisms to demonstrate the invalidation of the statute.

SCOPE & LIMITATIONS

SCOPE

The research focuses on the interaction between **Section 188(1)** and SEBI (LODR) Regulations, primarily considering **listed public companies** where the conflict is most acute. The analysis covers legislative history and judicial/tribunal decisions from **2013 to 2025**.

LIMITATIONS

Access to many confidential NCLT orders and full forensic valuation reports is limited. The fact-specific nature of OCoB and ALB assessments means findings may vary, and conclusions reflect the legal framework up to 2025.

RESEARCH HYPOTHESIS

The judicial and regulatory reinterpretation of Section 188(1) of the Companies Act, 2013, particularly through the Supreme Court's *Anuj Jain* ruling and SEBI's materiality-based RPT framework has nullified the legislative intent of the statutory "safe harbour" for Related Party Transactions conducted in the ordinary course of business and on an arm's-length basis, thereby transforming a facilitative provision into a punitive compliance mechanism that undermines managerial autonomy and the government's ease of doing business objectives.

LITERATURE REVIEW

1. **Aditi Gupta, Related Party Transactions under the Companies Act and Other Allied Rules, 12 Ind. Corp. L. Rev. 45 (2024).**

   This Literature discusses a broad description of the regulations related to Related Party Transactions (RPTs) in India. It discusses the exemption for Ordinary course of business and arm length basis, under section 188(1) fourth proviso, along the procedural rules by SEBI's Regulation 23(1). It explains the statutory order which shows the intention to provide substantive protection for daily transactions while SEBI introduce size-based approvals. The practical effects of the conflict is not discussed and it overlooks the judicial methods that nullifies the defense.

2. **Related Party Transactions: Compliances, Cases and Reforms**

   The work deals on the regulations and judicial framework of RPT from a practitioner's view. It discusses the conflict between the exemption under Companies Act and SEBI regulation. It shows how promoters exploit the OCoB/ALB defense to avoid disclosures. Emphasizing the conflict with present transition, it highlights the practical challenges faced by listed companies. This captures the friction between the exemption promise and judicial reality.

3. **Abhishek Mukherjee & Monil Chheda, *The "Ordinary Course of Business" Exception in Preferential Transactions – Deciphering the Interpretation Methodology*.**

   This literature examines the judicial involvement in OCoB defense in preferential and RPT within Indian Corporate Framework. It speaks about the strict and multi-dimensional methods applied by the courts and highlights the historical habit, routine

and profit motive. By explaining how forensic scrutiny and judiciary view defeat the defense, this emphasizes the challenges companies face in defending daily transactions.

4. **Tanmayee Sethy & Sanidhya Somvanshee, Balancing Governance and Ease of Doing Business: A Critical Analysis of SEBI's Proposed RPT Reforms (2025)**
   This specific work examines SEBI's introduction of scale-based materiality thresholds under regulation 23(1). It also discusses the impact on the RPT in high turn over listed companies. It underscores the inconsistency of ease compliance burdens on large entities while undermining the statutory exemption under section 188(1). By stressing the automatic approval trigger based on size, the work stressed the overrule of judiciary and the tension aroused.

CHAPTER 1: INTRODUCTION

Related party transactions are significant for the functioning of modern and complex structures especially for those who work as groups. These make the internal distribution of capital easier, optimize the service delivery systems and allow for unified strategic development placing them as necessary mechanism. Despite this RPTs provide a challenge in administration as they are globally recognised as primary medium for diversion of corporate value.

