A2Z Taxcorp LLP

Supreme Court: Banning the Online Money Gaming is within the States' Power

The Hon'ble Supreme Court in ***State of Tamil Nadu & Ors. v. Junglee Games India Pvt. Ltd. & Ors. [Civil Appeal Nos. 6124–6131 of 2023 dated May 27, 2026]*** set aside the judgments of the High Court of Madras and the High Court of Karnataka — which had struck down the Tamil Nadu and Karnataka amendments banning online games played for stakes — and held that the expression **"betting and gambling"** in Entry 34 of List II cannot be read down to **"betting on gambling"**; that the moment money is staked on the uncertain outcome of any game, the activity becomes betting and gambling **irrespective of whether the underlying game is one of skill or of chance**; that such activity is *res extra commercium* carrying no fundamental right under Article 19(1)(g); and that the State Legislatures are fully competent — under Entry 34 and, independently, under Entry 1 (public order) of List II — to regulate, restrict or even wholly prohibit online money gaming, including online rummy, poker and fantasy sports.

Held (in brief)

Appeals of the States allowed; the impugned Tamil Nadu and Karnataka amendments are **declared intra vires**. The High Courts' "conjunctive" reading of Entry 34 of List II (as "betting on gambling") is a "clear Constitutional aberration." Betting on a game of skill is itself gambling; the activity is *res extra commercium* — hence no fundamental right and no proportionality enquiry survive.

[1] Background — A Century-and-a-Half of "Skill v. Chance"

To appreciate the seismic shift effected by this judgment, the long legislative and judicial backdrop must be kept in view. Indian anti-gambling law has, for over 150 years, carved games of "mere skill" out of the net of prohibition. That carve-out is precisely what the Supreme Court has now held does not protect the act of staking money on those games.

[1.1] The pre-Constitution framework

The Public Gambling Act, 1867 — the central template adopted (with variations) across the country — was enacted to suppress common gaming houses. From its inception the Legislature took a policy decision not to apply its penal provisions to games of mere skill; Act IX of 1851 and numerous provincial statutes (including the Bombay Prevention of Gambling Act and the Madras City Police Act, 1888) followed the same model, expressly saving games of skill while penalising staking on cards and dice. The expression "bet" entered the statute book through the 1922 amendment to the Madras City Police Act, and "betting and gambling" found a constitutional home first in Entry 36 of List II of the Government of India Act, 1935 and thereafter in Entry 34 of List II of the Seventh Schedule to the Constitution.

[1.2] Tamil Nadu — the 2021 Amendment and the 2022/23 Act

Tamil Nadu first promulgated an Ordinance in November 2020, replaced by the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 ("the 2021 TN Amendment Act") amending the Tamil Nadu Gaming Act, 1930. The Statement of Objects and Reasons recorded that playing games like rummy and poker on computers or mobile phones for money — addictive in nature — had grown manifold, causing cheating and reported suicides. The amendments:

- expanded Section 3(b) so that "gaming" includes *any game involving wagering or betting in person or in cyberspace*;
- introduced Section 3-A prohibiting wagering or betting in cyberspace by playing rummy, poker or any other game (punishable up to two years' imprisonment); and
- crucially, amended Section 11 to **remove the carve-out** for games of mere skill, applying Sections 3A and 5–10 to games of mere skill "if played for wager, bet, money or other stake."

After the Madras High Court struck down this Part II in ***Junglee Games India Pvt. Ltd. v. State of T.N. [2021 SCC OnLine Mad 2762]***, the State constituted the Justice K. Chandru Committee (10.06.2022), which reported on 27.06.2022, leading to the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022/23 (**"the TN Online Gambling Act 2022/23"**, 07.04.2023). That Act created an Online Gaming Authority and, through Sections 2(i)/2(l) and the Schedule, presumptively classified rummy and poker as *"online games of chance."* The Madras High Court again read down those provisions on 09.11.2023, prompting the connected SLPs.

[1.3] Karnataka — the 2021 Police (Amendment) Act

The Karnataka Police (Amendment) Act, 2021 ("the 2021 Karnataka Amendment Act") amended the Karnataka Police Act, 1963 to: widen "gaming" [Section 2(7)] to all forms of online wagering or betting "including on a game of skill"; redefine "instruments of gaming"

[Section 2(11)] to include computers, mobile apps, internet and cyberspace; insert "online gaming" [Section 2(12A)]; extend "common gaming house" [Section 2(3)] and "place" [Section 2(13)] to virtual platforms; punish online platform owners under Section 78(1)(a)(vi)–(vii); and, like Tamil Nadu, amend the saving in Section 176 so that it now protects only "any pure game of skill" and no longer protects wagering or betting on games of skill.

