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INDIAN COUNCIL OF ARBITRATION

Dedicated to Arbitration for Over Five Decades

STATEMENT OF PURPOSE

The ICA Arbitration Quarterly, published by the Indian Council of Arbitration, aims to be a scholarly journal to provide independent platform and ensure in-depth studies of the most important current issues in Domestic and International Arbitration, giving it even more urgency as a forum for original thinking, threadbare analysis and reporting on regional and global trends in order to contribute to the promotion and development of arbitration practices.

ICA, as such, welcomes the contribution from the intending writers on issues relating to domestic, maritime and international commercial arbitration. Intending writers are requested to read and understand "Guidelines for Authors" given on the inner side of the Back Cover of this Journal. The persons, intending to contribute in the Quarterly, may send article to:

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FROM THE PRESIDENT'S DESK

As I reflect on the recent trajectory of arbitration reform in India, it is evident that we are in the midst of a transformative phase. Among the most significant developments are the draft amendments to the **Arbitration and Conciliation Act, 1996**, introduced in 2024. These long-awaited reforms, now under consideration by Parliament, mark a crucial step toward strengthening and modernizing India's arbitration framework. Alongside this legislative momentum, a growing corpus of pro-arbitration judicial pronouncements continues to reinforce a jurisprudence that aligns with international best practices. Together, they reaffirm India's commitment to establishing itself as a premier global hub for dispute resolution.

In the first quarter of 2025, the **Supreme Court of India** played a leading role in advancing this vision through a series of landmark rulings. Notably, in My Preferred Transformation & Hospitality Pvt. Ltd., 2025 INSC 56, the Court highlighted the need for a more pragmatic approach to limitation in arbitration, moving away from overly rigid interpretations that may undermine the goals of alternative dispute resolution. Equally significant was the Court's reaffirmation of the principle laid down in NHAI vs. M. Hakeem & Another [AIR 2021 SC 3471], reiterating that under Sections 34 and 37 of the Act, courts do not have the jurisdiction to modify arbitral awards. Such judgments underscore the judiciary's resolve to uphold the sanctity of the arbitral process and reinforce the principle of party autonomy.

This is but a snapshot of the essential judicial support that is shaping a more arbitration-friendly environment in India. Against this backdrop, this edition of the ICA Arbitration Quarterly, offers a comprehensive view of the evolving jurisprudential landscape while highlighting the Council's initiatives at both domestic and international levels.

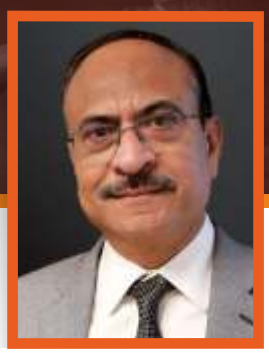
I invite you to explore this edition and engage with the insights, developments, and thought leadership it brings.

Happy reading!

N G Khaitan

N. G. KHAITAN
President ICA

PREFACE



Dear Readers,

It is always a pleasure to connect with you through this quarterly update and reflect on the milestones achieved by the Indian Council of Arbitration (ICA). The first quarter of 2025 began on a promising and productive note, marked by significant developments that brought together experts, stakeholders, and practitioners to deliberate on pressing issues surrounding arbitration, mediation, and cross-border trade and investment dispute resolution. These efforts have further reinforced the standing of alternative dispute resolution (ADR) mechanisms as the preferred mode of commercial dispute resolution. The engagements during this period not only deepened ICA's footprint within India but also underscored our growing influence and relevance on the global stage.

The quarter commenced with ICA's Annual General Meeting, followed by an important Symposium on "Mediation: A Critical Tool for Commercial Dispute Resolution" and the formal launch of the ICA Rules of Mediation on January 14, 2025, at Federation House, New Delhi.

The event was graced by Dr. Rajiv Mani, Union Law Secretary, along with several eminent Sr. Advocates, Mediators & ADR experts. With the adoption of the ICA Mediation Rules, we embrace an expanded mandate, to promote and institutionalize commercial mediation alongside our core focus on arbitration.

A major international highlight of the quarter was the ICA Symposium on “Arbitrating Indo-Saudi Commercial Disputes,” organized as part of Riyadh International Disputes Week (RIDW) 2025 on February 23, 2025, in Riyadh, Kingdom of Saudi Arabia.

Hon'ble Minister of Law & Justice, Shri Arjun Ram Meghwal, inaugurated the event, underscoring the potential of establishing an Indo-Saudi arbitration corridor, a legal and institutional framework that serves the needs of the Global South and ensures effective access to justice for businesses. Special addresses were delivered by Mr. R. Venkataramani, Attorney General for India, and Dr. Suhel Ajaz Khan, Ambassador of India to the Kingdom of Saudi Arabia.

In addition to our on-ground engagements, ICA was actively involved in strengthening media presence this quarter. In this context, two of my articles, “India's Journey Towards Becoming a Global Arbitration Hub” (Hindustan Times, January 11, 2025) and “Indian Council of Arbitration – Strengthening India's ADR Ecosystem” (The New Indian Express, March 25, 2025), which emphasized the growing strategic importance of arbitration and mediation in India's commercial landscape got published. Also, I was invited at the DD National's Morning Show on March 17, 2025, where I shared insights on the future of alternative dispute resolution (ADR) in India, emerging opportunities for young professionals, and the importance of promoting gender inclusivity in the field. These engagements have been instrumental in raising awareness about ICA's work and in further building our public visibility and institutional identity.

Collectively, these events and initiatives reflect our renewed commitment to positioning both arbitration and mediation as the preferred modes of dispute resolution, responsive, efficient, and in line with international best practices.

I look forward to your continued support and active engagement in the Council's journey ahead.

Keep reading!

Director General,
Indian Council of Arbitration

ARTICLE

THE EVOLUTION OF SECTION 34: MODERNIZING INDIA'S ARBITRATION FRAMEWORK

By: Dr. Subir Bikas Mitra (Member, ICA) & Mr. Chirag Rastogi

Abstract

The rapid globalization of India has led to a surge in business conflicts, overwhelming courts with heavier caseloads and prolonged resolution times. In response, Indian businesses are increasingly turning to arbitration as a quicker and more efficient means of conflict resolution outside traditional court settings. The "Arbitration and Conciliation Act of 1996" is a crucial milestone, aligning Indian arbitration practices with international standards to provide a robust mechanism for dispute resolution.

Arbitration, a prominent form of alternative dispute resolution (ADR), offers binding resolutions by arbitrators and is often faster than traditional litigation. However, it faces criticism regarding enforceability and procedural fairness, with ongoing debates about the optimal balance between promoting ADR and ensuring judicial oversight, particularly concerning the modification of arbitral awards under "Section 34".

This research assesses the Act's impact on dispute resolution in India amid escalating business conflicts and global demands. It aims to optimize India's arbitration framework and enhance commercial dispute resolution practices through a comprehensive analysis of relevant provisions and court interventions.

Introduction

In the 1990s, India made substantial modifications to its arbitration laws, such as extending the time term for finishing an arbitration procedure to 12 months and disqualifying foreign arbitrators. The fundamental rationale for arbitration was

because legislation was judged to be very troublesome, resulting in excessive time and expense. As a consequence, new and more effective conflict resolution procedures were necessary, and the Arbitration and Conciliation Act of 1996 was passed.

"Do I believe in arbitration? I do. But not in arbitration between the lion and the lamb, in which the lamb is in the morning found inside the lion."

-Samuel Gompers[1]

Arbitration is a form of alternative dispute resolution (ADR) that involves settling disagreements outside of the courts. One or more persons (the 'arbitrators', 'arbiters', or 'arbitral tribunal') will determine the dispute and issue the "arbitration award". Unless all parties agree that the arbitration method and result are non-binding, an arbitration decision or award is legally binding and enforceable in court. Arbitration decisions are subject to a limited review and appeal. Arbitration differs from judicial procedures (though court proceedings are often referred to as arbitrations in certain countries), alternative dispute resolution (ADR), expert decision, or mediation (a kind of settlement discussion assisted by a neutral third party). The Alternative Dispute Resolution (ADR) process offers the Indian judiciary with scientifically designed tools that aid in lowering the burden on the courts.

Alternative Dispute Resolution (ADR) offers solutions for various types of disputes, including civil, commercial, industrial, and familial conflicts, especially when parties struggle to communicate and reach a settlement.

Section 34 of the 1996 Act refers to both Article 34 of the UNCITRAL (United Nations Commission on International Trade Law) Model Law and Section 30 of the Arbitration Act 1940, which both deal with putting aside an arbitral ruling. Section 34[2] of the Arbitration and Conciliation Act of 1996 provides the grounds for contesting an arbitral ruling issued under Section 31. However, there are certain limits to

[1] *Samuel Gompers (1850-1924) was an English-born American cigar maker who became a Georgist labor union leader and a key figure in American labor history. Gompers founded the American Federation of Labor (AFL), and served as the organization's president from 1886 to 1894 and from 1895 until his death in 1924.*

[2] *Section 34 is analogous to Article 34 of the Model Law.*

challenging an award under Section 34[3], such as the fact that it may only be disputed within three months of receiving the award, which can be extended for an additional 30 days.

Literature Review

The scholarly literature on arbitration in India offers a comprehensive analysis of its history and challenges, particularly in the context of economic growth and globalization. Researchers trace the evolution of arbitration laws from colonial-era regulations to the 1996 Arbitration and Conciliation Act, which aimed to align India's arbitration framework with global standards. Section 34, which sets aside arbitral awards, has been scrutinized by scholars like Menon and Seetharaman. Critiques of Indian arbitration include enforcement challenges, procedural fairness, and limited appeal avenues. The literature highlights the challenges of arbitration, especially in cases involving parties with disparate bargaining power or limited resources. The literature also emphasizes the need for continuous efforts to improve the credibility and effectiveness of arbitration within India's legal framework.

Research Methodology

The research methodology aims to evaluate recent Supreme Court judgments related to "Section 34 of the Arbitration and Conciliation Act" in India, analyzing judicial interpretations and developments in arbitration law. A comprehensive literature review will establish foundational knowledge of arbitration in India, highlighting key themes and critiques. Significant cases will be selected for their relevance to Section 34, utilizing legal databases.

A systematic case analysis will be conducted using a coding framework to categorize judgments based on specific criteria such as interpretations, enforcement challenges, procedural fairness, and their impact on arbitration practice.[4] The comparative analysis will

[3] *Arbitration and Conciliation Act, 1996; Section 34 (1):" Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)."*

[4] *Kaur, N., & Narula, G. (2022). The Evolution of Arbitration in India: Insights from Judicial Case Analysis and SIAC Report 2021. Journal of Survey in Fisheries Sciences, 347-351.*

identify common patterns, divergent interpretations, and emerging trends in Supreme Court jurisprudence regarding Section 34, providing insights into the evolution of arbitration law and judicial approaches over time.

The findings will be synthesized to draw conclusions about the efficacy, challenges, and potential reforms related to Section 34 of the Act. The research will interpret the implications of recent Supreme Court judgments on arbitration practice and legal frameworks in India, acknowledging and addressing potential biases in case selection and interpretation.

Enforceability and Challenges of Arbitral Awards: Legal Framework and Implications

An arbitral award is a pivotal outcome in arbitration, representing the final decision or judgment rendered by an arbitrator or arbitral tribunal in a dispute submitted to arbitration. This award is the culmination of the arbitration proceedings, during which the arbitrator(s) meticulously assess arguments, review evidence, and ultimately decide on the contentious issues between the parties. Arbitral awards carry significant legal weight as they are typically binding on the parties involved.[5] This binding nature means that once an arbitral award is issued, the parties are legally obligated to adhere to its terms and comply with the decision, unless both parties agree to an alternative arrangement or the award is successfully challenged or set aside through legal means.

The enforceability of arbitral awards is crucial to their efficacy. In many jurisdictions, including India, arbitral awards are enforceable in courts, allowing parties to seek judicial intervention for enforcement if necessary. The mechanisms for enforcing these awards are governed by national laws and international agreements, such as the influential New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Arbitral awards are generally considered final and conclusive, typically not subject to appeal except in specified circumstances outlined by the arbitration agreement or applicable arbitration rules. This finality is integral to the efficiency of arbitration as an alternative dispute resolution mechanism,

[5] *Khushi. (2022). A Study on the Law of Arbitration in India. Issue 1 Int'l JL Mgmt. & Human., 5, 1945.*

providing parties with a swift and definitive resolution to their legal disputes. The content of an arbitral award typically includes the decision on the substantive issues in dispute, directives for specific performance or compensation, and the rationale or reasoning behind the decision. Additionally, the award may address procedural matters, costs, and other pertinent aspects of the arbitration process.

A comprehensive understanding of the concept of an arbitral award is essential within the broader framework of arbitration as an alternative to traditional litigation. Arbitration offers parties a confidential, flexible, and often expedited avenue for resolving disputes outside the courtroom. Recent advancements in arbitration laws, exemplified by provisions like Section 34 in Indian arbitration law, are designed to clarify and strengthen the recognition and enforceability of arbitral awards, thereby enhancing the credibility and effectiveness of arbitration as a method for commercial dispute resolution.[6]

As for the conditions under which an arbitral award can be challenged or set aside, several grounds are outlined in "Section 34(2)(a)" and "Section 34(2)(b)" of the Arbitration and Conciliation Act, 1996:

- Incapacity of a Party: If any party to the arbitration is deemed legally incapacitated (such as being a minor), they are not bound by the arbitration agreement, rendering any resultant award subject to potential revocation by the court. For instance, an individual suffering from a severe mental illness like schizophrenia may have an award set aside through legal representation.
- Invalidity of the Agreement: If the underlying contract is deemed invalid or illegal, the arbitration agreement contained within it may also be considered void, potentially leading to the revocation of the arbitral award.
- Lack of Proper Notification: An arbitral award may be challenged if a party filing an application was not given adequate notice of the arbitrator's appointment or the arbitral procedures, thereby

[6] *Brahmabhatt, K. (2022). Evolution of Arbitration Act and Enforceability of an Arbitration Agreement along with Analysis of Judicial Intervention in Arbitration. Jus Corpus LJ, 3, 556..*

depriving them of an opportunity to present their case.

- Exceeding Scope of Arbitration: If the arbitral award addresses issues that were not included within the agreed scope of arbitration, or if decisions are made on matters beyond the arbitration agreement, those specific parts of the award may be subject to challenge.
- Composition of Arbitral Tribunal: If the appointment of arbitrators deviates from the contractual provisions or agreements made by the parties, or if administrative aspects of the arbitration agreement are not fulfilled as agreed upon, this can be grounds for setting aside the award.

Apart from these grounds, additional conditions for setting aside an arbitral award are stipulated under "Section 34(2)(b) of the Arbitration and Conciliation Act, 1996", which include situations where the subject matter pertains to another law outside the Arbitration Act or where the award contradicts the public policy of India.

Conversely, "Section 34(3)" of the same Act outlines limitations under which an arbitral award cannot be set aside, such as when the application is filed beyond a specified time frame (three months from receipt of the award) or merely due to an erroneous application of law or mis appreciation of evidence. Furthermore, the rationale behind the award, including whether it meets the requirement of being a reasoned award as specified under "Section 31(3)" of the Arbitration Act, plays a crucial role in determining whether an award can be set aside on these grounds.[7]

Judicial Authority over Arbitral Awards

Expanding on the powers of courts concerning arbitral awards and whether courts can modify or alter such awards involves a nuanced exploration of legal frameworks and judicial principles across different jurisdictions.

The "Arbitration and Conciliation Act of 1996 (Section 34)" specifies grounds upon which an arbitral award may be set aside by the court. These grounds primarily relate to procedural irregularities, jurisdictional issues, or contraventions of public policy. However, the Act does not grant courts the authority to directly modify or alter the

[7] *Verma, R., & Dongrey, N. (2022). The Future of International Commercial Arbitration in India. Issue 4 Int'l JL Mgmt. & Human., 5, 291.*

substance of arbitral awards. This limitation underscores the legislative intent to preserve the finality and autonomy of arbitral decisions, thereby promoting the efficiency and credibility of the arbitration process.

The decision in Project Director, "National Highway Authority of India v. M. Hakeem & Anr. (2021)" further clarifies this principle of minimal judicial intervention in arbitral awards under Section 34. The Supreme Court's ruling reaffirmed that courts lack the power to amend, revise, or alter an arbitral award under this provision, reinforcing the principle of respecting arbitral finality and the parties' autonomy in resolving disputes.[8]

Additionally, "Article 142" of the Indian Constitution grants the Supreme Court discretionary powers to issue orders necessary for complete justice in any matter before it. While this provision allows for tailored interventions in exceptional cases, it does not empower courts to modify or alter arbitral awards directly under "Section 34".[9] The emphasis remains on upholding the integrity of arbitral processes while addressing extraordinary circumstances to ensure fairness and equity.

In contrast, jurisdictions like England, under the English Arbitration Act of 1996, grant courts broader authority to intervene in arbitral awards. English courts may revise or modify arbitral decisions, especially when substantive issues are challenged or legal matters require clarification. This divergent approach underscores varying degrees of court involvement in arbitration proceedings across different legal systems, highlighting the flexibility and discretion granted to courts in different jurisdictions.

Importantly, the Indian Arbitration Act does not explicitly provide for partial annulment or modification of arbitral awards. Therefore, any attempt to modify an arbitral award within this legal framework would likely involve setting aside the award in part rather than directly altering its substance. This underscores the importance of adhering to established legal procedures and principles governing

[8] *Nomani, S. F., & Tamheed, M. (2022). International Commercial Arbitration: Preference of the Changing World. Issue 1 Int'l JL Mgmt. & Human., 5, 1234.*

[9] *AR, S. (2021). Analytical Study on Changing Dynamics of Public interest Litigation in India.*

arbitration, while also balancing the need for judicial oversight and the enforcement of arbitration agreements.

Exploring the nuances of court powers and interventions in arbitral awards across different legal systems enhances our understanding of the evolving jurisprudence surrounding arbitration proceedings. The contrast between Indian and English legal approaches highlights the delicate balance between party autonomy in arbitration and the role of courts in ensuring fairness, compliance with legal standards, and the effective resolution of disputes.

Criticisms of ADR Section 34

Section 34 of Alternative Dispute Resolution (ADR) law is frequently scrutinized due to its lack of clarity in delineating the scope and application of ADR methods. Ambiguous terminology can lead to confusion among parties and practitioners regarding the acceptability of issues for ADR, relevant ADR procedures, and integration of ADR solutions into the legal framework. This ambiguity may hinder the effective implementation of ADR procedures and diminish parties' confidence in utilizing alternative dispute resolution techniques.

Another critical concern relates to the perceived inadequacy in enforcing ADR rulings compared to outcomes from traditional judicial processes. If ADR decisions lack robust enforcement mechanisms, parties may hesitate to engage in ADR, fearing that their agreements may not be upheld or enforced as effectively as court judgments.

Provisions such as ADR Section 34 might inadvertently restrict access to formal judicial systems by promoting or mandating ADR before court proceedings. This could lead to delays or additional hurdles for individuals with urgent legal needs or seeking definitive legal remedies.[10]

Issues also arise regarding the impartiality and safeguarding of legal rights under ADR proceedings governed by Section 34. Without adequate procedural protections such as the right to legal representation, discovery, and appeal, ADR hearings may result in decisions that disadvantage parties with fewer resources or bargaining power.

[10] *Aragaki, H. N. (2018). Arbitration reform in India: Challenges and opportunities. The developing world of arbitration: a comparative study of arbitration reform in the Asia Pacific. Hart Publishing, Oxford, Portland, Oregon, 221-50.*

Moreover, concerns exist about potential injustices within ADR proceedings under Section 34, where inadequate oversight and regulation may perpetuate existing power imbalances and disadvantage vulnerable parties. The confidentiality associated with ADR proceedings may limit public scrutiny and accountability for ADR practitioners, raising concerns about the legitimacy of outcomes reached through closed hearings.

Over-reliance on ADR, as encouraged by provisions like Section 34, risks fragmenting legal principles and undermining the predictability and consistency of court rulings over time. This could erode the stability and coherence of the legal system.

Reliability of Arbitral Award and Judicial Intervention

An arbitration award operates much like a court judgment, carrying significant weight by legally binding the involved parties and forming a cornerstone of dispute resolution. The decision to challenge an arbitral award hinges largely on its binding nature. If an arbitration ruling lacks enforceability or is deemed non-binding, parties can appeal the award without stringent grounds. However, when an award is binding, contesting it in court requires substantial justification, akin to challenging a jury trial verdict.[11]

In the field of arbitration law, several court rulings underscore the need for caution in provisions allowing the setting aside of arbitral awards. There is a prevailing view that questioning the competence or integrity of arbitrators in reaching a decision should generally be avoided, irrespective of whether the award aligns with a party's interests. Parties are typically expected to adhere to and respect arbitral decisions as a fundamental principle of the arbitration process.

[11] *Aragaki, H. N. (2018). Arbitration reform in India: Challenges and opportunities. The developing world of arbitration: a comparative study of arbitration reform in the Asia Pacific. Hart Publishing, Oxford, Portland, Oregon, 221-50.*

Recent Cases in reference to Section 34 Arbitration and Conciliation Act 1996 and power of courts

S. No.	Case Name	Disposal Date	Allowed/ Dismissed	Grounds
1.	National Highways Authority of India v. M. Hakeem & Anr. (Arising out of SLP (CIVIL) No.13020 of 2020)[12]	July 20, 2021	Allowed under the District court but was Dismissed by High and Supreme court.	Section 34 of the Arbitration Act gives no ability to alter or change an award.
2.	National Highways Authority of India v Sri. P Nagaraju & ANR (Civil Appeal No. 4671)[13]	July 11, 2022	Allowed under the District court but was Dismissed by High and Supreme court.	Same as above
3.	Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar (Civil Appeal Nos. 837-838)[14]	February 1, 2022	Dismissed by Supreme court	An arbitral tribunal, as a contract creature, is required to operate in line with the contract under which it is constituted, and an award might be considered blatantly invalid if the arbitral tribunal failed to act in accordance with the contract or disregarded particular contract conditions.

[12] *National Highways Authority of India v. M. Hakeem & Anr., (2020) 9 SCC 743*

[13] *National Highways Authority of India v. Sri. P Nagaraju & Anr., (2010) 14 SCC 670*

[14] *Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar, (2011) 3 SCC 507*

S. No.	Case Name	Disposal Date	Allowed/ Dismissed	Grounds
4.	I-Pay Clearing Services Private Limited v. ICICI Bank Limited (Civil Appeal No. 7)[15]	January 3, 2022	The Appeal was dismissed by the Supreme court	When a party requests it, the Court has the ability to remit a case. The ability conferred by Section 34(4) of the Act to cure deficiencies may be used in circumstances where the arbitral decision does not contain any rationale, has gaps in the reasoning, or otherwise, and can be rectified in order to prevent a challenge under Section 34.
5.	South East Asia Marine Engineering and Constructions Ltd vs. Oil India Limited (Civil Appeal Nos. 673 and 900)[16]	May 11, 2020	The Appeal was allowed by High court and the Supreme court	A "prudent contractor" would have considered pricing changes when bidding. As a result, such price variations would fall beyond the scope of the contract's Clause 23.

Relevant Case Laws/ Case Summary

1) National Highways Authority of India v. M. Hakeem & Anr. (2021)

Facts

A batch of Supreme Court appeals concerning notifications issued under the National Highways Act, 1956 ("NH Act"), consisting of awards granted by the competent authorities (Special District Revenue Officer). These awards were granted on the basis of the guideline value of the individual lands rather than the sale documents. As a result, the responsible authorities granted abysmally low sums. However, the District Collector, who was selected by the government as the arbitrator, found no flaws in the sums given and upheld the compensation.

[15] *I-Pay Clearing Services Private Limited v. ICICI Bank Limited, (2021) 2 SCC 777*

[16] *South East Asia Marine Engineering and Constructions Ltd. v. Oil India Limited, (2021) 11 SCC 580*

While hearing the challenge under Section 34 of the Arbitration Act, the District and Sessions Judge increased the compensation, altering the District Collector's decision.