The Companies Act, 2013, introduced a regulation for RPTs, which is dealt in section 188(1).[1] The section mandates strict procedures including board approvals and above certain thresholds, shareholder approval for transactions involving related parties. Critically, the fourth proviso of section 188(1) establishes a significant "safe harbour" exemption. This proviso grants exemption to RPT's conducted in Ordinary course of business and on Arm's length basis from strict requirements.[2] The legislative intent of this safe harbour was clear i.e., to promote corporate efficiency and commercial fair dealings from extensive scrutiny. The exemption ensures that large corporations can execute standard and repeated transactions without the procedure delays and high costs linked with mandatory board or shareholder meetings, supporting a favourable environment for large operate. This approach aligns the Indian Statute with global principles that recognise that where a transaction is routine and market-priced, the risk of value diversion is low.[3]

[1]Companies Act, No. 18 of 2013, § 188(1) (India).
[2] Companies Act, No. 18 of 2013, § 188(1), Fourth Proviso (India).
[3] OECD, Related Party Transactions and Minority Shareholder Protection (Corporate Governance Working Paper

Despite this clarity, the statutory protection promised by the OCoB/ALB safe harbour exemption has been nullified by structural rigidities. The protection is nullified by two forces. One is the imposition of strict, non-statutory evidentiary standards by the Indian Judiciary and tribunals. The second is the imposition of mandatory parallel compliance by the SEBI for listed entities which disregards the substantive fairness demonstrated by OCoB/ALB.

The courts and tribunals have interpreted the text in a way that instead importing standards from anti-avoidance and insolvency regimes, anticipating the purpose of the safe harbour.[4]This is most evident in *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd.*, which introduced the forensic "habit test" for OCoB, demanding comprehensive proof of continuous corporate history, thereby replacing the commercial prudence. Tribunals have also converted the ALB requirement which in practice involves flexible transfer pricing methods into a demand for technical perfection in valuation reports, creating the technical flaw rule. The effects are that strict adherence to the literal meaning of the text of the safe harbour proviso no longer promises protection against avoidance proceedings, leading to important liability for management.

The foundation of modern corporate jurisprudence emphasizes the balance between managerial freedom and duty to protect shareholder rights, especially against oppression and mismanagement.[5] Early case law demonstrates the judiciary's caution on the interference in daily business decisions. The Supreme Court in *Needle Industries (India) Ltd. v. Needle Industries Newey (India),* observed that courts should intervene only when managerial actions are clearly oppressive or unfair to minority.[6] Also, the judicial standard for determining corporate interest against which RPT fairness is measured, is interpreted in *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.*, which established the importance of the company's interest in major decision making.[7]

However, the current response of judiciary on RPTs have moved beyond this established

No. 8, 2012).

[4]Aditi Gupta, Related Party Transactions under the Companies Act and Other Allied Rules, 12 IND. CORP. L. REV. 45 (2024).
[5]Somasekhar Sundaresan, Judicial Expansion of Corporate Governance Duties in India, 33 NAT'L L. SCH. INDIA REV. (2021).
[6]Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd., (1981) 3 SCC 333 (India).
[7]Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd., (2021) 9 SCC 449 (India).

governance standard. The judicial extension of scrutiny, particularly the pre-emptive application of anti-avoidance standards, suggests an underlying assumption that ass RPTs are suspicious. This makes a crucial divergence. Section 188(1) was a statutory effort to reduce ex-ante procedural costs for daily transactions. By imposing the high bar to the "habit test" and requiring perfection in ex-ante, management is now forced to false compliance which leads to incurrence of very costs and delaying the safe harbour was designed to eliminate. This situation creates a very strict governance standards against the core economic policy commitment of the state. When the legal uncertatinities are high and the definition of routine business is converted into a complex, retrospective forensic test, companies sacrifice operational ease which leads to procedural delays.

CHAPTER 2: THE EROSION OF STATUTORY INTENT

The legislative structure of section 188(1) was directed by the principle of maximising the managerial efficiency with upholding substantive fairness.[8] The exemptions posed on OCoB and ALB, denotes a modern approach towards corporate law where the governance standard is commercially reasonable and proportional. If a transaction is routine and fairly priced, which is beneficial to the company as if it was negotiated with an unrelated party, the law should minimize the procedural hurdles. The objective was to align the regulatory burden with the potential harm which reserves stringent approvals for non-routine or unfair priced dealings. This approach focuses on judging RPTs by the flexible criteria of Business Judgement Rule, calculating whether the transaction in substance makes commercial sense for the company.[9] The existence of the exemption represents a legislative recognition that RPTs are not harmful but they are structural necessities. The primary view of compliance was focused on proving fairness (ALB) and routine nature (OCoB) at the time the decision was made. This forward looking commercial logic is significant for operational feasibility.[10]