[1.4] The two High Court verdicts that were under appeal

The Madras High Court (*Junglee Games*, 03.08.2021) and the Karnataka High Court ***(All India Gaming Federation v. State of Karnataka [(2022) 1 KCCR 513], 14.02.2022)*** had both held that "betting" in Entry 34 takes its colour from "gambling" and must be read conjunctively as "betting on gambling," i.e. betting only on games of chance. Relying on the *Chamarbaugwala* line and *K.R. Lakshmanan*, they treated games of substantial skill as constitutionally protected business under Article 19(1)(g), held the blanket bans disproportionate and ultra vires, and issued a mandamus restraining interference with the gaming businesses. It is these conclusions that the Supreme Court has now overturned.

[2] Facts

Two clutches of appeals were heard analogously and disposed of by a common judgment:

- **the Tamil Nadu batch** — the State's appeals against the Madras High Court orders dated 03.08.2021 (striking down Part II of the 2021 TN Amendment Act) and 09.11.2023 (striking down the Schedule and reading down Sections 2(i)/2(l)(iv) of the TN Online Gambling Act 2022/23 to exclude rummy and poker); and

- **the Karnataka batch** — the State's appeals against the Karnataka High Court's common judgment dated 14.02.2022 striking down Sections 2, 3, 6, 8 & 9 of the 2021 Karnataka Amendment Act and issuing a writ of mandamus.

The respondents were the online gaming operators and industry bodies — among them Junglee Games, Gameskraft, Head Digital Works, Galactus (MPL), Play Games 24x7, the All India Gaming Federation and the Federation of Indian Fantasy Sports — who run platforms for online rummy, poker and fantasy sports, typically charging a 7–10% platform fee or rake on players' buy-ins while (they contended) not themselves wagering on outcomes.

The common, narrow legal question running through every appeal was whether a State, tracing its competence to Entry 34 of List II, may treat the staking of money on an online game of skill as "betting and gambling," and so regulate or prohibit it — or whether the presence of skill takes the activity outside the entry and into the protected commercial sphere of Article 19(1)(g).

[3] Contentions

[3.1] States submitted, in substance:

- Entry 34 must receive a broad, purposive reading. The conjunction "and" in "betting and gambling" is not rigidly conjunctive — read so, even Entry 48 List I ("Stock exchanges and futures markets") would disable Parliament from legislating on stock exchanges where no futures are traded. The High Courts' reading is *per incuriam* of the entry's text and history.

- A bettor backing the uncertain outcome of a game (his own or another's) is forecasting a result — that act is "betting" within Entry 34 even if the underlying game is one of skill.

- Even absent Entry 34, competence flows from Entry 1 (public order), Entry 2 (police), Entry 6 (public health), Entry 26 (trade & commerce) and Entry 33 (sports, entertainments and amusements); a law traceable to even one valid entry survives — *Mineral Area Development Authority v. SAIL* [2024 INSC 554].

- Online platforms transcend physical boundaries and amplify addiction, financial exploitation and suicides; "gaming disorder" is recognised by the WHO (ICD-11). The State's empirical material — the Justice Chandru Committee report, a survey of two lakh teachers and documented suicides — satisfies legitimate aim, rational connection, necessity and balancing (*M.R.F. Ltd. v. State of Kerala*; *K.S. Puttaswamy*). No fundamental right is absolute; betting and gambling are *res extra commercium*.

[3.2] On behalf of the Gaming Companies

Senior counsels advanced a closely-knit set of submissions:

- Entry 34 is a single composite expression; "betting" takes colour from "gambling" and is confined to games of chance. The settled trilogy — *RMDC-I* [AIR 1957 SC 699], *RMDC-II* [AIR 1957 SC 628] and *K.R. Lakshmanan* [(1996) 2 SCC 226] — excludes games of skill from "betting and gambling."

- The mere presence of stakes does not convert a game of skill (rummy, poker, fantasy sports — judicially recognised as preponderantly skill-based) into gambling. Games of skill are legitimate businesses protected by Article 19(1)(g), not *res extra commercium*.

