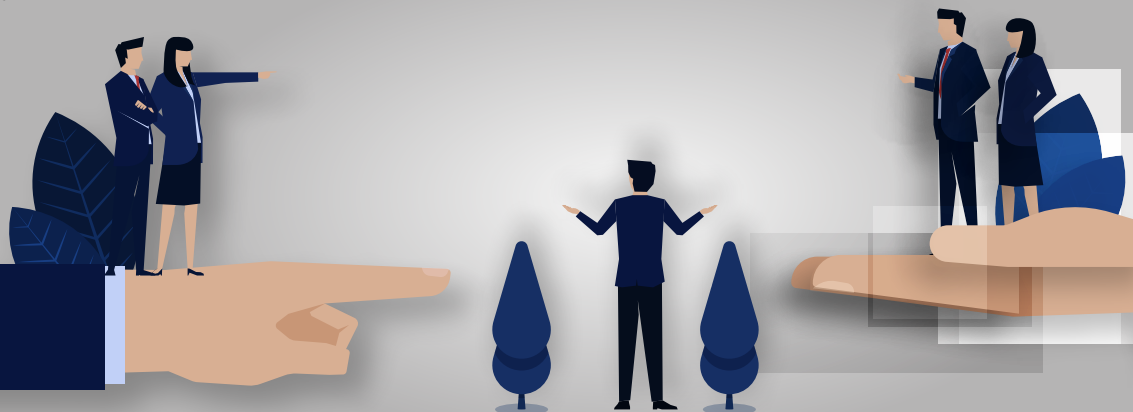




May 2024



Arbitration Newsletter – May 2024

It gives us immense pleasure to circulate the twenty-fifth edition of the Arbitration Newsletter of Shardul Amarchand Mangaldas & Co.

In this edition, we have analysed the impact of recent arbitration related judgments of the Supreme Court of India and Indian High Courts.

We are pleased to share that the Chambers and Partners Global Guide 2024 ranked the Dispute Resolution: Arbitration practice of Shardul Amarchand Mangaldas & Co as a 'Band 1 Practice'. It also recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** as an 'Eminent Practitioner', **Tejas Karia (Partner and Head, Arbitration)** as a 'Band 1 Lawyer' and 'Ranked Lawyer', and **Ila Kapoor (Partner)** as a 'Ranked Lawyer'.

Chambers and Partners Asia-Pacific Guide 2024 ranked the Dispute Resolution practice of Shardul Amarchand Mangaldas & Co as a 'Band 1 Practice'. It also recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** as an 'Eminent Practitioner', **Tejas Karia (Partner and Head, Arbitration)** as a 'Band 1 Lawyer', **Siddhartha Datta (Partner)** as a 'Spotlight' and 'Up & Coming' Ranked Lawyer and **Ila Kapoor (Partner)** as a 'Ranked Lawyer'.

Chambers and Partners, 2012-24 ranked the Dispute Resolution practice of Shardul Amarchand Mangaldas & Co as a 'Band 1 Practice' for a decade.

The 17th edition of the Global Arbitration Review (GAR) 100 ranked Shardul Amarchand Mangaldas & Co among the top international arbitration practices in the world.

The Legal 500-Asia Pacific 2024 ranked the Dispute Resolution: Arbitration practice of Shardul Amarchand Mangaldas & Co as a 'Tier 1 Practice'. It recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** in the 'Hall of Fame' and **Tejas Karia (Partner and Head, Arbitration)** as a 'Leading Individual'.

Who's Who Legal: Arbitration 2024 identified **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)**, **Tejas Karia (Partner and Head, Arbitration)** and **Ila Kapoor (Partner)** as 'Recognised Lawyers'.

The ALB India Awards 2024 recognised Shardul Amarchand Mangaldas & Co as the 'Law Firm of the Year' for its Arbitration practice.

The India Business Law Journal's 2023-24 A-List identified **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** as a 'Legal Icon' and also recognised **Tejas Karia (Partner and Head, Arbitration)** as part of the List.

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Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution) entered Business Today's Most Powerful Women (MWP) Hall of Fame for being a MPW winner more than seven times. She was also recognised as a 'Legacy Builder' by BW Legal World Most Influential Women in Law 2024.

Ila Kapoor (Partner) was a recipient of the Lexology Client Choice Awards 2024.

Juhi Gupta (Principal Associate) was selected as a Group Advisor in the 11th cycle of the Young ICCA Mentoring Program for 2024-25.

Yashna Mehta (Principal Associate) received the 30-under-30 Award for top lawyers and legal influencers by BW Legal World. She has also been appointed as an Editor of the Indian Review of International Arbitration.

We hope you enjoy reading this edition and find it useful to your practice.

Arbitration Case Law Updates

High Court of Delhi affirms that arbitral tribunals should scrutinise and form their prima facie opinion on the admissibility, relevance, or materiality of the evidence before allowing an application under Section 27 of the Act¹

Brief Facts

The Steel Authority of India Limited ("**Petitioner**") chartered a vessel named 'MV PEACE GEM' for cargo transport from DTA Terminal New Port News, USA to the Indian ports of Vishakhapatnam and Haldia. Uniper Global Commodities ("**Respondent**") had ownership of the vessel.

Disputes arose between the parties, leading to arbitration under the Rules of the Indian Council of Arbitration, wherein the Respondent claimed demurrage charges from the Petitioner for the vessel's stay at Haldia Port from 7 May 2019 to 20 May 2019. The Petitioner denied the demurrage claim on the grounds that the vessel had infrastructural damages that rendered it unfit to berth. The River Pilots at the Haldia Dock Complex refused to board the vessel as the pilot ladder on the starboard side of the vessel was damaged. An email from the Kolkata Port Trust dated 19 May 2019 confirmed that the River Pilots refused to board the vessel due to the damaged pilot ladder. The Petitioner sought the arbitral tribunal's approval to move the court for assistance in taking evidence from the concerned officer of Kolkata Port Trust who issued the email, under Section 27 of the Arbitration and Conciliation Act, 1996 ("**Act**").

The tribunal, in its order dated 13 April 2023, allowing the application, stated as follows: "[...] *the role of the Tribunal under Section 27 of the Arbitration & Conciliation Act, 1996 is limited and at this stage, Tribunal is not required to go into relevance or materiality of the evidence sought to be produced*". The tribunal further granted permission to file the necessary petition. Subsequently, the Petitioner filed the petition under Section 27 of the Act before the High Court of Delhi ("**Court**") seeking directions for this witness to appear before the tribunal and adduce evidence directly. Before the Court, the Petitioner *inter alia* contended that:

- (i) At the stage of admission/denial of documents in the arbitral proceedings, the Respondent had denied the authenticity of the email dated 19 May 2022. This necessitates the testimony of an independent third party.
- (ii) The tribunal's decision indicated a *prima facie* consideration and application of mind. The tribunal can use its discretion under Section 19 of the Act to conduct the proceedings in any manner it considers appropriate, which includes deferring the decision on the relevance and materiality of the evidence.

Conversely, the Respondent made the following submissions:

- (i) The Court should refrain from issuing orders under Section 27 of the Act if it is of the view that the tribunal's decision shows a complete non-application of mind or misconception of law.

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- (ii) The tribunal is required to pass a reasoned order, even if brief and *prima facie*, and cannot act mechanically, without scrutinising the relevance of the evidence.
- (iii) The Petitioner failed to establish the relevance of the evidence and did not place any material on record for the Court to examine the relevance or materiality of the evidence.

Issue

Whether the tribunal, before granting the permission under Section 27 of the Act, should have delved into the *prima facie* relevance and admissibility of the evidence?

Judgment

The Court observed that the orders of an arbitral tribunal are not to be ordinarily disturbed in a petition under Section 27 of the Act since the court is not hearing an appeal against the tribunal's decision. However, the Court noted that in the present case, the order passed by the tribunal was a non-speaking order, based on a misconception of law that the tribunal is not bound to scrutinise, even *prima facie*, the relevance or materiality of the evidence sought to be produced, before allowing the Petitioner's application under Section 27 of the Act.

Therefore, the Court held that an application under Section 27 cannot be allowed mechanically and should involve at least a *prima facie* scrutiny by the tribunal of the evidence being produced. Relying on **Hindustan Petroleum Corpn. Ltd. v. Ashok Kumar Garg**,² the Court stated that the tribunal would have to apply its mind to determine the relevance of the evidence in question.

The Court further reiterated that it is not its role to assess the importance or relevance of the evidence sought to be produced by the Petitioner. The authority granted to the court under Section 27 is non-adjudicatory when read with Section 5 and Section 19 of the Act. Instead, the responsibility for such an evaluation should rest with the arbitral tribunal, and the court is merely empowered to execute the request of the tribunal. To substantiate this point, the Court relied on **Thiess Iviinecs India v. NTPC Limited**³ and **Dilip v. Errol Moraes**.⁴

Thus, the Court rejected the petition and directed the tribunal to consider, even if on a *prima facie* level, the relevance or materiality of the evidence before permitting the Petitioner to seek assistance from the Court.

Analysis

The Court's decision underscores the principle that an arbitral tribunal must examine the relevance or materiality of evidence sought to be produced before allowing applications under Section 27 of the Act. By mandating the tribunal to evaluate the *prima facie* relevance of the evidence, it serves to deter unwarranted or unrelated requests for court intervention, thus enhancing the efficiency of the arbitration process. This principle clarifies the tribunal's duty to exercise discretion and admit only relevant evidence, thereby fostering the efficacy and credibility of the arbitration process.

Supreme Court upholds the group of companies doctrine for binding non-signatories to arbitration⁵

Brief Facts

On 14 December 2010, Cox and Kings Ltd. ("**C&K**") entered into a software licensing agreement with SAP India Pvt. Ltd. ("**SAP India**"). SAP India specialises in creating and selling software to aid companies in marketing, finance, human resources, and other areas of interest for large businesses. In October 2015, as C&K began developing its own e-commerce platform, SAP India approached them with an offer to install a new software. The two companies entered into three new agreements to use SAP India's 'Hybris Solution' software. All four agreements together constituted the contract between the parties ("**Contract**"). One of the agreements, the General Terms and Conditions Agreement ("**GTC**"), contained an arbitration clause. The two companies agreed to resolve future disputes through arbitration. They also agreed to be bound by the Act and conduct any future arbitrations in Mumbai. The project to implement the Hybris Solution software faced difficulties. C&K then reached out to SAP

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SE — the main branch of SAP based in Germany — and requested their assistance. SAP SE created a team of global experts and effectively took over the project. However, the project failed to get off the ground despite repeated extensions. Owing to issues in the implementation of the Hybris Solution software, C&K rescinded the contractual framework. As a result, SAP India withdrew all the necessary resources. Aggrieved by this, C&K demanded a refund of INR 450 million from SAP India. In response, SAP India issued a notice of arbitration under the GTC to commence arbitration proceedings, claiming that C&K wrongfully terminated the Contract and demanded INR 170 million as payment.

The arbitration proceedings were adjourned in November 2019 by the National Company Law Tribunal, Mumbai as C&K was facing insolvency proceedings. Despite looming bankruptcy, C&K sent a notice to SAP India and initiated a fresh arbitration. This time, C&K sent a notice to SAP SE as well to make them a party to the arbitration even though SAP SE was not a signatory to the Contract. SAP India was a subsidiary of SAP SE and was fully owned by them. When SAP India did not appoint any arbitrator, C&K approached the Supreme Court (“**Court**”) under Section 11 of the Act and requested the Court to appoint an arbitrator. C&K claimed that SAP SE could be included as a party to the arbitration even though they did not sign any of the agreements. C&K argued that SAP SE took full responsibility of the project and gave their implied consent to be bound by the Contract.

On 6 May 2022, a 3-judge bench referred the case to a 5-judge Constitution Bench of the Court, expressing concerns regarding the applicability of the group of companies doctrine *vis-à-vis* the Act.

Issues

Issue (i): Whether the Act allows joinder of a non-signatory as a party to an arbitration agreement?

Issue (ii): Whether the group of companies doctrine is valid and applicable in Indian arbitration law and, if so, under what circumstances and conditions?

Issue (iii): Whether Section 7 of the Act allows for determination of an intention to arbitrate on the basis of the conduct of the parties?

Judgment

Issue (i): The Court decided the reference by holding that a non-signatory to an arbitration agreement can also be bound by such an agreement. It also clarified that the determination pertaining to the group of companies doctrine should not be interpreted to exclude the application of other legal doctrines and principles, such as agency, estoppel, etc.

The Court further observed that the Act does not prohibit the joinder of a non-signatory as a party to an arbitration agreement, provided that there is a defined legal relationship between the non-signatory and the parties to the arbitration agreement, and that the non-signatory has consented to be bound by the arbitration agreement, either expressly or impliedly.

Issue (ii): The group of companies doctrine can be invoked to bind a non-signatory entity within a corporate group to an arbitration agreement if certain factors are satisfied, including: (i) the mutual intent of parties; (ii) the relationship of a non-signatory to a party, which is a signatory to the agreement; (iii) the commonality of subject matter; (iv) the composite nature of transactions; and (v) the performance of the contract. However, the Court cautioned that mere incidental involvement in performance of the contract by the non-signatory is insufficient to infer its consent to be bound by the underlying contract or the arbitration agreement.

Issue (iii): The Court further clarified that Section 7 of the Act does not preclude the determination of an intention to arbitrate on the basis of the conduct of the parties, as long as such conduct is evidenced in writing or by reference to a document containing an arbitration clause. The Court further observed that the principles of alter ego, piercing the corporate veil, or “single economic unit” cannot be the basis for applying the group of companies doctrine.

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Narasimha J., writing a concurring judgment, found that the joinder of a non-signatory as a party to an arbitration agreement is a matter of contractual interpretation, which should be left to the arbitral tribunal to decide in the first instance, unless the court is satisfied that there is a *prima facie* case of no consent or intention to arbitrate on the part of the non-signatory.

The Court observed that its earlier decision in **Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.**⁶ to the extent that it traced the application of the group of companies doctrine through the phrase “*claiming through or under*” in Sections 8 and 45 of the Act, was erroneous. The Court noted that the definition of a ‘party’ under Section 2(1)(h) read with Section 7 of the Act includes both, signatory and non-signatory parties. This is distinct from the concept of ‘persons claiming through or under a party’ to the arbitration agreement.

Analysis

The Court’s judgment provides much needed clarity regarding the applicability of the group of companies doctrine to arbitral proceedings. By holding that the mere requirement of a written arbitration agreement under Section 7 of the Act does not exclude the possibility of binding non-signatories to the agreement, the Court has adopted a contemporary approach, in line with international practices. Simultaneously, it has also sharpened the contours of the doctrine by holding that the concepts of ‘*alter ego*’, ‘*piercing the corporate veil*’ and ‘*single economic unit*’ cannot be the basis for invoking the doctrine, which is a welcome step as it reduces the scope and possibility of abuse of the doctrine.

Following the reasoning in **Chloro Controls** (*supra*), the Court invoked the doctrine in terms of Sections 8 and 45 of the Act to implead the non-signatory entities on the basis that they were part of the same corporate group as the signatory entities, and were therefore, “*claiming through or under*” such parties. By observing that the phrase “*claiming through or under*” only applies to entities acting in a derivative capacity, the Court has altered the basis for invoking the doctrine. Consequently, a party invoking the doctrine must now demonstrate that the non-signatory sought to be bound by the arbitration agreement is a “*party*” under Section 2(1)(h) read with Section 7 of the Act, which the Court clarified, includes non-signatories.