Issues before the Supreme Court

One of the questions before the Supreme Court was whether the Court's jurisdiction under Section 34 of the Arbitration Act includes the ability to amend an arbitral verdict.

Obiter Dicta

The Supreme Court stated that the NH Act's arbitration procedure was not consensual, and that the landowner had no say in the nomination of the arbitrator, who was always nominated by the acquiring authority, which was the Central Government.

In respect to Section 34 of the Arbitration Act, the Supreme Court stated that the clause gave exceedingly limited grounds for setting aside an arbitral judgement. Given the narrow grounds for appeal offered by Section 34(2) and (3), the Court ruled that an application may only be filed to set aside the award.

Conclusion

Given the difference of opinion of certain High Courts on this issue, the decision by the Supreme Court is significant since it clarifies that there exists no power to modify or vary an award under Section 34 of the Arbitration Act. This decision once again re-affirms the minimal judicial interference followed by the Indian Courts when it comes to challenges to an award. The decision is also consistent and takes forward the amendments made to the Arbitration Act, and in particular, those made to Section 34 of the Arbitration Act.

2) National Highways Authority of India v Sri. P Nagaraju & ANR (2022)

Facts

Notifications were issued under the National Highways Act 1956 (NH Act) for land acquisition pursuant to which a Special Land Acquisition Officer was appointed to determine the compensation for land acquired. Disputes arose between the Respondents and the Appellant in relation to quantum of the compensation payable. As per section 3G(7) of the NH Act, an arbitrator was appointed to determine compensation. The arbitrator increased the amount of compensation to be paid to the Appellant. In appeal, both the District and Sessions Court as well as the Karnataka High Court upheld the award. The Appellant then approached the Supreme Court.

Decision

The Supreme Court allowed the appeal and relied on National Highway Authority of India v M Hakeem & Anr. The Supreme Court held that since the scope of interference by a court is limited, it would not be open to the court to modify an award and alter the compensation payable. The appropriate course to be adopted in such event is to set aside the award and remit the matter back to the Tribunal in terms of section 34(4) of the Act.

Conclusion

In a challenge to an arbitral award, a court cannot modify the award but can only set it aside and remit the matter back to the Tribunal.

3) Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar (2022)

Facts

The Indian Oil Corporation Ltd. ("lessee") and M/s Shree Ganesh Petroleum ("lessor") entered into a lease agreement dated September 20, 2015 for a period of 29 years, under which the lessee set up a retail outlet for sale of its petroleum products at a monthly rent of Rs. 1750/-. Subsequently, the parties also entered into a dealership agreement dated November 15, 2006 under which the lessor was appointed as a dealer of the said retail outlet.

The Award was challenged by the lessee under section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") before the District Court. The District Court observed that although the arbitral tribunal was not empowered to reduce the lease period from 29 years to 19 years and 11 months, the enhancement of rent to Rs. 10,000/- per month with a 10% increase every three years was justified. Both the parties challenged the order of the District Court under section 37 of the Act before the High Court of Bombay ("High Court"). The High Court observed that the District Court erred in interfering with the Award and upheld the award in its entirety. The lessee challenged the award before the Supreme Court.

Issue before the Supreme Court

Can an arbitral tribunal act beyond the terms of the contract under which it had been constituted?

Judgement

The Supreme Court held that an arbitral tribunal, as a creature of contract, is bound to act in accordance with the contract under which it is formed, and that an award can be said to be patently illegal where the arbitral tribunal has failed to act in

accordance with the contract or has ignored specific contract terms. However, the court also stated that a distinction must be made between failure to act in accordance with the terms of a contract and an incorrect interpretation of the terms of a contract. While adjudicating a dispute, an arbitral tribunal has the authority to interpret the terms and conditions of a contract.

4) I-Pay Clearing Services Private Limited v. ICICI Bank Limited (2022)

Facts

According to an arbitral Award issued in the parties' proceedings (Award), the Respondent, ICICI Bank, was ordered to pay the Appellant, I-Pay Clearing Services Pvt. Ltd., monetary sums as well as interest and fees as a result of the Respondent cancelling a contract negotiated between the parties. The Respondent appealed the Award to the Bombay High Court under Section 34(1) of the Act. The fundamental reason for the challenge was that the Award was patently illegitimate, i.e. there was no finding in the Award that the Respondent had unilaterally and suddenly terminated the contract between the parties.

The High Court issued a conditional order in the Respondent's Notice of Motion and rejected the Appellant's Notice of Motion under Section 34(4) of the Act in a joint ruling. The High Court determined that the fault in the award was not curable, and so the Appellant's Application under Section 34(4) of the Act requesting remission of the proceedings had no merit.

The Appellant filed an appeal with the Supreme Court after being dissatisfied with the Order of Dismissal.

Issue before the Supreme Court

Does the court have discretionary power under Section 34(4) of the Act to remit the matter to the arbitral tribunal to give an opportunity to resume the proceedings?

Judgement

The Supreme Court held that Section 34(4) of the Act itself makes it clear that it is the discretion vested with the court for remitting the matter to an arbitral tribunal to give an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

Therefore, it was held that merely because an application is filed Under Section 34(4) of the Act by a party, it is not always obligatory on the part of the court to remit the matter to an arbitral tribunal. The

discretionary power conferred under Section 34(4) of the Act, is to be exercised where there is inadequate reasoning or to fill up the gaps in the reasoning, in support of the findings which are already recorded in the award.

If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself.

Accordingly, the Supreme Court dismissed the Appeal.

5) South East Asia Marine Engineering and Constructions Ltd vs. Oil India Limited

Facts

SEAMEC was awarded a work order in 1995 from OIL for well-drilling operations within the State of Assam ("Contract"). Among other things, High Speed Diesel ("HSD") was an essential material for the Appellant's performance of the Contract. During the subsistence of the Contract, the price of HSD was increased by the Government of India ("GOI") by way of a circular.

Clause 23 of the Contract dealt with effects of a "Change in Law" ("Clause 23"). The relevant portion is extracted below:

"...if there is a change in or enactment of any law or interpretation of existing law, which results in additional cost/reduction in cost to Contractor on account of the operation under the Contract, the Company/Contractor shall reimburse/ pay Contractor/Company for such additional/reduced cost actually incurred..."

The Appellant argued that the increase in the price of HSD would amount to a "change in law". The Tribunal accepted this interpretation. In doing so, the Tribunal adopted a liberal construction of Clause 23, and held that the GOI's Circular may not be a statutory enactment and accordingly might not be "law" in the literal sense. However, the GOI's Circular has the "force of law" and would fall within the ambit of Clause 23. The award was challenged by OIL under Section 34.

The District Court upheld the award and held that the findings were not against the public policy of India. Thereafter, on appeal, the High Court at Gauhati set aside the award for being erroneous and against the public policy of India.

Judgement

In appeal, the Apex Court upheld the High Court's decision to set aside the award – albeit for different reasons.

The Court attempted to understand the Contract and its economic intent. It was discovered that the Contract was for a 'fixed rate,' which meant that all rates specified in the Contract would be in effect until completion. The Court further stated that the tendering procedure was designed to restrict price variances. The Contract's annex additionally stated that the Appellant would supply HSD at his own expense.

In light of these findings, the Court was of the view that a "prudent contractor" would have taken price fluctuations into account while bidding. Therefore, such price fluctuations would not be under the ambit of Clause 23. Observing that that the tribunal's view of Clause 23 was not even a possible interpretation, the Supreme Court held that award suffered from a unreasonableness. It was therefore set aside under Section 34 for being violative of India's public policy.

Recommendations

Efficient and equitable dispute resolution mechanisms, particularly in the context of judicial oversight over arbitral awards and the evolving landscape of Alternative Dispute Resolution (ADR), form a critical aspect of contemporary legal frameworks worldwide. Here are suggestions and precautions:

1. **Clarification of Judicial Powers:** The legal community should work towards a clearer delineation of judicial authority over arbitral awards, particularly emphasizing the limitation on courts to modify or alter the substance of arbitral decisions as underscored by the "Arbitration and Conciliation Act of 1996 (Section 34)".[17] This effort should aim to uphold the finality and autonomy of arbitration, fostering confidence in the efficiency and credibility of the arbitral process.

2. **Enhanced Legal Frameworks:** Jurisdictions, like India, could consider amendments to Section 34 that provide a nuanced balance between judicial oversight and arbitral autonomy. This could involve refining grounds for challenging arbitral awards to ensure effective review while maintaining the integrity and efficiency of arbitration.

3. **Strengthening ADR Clarity:** There is a pressing need to enhance clarity within Alternative Dispute Resolution (ADR) laws, particularly concerning the scope

[17] *Gupta, H. (2023). Evolution and Future of Emergency Arbitration in India. Available at SSRN 4503214.*

and application of ADR methods. This clarity is essential to mitigate ambiguity among parties and practitioners, fostering greater trust and utilization of alternative dispute resolution techniques.

4. **Enforcement Mechanisms:** Efforts should be directed towards bolstering the enforceability of ADR rulings to encourage broader participation and trust in ADR processes. Strengthening enforcement mechanisms can ensure that ADR outcomes are perceived as reliable and binding, comparable to traditional judicial processes.

5. **Ensuring Procedural Protections:** To address concerns about fairness and impartiality in ADR proceedings, there is a need to establish robust procedural protections such as the right to legal counsel, discovery, and appeal. This will help safeguard the legal rights of all parties involved, promoting equitable dispute resolution.

Summary/Final Thought

The evolution of India's arbitration landscape, particularly the revisions to "Section 34 of the Arbitration and Conciliation Act of 1996", represents a significant shift towards more efficient and globally aligned dispute resolution methods. This transformation responds to the strain on traditional court systems amid India's rapid economic growth and integration into the global market, leading to increased caseloads and delays.

The enactment of the Arbitration and Conciliation Act in 1996 marked a watershed moment for India's legal framework, consolidating laws governing domestic and international arbitration while aligning with international standards, notably drawing from the UNCITRAL Model Law and Rules. This legislative milestone aimed to bolster the credibility and enforceability of arbitral awards, providing businesses with a dependable alternative to protracted litigation.

However, the evolution of Section 34 has not been without criticism and constraints, particularly regarding the perceived narrow grounds for challenging arbitral awards, which may restrict effective scrutiny of arbitration decisions. Persistent concerns also revolve around the enforceability of awards and the availability of robust appeal mechanisms, essential for fostering trust and confidence in arbitration as a dispute resolution method.[18]

[18] *Gupta, H. (2023). Evolution and Future of Emergency Arbitration in India. Available at SSRN 4503214.*

To tackle these challenges, ongoing efforts are underway to refine Section 34 and enhance its efficacy. This ongoing evolution reflects a broader commitment to balancing the promotion of alternative dispute resolution (ADR) with the imperative of due process and judicial oversight. By addressing critiques and improving the efficiency and reliability of arbitral procedures, India aims to foster a conducive environment for commercial dispute resolution.

Looking ahead, India must continue to modernize and adapt its arbitration framework to navigate emerging complexities and evolving business dynamics. This entails a comprehensive understanding of Section 34's development, limitations, and criticisms to ensure that the legal framework supports transparent, efficient, and equitable arbitration practices nationwide.

Be that as it may, India's dedication to refining its arbitration laws underscores its ambition to strengthen its position as a preferred destination for investment and commerce. By embracing international best practices and addressing domestic challenges, India can enhance its competitiveness and contribute to sustained economic growth globally.

ARTICLE

THIRD-PARTY FUNDING IN ARBITRATION: LESSONS FOR INDIA

By: Ratan K. Singh[1] & Ankit Malhotra[2]

The United Kingdom's Arbitration Act 2025 has taken a distinctive stance on third-party funding by deliberately avoiding the imposition of explicit regulatory requirements on TPF arrangements. This legislative choice is not an oversight but a carefully considered decision designed to preserve the principle of party autonomy and to rely on institutional self-regulation. By refraining from detailed statutory intervention, the UK framework essentially endorses a market-driven approach whereby parties negotiate and agree upon their funding arrangements. In effect, this "regulation by silence" allows the established norms of international arbitration—and the specific rules of institutions like the ICC and LCIA—to guide the practical aspects of TPF, including disclosure and cost allocation. For India, where TPF remains largely unaddressed by the Arbitration and Conciliation Act, 1996, the UK model provides critical insights. In an environment where statutory clarity is absent, Indian arbitration practitioners have often had to rely on ad hoc judicial interpretations. The UK's minimalist approach suggests that a well-designed

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[1] *Ankit Malhotra is an Associate in the Chambers of Mr. Ratan K. Singh SA. He is an awardee of 10 University Prizes from O.P. Jindal Global University where he read his BA and LLB. He read his LLM as the Felix Scholar at SOAS, University of London. As a Reporter for the Oxford Reports on International Law in Domestic Courts, he analyses UK case law which have been cited by the UN and UK Parliament. He co-edited Re-Imagining the International Legal Order, launched at the House of Lords.*

framework need not be over-prescriptive; instead, it should encourage parties to design bespoke funding solutions within a clearly defined, yet flexible, legal envelope. This strategy not only protects the interests of both funders and funded parties but also promotes efficiency and investment in dispute resolution.

II. Precedential Impact of PACCAR on TPF and the Role of Dissenting Opinions

A major development in the UK funding landscape has been the Supreme Court's decision in R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others [2023] UKSC 28. This landmark case addressed the complexities of damages-based funding arrangements.

A. The Majority Judgment in PACCAR

In PACCAR, the majority of the UK Supreme Court expressed significant reservations about certain damages-based funding models. In paragraphs 147 to 155, the Court underscored the risk that funding arrangements—where a funder's remuneration is directly linked to the damages awarded—might undermine fundamental public policy principles, particularly those guarding against champerty and maintenance. The majority's decision was informed by concerns that such arrangements could distort litigation incentives, potentially encouraging overly aggressive or unmeritorious claims. This perspective has provided a basis for later judicial decisions to scrutinize the commercial and ethical dimensions of TPF arrangements, ensuring that they do not conflict with the traditional safeguards of common law.

B. Lady Rose's Dissent and Its Enduring Influence

In stark contrast, the dissenting opinion of Lady Rose (paras. 156–163) offered a robust counter-argument. Lady Rose contended that an overly restrictive approach to TPF would effectively penalize access to justice. She emphasized that funding arrangements play a crucial role in levelling the playing field, especially for claimants who might otherwise lack the financial wherewithal to pursue valid claims. According to her, the focus should be on ensuring transparency and effective disclosure rather than imposing blanket prohibitions or onerous cost-shifting obligations. Lady Rose argued that the law should encourage innovation in funding arrangements, provided that funders' roles and potential conflicts of interest are clearly disclosed. Her dissent has resonated in subsequent cases, where judges have cited her reasoning to support frameworks that allow flexible,

market-driven funding while still safeguarding the integrity of the dispute resolution process.

C. Subsequent Precedential Developments

The principles laid down in PACCAR have found their way into later judgments, where courts have been cautious not to extend cost or enforcement liabilities to third-party funders unless there is express consent. By invoking PACCAR, later decisions have reinforced that while TPF is permissible, it must operate within a regime that respects party autonomy and minimizes public policy concerns. Lady Rose's dissent, in particular, has been influential in cases where courts rejected attempts to "mulct" funders—i.e., to impose financial burdens on them for risks they did not willingly assume. This precedent has proven critical in shaping the debate around TPF in international arbitration, setting an international benchmark that Indian practitioners and policymakers can look to when drafting reforms.

III. The Indian Position on Third-Party Funding: Insights from Recent Jurisprudence

In India, the regulatory landscape for TPF remains notably underdeveloped. The Arbitration and Conciliation Act, 1996 does not explicitly mention third-party funding, leaving many questions unanswered. Recent judgments, such as the Delhi High Court's ruling in Tomorrow Sales Agency Private Limited v. SBS Holdings, Inc. & Ors (29 May 2023), provide valuable insight into the Indian judicial approach toward TPF and the treatment of non-signatories.

A. Judicial Caution and the Principle of Consent

Indian courts have traditionally anchored arbitration on the principle of consent. In the Delhi High Court judgment, the Court made it clear that a non-party cannot be compelled to accept liability for an arbitral award unless there is clear evidence of consent or contractual obligation. The Court stressed that even if a non-signatory benefits indirectly from the arbitration proceedings—such as through a funding arrangement—it should not automatically be bound by the costs or enforcement actions arising from the award. This mirrors the concerns raised in PACCAR and in Lady Rose's dissent, where extending liabilities to third-party funders was seen as contrary to the fundamental principle of party autonomy.

B. Disclosure and Transparency

The Delhi High Court also emphasized the need for transparency in funding

arrangements. The judgment discussed the importance of disclosing the existence of any funding relationship, a requirement mirrored in international practices such as those under the SIAC Rules. This disclosure is crucial for ensuring that all parties, including the arbitrator, are aware of any potential conflicts of interest or hidden influences that might affect the dispute resolution process. Notably, the judgment made it clear that while disclosure is mandatory, it does not automatically impose cost liabilities on the funder. This position aligns closely with the perspective articulated by Lady Rose in PACCAR, where transparency was favored over punitive measures.

C. Enforcement of Arbitral Awards and Non-Party Liability

One of the most contentious issues in the Indian context is whether a non-party to an arbitration can be compelled to bear the costs of an award. The Delhi High Court's decision provides a detailed analysis of this issue. The Court held that because the non-party (in this instance, the third-party funder) had not consented to be bound by the arbitration agreement, it could not be compelled to discharge liabilities arising from the arbitral award. This approach prevents the imposition of unexpected financial burdens on third-party funders, thereby preserving the integrity of TPF arrangements. By refusing to extend the enforcement of cost orders to non-signatories, the Indian judiciary has signaled its commitment to ensuring that funding arrangements remain a tool for access to justice rather than a mechanism for unwarranted financial exposure.

D. Cross-Border Considerations

Another significant issue highlighted by the Delhi judgment relates to cross-border funding. The absence of clear statutory guidelines regarding the treatment of foreign funding and the interaction of TPF with regulatory regimes such as the Foreign Exchange Management Act (FEMA) has created uncertainty for international funders. Indian courts have been cautious in extending liability to funders when foreign capital is involved, a hesitation that underscores the need for comprehensive legislative reform. A well-defined statutory framework would provide clarity on issues like cost allocation, disclosure obligations, and the repatriation of funds—thereby attracting reputable international funders and enhancing India's competitiveness as an arbitration hub.

IV. Toward a Codified Framework for TPF in India: Recommendations

Drawing on the UK experience and the insights from recent Indian judgments, it is

evident that India must develop a robust, codified framework for third-party funding in arbitration. Such a framework should incorporate the following elements:

A. Explicit Legal Recognition of TPF

India should amend the Arbitration and Conciliation Act, 1996 to explicitly recognize third-party funding arrangements. This amendment would serve to dispel any residual uncertainties regarding the legality of TPF and would align India with international best practices. Explicit recognition would also provide a statutory basis for subsequent rules on disclosure, cost allocation, and funder liability.

B. Mandatory Disclosure Requirements

Following the model of international institutions and consistent with the transparency principles espoused by Lady Rose, the Indian framework should mandate that any party receiving third-party funding disclose the identity of the funder and the nature of the funding arrangement. This disclosure should occur at the earliest possible stage in the arbitration proceedings, allowing the arbitrator and other parties to fully assess any potential conflicts of interest. The Delhi High Court's emphasis on disclosure, as reflected in its detailed analysis of the SIAC Practice Note (paras. 42–44), reinforces the necessity of this requirement.

C. Clear Limits on Funder Liability

It is essential that the new framework expressly limits the liability of third-party funders. Drawing on the reasoning in both PACCAR (majority paras. 147–155) and Lady Rose's dissent (paras. 156–163), the framework should clarify that funders, who operate on a non-recourse basis, are not to be held liable for adverse cost orders or enforcement actions unless they have explicitly assumed such risks. This approach would protect funders from unexpected financial exposure and encourage them to invest in arbitration as a viable risk management tool.

D. Institutional and Procedural Safeguards

Indian arbitral institutions should be encouraged to develop and adopt rules that mirror international best practices. These rules should include:

Guidelines on the disclosure of funding arrangements, ensuring that all parties are aware of any external financial involvement.

Procedures for assessing the impact of TPF on cost awards, thereby preventing the imposition of cost liabilities on non-parties.

Mechanisms for the joinder of third-party funders only when they have expressly agreed to assume the attendant risks, in line with international norms.

E. Cross-Border Regulatory Clarity

Finally, India must address the challenges posed by cross-border funding. The Reserve Bank of India (RBI) and the Ministry of Finance should issue clear guidelines on how TPF interacts with FEMA and other relevant regulations. Such guidance would facilitate the participation of international funders and ensure that funding proceeds are appropriately classified for tax and repatriation purposes.

V. Conclusion

The evolution of third-party funding in arbitration presents both challenges and opportunities. The UK's Arbitration Act 2025—with its deliberate choice to refrain from explicit regulation of TPF—demonstrates a commitment to party autonomy and institutional self-regulation. Meanwhile, the PACCAR decision, particularly the nuanced perspectives offered in paragraphs 147–155 (majority) and 156–163 (Lady Rose's dissent), underscores the need to balance commercial innovation with public policy safeguards. For India, where TPF remains largely unaddressed by statute, the UK experience offers valuable lessons. Recent Indian jurisprudence, as evidenced by the Delhi High Court's decision in Tomorrow Sales Agency Private Limited v. SBS Holdings, Inc. & Ors (29 May 2023), reveals a cautious judicial approach that carefully delineates the boundaries of non-party liability and the necessity for transparent funding arrangements. The Court's detailed analysis—emphasizing the principle of consent, the need for disclosure, and the limits on imposing cost liabilities on third-party funders—mirrors international trends and reinforces the call for legislative reform. In light of these developments, it is imperative for India to move from a regulatory vacuum to a coherent, codified framework for third-party funding in arbitration. Such a framework should explicitly recognize TPF, mandate timely disclosure, limit funder liability to agreed risks, and provide institutional and cross-border safeguards. By doing so, India can promote investment, enhance efficiency, and ensure fairness in its arbitration processes—ultimately bolstering its reputation as a modern, arbitration-friendly jurisdiction in the global dispute resolution arena.

THE NEW INDIAN EXPRESS

HYDERABAD, Tuesday, 25 March 2025

Indian Council of Arbitration: Strengthening India's ADR Ecosystem

In an era where commercial disputes demand swift and efficient resolution, the Indian Council of Arbitration (ICA) has emerged as a pillar of institutional arbitration in India. Established in 1965, ICA has consistently set benchmarks in domestic and international arbitration, reinforcing India's standing as a global hub for Alternative Dispute Resolution (ADR).

As India's premier arbitral institution, ICA has been at the forefront of providing businesses with a structured, transparent, and globally recognized dispute resolution mechanism. With a robust panel of arbitrators, international collaborations, and state-of-the-art infrastructure, ICA continues to enhance ease of doing business by fostering trust and efficiency in commercial arbitration.

Expanding Global Footprints

ICA has played a pivotal role in elevating India's arbitration framework to international standards. Through strategic reciprocal cooperation agreements and Memorandums of Understanding (MoUs) with leading arbitral institutions worldwide, ICA has positioned itself as a key player in cross-border dispute resolution.

The institution has hosted high-impact international arbitration conferences in major jurisdictions like the UK, UAE, Australia, and Germany, often graced by Hon'ble Chief Justices of India, Supreme Court Judges, and Union Ministers. These global engagements have not only strengthened ICA's credibility but also showcased India's growing role in shaping international arbitration policies.

Modernizing Arbitration with Technology & Inclusivity

ICA remains committed to innovation, inclusivity, and modernization. Recognizing the evolving needs of businesses, ICA has embraced cutting-edge technology to facilitate seamless arbitration processes, including:

- State-of-the-art hearing facilities for virtual and in-person proceedings
- Digitized case management systems to streamline dispute resolution
- User-friendly infrastructure to enhance ease of access for all stakeholders

In addition, ICA has been a strong advocate for gender diversity in arbitration, actively encouraging the participation of women arbitrators through dedicated forums and initiatives.

