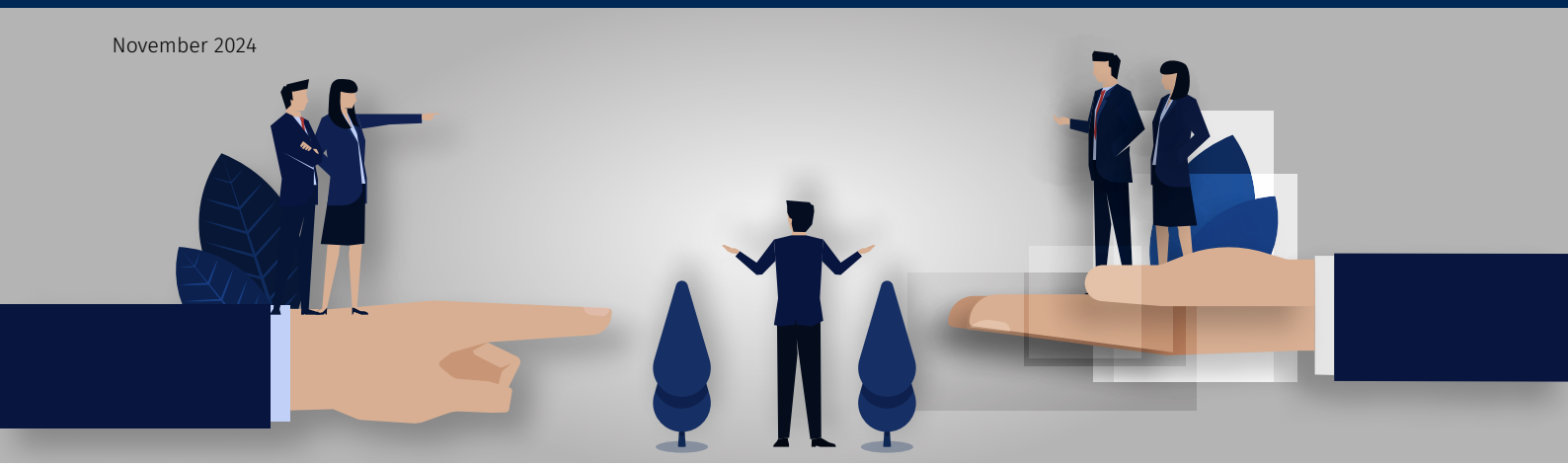
Arbitration Newsletter

Shardul Amarchand Mangaldas

November 2024



Arbitration Newsletter – November 2024

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

We take this opportunity to wish you and everyone in your family a **Happy Diwali** and **Prosperous New Year**!

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 Asialaw recognised Shardul Amarchand Mangaldas & Co's dispute resolution practice as a 'Ranked Practice Area'. It recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** and **Tejas Karia (Partner and Head, Arbitration)** as 'Elite Practitioners', **Binsy Susan (Partner)** as a 'Distinguished Practitioner' and **Karan Joseph (Partner)** as a 'Rising Star'.

Who's Who Legal 2024 Report has recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** as 'Thought Leader' for commercial litigation.

The Indian Business Law Journal's Indian Law Firm Awards 2024 recognised Shardul Amarchand Mangaldas & Co's arbitration and ADR practice as a 'Ranked Practice Area'.

Benchmark Litigation Asia-Pacific Awards 2024 recognised **Binsy Susan (Partner)** in the 'Top 100 Women in Litigation', and **Aashish Gupta (Partner)** and **Karan Joseph (Partner)** in the 'Top 40 Under 40'. Benchmark Litigation Asia-Pacific 2024 ranked **Ila Kapoor (Partner)** as a 'Litigation Star' and **Shruti Sabharwal (Partner)** as a 'Future Star'.

The Forbes India Legal Power List 2023 recognised **Ila Kapoor (Partner)** in its 'Top 100 Individual Lawyers'.

We are also pleased to share that **Shreya Jain** and **Niyati Gandhi**, based in the firm's Mumbai office and members of the Arbitration Practice Group of the firm, have been inducted as Partners.

Shreya Jain (Partner) was selected as a 'Regional Representative' of Young ICCA for the term 2024-26.

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

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High Court of Delhi clarifies the scope of Section 29A of the Arbitration and Conciliation Act, 1996[1]

Brief Facts

M/s Power Mech Projects ("**Petitioner**") filed a petition ("**Petition**") under Sections 29A(4) and (5) of the Arbitration and Conciliation Act, 1996 ("**Act**") before the High Court of Delhi ("**Court**"). The Petitioner had entered into a works contract with M/s Doosan Power Systems India ("**Respondent**") for works related to a power plant project. Pursuant to disputes arising between parties, the Petitioner initiated arbitration proceedings on 10 May 2022. A three-member arbitral tribunal was constituted on 6 July 2022.

Since the proceedings did not conclude within a period of 12 months as required under Section 29A(1) of the Act, the parties mutually consented to a six-month extension under Section 29A(3) of the Act. However, this extended mandate too expired on 4 February 2024. The proceedings were at the stage of cross-examination of the Petitioner's witness (Claimant in the arbitration proceedings). As the extended deadline expired, the Tribunal acknowledged that its mandate had ended and stated that it would need appropriate orders from the Court to continue. Consequently, the Petition was filed by the Petitioner seeking a further extension of 12 months to complete the arbitration.