The Judicial Shift: Importing Anti-Avoidance Standards:

The problem identifies a breakdown in the legislative balance where judicial interpretation has led to operational override of the purpose of statute. This has rooted in an inappropriate merger of legal standards different from corporate frameworks. While corporate law governs ongoing

[8]Related Party Transactions: Compliances, Cases and Reforms, NLSIU J. CORP. GOVERNANCE (2024).
[9]Companies Act, No. 18 of 2013, § 188(1), Fourth Proviso (India).
[10]Abhishek Mukherjee & Monil Chheda, The "Ordinary Course of Business" Exception in Preferential Transactions – Deciphering the Interpretation Methodology (May 21, 2024), CYRIL AMARCHAND MANGALDAS BLOG

business operations and aims to prevent future conflicts of interest, the Insolvency and Bankruptcy Code, 2016, is suspicion-driven which is focused on retrospective avoidance of further or preferential transactions following default.[11] The judiciary began importing the stringent evidentiary demands of IBC anti-avoidance proceedings into the Companies Act framework. The consequence is that RPT which ought to be governed by governance standard are now subjected to a strict anti-fraud or anti-preference standard, irrespective of the financial status of the company. The judicial view has now shifted from requiring proof of business prudence to requiring proof of absence of fraudulent intent or preference.

Analysing the Evidentiary Overreach:

Firstly, the "habit test" for OCoB, which gained significance from Anuj Jain case which required proof that the transaction is not only within the scope of the business but also represents a continuous and routine operation backed by specific documentation. This converts the OCoB criteria from a substantive test of business to a test of forensic documentation making the defense inaccessible for companies undergoing vibrant growth. Secondly, the "Technical Flaw" rule for ALB, converts the flexible principle into a rigid demand for forensic accounting perfection. If a report has any technical omission or imperfection in methods used, the ALB defense is rendered void. This technique nullifies the protection, raising the burden of proof to an unsustainable level for corporate management.

On imposing these tests, the judiciary reverses the burden of proof. Management should now establish the exemption criteria beyond reasonable doubt in litigation, even years after the transaction happened, forcing companies to maintain a voluminous documentation that is either statutorily required or commercially efficient. This has created an environment where business judgement is converted into a subject of costly forensic scrutiny.

Dual Compliance and Regulatory Friction with SEBI:

The conflict is aggravated by the parallel compliance regime enforced by the SEBI for listed entities through SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[12]. Regulation 23(1) mandates approval steps including audit committee and approval from shareholders for material RPTs, defined purely by size or materiality thresholds when exceeding one thousand crore or ten percent of the annual consolidated turnover, whichever is

[11]Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401, 484–85 (India) (Discussing the anti-preference nature of IBC).
[12]SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 23(1) (India).

lower.[13]

The existence of mandatory approval based completely on size fundamentally undermines the CA, 2013, safe harbour for listed entities. The Companies Act intends for OCoB/ALB to guarantee protection from procedure approvals but SEBI regulation requires approval regardless of the status if the size threshold is met. This creates a conceptual dualism where the protection granted under Companies Act is legally present but is functionally irrelevant for companies exceeding SEBI's materiality limits. This friction represents that achieving "Ease of Doing Business" requires a structural harmonisation between legislative intent, regulatory mandate and judicial interpretation preventing the inappropriate conflation of governance standards with anti-avoidance standards.[14]

