

The background of the page is a complex, abstract composition. It features numerous reflective, metallic-looking spheres of various sizes. These spheres are interconnected by a dense network of thin, light-colored lines that resemble a molecular structure or a web. The overall effect is one of intricate, three-dimensional geometry. The spheres and lines are distributed across the page, with some appearing more prominent than others.

Special Purpose Vehicles

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SPECIAL PURPOSE VEHICLES

UNDERSTANDING THE INDIAN FRAMEWORK

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SPECIAL PURPOSE VEHICLES

I. Introduction

Special Purpose Vehicles (SPVs) are legally distinct entities created for narrow and defined purposes, usually to manage financial risk, hold assets, or execute specific projects without exposing the parent company to liability. Despite their widespread use, there is no uniform legal definition. The International Monetary Fund (IMF) describes them as entities with minimal physical presence or staff, often controlled by non-residents to facilitate cross-border capital movement and shield ownership structures. SPVs allow sponsors to isolate risk, commonly in infrastructure or capital-intensive projects, by containing liabilities within the SPV. This separation ensures that financial distress at the project level does not directly affect the sponsor's balance sheet.

SPVs are also widely used in private equity and venture capital, where fund managers create them to raise capital for individual investments or side deals. Their legal form varies with context: in the U.S., they often take the form of Limited Liability Companies (LLCs) or Limited Partnerships (LPs), while joint ventures may use SPVs as co-owned subsidiaries with their assets and liabilities. This flexibility has made SPVs a staple of project finance, investment

pooling, and corporate structuring across jurisdictions.

II. General Regulatory Compliance for Special Purpose Vehicles

SPVs, though legally distinct from their parent entities, are embedded in a web of regulatory frameworks that span corporate, tax, securities, and foreign exchange law. In India, most SPVs are incorporated as private limited companies under the Companies Act, 2013. Sections 3(1)(b) and 7 lay down the requirements for incorporation, while Sections 134 and 137 require the preparation and filing of financial statements, along with the board's report and auditor's report. Compliance also includes maintaining statutory registers, holding regular board meetings (Section 173), and adhering to internal governance norms such as audit committees and independent directors, where applicable (Sections 177 and 149). These obligations ensure a baseline of transparency and accountability, even when the SPV is created for a narrow or temporary purpose.

Taxation of SPVs is governed by the Income Tax Act, 1961. Since SPVs often engage in transactions with their parent or related entities, especially in cross-border structures, they are subject to transfer pricing rules under Sections 92 to 92F. These provisions mandate that income arising from international or specified

domestic transactions be computed at arm's length, and detailed documentation (Rule 10D of the Income Tax Rules) must be maintained. Where SPVs are set up in low-tax jurisdictions or with minimal economic substance, anti-avoidance measures such as the General Anti-Avoidance Rules (GAAR) and the Place of Effective Management (POEM) guidelines are triggered, allowing the tax authorities to disregard the corporate form and tax the income in India. In cases where Double Taxation Avoidance Agreements (DTAAs) apply, Sections 90 and 90A permit the taxpayer to claim treaty benefits, though the benefit may be denied if the SPV is deemed to lack commercial substance.

SPVs dealing with public money or investment pooling are subject to securities market regulations. In India, this oversight is primarily exercised by the Securities and Exchange Board of India (SEBI). For instance, SPVs used in infrastructure projects may be designated as holding companies for Infrastructure Investment Trusts (InvITs) or Real Estate Investment Trusts (REITs), governed by the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and the SEBI (Real Estate Investment Trusts) Regulations, 2014, respectively. These regulations require the SPV to hold underlying assets, distribute income to unitholders, and comply with extensive disclosure norms. Where SPVs issue debt securities or participate in

securitisation, they must comply with the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, and the RBI's Master Directions on Securitisation of Standard Assets (2021). Additionally, if foreign investment is involved, the SPV must adhere to the Foreign Exchange Management Act, 1999, particularly the Foreign Exchange Management (Non-debt Instruments) Rules, 2019. These rules govern sectoral caps, ownership patterns, and reporting obligations (such as FC-GPR and FC-TRS filings with the Reserve Bank of India).

Compliance with insolvency and bankruptcy law is also pertinent. Under the Insolvency and Bankruptcy Code, 2016, SPVs can be subject to insolvency proceedings, though courts have acknowledged that their thin capitalisation and single-purpose nature often complicate resolution. For example, if a concessionaire SPV under a public-private partnership defaults, insolvency proceedings may implicate public assets or contractual obligations tied to state authorities. While the IBC applies in full to corporate SPVs, the extent to which the parent entity is affected depends on interlinked guarantees and operational control.

Ownership transparency and beneficial interest tracking are further essential in SPV regulation. The Companies (Significant Beneficial Owners) Rules, 2018, read with Section 90 of the Companies Act,

require disclosure of individuals who hold 10% or more of beneficial ownership or voting rights. This measure aims to prevent misuse of SPVs for money laundering or benami holdings. Relatedly, all SPVs must comply with Know Your Customer (KYC) and Anti-Money Laundering (AML) regulations under the Prevention of Money Laundering Act, 2002, particularly when they are involved in financial transactions or investments through regulated intermediaries.