The Respondent opposed the Petition on two grounds: (i) the dilatory conduct of the Petitioner in the arbitration proceedings - the Respondent highlighted several instances recorded by the Tribunal where the proceedings were delayed due to actions of the Petitioner; and (ii) the filing of the Petition after the expiry of the tribunal's mandate on 4 February 2024 and that the Court cannot extend a mandate that has already terminated by operation of law. The Respondent sought to distinguish between extending an existing mandate and reviving an expired mandate, arguing that the latter could not be done by the Petition under Sections 29A(4) and (5) of the Act. The Respondent relied on ***Rohan Builders (India) Pvt. Ltd. v. Berger Paints***[2] and ***ATS Infrastructure Ltd. v. Rasbehari Traders***,[3] both of which were pending before the Supreme Court at that time on the same issue. The Respondent suggested that since this issue is yet to attain finality, the Court should hold that the Petition is beyond the scope of Sections 29A(4) and (5) of the Act.

Issue

Whether the Court has the authority to extend the mandate of an arbitral tribunal in a petition filed after the expiry of the tribunal's mandate under Sections 29A(4) and (5) of the Act?

Judgment

At the outset, the Court listed several judgments passed by the High Court of Delhi, such as, ***Wadia Techno-Engineering Services Ltd. v. Director General of Married Accommodation Project and Anr.***[4] and ***ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.***,[5] which took the view that an arbitral tribunal's mandate could be extended by the court under Section 29A, regardless of whether the mandate had already expired.

The Respondent heavily relied on the decision of the High Court of Calcutta in ***Rohan Builders*** (*supra*) that was under challenge before the Supreme Court. In ***Rohan Builders*** (*supra*), the High Court of Calcutta had ruled that if an award is not delivered within the time limits specified under

1 Authored by Shruti Sabharwal, Partner and Devika Bansal, Associate; *M/s Power Mech Projects Ltd. v. M/s Doosan Power Systems India Pvt. Ltd.*, O.M.P. (MISC.) No. 6/2024, High Court of Delhi, 2024 SCC OnLine Del 4412, judgment dated 7 May 2024.
Coram: Prathiba M. Singh, J.

2 2023 SCC OnLine Cal 2645.

3 O.M.P. (T) (COMM.) No. 91/2023, decided on 17 November 2023 (High Court of Delhi).

4 2023 SCC OnLine Del 2990.

5 2023 SCC OnLine Del 7135.

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Section 29A(1) or Section 29A(3) of the Act, the mandate of the Tribunal automatically expires. According to this decision, an application for an extension of the mandate cannot be filed after its expiration, as '*post-expiration*' extensions are not permissible. In this regard, the Court considered a subsequent decision of the High Court of Calcutta in ***Multiplex Equipments and Services Pvt. Ltd. v. Bagzone Lifestyles Pvt. Ltd.***,[6] which took the position that arbitration proceedings should not be unnecessarily delayed and should continue without waiting for the Supreme Court's decision in ***Rohan Builders*** (*supra*), ensuring that a party was not left without a legal remedy.

The Court also examined decisions from other High Courts that consistently relied on ***ATC Telecom*** (*supra*) as opposed to ***Rohan Builders*** (*supra*). The Court further analysed the language of Section 29A(4) of the Act, which clearly specifies the court's authority to extend the mandate of the arbitral tribunal before or after the designated period has ended.

The Court also relied on its decision in ***Larson & Tourbo Ltd v. IIC Ltd. and Anr.***,[7] wherein it noted that Section 29A(4) of the Act contemplates two situations: (i) one where the arbitration mandate has not been extended and the 12-month period expires; and (ii) another where the mandate is extended by mutual consent. In both cases, the Court can extend the mandate of the Tribunal.

Ultimately, the Court found that it could not rely on ***Rohan Builders*** (*supra*) as it was of the view that the Act allowed the Court to extend the mandate of the tribunal even after it has expired. Accordingly, the Court extended the mandate of the tribunal to 31 December 2024.

Analysis

This ruling clarifies the interpretation of Section 29A(4) of the Act, emphasising that limiting the extension of a Tribunal's mandate to applications filed before its expiry undermines the intent of the provision. This decision upholds the objective of Section 29A of the Act, which aims to ensure that arbitration is conducted efficiently and conclusively. The Court is entitled to be satisfied with justifiable reasons when granting the extension post the expiry of the Tribunal's mandate.

This case reflects a trend where courts may choose to prioritise effective dispute resolution over strict procedural compliance to better serve the underlying objectives of alternative dispute resolution mechanisms.

High Court of Delhi observes that intimation to the Central Registrar under Section 84 of the Multi-State Cooperatives Societies Act, 2002 is deemed notice under Section 21 of the Act[8]

Brief Facts

Purvanchal Hathkargha Sahakari Sangh Ltd. ("**Petitioner**"), registered under the U.P. Co-op Society Act, 1965, is a member of All India Handloom Fabrics Society ("**Respondent No. 1**"). The Petitioner alleged that Respondent No. 1 wrongfully withheld payments of the Petitioner amounting to INR 18,332,731.22, towards supplies made by the Petitioner, meanwhile favouring and making prompt payments to the President, Vice-President and few select directors. The Petitioner filed representations ("**Representations**") to the Central Registrar of Cooperative Societies ("**Respondent No. 2**") to appoint an arbitrator in terms of Section 84 of the Multi-State Cooperatives Societies Act, 2002 ("**MSCS Act**"). However, Respondent No. 2 did not respond to the Petitioner's Representations. Aggrieved, the Petitioner approached the High Court of Delhi ("**Court**") under Section 11(6) of the Act seeking appointment of an arbitrator under Section 84 of the MSCS Act.

The Petitioner contended that:

6 2024 SCC OnLine Cal 174.