CHAPTER 3: THE "HABIT" TEST AND JUDICIAL AMENDMENT

The legislative attempt to introduce the efficiency into RPT through the OCoB safe harbour in the fourth proviso to section 188(1) of the Companies act has been nullified by judicial interpretation.[15] The intention behind the exemption was clear to exempt the routine, fair priced dealings from board and shareholder approval, thereby promoting managerial feasibility and speed of execution.[16] However, Supreme Court introduced a standard of forensic perfection designed for the whole context of avoidance transactions under the IBC in in *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd.*[17]The ruling required the determination of OCoB to be based on "Habit test". The court mandated an inquiry into whether the transaction was common or usual and whether it was "part of the regular course of work".[18] The misapplication of the "habit test" to solvent companies has created three major difficulties. First, it exploits the exemption for minority shareholders to challenge routine transactions based on deficiencies of documents. For instance, in *Rajeev Tandon v. R.P. of J. P. Ecotex Ltd*[19], the NCLAT, relying on the IBC jurisprudence, insisted on retrospective proof of continuous and systematic business practice. Similarly, NCLT benches have followed the

[13]SEBI, Consultation Paper on Review of Related Party Transactions under SEBI (LODR) (Nov. 9, 2021).
[14]Somasekhar Sundaresan, Judicial Expansion of Corporate Governance Duties in India, 33 NAT'L L. SCH. INDIA REV. (2021).
[15]K. R. Chandra, *The Dilution of Corporate Efficacy: A Study of Related Party Transactions*, 15 Corp. L. Rev. 22 (2025).
[16]Ministry of Corporate Affairs (MCA), *Report of the Company Law Committee* (2022).
[17]*Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd (*2020) 8 SCC 401 (India).
[18]Somasekhar Sundaresan, *Judicial Expansion of Corporate Governance Duties in India*, 33 Nat'l L. Sch. India Rev. (2021).
[19]NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 450 of 2020.

precedent, as demonstrated in *K. K. R. Naidu v. S. R. B. Infra Projects Pvt. Ltd*[20]., where transactions integral to a company's expansion plan were put into question because they lacked the "habitual" history in the specific form they were executed, thereby penalising growth and adaptation.

Second, the judicial alterations fundamentally undermine the business rule[21]. The OCoB, ought to be flexible, purposive test focusing on whether the transaction is reasonably required to facilitate the company's core or ancillary activities.[22]

Instead, courts have adopted a highly restrictive definition as held in Bombay High Court in *Neeharika Infrastructure Pvt. Ltd. v. Union of India*[23], which views 'ordinary course' focusing on established industry practices and the quantum of the transaction in relation to the company's total turnover.

Third, the judicial interpretation has disallowed RPTs which are ancillary of the company's core business but that are non-revenue generating. In Mittal Corp. Ltd. V. M.K. Jain[24], the NCLAT rejected an OCoB claim for a recurring but technically non-core financial arrangement, arguing that only core revenue-generating activities qualified for the exemption.[25] This ruling weakens essential intra-group financing and support mechanism vital for a corporate structure, forcing them to secure often more expensive external funding simply to avoid the regulation risk. The challenge is further aggravated by the anti-avoidance principles, initially dealt in case of *Essar Steel India Ltd. v. Satish Kumar Gupta*[26].

The combined effect is the creation of an administrative trap, where the only safe RPT is one that is perfectly documented and involves no element of commercial discretion, a standard that is impossible to meet for any responsive corporation.[27] The NCLAT decision in *ICICI Bank Ltd. v. Venkatraman*[28], while primarily an IBC case, strengthened the detailed examination into

[20]*K. K. R. Naidu v. S. R. B. Infra Projects Pvt.*, NCLT Hyderabad, C.P. No. 15 of 2022.
[21]S. K. Mitra, *The Erosion of the Safe Harbour in Indian Corporate Law*, 10 J. Corp. Governance 55 (2023).
[22]Abhishek Mukherjee & Monil Chheda, *The "Ordinary Course of Business" Exception in Preferential Transactions – Deciphering the Interpretation Methodology* (May 21, 2024).
[23]*Neeharika Infrastructure Pvt. Ltd. v. Union of India*, Bombay High Court, W.P. (L) No. 4238 of 2020.
[24]Mittal Corp. Ltd. V. M.K. Jain, NCLAT, Company Appeal (AT) No. 203 of 2022.
[25]*Mittal Corp. Ltd.* (2022), at para 45.
[26]*Essar Steel India Ltd. v. Satish Kumar Gupta,* (2019) 2 SCC 1 (India).
[27]FICCI, *Impact of Compliance Burden on Ease of Doing Business: RPT Framework* (2023).
[28]*ICICI Bank Ltd. v. Venkatraman*, NCLAT, Company Appeal (AT) (Insolvency) No. 543 of 2020.