High Court of Delhi partially sets aside an award under Section 34 of the Act insofar as it held that the Respondent was in breach of the contract but failed to award damages to the Petitioner⁷

Brief Facts

MBL Infrastructures Limited (“**Petitioner**”) was awarded a tender by the Delhi Metro Railway Corporation (“**Respondent**”) for construction of a station and accordingly furnished performance bank guarantees. The Petitioner was handed over the construction site partially after a delay of six months. Subsequently, the Petitioner requested for the remaining plot to be handed over, which was denied by the Respondent. The Respondent, thereafter, issued a notice to the Petitioner for *inter alia* the failure to adhere to the work programs. The Petitioner denied this, asserting that there was no delay on its part. Consequently, the Respondent terminated the contract and encashed the bank guarantees. The matter was referred to arbitration.

In its award dated 6 March 2020, the tribunal *inter alia* held that the delay was on the part of the Respondent, that the Respondent was in breach of the contract and thus, the termination of the contract and encashment of the performance bank guarantees were illegal and unjustified. However, the tribunal dismissed the claims of the Petitioner for damages, loss of profits, interest and costs.

Aggrieved by the rejection of its aforesaid claims, the Petitioner filed a petition under Section 34 of the Act before the High Court of Delhi (“**Court**”). The Petitioner sought to set aside the award insofar as it rejected its claims for *inter alia* damages and loss of profits, despite holding that the Respondent was in breach of the contract.

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Issue

Whether the tribunal rightly rejected the Petitioner's claims for damages, loss of profits, interest and costs?

Judgment

The Court reiterated the well settled position that a court does not sit in appeal over an arbitral award and it may only interfere on the limited grounds provided under Section 34(2)(b)(ii) of the Act, i.e., if the award is against public policy, which includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality and existence of patent illegality in the award. The Court thereafter, analysed each rejected claim of the Petitioner as follows:

Damages on idling of machines and loss of overheads, and loss of profits

The Court observed that the tribunal had held that: (i) the delay in completion of the project was attributable to the Respondent; (ii) there were surplus workers deployed by the Petitioner; and (iii) the termination of the contract and the forfeiture of performance security by the Respondent was not in terms of the contract. However, the tribunal refused to award damages to the Petitioner by relying upon the terms of the contract, which only entitled the Petitioner to seek extensions in case of delays.

The Court held that despite the tribunal holding that there is a delay on the part of Respondent as also wrongful termination of the contract, the tribunal was incorrect in not awarding damages to the Petitioner, which is a patent illegality. The Court held that the tribunal incorrectly relied on the clauses, which restricted the Petitioner from claiming damages since such clauses: (i) are not in public interest; (ii) are in violation of Section 23 read with Sections 55 and 73 of the Indian Contract Act, 1872 ("**Contract Act**"); and (iii) cannot restrain the tribunal from awarding damages. It was further observed that since the contract had been terminated, the Petitioner could not take the recourse of seeking extension of time. Accordingly, the award merited interference since it shocked the conscience of the Court.

The Court further held that the contract cannot prohibit the Petitioner from claiming loss of profits in case of wrongful termination. Since the Petitioner had placed on record certain material pertaining to the loss of profits suffered by it, the Court held that the tribunal had wrongly rejected the claim for loss of profits by relying on the clause that purportedly prevented the Petitioner from seeking monetary compensation / damages.

Financial loss due to loss of commercial reputation

The Court held that the tribunal had rightly rejected this claim since the Petitioner had failed to demonstrate that it had suffered actual loss / damages on account of loss of commercial reputation.

Costs of arbitration and interest

The Court held that the tribunal had rightly relied upon the contractual clauses, which provided that the parties shall bear their respective costs and that the parties shall not be entitled to pre-suit and *pendente lite* interest. The tribunal, being a creature of contract, had to act in accordance with the terms of the contract and had rightly rejected the claims for interest.

Setting aside v. modifying award

The Court reiterated the settled principles that various claims of an award can be severed and set aside, insofar as the same are perverse or illegal. However, the same needs to be contrasted with the modification of an award, where the court makes certain changes / modifications, such as modifying the amount of damages / interest etc. The purpose behind not allowing modification is that modification requires an appreciation of evidence, which is not allowed under Section 34 of the Act.

In view of the aforesaid analysis, the Court set aside the award insofar as it rejected the claims for damages and loss of profits, and remitted the same to the tribunal to decide afresh. However, the award required no interference insofar as it rejected the claims for financial loss due to reputational harm, costs and interest.

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Analysis

The Court's decision reiterates the settled principles of law that an award passed by an arbitral tribunal ought not to be interfered with on a routine basis. However, if the award suffers from patent illegality or is contrary to public policy / fundamental policy of Indian law, the same may be set aside. It further highlights that while the tribunal is a creature of contract and has to decide the dispute in terms thereof, the tribunal can read down provisions of the contract which are contrary to public policy.

It further reiterates the distinction between setting aside an award (or a part thereof) and the modification of an award, holding that while a court has the power to set aside and sever a part of the award, it has no power to modify the award.

Accordingly, the aforesaid decision is a good example of the court exercising its jurisdiction to carve out portions of an award which are contrary to public policy, while not intruding upon the overall sanctity given to the arbitral process.

Supreme Court holds that arbitration clauses in unstamped agreements are not void and courts may refer parties to arbitration or appoint arbitrators by relying on such arbitration clauses⁸

Background

As of 2021, two 3-judge benches of the Supreme Court had passed conflicting decisions⁹ on the validity / enforceability of an arbitration clause contained in an unstamped / insufficiently stamped instrument while exercising its powers to appoint an arbitrator under Section 11 of the Arbitration Act. This conflict resulted in the reference to a larger Constitution Bench (of five judges) (**Reference**) in **N.N. Global Mercantile Unique Pvt. Ltd. v. Indo Unique Flame Ltd.**¹⁰ ("**NN Global I**"), which was as follows:

"Whether the statutory bar contained in Section 35 of the Stamp Act, 1899 applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Act, would also render the arbitration agreement contained in such an instrument, which is not chargeable to payment of stamp duty, as being nonexistent, unenforceable, or invalid, pending payment of stamp duty on the substantive contract/instrument?"

The 5-judge bench of the Supreme Court in **N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.**¹¹ ("**NN Global II**"), by a 3:2 majority, held that an arbitration agreement in an unstamped or insufficiently stamped instrument would be void and unenforceable. It further held that even at a pre-reference stage, courts would have to act in accordance with the provisions of the Indian Stamp Act, 1899 ("**Stamp Act**") and could not act upon the arbitration clause contained in the unstamped / insufficiently stamped instrument.

Thereafter, a 5-judge bench hearing a curative petition against a separate judgment on a similar question of law¹² decided to refer the issue to a 7-judge bench of the Supreme Court, on account of the "*larger ramifications and consequences*" of **NN Global II** (*supra*). This resulted in the judgment in *Re: Interplay between the arbitration agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899* ("**Judgment**").¹³

Issue

Whether arbitration agreements contained in unstamped or insufficiently stamped instruments are non-existent, unenforceable, or invalid?

Judgment

The petitioners contended that **NN Global II** (*supra*) does not lay down the correct position of law. A summary of their arguments is as follows:

1. The requirement of stamping does not render an instrument void. It only makes the instrument

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inadmissible in evidence until the defect is cured in accordance with the provisions of the Stamp Act.

2. The non-payment of stamp duty, being a temporary affliction, cannot affect the validity of an arbitration agreement. Even if an instrument containing an arbitration agreement is unstamped or insufficiently stamped, such inadequacy or insufficiency should not derail the appointment of an arbitrator at the referral stage under Section 11(6A) of the Arbitration Act.
3. Requiring courts at the Section 8 or Section 11 stage of the Arbitration Act to examine the issue of stamping will defeat the legislative purpose of minimal judicial interference enshrined in Section 5 of the Arbitration Act.
4. The doctrine of separability recognises that an arbitration agreement is a self-contained agreement, distinct from the underlying contract. Further, an arbitral tribunal is competent to decide on its own jurisdiction (i.e., the competence-competence principle). **NN Global II (supra)** disregarded the principles of separability of the arbitration agreement and the competence-competence principle.

The 7-judge bench of the Supreme Court, by way of the Judgment, unanimously held that:

1. An arbitration agreement contained in an unstamped / insufficiently stamped instrument would not be void, *void ab initio* or unenforceable. However, considering the remit of Section 35 of the Stamp Act, the Court clarified that an unstamped instrument would be inadmissible in evidence, until the defect of non-stamping / inadequate stamping is cured.
2. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must limit its examination to whether an arbitration agreement *prima facie* exists and, if it does, refer the matter to arbitration. Courts hearing applications to refer parties to arbitration or to appoint an arbitrator under the Arbitration Act should not decide questions regarding stamping of the underlying instrument.
3. Once the matter has been referred to arbitration, all objections in relation to stamping of the agreement would be decided by the arbitral tribunal. The arbitral tribunal has the power to hear objections as to stamping of the underlying instrument and impound the instrument if necessary.

In reaching this decision, it overruled **NN Global II (supra)**, along with earlier decisions of the Court that were based on similarly erroneous reasoning.¹⁴

Analysis

The Judgment furthers the trend by Indian courts to adopt a pro-arbitration stance. It limits the scope for judicial interference at a pre-arbitration stage and prevents delays at the hands of recalcitrant parties trying to prolong a dispute or circumvent arbitration. The Judgment also reinforces the viability of arbitration in India as a legitimate alternative to litigation by recognising the powers of arbitral tribunals to examine and impound unstamped / insufficiently stamped instruments.

High Court of Delhi restrains interference under Section 34 of the Act in issues relating to the subjective satisfaction of and interpretation of contractual covenants by an arbitral tribunal¹⁵

Brief Facts

The International Quantum University for Integrative Medicine, Hawaii ("**Respondent**") provides online degrees and certifications to students across the world, under the trade name 'Quantum University' that is duly registered with the Department of Commerce and Consumer Affairs, Hawaii with effect from 2009. 'Quantum University' is also registered as a trademark with the United States Patent and Trademark Office ("**USPTO**"). The Respondent owns the Secondary Level Domain ("**SLD**") 'quantumuniversity' with various domain extensions, such as 'quantumuniversity.com', 'quantumuniversity.net', 'quantumuniversity.education' and 'quantumuniversity.online'.

The State of Uttarakhand enacted the Quantum University Act, 2016 ("**QU Act**") establishing Quantum University ("**Petitioner**"), which was previously known as the Quantum School of Technology,

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Roorkee. After its establishment as a University, the Petitioner registered the domain name 'www.quantumuniversity.edu.in' in 2017.

Aggrieved, the Respondent initiated arbitration proceedings, as provided for in the .IN Domain Name Dispute Resolution Policy (“**INDRP**”). The Respondent sought cancellation of the Petitioner's domain name before the .IN Registry (established under the INDRP) on the ground that it infringed the Respondent's 'quantumuniversity.com' domain name, which was registered at a prior point in time. In its arbitral award dated 4 May 2021 (“**Award**”), the sole arbitrator held *inter alia*, that the Petitioner's domain name, 'www.quantumuniversity.edu.in', infringed the Respondent's SLD and ordered cancellation of the Petitioner's domain name as: (a) it was identical and confusingly similar to the Respondent's SLD; (b) the Petitioner has no legitimate right or interest over the domain name; and (c) it was registered in bad faith.

The Petitioner challenged the Award under Section 34 of the Act before the High Court of Delhi (“**Court**”) on the following grounds:

- (i) The Petitioner is a prior user of the name 'Quantum University', having adopted the name in 2006.
- (ii) The Petitioner has been granted permission by the All India Council for Technical Education to open an institution under the said name.
- (iii) The QU Act established the Petitioner/Quantum University and therefore, the Award renders the Act and its provisions otiose.
- (iv) The University Grants Commission Act, 1956 (“**UGC Act**”) empowers only certain universities/institutions to confer or grant degrees and as such, the Respondent has not been empowered to do so.
- (v) The Award is contrary to the provisions of the INDRP as: (a) the domain names are not identical and/or deceptively similar; (b) the Petitioner has legitimate interests and rights in respect of the domain name since the domain name is in connection with the *bona fide* offering of commonly known goods/services, and does not intend to misleadingly divert consumers; and (c) the registration and use of the domain name by the Petitioner was not in bad faith.

In response, the Respondent submitted that: (a) its objection is not to the use of the name 'Quantum University', but to the use of the SLD, 'quantumuniversity'; (b) the arbitration related to domain name infringement and not trademark infringement; (c) neither the QU Act nor the UGC Act confers the Petitioner with the right to use the domain name 'www.quantumuniversity.edu.in' or prohibits the Respondent from use of 'University' in its domain name/mark; and (d) the domain name 'www.quantumuniversity.com' was registered in 2003, which the Respondent purchased in 2007. The Respondent has been registered “Doing Business As” in Hawaii since 2009 and has been certified to use 'Quantum University' as a trademark by the USPTO.

Issue

Whether the Award *vide* which the sole arbitrator addressed the submissions and interpreted the relevant clauses of the INDRP, suffers from patent illegality or perversity, and/or is contrary to the fundamental policy of Indian law, as would justify interference under Section 34 of the Act?

Judgment

The Court dismissed the petition holding that the scope of interference under Section 34 of the Act is heavily circumscribed, and that the Award did not in any manner suffer from patent illegality or perversity, and was not contrary to the fundamental policy of Indian law.

The Court divided the disputes into two broad parentheses:

- (i) Infirmity on account of reasons under the INDRP: The Court found that the provisions of the INDRP are akin to a contract between the parties. As laid down by the Supreme Court in **Hindustan Construction Company Ltd. v. National Highways Authority of India**,¹⁶ the scope of interference in respect of an arbitrator's interpretation of contractual covenants is limited

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unless a clause has not been considered or its construction by the arbitral tribunal is so perverse that no ordinary person would so interpret that clause.

(ii) Infirmary on account of reasons outside the INDRP:

- (a) The Court held that whether the domain names are deceptively/confusingly similar or whether the Petitioner has legitimate interests, or whether the use and registration were in bad faith, are questions of fact and subjective satisfaction. As such, in the absence of perversity on the face of the Award, the Court cannot embark on an examination of fact to see whether a different conclusion can be arrived at or re-examine and arrive at its own subjective satisfaction. Nevertheless, the Court found that as the difference between both domain names is only the extensions, there is every likelihood of a member of the public confusing them.
- (b) Further, the Award does not compromise the status of the Petitioner in any manner or disentitle it from calling itself 'Quantum University'.
- (c) Relying on **Satyam Infoway Ltd. v. Siffynet Solutions (P) Ltd.**,¹⁷ the Court found that domain name rights have a global character and as such, would be mutatis mutandis applicable to the INDRP. The Court therefore held that it is not permissible for a person to use a domain name which is deceptively similar to the domain name used by another person, even if that other person is situated in a different jurisdiction. Prior registration confers a global right to oppose registration of any deceptively similar domain name by anyone across the internet.