- For 150 years Indian gambling statutes have carved out games of skill; "betting and gambling" is a *nomen juris* tied to chance, consistent with Section 65B(15) of the Finance Act, 1994 and U.S. authorities (the prize–chance–consideration test; UIGEA; *White v. Cuomo*; *Dew-Becker v. Wu*).

- Online gaming/fantasy sport falls within Parliament's domain (Union List Entries 31, 42 and 97); State-wise prohibition would create regulatory chaos and trench on the IT Act, 2000.

- The bans are manifestly arbitrary under Article 14 (no intelligible differentia between online and offline skill games), disproportionate under Article 19(6) (no least-intrusive

measure; the IT Rules offer calibrated alternatives) and also infringe Article 19(1)(a) as online games are expressive content.

[4] Issues

The Hon'ble Supreme Court framed the following questions for consideration:

1. **Whether** the conjunction "and" in "betting and gambling" in Entry 34 of List II confines the State's competence to betting on gambling activities alone — i.e. whether betting on games of pure skill falls outside the entry?

2. **Whether** the two impugned legislations failed to correctly infer and apply *RMDC-I*, *RMDC-II* and *K.R. Lakshmanan*?

3. **Whether** the legislations are manifestly arbitrary in treating games of skill and games of chance alike?

4. **Whether** the blanket prohibition on online games with stakes failed the least-intrusive-measure test and is unconstitutional for being disproportionate?

5. **Whether** the decision to prohibit online gaming with stakes is supported by any empirical finding or research?

6. **Whether** "gaming" has acquired the status of *nomen juris* so as to include only games of chance?

7. **Whether** there is a rational nexus between prohibiting online games with stakes and the object sought to be achieved?

8. **Whether** the State's competence is to be derived solely from Entry 34, or whether "public order," "police," "public health" etc. also empower the impugned legislations?

[5] Held

The Hon'ble Supreme Court, allowing the appeals of the States of Tamil Nadu and Karnataka and setting aside the judgments of the High Court of Madras (in *Junglee Games*) and the High Court of Karnataka (in *AIGF*), held as under:

[5.1] Scope of Entry 34 — the intent of the framers

Observed that the present Entry 34 was Entry 45 before the Constituent Assembly. On 02.09.1949, when Shri H. V. Kamath objected that the Bombay Government was trying to ban "a harmless game like rummy," Shri T. T. Krishnamachari explained that the Bombay order stopped rummy **because of the stakes involved** — when played for such high stakes "it takes the form of gambling" — and that the power to prohibit rummy-for-money lay under Entry 45.

Noted that Dr. B. R. Ambedkar, rejecting the motion to delete the entry, made clear that the entry could be used either to permit or to prohibit betting and gambling, and that without it the provincial governments "would be absolutely helpless in the matter." The founding fathers thus intended that even a skill-based game of rummy, when played for money, would amount to gambling and fall within the regulatory power now in Entry 34.

"…when people play the game for such high stakes, it takes the form of gambling, and it was for that reason that powers were available under Entry 45 to prohibit playing of Rummy for money." — *Shri T. T. Krishnamachari, Constituent Assembly Debates, 02.09.1949*

Held that to shrink Entry 34 to games of chance and to obliterate the significance of stakes would violate not only the express scope of the entry but the wisdom, intention and vision of the founding fathers; the State Legislatures are free to change their approach over time and to increase regulation or even prohibit betting and gambling enterprises.

[5.2] Entries in the Seventh Schedule receive a broad and liberal interpretation

Held that entries are fields of legislation to be given the widest possible amplitude. To read the "and" in "betting and gambling" as "on" would, applied consistently, cripple entries such

as "War and peace," "Stock exchanges and futures markets," "Public health and sanitation" and "Trust and trustees." Relying on the 9-Judge Bench in *State of U.P. v. Lalta Prasad Vaish* [2024 INSC 812] and *Welfare Association v. Ranjit P. Gohil* [(2003) 9 SCC 358], the Court reiterated that a narrow construction is permissible only where the entry's language so limits it or where a wide reading creates overlap — neither of which applies here.

[5.3] The RMDC and K.R. Lakshmanan decisions did not decide the scope of "betting"

Observed that *RMDC-I* concerned whether the 1952 amendment to the Bombay Lotteries and Prize Competitions Act covered "innocent prize competitions," and *RMDC-II* concerned the severability of the Prize Competitions Act, 1955 as applied to competitions involving substantial skill. In neither case was any game of skill **played with stakes**; in neither did the Court interpret "betting," the conjunction "and," or the outer limits of Entry 34.