7 2024 SCC OnLine Del 832.

8 Authored by Akshay Sharma, Partner, Sambhav Sharma and Deeksha Pokhriyal, Associates; *Purvanchal Hathkargha Sahakari Sangh Ltd. v. All India Handloom Fabrics Society & Anr.*, ARB. P. No. 75/2024, High Court of Delhi, judgment dated 8 May 2024.
Coram: Dinesh Kumar Sharma, J.

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(i) Under Section 21 of the Act, the arbitration would commence from the date of delivery of the Representations made to Respondent No. 2, seeking appointment of an arbitrator under Section 84 of the MSCS Act;
(ii) In terms of Section 11(6) of the Act, the High Court's jurisdiction is limited to *prima facie* examination of facts; and
(iii) Since Section 84(1)(b) of the MSCS Act provides for reference of disputes concerning constitution, management or business of cooperative societies to arbitration, the Court must appoint an arbitrator under Section 11(6) of the Act.

Respondent No. 1 contended that:
(i) The Petition under Section 11(6) of the Act is not maintainable on the ground that the Petitioner failed to serve a notice on Respondent No. 1 in terms of Section 21 of the Act;
(ii) The representations made to Respondent No. 2, without marking a copy to Respondent No. 1, do not constitute a valid notice to refer the dispute to arbitration under Section 21 of the Act;
(iii) A notice under Section 21 of the Act is a pre-requisite for initiation of arbitration in terms of the Act; and
(iv) Merely asking Respondent No. 2 for appointing an arbitrator does not *ipso facto* imply reference to arbitration.

Issues

Issue (i): Whether Section 84 of the MSCS Act provides power to Respondent No. 2 to appoint an arbitrator?

Issue (ii): Can the Representations sent by the Petitioner to Respondent No. 2 be deemed to be a valid notice of arbitration, given that Section 21 of the Act does not provide a specific format?

Judgment

In its judgment, the Court made the following observations: (i) Relying upon the decision of its coordinate bench in ***Appolo Handloom Manufacturing Co-op Society Ltd. v. All India Handloom Fabrics Society & Ors.***,[9] the Court established that the present dispute, concerning Respondent No. 1's management, charter and operations, falls squarely under the ambit of Section 84 of the MSCS Act; (ii) the Court, while retaining the authority to exercise its jurisdiction and appoint an arbitrator on its own, may also direct Respondent No. 2 to do so in terms of the MSCS Act; (iii) the service of a notice under Section 21 of the Act is a pre-requisite for initiation of arbitration proceedings under the Act; (iv) the MSCS Act has been enacted for the benefit of cooperative societies to facilitate their democratic functioning and promote their economic and social betterment; and (v) the procedure related to commencing arbitration proceedings is the handmaid of justice.

The Court further observed that Section 21 of the Act does not stipulate a specific proforma or format for issuing the notice invoking arbitration and is meant to put on notice the opposing party regarding the commencement of arbitration proceedings. Consequently, the Petitioner's Representations would constitute a valid notice under Section 21 of the Act insofar as they intimated Respondent No. 2 of the dispute under Section 84 of the MSCS Act.

In view of the above, the Court allowed the Petition under Section 11(6) of the Act by directing Respondent No. 2 to appoint an arbitrator within three weeks and inform the Parties.

The Court also observed that the substantive issues of monetary dues and illegal appointment of the top management of Respondent No. 1 were issues of merit, which will be decided by the Arbitrator and are not meant for the Court to decide. Thus, all contentions on merits were left open.

Analysis

The Court's decision reposes faith in beneficial legislations enacted for the specific purpose of aiding

9 2024 SCC OnLine Del 2723.

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cooperative societies. By holding that procedure is a handmaid of justice while simultaneously observing that the Petitioner's Representations would constitute deemed notice under Section 21 of the Act in absence of a specific format, the Court has ensured a balanced approach to justice. The Court has also reiterated that justice is the primary objective of such legislations. Thus, in cases where technicalities in procedure hinder justice, courts have the duty to ensure that the true object of the legislation is given effect to. This decision will safeguard the interests of cooperative societies that are established on the fundamental premise of self-help and mutual aid, and promotion of functional business autonomy.

Having said that, one must be cautious of overstretching the bounds of justice by bypassing procedure. Given that procedural law upholds the sanctity of due process, such interpretations must only be made in exceptional circumstances, and in cases where the object of the legislation would be betrayed in case a strict and narrow interpretation is given to the legislation.

High Court of Delhi reaffirms that where the agreement stipulates an exclusive jurisdiction clause, the same is to be strictly followed[10]

Brief Facts

Two separate petitions ("**Petitions**") were filed by two Petitioners before the High Court of Delhi ("**Court**") seeking appointment of a sole arbitrator under Section 11(6) of the Act, for disputes arising out of two identical buyer-builder agreements dated 9 March 2017 ("**Agreements**"), entered into between the Petitioners/buyers and the Respondent/builder. In response to the Petitions, the Respondent had taken a preliminary objection that the Court did not have the territorial jurisdiction to entertain the Petitions.

Clause 21 of the Agreements, which is the "Arbitration and Jurisdiction" Clause, *inter alia* provided that all disputes arising out of the Agreements would be settled through arbitration and "*The Arbitration proceeding shall be held at NOIDA/Delhi and the Courts at NOIDA shall, to the specific exclusion of all other courts, have the jurisdiction in all matters arising out of/or concerning the Application Form/this Agreement, regardless of the place of execution of this Agreement.*"

Issue

Whether the Court had the jurisdiction to entertain the Petitions and appoint an arbitrator?