Analysis

The Court restrained the creation of judicial inroads into arbitration. The Court clarified that absent the standard of perversity or illegality relating to the arbitral tribunal's interpretation of contractual aspects, the law firmly proscribes interference and restricts courts from embarking on their own excursive journey into the covenants of the documents. While the Court did consider the factual disputes with respect to the domain names to some extent, it found that with respect to subjective satisfaction and discretion, or where findings reflect an informed decision of the arbitrator, the award is substantially immune from interference. It is settled that courts cannot embark on a *de novo* examination of facts to see whether it is possible to arrive at a different conclusion. By its analysis, the Court has reinforced the limited scope and power inbuilt under Section 34 of the Act in issues relating to interpretation of contractual covenants and subjective satisfaction of the arbitral tribunal. Simultaneously, key observations with respect to the global nature of domain rights and their protection across the internet and borders have also been made.

Supreme Court clarifies the powers of a court while referring a matter to arbitration under Section 8 of the Act¹⁸

Brief Facts

Emerald Acres Private Limited ("**Respondent No. 2**") was established by Late Mr. Shivkumar Daga and his wife, Mrs. Sushma Shivkumar Daga ("**Appellant No. 1**") on 18 April 2006, with the aim of engaging in real estate development activities.

Subsequently, two tripartite agreements dated 31 March 2007 and 25 July 2008 (collectively, referred to as "**Tripartite Agreements**") were executed between Shivkumar Daga, Madhurkumar Ramakrishnaji Bajaj ("**Respondent No. 1**"), and Respondent No. 2, to develop, trade and acquire further properties as agreed upon by the parties. The Tripartite Agreements included arbitration clauses.

Shivkumar Daga passed away on 8 May 2011, leaving his assets to his wife, i.e., Appellant No. 1, and son ("**Appellant No. 2**") (collectively referred to as "**Appellants**") through a will dated 10 February 2011.

Subsequently, the Appellants initiated legal action seeking, *inter alia*, a declaration that a deed of conveyance dated 17 December 2019, be declared null and void, and that the development agreements, dated 17 September 2007, 20 November 2007, 30 November 2007, 3 December 2007 and

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27 February 2008 should be legally terminated. These development agreements find their source in the Tripartite Agreements.

The Respondents filed an application under Section 8 of the Act (“**Section 8 Application**”) to refer the matter to arbitration, asserting that the arbitration clauses in the Tripartite Agreements are the basis for their application. This Section 8 Application was allowed by the trial court. The Appellants challenged the trial court’s order before the High Court of Bombay, (“**High Court**”), which challenge was subsequently dismissed.

Aggrieved by the orders issued by the trial court and the High Court, the Appellants filed an appeal before the Supreme Court (“**Court**”), broadly on the following grounds:

- (i) There is no arbitration agreement between the parties in the conveyance deed or the development agreements.
- (ii) The suit filed is in relation to the cancellation of a document relating to land, which is an immovable property. This results in an action *in rem* and not *personam*. Therefore, the dispute is not arbitrable.
- (iii) The Section 8 Application should not be allowed due to fraud.

Issues

Issue (i): Whether the trial court and the High Court rightly referred the matter to arbitration, despite the lack of an arbitration clause in the conveyance deed or the development agreements?

Issue (ii): Whether the termination of a document relating to immovable property is an action *in rem* and is therefore, not arbitrable?

Issue (iii): Whether there was fraud in the present case?

Judgment

Issue (i): The trial court and the High Court have correctly established that the arbitration clauses in the Tripartite Agreements would cover the dispute raised by the Appellants. The Court also noted that the Tripartite Agreements form the basis for all subsequent agreements. Since the Tripartite Agreements record the intention of the parties to acquire and develop properties, the parties executed the development agreements. Therefore, the matter has been correctly referred to arbitration.

The Supreme Court relied upon **Vidya Drolia v. Durga Trading Corporation**¹⁹ and **NTPC Ltd. v. SPML Infra Ltd.**²⁰ to affirm that the court would only abstain from referring the matter to arbitration under Section 8 or Section 11 of the Act in exceptional circumstances, where it is evident that either the arbitration agreement is not present or the dispute itself is manifestly non-arbitrable.

In the present case, the Court disagreed with the Appellants’ argument that the dispute before the civil suit was non-arbitrable. To substantiate this, the Court relied upon the tests for the non-arbitrability of a dispute laid out in **Booz Allen and Hamilton Inc. v. SBI Home Finance Limited and Ors.**²¹ and **Vidya Drolia (supra)**.

The Court further examined Section 16 of the Act and reiterated that all issues of jurisdiction, including, the existence and validity of an arbitration clause, fall within the purview of the arbitral tribunal. Thus, relying on **Uttarakhand Parv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.**,²² the Court reiterated the tribunal’s authority to determine its own jurisdiction.

Issue (ii): The Court rejected the Appellants’ argument that the cancellation of a document relating to immovable property constitutes an action *in rem*. Relying upon **Deccan Paper Mills v. Regency Mahavir Properties**,²³ the Court held that irrespective of whether the action pertains to a matter seeking cancellation of a deed or a declaration of rights arising from the deed, it would only constitute an action *in personam* and not an action *in rem*. Thus, it could be subject to arbitration.

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Additionally, the Court clarified that relief sought under the Specific Relief Act, 1963 constitutes an action *in personam*.

Issue (iii): The Court dismissed the Appellants' allegations of fraud as they were in relation to internal affairs of the parties having no implication in the public domain.

Analysis

The Court's decision underscores the commitment of Indian courts to reducing judicial intervention in arbitration proceedings and clarifies the stance of the arbitrability of disputes relating to immovable property. It further reaffirms the authority of arbitral tribunals to resolve disputes, and preserves the sanctity of arbitral proceedings.

High Court of Delhi holds that parties cannot rely on non-est filing of a petition under Section 34 of the Act to extend the limitation period²⁴

Brief Facts

An award was passed by the sole arbitrator on 14 March 2019 ("**Award**") in arbitration proceedings between three private parties and the Union of India ("**UOI**"). Against the Award, petitions under Section 34 of the Act were filed by the UOI before the High Court of Delhi ("**Court**"). The UOI also filed supporting applications for condonation of delay of 50/55 days in filing / re-filing the said petitions. The Ld. Single Judge, *vide* judgment dated 18 March 2020, dismissed the condonation applications by observing that the valid filing was beyond the period of 3 months and 30 days prescribed under Section 34(3) of the Act.

Aggrieved by the said judgment, the UOI filed an appeal under Section 37 of the Act.

Issue

When can the filings be considered as validly made for the purpose of calculation of the period of 3 months and 30 days prescribed under Section 34(3) of the Act?

Judgment

The Court held that the limitation period of 3 months plus 30 days is inelastic and inflexible, and any delay of even one day beyond this period cannot be condoned. Section 34(3) of the Act only prescribes the limitation period in respect of filing an application to challenge an award. However, for ascertaining the date of first filing, the nature of defects noted in the application plays a significant role.

The first deficiency in the objections filed under Section 34 of the Act was that the Award was not filed along with the petitions. The Court held that the Act neither specifies any such procedure nor mentions the documents to be accompanied while filing objections against an award. However, the rules for a proper and valid filing have been applied as general principles of law over the years. Thus, defects in filing must not be of such nature that they make the filing hopelessly inadequate or that they fail to hold the character of an application/petition under Section 34 of the Act. The pre-requisite of filing a copy of the impugned award along with the petition under Section 34 of the Act has been emphasised by courts time and again.²⁵

The Court held that the filing of an award is not an empty procedural requirement since in the absence of the award, the grounds on which the objections have been taken cannot be appreciated and considered if they are within the scope of Section 34(2) of the Act. Such instances of filing of objections without the impugned award render the entire objections incomprehensible for consideration under Section 34 of the Act. The award is, therefore, an absolute essential for the court to proceed further, meaning thereby that the court cannot proceed further until the award is filed. The first step would commence only on filing of the award and therefore, the effective date of filing would necessarily be the date of filing of the award in support of the petition.

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The Court further held that a petition under Section 34 of the Act without a prayer to set aside the impugned award cannot be considered as a valid petition as such a petition would merely amount to empty submissions without any relief. Without there being any prayer, it cannot be deciphered what relief is being sought on the basis of averments made in the petition. Thus, without seeking relief, the petition at the outset is not maintainable, rendering it to be *non-est*. The Court held that when the entire content of the petition itself has been changed, it cannot relate back to the first filing.

The Court was of the view that the stringent rules for considering the reasons for delay under Section 34 of the Act are not strictly applicable while considering the explanation for re-filing. The Court observed that there is no time frame prescribed for re-filing once the filing has been done within the given time frame.

The Court held that the date which the petitioner is claiming to be the date of filing is erroneous since the initial filing was *non-est* and the date of second re-filing is beyond the prescribed period under Section 34 of the Act. Any amount of explanation for condoning the delay thereafter is strictly barred under Section 34 of the Act.

The Court concluded that the limitation period under Section 34 of the Act cannot be stretched by parties through dummy filings, which cannot be construed as valid as they are *non-est*. The object of providing a narrow limitation period under Section 34 of the Act was to ensure the expeditious enforcement of awards. The Court held that if such dummy filings are legitimised, then the whole object of providing a strict limitation period would be defeated.

Analysis

It is trite law that the time period provided for filing a petition under Section 34 of the Act is required to be strictly adhered to, so as to ensure that arbitrations remain time bound and commercially prudent. The determination of whether a filing under Section 34 of the Act constitutes a valid filing depends on the specific defects in a petition. In this case, the Court further clarified that a petition would be *non-est* if: (i) the award is not filed; (ii) the prayer is not mentioned in the petition; or (iii) there is substantial increase in the number of pages in the petition.

This judgment is a welcome addition to a series of judgments where courts have consistently adopted a strict approach to address *non-est* filings of Section 34 petitions so as to prevent parties from abusing the process and circumventing the time limit prescribed under Section 34 of the Act.²⁶

High Court of Bombay outlines the restricted scope of a partner's authority to invoke arbitration on behalf of the partnership firm²⁷

Brief Facts

Shailesh Ranka, Shreyas Ranka, Fatehchand Ranka and Shashikala Ranka (collectively, the “Ranka family”), together with KrishnaArya Tech Corp LLP, (“KTC”) were partners in a partnership firm (“Firm”). In early 2018, one Windsor Machines Limited (“Windsor”) entered into an investment agreement with the Firm (“Agreement”). Under this Agreement, Windsor was to invest money that the Firm would then use towards the development of certain technology. The Agreement contained a tiered dispute resolution clause that stipulated a series of steps towards resolving disputes. These included the Firm and Windsor each appointing a neutral person to give a final and binding decision reasonably settling the dispute, failing which the dispute shall be resolved through Mumbai-seated arbitration before a sole arbitrator.

It is the Ranka family's case that Windsor failed to pay its committed amount, forcing the former to raise a dispute. The Ranka family informed Windsor of their nomination of a neutral person. Windsor wrote back, stating that it assumed the neutral person had been nominated on behalf of both the Ranka family and KTC. The Ranka family replied specifying that the neutral person nominated was on their behalf only (thereby indicating that KTC had not joined in the nomination). Windsor failed to appoint its own neutral person. Consequently, the Ranka family issued a notice

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invoking arbitration on its behalf (“**Notice**”) to Windsor. Importantly, this Notice was not also issued on KTC’s behalf. The Ranka family issued a separate notice to KTC invoking arbitration.

Windsor objected to the Notice stating that: (i) it was issued to the exclusion of KTC; and (ii) since the appointment of the neutral person was defective for the same reason, arbitration could not have been invoked.

Aggrieved by this, the Ranka family applied to the High Court of Bombay (“**Court**”) under Section 11 of the Act seeking appointment of an arbitrator (“**Application**”). Both, Windsor and KTC were named as Respondents to the Application. Pertinently, before the Court, KTC submitted that it did not support the Ranka family.

Issues

Issue (i): Whether the pre-arbitral steps under the Agreement had been exhausted?

Issue (ii): Whether the Ranka family had validly invoked arbitration in circumstances where (a) the Firm was the party to the arbitration agreement (and not the partners of the Firm in their individual capacities); and (b) the Notice was not issued on behalf of all the partners of the Firm?

Judgment

Issue (i): The Court opined that the facts of each case would determine whether the mechanism contemplated in a dispute resolution clause has been satisfied or not. In the present case, the Ranka family had complied with the provisions of the Agreement and appointed a neutral person to resolve the dispute. The Court observed that Windsor had not appointed a neutral person. As such, it could not be permitted to claim that the pre-arbitral requirement of the dispute resolution mechanism (i.e., of resolving the dispute by a panel of neutral persons) had not been exhausted.

Issue (ii): The Court observed that the arbitration agreement was between the Firm and Windsor. However, the Ranka family had invoked arbitration and had pursued the Application only on their own behalf and without the concurrence of the other partner in the Firm, KTC. This contravened Section 19(2)(a) of the Indian Partnership Act, 1932 (“**IPA**”), which provides that absent any usage or custom of trade to the contrary, the implied authority of a partner does not empower them to submit a dispute relating to the business of the firm to arbitration.

The Court referred to its decision in *Maharashtra State Electricity Distribution Company Limited v. Godrej and Boyce Manufacturing Company Limited*.²⁸ In this case, the Court held [in light of Section 19(2)(a) of the IPA] that arbitration invoked by a lead partner in a partnership firm in the absence of any express authority by the other partner was not maintainable, and that the arbitrator ought to have dismissed the claims.

In light of its findings on Issue (ii) above, the Court found the Notice to be defective and dismissed the Application.

Analysis

The Court has reiterated the well-settled position that the satisfaction of a pre-arbitration dispute resolution mechanism is a fact specific inquiry. The decision also reinforces the lack of any implied authority of individual partners under the IPA to initiate an arbitration on behalf of a firm without the concurrence of or express authority given by the firm’s other partners. Applying the statutory prescription (which is confirmed by judicial decisions), the Court appositely observed that since the Firm was a party to the arbitration agreement, as opposed to the individual partners, the notice invoking arbitration had to be issued with the concurrence of all partners. Accordingly, the absence of KTC’s concurrence/express authority to issue the Notice rendered it defective and, in turn, vitiated any proceedings under Section 11 of the Act.

Although not relied on by the Court, this decision is in conformity with the Supreme Court’s decision

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under Section 11(6A) of the Act in **Magic Eye Developers (P) Ltd. v. Green Edge Infrastructure (P) Ltd.**²⁹ In this decision, the Supreme Court held that the examination of the existence of an arbitration agreement under Section 11(6A) includes an inquiry into the parties to the agreement. Accordingly, since it was the Firm that was a party to the arbitration agreement, Section 19(2)(a) of the IPA had to be complied with.

High Court of Delhi clarifies definition of “party” and what constitutes service of an award for purposes of calculating limitation under the Act³⁰

Brief Facts

The Ministry of Health & Family Welfare (**MoHFW**) entered into an agreement with M/s Hosmac Projects Division of Hosmac India Pvt. Ltd. (“**Respondent**” / “**Hosmac**”) dated 7 May 2010 (“**Agreement**”) for construction of emergency care services and renovation of VIP Rooms at Dr. Ram Manohar Lohia Hospital, New Delhi (“**RML**”), which is under control of the MoHFW.