Noted that the much-relied passage in *RMDC-I* (a competition must depend to a substantial degree on skill to avoid "the stigma of gambling") was directed at the chance/skill character of a competition's own success, not at the separate act of staking money on its outcome. The second category of prize competitions there — forecasting the result of a future or past event — was itself held to be a gambling adventure, and the Court was alive to the reality that, under the garb of skill, common people merely "take a shot at a hidden target."

"…the betting that the State can legislate on has to be the betting pertaining to gambling; ergo, betting only on games of chance." — the impugned finding of the High Courts, which the Supreme Court has now overruled.

Held that the case of rummy and fantasy sports stands on the very footing rejected in *RMDC-I*: while an expert may occasionally forecast accurately, the mass of players on an open online platform are merely forecasting an uncertain outcome — "taking a shot at a hidden target" — which is betting and enjoys no Article 19(1)(g) protection. The Court pointedly recorded that *even the best AI-powered prediction models cannot predict the outcome of a cricket match*, so

a common person cannot be credited with the statistical skill to assemble the "best 11" for a fantasy contest.

Held further that the ratio of *RMDC-I* is the entry-fee distinction: a chance-based competition for an entry fee is gambling (the fee is the stake), whereas a genuine skill-based competition for an entry fee is not (the fee buys the right to participate and the announced prize is not linked to the stake). The online platforms, however, do not run tournaments with pre-announced winners; their terms invite players to place stakes on the uncertain outcome of each game, with systematic inducements (discounts, incentives for repeated betting, withdrawal restrictions) to bet more and more — the antithesis of a skill tournament. To suggest that *RMDC-I* recast Entry 34 from "betting and gambling" to "betting on gambling" is a misreading; indeed *RMDC-I* itself approvingly quoted Hamilton's Hedaya that staking on chess (a game of skill) is gambling.

Observed that *RMDC-II* protects games of skill from Entry 34 **only when they are not played for stakes**; once stakes are introduced, the entry gains full relevance. The Court's own remark in *RMDC-II* — that skill competitions had "not done any harm to the public" — confirms that the decision turned on the then-existing factual context and did not curtail the State's power to regulate skill games if they later begin to cause harm, as online money gaming now does.

Held that in *K.R. Lakshmanan*, the protection to betting on horse-racing flowed from the statutory exception for games of "mere skill" (Section 49 of the 1963 Police Act / Section 11 of the 1930 Gaming Act) — not from the scope of Entry 34. In the absence of such an exception (as after the present amendments), *K.R. Lakshmanan* would not yield the same result. Further, betting at the Club on race day was held lawful precisely because it was highly regulated and physically contained — "very different from the uncertainty and veil of invisibility" of online gaming, where there is no enclosure and the average participant has none of the expertise of a punter inside a racing club.

[5.4] "Betting and gambling" cannot be split

Held that reading Entry 34 as "betting on gambling" is "a clear Constitutional aberration, tinkering with the Constitution or actually rewriting the Constitutional text which Courts are not legally entitled to do." "Betting and gambling" is a set expression — like "pipes and tubes" — both terms involving the aspect of staking money on an uncertainty. It is incorrect to attribute the staking angle only to "betting" and the chance angle to "gambling": in the absence of staking there is no gambling, and "merely taking a chance without staking can never be a gamble." Both terms are interchangeable and denote placing money on an unknown outcome. In both rummy (skill) and teen patti (chance) the player equally risks money on an uncertain victory.

[5.5] No manifest arbitrariness (Article 14)

Held that the three ingredients of betting and gambling are (a) a stake/bet, (b) placed on an uncertain outcome, (c) with the hope of gaining substantially more than is staked. Surveying authorities from *Dyson v. Mason* [(L.R.) 22 Q.B.D. 351], *King Emperor v. Arjoon Singh*, *Re Musa* and *Panna Lal v. Emperor* [AIR 1926 All 187] to *MJ Sivani v. State of Karnataka* [AIR 1995 SC 1770] and *Director General of Police v. Mahalakshmi Cultural Association* [2012 SCC OnLine Mad 1130], the Court held it is the existence of a stake — not the skill/chance character of the game — that constitutes gaming. The underlying character of the game becomes relevant only where a statute protects games of skill; remove that protection and the differentiation "pales into insignificance." Classification founded on the presence of stakes (rather than on pure skill games without stakes) bears a reasonable nexus to the object and is neither discriminatory nor arbitrary; the classification is, moreover, based on the Justice Chandru Committee report.