Judgment

The Court observed that while the arbitration clause mentioned that the arbitration proceedings shall be held at Noida/Delhi, it also mentioned that courts at Noida shall have exclusive jurisdiction. The Court further observed that the coordinate bench of the Court,[11] while dealing with an identical clause, culled out the following principles:

(i) There shall be only one seat of arbitration though venues may be different;
(ii) Where the arbitration seat is fixed (may be neutral), only such court shall have an exclusive jurisdiction;
(iii) Where a seat/place of arbitration is fixed, it is Section 20(1) and Section 20(2) of the Act being referred to; and
(iv) Venue relates to convenience of parties, as per Section 20(3) of the Act.

The Court noted that in the present case, the cause of action arose at Noida, the suit property is situated at Noida, and the parties have agreed that the Courts at Noida shall have exclusive jurisdiction. Further, the facts involved in the present Petitions were identical to a decision of a coordinate bench of the Court where it had been held that the Court did not have jurisdiction in

10 Authored by Aditya Mukherjee, Partner, Aditya Thyagarajan, Senior Associate, and Chiranjeev Singh Marwaha, Associate; *Abhimanyu v. Parmesh Construction Co. Ltd.*, and *Ashish Kaushal Ranjan v. Parmesh Construction Co. Ltd.*, High Court of Delhi, 2024 SCC OnLine Del 3689, judgment dated 14 May 2024.
Coram: Dinesh Kumar Sharma, J.

11 CVS Insurance and Investments v. Vipul IT Infrasoft Pvt. Ltd., 2017 SCC OnLine Del 12149.

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identical circumstances. Accordingly, the Court dismissed the Petitions, holding that it did not have the jurisdiction to entertain the Petitions.

Analysis

The Court's decision reaffirms the settled position of law that while an arbitration may be held at multiple venues, the court(s) exercising exclusive jurisdiction over the seat (as agreed between the parties) shall have the exclusive jurisdiction to entertain an application under Section 11 of the Act.

Supreme Court of India holds that abandonment of claim can only be inferred if the conduct of a claimant clearly indicates that it has given up the claim and not merely on failure to participate in the proceedings[12]

Brief Facts

Dani Wooltex Corporation, ("**Dani**") owned certain land in Mumbai that was permitted to be developed by the Sheil Properties ("**Sheil**") under a development agreement dated 11 August 1993 ("**Agreement**"). Separately, Dani agreed to sell another portion of its property to Marico Industries ("**Marico**") through a Memorandum of Understanding ("**MOU**"). When Sheil objected to the deal between Dani and Marico, disputes arose between the parties regarding the Agreement and MOU. Sheil filed a suit for the specific performance of the MOU against Dani and Marico. Marico also filed a suit against Dani and Sheil.

A consensus was eventually reached to refer the disputes to arbitration, where both Sheil and Marico pursued their respective claims against Dani. The arbitral proceeding based on Marico's claim was heard earlier, culminating in an award dated 6 May 2017. However, the arbitral proceeding based on the claim filed by Sheil faced delays and did not proceed.

In 2020, the arbitral tribunal terminated the proceedings related to Sheil's claims, citing that the continuation of proceedings had become unnecessary or impossible. Sheil filed an application before the High Court of Bombay to challenge the Tribunal's order. The High Court of Bombay vide order dated 13 January 2023, set aside the order of termination of the proceedings passed by the Tribunal. The said order was then challenged before the Supreme Court.

Issue

Whether termination of the arbitral proceedings under Section 32(2)(c) of the Act was valid and legal?

Judgment

The Supreme Court held that the power under Section 32(2)(c) of the Act can be exercised only if the continuation of proceedings has become unnecessary or impossible. Unless the arbitral tribunal records its satisfaction based on the material on record that proceedings have become unnecessary or impossible, the power under Section 32(2)(c) of the Act cannot be exercised. If the said power is exercised casually, it will defeat the very object of enacting the Act.

Additionally, it is the Arbitral Tribunal's duty to fix a meeting for hearing even if parties to the proceedings do not make such a request. It is the duty of the Tribunal to adjudicate upon the dispute referred to it. If, on a date fixed for a meeting/hearing, the parties remain absent without any reasonable cause, the Arbitral Tribunal can always take recourse to the relevant provisions of the Act, such as Section 25. However, the failure of the claimant to request the Tribunal to fix a date for hearing, *per se*, is no ground to conclude that the proceedings have become unnecessary.

Further, the Supreme Court held that the abandonment of the claim by a claimant can be a ground

12 Authored by Tejas Karia, Partner and Head, Arbitration, Avlokita Rajvi, Counsel, Lakshya Khanna, Senior Associate, and Shradha Sriram, Associate; *Dani Wooltex Corporation & Ors. v. Sheil Properties Pvt. Ltd. & Anr.*, Civil Appeal No. 6462 of 2024, Supreme Court of India, (2024) 7 SCC 1, judgment dated 16 May 2024.
Coram: Abhay S. Oka and Pankaj Mithal, JJ.

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to invoke Section 32(2)(c) of the Act. The abandonment of the claim can be either express or implied; the abandonment cannot be readily inferred. There is an implied abandonment when admitted or proved facts are so clinching that the only inference which can be drawn is of the abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up his/her claim can an inference of abandonment be drawn. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment. Merely because a claimant, after filing his statement of claim, does not approach the tribunal to fix a date for the hearing, the failure of the claimant will not amount to the abandonment of the claim.

In any case, there is no express abandonment. Even if it is to be implied, there must be convincing circumstances on record which lead to an inevitable inference about the abandonment. In the facts of the case, there was no abandonment either express or implied.