Disputes arose between the MoHFW and Hosmac under the Agreement, pursuant to which Hosmac invoked arbitration under the Agreement. The sole arbitrator passed an award dated 20 November 2018 (“**Award**”), awarding an amount of INR 220,509,651/- in favour of Hosmac. This was later reduced to INR 151,166,498/- by way of an order dated 7 January 2019 (“**Corrigendum Order**”), after an application for correction of computation was filed by Hosmac under Section 33(1)(a) of the Act. The MoHFW and RML jointly filed a petition under Section 34 of the Act on 10 May 2019 (“**Petition**”) before the High Court of Delhi (“**Court**”). The Petition sought to set aside the Award and Corrigendum Order. The Petition was accompanied with an application under Section 34(3) of the Act seeking condonation of delay in filing the Petition (“**Application**”).

The Petition was dismissed by a Ld. Single Judge of the Court on 12 September 2019 (“**Impugned Order**”) on account of expiry of the limitation period (“**Impugned Order**”) of three months and 30 days. The MoHFW filed an appeal under Section 37 of the Act (“**Appeal**”) before a Division Bench of the Court against the Impugned Order.

The MoHFW challenged the Impugned Order on *inter alia* the following grounds: (i) the MoHFW became aware of the Award and Corrigendum Order upon receipt of a letter dated 14 March 2019 from RML and the MoHFW was not sent a signed copy of the Award or Corrigendum Order by the arbitrator; and (ii) delivery of an award on an agent/counsel of a party does not amount to proper service on the party under Section 31(5) r/w Section 2(1)(h) of the Act. Therefore, the limitation period would commence from 14 March 2019 such that the Petition would fall within the limitation period. The Respondent argued that the limitation period would start running from the date on which the Corrigendum Order was passed, i.e. 7 January 2019. The Petition was filed on 10 May 2019, which is beyond even the 30 additional days provided for in Section 34(3) of the Act. Further, RML prosecuted the arbitral proceedings on behalf of the MoHFW.

Issue

Whether the delivery of a true copy of the Award and a copy of the Corrigendum Order to an authorised representative of RML would constitute “proper service” upon the MoHFW under Section 31(5) of the Act for the purpose of calculating limitation?

Judgment

The Court held that the limitation period to file a petition under Section 34 of the Act is three months from date of receipt of an award or the date from when a request for correction under Section 33 of the Act is disposed. Section 31(5) of the Act provides that a signed copy of an award shall be delivered to each “party”. “Party” is defined as a party to an arbitration agreement under Section 2(1)(h) of the Act.

The Court referred to the Supreme Court’s decisions in **UOI v. Tecco Trichy Engineers & Contractors**³¹ and **Benarsi Krishna Committee & Ors. v. Karmyogi Shelters Pvt. Ltd.**³² In **Tecco Trichy** (*supra*), the

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Supreme Court held that in order to constitute effective service on the Ministry of Railways, a copy of the award is to be delivered to a person who has knowledge of the arbitration proceedings and is the best person to understand and appreciate the award and to decide whether or not to challenge it. Further, for calculating the date of service for purposes of Section 34(3), the date of receipt by the Chief Engineer, and not the date of receipt by the inward clerk at the office, was relevant for computing the limitation period.

This decision was relied on in *Benarsi Krishna* (*supra*), where the Supreme Court held that “party” is defined as a party to an arbitration agreement under Section 2(1)(h) of the Act. It further clarified that “party” as defined under Section 31(5) r/w Section 2(1)(h) of the Act can only mean the party themselves and not their agent or their advocate. For proper service, only service on the party itself is required.

Accordingly, the Court concluded that a copy of the Award was sent only to the counsel for the parties and the authorised representatives of RML, and not the MoHFW. Since the Agreement was between the MoHFW and Hosmac, the Award ought to have been served on the MoHFW directly and not on RML as RML was not a party to the Agreement. The Court did not agree that service on RML would constitute service on the MoHFW and held that only the MoHFW could challenge the Award.

After analysing the judicial precedents, the Court settled the law on this issue as follows:

- (i) The signed copy of an arbitral award is to be delivered to each party.
- (ii) Delivery should be to a party who is competent to take a decision regarding challenging an award.
- (iii) “Party” does not include an agent/lawyer of such party.
- (iv) Limitation under Section 34(3) of the Act commences when the party “has received the award”.
- (v) If there is an application under Section 33 of the Act, limitation is to be calculated from the date on which such application is disposed of.

Thus, the Court allowed the Appeal, set aside the Impugned Order and directed the matter to be listed before the Ld. Single Judge for a decision on merits.

Analysis

This decision is pivotal for clarifying the position of law with respect to the computation of the limitation period for filing a petition under Section 34 of the Act, especially when there are multiple parties in an arbitration proceeding or one of the parties is a monolithic organisation, such as the government/ministry. In this case, RML was arrayed as Respondent No. 2 since the Agreement was for construction to be carried out in RML. However, RML was not a party to the arbitration agreement, which was solely between the MoHFW and Hosmac. Even if RML was acting on behalf of the MoHFW, it could not be said that service upon RML would constitute effective service upon the MoHFW.

Moreover, the decision also clarifies the law laid down in *Tecco Trichy* (*supra*), wherein it was held that the relevant person to whom an award is to be delivered is a person who has the knowledge of the arbitration proceedings and is the best person to understand and appreciate an award and to take a decision regarding its challenge. This decision is therefore crucial, not only in the context of government entities or ministries, but also in the context of arbitration proceedings involving multiple parties.

High Court of Bombay clarifies that ‘financial institutions’ notified under the SARFAESI Act can invoke arbitration proceedings³³

Brief Facts

Tata Motors Finance Solutions Limited (“**Petitioner**”) filed a petition under Section 9 of the Arbitration Act seeking certain interim measures against the respondents. The Petitioner had advanced certain loan facilities to the respondents for purchasing certain vehicles. Pursuant to the same, Loan-cum-Hypothecation-cum-Guarantee Agreements (“**Agreements**”) were executed between the parties, each of which contained an arbitration clause.

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Subsequently, the respondents defaulted in making timely payments in terms of the above Agreements. It was further noticed that one of the vehicles was sold by the respondents. Accordingly, the Petitioner was constrained to invoke the arbitration clauses in the Agreements and file petitions under Section 9 of the Arbitration Act before the High Court of Bombay (“Court”) since it apprehended that the respondents would either continue using the vehicles despite committing defaults or the vehicles may even be disposed of. Additionally, the Petitioner also filed an application under Section 11 of the Arbitration Act seeking an appointment of a sole arbitrator in terms of the arbitration clause provided under the above Agreements.

The respondents challenged the above-mentioned petitions and application filed by the Petitioner on the grounds that: (i) the Petitioner being a ‘financial institution’ covered under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”) ought to proceed under the SARFAESI Act and the remedy of arbitration cannot be invoked by the Petitioner; (ii) the Petitioner instead ought to approach the Debts Recovery Tribunal (“**DRT**”) by invoking provisions under the SARFAESI Act; and (iii) in **Vidya Drolia** (*supra*) the Supreme Court clarified that in the face of a statutory remedy being available to a party, arbitration proceedings cannot be resorted to, notwithstanding an arbitration clause contained in the agreement executed between parties. To buttress its arguments concerning non-arbitrability of such disputes, the respondents also relied on Section 2(h) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“**RDDB Act**”), which defines ‘financial institution’, and Section 18 of the RDDB Act, which ousts the jurisdiction of any court or authority in relation to matters specified in Section 17 of the RDDB Act, such powers being exercised by the DRT.

On the other hand, the Petitioner contended that it was notified as a ‘financial institution’ only in terms of Section 2(1)(m)(iv) of the SARFAESI Act and not Section 2(h) of the RDDB Act. Therefore, the Petitioner could approach the DRT, if at all, upon crystallisation of the debt recoverable only to utilise the mechanism and machinery provided under the SARFAESI Act. It was further contended that as the provisions of the SARFAESI Act do not provide a mechanism for determination of the debt due, such exercise may be carried out by the arbitral tribunal sought to be constituted in terms of the arbitral clause provided under the Agreements executed between parties.

Issue

Is the Petitioner entitled to invoke arbitration under the Agreements?

Judgment

Based on the submissions advanced, the Court allowed the petitions and application filed by the Petitioner, and rejected the respondents’ arguments on *inter alia* the following grounds:

- (i) The Petitioner was declared as a ‘financial institution’ under Section 2(1)(m)(iv) of the SARFAESI Act, which specifies that an institution notified by the central government shall be a “*financial institution for the purposes of this Act*”. Accordingly, any institution or non-banking financial company notified as a financial institution under such provision is for the purposes of the SARFAESI Act alone.
- (ii) The Petitioner was undisputedly not notified as a ‘financial institution’ under the RDDB Act. Accordingly, the Petitioner would be required to approach the DRT only in terms of the SARFAESI Act and not the RDDB Act.
- (iii) Consequently, the Petitioner could only approach the DRT under the SARFAESI Act for enforcing the recovery mechanism provided thereunder, which may be triggered only based on a crystallised or determined amount or quantum. The entire mechanism and machinery of the SARFAESI Act pertains to enforcement and not to the prior process of determination of the debt due, which is otherwise provided under the RDDB Act.
- (iv) In view of the above, since the mechanism and machinery under the RDDB Act was not applicable to the Petitioner, the exercise of determining and resolving disputes pertaining to the debt due, forms part of the scope of the arbitration which the parties have agreed to by incorporating arbitration clauses in the concerned Agreements.

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- (v) The above position is further supported by Section 37 of the SARFAESI Act, which provides that the application of other laws is not barred. In fact, it provides that the provisions of the SARFAESI Act and the rules made thereunder are in addition to the statutes specifically named in such provision and “any other law for the time being in force”. Accordingly, the Arbitration Act and the SARFAESI Act operate in tandem.
- (vi) An examination of **Vidya Drolia** (*supra*) would also indicate that claims of only financial institutions covered by the RDDB Act are non-arbitrable and thus, even in the presence of an arbitration clause, arbitration could not be resorted to. However, as the Petitioner was admittedly not notified as a ‘financial institution’ under the RDDB Act, the adjudicatory process of arbitration was clearly available with the Petitioner.

Accordingly, the Court granted interim protection to the Petitioner and appointed a sole arbitrator to adjudicate the disputes between the parties.

Analysis

The Court’s decision reiterates the findings in **Vidya Drolia** (*supra*) insofar as it clarifies that claims of only those financial institutions notified under the RDDB Act cannot be determined and disposed of by way of arbitration. The decision provides useful guidance insofar as arbitrability of claims of financial institutions notified under the SARFAESI Act is concerned while also clarifying that the SARFAESI Act and Arbitration Act operate in tandem and are not in conflict with each other.

By creating such jurisprudence, it is expected that more financial institutions notified under the SARFAESI Act shall resort to arbitration, which would facilitate the objective of making India a pro-arbitration jurisdiction.

Supreme Court clarifies that arbitral awards cannot be modified under Sections 34 and 37 of the Act³⁴

Brief Facts

On 29 January 1990, Mr. S.V. Samudram (“**Appellant**”) and the Karnataka State Public Works Department (“**Respondent**”) signed an agreement for the construction of the Chief Conservator of Forests’ office and residence in Sirsi at a cost of INR 1.486 million. The agreement stated that the Appellant would take possession of the construction site on 8 March 1990 and the work assigned needed to be finished by 6 May 1990, excluding the monsoon season. The Appellant contended that the inability of the Respondent to pay bills on time at each step, along with delays brought on by a site change and delayed supply of building supplies, prevented the work from being finished on schedule.

Under the contract, the parties had chosen arbitration as the dispute resolution mechanism for settlement and adjudication of any claims and disputes. The Appellant invoked arbitration against the Respondent and filed a claim for INR 1,806,439/- along with interest payable thereupon @18% per annum. The tribunal allowed nine out of the total 11 claims filed by the Appellant, which totalled to INR 1,468,239/- with interest payable @18% per annum.

The Respondent filed a petition under Section 34 of the Act, challenging the award. The Civil Judge, while deciding the Section 34 petition, modified the award and reduced the awarded amount to INR 371,564/- (25% of the tender amount) with interest payable at 9% per annum (“**Section 34 Order**”).

The Appellant challenged the Section 34 Order under Section 37 of the Act before the High Court of Karnataka (“**High Court**”). The High Court upheld the modification of the arbitral award, dismissing the application filed by the Appellant under Section 37 of the Act (“**Section 37 Order**”). The Section 37 Order was challenged before the Supreme Court (“**Court**”) by way of a Special Leave Petition.

Issue

Whether the modification of the arbitral award by way of the Section 34 Order, and later confirmed by the High Court, was justified by law?

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Judgment

The Court clarified that the legal position as to whether an arbitral award can be modified in proceedings initiated under Sections 34 and 37 of the Act is no longer a matter requiring fresh consideration. Referring to its earlier decision in **National Highways Authority of India v. M. Hakeem and Another**,³⁵ the Court emphasised that a court, when dealing with a petition under Section 34, lacks the authority to modify an arbitral award. The Court further clarified that any attempt to “modify an award” under Section 34 would amount to “crossing the *Lakshman Rekha*”.

The Court, thereafter, referred to its decision in **Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited**,³⁶ wherein the Court clarified the options available to a court while deciding a petition under Section 34 of the Act. In this case, the Court explained that a court may either dismiss the objections filed and uphold the award or set aside the award if the grounds contained in sub-sections (2) and (2-A) of Section 34 are made out.

The Court held that an award could be said to be against the public policy of India in, *inter alia*, the following circumstances:

1. When an award is, on its face, in patent violation of a statutory provision.
2. When the tribunal has failed to adopt a judicial approach in deciding the dispute.
3. When an award is in violation of the principles of natural justice.
4. When an award is unreasonable or perverse.
5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the Act.
6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the court.

In view of the above settled law, it was held that a court, while deciding a petition under Section 34 of the Act, can only go into the merits of the case if the arbitral award is contrary to the public policy of India. In the present case, the Section 34 Order was passed without recording appropriate reasons for examination of merits of the case. Further, the Court emphasised the limited scope under Section 37 of the Act by holding that “[...] *when it comes to the scope of an appeal under Section 37 [...], the jurisdiction of an appellate court in examining the order, setting aside or refusing to set aside an award, is all the more circumscribed [...]*”.

As a result, in the absence of compliance of the Section 34 Order and Section 37 Order with the well laid out parameters and contours of Section 34 and Section 37 of the Act respectively, the Section 37 Order was set aside. Consequently, the award of the arbitrator was restored.

Analysis

The Court reaffirmed the settled legal principle that it is not for a court to modify an arbitral award challenged before it as the only available options are to uphold it or dismiss it. The judgment is also in line with the settled principle of law that an arbitral award can only be set aside on limited grounds. The judgment upholds the principle of party autonomy and limits the interference of the court. It gives confidence to commercial parties who make a conscious choice for their dispute to be resolved before an arbitral tribunal.

It is noteworthy that after this decision, the Supreme Court, in **Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited**,³⁷ on 20 February 2024 referred the issue of whether courts can modify arbitral awards under Sections 34 and 37 of the Act to a larger bench on account of the differing judgments of different courts.