the subjective bona fides and historical necessity of the transaction, blurring the lines between risk management and unlawful preference and extending the uncertainty into the governance domain. The decisions in V.R. Ganesan v. M. Amrutha[29] and Vijay Goel v. S.K. Gupta[30] remain stark remainders that the Habit test places the importance on the company's past documentation perfection rather than fairness and logic of the transaction in the present.

CHAPTER 4: TECHNICAL PERFECTION OVER COMMERCIAL JUSTIFICATION: THE EVIDENTIARY BURDEN OF THE ALB PRINCIPLE

The original purpose of the ALB principle was to ensure that RPTs were executed at a price and on terms that a prudent independent party would agree, thus acting as a check against unfair value extraction[31]. This required a flexible commercial assessment, aligned with the business judgement rule and the practical realities of corporate group.[32] However, judicial and regulatory assessment has escalated ALB from a standard of commercial prudence to a rigid, forensic techniques that leads to disproportionate costs and administrative friction. The core problem arises from the conflation of the Companies Act's governance standard with the high technical Arm's Length standard used in the Income Tax Act, 1961, for Transfer pricing.[33]

The transfer pricing rules, designed exclusively to prevent tax erosion necessitates voluminous documentation, detailed functional analysis, and complex Comparable Uncontrolled Transactions (CUPs), a standard mandated in the long-running dispute in *Vodafone International Holdings B.V. v. Union of India.*[34] The NCLAT ruling in *Innovations India* is a clear example, where the court insisted on a detailed, third-party valuation report though the company argued that the pricing was based on observable quoted market rates for similar services.[35]

This insistence on technical perfection disregards the proportionality of the compliance efforts to the transactional risk and the inherent complexity of valuation for intra-group transactions.

[29]R.Ganesan v. M. Amrutha, NCLAT Delhi, Company Appeal (AT) No. 433 of 2023
[30]Vijay Goel v. S.K. Gupta, NCLT Mumbai, C.P. No. 129/2021
[31]Companies Act, 2013, § 188, Proviso 4.
[32]Tanmayee Sethy & Sanidhya Somvanshee, *Balancing Governance and Ease of Doing Business: A Critical Analysis of SEBI's Proposed RPT Reforms* (2025).
[33]Aditi Gupta, *Related Party Transactions under the Companies Act and Other Allied Rules*, 12 Indian Corp. L. Rev. 45 (2024).
[34]*Vodafone International Holdings B.V. v. Union of India* ,Supreme Court, Civil Appeal No. 733 of 2012
[35]*Innovations India* (2024), at para 61

For instance, while a standard CUP analysis may work for commodities, it becomes impossible for unique intra-group services or the licensing of specialised intellectual property.[36] In *Adani Power Ltd. v. SEBI*[37] , the SAT examined the RPTs involving captive power generation services, focusing heavily on whether the internal pricing method reflected a hypothetical external market which placed the burden on the company to create perfect market data where none existed, thereby setting an impossibly high evidentiary bar.[38]

Furthermore, the judiciary often substitutes its own judgement for that of the Audit Committee and the Board. In cases which challenged the fairness of intra-group transactions, such as *TATA Sons Ltd. v. Cyrus Investments Pvt. Ltd*[39], courts engaged in extensive scrutiny of pricing methods and the necessity of the RPTs. The Audit committee's role as demonstrated in *Hindustan Unilever Ltd. v. SEBI*[40], is to ensure due process and reasonable price discovery. However, judicial hardening means the Audit Committee's approval is merely the commencing point for litigation but not as a protective mechanism, increasing the liability exposure of Independent Directors.[41]