"The medium of play, whether online or not, is not relevant… The moment stakes are involved the medium of playing or the nature of the game as one of skill or chance is irrelevant because it will constitute betting and gambling."

[5.6] No proportionality enquiry survives — res extra commercium

Held that the occasion to test the laws on proportionality does not arise, because activities encompassed by "betting and gambling" are *res extra commercium* and no one can claim a fundamental right to operate them. Games of skill remain protected by Article 19, but **betting or wagering on any game — even a game of skill — is not**, unless the Legislature itself creates an exception. Once the trade is classified as betting and gambling it becomes *res extra commercium* and Article 19 is not attracted; a total prohibition therefore cannot be struck down for disproportionality. The Court drew on *P.N. Krishna Lal v. Govt. of Kerala* [1995 Supp (2) SCC 187] (no fundamental right to trade in inherently pernicious goods) and on the Directive Principles (Articles 38, 39(f), 47) directing the State to protect health, youth and standard of living.

[5.7] "Gaming" is not nomen juris

Held that the constitutional expression is "betting and gambling," not "gaming"; the word "gaming" does not define the subject of legislation in List II and cannot be frozen into an archaic *nomen juris* confined to chance. "Gaming" is a fluid statutory definition that the Legislature may alter at will and that takes colour from the statute in question. There is no "Midas touch" or legal fiction: for eons, staking money on any game has been treated as betting and gambling. The framers deliberately used broad language so the entry could be moulded by "the tides of time," and courts must construe statutory definitions by their plain meaning without reading in words (*Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax* [(1978) 1 SCC 636]).

[5.8] Independent competence under Entry 1 (public order)

Held that over and above Entry 34, the State Legislatures are competent under Article 246(3) read with Entry 1 (public order). After an exhaustive survey of the public-order jurisprudence — *Romesh Thappar*, *Rev. Stainislaus*, *Arun Ghosh* ("even tempo of the life of the community"), *Ram Manohar Lohia* (the three concentric circles), *Banka Sneha Sheela*, *S. Bagavathy* (social and economic disorder) and *Shreya Singhal* (public order in the internet age, requiring a

proximate nexus) — the Court distilled the ingredients of public order and held that the proximate-nexus requirement is satisfied here.

Noted that online money gaming has a definite impact on the public at large — across the country, often among rural and lower-income players — "every mobile phone is now a virtual common gambling house." In terms of addiction, monetary losses and resultant widespread suicides, public tranquillity is breached and the "even tempo" of community life is disturbed; the cascading effect strikes at the welfare State itself. The right to mental health, recognised in *Sukdeb Saha v. State of Andhra Pradesh* [2025 INSC 893] as integral to Article 21, reinforces the State's duty to curb such harm.

Directed that — by way of operative conclusion — the impugned judgments of the High Courts of Madras and Karnataka are set aside; and Part II of the 2021 TN Amendment Act, Sections 2(i) and 2(l)(iv) and the Schedule to the TN Online Gambling Act 2022/23, and Sections 2, 3, 6, 8 & 9 of the 2021 Karnataka Amendment Act are **declared intra vires the Constitution**. The Tamil Nadu legislation was further found to be backed by empirical material (the Justice Chandru Committee report and the teachers' survey). The appeals were allowed and the connected appeal disposed of accordingly, with no order as to costs.

[6] Our Comments and Analysis

This judgment is, in our considered view, the single most consequential pronouncement on the gaming sector in over six decades — and it must be read together with its fiscal twin, decided by the same Bench (Pardiwala and Mahadevan, JJ.) in the very same week, *Directorate General of GST Intelligence v. Gameskraft Technologies Pvt. Ltd.*, upholding the levy of 28% GST on the full face value of bets. The constitutional holding and the indirect-tax holding rest on one identical doctrinal pillar: **the moment money is staked on an uncertain outcome, the activity is "betting and gambling," and the skill/chance character of the game is legally irrelevant.** For the practitioner, the two judgments together close the longest-running fault line in Indian gaming law and tax.