A Vision for Arbitration Excellence

Under the leadership of **Mr. Arun Chawla, Director General, ICA,** the institution has taken significant steps toward reinforcing arbitration as the preferred method of commercial dispute resolution in India. Mr. Chawla's expertise in arbitration policy, coupled with his extensive corporate and legal experience, has been instrumental in positioning ICA at the heart of India's arbitration reforms.

Shaping Policy & Strengthening India's ADR Framework

ICA has worked closely with regulators, policymakers, and industry leaders to advocate for arbitration-friendly policies that enhance business confidence. Notably, ICA was represented in the High-Level Committee for 'Making India a Hub of Arbitration,' chaired by Justice B.N. Srikrishna (Retd.), Supreme Court of India, which laid the groundwork for several key arbitration reforms.

ICA's commitment to ADR excellence extends beyond policy advocacy-it actively organizes training programs, symposia, and workshops to equip legal professionals, arbitrators, and businesses with best practices in arbitration and mediation.

A Future-Ready Arbitral Institution

With the global economy becoming increasingly interconnected, ICA continues to adapt and evolve to meet the demands of a rapidly changing legal and commercial environment. By fostering innovation, strengthening institutional arbitration, and enhancing India's position in global ADR mechanisms, ICA is driving the next chapter of arbitration excellence in India.

"ICA is committed to ensuring that arbitration remains a trusted, efficient, and business-friendly mechanism for resolving disputes in India. Our goal is to continually modernize, innovate, and expand our global outreach to establish India as a leading international arbitration hub." - ***Mr. Arun Chawla, Director General, ICA.***

ARUN CHAWLA, DG, ICA

REFLECTIONS

This segment of the quarterly highlights the media coverage of ICA, which continues to shape the public and professional discourse around alternative dispute resolution (ADR) in India. The visibility garnered through media engagement not only enhances awareness but also affirms ICA's pivotal role in championing ADR mechanisms—particularly arbitration and mediation—as integral tools for effective and business-friendly dispute resolution. These efforts align with our broader mission of positioning ADR not simply as an alternative, but as the most preferred and strategic choice for resolving commercial disputes. As the legal and business communities increasingly seek efficiency, confidentiality, and cost-effectiveness, ICA remains committed to leading the conversation and strengthening the institutional framework that supports this shift.

Media Spotlight: India's Journey Towards Becoming a Global Arbitration Hub

Hindustan Times | January 11, 2025

In a compelling article published in the Hindustan Times, Mr. Arun Chawla, Director General of the Indian Council of Arbitration, offered his expert perspective on the critical role of Alternative Dispute Resolution (ADR) in India's economic development.

Titled *"India's Journey Towards Becoming A Global Arbitration Hub"*, the piece underscores how ADR mechanisms-particularly arbitration and mediation-are instrumental in enhancing economic confidence, promoting ease of doing business, accelerating the nation's growth trajectory, and achieving the vision of positioning India as a global arbitration hub.

Mr. Chawla's article contributes meaningfully to the growing discourse around ADR, articulating its transformative impact on the commercial ecosystem. By highlighting the strategic benefits of timely and efficient dispute resolution, the article

reinforces ICA's mission to position ADR not merely as an alternative, but as the preferred approach for resolving commercial conflicts in India's dynamic economic landscape.

Read the full article here:
https://www.hindustantimes.com/ht-insight/governance/indias-journey-towards-becoming-a-global-arbitration-hub-101736587259640.html

Media Milestone: National Broadcast Highlights ICA's ADR Vision

DD National - DD Morning Show | March 17, 2025

In a thought-provoking segment aired on DD National's Morning Show on March 17, 2025, Mr. Arun Chawla, Director General of the Indian Council of Arbitration, engaged in a compelling dialogue on the transformative role of Arbitration and Mediation in India's legal and commercial landscape.

The conversation examined how ADR mechanisms are streamlining legal frameworks, easing pressure on the judiciary, and offering faster, more efficient resolution of commercial disputes. Importantly, the interview also navigated critical contemporary themes, including the rising scope for young professionals in the ADR space, the growing parity of mediation with arbitration as a preferred method of dispute resolution, and the increasing gender inclusivity within the ADR ecosystem.

Through this national broadcast, ICA's mission of making ADR the cornerstone of commercial justice in India was meaningfully amplified, aligning with the broader goal of positioning India as a global hub for arbitration and mediation.

Watch the full interview here:
https://youtu.be/9crrKq-RxTA


DD MORNING SHOW
Arun Chawla
Director General, Indian Council of Arbitration (ICA)

ICA in the Spotlight: Strengthening India's ADR Ecosystem

The New Indian Express | March 25, 2025

In a featured article titled "Indian Council of Arbitration – Strengthening India's ADR Ecosystem", Mr. Arun Chawla, Director General of the Indian Council of Arbitration, shared his insights on ICA's pivotal role in advancing India's Alternative Dispute Resolution (ADR) framework. Published in The New Indian Express on March 25, 2025, the article highlights ICA's leadership in institutionalizing arbitration and mediation practices to meet the growing demands of a dynamic commercial landscape.

Mr. Chawla emphasized ICA's continued commitment to enhancing accessibility, awareness, and credibility of ADR mechanisms across sectors. The piece outlines key reforms, capacity-building initiatives, and outreach efforts led by ICA, reinforcing its mission to make ADR not just an alternative, but the primary mode of commercial dispute resolution in India.

As India aspires to emerge as a global hub for arbitration and mediation, ICA stands at the forefront—driving innovation, building stakeholder confidence, and shaping a robust, future-ready dispute resolution ecosystem.

Symposium on

"Mediation: A Critical Tool For Commercial Dispute Resolution" Report

14th January 2025 | Federation House, New Delhi

Organized by: Indian Council of Arbitration (ICA) at the Federation House, New Delhi, India

The Symposium, held on January 14, 2025, at Federation House, New Delhi, emphasized the growing importance of mediation—alongside arbitration—as a key driver of effective commercial dispute resolution. This integrated approach was acknowledged as vital to supporting sustainable growth within the context of India's rapidly evolving economic landscape. The symposium reaffirmed the immense potential that commercial mediation holds in transforming and strengthening India's dispute resolution ecosystem.

The panel discussion that followed the inaugral session, brought together legal luminaries, scholars, policy stakeholders and seasoned ADR practitioners to delve into the transformative potential of commercial mediation in promoting efficient and economical dispute resolution, thereby leveraging India's growth prospects. With policy stakeholders and ADR specialists speaking about the practicalities of commercial mediation in Indian landscape, the event was a pivotal moment for those interested in exploring the present and future potential of institutional mediation. As India stands on the brink of becoming a $5 trillion economy by 2030, its of utmost significance to bolster the dispute resolution landscape, as it positively translates into the nation being perceived as business friendly on the global centre stage.

The event commenced with engaging and enriching opening session, featuring distinguished representatives of the Ministry of Law, the Bar & the institutional arbitration fraternity, who shared their insights on evolving landscape of commercial mediation in India and its consequential impact on the India Inc. The event was inaugurated by **Dr. Rajiv Mani,**

Secretary Ministry of Law & Justice, Government of India, by delivering the special address. Dr. Rajiv Mani elucidated, that India has long been a country of mediators, with its civilizational heritage emphasizing peaceful dispute resolution. He further highlighted that the concept of 'community mediation' underscores the significant role that society plays in achieving effective resolutions. He urged that to enhance the sanctity of the mediation process; a proposal is underway to register mediated settlement agreements. Additionally, he added that there is a pressing need to popularize mediation among disputants, where the role of institutional ADR bodies, such as ICA, becomes crucial in driving this change.

Dr. NG Khaitan, President ICA & Sr. Partner Khaitan & Co., gave the welcome address. In his address Dr. Khaitan reiterated, that mediation, since time immemorial has been a way of dispute resolution at all levels of society in India. The legal fraternity as a unified structure needs to promote the use of mediation, as a cost and time efficient mode of dispute resolution. He suggested that the Schedule II of Mediation Act,2023 must increase its ambit of Central legislations, this will help increase the usage and popularity of mediation amongst all categories of disputants.

Mr. Arun Chawla, Director General, ICA, had commenced the session with his opening remarks. He noted that mediation is not just an alternative—it is a transformative tool for businesses seeking sustainable solutions with higher compliance rates. Despite its advantages, mediation faces a peculiar challenge globally, known as the 'mediation paradox'. The paradox reveals that systemic gaps, lack of awareness, and stakeholder reluctance impede mediation's full potential. He highlighted that the introduction of the ICA Mediation Rules marks a significant milestone in our mission to make dispute resolution more accessible, faster, economical, and collaborative.

The inaugural session concluded with the splendid **launch of the ICA Mediation Rules**, marking a defining moment in India's institutional dispute resolution landscape. The launch was led by Guest of Honour Dr. Rajiv Mani, Secretary, Ministry of Law & Justice, Government of India, alongside Dr. N.G. Khaitan, President, ICA & Senior Partner, Khaitan & Co., and Mr. Arun Chawla, Director General, ICA & former DG, FICCI.

The event's centrepiece was the **Panel Discussion on the "Efficacy of Mediation in Commercial Disputes"**, which was moderated by Ms. Pinky Anand, Senior

Advocate & Former Additional Solicitor General of India. The distinguished panel comprised of Ms. Geeta Luthra, Senior Advocate & Vice President, ICA; Mr. Ajay Kumar Arora, Joint Secretary (Arbitration & Conciliation), Ministry of Law & Justice; Ms. Priya Hingorani, Senior Advocate & Mediator, Supreme Court of India; Ms. Shirin Khajuria, Senior Advocate & Mediator, Supreme Court of India & Ms. Varuna Bhandari Gugnani, Advocate & Mediator, Supreme Court of India.

The discussions emphasized the significance of commercial mediation as a cost-effective, efficient, confidential and collaborative method to resolving disputes in today's contemporaneous and globally interwoven commercial dispute landscape.

The panel discussion was moderated by **Dr. Pinky Anand, Senior Advocate and Former Additional Solicitor General of India.** In her remarks, Dr. Anand emphasized the transformative potential of commercial mediation in enhancing the 'ease of doing business' in India and advancing the Government of India's vision of establishing the country as the ADR capital of the world. She also highlighted the need for the Mediation Act, 2023, to address the enforceability of internationally mediated settlement agreements in the near future.

Offering his perspective during the panel discussion, **Mr. Ajay Kumar Arora, Joint Secretary (Arbitration & Conciliation), Ministry of Law & Justice, Government of India**, highlighted the role of mediation in delivering timely and mutually acceptable solutions. He explained that, just as currency depreciates over time, the prolonged pursuit of commercial disputes can significantly diminish the value of claims. A prompt and amicable resolution, he emphasized, not only safeguards value but also strengthens the overall business environment.

Reflecting on the role of mediation, **Ms. Priya Hingorani, Senior Advocate and Mediator, Supreme Court of India**, highlighted the added value that a 'med-arb clause' can offer in providing disputants with a seamless and comprehensive dispute resolution mechanism. She expressed optimism that the popularity and acceptance of ADR processes—particularly institutional commercial mediation—will continue to grow with increased awareness of the numerous benefits they offer. Ms. Hingorani also reiterated ICA's commitment to advancing its vision of promoting institutional arbitration and, now, mediation as vital tools for enhancing the efficiency of dispute resolution in India's evolving legal and economic landscape.

Sharing her insights, **Ms. Shirin Khajuria, Senior Advocate and Mediator, Supreme Court of India**, emphasized that robust ADR mechanisms play a critical role in advancing the objectives of Sustainable Development Goal 16—promoting peace, justice, and strong institutions. She further highlighted the significant potential of mediation in commercial dispute resolution, particularly in the Indian context where a large proportion of businesses are family-run. In such cases, the risk of reputational damage from public disputes can adversely impact market sentiment and business goodwill.

Weighing in on the discussion, **Ms. Varuna Bhandari Gugnani, Advocate and Mediator, Supreme Court of India**, urged the legal fraternity to actively adopt the 'multi-door courthouse approach' to ensure that dispute resolution remains both time- and cost-efficient. She also underscored the importance of integrating 'pre-litigation mediation' into a wider array of legislations to reduce case pendency and accelerate access to justice.

Left to right: Mr Arun Chawla, DG, ICA, Dr Rajiv Mani, Secretary Ministry of Law & Justice, Government of India, Dr. NG Khaitan, President ICA & Sr. Partner Khaitan & Co.

Left to right: Ms. Geeta Luthra, Senior Advocate & Vice President, ICA; Mr. Ajay Kumar Arora, Joint Secretary (Arbitration & Conciliation), Ministry of Law & Justice; Ms. Pinky Anand, Senior Advocate & Former Additional Solicitor General of India; Ms. Priya Hingorani, Senior Advocate & Mediator, Supreme Court of India; Ms. Shirin Khajuria, Senior Advocate & Mediator, Supreme Court of India & Ms. Varuna Bhandari Gugnani, Advocate & Mediator, Supreme Court of India

Left to right: Dr. NG Khaitan, President ICA & Sr. Partner Khaitan & Co. ; Mr. Ajay Kumar Arora, Joint Secretary (Arbitration & Conciliation), Ministry of Law & Justice; Ms. Geeta Luthra, Senior Advocate & Vice President, ICA; Ms. Pinky Anand, Senior Advocate & Former Additional Solicitor General of India; Ms. Priya Hingorani, Senior Advocate & Mediator, Supreme Court of India; Ms. Shirin Khajuria, Senior Advocate & Mediator, Supreme Court of India & Ms. Varuna Bhandari Gugnani, Advocate & Mediator, Supreme Court of India; Mr Arun Chawla, DG, ICA


"MEDIATION:
COMMERCIAL


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PRIYA HINGORANI


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VARUNA BHANDARI GUGNANI


GEETA LUTHRA
AJAY KUMAR ARORA
PINKY ANAND

Symposium on

"Arbitrating Indo-Saudi Commercial Disputes" with Panel Discussion on "Harnessing opportunities in the Saudi Arabia-India corridor for businesses and investors: - Empowering Cross-Border Dispute Resolution" Report

February 23rd, 2025 | Riyadh, Kingdom of Saudi Arabia (KSA)

Organized by: Indian Council of Arbitration (ICA) at the Riyadh International Disputes Week (RIDW) 2025 in Riyadh, Kingdom of Saudi Arabia (KSA)

The conference held on 23rd February 2025 in Riyadh, KSA reiterated the role of effective cross border dispute resolution in harnessing opportunities in the Saudi Arabia-India corridor for businesses and investors.

The colloquium brought together key figures and experts from policy making to policy execution, and dispute resolution; lending insightful discourses on the nuances of cross border dispute resolution mechanisms when appreciated juxtaposed to bilateral relations. This one-day Symposium celebrated the synergy of both economies, highlighting the catalytic potential of an effective cross border dispute resolution in leveraging the mammoth potential of Indo-Saudi economic corridor. The conference stimulated thought-provoking discussion on the grey areas in dispute resolution mechanism vis-à-vis cross border economic disputes and how ambiguities in this context are proving to be detrimental for business and investor sentiment.

The conference was just in time as both India and KSA stand to realize their aims of self-sufficiency and infrastructural growth pursuant to Vision 2047 & Vision 2030 respectively. Both nations have shared multifaceted and robust politico- economic ties, where India is the KSA's 2nd largest trade partner and KSA is India's 5th largest trade partner as of FY 2023-24. The economic corridor brims with opportunities for businesses and investors alike, however business and disputes seen as Siamese twins need to be addressed in tandem. To make the economic corridor realize its full potential, it is a pre-requisite that an effective and efficient alternate dispute resolution mechanism aid dispute

resolution as and when they arise. The progressive Indian arbitral landscape and judiciary's pro-arbitration stance has helped increase the investor confidence making India goldilocks zone for investments. Similarly, KSA too in the recent years has made its arbitration laws more global in outlook, and its judicial stance pro-arbitration and pro- enforcement of foreign arbitral awards. Furthermore, the event explored avenues for greater cooperation between both nations to enhance efficiency and accessibility of arbitration in specific and all forms of alternate dispute resolution in general; in all commercial disputes involving cross- border engagements and investments.

The event commenced with engaging and enriching inaugral session, featuring distinguished representatives of the Government of India, Bar & Institutional arbitration fraternity, who shared their insights on evolving landscape of arbitration in the India-KSA economic corridor and its consequential effect on both nation's economic growth. The session had **Keynote address by Shri Arjun Ram Meghwal, Hon'ble Minister of Law & Justice, Government of India**. He emphasized the deepening Indo-Saudi legal cooperation and the role of arbitration in fostering economic and commercial stability, he further underscored India and Saudi Arabia's shared vision of strengthening Alternative Dispute Resolution (ADR) mechanisms, positioning both nations as leaders in international arbitration. He noted that, historically, businesses relied on arbitration hubs like London, Singapore, and Dubai, but today, India and Saudi Arabia are reshaping the global arbitration landscape by creating an Indo-Saudi Arbitration Corridor. He reiterated that collective synergy can help in creating an Indo-Saudi arbitration corridor—a legal framework designed for the Global South & by the Global South; ensuring that businesses do not have to look elsewhere for Justice.

He discussed India's technology-driven legal reforms, which have significantly improved governance, transparency, and citizen-centric legal solutions. He highlighted the repeal of over 1,562 obsolete laws in India, ensuring that businesses and citizens are not trapped in unnecessary legal complexities. He emphasised that these reforms boost investor confidence, enhance the ease of doing business, and ensure fair, transparent, and cost-effective legal solutions. Furthermore, he stated that successful settlement helps preserve the relationship among the parties, offer ease

of living, and contributes to the growth of the economy. He elucidated the potential of effective arbitration saying that it acts as a catalyst for improving the business environment, contracts, inclusivity, as well as other aspects of ease of doing business. He elucidated that the spirit behind promoting arbitration ecosystem is to reach a minimal solution acceptable to all parties involved, in order to avoid a larger conflict. Lastly, he reaffirmed on India's commitment to global legal cooperation, aligning with its ancient philosophy of 'Vasudhaiva Kutumbakam' (The World is One Family). He called upon stakeholders from government, business, and the legal community to collaborate in shaping a dynamic and inclusive global dispute resolution system.

The Special addresses were given by **Mr. R. Venkataramani, Attorney General for India & Dr. Suhel Ajaz Khan, Ambassador of India to the Kingdom of Saudi Arabia, Riyadh.**

Mr. R. Venkataramani, Attorney General for India in his special address highlighted that arbitration like the 'Rule of Law' principle has now become global dialogue under framework common to all humankind, making it equivalent to 'a global common good'. Both India & KSA have evolved their respective dispute resolution mechanisms in this regard. He expressed hope that such engagements as the ICA Symposium at RIDW 2025 will breed possible convergence despite apparent differences and lead to drawing a new charter of arbitration framework assimilating legal systems of both nations. He also mooted for an 'Indo-Saudi arbitration protocol', which could clarify the issues of arbitrability of disputes, agreed applicability of law, enhancing expeditious resolution mechanisms, framework for enforcement of award within a timeframe and developing a report making mechanism for periodic evaluation among other areas of focus. He on behalf of India, invited representatives of KSA to visit India to discuss the same, which shall be addressed with enhanced goodwill and greener pastures.

Dr. Suhel Ajaz Khan, Ambassador of India to the Kingdom of Saudi Arabia, Riyadh in his special address spotlighted the growing economic relations and bilateral trade between India & KSA, which are build on millennia old cultural ties, historic trade links and maritime trade routes. He reiterated that with a 2.6 million strong Indian diaspora acting as 'living bridge', both nations now give significant role to each other. He expressed optimism saying that in recent years from increased cross border investments to space technology to

defence ties, there have been many 'firsts' in the bilateral relations. Furthermore, he underscored that economic partnership is the key fulcrum to this bilateral relationship, where both are complementary to each other in their economic approaches. With the IMEC (India Middle East Europe) economic corridor in the pipeline, he expressed optimism in the quantum leap in economic engagements between the nations enroute the corridor, due to the enhanced regional connectivity and newer opportunities that will come along. He further accentuated the effectiveness of arbitration in giving efficient, fair and transparent solutions to economic disputes as and when they arise. He highlighted that arbitration offers structured, flexible and neutral solutions to disputes in a manner that respects the legal systems of both nations. Conclusively he said that together both India & KSA can build a prosperous and resilient future, grounded in principles of fairness, justice and mutual respect.

Mr. N G Khaitan, President, ICA & Senior Partner, Khaitan & Co, in his welcome address drew focus to the fact that no economy can survive litigating, neither businesses see litigation heavy jurisdictions as conducive. He highlighted that what the world today looks at is the 'new KSA' with its Vision 2030 that draws on growth potential of sectors other than energy exports. He said that with the new policies, KSA has truly globalized, granting licenses to more than 300 Indian industries to venture into the manufacturing domain with its homegrown experience. He accentuated that India traditionally has been a country reliant on alternative dispute resolution mechanisms, where traditionally village level community hearings were the way of dispute resolution. In the colonial era, the earliest codified Arbitration law was as early as 1781. Furthermore, he reiterated that both India & KSA have ingrained alternate dispute resolution as part of their socio-cultural structure historically and continue to keep their jurisdictions investors and businesses friendly by adopting relevant legislative measures making them pro-arbitration jurisdictions. Conclusively, he highlighted that investor and business confidence in alternative dispute resolution mechanisms are primarily fueled by cost efficiency, The ICA (Indian Council Of Arbitration) in this domain boasts of one of lowest administrative and arbitration costs globally, juxtaposed to a large pool of highly qualified arbitrators to choose from.

Mr. Arun Chawla, Director General, ICA and former Director General FICCI, in his opening remarks underscored the mammoth potential of the Indo-Saudi

economic corridor and the sacrosanct role played by efficient dispute resolution mechanisms in leveraging the bilateral synergies. He highlighted the deep economic ties between both economies across domains of energy, infrastructure, fintech, digital transformation and healthcare. He highlighted that in today's increasingly interconnected global economy, sound investment protection mechanisms are essential for sustainable growth. While globalization has facilitated expanded trade and investment, it has also increased the complexity of commercial disputes. Efficient arbitration and ADR mechanisms are not only essential for dispute resolution but also instrumental in enhancing investor confidence and ensuring seamless business operations. Furthermore, he accentuated a World Bank Policy Paper that correlated ADR mechanisms and foreign direct investment (FDI) inflows, emphasizing that economies with well-structured ADR frameworks are more attractive to international investors, reinforcing the critical role of arbitration in economic expansion. Similarly, he spotlighted India's Economic Survey 2023-24 that underscored the necessity of efficient dispute resolution mechanisms for enabling private sector participation and investment growth.

Dr. Pinky Anand, Senior Advocate, Supreme Court of India, Former Additional Solicitor General of India & FCIArb, gave the concluding remarks and vote of thanks. She highlighted that business begets business, and business begets law, law begets arbitration and arbitration begets mediation. At the end of the day, ranging from a commercial entity level to national level, everyone need a 'resolution'. At present, the most burning need of the hour is that India & KSA need least court intervention in dispute resolution in both awards and its enforcement. Conclusively, building upon the idea of 'arbitration being a common good' given by Attorney General in his address, Dr. Anand reiterated that on the national level we need to consider each country as a 'reciprocating country' to leverage the overall cross border dispute resolution potential.

The inaugral session was succeeded by a panel discussion on **"Harnessing opportunities in the Saudi Arabia-India corridor for businesses and investors: - Empowering Cross-Border Dispute Resolution"** which was **moderated by Mr. Nitesh Jain, Partner, Dispute Resolution, Trilegal.** The panel comprised of following distinguished speakers-

- **Dr. Pinky Anand**, Sr. Advocate & Former Additional Solicitor General of India, Supreme Court of India
- **Mr. Abdullah Alajlan**, Partner, Khoshaim & Associates

- **Dr. Hassan Arab**, Partner, Regional Head of Dispute Resolution, Al Tamimi & Company
- **Mr. Vivek Gambhir**, General Counsel, Energy Solutions Company
- **Mr. Laj Abdullah**, General Counsel, Alfanar Projects
- **Ms. Nayla Comair Obeid**, Founding Partner of Obeid Law Firm
- **Mr. Delano Furtado**, Partner, Trilegal

The panel highlighted and reiterated the potential of India-KSA economic corridor, which is leveraged by effective and efficient cross border dispute resolution mechanisms. The panel in unison spotlighted the growing engagements of businesses and investors across the bilateral landscape, opening newer opportunities in domains hitherto unattended. The panelists showed optimism in the jurisdictions and shared their experiences in handling nuanced cross border disputes and how the landscape has considerably become more conducive for international commercial arbitration in the last few years. Speaking of the policy and judicial stances in both nations, all panelists shared positive perception of the respective jurisdictions in dispute resolution engagements amongst investors and businesses. All panelists also highlighted the grey areas which need interventions on national and institutional levels to make the bilateral economic relations realize its complete potential in the near future.