High Court of Delhi binds a non-signatory company to arbitration using the group of companies doctrine³⁸

Brief Facts

M/s Opuskart Enterprises and others (“**Petitioners**” / “**Firm**”) alleged that Mr. Kaushal Kishore Tyagi

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("Respondent"), one of the five partners of the Firm, has misappropriated the funds of the Firm. Accordingly, the Petitioners issued a notice to the Respondent raising a claim of INR 6,050,000/-. The Respondent replied to this notice stating that the partners also hold the position of directors in a company named M/s Opuskart India Pvt. Ltd. ("Company"), and alleged that the Petitioners intended to hijack, usurp and run away with the business of both, the Firm and Company.

Subsequently, the Petitioners invoked arbitration under the partnership deed in which they raised claims against the Respondent to the tune of INR 38.8 million. Since the Respondent did not reply to the notice invoking arbitration, the Petitioners approached the High Court of Delhi ("Court") under Section 11(6) of the Act. The Petitioners alleged that the Respondent has acted in violation of the partnership deed, specifically, the duty of the partners to be just and faithful and render true accounts and full information relating to the Firm to the other partners, and also pay their separate private debts on their own.

The Respondent objected to the petition on the following grounds, namely: (i) the arbitration agreement is invalid as it refers to the Indian Arbitration Act, 1940; (ii) the arbitration agreement is unstamped; (iii) there is a variance in the claimed amounts in the initial notice and the notice invoking arbitration; (iv) claims relating to the company are not arbitrable as the company is not a party to the arbitration agreement; and (v) the claims are barred by limitation.

Issues

Issue (i): Whether the claims relating to the Company are arbitrable?

Issue (ii): Whether the claims are barred by limitation?

Judgment

Issue (i): Firstly, the Court held that the claims/disputes raised in relation to the Company would be arbitrable. The Court stated that the business by the partners is being conducted both, through the Firm and by the Company. This is evidenced by the partnership deed, which was identified to be broad enough to cover all the businesses of the parties to the partnership deed. The Court also noted that the arbitration clause in the partnership deed is itself quite wide and covers disputes and differences between the parties either in respect of the construction, meaning and effect of the deed or a part thereof as well as in respect of the accounts, profits and losses or the business or the rights and liabilities of the partners. Further, the Respondent's reply to the initial notice also clearly acknowledges the fact that the partners had started the Company, which was doing the common business as that of the Firm. The Respondent made repeated references to the Firm and the Company in the reply, which clearly gives the impression that the stand of the Petitioners that the business between the five partners is common, is correct.

Secondly, the mutual intention of signatories and non-signatories can make a non-signatory affiliate or a sister or parent company a party to an arbitration agreement. The Court relied on the Supreme Court's judgment in *Cox and Kings Ltd. v. SAP India Pvt. Ltd. and Ors.*,³⁹ wherein it was held that existence of an arbitration agreement with a non-signatory is a matter of interpretation and construction. In order to do this, the court may consider surrounding circumstances and adopt well-established principles, one of which is the group of companies doctrine, along with additional factors like commonality of subject matter, composite nature of transaction and interdependence of the performance of contracts, which may determine such mutual intent.

Issue (ii): The Court held that the issue of limitation would arise only after the claims are filed, which would have to be considered by the tribunal and decided in accordance with law.

Accordingly, the Court appointed a sole arbitrator under Section 11 of the Act.

Analysis

The decision of the Court broadens the scope of arbitrability of disputes by holding that any

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disputes relating to the business between partners would be arbitrable and reiterating that a non-signatory may be made a party to an arbitration agreement upon evidence of mutual intention of the signatories and non-signatories to this effect.

The judgment lays emphasis on the 'group of companies' doctrine through which, upon proof of mutual intent and other circumstantial evidence, joint liability of an affiliate may be established and/or assumed. However, it must be ensured that the principle of economic independence is not diluted whilst applying this doctrine. It should, thus, not have a boundless application but must be viewed on a case-by-case basis upon strong evidence of the existence of mutual intention of the members of a group to be so bound.

High Court of Delhi clarifies that an arbitral tribunal cannot denude the jurisdiction of courts from entertaining a writ petition on the issue of whether or not the State has been deprived of the revenue of the stamp duty payable on an instrument⁴⁰

Brief Facts

Mrs. Vinnu Goel ("**Petitioner**") had earlier filed a suit bearing C.S. (O.S.) No. 371 of 2017 before the High Court of Delhi ("**Court**"), seeking partition of the suit property and a declaration that the Memorandum of Understanding dated 12 November 2014 ("**MOU**") is null and void. In the said suit, Respondent Nos. 2 and 3 filed an application under Section 8 of the Act seeking reference of the parties to arbitration in terms of the arbitration clause for dispute resolution as provided under the MOU. The said application was allowed by the Court and the parties were referred to arbitration. The Petitioner appealed against this decision before the Division Bench of the Court and simultaneously also filed the present writ petition seeking declaration that the MOU has been incorrectly and insufficiently stamped/endorsed by the Deputy Commissioner, Stamp Registration ("**Respondent No. 1**") and therefore, the same is *non-est* in the eyes of law.

Issues

Issue (i): Whether the Court had jurisdiction to entertain the writ petition?

Issue (ii): Whether the MOU is void for being insufficiently stamped?

Judgment

Issue (i): The Court rejected the Respondents' argument that once the matter is referred for arbitration, the arbitral tribunal can consider all preliminary issues, including the issue of insufficient stamping. The Court held that an arbitral tribunal cannot denude the jurisdiction of the court from entertaining a writ petition on the issue of whether or not the State has been deprived of the revenue of the stamp duty payable on the instrument.

The Court clarified that since the issue of stamping of the MOU is distinct from the adjudication under Section 8 of the Act, the prayer seeking a declaration on the stamping of the MOU is maintainable. The Court delved into Sections 31, 33 and 56 of the Stamp Act, reiterating the intention of the Legislature, which was to prevent deprivation of revenue of the State. Accordingly, the Court upheld its jurisdiction to entertain the writ petition on the basis that the issue of revenue loss to the State was within the jurisdiction of the Court and the same could be examined independently of the subject matter being referred to an arbitral tribunal. However, the Court abstained from deciding the issue on merits and directed the Petitioner to approach the Chief Controlling Revenue Authority, to determine the adequacy of the stamp duty that was to be paid for the MOU.

Issue (ii): The Court, while placing reliance on the judgment passed in **Re: Interplay between Arbitration Agreements** (*supra*) rejected the prayer to set aside the MOU. In the said case, the Supreme Court opined that non-stamping or inadequate stamping is a curable defect and the same does not render the non-stamped or inadequately stamped agreements as void or void ab initio or unenforceable.

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Analysis

The Court's decision clarifies that the issue of stamping is distinct from the issue pertaining to referring the parties to arbitration. Therefore, even if a matter is referred to arbitration, an arbitral tribunal cannot denude the jurisdiction of the court from entertaining a writ petition on the issue of whether or the State has been deprived of the revenue of the stamp duty payable on the instrument. The decision clarifies that parties have independent remedies against the non-stamping of an agreement, i.e., to approach the revenue authorities and/or the High Court under Article 226 of the Constitution, rather than referring such issues to the arbitral tribunal.

High Court of Bombay clarifies that “Court” under Section 29A of the Act is the court that has appointed the arbitrator⁴¹

Brief Facts

Disputes arose between K.I.P.L. Vistacore Infra Projects J.V. (“**Petitioner**”) and the Municipal Corporation of the City of Ichalkarnji (“**Respondent**”) under a work order. Subsequently, pursuant to a resolution passed by the Respondent to resolve the disputes by arbitration, a Division Bench of the High Court of Bombay (“**Court**”) appointed a sole arbitrator. This appointment was made in a writ petition filed by the Petitioner before the Court, challenging the Respondent's termination of the work order. The Division Bench directed the arbitration to be conducted in Kolhapur and the arbitrator to provide the award within a stipulated time-frame. Thereafter, due to the COVID-19 pandemic, the arbitrator's mandate was extended by six months by parties' mutual consent. Upon expiry of the extended period, the Petitioner filed a petition under Section 29A of the Act before the Single Judge of the Court for a further extension of six months to conclude the arbitration proceedings (“**Petition**”).

The Respondent objected to the Court's jurisdiction to hear the Petition on the ground that the “**Court**” in Section 29A of the Act is the “**Court**” as defined under Section 2(1)(e) of the Act, which means the principal civil court of original jurisdiction in a district. Accordingly, as per the Respondent, the competent court was the Principal Civil Court of Original Jurisdiction at Pune.

Issue

What is the import of the term “**Court**” in Section 29A(4) of the Act and is the Court or the principal civil court of original jurisdiction (at Pune) competent to extend the arbitrator's mandate?

Judgment

The Court noted that in domestic arbitrations, “**Court**” under Section 2(1)(e) of the Act means the principal civil court of original jurisdiction in a district, including the High Court exercising its original civil jurisdiction. However, the term can be interpreted differently if the context so requires as Section 2 of the Act is qualified by the words “*unless the context otherwise requires*”. In interpreting the term “**Court**” in Section 29A contextually, the Court held it to mean the court that has appointed the arbitrator and not the principal civil court of original jurisdiction.

The Court explained that Section 29A not only provides for extending an arbitral tribunal's mandate beyond 18 months to complete the arbitration proceedings but also contemplates substitution of one or more members of the arbitral tribunal by the court. As regards the latter, the Court opined that it would be inconceivable that a subordinate court substitutes an arbitrator appointed by the Supreme Court or the High Court (as the case may be) under Section 11 of the Act. The same would apply in the case of extending an arbitral tribunal's mandate. The Court concurred with the decision of the High Court of Delhi in **DDA v. Tara Chand Sumit Construction Co.**,⁴² as well as other decisions of High Courts,⁴³ in which it has been consistently held that the powers of the superior courts to appoint an arbitrator and the civil courts to substitute them are concomitant powers. Therefore, in order to avoid an irreconcilable conflict, “**Court**” in Section 29A must mean the court that has appointed the arbitrator under Section 11 of the Act.

Further, the Court explained that when an arbitrator is appointed without the intervention of

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superior courts, the principal civil court of original jurisdiction would be competent to entertain applications under Section 29A. This scenario arose in **Magnum Opus IT Consulting Pvt. Ltd. v. Artcad Systems Through its Proprietor Vinay Digambar Shende**,⁴⁴ where the principal civil court of original jurisdiction was held competent to extend the arbitral tribunal's mandate and substitute the arbitrator under Section 29A as the arbitration took place before the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006.

In the present case, the Court held that the appointment of the arbitrator was by the Division Bench in the exercise of its powers under Section 11(6) of the Act even if the circumstances contemplated under Section 11 of the Act did not arise. Accordingly, the Court allowed the Petition.

Analysis

The Court has harmoniously interpreted Sections 2(1)(e), 11 and 29A of the Act, and clarified that the court which appoints the arbitrator is the court that is empowered to extend the arbitral tribunal's mandate and/or substitute the tribunal. By recognising exceptions where the tribunal is not appointed under Section 11 of the Act, the Court has balanced the jurisdiction of the principal civil courts of original jurisdiction under Section 29A with the powers of the Supreme Court and High Courts under Section 11 of the Act. This interpretation accords with the intention of the Act and makes the mechanism envisaged under Section 29A workable.

Notably, the Court also indicated factors that could equate the appointment of a tribunal to an appointment under Section 11 even in the absence of a petition under Section 11. In this case, Court pointed to the fact that pursuant to the parties' agreement to refer the dispute to arbitration, the Division Bench stipulated the terms and conditions of the arbitrator's appointment by directing him to file a disclosure statement and issue the final award within a stipulated time-frame, and also determined the costs of the arbitrator.

High Court of Delhi clarifies that non-signatory directors of a company cannot be made parties to an arbitration proceeding⁴⁵

Brief Facts

Vingro Developers Pvt. Ltd. ("**Petitioner**") filed an application ("**Application**") under Section 11 of the Act before a Single Judge of the High Court of Delhi ("**Court**") for appointment of an arbitrator for disputes arising out of two Builder Buyer Agreements ("**Agreements**"). These Agreements were executed between the Petitioner and the real estate developer, Nitya Shree Developers Private Limited ("**Respondent No. 1**") in respect of Respondent No.1's resident township project in Rajasthan. The Agreements stipulated an arbitration clause, which was invoked by the Petitioner as Respondent No. 1 did not complete the project in time. Respondent Nos. 2 and 3, being the directors of Respondent No. 1 ("**Directors**"), were impleaded as parties to the Application. Since Respondent No. 1 did not respond, the Petitioner filed the Application. The existence of an arbitration agreement, arbitrable dispute and territorial jurisdiction of the Court were not disputed in the Application.

Issue

Whether the Directors, who are not parties to the arbitration agreement, can be made parties to the arbitration?

Judgment

The Court observed that the scope of exercising jurisdiction under Section 11 of the Act is limited to looking into the aspect of the existence of a *prima facie* valid arbitration agreement, which requires examination as to whether the agreement contains an arbitration clause. The Court relied on (i) **Emaar MGF Land Ltd. v. Aftab Singh**,⁴⁶ where it was clarified that upon arbitration being invoked, the only valid reasoning for a court's refusal to refer the matter to arbitration is the non-existence of an arbitration agreement; and (ii) **DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd.**,⁴⁷ which held that the jurisdiction of courts under Section 11 is primarily to find out whether there exists a written arbitration agreement between the parties.

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The Court held that *prima facie* it is apparent that the current dispute may be referred to arbitration and the only scrutiny that must be done is whether Respondent Nos. 2 and 3, as directors or agents of the principal (i.e., Respondent No. 1), may be added as parties to the arbitration. The Court observed that to bind a non-signatory to an arbitration agreement, there must exist a common intention between the parties to do so. The Court must examine the relationship between the parties and circumstances to impute the intended meaning behind them.

In this case, Respondent No. 2 was a signatory to the Agreements in his capacity as authorised signatory of company and Respondent No. 3 was a non-signatory. Both Respondent Nos. 2 and 3 were made parties to the Application in their capacities as Directors. The Court distinguished the Supreme Court's judgment in **Cox & Kings** (*supra*) because in the present case, the relationship between Respondent No. 1 and Respondent Nos. 2 and 3 was that of principal and agent. Accordingly, the intention to bind a non-signatory to the arbitration agreement cannot be found as per Section 182 of the Contract Act. Further, reliance was placed on the Supreme Court's judgment in **Cheran Properties Ltd v. Kasturi & Sons Ltd.**,⁴⁸ where it was held that the circumstances in which an agreement was entered into may reflect an intention to bind both, signatory and non-signatory entities within the same group. Reliance was also placed on the Supreme Court's judgment in **Vivek Automobiles Ltd v. Indian Inc.**,⁴⁹ where it was held that an agent could not be sued when the principal has been disclosed, and the decision of a coordinate bench of the Court in **ACE Innovators (P) Ltd. v. Hewlett Packard India Sales (P) Ltd.**,⁵⁰ where it was held that according to Section 230 of the Contract Act, in absence of any contract to that effect, an agent can neither personally enforce contracts entered into by him on behalf of his principal nor is he personally bound by them. Accordingly, it was held that Respondent Nos. 2 and 3 cannot be made parties to the arbitration and the Court referred the dispute to arbitration as against only Respondent No. 1.