Analysis

The judgment provides much-needed clarity on the standards for determining the abandonment of claims in an arbitration. It protects a Claimant's right to a fair hearing and strikes a balance between procedural efficiency and rights of the parties. By doing so, the Supreme Court has enhanced confidence in arbitration as a method of dispute resolution, emphasising that a Claimant should not lose its right to pursue a claim unless there is clear evidence of intent to abandon the claim. Bottom of Form

High Court of Delhi holds that it has the power to appoint a sole arbitrator in deviation from an arbitration agreement that provides for three arbitrators[13]

Brief Facts

M/S Twenty-Four Secure Services Pvt. Ltd. ("**Petitioner**") filed a petition ("**Petition**") under Section 11(6) of the Act before a Single Judge of the High Court of Delhi ("**Court**") seeking appointment of a sole arbitrator.

The dispute between the parties arose under a Service Agreement dated 20 November 2020 ("**Service Agreement**") in relation to the pending payments and arrears thereunder. The Petitioner *vide* notice dated 3 June 2023 invoked arbitration as per Clause 7 of the Service Agreement. The Respondent *vide* reply dated 1 July 2023 refused the existence of any dispute between the parties; however, it nominated an arbitrator. Despite various reminders/emails from the Petitioner, no action with respect to the appointment of the third arbitrator was taken by the Respondent.

As per Section 11(6) of the Act, upon parties' failure to arrive at a consensus, either party may pray for necessary measures to be taken by the court to secure appointment of the Tribunal. The Petitioner filed the Petition seeking appointment of a sole arbitrator. The Respondent's contention was that the Petition ought to be dismissed as it was premature and against the procedure of appointment of the arbitral tribunal agreed between the parties.

Issue

Whether the Petition could be dismissed on grounds of it being premature?

Judgment

The Court rejected the grounds raised by the Respondent and held that the Petition was not premature as: Firstly, Clause 7 in the Service Agreement stipulated:

"[...] *dispute or difference by the either Party then the matter will be referred to arbitration by Sole*

13 Authored by Smarika Singh and Saifur Rahman Faridi, Partners and Arjun Singh Rana, Associate; *M/S Twenty-Four Secure Services Pvt. Ltd. v. M/S Competent Automobiles Company Limited*, ARB. Pet. No. 24/2024, High Court of Delhi, 2024 SCC OnLine Del 4358, judgment dated 22 May 2024.
Coram: Neena Bansal Krishna, J.

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Arbitrator where parties agree on the appointment of such arbitrator but where parties are unable to agree on such sole arbitrator, the matter will be referred to arbitration by three (3) arbitrators in which event, each party is to appoint an arbitrator and two arbitrators appointed by the Parties shall appoint the third arbitrator [...]".

Thus, only if there was no consensus between the parties on the appointment of the sole arbitrator, then the disputes would be referred to a three-member tribunal for which, each party was to appoint an arbitrator and the two arbitrators so appointed shall appoint the third arbitrator.

Secondly, the parties were unable to agree on the sole arbitrator or to constitute a three-member tribunal. Thirdly, the Court relied on the decision of the Supreme Court in ***Union of India v. Singh Builders Syndicate***,[14] which upheld the appointment of a sole arbitrator, in distinction from the arbitration agreement which provided for a tribunal of three members. The Supreme Court recognised the validity of such appointment under circumstances where consensus could not be reached.

Consequently, the Petition was allowed. A sole arbitrator was appointed to adjudicate the disputes between the parties under the aegis of the Delhi International Arbitration Centre.

Analysis

The Court's decision reiterates that the court has authority to deviate from the parties' agreement to choose either a sole arbitrator or a three-member tribunal should the circumstances require. Despite the Respondent's assertion that preference should be given to party autonomy, as per Section 11(6) of the Act and contemporary jurisprudence, the court is vested with the power of appointment if a party fails to act as required under the agreed appointment procedure. It was clear from the submissions made and the contentions of the Respondent that there was a lack of consensus between the parties on the appointment of the sole arbitrator as well as the three-member tribunal.

In the instant case, however, there is lack of clarity as to whether the parties failed to appoint a sole arbitrator before moving onto a three-member panel. If in fact the parties failed, then the procedure to be followed was to appoint a three-member panel. The Court instead decided to appoint a sole arbitrator. This seems to be inconsistent with Clause 7 of the Service Agreement, which provided for the appointment of a sole arbitrator and only if there was no consensus on the same, then the appointment of a three-member panel.

In ***Singh Builders*** (*supra*), it was required for the Court to appoint the sole arbitrator in order to expedite a matter that had been pending for nearly 10 years. However, such facts were not present in the present case and therefore ***Singh Builders*** (*supra*) was distinguishable. Furthermore, in ***Northern Railway Admn. v. Patel Engg. Co. Ltd.***,[15] the Court laid emphasis on the terms of the agreement being adhered to as closely as possible and the exhaustion of all remedies provided for in the same before appointing the sole arbitrator.

Despite the abovementioned analysis, the factual incongruencies aside, the objective of the Court in laying down the ratio in ***Singh Builders*** (*supra*) was not to override the terms of the agreement regarding a three-member panel or sole arbitrator. It was instead to further the intent of the parties to bring disputes before an arbitral tribunal, regardless of its composition. In other words, in this case as well, the Court has prioritised the parties' decision to resort to arbitration in the first place, over the composition of said arbitral tribunal. Moreover, it should be kept in mind that Clause 7 did indeed provide for a sole arbitrator's appointment before a three-member panel is considered. Thus, Court has not deviated from the decision in ***Northern Railway*** (*supra*) as in its view, all remedies provided for in the agreement were exhausted before appointment of sole arbitrator.