The ICA symposium delivered as promised, to be the apotheosis forum for the exchange of ideas and insights into the synergetic role of arbitration in harnessing the untapped potential of the Indo- Saudi economic corridor. The Symposium was attended by various stakeholders from across the globe. The panel discussion aided discussions on intricate issues which if optimized timely are capable of generating prosperity in the strategically important India-KSA bilateral economic engagements.

Left to right: Mr Arun Chawla, DG, ICA; Dr. NG Khaitan, President ICA & Sr. Partner Khaitan & Co.; Shri Arjun Ram Meghwal, Hon'ble Minister of Law & Justice, Government of India; Mr. R. Venkataramani, Attorney General for India; Dr. Suhel Ajaz Khan, Ambassador of India to the Kingdom of Saudi Arabia, Riyadh; Dr. Pinky Anand, Senior Advocate, Supreme Court of India, Former Additional Solicitor General of India & FCIArb

Left to right: Mr. Nitesh Jain, Partner, Dispute Resolution, Trilegal ; Mr. Delano Furtado, Partner, Trilegal ; Mr. Laj Abdullah, General Counsel, Alfanar Projects; Mr. Vivek Gambhir, General Counsel, Energy Solutions Company; Mr. R. Venkataramani, Attorney General for India;Ms. Nayla Comair Obeid, Founding Partner of Obeid Law Firm; Dr. NG Khaitan, President ICA & Sr. Partner Khaitan & Co.; Dr. Pinky Anand, Sr. Advocate & Former Additional Solicitor General of India, Supreme Court of India; Dr. Hassan Arab, Partner, Regional Head of Dispute Resolution, Al Tamimi & Company; Mr. Abdullah Alajlan, Partner, Khoshaim & Associates;Mr Arun Chawla, DG, ICA

ARBITRATION & ADR ROUNDUPS

JANUARY 2025

SUPREME COURT

1. **Case Title:** Serosoft Solutions Pvt. Ltd. Vs. Dexter Capital Advisors Pvt. Ltd.

Case Citation: 2025 INSC 26

Patently Illegal Or Perverse Arbitral Tribunal Order, Can Attract High Court Interference Under Article 226 or 227

In the present case, the Supreme Court criticized the High Court's intervention under its Writ Jurisdiction in the Arbitral Proceedings, where it had directed the Arbitral Tribunal to grant additional time for one party to cross-examine another, despite the Tribunal already having provided ample time for cross-examination.

The Court deprecated the practice of interfering with the arbitral process when full opportunity was granted to the parties to present their case in the proceedings governed under Section 18 of the Arbitration & Conciliation Act, 1996 ("1996 Act").

2. **Case Title:** State Of Uttar Pradesh & Anr. Vs R.K. Pandey & Anr.

Case Citation: 2025 INSC 48

Supreme Court Sets Aside Ex-Parte Awards In Sham Arbitration Proceedings

In the present case, the Supreme Court set aside two ex-parte arbitration awards on grounds of fraud played by the litigant/respondant who appointed sole arbitrators and conducted 'sham' arbitration proceedings in a service dispute against U.P. Government and Government Hospital where he was employed.

The dispute related to respondent's date of superannuation pursuing which he further relied upon an alleged arbitration agreement dated 01.04.1957 between the then Administrator of the DNBPID Hospital and the Governor of Uttar Pradesh.

The Supreme Court in present case held that the respondent had committed fraud on the authorities. The relevant facts were-

- the alleged arbitration agreement was nowhere available on the records of either the Municipal Corporation or the State of Uttar Pradesh.
- Respondent did not file the original agreement since he was not in possession of the same, nor is he a signatory and party to the arbitration agreement.
- There is no evidence to show the existence of the arbitration agreement, except a piece of paper, which is not even a certified copy or an authenticated copy of the official records, and
- That there is lack of clarity as to how and from where Pandey got a copy of the agreement, and that too nearly 10 years after his retirement.
- That the unilateral appointment of arbitrator by repsondent was perhaps against the alleged arbitration agreement which states that *"each party, that is, the Municipal and Development Board, Kanpur, and the Governor of Uttar Pradesh, may nominate an arbitrator for adjudication by giving written notice to the other party. In the event the other party fails to nominate an arbitrator within ten days, the arbitrator nominated by the first party shall act as the sole arbitrator".*

The Court placed reliance on the recent decision *in Central Organisation of Railway Electrification v. ECI PIC SMO MCPL (JV)* [2024 INSC 857], which held that a clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the parties in the appointment process of arbitrators.

Concluding that the arbitration agreement was unreliable and proceedings sham, the Court set aside the ex-parte awards as null and void and also dismissed the execution proceedings.

3. Case Title: My Preferred Transformation & Hospitality Pvt. Ltd. & Anr. Vs M/s Faridabad Implements Pvt. Ltd.

Case Citation: 2025 INSC 56

Supreme Court Raises Concern About Rigid Use Of Limitation Statutes; Clarifies The Interpretation Of Section 4 of

Limitation Act In Cases Of Challenge Of Arbitral Award

The Supreme Court in present case, raised concerns about the interpretation of limitation statutes in arbitration cases and observed that the rigid application of the law could curtail the limited remedy available under Section 34 of the Arbitration and Conciliation Act, 1996(Arbitration Act hereinafter) to challenge arbitral awards.

In present case, the two-judge bench dismissed an appeal filed by a company against a Delhi High Court judgment rejecting its challenge to an arbitral award as barred by limitation under Section 34. The Court concluded that the appellant's delay in filing the petition was not condonable under the prevailing legal framework, however the Bench also highlighted concerns with the strict interpretation of limitation provisions.

The Court while considering the interplay of provisions of Limitation Act & Arbitration Act, expressed concerns over equating the term *"prescribed period"* under Section 4 and Section 29(2) of the Limitation Act solely with the three-month limitation period under Section 34(3). This interpretation excludes the additional 30 days allowed under the proviso to Section 34(3).

The Court, observed that remedies available under Sections 34 and 37 of the Arbitration Act, which deal with challenging arbitral awards and appeals, are inherently limited due to statutory prescription and advocated for liberal interpretation of limitation provisions to preserve the limited window for parties to contest an award. A rigid approach, he warned, could result in denying remedies and discourage arbitration as a dispute resolution mechanism.

underlined that the purpose of Limitation Act was to give discretion under Sections 4 to 24 to the Court to grant the benefit. He noted that the current position of law renders the additional 30-day condonable period ineffective, as section 4 is not applicable to it.

Section 29(2) of Limitation Act, provides that the provisions of the Limitation Act, including Sections 4 to 24, apply to special laws unless they are *"expressly excluded."*

In the case of *Union Of India vs Popular Construction* 2001 (8) SCC 470, the Supreme Court held that the proviso to Section 34(3) of the Arbitration Act "impliedly" excludes the application of Section 5 of the Limitation Act. Section 5 provides for the extension of the prescribed period if sufficient cause is demonstrated. The Court criticised this,

highlighting that once provisions of the Limitation Act were disapplied to the Arbitration Act through implied exclusions, the application of Sections 4 to 24 of the Limitation Act became subject to judicial interpretation on a case-to-case basis.

"It is for the legislature to take note of this position and bring about clarity and certainty. We say no more, for the overbearing intellectualisation of the Act by courts has become the bane of Indian arbitration", the Court concluded, emphasizing that it is now imperative for Parliament to address these issues.

In the present case under consideration, the Court clarified that Section 4 of the Limitation Act applies only when the initial three-month period expires on a court holiday and not to the additional 30-day condonable period.

The Court dismissed the appeal, concluding that the application was filed beyond the permissible period.

4. Case Title: S. Jayalakshmi vs The Special District Revenue Officer & Ors.

Case Citation: Civil Appeal No.192 of 2025

Under Sections 34 and 37 Courts' Jurisdiction Does Not Extend To Modifying Arbitral Award

The Supreme Court affirmed the principle laid down in *National Highways Authority of India vs. M. Hakeem & Another* AIR 2021 SUPREME COURT 3471, that the jurisdiction of the Courts under Sections 34 and 37 of the Arbitration & Conciliation Act, 1996 (1996 Act) will not extend to modifying an arbitral award.

5. Case Title: M/s Vidyawati Construction Company Vs. Union Of India

Case Citation: 2025 INSC 101

After Submitting Statement Of Defence, Challenge To Arbitral Tribunal's Jurisdiction Impermissible

The Supreme Court affirmed the principle that the jurisdiction of the arbitral tribunal cannot be challenged after the submission of the statement of defence.

6. Case Title: Somdatt Builders -NCC - NEC(JV) Vs. NHAI & Ors.

Case Citation: 2025 INSC 113

Supreme Court Reaffirmed The Contours Of Appellate Court Powers Over Arbitral Awards

The Supreme Court reaffirmed that arbitral awards should only be interfered with in cases of perversity, violation of public policy, or patent illegality. It emphasized that appellate courts cannot

reassess the merits of awards and must limit their inquiry to whether the award breaches Section 34(2)(b)(ii) of the Arbitration Act i.e., if the award is against the public policy of India.

The Court emphasized that at the Appellate Stage, the Court cannot undertake an independent assessment of the merits of the award and must limit its inquiry within the restrictions laid down under Section 34(2)(b)(ii) of the Arbitration Act i.e. if the award is against the public policy of India. *"In MMTC Ltd. Vs. Vedanta Ltd. (2019) 4 SCC 163, this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As far as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision."*, the court observed.

The Court noted that the Division Bench erred in interfering with the well-reasoned order passed by the Arbitral Tribunal, which does not require interference because the award did not suffer from vires of perversity, nor opposed to the public policy of India or was patently illegal. Accordingly, the appeal was allowed, and the Award was restored.

ANDHRA PRADESH HIGH COURT

1. Case Title: Tuf Metallurgical Private Limited Vs. Bst Hk Limited and Others

Case Citation: APHC010504772024; ICOMAA. No.2 of 2024

CPC To Be Considered While Deciding Sec 9 Petition

The Andhra Pradesh High Court observed that in deciding a petition under Section 9 of the Arbitration Act, the Court cannot

ignore the basic principles of the CPC. At the same time, the power of the Court to grant relief is not curtailed by the rigours of every procedural provision in the CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of the CPC.

ALLAHABAD HIGH COURT

1. Case Title: M/S. Arya Rice Mill v. State Of U.P. & 6 Ors.

Case Citation: 2025:AHC:7981-DB

The Allahabad High Court has held that as per Section 16(2) of the Arbitration and Conciliation Act, 1996, the jurisdiction of an arbitral tribunal cannot be challenged after submission of defence and that the arbitral tribunal is empowered to adjudicate on its own jurisdiction. The Court also observed that as per Section 21 CPC, objections regarding jurisdiction must be taken at the earliest and not at a later stage.

BOMBAY HIGH COURT

1. Case Title: Shreegopal Barasia Vs. M/s. Creative Homes & Ors.

Case Citation: Substantive Objections On Validity Or Existence Of Arbitration Agreement Can Be Adjudicated By Tribunal U/S 16 Not Courts U/S 11 Of Act

The Bombay High Court held that substantive objections concerning the validity and existence of an arbitration agreement can be adjudicated by the Arbitral Tribunal and not by the court under section 11 of the Arbitration Act.

The court while relying on the judgment of the Supreme Court in *In re: Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899(2024)* observed that it is also now trite law that the referral court under Section 11 of the Act ought to restrict its scrutiny in the course of such proceedings solely to the existence of an arbitration agreement.

It also referred to the Supreme Court judgment in *Ajay Madhusudan Patel & Ors. Vs. Jyotindra s. Patel & Ors(2024)* where it was held that *"the scope of examination under Section 11(6) should be confined to the "existence of the arbitration agreement" under Section 7 of the Act, 1996 and the "validity of an arbitration agreement" must be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. Therefore, substantive objections pertaining to existence and validity on the basis of evidence must be left to the arbitral tribunal."*

2. Case Title: Health Care, Medical & General Stores Vs. Amulya Investment, Through Proprietor Mr. Sameer G. Narvekar

Case Citation: 2025:BHC-OS:616-DB

Court Clarified What Constituted Valid Service U/S 31(5) Of Arbitration Act

The Bombay High Court held that service of a signed copy of an award on an employee of a party to an arbitration agreement is not a valid service under section 31(5) of the Arbitration Act.

In the present case, a petition was filed under section 34 of the Arbitration Act which was dismissed by the court on the ground that the award had been received on time and the petition was filed after expiry of the time period provided under section 34(3) of the Arbitration Act. Hence, the present appeal under section 37 of the Arbitration Act.

The appellants submitted that as per section 31 of the Arbitration Act, the arbitrator must send a signed copy of the award to all the parties involved. In the present case, only two signed copies were created and there were five parties therefore substantiating the fact that the three partners of the firm were not served. since they were not served with a copy of the award, the limitation period had not started for them.

It was also argued that the copy of the award was served to the clerk who was not authorized to receive the legal documents therefore service on the clerk will not be a valid service.

The Court referred to the Delhi High Court in the *Ministry of Health & Family Welfare & Anr. Vs. M/s. Hosmac Projects Division of Hosmac India Pvt. Ltd (2023)* held that a signed copy of the award has to be served on each party to an arbitration agreement and service of such an award on the authorized representative of the party would not be a valid service for the purpose of section 31 of the Arbitration Act.

The court after perusing the entire material on record noted that the appellant no. 3rd was not served with the signed copy of the award.The court observed that even if the signed copy of the award was sent to the partnership firm which was acknowledged by an employee, such an acknowledgement by an employee does not constitute a valid service within the meaning of section 31 of the Act. This non-compliance was overlooked by the Single Judge.

Accordingly, the impugned order was set aside.

3. Case Title: Sri Sathe Infracon Private Limited v. M/s Rudranee Infrastructure Ltd. & Anr.

Case Citation: Arbitration Application No. 9 of 2024

Court Cannot Assume Jurisdiction To Appoint Arbitrator Unless Request For Reference Of Dispute Is Received By Respondent

The Bombay High Court held that compliance with Section 21 of the Arbitration and Conciliation Act, 1996 is mandatory and that the court cannot assume jurisdiction to appoint an Arbitrator under Section 11 unless a request for a reference of dispute is received by the respondent.

CALCUTTA HIGH COURT

1. **Case Title:** Smt. Gitarani Maity vs. Mrs. Krishna Chakraborty & Ors.

Case Citation: FAT No. 308 of 2023

Section 8 Application Must Be Filed Before Or Simultaneously With Written Statement

The Calcutta High Court held that when no application for reference to arbitration under Section 8 of the Arbitration Act is made by either party, the civil court may very well entertain the suit and proceed with the adjudication of the same on merits in accordance with law.

2. **Case Title:** Versatile Construction vs. Tata Motors Finance Ltd.

Case Citation: APOT/389/2024 with AP.COM/822/2024 IA No.: GA-COM/1/2024

Court Refers To 'Shashoua Principle' While Highlighting Seat vs Venue Of Arbitration

The Calcutta High Court held that once the "seat" of arbitration is designated in an agreement, it is to be treated as the exclusive jurisdiction for all arbitration proceedings. The Court referred to the 'Shashoua Principle', which propounds that when there is an express designation of a "venue" and no alternative seat is specified, the venue is considered the juridical seat of arbitration.

The court referred to *Roger Shashoua v. Mukesh Sharma*, in which the England and Wales High Court held that the seat of arbitration has to have an exclusive jurisdiction over all arbitration proceedings. This came to be popularly referred to as the 'Shashoua Principle'. It propounded that whenever there is an express designation of a "venue" and no designation of any alternative place as the seat combined with a supranational body of Rules governing the arbitration and no other significant contrary indica, the inexorable conclusion is that the seated

venue is actually the juridical seat of the arbitration proceeding.

3. Case Title: Haldia Development Authority Vs M/s. Konarak Enterprise

Case Citation: AP-COM No.229 and 255 of 2024

Power To Correct Computation Error U/S 33 Of Arbitration Act Can Be Exercised Suo Moto If No Application Is Filed Within 30 Days

The Calcutta High Court held that power to correct computation error in the award under section 33 of the Arbitration Act can be exercised suo moto by the Arbitral Tribunal when no application is filed to this effect within 30 days.

CHHATTISGARH HIGH COURT

1. Case Title: M/s Hira Carbonics Private Ltd vs. Kunwar Virendra Singh Patel & Anr.

Case Citation: 2025: CGHC:2571

Additional Evidence Can Only Be Allowed In Exceptional Circumstances While Deciding Plea U/S 34 Of Arbitration Act

The Chhattisgarh High Court held that additional evidence not forming part of the arbitral record can be allowed to be given only in exceptional circumstances while hearing a petition under section 34 of the Arbitration & Conciliation Act,1996.

The court noted that in *Alpine Housing Development Corporation Pvt. Ltd. v. Ashok S. Dhariwal, 2023*, the Supreme Court held that ordinarily additional documents which are not part of the arbitration record cannot be permitted to be given by the court hearing the application under section 34 of the Arbitration Act. The proceedings under section 34 are summary proceedings and if additional evidence are permitted, the purpose of speedily disposing of the petition would be defeated.

It was held that "an application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator, however, if there are matters not containing such records and the relevant determination to the issues arising under section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties' the cross-examination of the persons swearing in to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on the reading of the affidavits filed by both the parties."

DELHI HIGH COURT

1. Case Title: Mr. Pawan Gupta & Anr. vs. Miton Credentia Trusteeship Services Limited & Ors.

Case Citation: 2024: DHC: 10107

Remedy U/Sec 9 Can Also Be Availed Against Non-Parties To Subject Matter

The Delhi High Court held that the Plaintiffs are not barred from availing the remedy under Section 9 of the Arbitration and Conciliation Act, 1996 even against individual(s)/entities who are not party to the Family Settlement out of which the dispute arose. However, in present case the application for ad interim injunction was held to be not maintainable due to pending Arbitration proceedings in regard to the Family Settlement and a pending Application under Section 12A of the Commercial Courts Act.

The court held that no ad interim injunction was made out at the stage.

2. Case Title: TEFCIL Breweries Ltd. v. Alfa Laval (India) Ltd.

Case Citation: 2025: DHC:105

Court Clarifies Terminus Quo For Calculating Limitation U/S 34(3) Of The Arbitration Act

In the present case the issue at hand revolved around whether the terminus quo for calculating limitation would be the date on which the application under Section 33 of the Act filed by the respondent was disposed off or the date on which the copy of the corrected award was received.

The court in present case referred to two contradictory orders in Article 136 SLP's (Article 136 of the Constitution of India) addressed by The Supreme Court on this topic, where it was held that the provisions of Section 34(3) of the Act give two timelines. One, where an application under Section 33 of the Act has not been filed in which case the legislature was conscious enough to state that it would be the date of receipt of the award. Whereas, in the case where an application under Section 33 of the Act has been filed, the legislation was conscious enough to lay down that the date of disposal would be the starting point for calculation of limitation.

Thereafter, the court held that taking the date of receipt of the corrected award as the starting point and not as the date of disposal would go contrary to the plain reading of Section 34(3) of the Act. This will apply even in cases where an application under Section 33 of the Act has been filed.

3. Case Title: Mahanagar Telephone Nigam Ltd. v. Micro & Small Enterprise Facilitation Council & Ors.

Case Citation: 2025: DHC: 102

Arbitral Award Cannot Be Challenged In Writ Petition, Remedy Lies U/S 34 Of Arbitration Act

The present petition challenged an arbitral award passed pursuant to reference to arbitration under Section 18 of the MSMED Act 2006. The Arbitral Tribunal consisted of a sole arbitrator appointed by the DIAC. The petitioner contended that the arbitrator has exercised jurisdiction beyond the scope of reference. Also, the petitioner argued that the award is liable to be set aside as the arbitrator was completely devoid of the jurisdiction under the MSMED Act, 2006 to adjudicate the disputes.

The court observed it is impermissible for the petitioner to agitate these issues in the present petition under Article 226 of the Constitution of India. The impugned award having been rendered by the sole arbitrator, and the objections as regards (lack of) jurisdiction having been rejected by the sole arbitrator, the appropriate remedy for the petitioner is to assail the same by taking recourse to the remedies under the Arbitration and Conciliation Act, 1996.

The Court furthermore relied on the judgment of the Supreme Court in India in *Glycols Limited and Anr. v. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri and Ors (2023),* in disposing off the petition.

4. Case Title: Aptec Advanced Protective Technologies AG vs. Union of India

Case Citation: 2025: DHC: 111-DB

Interim Arbitral Award Can Be Challenged U/Sec 34 of The A&C Act, 1996

The Delhi High Court division bench held that orders passed by the Arbitrator during the pendency of Arbitral proceedings, which finally determines any substantive rights of the parties, constitutes an interim Arbitral Award, and can be challenged under Section 34 of the Arbitration and Conciliation Act, 1996.

At the outset, the court noted that the A&C Act does not define "interim award". The court referred to *IFFCO Ltd. v. Bhadra Products (2018) 2 SCC 534*, which held that the Arbitral Tribunal can make an interim arbitral Award on any matter with respect to which it may make a final Award; and the term "matter" in Section 31(6) of the A&C Act includes any point of dispute between the parties which has to be answered by the Arbitral Tribunal. The Supreme court had held that while the arbitration proceedings can be terminated only by way of a final Award,

there can be one or more interim Awards before the final Award, which conclusively and finally determine some of the issues between the parties, finally leading upto the final Award.

The Court further relied upon the judgment in *Rhiti Sports Management Pvt. Ltd. v. Power Play Sports & Events Ltd.*, where it was held that for an order to qualify as an Award, whether final or interim, it must settle a dispute on which the parties are at issue; any procedural order that does not settle a matter on which the parties are at issue, will not qualify to be termed as an Award.

5. Case Title: Synergies Casting Ltd. vs. National Research Development Corporation & Anr.

Case Citation: 2025: DHC: 133-DB

Appeals In Arbitration Matters Are Maintainable Only If Expressly Provided For U/ sec 37 Or 50 of the A&C Act

The Delhi High Court held that an order which neither sets aside nor refuses to set aside the arbitral award, does not fall under the ambit of Section 37(1)(c) of the Arbitration & Conciliation Act and is not appealable. The Court held Section 13 Of Commercial Courts Act doesn't provide any independent right to appeal in arbitration matters.

The court observed that appeals in arbitration matters are maintainable only if expressly provided for in section 37/ 50 of the A&C Act. Section 13 of the Commercial Courts Act, 2015 does not confer an independent right to appeal.

The Court referred to *BGS SGS Soma JV v. NHPC Ltd. (2020)*, where the Supreme Court observed that the A&C Act being a Special Act while the Commercial Courts Act being a General Act, the appeal against any order passed under the provisions of the A&C Act shall be maintainable only in accordance with Sections 37 or 50 of the same. Further, section 13 of the Commercial Courts Act does not provide any independent right to appeal and merely provides for Forums thereof.

The Supreme Court had held that even though an order passed may generally be appealable under Order 43 Rule 1 of the CPC, if it does not fall with the 'pigeonhole' of Section 37 of the A&C Act, it would not be appealable under Section 13 of the Commercial Courts Act.

The court held that because the Impugned Order neither set aside nor refused to set aside the arbitral award under challenge before the Single Judge, it is not an order covered by Section 37(1)(c) of the A&C Act and thus cannot be appealed. The court dismissed the appeal.