Analysis

The Court's decision reiterated that in a Section 11 application, while referring the parties to the arbitration, the court must examine the relationship and common intention of the parties irrespective of whether they are signatories or non-signatories to the arbitration agreement. The decision clarifies that if the relationship between the parties is that of a principal and agent, then the agent will not be party to the arbitration as the agent cannot be held liable for contracts entered into on behalf of the principal.

Supreme Court refers the issue regarding modification of an arbitral award under Section 34 and 37 of the Act to a larger bench⁵¹

Gayatri Balasamy (“Appellant”) moved the Supreme Court, assailing the judgment dated 8 August 2019 (“Impugned Order”) passed by the High Court of Madras (“High Court”) in OSA No. 59/2015 and OSA No. 181 of 2015. In the Impugned Order, the Ld. Division Bench of the High Court (“Ld. DB”) affirmed the order passed by the Ld. Single Judge of the High Court (“Ld. SJ”) and opined that while deciding an application under Section 34 of the Act, courts have the power to modify the arbitral award without disturbing the factual findings therein.

Brief Facts

The Impugned Order arose out of cross appeals filed by the Appellant and ISG Novasoft Technologies Limited (“Respondent”) under Section 37 of the Act. The appeals challenged the order dated 2 September 2014 (“Section 34 Order”) passed by the Ld. SJ, whereby the Ld. SJ dismissed the cross petitions filed by the Appellant and Respondent under Section 34 of the Act. The Ld. SJ, *vide* the Section 34 Order, affirmed the findings in the arbitral award dated 21 March 2012 (“Award”); however, the Ld. SJ modified the Award to the extent of a claim for damages by awarding an additional amount of INR 16.8 million.

The Ld. DB, *vide* the Impugned Order, upheld the Section 34 Order and the modification in the Award by the Ld. Single Judge; however, the Ld. DB reduced the damages awarded from INR 16.8 million to INR 50,000/-. The Ld. DB relied on the judgment of the Supreme Court in **Hindustan Zinc Limited v.**

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Friends Coal Carbonisation⁵² to observe that merely because the words ‘modify’ or ‘vary’ have not been used in Section 34 of the Act, it does not take away the power of the court to partially interfere with an award. The Ld. DB also held that a reasonable interpretation of Section 34 allows a court to modify an award and not allowing the same would only lead to multiplicity of proceedings. The Ld. DB further held that while an award may be modified, it should be done without disturbing the factual findings of the arbitral tribunal.

The Appellant challenged the Impugned Order by way of a Special Leave Petition before the Supreme Court (“SLP”). On 21 February 2023, the Supreme Court issued notice in the SLP and on 20 February 2024, referred the issues (as mentioned herein below) to a larger bench.

Issues

While considering conflicting judgments of the coordinate bench on the issue of modification of the arbitral award at the stage of proceedings under Sections 34 and 37 of the Act, the Supreme Court referred the following issues to be decided by a larger bench:

- (i) Whether the powers of a court under Sections 34 and 37 of the Act will include the power to modify an arbitral award? If yes, whether such power can be exercised only where the award is severable and a part thereof can be modified?
- (ii) Whether the power to modify an award can be read into the power to set aside an award under Section 34 of the Act and whether the power to set aside an award under Section 34 includes the power to modify an arbitral award and if so, to what extent?
- (iii) Whether the previous judgments of the Supreme Court have either modified or accepted modification of the arbitral awards under consideration?

Judgment

The Supreme Court, *vide* order dated 20 February 2024, referred the above issues to be decided by a larger bench. This is because some judicial decisions have rejected the notion of modifying arbitral awards at the Section 34 Section 37 stage, whereas other decisions have permitted or upheld such modifications. This has led to an inconsistency and ambiguity in the scope of the powers of courts under Section 34 and Section 37 of the Act.

In **NHAI v. M. Hakeem**,⁵³ the Supreme Court compared the court’s power to modify an award under Section 34 of the Act to crossing the ‘*Lakshman Rekha*’. The Court held that the Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Act. The Parliamentary intent was also discussed by the Supreme Court in **Larsen Air Conditioning and Refrigeration Company v. Union of India**,⁵⁴ wherein it noted that the Arbitration Act, 1940 contained a provision, which enabled the court to modify an award and the same was consciously omitted by the Parliament while enacting the Act, meaning that the Parliamentary intent was to exclude the court’s power to modify an award in any manner.

Recently, in **S. V. Samudram v. State of Karnataka** (*supra*), the Supreme Court held that the court would have no jurisdiction to modify an arbitral award under Section 34 and cannot correct errors of arbitrators. It can only quash the award, leaving the parties free to begin the arbitration again if desired.

To the contrary, there are a catena of judgments wherein the Supreme Court has interfered and modified an arbitral award. In **J.C. Budhraj v. Chairman, Orissa Mining Corporation Ltd.**,⁵⁵ the Supreme Court modified the award by setting aside a part of the claim awarded, which was barred by limitation. Further, in **M.P. Power Generation Co. Ltd. v. Ansaldo Energia Spa**,⁵⁶ the Supreme Court modified the award by substituting the arbitral tribunal’s view with its observations.

In **Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited**,⁵⁷ the Supreme Court modified the interest rate granted in the award on the ground that same interest rates could not have been granted for different currencies. Even in **Oriental Structural Engineers Pvt. Ltd. v. State of Kerala**⁵⁸ and **Shakti Nath v. Alpha Tiger Cyprus Investment No. 3 Ltd.**,⁵⁹ the Supreme

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Court only modified the arbitral award qua the interest awarded by the arbitral tribunal on the ground that it was excessive. The Court reduced the rate of interest to what it considered just and equitable. In **Tata Hydroelectric Power Supply Co. Ltd. v. Union of India**,⁶⁰ the Supreme Court, while confirming the findings of the award, only modified the effective date from which interest had to be calculated.

Analysis

The Supreme Court's decision to seek clarity on the modification of arbitral awards demonstrates its commitment to resolve the existing ambiguity and inconsistency in this crucial aspect of arbitration law. This initiative is expected to have far reaching implications and will provide much needed clarity and uniformity in the adjudication of arbitration matters in India.

The said issue of modification of the arbitral award has also been discussed in the Report of the Expert Committee dated 7 February 2024 under the chairpersonship of Dr. Viswanathan⁶¹ ("**Expert Report**") on proposed amendments to the Act. The Expert Report proposed to amend Section 34 to include the powers to set aside the arbitral award in whole or in part and to pass consequential orders varying the award only in exceptional circumstances to meet the ends of justice. The Supreme Court's intervention adds significance to the ongoing discourse and underscores the urgency of addressing this matter for the improvement of arbitration processes in the country.

After the reference to the larger bench, the Supreme Court, *vide* judgment dated 21 February 2024 in **GH Reddy Associates v. Chief Engineer KBJNL**,⁶² set aside the order passed by the High Court of Karnataka in proceedings under Section 37 of the Act, which modified the arbitral award to the extent of the claim amount awarded towards deductions and interest.

Supreme Court clarifies that a petition for appointment of an arbitrator under Section 11 of the Act should be filed within three years from the date of accrual of the cause of action⁶³

Brief Facts

M/s Arif Azim Co. Ltd. ("**Petitioner**"), a company based in Afghanistan, filed a petition under Section 11(6) of the Arbitration Act for the appointment of an arbitrator for adjudication of disputes arising out of a Franchise Agreement ("**Agreement**") executed between the Petitioner and M/S Aptech Limited ("**Respondent**"). The Respondent as the franchisor had granted a non-exclusive license to the Petitioner as the franchisee to establish and operate a business under the trade name 'Aptech English Language Academy'. Pursuant to the signing of the Agreement, the Indian Council for Cultural Relations, New Delhi ("**ICCR**") invited proposals for the execution of training courses in English for students from Afghanistan pursuing various degree courses at universities in India. The Respondent's proposal was accepted, and the course was executed by the Petitioner from February to April 2017. Thereafter, in 2018, disputes arose between the parties regarding *inter alia* payment to the Petitioner from the amount received by the Respondent from ICCR. Subsequently, in 2022, the Petitioner invoked pre-institution mediation against the Respondent and ICCR. However, the mediation was a non-starter, following which the Petitioner invoked arbitration against the Respondent in November 2022. Since the Respondent did not nominate its arbitrator, the Petitioner filed the present petition before the Supreme Court ("**Court**").

Issues

Issue (i): Whether the Limitation Act, 1963 ("**Limitation Act**") is applicable to an application for appointment of an arbitrator under Section 11(6) of the Arbitration Act? If yes, whether the present petition is barred by limitation?

Issue (ii): Whether the court may refuse to make a reference under Section 11 of the Arbitration Act where the claims are *ex-facie* and hopelessly time-barred?

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Judgment

Issue (i): The Court analysed that no time limit has been prescribed for filing an application under Section 11(6) of the Arbitration Act. However, Section 43 of the Arbitration Act provides that the Limitation Act would apply to arbitrations as it applies to court proceedings. The Court also observed that since none of the Articles in the Schedule of the Limitation Act stipulate the time period for filing an application under Section 11(6), it would be covered by Article 137 of the Limitation Act, which is the residual provision.

The Court held that the limitation period for filing a Section 11(6) application must not be confused with the limitation period for raising claims before the arbitral tribunal. The limitation period for filing a Section 11(6) application commences after a valid notice invoking arbitration has been issued and there has been a failure/refusal by the respondent party in complying with the notice. Accordingly, it was held that in the present case, the Respondent was given one month from the date of receipt of the notice of invocation of arbitration to comply. The Court held that the clock of limitation for filing the petition under Section 11(6) would start to tick from the date on which the Respondent failed to comply with the notice and it must be filed within three years as provided under Article 137 of the Limitation Act.

Issue (ii): The Court held that two categories of issues may be raised in a Section 11(6) application: (a) Firstly, issues pertaining to the power of arbitrators to hear jurisdictional issues/objections, like objections to the competence of arbitrators to adjudicate a dispute, existence/validity of an arbitration agreement, absence of consent of parties to submit disputes to arbitration and disputes falling outside the scope of an arbitration agreement; and (b) Secondly, issues relating to the nature of the claim, i.e., admissibility issues/objections.

The Court held that although limitation is an admissibility issue, it is the duty of courts to *prima facie* examine and reject non-arbitrable or dead claims to protect the other party from being drawn into a time consuming and costly arbitration. The Court relied on *Vidya Drolia (supra)* and *NTPC v. SPML (supra)* for the “Eye of the Needle” test. As per this test, the arbitral tribunal is the preferred first authority to determine questions of non-arbitrability of a dispute. The Court held that while considering the issue of limitation in a Section 11(6) application, courts should satisfy themselves on two aspects: (a) whether the petition is barred by limitation; and (b) whether the claims sought to be arbitrated are *ex-facie* dead claims and barred by limitation on the date of commencement of arbitration. Courts may refuse to appoint an arbitrator if either of these issues is answered against the party seeking to refer disputes to arbitration.

Therefore, the Court allowed the Section 11(6) application as it was filed within a period of three years from the date on which the Respondent failed to comply with the notice invoking arbitration and within three years from the date of accrual of the cause of action.

Analysis

The Court has observed that there is no statutory prescription regarding the time limit to file an application under Section 11(6) of the Arbitration Act because of which Article 137 of the Limitation Act has to be applied. It was also observed that the three years’ time limit is unduly long and is against the spirit of Arbitration Act, which provides for expeditious resolution of commercial disputes within a time bound manner. The Court opined that the Parliament should consider bringing an amendment to the Arbitration Act, prescribing the limitation period within which a party may file a petition for appointment of an arbitrator.

Supreme Court holds that the enforcement of foreign awards should be refused on the ground of bias only in exceptional circumstances⁶⁴

Brief Facts

On 11 May 2012, HSBC PI Holdings (Mauritius) Limited (“Respondent” / “Award Holder”) invoked the Singapore-seated arbitration clause under the Singapore International Arbitration Centre (“SIAC”) Rules, 2016 and claimed damages of USD 60 million from Avitel Post Studios Limited

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("Appellant No. 1"), founder of Avitel Post Studioz Limited and directors of Appellant No. 1 (collectively referred as "Appellants" / "Award Debtors"). On 27 September 2014, the arbitral tribunal rendered its final award and directed the Appellants to pay USD 60 million as damages for fraudulent misrepresentations ("Award").

The Award Debtors had raised an objection to enforcement of the foreign Award, under Section 48 of the Act. The High Court of Bombay vide order dated 25 April 2023 rejected the objections and directed that the order of attachment against the Award Debtors shall continue to operate during the execution proceedings to be undertaken by the Award Holder.

Thereafter, the Appellants challenged the order dated 25 April 2023 before the Supreme Court whereunder the High Court had facilitated the enforcement of the Award.

Issues

Issue (i): Whether enforcement of a foreign award can be refused on the ground of bias?

Issue (ii): Whether the ground of bias could be raised at the enforcement stage under Section 48(2) (b) of the Act for being violative of the public policy of India and the most basic notions of morality or justice?

Judgment

Issue (i): The Supreme Court held that minimal judicial intervention to a foreign award is the norm and interference can only be based on the exhaustive grounds mentioned under Section 48 of the Act. A review on the merits of the dispute is impermissible. The Supreme Court, while relying on *Vijay Karia v. Prysmian Cavi E. Sistemi SRL*,⁶⁵ noted that the party resisting enforcement can only have "one bite at the cherry" and when it loses in the High Court, the limited scope for interference could be merited only in exceptional cases of "blatant disregard of Section 48".

The Supreme Court held that even though the New York Convention does not explicitly mention "bias", the possible grounds for refusing recognition of a foreign award are contained in Article V(1) (d) (irregular composition of arbitral tribunal), Article V(1)(b) (due process) and the public policy defence under Article V(2)(b). Courts across the world have applied a higher threshold of bias to prevent enforcement of an award than the standards set for ordinary judicial review. Therefore, arbitral awards are seldom refused recognition and enforcement, considering the existence of a heightened standard of proof for non-recognition and enforcement of an award, based on alleged partiality. A higher threshold is applicable than what is applicable in cases of removal of the arbitrator.

The Supreme Court also noted that courts across the world do not adopt a uniform test while dealing with allegations of bias. Therefore, the outcome of a challenge on the ground of bias would vary, depending on domestic standards. Accordingly, the Court held that in India, courts must adopt an internationally recognised narrow standard of public policy, when dealing with the aspect of bias. It is only when the most basic notions of morality or justice are violated that this ground can be attracted, i.e., when the conscience of the court is shocked by infraction of fundamental notions or principles of justice.

The Supreme Court also held that there can be no difficulty in holding that the most basic notions of morality and justice under the concept of 'public policy' would include bias. However, courts must endeavour to adopt international best practices instead of domestic standards, while determining bias and only in exceptional circumstances enforcement should be refused on the ground of bias.