14 (2009) 4 SCC 523.

15 (2008) 10 SCC 240.

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High Court of Bombay holds that an unconditional stay of an arbitral award can be granted even when a case does not fall under the second proviso to Section 36(3) of the Act where there is patent illegality on the face of the award[16]

Brief Facts

On 29 January 2010, SAR Parivahan Pvt. Ltd. ("**Respondent No. 1**") obtained a loan from L&T Finance Company ("**Lender**") for the sum of INR 28,570,000/-, for a term of 34 months, at an interest rate of 6.26% p.a ("**Loan Agreement**"). The Loan Agreement was to be secured by hypothecation of the assets for which Respondent No. 1 availed the loan facility. On the occurrence of any event of default under the Loan Agreement, the Lender was entitled to sell/transfer/assign the assets and appropriate the proceeds towards repayment of all outstanding amounts. The Loan Agreement contained an arbitration clause.

Accordingly, Respondent No. 1 executed a deed of hypothecation in favour of the Lender in respect of 5 Volvo FM 400 Tippers ("**Assets**") as security, in terms of the Loan Agreement. Additionally, Respondent No. 1 and Respondent Nos. 2 and 3 (who are individuals) executed various deeds of guarantee and demand promissory notes as further security.

Following a default by the Respondents in repaying the loan, on 1 June 2011, the Lender issued a notice demanding payment of the outstanding dues amounting to INR 28,249,868/- and invoking arbitration. On 28 June 2011, the Lender filed a Statement of Claim to recover the outstanding dues. The Respondents initially objected to the arbitrator's appointment, but subsequently submitted to the arbitrator's jurisdiction. The Respondents did so by submitting a valuation report for the Assets ("**Valuation Report**") on 29 April 2013.

Meanwhile, the Lender sold the Assets for INR 11,000,000/- and wrote to the arbitrator to reduce its claim in arbitration to INR 17,249,868/-. Pursuant to further procedural hearings, the Lender once again amended its claim to INR 5,997,210.65/-. Respondent Nos. 1-3 then filed a counter claim, seeking compensation to the tune of INR 23,543,476/- from the Lender for allegedly undervaluing the Assets while selling them ("**Counter Claim**").

On 27 September 2022, the arbitrator, upon an application filed by CFM Asset Reconstruction (P) Ltd. ("**Petitioner No. 1**"), passed an order substituting it in place of the Lender and directing it to amend the Statement of Claim. In October 2022, Integro Finserv Private Limited ("**Petitioner No. 2**") wrote to the arbitrator informing him that the subject debt had been assigned to it by Petitioner No. 1.

Several procedural hearings took place thereafter. Due to the Petitioners' failure to comply with a procedural direction, the arbitrator proceeded with Respondent Nos. 1 to 3's arguments on the Counter Claim and closed the matter to pass the award. Petitioner No. 2 wrote to the arbitrator and to counsel for Respondent Nos. 1-3 noting that it did not have a complete copy of the Counter Claim and therefore sought an extension to file its reply and written arguments. Despite this, the arbitrator passed its award on 23 November 2023, whereby it allowed the claim of Petitioner No. 1 for the sum of INR 5,997,210/- and also allowed the Counter Claim for a sum of INR 12,569,768/-, thereby directing Petitioner No. 1 to pay Respondents a sum of INR 6,572,558/- ("**Award**"). Notably, the arbitrator had passed the Award by relying on the Valuation Report, for which no oral evidence was led, nor was any examination of the correctness of the findings in the Valuation Report carried out.

Aggrieved by the Award, the Petitioners filed a petition under Section 34 of the Act ("**Petition**"). They challenged the Award on the various grounds, including, *inter alia*: (i) that the arbitrator erred in adjudicating the validity of the sale of assets given that the Loan Agreement expressly granted the Lender the irrevocable authority to do so; (ii) the arbitrator adjudicated the dispute *ex-parte*,

16 Authored by Shreya Gupta, Partner and Sanjana Kattoor, Associate, *CFM Asset Reconstruction (P) Ltd. v. SAR Parivahan (P) Ltd.*, I.A. (Lodging) No. 6246 of 2024 in Commercial Arbitration Petition (Lodging) No. 5565 of 2024, High Court of Bombay, 2024 SCC OnLine Bom 1659, judgment dated 13 June 2024.
Coram: Firdosh P. Pooniwalla, J.

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despite Petitioner No. 2 seeking time to obtain a complete copy of the Counter Claim given that it had only received an incomplete copy without annexures; (iii) the arbitrator erred in concluding that the Lender sold the assets without following due process, without providing a reasonable opportunity to the Petitioners; and (iv) the arbitrator violated the principles of natural justice by hearing the disputes in the absence of the Petitioner without giving a clear peremptory notice for such hearing.

Issue

Whether an unconditional stay on the award under Section 36(3) of the Act should be granted?

Judgment

While deciding the question of whether an unconditional stay on the Award should be passed, the Court held in the affirmative on the basis that there was patent illegality on the face of the Award, and that the Award was perverse.