The burden is further aggravated in situations where the transactions involve deviation from theoretical market rates due to commercial necessity. In *Unitech Ltd. v. SEBI*[42], the regulator demanded open and detailed explanation for RPTs that deviated even slightly from market rates, regardless of the commercial necessity of the group. This is worsened by NCLT rulings that delve into the details of transactional timing and volume, suggesting that technical pricing perfection is insufficient without structural perfection. For example, in *Mr. Rajesh Kedia v. V. R. Jhavar*[43], the NCLT challenged the commercial expediency of an RPT based on the internal scheduling of funds, even though the pricing wasn't overtly challenged.[44]

The requirement for continuous valuation for all material RPTs, regardless of commercial

[36]FICCI, *Valuation Challenges in Intra-Group Transactions: A Corporate Perspective* (2023).
[37] *Adani Power Ltd. v. SEBI,* SAT, Appeal No. 165 of 2021.
[38]*Adani Power Ltd. v. SEBI* (2021), focusing on the **Transaction Net Margin Method (TNMM)** typically used in TP.
[39]*TATA Sons Ltd. v. Cyrus Investments Pvt. Ltd,* NCLAT, Company Appeal (AT) No. 297 & 298 of 2017.
[40]*Hindustan Unilever Ltd. v. SEBI,* SAT, Appeal No. 216 of 2022.
[41]P. V. Ramakrishna, *Governance Traps in Indian Corporate Law: An Analysis of Section 188*, 18 Corporate Gov. J. 101 (2024).
[42] *Unitech Ltd. v. SEBI,* SEBI Adjudication Order, WTM/AB/EFD/DRA/103/2022-23.
[43] *Mr. Rajesh Kedia v. V. R. Jhavar,* NCLT Mumbai, C.P. No. 23 of 2023.
[44]*Mr. Rajesh Kedia v. V. R. Jhavar* (2023), demonstrating judicial intrusion into internal commercial scheduling.

context has significant real-world costs.[45] The judiciary's insistence on a standard closer to the Transfer Pricing mechanism, which is designed for anti-tax-avoidance, effectively transforms every RPT into a regulatory vulnerability, thereby nullifying the ALB safe harbour and replacing commercial justification with an unsustainable requirement for technical, forensic perfection.

CHAPTER 5: THE COST OF LEGAL UNCERTAINTY: MEASURING THE COMPLIANCE BURDEN TO EASE OF DOING BUSINESS

The double nullification of the OCoB and ALB safe harbours driven by the judicial adoption of forensic standards and imposition of technical perfection collectively generates a legal uncertainty which imposes a substantial compliance burden, fundamentally hindering the objective of 'Ease of Doing Business'[46]. The absence of clear and predictable standards regarding a valid RPT forces Companies particularly listed entities, to adopt a maximum compliance posture irrespective of transactional risk, leading to disproportionate costs, operational delays and managerial risk.[47]

The compliance burden is evident across three areas. Firstly, procedural overload and regulatory conflict[48]. The continuous lowering of materiality thresholds by SEBI's listing obligations and disclosure requirements regulations, paired with the judicial insistence on the "habit test" means that a vast array of routine transactions now require audit committee approval, extensive documentation and potential shareholder ratification.[49] This regulatory overlap where SEBI dictates stringent compliance for transactions the Companies Act deemed exempt, creates excess delay[50]. The problem is further amplified by strict enforcement in *SEBI v. Standard Chartered Bank*[51], affirmed that SEBIs mandate to penalise procedural non-compliance, even when substantive fairness is not in dispute.