Finally, all SPVs are subject to mandatory statutory audit under Section 143 of the Companies Act, 2013. The auditor is required not only to verify the accuracy of financial records but also to comment on the adequacy of internal controls and whether the entity's financial statements reflect its stated objectives. If the SPV is part of a publicly listed group or a regulated financial arrangement, additional audit certifications, such as CARO (Companies Auditor's Report Order) 2020, and internal audit requirements under Rule 13 of the Companies (Accounts) Rules, 2014, may also apply. These compliance obligations are not merely procedural; rather, they serve to ensure that SPVs operate within the bounds of law and that their structural autonomy is not used to undermine regulatory intent.

III. Judicial Interpretation and Case Laws

Courts in India have played a crucial role in moulding the legal contours of Special Purpose Vehicles (SPVs), particularly when regulatory benefits, disqualifications, or obligations hinge on corporate structures. However, judicial interpretation of SPVs has not been consistent across sectors, resulting in conflicting precedents, reflecting further ambiguities in their treatment under Indian law.

In *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*¹, the Supreme Court scrutinised the use of SPVs as instruments of indirect corporate control in the context of the Insolvency and Bankruptcy Code (IBC), 2016. ArcelorMittal's eligibility to submit a resolution plan was challenged on the grounds that it had previously been a promoter of defaulting companies through layered investments in SPVs. The Court held that the legal form of an SPV cannot shield a resolution applicant from disqualification under Section 29A of the IBC if it exercises de facto control over the debtor. The judgment explicitly sanctioned the piercing of the corporate veil to examine real economic interest and beneficial ownership, signalling that SPVs used to distance promoters from defaulting entities would not

¹ (2019) 2 SCC 1

be afforded protection if the separation was merely formal. This judgment thus demonstrates that SPVs, while structurally independent, are susceptible to judicial scrutiny when used to engineer strategic insulation from liability in insolvency contexts.

A contrasting strand of jurisprudence is seen in ***Tamil Nadu Power Producers Association v. Tamil Nadu Electricity Regulatory Commission***², where the Appellate Tribunal for Electricity differentiated between SPVs and Associations of Persons (AOPs) for purposes of Rule 3 of the Electricity Rules, 2005. The Tribunal clarified that SPVs, as incorporated legal entities, are governed by Rule 3(1)(b) and are not subject to the proportional consumption requirement applicable to AOPs under Rule 3(1)(a). This position departed from the earlier ***Kadodara Power Pvt. Ltd. v. GERC***³ ruling, affirming the distinct legal character of SPVs and offering regulatory certainty to entities operating captive generation plants through corporate vehicles. APTEL's interpretation favoured form over function, reinforcing that SPVs should not automatically inherit the obligations imposed on non-corporate collectives like AOPs.

However, this clarity was short-lived. In ***Dakshin Gujarat Vij***

² 2021 SCC OnLine APTEL 19

³ 2009 SCC OnLine APTEL 119

Company Ltd. v. Gayatri Shakti Paper and Board Ltd.⁴ , the Supreme Court reintroduced ambiguity by reviving the Kadodara position. The Court held that SPVs owning captive generation plants could indeed be treated as AOPs, and that the proportional consumption condition under Rule 3(1)(a) was a mandatory requirement. It further held that Rule 3(1)(b), which refers to SPVs, must be read harmoniously with 3(1)(a), not as an exemption from it. This approach, emphasising economic substance over legal form, blurs the distinction that APTEL had drawn and expands regulatory obligations for SPVs by equating them with informal joint ownership structures. As a result, the burden of compliance for SPVs in the electricity sector has been re-elevated, creating uncertainty for project developers and investors relying on their formal legal separation from shareholders.

In ***Bid Services Division (Mauritius) Ltd. v. Authority for Advance Rulings***⁵, the Bombay High Court dealt with a Mauritius-based SPV that had invested in an Indian airport infrastructure company. The SPV sought an advance ruling on whether capital gains arising from the transfer of shares in the Indian company would be taxable in India, claiming treaty protection under the India–Mauritius Double

⁴ 2023 SCC OnLine SC 1276

⁵ 2023 SCC OnLine Bom 2758

Taxation Avoidance Agreement (DTAA). The Revenue argued that the SPV was merely a conduit with no commercial substance, created solely to access tax benefits. However, the Court held that once the taxpayer demonstrated compliance with the requirements of the DTAA and presented a valid tax residency certificate, the benefit could not be denied absent compelling evidence of treaty abuse. Thus, upholding the legitimacy of SPVs used for tax-efficient structuring so long as they meet formal legal requirements. Yet, it also flagged that SPVs must withstand scrutiny on the grounds of commercial substance and purpose, especially when anti-avoidance provisions like GAAR or POEM may later be invoked.

IV. Conclusion

The legal architecture surrounding Special Purpose Vehicles in India remains uneven. It is characterised by regulatory layering, sectoral divergence, and at times, doctrinal inconsistency. While SPVs continue to serve as essential instruments for risk isolation, capital structuring, and regulatory ring-fencing, their treatment under Indian law is far from uniform. Judicial decisions have alternated between respecting the formal autonomy of SPVs and subordinating it to tests of economic substance or control, particularly in tax and insolvency contexts. This evolving jurisprudence, coupled with the

compliance burdens imposed by company law, foreign exchange regulation, and sector-specific norms, makes the legal stewardship of SPVs a complex task. As SPVs proliferate across infrastructure, private equity, and securitisation markets, a clear understanding of their regulatory positioning and operational constraints is critical. This brief has attempted to map those fault lines and offer a structured account of the legal considerations that govern the use and scrutiny of SPVs in contemporary Indian practice.