The Court arrived at this conclusion on the basis that the arbitrator's reliance on the Valuation Report, which had not been proved, to arrive at its findings on the valuation of the Assets was perverse and amounted to patent illegality. The Valuation Report was the opinion of a valuer and should have been proved by having the valuer depose. No such process was followed and therefore the Court found that the arbitrator had acted in a perverse manner, resulting in patent illegality on the face of the Award. In this regard, the Respondents submitted that by a letter dated 29 November 2012, the arbitrator had indicated that the arbitration would be decided on the basis of documentary evidence. However, the Court did not accept this argument and held that notwithstanding whether the arbitrator had indicated that he would decide the matter on the basis of documents, he could not have simply accepted the Valuation Report without requiring on strict proof of the Valuation Report, and examining the valuer.

On the question of stay of the Award pending the Petition, the Court held that it has the discretion to determine whether to grant unconditional stay or not, even in the case of a money decree.

The Respondents had relied on various precedents to contend that an unconditional stay on a monetary award can be granted only in the cases covered by the second proviso to Section 36(3) of the Act, i.e., where the contract or award was induced by fraud or corruption.

The Court rejected this contention and recognised that where the award was induced by fraud or corruption, it was mandatory for the court to grant an unconditional stay. However, it emphasised that the first proviso to Section 36(3) requires the Court to give due regard to the provisions on the stay of a money decree under the Code of Civil Procedure, 1908 ("**CPC**"), i.e., Order XLI Rule 5, while considering an application for stay of an award for the payment of money. The Respondents' contention would render the first proviso otiose.

Further, the Court relied on ***Ecopack India Paper Cup Pvt. Ltd. v. Sphere International***,[17] where it was held that in light of Section 36(3) read with Order XLI Rule 5 of the CPC, the Court can exercise its discretion to impose or not impose any condition while granting a stay on the execution of a decree. ***Ecopack*** (*supra*) recognises that "sufficient cause" and "substantial loss" must be established for the court to exercise its discretion under Order XLI Rule 5. In the present case, the Court found that the perversity and patent illegality of the Award amounts to sufficient cause to grant an unconditional stay. Additionally, the Court found that the Petitioners would suffer substantial loss as they would have to make payment for a claim which has been perversely granted by the arbitrator.

Thus, the Court admitted the petition and granted an unconditional stay of the Award.

Analysis

This judgment furthers the line of jurisprudence on the circumstances in which an unconditional

17 2018 SCC OnLine Bom 540.

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stay may be granted under Section 36(3) of the Act. In ***Ecopack*** (*supra*), the High Court of Bombay recognised that Section 36(3) read with Order XLI Rule 5 of the CPC empowers a court to grant an unconditional stay on the award where the applicant proves that there is sufficient cause and that it would be put to substantial loss. This judgment expands the meaning of "sufficient cause" and "substantial loss" to include perversity and patent illegality on the face of the award as grounds on which a Section 34 petitioner may seek an unconditional stay on an award.

High Court of Delhi allows an appeal by a third party against an interim order passed under Section 17 of the Act[18]

Brief Facts

An appeal under Section 37 of the Act was filed by ASSETS Care and Reconstruction Enterprise Limited ("**Appellant**"), seeking setting aside of orders passed by a sole arbitrator under Section 17 of the Act in an arbitration between the ATS Group ("**Claimants**") against the Dalmia Group ("**Respondents**"). By way of the first impugned order in the arbitration dated 12 October 2021:

(i) the Claimants were directed to furnish bank guarantees in favour of the Respondents;
(ii) the Claimants were directed to furnish the list of flats / units which are unencumbered; and
(iii) the aforesaid flats were to remain as security in favour of the Respondents and were not to be alienated till the disposal of the proceedings.

The Claimants were directed to comply with these directions within 3 weeks. The Claimants were injuncted from alienating or parting with the possession of any flat / unit out of specified projects without further orders of the arbitral tribunal. The injunction was to remain in force for 3 weeks or earlier, till the other directions were complied with. In the event of default of compliance with the directions, the injunction granted would continue to remain operative. The Claimants were granted 3 additional weeks to comply with the order by way of a subsequent order dated 5 November 2021, i.e., the second impugned order.

The Claimants had availed credit facilities from the Appellant for INR 11 billion and had created the first equitable mortgage over certain projects in favour of the Appellant ("**Charged Projects**"). However, by way of the first impugned order and second impugned order (collectively, "**Impugned Orders**"), the arbitral tribunal had injuncted the Claimants from alienating, transferring etc., flats / units from *inter alia* the Charged Projects.

Before the High Court of Delhi ("**Court**"), the Appellant *inter alia* contended that:

(i) While it was not a party to the arbitration proceedings, the Impugned Orders interfered with the contractual rights between the Appellant and the Claimants, and such order(s) passed under Section 17 of the Act were appealable by a non-party to the arbitration;
(ii) The charge in favour of the Appellant in respect of the Charged Projects had been registered under Section 77 of the Companies Act, 2013 ("**Companies Act**");
(iii) As per Section 80 of the Companies Act, a person was deemed to have notice of the registered charge and accordingly, the Respondents had notice of such charge on the Charged Projects; and
(iv) The purported charge in favour of the Respondents was not registered and the charge on the Charged Projects would take precedence.

In response, the Respondents *inter alia* contended that:

(i) The Respondents had invested in various projects of the Claimants and an exclusive charge had been created over one of the Charged Projects;
(ii) The appeal was not maintainable and was liable to be dismissed since it had been preferred by a non-party to the arbitration. The Impugned Orders had been passed under Section 17 of the

18 Authored by Anirudh Das, Partner, and Aditya Thyagarajan, Senior Associate; *ASSETS Care and Reconstruction Enterprise Limited v. DOMUS Greens Private Limited & Ors.*, ARB. A. (Comm) 78/2022 and I.A. Nos. 18317/2022 and 1455/2023, High Court of Delhi, 2024 SCC OnLine Del 4455, judgment dated 1 July 2024.
Coram: Jasmeet Singh, J.