6. Case Title: WTC NOIDA Development Co. Pvt. Ltd. V. Ms. Arti Khattar & Ors.

Case Citation: 2025: DHC: 228-DB

Issue Related To The Existence Of An Arbitration Agreement Cannot Be Decided Ex-Parte

The Delhi High Court held that the District Judge was at fault in deciding the issue related to the existence of an arbitration agreement ex-parte, without calling upon the respondent to give its stand on the same.

Additionally, the court held that an arbitration agreement, by virtue of the presumption of separability, survives the principal contract in which it was contained.

7. Case Title: M/s Jaiprakash Associates Limited v. M/s NHPC Limited

Case Citation: 2025: DHC: 226

Referral Courts At Post-Award Stage Must Protect Parties From Being Forced To Arbitrate Non-Arbitrable Claims

The Delhi High Court while refusing to appoint an arbitrator in a Section 11 petition, has held that the referral court in a post-award stage must protect the parties from being forced to arbitrate when, after prime facie scrutiny of the facts the claims are found to be non-arbitrable. The court applied the 'eye of the needle' test, which allows the referral court to reject arbitration in exceptional circumstances where the claims are deadwood.

The bench observed that post *Vidya Drolia v. Durga Trading Corporation (2021) and SBI General Insurance Co Ltd. v. Krish Spinning (2024)* the scope of referral courts is primarily restricted to ascertaining whether a valid arbitration agreement exists between the parties. The arbitral tribunal is considered to be the primary authority to adjudicate upon the arbitrability of disputes. Nonetheless, the referral court can exercise its limited jurisdiction not to refer ex-facie frivolous and non-arbitrable disputes to arbitration.

The court further observed that at the first referral stage, courts going into questions other than the existence of an arbitration agreement might hinder arbitration proceedings; however, at the post-award stage, the referral court must take into consideration various factors, including the fact arbitration proceedings are not misused by the parties. The dispute in the present case would fall within the category of 'non-arbitrable.' Subsequently, it failed to meet the conditions laid down in para 154.4 of

Vidya Drolia to make a case for referral. Furthermore, the Supreme Court in *Goqii Technologies Pvt Ltd. v. Sokrati Technologies Pvt Ltd (2024)* held that Section 11 of the A&C Act should not be misused by the parties by forcing the other party into arbitration.

The court refused to refer the dispute to arbitration and, therefore, dismissed the petition.

GAUHATI HIGH COURT

1. Case Title: M/S J.M.B. Construction & 2 Ors. vs. Dr. Somesh Dhar & 3 Ors.

Case Citation: GAHC010226402024

Mere Existence Of Arbitration Clause In Agreement Does Not Oust Jurisdiction Of Civil Court To Entertain Suit

The court noted that in *S.Vanathan Muthuraja vs. Ramalingam @ Krishnamurthy Gurukkal & Ors., (1997)* the Supreme Court held that when a legal right is infringed, a civil suit would lie unless entertainment of such suit is specifically barred. The normal rule is that a civil court would have jurisdiction to entertain all suits of a civil nature except those whose cognizance is either explicitly or by implication is barred.

It also relied on the Supreme Court judgment in *ITI Ltd. vs. Siemens Public Communications Network Ltd., (2002)* where it was held that application of the code is not specifically prohibited when it comes to proceedings arising out of the Act before the court.

In the above judgment, the Supreme Court further observed that *"the jurisdiction of the civil court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the civil courts have the jurisdiction to decide all questions of civil nature."*

The court further observed that similarly the Rajasthan High Court in Mahesh Kumar vs. RSRTC (2006) held that mere existence of an arbitration clause does not bar the jurisdiction of a civil court to entertain a suit automatically. It was also held that it cannot be presumed that the civil court would not have jurisdiction to entertain the suit just because there is a contract between the parties for referring the dispute to an arbitrator.

In light of the above discussion, the court concluded that *"merely because there is an arbitration clause provides for*

referring the dispute and the claim to the arbitration, the civil court's jurisdiction is not barred but the same is subject to Section 8 of the Arbitration Act, 1996."

Accordingly, the present appeal was dismissed.

HIMACHAL PRADESH HIGH COURT

1. Case Title: The Chief General Manager H.P. Telecom Circle & ors. Vs. Sh. Kashmir Singh (Government Contractor)

Case Citation: 2025: HHC:305

High Court Which Appointed Arbitrator U/S 11(6) Of Arbitration Act Cannot Be Classified As "Court" U/S 42

The Himachal High Court held that the High Court which exercises original civil jurisdiction cannot be classified as 'Court' for the purpose of Section 42 of the Arbitration and Conciliation Act when it merely appointed arbitrators under Section 11(6) of the Act. Section 42 of the Act will not be attracted where High Court having original civil jurisdiction has only appointed the arbitrator and has not undertaken any other exercise.

The court observed that Section 42 starts with a non-obstante clause i.e. 'notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force'. The words 'this Part' refers to Part-I which encompasses Sections 1 - 43. As per Section 42, where an application with respect to an arbitration agreement under Part-I has been made to a Court then that Court alone will have the jurisdiction over (a) arbitral proceedings & (b) all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

In Konkan Railway Corp. Ltd. & others vs. Mehul Construction Co., 2000, the Supreme Court held that order of appointment of arbitrator passed under Section 11(6) was administrative in nature. The Chief Justice does not function as a Court or a Tribunal. The said order cannot be subjected to judicial scrutiny of the Supreme Court. The nature of function performed by the Chief Justice being essentially to aid, constitution of the Arbitral Tribunal cannot be held to be a judicial function.

This judgment was overruled by the Supreme Court in *SBP & Co. vs. Patel Engineering Ltd. & another, 2005* wherein it was held that the mere fact that power is conferred upon Chief Justice and not on the Court presided by him, would not

mean that power conferred is only administrative and not judicial.

The Court further noted that the Apex Court also affirmed the view taken in *State of Goa vs. Western Builders, 2006* that in case of appointment of arbitrator by High Court under Section 11(6), the Principal Civil Court of Original Jurisdiction remained the District Court and not the High Court. If arbitrator is appointed by the Supreme Court, the objections can be filed before the Principal Civil Court of Original Jurisdiction as defined in Section 2(1)(e). It was also held that converse position would result in depriving the party of its valuable right to appeal under Section 37 of the Act.

In *State of Maharashtra through Executive Engineer vs. Atlanta Limited, 2014* the Supreme Court held that it makes no difference, if the "principal civil court of original jurisdiction", is in the same district over which the High Court exercises original jurisdiction, or some other district. In case an option is to be exercised between a High Court (under its "ordinary original civil jurisdiction") on the one hand, and a District Court (as "principal Civil Court of original jurisdiction") on the other, the choice under the Arbitration Act has to be exercised in favour of the High Court.

The Court further said that in the present case the arbitrator was appointed on 02.08.2019 when the Act stood amended and the words 'Chief Justice' stood replaced with the words 'High Court'. Hence appointment of arbitrator was by the High Court. The object behind replacing the words 'Chief Justice' with 'High Court' in Section 11(6) as given by the Law Commission is that "delegation of the power of 'appointment' as opposed to a finding regarding the existence/nullity of the arbitration agreement shall not be regarded as a judicial act.

In the present case the court opined that *"the arbitrator was appointed by the High Court not because this High Court exercises original civil jurisdiction or in exercise of its original civil jurisdiction but because of the power given in Section 11(6) of the Act."*

It further noted that in Garhwal Mandal Vikas Nigam Ltd., 2008 the Apex Court held 'Once an arbitrator is appointed then the appropriate forum for filing the award and for challenging the same will be the Principal Civil Court of Original Jurisdiction. The expression 'Court' used in Section 34 of the Act will also have to be understood ignoring the definition of 'Court' in the Act.

It opined that in the scheme of things, if appointment is made by the High Court or by this Court, the Principal Civil Court of Original Jurisdiction remains the same as contemplated under Section 2(1)(e) of the Act.'

The court concluded that "the judgments passed by the learned District Judge Mandi on 12.01.2023 are set aside to the extent they hold that this Court alone will have the jurisdiction to entertain & decide the objections preferred under Section 34 of the Arbitration and Conciliation Act against the arbitral awards. It is held that in the instant case, jurisdiction to decide the objections preferred under Section 34 of the Act against the arbitral awards will be before the Principal Court of original jurisdiction at Shimla."

2. Case Title: Mangal Chand and ors vs. LAC NHAI and ors.

Case Citation: Arb. Case No. 799 of 2023

Mentioning S.151 Of CPC Instead Of S. 29A Of Arbitration Act, Cannot Be Ground For Dismissal Of Application For Extension Of Time

The Himachal Pradesh High Court held that it is well-settled law that mere mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court.

The Court referred to the case of *My Palace Mutually Aided Coop. Society v. B. Mahesh, 2022* where the Supreme Court held that *"Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code."*

Based on the above, the court observed that the application under Section 151 CPC would not be maintainable when specific provision under Section 29 A (4) of the Arbitration and Conciliation Act exists to extend the time.

However, the court further noted that this will not make much difference as the Supreme Court in *Pruthvirajsinh Nodhubha Jadeja v. Jayeshkumar Chhakaddas Shah, (2019)* held that "It is well-settled law that mere non-mentioning of a correct provision is not fatal to the application if the power to pass such an order is available with the court."

It opined that the application cannot be dismissed on the ground that Section 151 of CPC was mentioned instead of Section 29 A (4) of the Arbitration and Conciliation Act.

Accordingly, the present application was allowed on the ground that the petitioner

could not be penalised for the fault of his counsel in sending the order to the Arbitrator and time was extended.

JAMMU & KASHMIR AND LADAKH HIGH COURT

1. **Case Title:** Union of India v. M/s Des Raj Nagpal Engineers & Contractors

Case Citation: Arb App No.1/2022

Irregularity & Curable Defect Cannot Be Grounds For Dismissal Of Application U/S 34 Of Arbitration Act

The Jammu & Kashmir and Ladakh High Court held that the failure of the Chief Engineer to sign the pleadings, which were signed by the Garrison Engineer would only be an irregularity and a curable defect and would not entail dismissal of the application filed under Section 34 of the Arbitration Act without providing opportunity to the appellants to correct the irregularity.

The court noted that Order XXVII of the Code of Civil Procedure deals with suits by or against the Government. Rule 1 provides that in any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may by general or special order appoint in this behalf. The Government of India has, in the exercise of powers conferred by Rule 1 of Order XXVII aforesaid, issued notification authorizing different officers to sign the pleadings on behalf of Government of India in any suit by or against the Government. The Garrison Engineer is one of those officers. That being the clear position emerging from reading of the provisions of Article 299 of the Constitution of India and, it cannot be said that the Garrison Engineer was not an officer authorized to sign pleadings on behalf of the Government of India.

JHARKHAND HIGH COURT

1. **Case Title:** Rites Ltd v. M/s Supreme BKB DECO JV

Case Citation: W. P. (C) No. 311 of 2025

Arbitral Tribunal Not Bound By Strict Rigors Of CPC, Amendment Permissible At Any Stage Of Proceedings

The Jharkhand High Court held that the power under Articles 226 and 227 of the Constitution can be invoked for interfering with an interim order only in exceptionally rare cases.

Additionally, the court held that Arbitral Tribunals are not bound by the strict rigours of CPC and an amendment is

permissible at any stage of the proceedings for the purpose of determining the real question in controversy between the parties.

KARNATAKA HIGH COURT

1. Case Title: Bruhat Bengaluru Mahanagara Palike v. M/S Ashoka Biogreen Pvt. Ltd.

Case Citation: Commercial Appeal No. 427 Of 2024

Double Payment For Same Claim Violates Public Policy U/S 34 Of A&C Act

The Karnataka High Court B held that the issue of double payment for the same claim would undoubtedly be in direct conflict with the Public Policy of India and would violate the Fundamental Policy of Indian Law, as well as the basic principles of morality and justice.

Additionally, the court held that it is well established in law that double payment for the settlement of a single claim is impermissible.

KERALA HIGH COURT

1. Case Title: P.V. George v. NHAI & Ors.

Case Citation: 2024:KER:91314

Writ Petition Maintainable If Arbitrator Refuses To Entertain Application U/S 3G(5) Of National Highways Act

The Kerala High Court while hearing a writ petition has held that when an arbitrator appointed by the Central Government refuses to entertain an application u/s 3G(5) of the National Highways Act, 1956, the Courts can entertain a petition under Article 226 to the limited extent of referring the dispute to arbitration.

Section 3G(5) places a statutory obligation upon the District Collector, who acts as an arbitrator, to receive applications for adjudication of disputes relating to the determination of compensation.

2. Case Title: M/s. Bhageeratha Engineering Ltd. V. State Of Kerala

Case Citation: 2025: KER:337

Arbitrator Can Only Decide On Point Which Is Referred To Tribunal, Not Entire Dispute

The Kerala High Court held that if the parties choose to refer to a singular point for arbitration, then the arbitral tribunal cannot proceed to decide on all disputes. On the contrary, if the parties agree to arbitrate on the entire disputes, then the arbitral tribunal shall have jurisdiction to decide the entire dispute and not a specific dispute.

Additionally, the Court held that any clause working as a restraint for initiation of the dispute between the parties, provided in the agreement is void and cannot operate. The Court relied on the court relied on the judgment in *Grasim Industries Ltd. v. State of Kerala (2018)* and interpretation of clause (b) of Section 28 of the Indian Contract Act, 1872, to hold the restraining clause as void.

3. Case Title: Unnimoidu v. Muhammad Iqbal

Case Citation: 2024: KER: 97803

Notice To Appoint Another Arbitrator To Continue Stalled Arbitration Proceedings Satisfies Mandate Of S.21Of A&C Act

The Kerala High Court while hearing a Section 11 petition, has held that a notice to revive a stalled arbitration proceedings by appointing another arbitrator satisfies the mandate of Section 21 of the A&C Act.

The Court further observed that the questions relating to the validity of the partnership agreement cannot be looked into by a referral court. The Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning (2024)* has limited the scope of the referral court to ascertain whether a Section 11 application has been filed within three years. The court cannot go into the arbitrability of the dispute, and such questions are for the tribunal to adjudicate.

MADHYA PRADESH HIGH COURT

1. Case Title: Gokul Bansal Vs. Vipin Goyal & Ors.

Case Citation: Arb Case No. 44 of 2021

Disputes concerning the Partnership Act and Partnership Deed that involve third-party rights cannot be submitted to arbitration

The court held that the relief of partition of subject property as sought by the applicant during subsistence of partnership firm is barred by law. Therefore, the matter is non-arbitrable.

Additionally, the court noted that scope of enquiry having the trappings of adjudication is limited at the stage of application under Section 11 of the Act, but the Court can certainly determine existence of arbitration agreement and also to enquire whether there is prima facie arbitration dispute or not.

Furthermore, the court relied on the judgment of the Apex Court in *NTPC Ltd. Vs. M/s SPML Infra Ltd. (2023) and Vidya Drolia and Ors. vs. Durga Trading Corporation (2021).*

Thereafter, the court held that when matter relates to the Partnership Act and partnership deed and third-party rights are also involved then it cannot be referred to arbitration. The applicant may resort to other remedy in accordance with law. Finally, the court dismissed the application.

MADRAS HIGH COURT

1. Case Title: M/s. Unique Builders Vs The Union of India

Case Citation: O.P. No.21 of 2020 An Award Issued After An Excessive And Unexplained Delay May Be Set Aside Under Section 34 Of The Arbitration Act

The Madras High Court has held that inordinate and unexplained delay in passing the arbitral award can be a ground to set it aside under section 34 of the Arbitration Act.

In the present case, the primary question before the court was whether an arbitral award can be set aside on the ground that a significant time was taken by the Arbitrator in passing the award. The court noted that in *Harji Engineering Works Private Limited v. Bharat Heavy Electricals Limited, (2009)* the Delhi High Court while referring to the UNCITRAL guide held that arbitration aims to provide speedy justice and a substantial delay in passing the award would lead to the Arbitrator forgetting the crucial facts. An unexplained delay in passing the award could render the award contrary to public policy.

The court further referred to its own judgment in *K. Dhanasekar v. Union of India, 2019* where the court while referring to Harji Engineering Works Private Limited (supra) held that when there is a huge gap between the last date of the hearing and the date on which the award is passed, the arbitrator is obligated to explain the inordinate delay and in absence of such an explanation it would cause grave prejudice to the aggrieved party.

Similarly, the Delhi High Court in *Department of Transport, GNCTD v. Star Bus Services Private Limited, 2023* held that when there is an inordinate and unexplained delay in passing the award from the date on which the award was reserved, it would be in contravention of public policy.

While applying the above law to the facts of the present case, the court noted that the Arbitrator failed to publish the award for over a year from the date on which arguments were concluded. It further noted that submissions again were made

with respect to pendente lite interest as per clauses of the GCC and the matter was reserved for judgment on the same day. Still, the arbitrator failed to publish the award. It is only when an application seeking termination of the mandate was filed, that the arbitrator passed the award within a week after filing of the application.

Furthermore, the arbitrator is mandated to send signed copies of the award to each party to an arbitration agreement under section 31(5) of the Arbitration Act but in this case, the copy was served on the counsel of the petitioner and the petitioner got his copy only after 10 days from the date of passing the award. This indicates a serious irregularity being committed by the Arbitrator.

Thus, the award was set aside in the present case.

ORISSA HIGH COURT

1. Case Title: Rajdhani Coir V. Micro, Small Enterprises Facilitation Council, Nagpur, Maharashtra

Case Citation: W.P.(C) No.22514 of 2022

Breach Of Provisions Under The Arbitration Act Or MSMED Act Can Be Challenged In Court Under Section 34 Of The Arbitration Act

An Orissa High Court bench has dismissed a writ petition upon holding that the petitioner, without availing the efficacious statutory remedy u/s 34 of the Arbitration Act had approached the Court under Articles 226 and 227 of the Constitution for which the Court was not inclined to exercise its discretionary power to entertain it.

Additionally, the court held that violation of any provisions of the Arbitration Act and/or the MSMED Act can be effectively adjudicated by the competent Court in an application under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act.

2. Case Title: M/s. Jaycee Housing Private v. Neelachal Buildtech & Resorts Pvt.

Case Citation: ARBA No.7 of 2024

Appeal In Commercial Dispute Arising From Arbitration Act Must Be Filed Before Commercial Appellate Court, Not High Court

The Orissa High Court has held that a plain reading of Sections 6 and 10(3) of the Commercial Courts Act, 2015, leads to the conclusion that the appropriate 'court' to consider a commercial dispute, even if it arises under the Arbitration and Conciliation Act, would be the commercial

court and an appeal would, therefore, lie only before the Commercial Appellate Court being the District Court.

PATNA HIGH COURT

1. Case Title: M/s R.S. Contruction Versus Building Construction Department

Case Citation: Request Case No.105 of 2024

Unilateral Clause For Appointment Of Arbitrator Undermines Equal Participation Of Parties In The Appointment Process

The Patna High Court held that a clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the parties in the appointment process of arbitrators.

The court relied on the judgment in *Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company (2019)* and held that a clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the parties in the appointment process of arbitrators. Finally, the court rejected the request case.

2. Case Title: The State of Bihar V. M/s Baba Hans Construction Pvt. Ltd.

Case Citation: Miscellaneous Appeal No.679 of 2023

Procedural Lapses In Government Machinery Do Not Constitute 'Sufficient Cause' For Condoning Delay In Filing An Appeal Under Section 37 Of The Arbitration Act

The Patna High Court held that procedural impediments in the government machinery are not a 'sufficient cause' for condoning the delay in filing the appeal.

Additionally, the court held that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors in condoning delay.

In the present case, the court held that procedural impediments in the government machinery are not a 'sufficient cause' for condoning the delay. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The law of limitation fixes a lifespan for such legal remedy for the

redress of the legal injury suffered. The law of limitation is founded on public policy. It is enshrined in the maxim *interest republicae up sit finis litium* (it is for the general welfare that a period be put to litigation).

Further, the court held that the appellant does not show any "sufficient cause" whatsoever for condonation of delay of 129 days in filling of the appeal, which was otherwise required to be filed within 90 days as prescribed under Section 37 of the Arbitration and Conciliation Act. The court affirmed that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors in condoning delay. Finally, the appeal was dismissed by the court.

PUNJAB AND HARYANA HIGH COURT

1. Case Title: Prikshit Wadhwa & Ors. Vs. Vinod K Wadhwa

Case Citation: 2025: PHHC: 000270

Pendency Of Civil Or Criminal Litigation Between Partners Cannot Estop Either Partner From Invoking Arbitration Clause

The Punjab and Haryana High Court held that pendency of a civil and criminal litigation inter se partners, cannot estop one of the partners from invoking the arbitration clause or bar the reference of dispute for adjudication to an arbitrator for determination.

2. Case Title: Parsvnath Developers Limited vs. Brig. Devendra Singh Yadav & ors.

Case Citation: 2025: PHHC: 008004-DB

Appeal Under Section 37 Of The Arbitration Act Is Not Maintainable Against An Order Passed Under Order VII Rule 10 Of The CPC

The Punjab and Haryana High Court held that an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 Act read with Section 13(1) of the Commercial Courts Act, 2015 is not maintainable against an order passed under Order VII Rule 10 of the CPC directing the return of a petition filed under Section 34 of the 1996 Act for presentation to the appropriate court.

RAJASTHAN HIGH COURT

1. Case Title: Jaipur Development Authority v. TPl-Sucg Consortium

Case Citation: 2024:RJ-JP:51492

Commercial Court Committed A Jurisdictional Error By Imposing A Pre-Condition Of 50% Deposit For Granting Stay On The Arbitral Award

The present petition has been filed under Article 227 challenging the order passed by the Commercial Court on an application filed by petitioner under Section 36 of the Arbitration and Conciliation Act, 1996 seeking to stay the arbitral award until decision of application filed under Section 34 of the Act, whereby and whereunder the Commercial Court has stayed execution of arbitral award, subject to deposition of 50% of the awarded amount by the petitioner.

The court held that the Commercial Court has committed jurisdictional error in exercising its discretion arbitrarily, mechanically and injudiciously, while putting the condition of pre-deposit of 50% of awarded amount. Then, the court held that the Commercial Court, in the peculiar facts and circumstances of the present case, ought to have permitted the petitioner to furnish security instead of insisting on deposition of 50% of the awarded amount in cash before the Court. To this extent, the Commercial Court has committed jurisdictional error in the exercise of its discretionary powers, that too, has been saddled upon the petitioner, without application of judicious mind and without assigning proper reasonings. Hence, the impugned order warrants interference/ modification to this extent only. So, the court modified the order in the manner that the stay order will become operative only after furnishing the security by the petitioner in the form of FDR of a nationalised bank, equivalent to the 50% of the awarded amount, before the Commercial Court.

UTTARAKHAND HIGH COURT

1. Case Title: M/s SPDD VDPPL JV and another v. State of Uttarakhand & ors.

Case Citation: 2025:UHC:242

The Practice Of Appointing A Named Arbitrator Who Has An Interest In The Dispute Is No Longer Legally Sustainable

The court relied on the judgment in *Perkins Eastman Architects DPC and another vs. HSCC (India) Limited (2020)* and held that in the light of the law declared by the Apex Court, the concept of named Arbitrator, who himself is an interested party, is no more sustainable.

Thus, in the present case the court allowed the application and appointed an arbitrator.

FEBRUARY 2025

SUPREME COURT

1. Case Title: AC Choksi Share Broker Pvt. Ltd. Vs. Jatin Pratap Desai & Anr.

Case Citation: 2025 INSC 174

Oral Undertaking Seen Within Scope Of Arbitration Clause, Liability Flows Even Into Joint Account Held By Husband With Wife

The Supreme Court held that an oral contract undertaking joint and several liability falls within the scope of an arbitration clause.

Holding so, the Court affirmed an arbitral award against a husband, finding him jointly liable for the award due to a debit balance in a joint demat account registered in his wife's name.

The Court rejected the contention that the husband's liability constituted a "private transaction" beyond the scope of arbitration. Instead, it held that the arbitration clause, applicable to non-signatories, in conjunction with the husband's active participation in transactions within his wife's account, gave rise to an implied oral agreement establishing joint and several liabilities for both parties.