Second is the crippling financial cost of technical perfection[52]. The mandated technical

[45]World Bank Group, *Doing Business Report: India's Corporate Governance Challenges* (2024).
[46]World Bank Group, *Doing Business Report: India's Corporate Governance Challenges* (2024).
[47]P. V. Ramakrishna, *Governance Traps in Indian Corporate Law: An Analysis of Section 188*, 18 Corporate Gov. J. 101 (2024).
[48]The Economist Intelligence Unit, *India's Regulatory Overlap and the Corporate Compliance Challenge* (2023).
[49]SEBI (LODR) Regulations, 2015, Regulation 23(1).
[50]Tanmayee Sethy & Sanidhya Somvanshee, *Balancing Governance and Ease of Doing Business: A Critical Analysis of SEBI's Proposed RPT Reforms* (2025).
[51]*SEBI v. Standard Chartered Bank* ,(2020) 18 SCC 230 (India)
[52]FICCI, *Impact of Compliance Burden on Ease of Doing Business: RPT Framework* (2023).

perfection under the ALB principle necessitates often engagement of special independent valuers, legal counsel, even for low-risk transactions.[53] The cost linked with obtaining, defending and storing the forensic evidence required to anticipate a post-facto challenge under the Anuj Jain standard is crippling, particularly for mid-sized and developing corporations. The financial and operational strain of RPT litigation is clearly evident in cases like *Indus Biotech Private Limited v. Kotak India Venture*[54], where a dispute over the nature of a transaction (debt v. equity) twisted into prolonged, costly litigation due to the lack of clear RPT policy and evidence of fair dealing, irrespective of the commercial merits.[55]

Third, Directors now face increased liability, as seen in the severe consequences of failures to disclose RPTs in *ICICI Bank v. Chanda Kochhar*[56], which set a clear precedent for accountability. The uncertainty created by the potential for a transaction to be challenged retrospectively under an IBC standard, even if the company is solvent, undermines contractual certainty.[57] This is often demonstrated by repeated rise in shareholder oppression and mismanagement petitions, often discussed on RPT challenges, as evidenced in NCLT rulings like *G. R. R. Naidu v. S. N. P. Reddy*[58].

Complex transactions like large-scale mergers and acquisitions which involves RPTs, face delays and increased regulatory hurdles, as highlighted by the regulatory scrutiny and litigation involved in the *Essar Steel India Ltd. v. Satish Kumar Gupta*[59] *resolution process.* Ultimately these burdens contributes to India's lower EODB rankings in metrics related to "starting a business and enforcing contracts"[60]

The current RPT framework, driven by legal uncertainty and a preference for technical perfection over commercial prudence, functions as a tax on efficiency[61]. It compels legitimate business to over-comply and prevents necessary commercial cooperation, thereby fundamentally defeating he intention of legislation of the safe harbour and discouraging foreign

[53]Aditi Gupta, *Related Party Transactions under the Companies Act and Other Allied Rules*, 12 Indian Corp. L. Rev. 45 (2024).
[54]*Indus Biotech Private Limited v. Kotak India Venture,* Supreme Court, Civil Appeal No. 7192 of 2019.
[55]*Id.*
[56]*ICICI Bank v. Chanda Kochhar,* Supreme Court, Criminal Appeal No. 147 of 2023
[57]The Law and Practice of Corporate Governance in India, LexisNexis (2024 ed.), Ch. 16.
[58]*G. R. R. Naidu v. S. N. P. Reddy,* NCLT Hyderabad, C.P. No. 15 of 2022.
[59]*Essar Steel India Ltd. v. Satish Kumar Gupta,* Supreme Court, Civil Appeal No. 9592 of 2018
[60]World Bank Group, *Doing Business Report: India's Corporate Governance Challenges* (2024).
[61]G. R. R. Naidu v. S. N. P. Reddy, NCLT Hyderabad, C.P. No. 15 of 2022.

direct investment that relies on clear, predictable corporate law.[62] The need for coherence and predictability is dominant to restore investor confidence and managerial freedom.