[6.1] The relevant provisions invoked

The decision turns on the constitutional scheme of distribution of legislative power and on the gambling-specific entries:

- **Article 246(3)** read with **Entry 34, List II** ("Betting and gambling") — the primary source of State competence.
- **Entry 62, List II** (taxes on betting and gambling — now subsumed for GST) and **Entry 60, List II** (taxes on luxuries, entertainments, amusements) — relevant to the *RMDC* taxation context.
- **Entries 1, 2, 6, 26 and 33, List II** — public order, police, public health, trade & commerce, and sports/entertainments/amusements — invoked cumulatively, with Entry 1 emerging as an independent and sufficient peg.
- **Articles 14, 19(1)(a), 19(1)(g), 19(2), 19(6) and 21** — the fundamental-rights challenge, comprehensively rejected via the *res extra commercium* doctrine and the right-to-mental-health line in *Sukdeb Saha*.
- **Directive Principles (Articles 37, 38, 39(f) and 47)** — pressed into service to justify protective, prohibitory legislation.

[6.2] The fiscal dimension — why "the Revenue wins" the GST war

From an indirect-tax standpoint, the constitutional holding is the lock and the *Gameskraft* GST ruling is the key. Recall the GST architecture the Government built between 2023 and 2024:

- **Schedule III, Entry 6 of the CGST Act, 2017** was amended so that "actionable claims, other than *specified* actionable claims" are treated as neither a supply of goods nor of services. "Specified actionable claim" [Section 2(102A)] now captures betting, casinos,

gambling, horse racing, lottery and **online money gaming** — making them squarely taxable.

- **Section 15(5) read with Rule 31B of the CGST Rules, 2023** shifts the base of valuation from the platform fee / Gross Gaming Revenue to the **total amount paid or payable to or deposited with the supplier** — i.e. the full face value of the deposit/bet — at 28%, w.e.f. 01.10.2023, with the proviso that amounts re-deployed from winnings (without withdrawal) are not deducted.

- **Definitions of "online gaming," "online money gaming," "specified actionable claim" and "supplier"** were inserted/amended so the operator is the supplier of the actionable claim — not a mere intermediary — and Section 24 mandates registration even for offshore suppliers.

The industry's central defence in *Gameskraft* was the same skill/chance argument: rummy/poker/fantasy are games of skill, hence not "betting or gambling," hence outside "specified actionable claim," hence the pre-October-2023 demands (computed on full face value) are without authority of law. That defence collapses the instant the constitutional Bench holds — as it now has — that **staking on a game of skill is itself betting and gambling.** The Court accordingly upheld the retrospective demands, restored the show-cause notice against Gameskraft (reportedly exceeding ₹21,000 crore) that the Karnataka High Court had quashed in 2023, treated operators as suppliers of actionable claims, and held that amounts staked are "consideration" with no statutory basis for exclusion. Sector-wide exposure is estimated at over ₹1 lakh crore — for the practitioner, no longer a litigation question but, as commentators put it, *"a balance-sheet event."*

The doctrinal bridge

Constitutional holding: *"When the element of betting and gambling enters the picture, the nature of the game ceases to be of relevance."* Tax holding: *once participation requires staking money on an uncertain outcome, the transaction is "betting and gambling" for GST, even where the game involves substantial skill.* The same sentence wins both cases for the Revenue.

[6.3] How the Revenue/States won — and where the industry lost ground

Stripped to essentials, the Revenue and the States prevailed on four moves, each of which the practitioner should internalise:

1. **Decoupling stake from skill.** The Court severed the act of staking from the character of the underlying game. The 70-year-old assumption that *RMDC* protects "games of skill played with stakes" was held to be a misreading — "what does not flow from RMDC-I has been canvassed for 70 years as if emanating from RMDC-I."

2. **Recasting the entry, not rewriting it.** By reading "betting and gambling" as a composite, set expression (not "betting on gambling"), the Court restored the entry's full breadth and labelled the High Courts' contrary reading a "Constitutional aberration."

3. **Res extra commercium as a shut-out.** By classifying staked gaming as *res extra commercium*, the Court removed the Article 19(1)(g)/19(6) proportionality enquiry altogether — there is simply no fundamental right to be balanced, so even a total ban is immune from the least-intrusive-measure test.

4. **A second, independent peg in public order.** Even if Entry 34 had failed, Entry 1 (public order) — read expansively to include social and economic disorder, addiction, financial ruin and suicide — would independently sustain the laws. This belt-and-braces reasoning makes the judgment exceptionally difficult to dislodge.