ANDHRA PRADESH HIGH COURT

1. Case Title: M/s. Kranthi Grand DKNV Hospitalities & anr Vs. M/s. Manasa Estates and Hospitality Pvt. Ltd. and 2 ors.

Case Citation: APHC010550962023

Named Arbitrator Cannot Be Replaced Unless There Is Evidence Of Partiality Or Bias Against Them

The Andhra Pradesh High Court held that the request for seeking appointment of an independent arbitrator other than the named arbitrator cannot be entertained if there is no evidence to show that the named arbitrator would act in a partial or biased manner. The court observed that the explanation given by the applicant as to why the arbitrator other than the nominated arbitrator is required to be appointed is very casual. No reasons have been furnished whether the named arbitrator falls any of the ineligibilities prescribed under section 12(5) of the Arbitration Act.

The Court relied on the Supreme Court judgment in *Indian Oil Corporation Limited and others vs. Raja Transport Private Limited (2009)* held that the appointment of the named arbitrator in the agreement is a rule and appointment of the arbitrator other than the named arbitrator should be treated as an exception.

2. Case Title: Alliance Enterprises v. Andhra Pradesh State Fiber Net Limited (APSFL)

Case Citation: APHC010444032023

Limitation For Appointment Of Arbitrator Commences From Date Of Failure To Comply With Requirements In Notice Invoking Arbitration

The Andhra Pradesh High Court held that the limitation period for filing an application seeking appointment of arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996, commences only after a notice invoking arbitration has been issued by one of the parties and there has been either a failure or refusal on the part of the opposite party to make an appointment as per the procedure agreed upon between the parties.

The Court referred to the judgment of the Apex Court in *Arif Azim Co. Ltd. v. Aptech Ltd.,* wherein the court had observed that the "limitation period for making an application seeking appointment of arbitrator must not be conflated with the limitation period for raising the substantive claims which are sought to be referred to an arbitral tribunal."

3. Case Title: M/s Brothers Engineering and Erectors Ltd. Vs. M/s. Zorin Infrastructure, LLP

Case Citation: Civil Misc. Appeal No. 623 of 2024

Non-Payment Of Part Of Mutually Agreed Amount After Settlement Of Dispute Not An Arbitrable Issue Under Arbitration Agreement

The Andhra Pradesh High Court has upheld the dismissal of an application filed under section 8 of the Arbitration and Conciliation Act, holding that once an amount has been mutually decided by the parties, the dispute itself is resolved and no arbitrable issue remains for consideration.

Giving credence to the judgement rendered in *Emaar India Ltd. v. Tarun Aggarwal Projects LLP,* the Bench noted that ideally, jurisdiction lies with the Tribunal to decide whether a matter is arbitrable or not and the High Court is only granted the power to have a 'second look'. However, the bench pointed out, that there is one exception to this rule. When the issues are manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, the Court may interfere and reject the application at the threshold.

BOMBAY HIGH COURT

1. Case Title: Maharashtra Public Service Commission Versus Vast India Pvt. Ltd.

Case Citation: 2025:BHC-OS:2179

Mandate Of Facilitation Council Is Not Terminated Even If It Fails To Render Award Within 90 Days U/S 18(5) Of MSME Act

The Bombay High Court held that the mandate of the MSME Facilitation Council (Council) cannot be terminated merely on the ground that it failed to render an award within 90 days under section 18(5) of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSME Act") from the date of entering reference as this time period is directory in nature.

Additionally, the court observed that although the time period under the MSME Act is directory, once the arbitration is undertaken by the Council, the timeline prescribed under Section 29A of the Arbitration Act becomes applicable. Accordingly, the award must be rendered within 12 months from the completion of pleadings. However, the court noted that in this case, a counterclaim was also filed by the MPSC, which reset the 12-month deadline as provided under Section 29A of the Arbitration Act. Therefore, the award rendered by the Council was within the prescribed timeframe and could not be said to be in violation of Section 29A.

2. Case Title: Executive Engineer National Highway Division Versus Sanjay Shankar Surve & Ors

Case Citation: 2025:BHC-AS:6550

Limitation For Appeal U/S 37 Of Arbitration Act Is Governed By Article 116 Of Limitation Act, Delay Not To Be Condoned In Mechanical Manner

The Bombay High Court held that the delay in filing an appeal under section 37 of the Arbitration and Conciliation Act,1996 ("Arbitration Act") should not be condoned in a mechanical manner as it would defeat the very objective of the Arbitration Act which is to provide a speedy resolution of disputes.

It also held that as per judgment of the Supreme Court in *Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited (2021)*, the limitation period under section 37 of the Arbitration Act is governed by Article 116 of the Limitation Act, 1963 ("Limitation Act") which provides for a 90 days time period. The delay in filing the appeal beyond 90 days can be condoned under section 5 of the Limitation Act but only when sufficient cause is demonstrated.

3. Case Title: Lords Inn Hotels and Resorts Versus Pushpam Resorts LLP and 3 Ors.

Case Citation: 2025:BHC-OS:2178 When There Is Ambiguity In Arbitration Agreement, Business Efficacy Test Can Applied To Discern Intent Of Parties To Arbitrate

The Bombay High Court held that when there is an ambiguity in the agreement with respect to arbitration related provisions, the business efficacy test can be applied to discern true intent of the parties to arbitrate.

The court noted that while applying the business efficacy test, it must conclude that the implied term is reasonable and equitable, necessary for business efficacy, implicitly agreed upon (officious bystander test), clearly expressed, and consistent with the express terms. Once these conditions are satisfied, the court may infer the implied terms. However, this does not mean that the court can rewrite contracts.

The Court referred to judgment in Supreme Court in *Nabha Power Limited vs. Punjab State Power Corporation Limited & Anr. (2018)* where it held that the court cannot override express terms of the contract with its own interpretation of the commercial intent. The terms included in the contract are final with regards to the intention of the parties. The multi-clauses contract must be interpreted in such a manner that a particular clause should not undermine any other clause.

The court further observed that given the negotiated drafts and exchange of emails between the parties before executing the Resort Management Agreement, the business efficacy test is necessary to discern the true intent to arbitrate. It added that dismissing three clauses in the Resort Management Agreement which talk about arbitration would be absurd therefore it is warranted to examine whether agreement makes more sense after applying the business efficacy test.

The court examined the correspondences between the parties which demonstrated that the parties initially referenced to arbitration in multiple provisions but in the final draft the arbitration clause was itself omitted. It was an oversight rather than an intention to exclude arbitration.

It further observed that section 7(4)(b) of the Arbitration Act envisages examining e-mail correspondence to discern an arbitration agreement and this is why examination of the e-mail exchanges immediately preceding the executed agreement point to the fact that the parties had originally envisaged arbitration, then wanted to give it a complete go-by, and then brought it back.

It further noted that when doing so, they missed out on one provision, rendering three provisions commercially absurd. This is why it is truly necessary to apply the business efficacy test.

Accordingly, the petition was allowed.

CALCUTTA HIGH COURT

1. Case Title: Haldibari Tea Manufacturers LLP & Anr. Vs. Mahindra Tubes Ltd. & Ors.

Case Citation: CO 204 of 2024

Even If No Satisfaction Is Recorded By Court On Bypassing Pre-Institution Mediation U/S 12A Of Commercial Courts Act, Still It Cannot Be Ground For Rejecting Plaint

The Calcutta High Court held that admission of the plaint by the Commercial Court without recording satisfaction as to whether the requirement of pre-institution mediation under section 12A of the Commercial Courts Act, 2015 ("Commercial Courts Act") can be bypassed and a case for urgent relief is established, cannot be said to be fatal and the plaint cannot be rejected on this ground alone.

The court at the outset observed that section 12A of the Commercial Courts Act provides for the pre-institution mediation which is mandatory in nature. However, this section has carved out an exception that in case of urgent relief, the requirement of pre-institution mediation can be bypassed. The case of urgent relief should be made out from a holistic reading of the plaint at the time of its institution.

The Court referring to the Supreme Court in *Yamini Manohar vs TKD Keerthi case*, held that when the plaintiff tries to make out a case for an urgent relief, the commercial court is not prohibited from checking whether the case for such relief has been made out. The court can conduct such an inquiry to dismantle the falsity and deception created in the plaint to bypass the pre-institution mediation provided under section 12A of the Commercial Courts Act.

Similarly, the Telangana High Court in *Kohinoor Seed Fields India Pvt. Ltd. vs. Veda Seed Sciences Pvt. Ltd. & Anr. (2024)* held that there is no requirement of taking a leave of the court before filing the suit seeking urgent relief. However, the court in the same judgment observed that the court can peruse the plaint and prayers made therein to ascertain whether the case for urgent intervention is made out.

The court observed that accepting the plaint without recording the satisfaction as to the urgency of relief cannot be said to be fatal. The court at the time of scrutinizing the plaint has to see whether the case for the urgent relief is established. It need not go into the question whether the plaintiff will succeed in obtaining the same. Even if interim relief is denied or the case is weak, the plaint cannot be rejected on this ground alone.

The court further noted that from a bare perusal of the statements made in the plaint, it becomes clear that the plaintiffs have prayed for an urgent interim relief. From the order-sheet filed in this case, it would transpire that simultaneously with the filing of the suit, the plaintiffs had also filed an application under Order XXXIX Rule 1 and 2 of the CPC. Admittedly, the suit was filed to seek urgent relief. The plaintiffs have however, failed to succeed in obtaining any ex parte interim order.

The Court added that just because the plaintiff failed to obtain the interim relief, this does not justify rejection of the plaint. It also observed that even a weak case for urgent relief cannot be thrown out. The events subsequent to presentation of the plaint are not relevant consideration to decide whether the statutory remedy provided for in section 12A of the said Act can be bypassed.

2. Case Title: Kalpataru Projects International Limited vs. BHEL

Case Citation: AP-COM/94/2025

Referral Courts Are Not Empowered To Undertake An Enquiry Into Whether The Claims Are Time-Barred

The Calcutta High Court held that in an application under section 11 of the Arbitration and Conciliation Act, 996, it would not be proper for the referral court to indulge in an intricate evidentiary enquiry into the question of whether the claims raised by the petitioner were time-barred or not.

The court referred to the decision in *Aslam Isamil Khan Deshmukh vs. ASAP Fluids Private Limited and anr.* AIR 2019 (NOC) 566 (BOM), which clarified that the referral court must only conduct a limited enquiry to examine whether the application under section 11(6) had been filed within three years or not.

3. Case Title: The Director General, National Library, Ministry Of Culture, Government Of India Vs Expression 360 Services India Private Limited (Now Known As Expression Ad Agency Pvt. Ltd.)

Case Citation: AP-COM/860/2024, AP-COM/644/2024 and EC-COM/245/2024

Government Authority Must Provide Security Before Obtaining A Stay On An Award Under Section 36(3) Of The A&C Act; No Special Treatment Shall Be Granted

The Calcutta High Court held that special treatment cannot be given to the government while hearing a petition seeking stay on the enforcement of the award under section 36(3) of the Arbitration Act. Every petitioner including the government will have to furnish security or deposit the awarded amount before a stay on the enforcement of the award can be granted.

The court noted that the Supreme Court in *Pam Developments Private Limited Vs. State of West Bengal (2019),* held that Arbitration is essentially an alternate dispute resolution mechanism curated to provide a swift and quick resolution of disputes therefore if money decree award passed against the government is allowed to be stayed unconditionally, it would defeat the very purpose of the Arbitration Act as the award holder would be deprived of the fruits of the award on mere filming an application under section 34 of the Arbitration Act.

The Court further noted that, no doubt special treatment is given to the Government under the CPC, when it comes to the Arbitration Act all parties are treated equally in light of section 18 of the Act.

CHHATTISGARH HIGH COURT

1. **Case Title:** Amit Kumar Jain vs. Induslnd Bank Limited Through Its Director & Anr.

Case Citation: 2025: CGHC: 2394

Execution Proceedings Can't Be Quashed Solely Due To Non-Supply Of Signed Arbitral Award

The Chhattisgarh High Court held that non-supply of the signed arbitral award may be a ground for setting aside an award, but on this ground alone, the execution proceedings cannot be quashed.The court observed that an award can only be challenged under section 34(2) and not otherwise. It dismissed the petition.

DELHI HIGH COURT

1. **Case Title:** Bhadra Intl. India Pvt. Ltd. & Ors. Vs. Airports Authority Of India

Case Citation: 2025: DHC: 841-DB

Award Cannot Be Set Aside When No Objections Were Raised Before Arbitrator Or Court U/S 12(5) Of Arbitration Act

In the present case, during the arbitration, Section 12(5) of the Arbitration Act was introduced, prohibiting the unilateral appointment of arbitrators. However, the appellants did not raise any objections to the arbitrator's appointment at that time. The validity of the arbitrator's appointment based on section 12(5) of the Arbitration Act was challenged later during the petition under Section 34 of the Arbitration Act. The Single Judge rejected these objections, leading to the present appeal.

The Delhi High Court held that the award cannot be set aside solely on the ground that the appointment of the Arbitrator was illegal in view of section 12(5) of the Arbitration and Conciliation Act (Arbitration Act) when no such objections were raised before the Arbitrator or the court under section 34 of the Arbitration Act.

The court held that objections to the appointment of the Arbitrator were raised only when a Miscellaneous Application seeking amendment to the petition under section 34 of the Arbitration Act was filed in which grounds based on section 12(5) of the Arbitration Act were incorporated. Before this, no objections were raised.

The court concluded that *"this case is, therefore, unique in that respect, and cannot be equated with cases in which, at one stage or the other, an objection to the appointment of the Arbitrator was voiced."*

Accordingly, the present appeal was dismissed on the ground that no objections as to the appointment of the arbitrator were raised before the arbitrator or the court under section 34 of the Arbitration Act.

2. Case Title: Union of India v. Reliance Industries Limited & Ors.

Case Citation: 2025: DHC: 914-DB

Delhi HC Sets Aside Tribunal's Award Permitting RIL To Explore 'Migrated Gas' Without Express Permission, Citing Violation Of Public Trust Doctrine

A Division Bench of the Delhi High Court, while hearing an appeal under Section 37 of the A&C Act, set aside an arbitral award in favour of Reliance Industries Limited(RIL).

The Court invoked the doctrine of 'public policy in India', 'public law' and 'Public Trust Doctrine' and observed that the findings of the Arbitral Tribunal which

held that the RIL's breach of Production Sharing Contract (PSC) was not a material breach of the PSC and 1959 PNG Rules, was in violation of fundamental law of India and the award was patently erroneous.

Briefly put as per the facts matrix of the case, the Union of India (UOI) entered into a PSC with RIL and Niko Limited with a participating interest of 90% & 10%, respectively. By way of a supplementary contract, RIL transferred its participation interest under the parent contract to British Petroleum Exploration Limited (BPEL). RIL and Niko had the right to take cost petroleum in accordance with the provisions of Article 15 of PSC.

The UOI entered into another PSC with Cairn Energy Limited which was later acquired by Oil and Natural Gas Corporation Limited (ONGC). The blocks of RIL and ONGC turned out to be adjoining blocks. Certain disputes arose between ONGC and RIL, and ONGC wrote to UOI stating that there was *"…evidence of lateral continuity of gas pools…"* between the Reliance block and ONGC block, as both the blocks were connected and there was migration of gas inter-se them.

The single judge disposed of the W.P.(C), and UOI constituted a single member committee of HMJ A.P.Shah to recommend a future course of action. During working of the committee eventually RIL withdrew its participation. On 29.08.2016, the Shah Committee issued its Final Report, based on which UOI raised a Demand Notice for 1.74 Billion USD along with interest. RIL, in response, invoked the arbitration clause in terms of Article 33 of the PSC.

The tribunal rendered the award in a 2:1 majority, holding that RIL was not in material breach of the PSC. Aggrieved by the award, UOI filed a Section 34 application for setting aside the arbitral award as it suffers from patent illegality.

The single judge while dismissing the Section 34 application observed that the arbitration between UOI and RIL was an 'International Commercial Arbitration' and the ground of patent illegality was not available, for the Courts to interfere with the arbitral award.

Aggrieved by the order of the single-judge bench, the UOI filed the present appeal u/s 37 of the A&C Act.

The issues before the Court are :

i. Whether the arbitral proceedings are domestic or international in nature?

   While holding the nature of the arbitral proceedings to be domestic in

nature, the Court observed that the Arbitral Tribunal in para 157 has recorded that RIL is the only claimant in the arbitration and Niko has not been made a party to the arbitral proceedings.

The Arbitral Tribunal concluded that RIL, an Indian entity, is the sole claimant, therefore the arbitration has to be treated as a domestic arbitration instead of an International Commercial Arbitration. The Supreme Court in *L&T-SCOMI v. MMRDA* observed that once it has been concluded that both companies are incorporated in India, the arbitration agreement would not be international commercial arbitration. The single judge while adjudication the Section 34 application exceeded the jurisdiction conferred u/s 34 of the A&C Act.

Therefore, the Court found sufficient cogent reason u/s 37 of the A&C Act to enter into the domain of Section 34 of the A&C Act to examine the arbitral award.

ii. Whether the arbitral award was crippled with patent illegality?

The Court observed that the issue of 'patent illegality' involves Article 297 of the Constitution, and 'public policy in India', 'public law' and 'Public Trust Doctrine', being all intertwined, are to be considered. By Article 297 of the Constitution, UOI is a depository holding the natural resources of India as a Trustee, and without the explicit and express permission of the UOI, there can be no extraction of the said resources by anyone.

The Court was of the opinion that the findings of Arbitral Tribunal pertaining to the implicit permission of the UOI of the 'migrated gas' require consideration. The UOI entered into a PSC with RIL since RIL had the 'technical know-how.' RIL was appointed for a specific and limited purpose of exploring/extracting the natural resources for and on behalf of the UOI. It has been the case of RIL that the permission pertaining to 'Migrated Gas,' if any, was not compulsorily required, and UOI's silence was meant to be deemed a grant of permission.

The Court observed that the nature of the transaction was in the Country's public interest. RIL cannot be allowed to take and/ or derive the benefit of any silence by the UOI. RIL was guilty of impeding the ONGC's rights

through an 'express and explicit' license qua its block, under the NELP.

There was a significant breach of the terms of PSC on the part of the RIL, however, the Arbitral Tribunal held that the said breach on the part of RIL was not material. The Court observed finding of the Arbitral Tribunal was wrong in holding: *"…The non-compliance by the claimant did not amount to a material non-disclosure constituting a breach by the Claimant of the PSC and the PNG Rules. …"* is patently erroneous as the RIL's breach could not termed as insignificant and be labelled immaterial by the Arbitral Tribunal.

The findings of the Arbitral Tribunal were in contravention of the substantive law and the terms of PSC, PTD, 1959 PNG Rules and the fundamental law of the land.

After a detailed analysis and findings qua the scope of Section 37 of the Act, there was patent illegality on the face of the arbitral award; subsequently, the Court set aside the order passed by the single judge.

3. Case Title: Dixon Technologies (India) Limited vs. M/s Jaiico & Anr.

Case Citation: ARB.P. 224/2025

Court Re-Affirms Discretion Of Arbitral Tribunal To Implead 'Non-Signatory' As 'Necessary Party' In Arbitration Proceedings

The Delhi High Court has reaffirmed that an Arbitral Tribunal has the authority to implead non-signatories to an arbitration, provided they are deemed 'necessary parties' to the proceedings.

4. Case Title: Pragati Construction Consultants v. Union of India and Ors.

Case Citation: 2025: DHC: 717-FB

Non-Filing Of The Impugned Arbitral Award Along With The Section 34 Application Would Render The Application Non-Est

A full bench of Delhi High Court while hearing a reference made by a single judge bench in *Pragati Construction Consultants v. Union of India [FAO(OS)(COMM) 70/2024]* held that if the party challenging an award u/s 34 of the A&C Act does not attach the impugned arbitral award with the Section 34 application, the filing will be considered "non-est." The Court further held that the filing of the arbitral award along with the Section 34 application is an essential requirement.

5. Case Title: Idemia Syscom India Pvt. Ltd. v. M/s Conjoinix Total Solutions Pvt. Ltd.

Case Citation: 2025: DHC: 1205

MSMED Act Will Prevail Over Arbitration Act In Disputes Pertaining To A Party Which Is An MSME

The Delhi High Court has reiterated that the Arbitration and Conciliation Act, 1996 is a general law governing the field of arbitration whereas the MSMED Act, 2006 governing a very specific nature of disputes concerning MSMEs, is a specific law and being a specific law would prevail over Arbitration and Conciliation Act, 1996.

The Court noted that in view of Section 18 and Section 24 of the MSMED Act which provide non obstante clauses which have the effect of overriding any other law for the time being in force, the legislative intent is clear that MSMED Act would have an overriding effect on the provisions of the Arbitration & Conciliation Act. The Court relied on the judgments of the Apex Court in *Silpi Industries and Ors. v. Kerala SRTC and Anr. 2021 SCC OnLine SC 439 and Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd. (2023) 6 SCC 401.*

The Court further observed that the provisions of MSMED Act would become ineffective if, by way of an independent arbitration agreement between the parties, the process mandated in Section 18 of the MSMED Act is sidestepped. Further, the fact that the Petitioner approached the Court under Section 11, Arbitration and Conciliation Act first would be of no significance as the MSMED Act does not carve out any such exception to the non-obstante clause.

6. Case Title: M/s Isc Projects Private Limited v. Steel Authority of India Limited

Case Citation: 2025: DHC: 1115

If Reasons For Omission Of Missing Signature Are Not Stated, Arbitral Award Not Signed By All Members Of Tribunal Can Be Set Aside

The Delhi High Court has observed that the signature of all members of the arbitral tribunal should be available on the award as the signing of an award is not a ministerial act but a substantive requirement. It was further observed that if the signature of any member of the tribunal is omitted, then the reasons should be stated as this requirement is considered as a need to ensure that all members of the tribunal have had an opportunity to participate in the decision-making process.

The Court relied on the decision of the Apex Court in *Dakshin Haryana Bijli Vitran Nigam Lts. V. Navigant Technologies Pvt.*

Ltd (2021) ("Dakshin Haryana"), wherein it was observed that all members of the tribunal should have signed the award and that a dissenting opinion, if any must be delivered contemporaneously with the majority award. The Court also considered the decisions of the Delhi High Court in Mahanagar Telephone Nigam Ltd. v. Siemens Public Communication Network Ltd. (2005), Government of India v. Acome (2008) and M/s Chandok Machineries v. M/s S.N. Sunderson & Co. (2018) amongst others and laid down the following points -

i. It is the award of the majority alone that constitutes an arbitral award. The opinion of a dissenting arbitrator is not an award at all.

ii. Signatures of all members of the arbitral tribunal should be available on the award. The signing of an award is not a ministerial act, but a substantive requirement.

iii. If the signature of any member of the tribunal is omitted, the reasons should be stated. However, the reasons can be supplied separately and subsequently.

iv. The requirement is referable to the need to ensure that all members of the tribunal have had an opportunity to participate in the decision-making process.

v. While a dissenting opinion has no direct legal effect, it is also not wholly meaningless or irrelevant, it constitutes a safeguard against arbitrary and unchecked decision-making, and can be used by the aggrieved party as well as the Court in the course of a challenge to the majority award.

7. Case Title: Isar Engineers Pvt. Ltd. Vs. NTPC-SAIL Power Co. Ltd.

Case Citation: 2025: DHC: 658

Award Passed By Improperly Appointed Arbitrator Is Non-Est In Law And Invalid

The Delhi High Court held that it is settled law that the Arbitrator is a creature of the contract and has to function within four corners of contract. If a particular mechanism is contemplated for his appointment, the same must be followed in its true letter, spirit and intent, failing which the Arbitrator is without jurisdiction and the appointment is non-est and invalid.

Additionally, the court relied on its own judgment in *M/s. M.V. Omni Projects (India) ltd. V. Union of India, 2024* in support of this conclusion where it was

held that proceedings before an improperly constituted Arbitral Tribunal is non-est in law.