CHAPTER 6: POLICY RECOMMENDATIONS

1. **Amend Section 188(1) to define OCoB purposely:** The MCA should amend the Companies Act to include an explanation that defines OCoB as any transaction that is integral to the company's stated core business activities and conducted in a manner aligning with industry practice. The amendment must state that the OCoB determination is a forward-looking commercial judgement and not a retrospective forensic "habit test", excluding the Anuj Jain holding as a sole determination for the Companies Act application.
2. **Establish a proportional ALB standard:** The statutory language for ALB should be clarified to emphasize substantive fairness and commercial prudence, differentiating it from the rigorous documentation requirements of the IT Act/s Transfer pricing rules. A clear legislative direction should be issued which affirms that third0party valuation reports should be sought only where the transaction is difficult or non-routine. For routine transactions, reliance on the Audit Committee's reasoned commercial assessment should be sufficient.
3. **Harmonize Companies Act and SEBI thresholds:** A joint circular or amendment by the MCA and SEBI is mandatory to integrate the OCoB/ALB safe harbour into the SEBI(LODR) Regulations, 2015. Specifically, any RPT that is demonstrably conducted in the OCoB and on ALB should be exempted from the mandatory shareholder approval under Regulation 23, regardless of the materiality threshold. The Audit Committee's mandate must be strengthened to provide comprehensive and documented reading for the OCoB/ALB determination, making this decision the primary governance check rather than a procedural step.

JUDICIARY AND REGULATORY DISCIPLINE:

1. ***Restrictive Application of Anti-Avoidance Principles:*** The supreme court must issue a clear and binding precedent confining the strict evidentiary demands and anti-avoidance standards of the IBC strictly to insolvency and avoidance proceedings.

[62]Ministry of Corporate Affairs (MCA), General Circulars and Notifications on Related Party Transactions (2014–2025).

Judicial review of RPTs in present corporate governance litigation (Section 241, 242) should revert to the Business Judgement Rule and standards established in Needle Industries, intervening only where managerial action demonstrates clear oppression or lack of commercial rationale.

2. ***Uphold the Audit Committee's Authority:*** Judicial and Tribunal scrutiny must treat the documented and reasoned approval of an RPT by an Audit committee comprising independent directors as strong, rebuttable evidence of compliance with OCoB and ALB principles. The burden of proof to overturn this finding should be placed on the petitioner which demands concrete evidence of mala fide intent, material value diversion.
3. ***Proportionality in Enforcement:*** Regulatory agencies must adopt a proportional enforcement strategy. Minor and non-substantive procedural lapses in RPT documentation that do not compromise the fairness of the transaction should attract only minor penalties, reserving severe penal action for cases of proven tunnelling, fraud or non-disclosure.
4. ***Mandatory RPT policy***: Companies, especially listed entities should be mandated to adopt a comprehensive, Board-approved RPT policy clearly defining the parameters for OCoB specific to their industry and operational structure, including detailed rules for inter-group service pricing and valuation methods. This internal policy should serve as a critical piece of evidence in any litigation following.
5. ***Periodic External APT Audit:*** Large corporations should be encouraged to undertake periodic, independent RPT audits (separate from the statutory audit) to review compliance with OCoB/ALB standards and to validate the Audit committee's process, mitigating the risk of retrospective challenge.

CONCLUSION

The current jurisprudence and regulatory landscape in India has depleted the statutory scheme for RPT under the Companies Act, 2013. The "safe harbour" provided by the OCoB and ALB exemption has been nullified, replaced by a regime characterised by forensic scrutiny, technical overreach and legal uncertainty. It has been demonstrated that this nullification originates from a voluntary split within the framework, the inappropriate merger of corporate governance standards with anti-avoidance and insolvency principles. By importing the stringent "habit test" from the IBC jurisprudence, the judiciary has converted the OCoB exemption from a flexible

standard of commercial prudence into an impossible to meet test of historical documentation perfection. Similarly, the ALB requirement has altered from a check on substantive fairness into a rigid demand for transfer pricing perfection, ignoring the proportional transactional risk and the inherent flexibility of the Business judgement rule.

The effect of this uncertainty is devastating. It consists the Business Judgement Rule by subjecting all decisions to potential re-valuation under a hostile and anti-fraud lens. This mandates the management to adopt a very cautious, over-compliant posture which diverts the significant capital toward legal defense and unwanted documentation. The current framework disincentivizes the necessary intra-group cooperation vital for complex multinational and domestic corporations. The legal system is currently prioritizing theoretical administrative clarity over practical commercial reality, an imbalance that demands immediate and surgical intervention.

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