[6.4] What remains open for the gaming industry

Despite the sweep of the decision, the judgment is not a blanket extinction of every gaming model. The following spaces survive — and the careful operator should map its product against each:

- **Pure skill games without stakes** remain fully protected; the Court repeatedly affirmed that a game of skill *not* played for stakes does not amount to betting or gambling and continues to enjoy Article 19(1)(g)/19(1)(a) protection.

- **Genuine skill tournaments with an entry fee** and a pre-announced, fixed prize that is *not* linked to the stake pool (the BCCI/IPL or a school cricket tournament; chess and quiz competitions) fall outside Entry 34 on the Court's own *RMDC-I* entry-fee distinction. The dividing line is intention and prize-structure: a reward for winning a competition versus a return on a wager.

- **Offline skill games** (where State laws still carve them out) and **the legislative-exception route** — the Court expressly held that betting on a game of skill carries no protection "unless the Legislature creates an exception in favour of such betting." States like Nagaland (the 2016 Skill-Games Act) and Sikkim (the 2008 licensing regime) show that a regulatory, licensed model for skill-based stakes is constitutionally permissible if the Legislature chooses it.

- **E-sports** (recognised under the National Sports Governance Act, 2025 and expressly excluded from the central ban where outcomes depend on player skill and no bets/wagers/stakes are placed) and **free-to-play / ad-funded / social games** without monetary stakes remain a clear runway.

- **The GST quantum and limitation defences** survive at the adjudication stage — even after *Gameskraft*, operators may still contest computation, the inclusion of re-deployed winnings, interest and penalty, the extended period of limitation, and the bona fide nature of the dispute (a genuine interpretational controversy may temper penalty

exposure under Section 74). The Court restored the notices and remitted to the adjudicating authorities to proceed *in line with* the judgment — the merits-on-numbers contest is not foreclosed.

[6.5] Overlap with the central law — PROGA 2025

The judgment also re-orders the federal picture. While these appeals were sub judice, Parliament enacted the **Promotion and Regulation of Online Gaming Act, 2025 ("PROGA")**, which received assent on 22.08.2025 and, with the Promotion and Regulation of Online Gaming Rules, 2026, came into force on 01.05.2026. PROGA imposes a **complete, pan-India prohibition on all online money games** — games of skill, chance or a combination — bans their advertisement and the processing of related financial transactions, applies extraterritorially to offshore operators, makes offences cognizable and non-bailable (up to three years' imprisonment and ₹1 crore fine), and carves out e-sports and social games. The Union traces its competence chiefly to Union List Entry 31 (communications). Constitutional challenges to PROGA have been transferred to and are pending before the Supreme Court.

The interplay is delicate. *Junglee Games* settles that States are competent under Entry 34/Entry 1 to prohibit staked online gaming; it does *not* decide whether Parliament, under Entry 31 of List I, is competent to do so centrally. The very reasoning that empowers the States — that betting and gambling is a List II subject — may be deployed *against* PROGA in the pending challenge, on the footing that the Union has trenched upon a State field. Conversely, the judgment's strong public-order and public-health logic, and its express acceptance that "gaming" is fluid and that the State may move from permission to prohibition, will be cited by the Union to defend PROGA's prohibitory thrust. Practitioners should expect the next round of litigation to be fought precisely on this Entry 31 v. Entry 34 axis.

[6.6] Legal remedies now available to the gaming companies

The matter has reached the apex court, but a few avenues remain. Each carries a steep threshold, and we set them out with candid assessments rather than false hope:

- **Review petition (Article 137 read with Order XLVII, SCR).** A review lies only for an error apparent on the face of the record, discovery of new and important matter, or an analogous ground — not for re-argument. The industry is reportedly weighing a review. Given the Bench's detailed engagement with *RMDC* and *K.R. Lakshmanan*, the prospects of demonstrating a self-evident error are modest, though the "70-year settled understanding" point and the divergence from a long line of High Court authority may be pressed.

- **Reference to a larger Bench.** This judgment is by a two-Judge Bench. *RMDC-I* and *RMDC-II* were Constitution Bench decisions and *K.R. Lakshmanan* a three-Judge decision. A future litigant may legitimately argue that a two-Judge Bench could not effectively dilute the settled reading of those larger-Bench authorities, and seek a reference under the doctrine of judicial discipline (*Central Board of Dawoodi Bohra*). This is, in our view, the most substantial structural argument available, although the present Bench has framed its analysis as *explaining* — not overruling — the trilogy.