Issue (ii): The Supreme Court held that it is the seat court which has exclusive supervisory jurisdiction to determine claims for a remedy relating to the existence or scope of an arbitrator's jurisdiction or the allegation of bias. Interestingly, in the present case, no setting aside challenge based on bias was raised before the Singapore courts by the Appellants within the limitation period. The Supreme

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Court relied on various judgments⁶⁶ and held that the objection of bias must be first raised in the country of origin of the award and only if the objection was rejected or was impossible to raise, could it be raised at the time of enforcement. Therefore, the Supreme Court emphasised that *bona fide* challenges to arbitral appointments have to be made in a timely fashion and should not be used strategically to delay the enforcement process.

The conclusion was that refusal of enforcement of foreign award should only be in a rare case where non-adherence to international standards is clearly demonstrable. While dismissing the appeals, the Supreme Court held that the High Court had rightly decided that the Award Debtors had failed to substantiate their allegations of (i) bias; (ii) conflict of interest; or (iii) failure by the presiding arbitrator to render disclosure to the parties, as objections to the enforcement of the Award. The Award Debtors had failed to meet the high threshold for refusal of enforcement of a foreign award under Section 48 of the Act.

Analysis

In this judgment, the Supreme Court has emphasised the need for swifter enforcement of foreign awards by the competent forum, without showing any unnecessary indulgence to the award debtors. Further, the Supreme Court stressed that challenges regarding an arbitrator's bias raised at the enforcement stage must be discouraged by Indian courts to send out a clear message to stakeholders that Indian courts would ensure enforcement of foreign awards unless there is demonstrable evidence of a clear violation of morality and justice.

India has adopted a progressive approach of not foraying into the merits of the matter while considering objections to enforcement of foreign awards, and has limited the scope and ambit of challenge on the ground of 'public policy' to minimise judicial interference.⁶⁷ This judgment is a welcome addition to a series of judgments where the Courts have consistently adopted a pro-arbitration stance and have held that the wider meaning given to the term 'public policy' under Section 34 is not applicable to Section 48(2)(b) of the Act.

Supreme Court exercises its curative jurisdiction under Article 142 of the Constitution and restores High Court of Delhi's decision under Section 37 of the Act to partly set aside an award for being patently illegal⁶⁸

Brief Facts

Disputes between Delhi Metro Rail Corporation ("**DMRC**") and the Delhi Airport Metro Express Pvt. Ltd. ("**DAMEPL**") arose in respect of the validity of DAMEPL's termination of a Concession Agreement of 2008 ("**CA**") between the parties for the construction, operation and maintenance of the Delhi Airport Metro Express Ltd. DAMEPL terminated the CA on account of alleged breaches of the CA by DMRC, which DMRC arguably failed to cure within the contractually stipulated period and had a material adverse effect on DAMEPL. On 23 October 2012, DMRC invoked arbitration, challenging the termination.

Meanwhile, pursuant to the parties' joint application to the Commissioner of Metro Railway Safety ("**CMRS**") for the metro line to be re-opened for the public (which had been shut in July 2012 on account of DAMEPL citing safety concerns) the CMRS permitted the metro to run subject to speed restrictions on 18 January 2013 ("**CMRS Sanction**"). Following the CMRS Sanction, DAMEPL commenced the metro operations.

On 11 May 2017, the tribunal issued its unanimous award in favour of DAMEPL ("**Award**"). The tribunal *inter alia* held that DAMEPL was entitled to termination payment of INR 27.82 billion plus interest in terms of the CA.

DMRC challenged the Award before a Single Judge of the High Court of Delhi under Section 34 of the Act. The Single Judge dismissed DMRC's challenge and upheld the Award on the basis that since the Award was reasonable and plausible, no interference was warranted, even if an alternate view was possible ("**S. 34 Decision**"). DMRC challenged the S. 34 Decision before the Division Bench of

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the High Court under Section 37 of the Act (“**S. 37 Court**”). The Division Bench partly set aside the Award for being perverse and patently illegal. The Division Bench reasoned that the Award *inter alia* overlooked the legal effect of the CMRS Sanction and erroneously treated it as irrelevant to the issue of the validity of DAMEPL’s termination of the CA (“**S. 37 Decision**”).

DAMEPL appealed against the S. 37 Decision before the Supreme Court in a Special Leave Petition under Article 136 of the Constitution. The Supreme Court allowed the appeal and restored the Award (“**SLP Decision**”). The SLP Decision reasoned, in material part, that the Award was not perverse as the tribunal’s finding that the defects were not cured was a finding of fact and does not warrant interference, and that the construction of the CA was exclusively within the tribunal’s domain.

DMRC’s review petition against the SLP Decision was dismissed, following which DMRC challenged the SLP Decision before the Supreme Court in the present curative petitions.

Issue

Whether the Supreme Court was justified in restoring the Award in the SLP Decision, which had been set aside by the S. 37 Decision on the ground that it suffered from patent illegality?

Judgment

The Supreme Court set aside the SLP Decision and restored the S. 37 Decision. The Court first examined the grounds for setting aside an arbitral award under Section 34 of the Act and in particular, the ground of patent illegality. Relying on its previous decisions in **Associate Builders v. Delhi Development Authority**⁶⁹ (“**Associate Builders**”) and **Ssangyong Engineering & Construction Co. Ltd. v. NHAI**⁷⁰ (“**Ssangyong**”), the Court explained that a patent illegality arises when:

- (i) The tribunal adopts a view that is not possible, which is a view that no reasonable body of persons could have taken.
- (ii) An award is perverse or irrational wherein the findings are based on (a) no evidence; (b) irrelevant material; or (c) an ignorance of vital evidence.
- (iii) The tribunal exceeds its jurisdiction.
- (iv) An award is in breach of a statute.
- (v) An award is unreasoned.
- (vi) There has been a fundamental breach of the principles of natural justice.

Further, the Court reiterated that the jurisdiction under Sections 34 and 37 of the Act is analogous, and courts exercising powers under Section 37 are restricted to the same grounds of challenge as provided under Section 34.

Next, the Court considered the limits of its discretionary jurisdiction under Article 136 of the Constitution, which enables a second appeal against an award and is to be exercised in only exceptional circumstances. The Court observed that it must limit itself to testing whether the court exceeded and/or erred in the exercise of its jurisdiction under Section 37 of the Act by failing to apply the correct tests to assail an award.

Applying the aforesaid principles to the facts of the case, the Supreme Court held that the Award was patently illegal because:

- (a) the tribunal’s interpretation of the CA, and particularly the termination clause, was not a possible view. The Court held that a contract needs to be given full effect and its interpretation cannot be unreasonable, such that no person of ordinary prudence would adopt such an interpretation. The Court agreed with the interpretation of the termination clause in the S. 37 Decision and the conclusion therein that the tribunal’s interpretation frustrated the very provision – it was not a matter of a mere alternative plausible interpretation of the clause – and it could not have been arrived at on any objective assessment given that it overlooked the plain meaning of the clause.

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(b) the Award overlooked vital evidence and matters on record that were relevant to the issue of termination. The tribunal erroneously rejected the CMRS Sanction as irrelevant in spite of expressly recording in the Award that DAMEPL's cure notice to DMRC was a crucial document. The cure notice, in turn, was heavily premised on the safety of operations, and the CMRS Sanction certifies the safety and structure of the project. Therefore, the CMRS Sanction was a vital piece of evidence. Further, the Award is unreasoned on important aspects.

Accordingly, the Supreme Court held that the S. 37 Court was correct in finding the Award to be perverse and patently illegal, thereby warranting interference with the Award. In exercising its jurisdiction under Article 136 of the Constitution, the Court failed to provide any justification for its interference with the well-reasoned S. 37 Decision. Instead, the SLP Decision restored a patently illegal award and "*saddled a public utility with an exorbitant liability*", resulting in the miscarriage of justice.

Accordingly, the Supreme Court allowed the curative petitions. Pertinently, the Court clarified that exercise of curative jurisdiction should not be adopted as a matter of ordinary course so as to add layers of appeal over arbitral awards, but that it should only be resorted to in exceptional circumstances to prevent grave miscarriage of justice.

Analysis

This is a landmark decision given that in spite of the prolonged litigation between the parties spanning multiple appeals and forums, the Supreme Court did not hesitate to exercise its curative jurisdiction to remedy the "*grave miscarriage of justice in the exceptional circumstances of this case where the process of arbitration has been perverted by the arbitral tribunal to provide an undeserved windfall to DAMEPL*". In restoring the Award, the Court reiterated the scope of the ground of patent illegality and emphasised the seriousness of arbitral tribunals evaluating vital evidence to determine the central issues in dispute. The Court also highlighted the importance of tribunals setting out cogent reasons for disregarding any such evidence. Further, this decision also provides instructive guidance to parties and counsels regarding when and on what grounds to sustain challenges to arbitral awards and any subsequent appeals.

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NLSIU Panel Discussion, Bengaluru (19 November 2023)

The Alternative Dispute Resolution Board at the National Law School of India University (NLSIU), Bengaluru organised a panel discussion on the "*Mediation Act, 2023*". **Tejas Karia (Partner and Head, Arbitration)** was a panellist in the session.

18th Lawasia Moot Court Competition International Rounds, Bengaluru (25 November 2023)

Karan Jospeh (Partner) judged the semi-finals and **Dushyanth Narayanan (Senior Associate)** judged the quarter-finals.

Conference on Arbitration and ADR, Delhi (30 November 2023)

The Indian Railways Institute of Logistics & Materials Management and Arun Jaitley National Institute of Financial Management organised a conference on "*Arbitration and Alternative Dispute Resolution with Special Focus on International Arbitration*". **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the inaugural session.

SCL Conference, Delhi (10 December 2023)

The Society of Construction Law (SCL) organised a technical session on "*Advocacy in Construction Arbitration*" at the SCL Conference on "*Construction Law & Arbitration: Reshaping Construction Dispute Resolution*" in Delhi. **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the session.

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ILSCA's Certificate Course on Alternative Dispute Resolution (ADR) Methods (15 December 2023)

Tejas Karia (Partner and Head, Arbitration) conducted a webinar on “An Overview of Arbitration and Conciliation Act, 1996” as part of the Indian Law Society’s Centre for Arbitration & Mediation (ILSCA) Online Certificate course in ADR.

Power Grid Corporation of India Workshop, Gurugram (15 December 2023)

The Power Grid Corporation of India Limited in association with Bettering Results conducted a one-day offline workshop on arbitration, where **Tejas Karia (Partner and Head, Arbitration)** spoke in the session on “Concepts, Definitions and Principles Involved in Arbitration”.

ICA's Conference on Arbitration, Mumbai (16 December 2023)

The Indian Council of Arbitration (ICA) organised a conference on “Arbitration as a Catalyst for Economic Development” at Mumbai where **Tejas Karia (Partner and Head, Arbitration)** was a panellist in the panel discussion on “Arbitration in emerging economies and future perspectives and innovation”.



ICAI Mock Arbitration (4 January 2024)

The Institute of Chartered Accountants of India (ICAI) conducted a mock arbitration for chartered accountants where **Avlokita Rajvi (Principal Associate)** and **Surabhi Lal (Principal Associate)** were the lead speakers.

Global Legal Summit, Dubai (25 January 2024)

Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution) delivered the key-note speech on “Global Perspectives on Arbitrating Cross-Border Commercial Disputes: The Impact of Cultural Differences in International Arbitration – From the Courtroom to the Table: Integrating ADR into the Judicial System” at the inaugural Global Legal Summit – An ADR Confluence.

WBNUJS Course on Arbitration Practice and Procedure, Kolkata (February- March 2024)

Surabhi Lal (Principal Associate) conducted a short course on Arbitration Practice and Procedure for the penultimate and final year law students of West Bengal National University of Juridical Sciences (WBNUJS), Kolkata through the months of February and March 2024.

DELOS Remote Oral Advocacy Programme (February-September 2024)

Yashna Mehta (Principal Associate) has been selected to participate in the DELOS Remote Oral Advocacy Programme.

Economic Times Masterclass (9 February 2024)

Tejas Karia (Partner and Head, Arbitration) and **Samarth Madan (Associate)** conducted a webinar on “Remedies to Contractual Breaches and Terminations” as part of the Economic Times’ Masterclass “Drafting Commercial Contracts and Dispute Resolution”.

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LBSNAA Training Program, Mussoorie (9 February 2024)

The Lal Bahadur Shastri National Academy of Administration (LBSNAA) conducted a training program, where **Avlokita Rajvi (Principal Associate)** was the speaker in the session on “*Dispute Resolution in Infrastructure Projects – Arbitration*”.

25th Annual IBA Arbitration Day, Singapore (23 February 2024)

Ila Kapoor (Partner) was a panellist at the 25th Annual International Bar Association (IBA) Arbitration Day. She spoke on the “*Arbitrability and Validity of Arbitration Proceedings*” from an Indian perspective.

MNLU Lecture, Mumbai (24 February 2024)

Bikram Chaudhuri (Partner) delivered a lecture at the Maharashtra National Law University (MNLU) on the practice of arbitration, covering various types of arbitration, key concepts and challenges typical in the field.

IIAM Panel Discussion, Delhi (25 February 2024)

The Indian Institute of Arbitration & Mediation (IIAM) conducted a panel discussion on “*Future-Proofing Investments: Trends in Arbitration*”, where **Tejas Karia (Partner and Head, Arbitration)** was a panellist.



2nd RMNLU-Kocchar & Co. Arbitration Moot Court Competition, Lucknow (25 February 2024)

Ananya Aggarwal (Counsel) judged the semi-final round of this competition.

ICA Training Program, Chennai (29 February – 2 March 2024)

Tejas Karia (Partner and Head, Arbitration) was a faculty member at the ICA’s training program on ‘International & Domestic Arbitration’. He conducted sessions on arbitration proceedings, arbitral award and overview of mediation.

IACC Summit, Delhi (4 March 2024)

The Indo-American Chamber of Commerce (IACC) organised the first ever India-U.S. Legal Services Summit on “*Indo-U.S. Cooperation on Corporate and Legal Issues*”, where **Shardul S. Shroff (Executive Chairman)** was a speaker.

YIAG India Seminar, Delhi (4 March 2024)

The Young International Arbitration Group (YIAG) of the London Court of International Arbitration held a seminar at which **Shreya Jain (Principal Associate)** co-chaired the sessions.

2nd Edition of Delhi Arbitration Weekend, Delhi (6-10 March 2024)

The Delhi International Arbitration Centre (DIAC) organised the 2nd edition of the annual “*Delhi Arbitration Weekend*”. **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** and **Smarika Singh (Partner)** were panellists at a seminar on “*Diversity in Arbitration*” organised by Shardul Amarchand Mangaldas & Co and ArbitralWomen. **Ila Kapoor and Shruti Sabharwal (Partners)** conducted a training session on “*Effective Techniques for Cross Examination and Oral Advocacy in Arbitration: Navigating Key Challenges and Maximising Impact*” on 6 March 2024. **Tejas Karia (Partner and Head, Arbitration)** was a panellist in the discussion on “*Court Support of the Arbitral Process*” on

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9 March 2024. **Ila Kapoor (Partner)** moderated the GAR Live Panel on the topic of “*The state of play of investor-state arbitration: a view from India and elsewhere*” on 9 March 2024.



WBNUJS Mediation Competition, Kolkata (8-10 March 2024)

Aman Goyal (Associate) served as a judge in the WBNUJS Mediation Competition 2024.