GUJARAT HIGH COURT

1. Case Title: NHAI Vs. Kishorbhai Valjibhai Jethani & Ors.

Case Citation: C/FA/4705/2023

Plea That Signed Copy Of Award Was Not Received Cannot Be Raised For First Time In Appeal U/S 37 Of Arbitration Act

The Gujarat High Court held that the plea that limitation period for challenging the award under section 34 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) did not start as the signed copy of the award was not received by the party, cannot be raised for the first time in appeal under section 37 of the Arbitration Act.

MADRAS HIGH COURT

1. Case Title: M/s. Sundaram Finance Limited vs. S.M. Thangaraj & Ors.

Case Citation: C.R.P.No.5197 of 2024

Executing Courts Can't Annul Arbitral Awards Solely On Ground Of Unilateral Appointment Of Arbitrator

The Madras High Court has observed that the issue of ineligibility of the arbitrator cannot be raised during the pendency of the execution proceedings. The court held that the Executing Courts cannot suo motu dismiss the Execution Petition(s) solely on the ground of unilateral appointment of an arbitrator.

The court held that the executing court cannot suo motu annul the award when a party to the agreement did not challenge the award on the ground of ineligibility of the arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996. *"As long as there is no objection raised, it cannot be said that a mere unilateral appointment of arbitrator would vitiate the entire arbitral proceedings which culminated in an award"*, the court stated.

The Court relied on judgment in *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*, wherein the court reiterated that:

"A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."

Furthermore the Court relied on *ONGC Limited v. M/s. Modern Constructions and Company*, where it was held that *"Executing court cannot go behind the decree and in absence of any challenge to the decree, no objection can be raised in execution". Likewise, in Shivshankar Gurjar v. Dilip, it was held that "the executing court cannot go behind the decree; it has no jurisdiction to modify a decree; and it must execute the decree as it is".*

2. Case Title: M/s.Chennai Metro Rail Limited Vs Transtonnelstroy Limited

Case Citation: OP Nos. 530 & 531 of 2017 & A.No.3818 of 2017

Arbitral Award Can Be Set Aside As 'Patently Illegal' If View Taken By Arbitrator Is Not A Plausible One

The Madras High Court held that when the view taken by the Arbitrator is not even a plausible view, an award passed by such an arbitrator can be set aside under section 34 of the Arbitration act on the ground of patent illegality.

3. Case Title: M/s.Powergear Limited, Chennai. Vs. M/s.Anu Consultants, Hyderabad

Case Citation: 2025:MHC:332

No Bar On Court To Entertain More Than One Application U/S 29A Of Arbitration Act

The Madras High Court held that there is no prohibition for the Court to entertain more than one application under Section 29A of the Act seeking extension of time for the arbitrator to pronounce arbitral award provided sufficient cause is demonstrated.

The court noted that 'section 29A' of the Arbitration Act does not prohibit multiple applications for extending the mandate of the Arbitrator. The only requirement is that sufficient cause must be demonstrated for seeking extension of the mandate of the tribunal.

It further added that when there are no restrictions as to the number of times an application seeking extension of the mandate of the Arbitral Tribunal can be filed, the court cannot prohibit parties from filing such applications provided sufficient cause is demonstrated.

4. Case Title: Gopal Krishan Rathi vs. Dr. R. Palani

Case Citation: OSA(CAD) No.141 of 2023

Arbitral Award Can't Have Specific Format; Reasoning Must Be 'Proper', 'Intelligible' And 'Adequate'

The Madras High Court observed that an arbitral award does not have to follow any specific format; just as every judge writes their judgment in a particular style, arbitrators also write in different styles.

The court also held that any ground which was not raised in a petition under section 34 of the Arbitration and Conciliation Act, 1996 cannot be raised at the stage of appeal under Section 37 of the Act. The court further observed that reasoning of the award must be 'proper', 'intelligible' and 'adequate'.

MARCH 2025

SUPREME COURT

1. Case Title: Rahul Verma & Ors. vs Rampat Lal Verma & ors.

Case Citation: 2025 INSC 296

Arbitration Agreement Does Not Stand Discharged On Death Of A Partner, It Can Be Enforced By The Legal Heirs Of The Deceased-Partner

The Supreme Court has reiterated that an arbitration agreement is enforceable against the legal representatives of a deceased partner of a partnership firm.

"An arbitration agreement does not cease to exist on the death of any party and the arbitration agreement can be enforced by or against the legal representatives of the deceased," the Court stated, referring to the judgment in Ravi Prakash Goel v. Chandra Prakash Goel & Anr.(2008) 13 SCC 667 & in Jyoti Gupta v. Kewalsons & Ors. 2018 SCC OnLine Del 7942.

2. Case Title: Disortho S.A.S. Vs. Meril Life Sciences Pvt. Ltd.

Case Citation: 2025 INSC 352

Supreme Court Discussed How To Determine Law Governing Arbitration Agreement In An International Commercial Arbitration

In a significant judgment relating to International Commercial Arbitration, the Supreme Court ruled that in the absence of an express law governing the arbitration agreement, the applicable law should be determined based on the parties' intentions, with a strong presumption in favor of the law governing the main contract (*lex contractus*).

The Court heard the case where the plea was made for an appointment of an arbitrator in an International Commercial Arbitration where the Petitioner was a foreign-Columbia-based entity, whereas the Respondent was an Indian-Gujarat based entity.

Since there was no express stipulation made about what law would be governing the arbitration agreement, therefore, the Court applied the three-step test established in *Sulamérica Cia Nacional De Seguros S.A. v. Enesa Engenharia S.A. [2012] EWCA Civ 638*, a leading international arbitration case, to determine the governing law of the arbitration agreement.

The three-step enquiry test to determine the governing law of the arbitration agreement was:

i. express choice,
ii. implied choice, and
iii. closest and most real connection,

i.e., in the absence of express choice for the law governing the arbitration agreement, the Court would identify the implied choice of law for the arbitration agreement, and even if the implied choice doesn't work, then the Court would apply the closest and most real connection test which considers several factors like parties intention, business operations, etc.

ANDHRA PRADESH HIGH COURT

1. Case Title: M/s. Real Fab India Pvt.Ltd. Vs. M/s. Rashtriya Ispath Nigam Ltd.

Case Citation: Civil Revision Petition No.2936 of 2024

Second Execution Petition Cannot Be Entertained When First Petition Seeking Execution Of Arbitral Award Was Dismissed On Merits

The Andhra Pradesh High Court held that a second execution petition for enforcing an award is not maintainable if the first was rejected on the ground that the award had not been set aside, solely because a signed copy was not filed with the application to set it aside under Section 34 of the Arbitration and Conciliation Act, 1996 (Arbitration Act).

It also held that if valid grounds existed for setting aside the award, its execution cannot be allowed merely due to the submission of a signed copy thereafter.

The Court referred to the judgment of Karnataka High Court in *Parikshitraj Kulkarni v. The Assistant Director, Women and Child Development Department (2013),* the first execution petition was dismissed as not maintainable and the order attained finality. The Petitioner later filed a second petition for the execution of the same decree stating that it was within the 12 years limitation period. The executing court dismissed the petition on the ground that the similar petition had been rejected previously.

The Karnataka High Court in the above case held that the earlier order was binding on both the petitioner and the court, making the second execution petition barred by res judicata.

Accordingly, the present petition was dismissed.

2. Case Title: Lakshmi Agencies v. Aryapuram Coop Bank Ltd.

Case Citation: APHC010073932016

Proceedings Before Registrar U/S 62 Of AP Cooperative Societies Act Not Arbitration, Provisions Of A&C Act Will Not Apply

The Andhra Pradesh High Court has observed that when proceedings are held before the Registrar under A.P. Cooperative Societies Act, 1964, such proceedings cannot be termed as arbitral proceedings.

Accordingly, it was held that no provision of the Arbitration and Conciliation Act, 1996 including Section 34 would be applicable to them. The appropriate remedy in such a case would be an appeal before the A.P. Cooperative Tribunal, under Section 76 of the APCS Act, 1964.

The Court referred the decision of the Apex Court in *Greater Bombay Cooperative Bank Ltd. v. M/s United Yarn Tex. Pvt. Ltd and Ors. AIR 2007 SC 1584* in this regard.

BOMBAY HIGH COURT

1. Case Title: Sanjiv Mohan Gupta v. Sai Estate Consultants Chembur Pvt. Ltd.

Case Citation: 2025:BHC-OS:3938

Arbitration Clause In Invoices Can Be Binding On Parties When They Acted Upon The Invoices And No Objections Were Raised

The Bombay High Court observed that where the correspondence between the parties included invoices which contained an arbitration clause and the parties acted upon those invoices without protesting, then it could be deemed that the party had accepted the arbitration clause.

The Court relied on its previous judgment in *Bennett Coleman & Co. Ltd. v. MAD (India) Pvt. Ltd. - 2022 SCC OnLine Bom 7807*, that where the parties had acted upon the invoices and there was no denial of invoices raised by the applicant, the clause contained in the invoices which clearly stipulated a reference to arbitration, deserved to be construed as an arbitration clause.

2. Case Title: Batliboi Environmental Engineering Ltd. v. Hindustan Petroleum Corporation Limited

Case Citation: 2025:BHC-OS:4031

Setting Aside Of Arbitral Award Leaves It Open To Parties To Choose To Arbitrate Again

The Bombay High Court has observed that once an arbitral award has been set aside by the court in the exercise of its powers under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, the parties would be restored to the original position and a fresh arbitration in such circumstances would not amount to the proverbial "*second bite at the cherry*".

The Court distinguished the facts of the present case from the facts in *Jaiprakash Associates Limited vs. NHPC Limited - 2025 SCC OnLine Del 170 and Tantia Construction Limited Vs. Union of India - 2021 SCC OnLine Cal 2465*, wherein the courts had refused to refer the parties to arbitration in a post-award reference.

The Court concluded that in present case, no case had been made out to deviate from the norm that the parties are restored to the original pre-arbitral award position.

3. Case Title: Kartik Radia vs. M/s. BDO India LLP and Anr.

Case Citation: Comm Arb Application No. 31 Of 2022

LLP Can Be Bound By Arbitration Clause Despite Not Being Signatory To LLP Agreement

The Bombay High Court held that the mere fact that an LLP is not a signatory to an LLP Agreement does not, by itself, preclude it from being a party to arbitration proceedings initiated between Partners under the arbitration clause of such an agreement.

The Court observed that an LLP is not a "third party" to its LLP Agreement but an entity with rights and obligations vis-à-vis its partners as per the statutory scheme of the LLP Act. The Arbitral Tribunal, and not the Section 11 Court, has the jurisdiction to determine whether a party is a necessary or proper party to the arbitration.

4. Case Title: NAFED Vs. Roj Enterprises (P) Ltd. and Ors.

Case Citation: 2025:BHC-AS:10854-DB

Court Must Assign Reasons For Accepting Or Rejecting Grounds Of Challenge U/S 34 Of Arbitration Act

The Bombay High Court held that a petition under Section 34 of the Arbitration and Conciliation Act, 1996

(Arbitration Act) cannot be dismissed merely by stating that the scope of interference is limited; the court must address each ground of challenge and provide reasoned findings.

The Court referred to the Supreme Court judgment in in *Delhi Metro Rail Corporation Ltd. Vs. Delhi Airport Metro Express Pvt. Ltd. (2024)*, where it was clarified that jurisdiction under Section 37 of the Arbitration is akin to the jurisdiction of the Court under Section 34 and is restricted to the same grounds of challenge as Section 34 of the Arbitration Act.

The court in present case observed that while the court under section 34 of the A&C Act does not sit in appeal over an arbitral award, it must consider and address objections raised against the award. The court is required to provide reasons for accepting or rejecting the challenge. Simply stating that the scope of interference is minimal does not justify refusing to examine specific grounds on which the award could be set aside.

5. Case Title: Fab Tech Works & Constructions Pvt. Ltd. vs Savvology Games Pvt. Ltd. & Ors.

Case Citation: 2025:BHC-OS:4877

Invocation Of Section 9 & Section 11 Of Arbitration Act Does Not Constitute Parallel Proceedings

The Bombay High Court held that the mere invocation of Section 9 and Section 11 of the A&C Act, 1996 does not amount to parallel proceedings. Further, the High Court noted that Section 9 is intended to provide interim relief to safeguard the subject matter of arbitration. On the other hand, Section 11 is limited to the appointment of an arbitrator when there is a dispute regarding the arbitration agreement.

The High Court rejected the Respondent's argument that proceedings under Sections 9 and 11 constituted parallel proceedings. The High Court held that:

"It is rather surprising that invocation of Section 9 and Section 11 have been treated in a cavalier manner by the Respondent, terming them as parallel proceedings on the same cause of action in the teeth of the scheme of the Act. Section 9 is meant to grant temporary interim protection in aid of the arbitral tribunal conducting proceedings. Non-compliance with the agreed commitment to refer disputes to arbitration is the basis of filing a Section 11 Application."

6. **Case Title:** NTPC BHEL Power Projects Pvt. Ltd. Versus Shree Electricals & Engineers (India) Pvt. Ltd

Case Citation: 2025:BHC-AS:12377-DB

Prosecution In Good Faith In Another Court Held To Attract Benefit Of S.14 Of Limitation Act Which Extends To Delayed Filing Of Petition U/S 34 Of A&C Act

The Bombay High Court held that the benefit of Section 14 of the Limitation Act, 1963 (Limitation Act) can be extended to the petitioner who committed delay in filing an application to set aside an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) due to the prevailing legal position at the time of filing, which was subsequently changed.

Court referred to the Supreme Court judgment in *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department & Ors.(2008)* where it was held that having regard to the legislative intent, the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Arbitration Act for setting aside an arbitral award.

Also in the Supreme Court judgment in *Deena (Dead) through LRs. vs. Bharat Singh (Dead) through LRs. and Ors (2002)* the Court held that the benefit of section 14 of the Limitation Act can be taken by those litigants who prosecuted prior proceedings in good faith and due care. A party litigating in a court lacking jurisdiction is entitled to an exclusion of that period if good faith defined as exercise of due care and attention is established. The finding as to good faith or the absence of it, is a finding of fact.

CALCUTTA HIGH COURT

1. **Case Title:** M/s Exchange and Ors. v. Pradip Kumar Ganeriwala and Anr.

Case Citation: A.P.O.T. No.338 of 2024

Non-Signatories To Arbitration Agreement Can Be Made Party To Dispute If Reliefs Sought Against Them Align With Those Sought Against Signatories

The Calcutta High Court observed that if the reliefs against the non-signatories to the arbitration agreement are in harmony with the reliefs sought against the signatories, particularly when the legal relationship between the signatories and non-signatories are on the same platform vis-a-vis the cause of action of the suit and the reliefs claimed, then the non-signatories could very well be brought

within the purview of the arbitration agreement.

The Court placed reliance on *Ajay Madhusudan Patel and others v. Jyotrindra S. Patel and others, 2024 SCC OnLine SC 2597* , wherein it was observed that for determining whether non-signatory parties would be bound by the arbitration agreement, the court has to assess whether such parties or entities intended or consented to be bound by the arbitration agreement or the underlying contract. The requirement of a written arbitration agreement did not exclude the possibility of binding non-signatory parties if there was a defined legal relationship between the signatory and non-signatory parties.

Adding to the ratio, the Court held that if upon looking at the plaint, it appears that the reliefs against the non-signatories to the arbitration agreement are in harmony with the reliefs sought against the signatories particularly when the legal relationship between the signatories and non-signatories are on the same platform vis-a-vis the cause of action of the suit and the reliefs claimed, then the non-signatories could very well be brought within the purview of the arbitration agreement.

2. Case Title: Indian Oil Corp. Ltd. & Ors. Vs. Saumajit Roy Chowdhury

Case Citation: 2025:CHC-AS:506-DB

Writ Petition Is Not Maintainable When Effective And Efficacious Remedy In Form Of Arbitration Is Available

The Calcutta High Court held that it cannot entertain a writ petition if an effective and efficacious remedy, in the form of arbitration, is available. It said that the High Court would normally exercise its jurisdiction in 3 contingencies as highlighted in the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others (1998),* namely-

i. when the writ petition was filed for enforcement of any fundamental rights,

ii. where there has been violation of principle of natural justice, or

iii. where the order or proceedings are wholly without jurisdiction or where the vires of an Act is challenged.

Additionally, the court observed that the in the present case does not fall in any three contingencies, and there was a binding arbitration agreement between the parties. Thus, the writ petition was not maintainable, more particularly when the

agreement provides for an efficacious alternate remedy in form of arbitration.

3. Case Title: Karur Vyasa Bank v. SREI Equipment Finance Limited

Case Citation: AP-COM/947/2024

Threshold To Prove Fraud & Corruption In Arbitral Award Is Much Higher Than Merely Criticizing Findings Of Arbitrator

The Calcutta High Court observed that in order to prove that the making of the award was vitiated by fraud, the petitioner would have to demonstrate that the unethical behaviour of the arbitrator surpassed all moral standards. The Court reiterated that an honest mistake or incorrect appreciation of the terms of the contract cannot be either fraud or corruption.

The Court observed that the second proviso to Section 36(3) required a primary satisfaction on the part of the court that the making of the award was induced or affected by fraud or corruption. The award-debtor could seek stay of operation of the award upon discharging the burden of at least, prima facie, showing that the award was induced by fraud or corruption. The Court made reference to *Venture Global Engineering LLP v. Tech Mahindra Limited (2018) 1 SCC 656* to discuss the meaning of fraud.

The Court further observed that the threshold to prove fraud and corruption on the part of the learned Arbitrator in the making of the award would be much higher than a criticism of the findings of the learned Arbitrator. The petitioner would have to demonstrate the unethical behaviour of the Arbitrator, which surpassed all moral standards. An honest mistake or the incorrect appreciation of the terms of the contract cannot be either fraud or corruption.

4. Case Title: Ilead Foundation Vs. State Of West Bengal

Case Citation: AP-COM/152/2025

Arbitration Agreement Valid Without Specifying 'Applicable Law', 'Seat' Or 'Venue' If Intent To Refer Dispute To Private Tribunal Is Clear

The Calcutta High Court held that for an arbitration agreement to be binding, neither the applicable law nor the seat or venue needs to be mentioned. As long as the clause indicates that the parties had agreed and there was a meeting of minds to refer any dispute to a private tribunal for adjudication of the disputes, the

clause would constitute an arbitration clause.

The court relied upon *Jagdish Chander vs Ramesh Chander & Ors (2007)* where it was observed:

"If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is an arbitration agreement."

It further relied upon *Solaris Chem Tech Industries Ltd Vs Assistant Executive Engineer Karnataka Urban Water Supply and Drainage Board & Anr. (2023)* which held:

"The 1996 Act does not prescribe a certain form of an arbitration agreement. The use or the absence of the word 'arbitration' is not conclusive and the intention of the parties to resolve the disputes through arbitration should be clear from the terms of the clause."

The court held that for an arbitration agreement to be a binding clause, neither the law nor the seat or venue has to be mentioned. As long as the clause indicated that the parties had agreed and there was a meeting of minds to refer any dispute to a private tribunal for adjudication of the disputes, the said clause would constitute an arbitration clause.

5. Case Title: SREI Equipment Finance Limited v. Whitefield Papermills Ltd.

Case Citation: AP-COM/368/2024

Referral Court Can Reject Arbitration Only In Exceptional Cases Where Plea Of Fraud Appears To Be Ex Facie Devoid Of Merit

The Calcutta High Court observed that unless the arbitration agreement prima facie appeared to be inoperative on account of fraud, the referral Court should not indulge in a roving inquiry as such an inquiry is within the domain of the arbitrator. The fact whether the agreement was induced by fraud would entail a detailed consideration of the evidence lead by the parties and these issues cannot be decided by the referral court.

The Court referred to the decision in *A Ayyasamy v. A Paramasivam and Ors. (2016) 10 SCC 386* , where the Apex Court had held that an application under Section 8 of the Arbitration and Conciliation Act can be rejected only when the allegation of forgery and fabrication of documents in support of the plea of fraud permeated

through the entire contract, including the arbitration agreement, thereby raising a serious question with regard to the validity of the contract itself. In this case the Court also categorised fraud into two categories-

a. whether the plea of fraud permeates the entire contract or

b. whether the allegation of fraud touches upon the internal affairs of the parties inter se, having no implication in the public domain.

Such issues required elaborate evidence to be adduced by the parties and the civil court should reject such application and proceed with the suit. However, the reverse position was also discussed in the said decision which stated that where there were simple allegations of fraud touching upon the internal affairs of the parties, inter se and it had no implication in the public domain, the arbitration clause need not be avoided and the parties should be relegated to arbitration.

The Court also relied upon the case of *SBI General Insurance Co. Ltd. v Krish Spinning 2024 SCC Online SC 1754* wherein it was observed that, *"a mere bald plea of fraud or coercion was not sufficient for a party to seek reference to arbitration and prima facie evidence for the same was required to be provided, even at the stage of Section 11 petition."*

As far as the contention of the Respondent regarding the suitability of civil court to try the case at hand was concerned, the Court observed that if an allegation of fraud could be adjudicated upon in the course of a trial before an ordinary civil court, there is no reason or justification to exclude such disputes from the ambit and purview of a claim in arbitration.

6. Case Title: M/s N.C. Construction v. Union of India

Case Citation: AP-COM/144/2025

Pre-Referral Jurisdiction Of Court U/S 11(6) Includes Inquiry On Whether Claims Are Ex-Facie & Hopelessly Time Barred

The Calcutta High Court held that while the scope of adjudication by referral court is limited and entails a mere examination of whether the arbitration agreement exists or not, the referral court is not precluded from examining whether the claim is deadwood or ex facie barred.

The Court observed that the scope of adjudication by a referral court is undoubtedly limited however, some parties might take undue advantage of such a limited scope of judicial

interference of the referral court and force other parties to the agreement to participate in a time consuming and costly arbitration process, for settlement of dead claims.

The Court further observed that in *Aslam Ismail Khan Deshmukh v. Asap Fluids Pvt. Ltd. & Anr. (2025) 1 SCC 502,* the Apex Court laid down the scope of interference of a referral court, inter alia, holding that at the stage of Section 11, the referral court needs to only examine whether the arbitration agreement exists, nothing more, nothing less. However, such limited interference by the referral court does not preclude the referral court from examining whether the claim is 'deadwood' or ex facie barred.

DELHI HIGH COURT

1. Case Title: Ramchander Vs. Union Of India & Anr.

Case Citation: 2025:DHC:1804

Writ Petition Not An Appropriate Remedy To Seek Enforcement Of Arbitral Award

The Delhi High Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The court found merit in the preliminary objection of the Railways that a writ is not the appropriate remedy for the petitioner to seek enforcement of the arbitral award.

The court referred the judgment in *Nivedita Sharma v. Cellular Operators Association of India and Others, (2011)*, wherein the court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. Also, the court held that it is prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure under the enactment and this power under Article 226 needs to be exercised in exceptional rarity, wherein one party is left remediless under the Statute, or a clear 'bad faith' is shown by one of the parties.

2. Case Title: M/s Dewan Chand v. Chairman cum Managing Director and Anr.

Case Citation: 2025: DHC: 2010

Unconditional Withdrawal Of Prior Petition Filed U/S 11 Of A&C Act Bars Subsequent Petition On Same Cause Of Action

The Delhi High Court observed that if a petition for appointment of arbitrator is

withdrawn without liberty to file a fresh petition, then by application of Order 23 Rule 1(4), CPC, a subsequent petition on the same cause of action would be barred. The Court held that though Order 23 Rule 1 mentions the words, "plaintiff" and "Suit", the Courts have extended the same principles to writ petitions, SLPs and even petitions such as the present one, filed under Section 11 of the A&C Act. In this regard court placed reliance on the decision of the Apex Court in *HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad 2024 SCC OnLine SC 3190.*

3. Case Title: Airports Authority Of India vs. Delhi International Airport Ltd. & Anr.

Case Citation: 2025: DHC: 1523

Force Majeure Clause 'Eclipses' Contractual Terms, Existence And Duration Of Force Majeure Event To Be Determined By Arbitral Tribunal

The Delhi High Court held that while deciding a petition under Section 34 of the Arbitration & Conciliation Act, 1996, courts cannot adopt the approach of one-size-fit-for-all. Courts can interfere into the award only if it shocks the conscience of the court and is prone to adversely affect the administration of justice.