- **Curative petition.** A residual remedy after dismissal of review, confined to violations of natural justice or bias (*Rupa Ashok Hurra v. Ashok Hurra*); realistically a long shot here.

- **The pending PROGA challenge.** The live constitutional battleground now shifts to the transferred petitions challenging the central Act on legislative-competence and proportionality grounds. Industry strategy is likely to consolidate here rather than in a thin review.

- **Adjudication-stage and appellate GST remedies.** Replies to the restored show-cause notices, contest on quantification and limitation, appeals to the Appellate Authority / GST Appellate Tribunal, and pre-deposit-based stay are all live. Settlement, restructuring

or an orderly wind-down are the commercial options many operators are now evaluating.

- **Representation to the GST Council / Government.** A policy ask for prospective-only application, an amnesty or a phased settlement for the retrospective period remains the most pragmatic relief lever — a legislative, not a judicial, route.

[6.7] Pari materia and contrary authority

Pari materia / supportive line

- *MJ Sivani v. State of Karnataka* [AIR 1995 SC 1770] — "gaming" read widely to mean playing any game (skill or chance) for money or money's worth; the present Bench rehabilitated it and faulted the Karnataka High Court for distinguishing it.

- *State of Bombay v. R.M.D. Chamarbaugwala* [AIR 1957 SC 699] and *R.M.D. Chamarbaugwala v. Union of India* [AIR 1957 SC 628] — re-read as turning on the chance/skill character of a competition's success and on the entry-fee distinction, not on the scope of "betting."

- *Director General of Police v. Mahalakshmi Cultural Association* [2012 SCC OnLine Mad 1130] — rummy (13 cards) is a game of skill, yet played with stakes it attracts the Police Act; approved as the correct position.

- *Panna Lal v. Emperor* [AIR 1926 All 187] and *Re Musa* — playing a game of mere skill for stakes is gaming; the protection merely shields it from the offence, it does not negate the gambling character.

- *Directorate General of GST Intelligence v. Gameskraft* (2026) — the fiscal mirror image, upholding 28% GST on face value on identical reasoning.

Contrary / now-displaced line

- *Junglee Games v. State of T.N.* [2021 SCC OnLine Mad 2762] and *AIGF v. State of Karnataka* [(2022) 1 KCCR 513] — the impugned High Court judgments, now set aside.
- *Dr. K.R. Lakshmanan v. State of Tamil Nadu* [(1996) 2 SCC 226] — not overruled, but read as a decision confined to the statutory "mere skill" exception and to the physically-regulated context of horse-racing; its protective reach is now expressly held inapplicable where the Legislature removes the exception.
- The line of High Court fantasy-sports decisions (*Varun Gumber*, *Gurdeep Singh Sachar*, *Chandresh Sankhla*, *Avinash Mehrotra*) that treated stake-based skill gaming as protected business — their continued authority is, to put it mildly, gravely in doubt after this judgment.

[6.8] Practitioner's takeaways

Action points

- Re-map every product against the stake test: *is money risked on an uncertain outcome with the hope of a larger return?* If yes, treat it as betting and gambling for both regulatory and GST purposes, irrespective of skill.
- Quantify retrospective GST exposure on face value (Rule 31B) for the relevant periods and prepare adjudication replies focused on computation, limitation and bona fide interpretational dispute.
- Pivot viable models toward genuine fixed-prize skill tournaments, free-to-play, e-sports and licensed regimes; document the prize-structure independence from the stake pool.
- Watch the PROGA challenge — the Entry 31 v. Entry 34 contest is where the next chapter is written, and where this judgment cuts both ways.

- Counsel boards candidly: a review is available but its threshold is high; the larger-Bench reference is the stronger structural argument; commercial restructuring may be the realistic near-term path.

In sum, after *Junglee Games* and *Gameskraft*, the long-cherished proposition that "a game of skill played for stakes is not gambling" no longer holds. The constant factor the Court fixed upon is the stake itself; once that is present, the medium of play and the skill content of the game both fall away, and the activity stands outside the protection of Article 19 and squarely within the regulatory — and taxing — reach of the State.

CLICK HERE FOR OFFICIAL JUDGMENT COPY

(Author can be reached at info@a2ztaxcorp.com)