GCADR Arbitration Week, Gandhinagar (18-23 March 2024)

The GNLU Centre for Alternative Dispute Resolution (GCADR) at the Gujarat National Law University organised a panel discussion on “*Balancing Cost Benefits with Due Process Concerns in Virtual Arbitrations vis-à-vis Physical Arbitration*”. **Tejas Karia (Partner and Head, Arbitration)** was a member of the panel and **Shalin Jani (Principal Associate)** was the moderator. **Bikram Chaudhuri (Partner)** was a speaker in a panel discussion on “*Sovereign Immunity and Enforcement of Investment Treaty Arbitration Awards*” hosted by GCADR.



ICA Conference, Goa (23 March 2024)

The ICA organised a technical session on “*Evolving Landscape of Dispute Resolution & Effect of Technology in ADR Mechanism*” at the ICA Conference on “*Ease to Justice Through Arbitration & Mediation in Commercial Disputes*” in Goa. **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the technical session.

Manipal Law School Conference, Manipal (24 March 2024)

The Manipal Law School organised a conference on “*Constructing Legal Foundations; Navigating the future of Construction Law*”, where **Tejas Karia (Partner and Head, Arbitration)** shed light on “*Principles of award of damages & the burden of proof*”.

8th CARTAL Conference, Jodhpur (30 March 2024)

The National Law University (NLU), Jodhpur organised the 8th edition of the annual CARTAL

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Publication



Conference on International Arbitration, where **Avlokita Rajvi (Principal Associate)** was a panellist in the discussion on “*Navigating Arbitration in India: Unveiling Risks & Mitigation Strategies*”.



IDRC Training Course (17 April 2024)

The Indian Dispute Resolution Centre (IDRC) organised a training course on “*Excellence in Arbitration Practice in India*” where **Tejas Karia (Partner and Head, Arbitration)** spoke on “*Appointment of Arbitral Tribunal: Strategies and Legal Framework*”.

SCL International Conference on Construction Arbitration, Mumbai (4 May 2024)

The SCL is organising the International Conference on Construction Arbitration, where **Tejas Karia (Partner and Head, Arbitration)** is the moderator of the panel discussion on the “*Variation in Construction Contract*”.

Publication

Smarika Singh (Partner), Saifur Rahman Faridi (Partner) and Tanya Gupta (Associate) contributed to the India Chapter of LexisNexis Dispute Resolution and Foreign Investment Law Guide, 2024.

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Endnotes

- 1 Authored by Akshay Sharma, Partner, and Ayushi Thakur and Arijeet Shukla, Associates; *Steel Authority of India Limited v. Uniper Global Commodities*, High Court of Delhi, 2023 SCC OnLine Del 7586, judgement dated 1 December 2023.
Coram: Sachin Datta, J.
- 2 2006 SCC OnLine Del 1056.
- 3 2016 SCC OnLine Del 1819.
- 4 2022 SCC OnLine Bom 129.
- 5 Authored by Shruti Sabharwal, Partner, and Rachit Bansal and Ramkrishna Veerendra, Associates; *Cox and Kings Ltd. v SAP India Pvt. Ltd.*, Arbitration Petition (Civil) No. 38 of 2020 with SLP (C) No. 8607 of 2022 and with SLP (C) No. 5833 of 2022, Supreme Court of India, 2023 SCC OnLine SC 1634, judgment dated 6 December 2023.
Coram: D.Y. Chandrachud, CJI, and Hrishikesh Roy, J.B. Pardiwala, Manoj Misra and P.S. Narasimha, JJ.
- 6 (2013) 1 SCC 641.
- 7 Authored by Aashish Gupta, Partner and Aditya Thyagarajan, Senior Associate; *MBL Infrastructures*

Limited v. Delhi Metro Rail Corporation, O.M.P. (COMM) No. 311/2021, High Court of Delhi, 2023 SCC OnLine Del 8044, judgment dated 12 December 2023.

Coram: Chandra Dhari Singh, J.

- 8 Authored by Shreya Gupta, Partner and Pratik Singhvi, Principal Associate; *In re: Interplay between arbitration agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*, Curative Petition (C) No. 44 of 2023 in Review Petition (C) No. 704 of 2021 in Civil Appeal No. 1599 of 2020 with Arbitration Petition No. 25 of 2023, Supreme Court of India, 2023 SCC OnLine SC 1666, judgment dated 13 December 2023.
Coram: D.Y. Chandrachud, CJI, and Sanjay Kishan Kaul, B.R. Gavai, Surya Kant, J.B. Pardiwala, Manoj Misra and Sanjiv Khanna, JJ.
- 9 Conflicting decisions on existence, validity and enforceability of arbitration clauses contained in unstamped agreements were passed in *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 and *N.N. Global Mercantile Unique Pvt. Ltd. v. Indo Unique Flame Ltd.*, (2021) 4 SCC 379.
- 10 (2021) 4 SCC 379.
- 11 (2023) 7 SCC 1.

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- 12 *Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v. Bhaskar Raju and Brothers*, (2020) 4 SCC 612.
- 13 *In re: Interplay between arbitration agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*, judgment dated 13 December 2023, Curative Petition (C) No. 44 of 2023 in Review Petition (C) No. 704 of 2021 in Civil Appeal No. 1599 of 2020 with Arbitration Petition No. 25 of 2023.
- 14 *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd*, (2011) 14 SCC 66; *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.*, (2019) 9 SCC 209.
- 15 Authored by Karan Joseph, Partner and Gawry Cootaiah, Senior Associate; *Quantum University v. International Quantum University for Integrative Medicine Inc.*, O.M.P. (COMM) No. 260/2021, High Court of Delhi, 2023 SCC OnLine Del 8016, judgment dated 13 December 2023.
Coram: C. Hari Shankar, J.
- 16 2023 SCC OnLine SC 1063.
- 17 (2004) 6 SCC 145.
- 18 Authored by Binsy Susan, Partner, Neha Sharma, Principal Associate, and Ayushi Thakur and Arijeet Shukla, Associates; *Sushma Daga & Anr. v. Madhurkumar Bajaj & Ors.*, Civil Appeal No. 1854/2023, Supreme Court of India, 2023 SCC OnLine SC 1683 judgment dated 15 December 2023.
Coram: Sudhanshu Dhulia and Aniruddha Bose, JJ.
- 19 (2021) 2 SCC 1.
- 20 (2023) 9 SCC 385.
- 21 (2011) 5 SCC 532.
- 22 (2020) 2 SCC 455.
- 23 (2021) 4 SCC 786.
- 24 Authored by Tejas Karia, Partner and Head, Arbitration, Avlokita Rajvi, Principal Associate, and Samarth Madan and Punya Mehrotra, Associates; *Union of India v. M/s Panacea Biotec Limited*, FAO(OS)(COMM) No. 81/2020, High Court of Delhi, 2023 SCC OnLine Del 8491, judgment dated 19 December 2023.
Coram: Neena Bansal Krishna and Suresh Kumar Kait, JJ.
- 25 *Executive Engineer v. Shree Ram Construction*, (2010) 120 DRJ 615(DB) and *SKS Power Generation (Chhattisgarh) Ltd. v. ISC Projects Private Limited*, 2019 SCC OnLine Del 8006.
- 26 *Oriental Insurance Co. Ltd. v. Air India Ltd.*, 2021 SCC OnLine Del 5139; *ONGC v. Sai Rama Engineering Enterprises*, 2023 SCC OnLine Del 63; *Viceroy Engineering v. Smiths Detection Veecon Systems (P) Ltd.*, 2023 SCC OnLine Del 7654.
- 27 Authored by Bikram Chaudhuri, Partner, Juhi Gupta, Principal Associate and Shivani Sanghavi, Associate; *Shailesh Ranka & Ors. v. Windsor Machines Limited and Anr.*, Commercial Arbitration Application (L) No. 38198 of 2022, High Court of Bombay, 2023 SCC OnLine Bom 2704, judgment dated 19 December 2023.
Coram: Manish Pitale, J.
- 28 2019 SCC OnLine Bom 3920.
- 29 (2023) 8 SCC 50.
- 30 Authored by Smarika Singh and Saifur Rahman Faridi, Partners, Yashna Mehta, Principal Associate and Arjun Singh Rana, Associate; *Ministry of Health & Family Welfare & Anr. v. M/s Hosmac Projects Division of Hosmac India Pvt. Ltd.*, FAO(OS)(Comm) No. 326/2019 and CM No. 49717/2019, High Court of Delhi, 2023 SCC OnLine Del 8296, judgment dated 20 December 2023.
Coram: Rajiv Shakhder and Tara Vitasta Ganju, JJ.
- 31 (2005) 4 SCC 239.
- 32 (2012) 9 SCC 496.
- 33 Authored by Aditya Mukherjee, Partner and Chandni Ghatak, Senior Associate; *Tata Motors Finance Solutions Limited v. Naushad Khan c/o Nazbul Hoda Khan*, Commercial Arbitration Application (L) No. 8654/2022 with Commercial Arbitration Application (L) Nos. 3908/2023 and 25821/2022, High Court of Bombay, 2023 SCC OnLine Bom 2716, judgment dated 20 December 2023.
Coram: Manish Pitale, J.
- 34 Authored by Ila Kapoor, Partner, Ananya Aggarwal, Counsel and Rachit Bansal, Associate; *S.V. Samudram v. State of Karnataka & Anr.*, Civil Appeal No. 8067 of 2019, Supreme Court of India, 2024 SCC OnLine SC 19, judgment dated 4 January 2024.
Coram: Abhay S. Oka and Sanjay Karol, JJ.
- 35 (2021) 9 SCC 1.
- 36 (2021) 7 SCC 657.
- 37 2024 SCC OnLine Del 486.
- 38 Authored by Smarika Singh, Partner, Yashna Mehta, Principal Associate and Arjun Singh Rana, Associate; *M/s Opuskart Enterprises & Ors. v. Kaushal Kishore Tyagi*, ARB. P. 134/2023, High Court of Delhi, 2024 SCC OnLine Del 266, judgment dated 10 January 2024.
Coram: Prathiba M. Singh, J.
- 39 2023 SCC OnLine SC 1634.
- 40 Authored by Tejas Karia, Partner and Head, Arbitration, Prakhar Deep, Principal Associate and Nitin Sharma, Associate; *Mrs. Vinnu Goel v. Deputy Commissioner, Stamp Registration & Ors.*, W.P. (C.) No. 9291 of 2023, High Court of Delhi, 2024 SCC OnLine Del 345, judgment dated 16 January 2024.
Coram: Subramonium Prasad, J.
- 41 Authored by Kanika Goenka, Partner, Juhi Gupta, Principal Associate and Ojaswi Shankar, Associate; *K.I.P.L. Vistacore Infra Projects J.V. v. Municipal Corporation of the City of Ichalkarnji.*, CAP No. 181 of 2023, High Court of Bombay, 2024 SCC OnLine Bom 327, judgment dated 22 January 2024.
Coram: Bharati Dangre, J.
- 42 2020 SCC OnLine Del 2501.
- 43 *Cabra Instalaciones Y. Servicios, S.A. v. Maharashtra State Electricity Distribution Co. Ltd.*, 2019 SCC OnLine Bom 1437; *Nilesh Ramanbhai Patel v. Bhanubhai Ramanbhai Patel*, Misc. Civil Application (O.J) No. 1 of 18; *Amit Kumar Gupta v. Dipak Prasad*, 2021 SCC OnLine Cal 2174; *Indicus Software Pvt. Ltd. Through Authorized Signatory Mr. Shridhar Kulkarni v. Infinite Uptime India Pvt. Ltd.*, 2023 SCC OnLine Bom 2880.
- 44 2022 SCC OnLine Bom 2861.
- 45 Authored by Suhani Dwivedi, Partner, Trisha Mukherjee, Principal Associate and Vidhi Sharma, Associate; *Vingro Developers Pvt. Ltd. v. Nitya Shree Developers Pvt. Ltd. through its Principal Officer & Ors.*, ARB. P. No. 667/2023, High Court of Delhi, 2024 SCC OnLine Del 486, judgment dated 24 January 2024.
Coram: Dinesh Kumar Sharma, J.

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- 46 (2019) 12 SCC 751.
47 (2021) 16 SCC 743.
48 (2018) 16 SCC 413.
49 (2009) 17 SCC 657.
50 2013 SCC OnLine Del 4019.
51 Authored by Tejas Karia, Partner and Head, Arbitration, Nishant Doshi, Senior Associate and Nitin Sharma, Associate; *Gayatri Balasamy v. M/s ISG Novasoft Technologies Ltd.*, SLP(C) No. 15336/15337 of 2021, Supreme Court, 2024 SCC OnLine Del 486, order dated 20 February 2024.
Coram: Dipankar Datta, K.V. Viswanathan and Sandeep Mehta, JJ.
52 (2006) 4 SCC 445.
53 (2021) 9 SCC 1.
54 2023 INSC 708.
55 (2008) 2 SCC 444.
56 (2018) 16 SCC 661.
57 (2019) 11 SCC 465.
58 (2021) 6 SCC 150.
59 (2020) 11 SCC 685.
60 (2003) 4 SCC 172.
61 *Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act 1996 to make it alternative in the letter and spirit* dated 7 February 2024.
62 Civil Appeal No. 2462 of 2012.
63 Authored by Siddhartha Datta, Partner, Trisha Mukherjee, Principal Associate and Vidhi Sharma, Associate; *M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd.*, A.P. No. No. 29/2023, Supreme Court of India, 2024 SCC OnLine SC 215, judgment dated 1 March 2024.
Coram: D.Y. Chandrachud, CJI, and J.B. Pardiwala and Manoj Misra, JJ.
64 Authored by Anirudh Das, Partner, Aditya Thyagarajan, Senior Associate and Sankalp Udgata, Associate; *Avitel Post Studios Ltd. v. HPEIF Holdings 1 Ltd.*, 2024 SCC OnLine SC 345, Supreme Court, judgment dated 4 March 2024.
Coram: Hrishikesh Roy and Prashant Kumar Mishra, JJ.
65 (2020) 11 SCC 1.
66 *Perma Container (UK) Line Limited v. Perma Container Line (India) Ltd.*, 2014 SCC OnLine Bom 575; *Vijay Karia v. Prysmian Cavi E. Sistemi SRL*, (2020) 11 SCC 1; and the German Supreme Court's decision in *Dutch Shipowner v. German Cattle and Meat Dealer, Bundesgerichtshof, Germany*, 1 February 2001, XXIX Y.B.Com. Arb. 700 (2004).
67 *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1; *Ssangyong Engineering & Construction Co. Ltd v. NHAI*, (2019) 15 SCC 131; and *Government of India v. Vedanta Ltd.*, 2020 SCC OnLine SC 749.
68 Authored by Shreya Gupta, Partner, Juhi Gupta, Principal Associate and Shivani Sanghavi, Associate; *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.*, Curative Petition (C) Nos. 108-109 of 2022 in Review Petition (C) Nos. 1158-1159 of 2021 in Civil Appeal Nos. 5627-5628 of 2021, Supreme Court of India, 2024 SCC OnLine SC 522, judgment dated 10 April 2024.
Coram: D.Y. Chandrachud, CJI, and BR Gavai and Surya Kant, JJ.
69 (2015) 3 SCC 49.
70 (2019) 15 SCC 131.

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