The court held that a force majeure clause' in a contract is generally an exception or an eclipse provision, meaning thereby if a force majeure is enforced the performance as mandated in the other terms of the contract will remain eclipsed till the force majeure event persists. Whether the force majeure has taken place or not or it exists or not or the time till when it exists is a question of fact to be determined by the Arbitral Tribunal.

4. Case Title: Sunehri Bagh Builders Pvt. Ltd. Vs. Delhi Tourism & Transportation Development Corporation Ltd.

Case Citation: 2025: DHC: 1828

Improper For Courts To Interfere In Arbitration Proceedings At Final Stage, When Sufficient Opportunity Had Been Given To Claimant To Inspect Documents

The Delhi High Court upheld the order passed by the Arbitrator whereby an application seeking production of certain documents has been dismissed. The court held that sufficient opportunity had been given to the claimant, but he didn't avail that opportunity. Thus, the court cannot interfere with the order of the arbitrator at the final stage.

Additionally, it said that the present case is at the stage of final arguments and, therefore, the Court did not find any requirement of interfering with the

abovesaid order, particularly, when the scope of interference in such type of arbitral proceedings is very limited.

5. Case Title: Faith Constructions vs. N.W.G.E.L Church

Case Citation: 2025:DHC:1806

Court's Jurisdiction U/S 11(6) Of A&C Act Is Decided Under CPC When No Seat Or Venue Is Specified In Arbitration Agreement

The Delhi High Court held that in the absence of a specified seat or venue in the Arbitration Agreement, the court's jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) is determined by Sections 16 to 20 of the Civil Procedure Code, 1908 (CPC). The relevant factors include where the respondent resides or conducts business and where the cause of action arose.

The court observed that it is a settled position in law that when the arbitration agreement is silent on the aspect of 'seat', 'venue' or 'place' of arbitration, the determining factor will be where the cause of action arises as well as where the defendant/respondent actually or voluntarily resides or carries on their business. The Court further added that in other words, Section 2(1)(e) of the Arbitration Act has to be read in light with Sections 16 to 20 of CPC to determine the territorial jurisdiction of the Court at the stage of considering referral to arbitration in a Section 11 Arbitration Act petition.

6. Case Title: M/s Vallabh Corp. vs. SMS India Pvt. Ltd.

Case Citation: 2025: DHC: 1851

Court Can Appoint Arbitrator U/S 11(6) Of Arbitration Act If MSME Council Fails To Initiate Mediation U/S 18 Of MSMED Act

The Delhi High Court held that when the Facilitation Council under the Micro, Small, and Medium Enterprises Development Act (MSMED Act) fails to initiate the mediation process under Section 18 of the MSMED Act, the court can appoint an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (Arbitration Act).

The Court referred to the judgment of the Bombay High Court in *Microvision Technologies (P) Ltd. 2023 where it was held that "upon the failure on the part of the Facilitation Council to refer the dispute to arbitration, an Application may be made under Section 11(6) (c) and accordingly in the present case the*

application was made for appointment of an Arbitrator. Thus, Section 18 of the MSMED Act has to be read harmoniously with Section 11 of the Arbitration Act."

7. Case Title: Shakti Pump India Ltd. Vs. Apex Buildsys Ltd. & Anr.

Case Citation: 2025:DHC:1813

Participation In Arbitral Proceedings Does Not Imply Acceptance Of Unilateral Appointment Of Arbitrator Unless Objections Are Waived In Writing

The Delhi High Court held that the mandate of the Arbitrator can be terminated under Section 14 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) if the Arbitrator was appointed unilaterally, which is explicitly prohibited under Section 12(5) of the Arbitration Act unless the ineligibility is expressly waived through a written agreement.

It also held that mere participation in the arbitration proceedings without expressly waiving any objections in writing cannot tantamount to acceptance of unilateral appointment of Arbitrator.

The Court referred to judgment of the Supreme Court in *Ellora Paper Mills Ltd. v. State of M.P. (2022)*, where Court had categorically held that mere participation in arbitral proceedings would not amount to waiver of objections in terms of the proviso to Section 12.

Furthermore, the Supreme Court in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co. 2024* held that equal participation of parties in the process of appointment of arbitrators ensures that both sides have an equal say in the establishment of a genuinely independent and impartial arbitral process.

The Court in present case concluded that mere participation without a clear, written waiver under section 12(5) proviso of the Arbitration Act after the dispute having arisen between the parties does not imply acceptance of a unilateral appointment and such appointment is void ab initio and liable to be terminated.

Accordingly, the present petition was allowed, and the mandate of the Arbitrator was terminated.

8. Case Title: Precitech Enclosures Systems Pvt. Ltd. v. Rudrapur Precision Industries

Case Citation: 2025:DHC: 1677

Exclusive Jurisdiction Clause Prevails Over Seat Of Arbitration Clause If It

Expressly Covers Proceedings Relating To Arbitration

The Delhi High Court observed that generally if an agreement contains both exclusive jurisdiction clause and seat of arbitration clause, then judicial proceedings relating to arbitration would lie only before the court having territorial jurisdiction over the arbitral seat/venue. However, as in the instant case, if the exclusive jurisdiction clause also covers proceedings relating to arbitration then it would prevail over the seat of arbitration clause.

The Court began its analysis by discussing the well settled principles regarding the general law applicable to the court having territorial jurisdiction to deal with proceedings relating to or arising out of arbitration. Drawing from a plethora of precedents, the Court observed that-

"if the agreement contains one clause designating the arbitral seat/arbitral venue, and another conferring exclusive jurisdiction on courts located elsewhere over the agreement and disputes that arise out of it, legal or judicial proceedings relating to arbitration would lie only before the Court having territorial jurisdiction over the arbitral seat/arbitral venue."

However, the Court noted that the situation at hand was different from the general position of law discussed above. In the instant case, the exclusive jurisdiction clause also covered proceedings relating to arbitration. The Court placed reliance on its previous decisions in *Cars24 Services (P) Ltd. v. Cyber Approach Workspace LLP 2020 SCC OnLine Del 1720 and Hunch Circle Private Limited v. Futuretimes Technology India Pvt. Ltd. 2022 SCC OnLine Del 361*, wherein similar to the present case, the exclusive jurisdiction clause also covered proceedings relating to arbitration.

The Court observed that where the agreement between the parties had contractually conferred jurisdiction for appointment of the arbitrator on competent courts in a particular territorial jurisdiction by exclusive jurisdiction clause, such court and no other would have the jurisdiction to entertain a Section 11 application. Thus, where an exclusive jurisdiction clause covered and included applications relating to the arbitral proceedings it would predominate over the seat of arbitration clause.

9. Case Title: Direct News Pvt. Ltd. Vs. DTS Travels Pvt. Ltd.

Case Citation: 2025: DHC: 1380-DB

Arbitral Tribunal Is Sole Judge Of Evidence, Court Not Required To Re-Evaluate Evidence U/S 34 Of Arbitration Act

The Delhi High Court held that the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. An award would not be held invalid merely because the award is based on little evidence or on evidence which does not meet the quality of a trained legal mind.

Also, the Court held that it is not required to reappreciate or reevaluate the evidence and reagitate the disputes under Section 34 of the Arbitration & Conciliation Act, 1996.

10. Case Title: IRCON International Limited vs M/S PNC-Jain Construction Co (JV)

Case Citation: FAO(OS) (COMM) 54/2023, CM APPL. 39274/2024

Application U/S 34 Of Arbitration Act Not Maintainable If Not Filed With Copy Of Arbitral Award

The Delhi High Court held that an application under Section 34 of the Arbitration and Conciliation Act, 1996 is non-maintainable if it is not accompanied by a copy of the impugned award. The court held that the filing of the award is not a mere procedural requirement but a mandatory prerequisite for invoking the court's jurisdiction under Section 34.

The Division Bench referred to its decision in *Pragati Construction Consultants v. Union of India.* The Court in this case noted that a challenge to an arbitral award is maintainable only on limited grounds. The Full Bench held that none of these conditions can be assessed unless the arbitral award itself is placed before the court. It held that the filing of the award along with the application under Section 34 is not a mere procedural formality but an essential requirement.

11. Case Title: NTPC Ltd. Vs. Starcon Infra Projects India Pvt. Ltd.

Case Citation: 2025: DHC: 1572

Order Passed U/S 23(3) Of Arbitration Act Is Procedural & Not An Interim Award, Cannot Be Challenged U/S 34 Of Arbitration Act

The Delhi High Court held that an order dismissing an application under Section 23(3) of the Arbitration & Conciliation Act is only a procedural order and does not qualify as an 'interim award' amenable to challenge under Section 34 of the Arbitration & Conciliation Act.

The court relied on the judgment in *Satwant Singh Sodhi v. State of Punjab & Ors. (1999)* and held that for any order to be termed as an interim award, it must finally determine the rights of the parties and any order which does not give any imprimatur on the rights of the parties cannot be termed as an interim award.

Then, the court rejected the petition and held that an order dismissing an application under Section 23(3) of the Arbitration & Conciliation Act is only a procedural order and does not qualify as an 'interim award' amenable to challenge under Section 34 of the Arbitration & Conciliation Act.

12. Case Title: Bentwood Seating System (P) Ltd. vs Airport Authority Of India & Anr

Case Citation: 2025: DHC: 1636

Serious Allegations Of Fraud Constituting Criminal Offense Are Non-Arbitrable

The Delhi High Court held that the allegations of fraud which are extremely serious and potentially constitute a criminal offense are non-arbitrable. The court noted that the plea of fraud is of such a nature that it impacts the entire contract, including the arbitration agreement. Consequently, the court held that such a dispute is not arbitrable in nature.

The High Court referred to the decisions of the Supreme Court in *A. Ayyasamy v. A. Paramasivam & Ors [(2016) 10 SCC 386] and Vidya Drolia and Others v. Durga Trading Corporation [(2021) 2 SCC 1].* The Supreme Court in these cases clarified the distinction between arbitrable and non-arbitrable disputes involving fraud. The Supreme Court held that while allegations of fraud simpliciter could be adjudicated by an Arbitral Tribunal, serious allegations of fraud should be best left to the Civil Courts. The High Court noted that in this case the allegations of fraud were not simple but involved complex issues. It noted that this included the fabrication of documents from foreign entities and the involvement of international witnesses. The court further held that the Civil Court is better equipped to handle such matters, given the need to summon witnesses from outside the country and the involvement of governmental authorities.

13. Case Title: M/S Smartschool Education Pvt. Ltd. Vs M/S Bada Business Pvt. Ltd & Ors

Case Citation: ARB.P. 1178/2024

Withdrawal Of MSMED Council Application Does Not Preclude Arbitration U/S 11, Even Without Council's Response

The Delhi High Court held that withdrawal of an application before the MSMED Council does not bar a party from seeking the appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, even in the absence of any corresponding response from the MSMED Council.

Further, the High Court held that the absence of correspondence from the MSMED Council accepting the withdrawal does not bar the Petitioner from approaching the High Court under Section 11 of the Arbitration Act.

14. Case Title: Incite Homecare Products Pvt. Ltd. Vs. R K Swamy Pvt. Ltd. Erstwhile RK Swamy BBDO Pvt. Ltd.

Case Citation: FAO 46/2025, CM APPL. 11874/2025 & CM APPL. 11875/2025

Time Spent Before 'Wrong' Court Excluded U/S 14 Of Limitation Act While Calculating Limitation Period U/S 34 Of Arbitration Act

The Delhi High Court held that during the calculation of the limitation period of three months for the application under Section 34(1) of the Act, the time during which the applicant was prosecuting such application before the wrong court is excluded. Court noted that the proceedings in the wrong court should be bona fide, with due diligence.

The court in present case observed that the District Judge had failed to consider the aspect of exclusion of time in accordance with Section 14 of the Limitation Act, 1963. Further, the court also relied on the judgment in *Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt.*, wherein the Supreme Court distinguished the scope and ambit of Section 5 vis-a-vis Section 14 of the Limitation Act, 1963.

Additionally, the court also relied on the judgment in *Kirpal Singh v. Government of India,* wherein the proposition of law was reiterated that the relief can also be claimed under Section 14 of the Limitation Act, 1963, despite an appeal being barred by virtue of Section 34(3) of the Act.

15. Case Title: Delhi Metro Rail Corporation Ltd. Vs. HCC Samsung JV

Case Citation: 2025: DHC: 1224

When Application U/S 33 Of A&C Act Is 'Disguised Review', Limitation For Challenging Award U/S 34 Cannot Be Extended

The Delhi High Court held that if the application under Section 33 of the Arbitration and Conciliation Act, 1996 is

purely an application for review, then the person seeking to challenge the award cannot avail of the time taken between the filing of the application under Section 33 and the date of disposal for calculating the period to challenge the award. The court stated that Section 33 cannot be allowed to be used as a tool to prolong limitation under Section 34, as it would undermine the legislative intent behind Section 33.

The Court referred to the judgments in *Gyan Prakash Arya v. Titan Industries Ltd. (2023), State of Arunachal Pradesh v. Damani Constructions (2007) & Vidhur Bhardwaj v. Horizon Crest India Real Estate (2022).*

The court observed that the legislative intent behind Section 33 was to permit rectification of typographical and computational mistakes and nothing more. It held that if the application under Section 33 is purely an application for review, then the person seeking to challenge the award cannot avail of the time taken between the filing of the application under Section 33 and the date of disposal for calculating the period to challenge the award.

The court stated that Section 33 cannot be allowed to be used as a stratagem for prolonging limitation under Section 34. It observed that permitting time taken in disposal of application under Section 33, which is in the nature of a review, will create a situation where such applications are used by vexatious parties to delay challenging an award.

The court held that:

"A review of the Award is unequivocally proscribed by the Act. Such an approach subverts the purpose of Section 33, rendering the application ineligible for the benefit of an extended limitation period under Section 34(3)."

HIMACHAL PRADESH HIGH COURT

1. Case Title: Gopinder Singh and Ors. Vs. The Land Acquisition Officer Cum Competent Authority (SLAU) and Anr.

Case Citation: 2025:HHC:6238

Arbitrator's Mandate Can Be Extended If Non-Completion Of Proceedings In 12 Months Is Due To Delays Not Attributable To Petitioner

The Himachal Pradesh High Court held that the mandate of the Arbitrator can be extended under Section 29A of the Arbitration and Conciliation Act, 1996 (Arbitration Act) if the arbitral proceedings are not completed within 12

months due to reasons not attributable to the petitioner, as failing to do so would cause grave prejudice to the petitioner.

The Court referred to the judgment by the Supreme Court in *TATA Sons Pvt. Ltd.(Formerly TATA Sons Ltd.) vs. Siva Industries and Holdings Ltd. and others (2023)* wherein it was held that *"in terms of Section 29A(4), in case the arbitral award was not rendered within the twelve or eighteen month period as the case may be, the mandate of the arbitrator(s) would stand terminated, unless on an application made by any of the parties, the court extended time on sufficient cause being shown."*

Similarly, the Supreme Court had held in Rohan Builders (India) Private Limited versus Berger Paints India Limited (2024) that under Section 29A(5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension mechanically on is not filing granted of the application.

In the present case the court concluded that once the Arbitrator has permitted parties to participate in the proceedings even after expiry of 18 months, the Arbitrator cannot late say that he cannot proceed with the arbitral proceedings since his mandate stood terminated. Such action of the Arbitrator would prejudice the parties which defeats the principle of *"Actus Curiae Neminem Gravabit".*

JAMMU AND KASHMIR AND LADAKH HIGH COURT

1. Case Title: Meena Kumari vs Sainik Cooperative House Society Ltd

Case Citation: Arb P No.28/2024

Party Cannot Be Forced To Accept Arbitrator Who Has Conflict Of Interest, Violates Principles Of Natural Justice And Fair Trial

The Jammu and Kashmir High Court held that a party could not be forced to accept an arbitrator who has a conflict of interest, as the same would violate the principles of a fair trial. In the present case the court held that the Perpetual Lease Deed, as well as the Byelaws, which provide for the Registrar, Cooperative Societies to be the sole arbitrator for adjudicating disputes between the petitioner and the department, would be against the law.

The Court observed that in the present case, the Registrar, who was appointed as the sole arbitrator under the lease deed, was the head of the respondent cooperative society, and the possibility of bias on his part could not be ruled out.

KARNATAKA HIGH COURT

1. Case Title: Starlog Enterprises Limited vs. Board of Trustees of New Mangalore Port Trust

Case Citation: Civil Misc. Petition No. 372 Of 2023

Arbitration Clause Cannot Be Invoked Again Over Matters Which Have Already Been Adjudicated

The Karnataka High Court has said the Arbitration clause in the lease agreement cannot be invoked for matters that have already been adjudicated upon and concluded by both the Arbitral Tribunal and the competent courts.

The court emphasized that this case involves post-award developments under Section 34 proceedings, where the award has been conclusively set aside.

Court said *"It is a well-established legal principle that once an award is set aside, the parties may ordinarily invoke the arbitration clause anew by resorting to Section 21 of the Arbitration and Conciliation Act. However, this principle is inapplicable here because the issues raised by the petitioner were already adjudicated upon by the Arbitrator and subsequently addressed in Section 34 proceedings, with the findings being affirmed by the Hon'ble Apex Court. The contention of the petitioner that since the entire award was set aside, their right to invoke arbitration under Section 21 still subsists is misconceived."*

Furthermore the Court held, *"The findings under Section 34 proceedings have a direct bearing on the maintainability of the present civil miscellaneous petition. The Court, while adjudicating Section 34 proceedings, unequivocally addressed the pertinent issues, and these findings remain binding upon both parties."*

The Court also rejected the assertion of the petitioner that the setting aside of the entire award revives their right to seek fresh arbitration.

2. Case Title: M/S Enmas GB Power Systems Projects Ltd vs Micro & Small Enterprises Facilitation Council & Anr.

Case Citation: 2025:KHC:11298

MSME Council Cannot Pass Award On Account Of Failure Of Conciliation Proceedings, Has To Refer Matter To Arbitration

The Karnataka High Court has held that the Micro and Small Enterprises Facilitation Council cannot pass an award on account

of conciliation having failed without referring the matter to arbitration.

The Court held thus while allowing the petition filed by M/s Enmas GB Power Systems Projects Ltd. It said, *"The matter is remitted to the Karnataka Micro and Small Enterprises Facilitation Council, to formally terminate the conciliation proceedings and thereafter take a decision whether it intends to conduct the arbitration proceedings by itself or refer the matter for arbitration to be held by an institution."*

3. Case Title: Mr. Ramu Nagabathini Versus Developer Group India Private Limited

Case Citation: 2025:KHC:9314-DB

Whether Rights In Favor Of Third Party Are Created In Property Which Is Subject Matter Of Arbitration Cannot Be Decided Under Writ Jurisdiction

The Karnataka High Court has held that whether rights in favor of a third party based on sale deeds have been created in the property, which is the subject matter of arbitration, cannot be decided by the court under writ jurisdiction.

PATNA HIGH COURT

1. Case Title: M/s Pramila Motors Pvt. Ltd. versus M/s Okinawa Autotech International Pvt. Ltd.

Case Citation: Request Case No.53 of 2024

In Absence Of Separate 'Seat' Clause In Arbitral Agreement, Court Mentioned In 'Venue' Clause Has Exclusive Jurisdiction

The Patna High Court held that in the absence of any clause in the agreement under consideration, which speaks of the "venue" being Delhi, there cannot be any other inference or intention of the parties for the "venue" and the "seat" being different.

Additionally, the court noted that the agreement in question does not mention the "seat" of arbitration but only mentions the "venue" for arbitration, which shall be at New Delhi. Thus, Delhi High Court only shall have the jurisdiction to adjudicate the present request.

The court relied on the judgment in *Brahmani River Pellets Limited vs. Kamachi Industries Limited, (2020)*, wherein the court held that where the contract specifies the jurisdiction of a Court at a particular place, only such Court will have the jurisdiction to deal with the matter and it would be presumed that the parties intend to exclude all other Courts. If the parties agree that the "venue of

arbitration" shall be at a particular place, the intention of the parties is to exclude all other Courts.

TELANGANA HIGH COURT

1. Case Title: M/s. Corvine Chemicals and Pharmaceuticals Private Limited vs. Srinivasulu Kanday

Case Citation: COMCA.No.40 of 2024

S.17 Of Arbitration Act Casts Weighty Burden On Party To Persuade Court To Hold Onto S.9 Proceedings After Formation Of Tribunal

The Telangana High Court has held that the 2015 amendment to the Arbitration and Conciliation Act grants a bouquet of protections to a party during the course of arbitral proceedings. It clarified that section 9 (3) restricts a party from seeking interim protection before a Court, once a tribunal has been constituted. After the amendment, once the Tribunal has been constituted, the parties can avail of the protection under section 17 by applying to the Tribunal.

The Bench further explained that the only exception to the rule under section 9(3) would be if the Court had already dealt with an application under section 9(1) on merits.

"Section 9(3) aims to prevent multiple levels of adjudication for the same relief and encourages a forward-looking momentum for dispute-resolution after constitution of the Arbitral Tribunal. The only break in that momentum is where the section 9 Court has already dealt with the application under section 9(1) on merits. This creates an exception to the bar under section 9(3) - that the Court shall not entertain the 9(1) petition once the Arbitral Tribunal has been constituted."

2. Case Title: M/s Singareni Collieries Company Ltd vs M/S H.B.T Gmbh

Case Citation: COMCA No.3 of 2025

Anti-Arbitration Suit Giving Short-Delay To Sec 16 A&C Act Is Hit By Order 7 Rule 11(d) Of CPC

The Telangana High Court has reiterated and clarified that suits initiated before Civil Courts to curb arbitration proceedings ignore section 16 of the Arbitration and Conciliation Act,1996, and deserve to be rejected under Order 7, Rule 11(d) as being barred by statute.

The Division Bench noted that section 16 of the A&C Act, lays down the principle of kompetnse-kompetenz and bestows the Tribunal the power to hear objections with respect to the existence or validity of the Arbitration Agreement.

"The doctrine of kompetenz-kompetenz implies conferment of this very power on the Arbitral Tribunal and intends to minimise judicial intervention in the arbitral process."

The High Court reiterated that an 'hands-off' approach should be taken by the Civil Courts, in arbitration matters.

"In essence, the threshold tests for an Anti-Arbitration injunction are exacting and are rarely entertained or applied by the Courts, given the all-pervasive remedy under section 16 of the 1996 Act," the Court reiterated.

3. Case Title: The State Of Telangana vs IHHR Hospitality Private Limited

Case Citation: Writ Petition No.1013 of 2025

Order Rejecting Jurisdictional Objections U/S 16 Of Arbitration Act Can Be Challenged U/S 34, Not Under Writ Jurisdiction

The Telangana High Court held that an order rejecting jurisdictional objections under Section 16 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) can only be challenged under section 34 of the Arbitration Act after an award is passed, and no writ petition against such an order can be entertained.

The Court referred to the judgment of the Delhi High Court in *Cadre Estate Pvt. Ltd. vs. Salochna Goyal and Ors. (2010)* held that a party may challenge an Arbitrator's jurisdiction under section 16 of the Arbitration Act, but if the challenge is rejected, it must wait until the award is made. As per section 37(2) of the Arbitration Act, an appeal is allowed only when jurisdictional objections are allowed and not when rejected therefore the Act explicitly requires an aggrieved party to wait until the award is passed before challenging it under section 34 of the Arbitration Act.

Furthermore the Court referred to the judgment of the Delhi High Court again in *IDFC First Bank Ltd. vs. Hitachi MGRM Net Ltd.(2023)* held that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained again an order rejecting the jurisdictional objections under section 16 of the Arbitration Act.

Based on the above, in the present case, the court held that since the Sole Arbitrator provided justification for the conclusion, there was no perversity in the order. However, this does not mean that the conclusion on limitation is correct on merits. The Petitioners may challenge the

limitation objection if the Arbitral Award is rendered against them in a petition under section 34 and further in appeal under section 37 of the Arbitration Act.

Accordingly, the present writ petition was dismissed.

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