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Act, read with Order XXXVIII, Rules 5 and 8 of the CPC, which provided for a separate procedure for adjudication of claims of third parties which would require leading of evidence; and

(iii) The Respondents were secured creditors and had a prior charge as against the Appellant.

Issue

Whether the appeal was maintainable and the Impugned Orders were liable to be set aside?

Judgment

The Court held that despite not being a party to the arbitration, the Appellant could file an appeal against the Impugned Orders. The Court also held that the appeal was maintainable since it was an order passed under Section 17 of the Act, which was appealable under Section 37 of the Act and the Impugned Orders had affected the rights of the Appellant. This was different to the scenario contemplated under Order XXXVIII, Rule 8 of the CPC, which refers to adjudication in respect of attachment of property. It was further held that given that the Appellant had a registered charge in its favour, the same put the Appellant in a preferential position qua the Respondents, whose charge was not registered. The Court observed that the Respondents' contention that the Appellant and the Claimants had colluded was bereft of any merit. The Court further relied on the fact that the Respondents were aware of the charge in favour of the Appellant. In view of the above, the appeal was allowed and the Impugned Orders were set aside.

Analysis

The Court's decision highlights that third parties, who are not parties to an arbitration, can appeal against an interim order that has been passed under Section 17 of the Act where their rights are affected.

High Court of Delhi holds that an arbitral tribunal is empowered to award compensation for breach of contract if the contract is incapable of specific performance without needing to amend its claim[19]

Brief Facts

The Deputy Commissioner of Police, New Delhi ("**Appellant**") had floated a tender for installing a CCTV system in Delhi, which was subsequently awarded to the Respondent. The parties entered into a contract, under which Score Information Technologies Ltd. ("**Respondent**") was required to deliver the CCTV cameras and other connected items ("**Equipment**"), and payments were to be made by the Appellant in two instalments: 60% of the cost of the Equipment was to be paid initially and the balance 40% of the cost of the Equipment was to be paid after the successful completion of the contract. The Respondent also provided a bank guarantee as security to the Appellant.

The execution of the contract works was delayed due to lack of permissions from civic agencies for activities such as digging and road cutting, which led to the Appellant issuing a show cause notice and a termination notice to the Respondent. The Appellant forfeited the Respondent's bank guarantee and blacklisted the Respondent. Aggrieved by the same, the Respondent invoked arbitration and the matter was referred to a sole arbitrator, where the Respondent sought monetary damages including payment of 60% of the price of the Equipment, refund of the bank guarantee, damages for the loss of reputation and business opportunity, and specific performance of the contract.

The tribunal *vide* an award dated 4 June 2012 ("**Award**") concluded that the Appellant illegally terminated the contract and hence, allowed the claim towards payment of 60% of the price of the

19 Authored by Tejas Karia, Partner, Head-Arbitration, Prakhar Deep, Principal Associate, Nishant Doshi, Senior Associate and Nitin Sharma, Associate; High Court of Delhi, *State v. Score Information Technologies Ltd.*, FAO (OS)(Comm) No. 357/2019, 2024 SCC OnLine Del 4555, judgment dated 2 July 2024.
Coram: Vibhu Bakhru and Tara Vitasta Ganju, JJ.
Score Information Technologies Ltd. was represented before the High Court of Delhi by the team of Shardul Amarchand Mangaldas & Co comprising Tejas Karia, Partner, Head-Arbitration, Prakhar Deep, Principal Associate, Nishant Doshi, Senior Associate and Nitin Sharma, Associate.

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Equipment and refund of the bank guarantee in favour of the Respondent. Since the Appellant awarded the contract to a third party during the pendency of the arbitration, which rendered the relief for specific performance of the contract infructuous, the tribunal awarded damages to the Respondent under Section 21 of the Specific Relief Act, 1963 ("**SR Act**") to the tune of 40% of the balance price of the Equipment after observing that the Respondent was willing to perform its contractual obligations.

The Appellant challenged the Award before the Ld. Single Judge ("**SJ**") of the High Court of Delhi ("**Court**") under Section 34 of the Act, which was dismissed by the SJ *vide* its judgment dated 8 July 2019 ("**Impugned Judgment**"). The SJ, while placing reliance on ***Associate Builders v. DDA***,[20] held that the court under Section 34 of the Act cannot interfere with the findings of an arbitral tribunal with respect to contractual interpretation and appreciation of evidence. On the objection raised by the Appellant regarding the claim for 40% of the price of the Equipment without there being a specific prayer for the same, the SJ reiterated the settled position of law that in terms of Section 21 of the SR Act, "*even in the absence of a specific prayer for damages, the Court/Arbitrator is not without competence to award such damages*". The Impugned Judgment was assailed by the Appellant before the Ld. Division Bench ("**DB**") of the Court, where the subject matter of challenge was limited to the award of 40% of the price of the Equipment.

Issues

Issue (i): Whether the Respondent was entitled to specific performance of the contract or compensation under Section 21 of the SR Act?

Issue (ii): Whether the tribunal's award of damages and compensation to the Respondent was legally sustainable under the Act since the Respondent never raised a claim to that effect?

Judgment

Issue (i): The DB referred to the judgments of ***Urmila Devi v. Mandir Shree Chamunda Devi***[21] and ***Jagdish Singh v. Natthu Singh***[22] and observed that when a contract becomes impossible to specifically perform due to no fault of a non-breaching party, courts/arbitrators are empowered to award compensation in terms of Section 21 of the SR Act. Accordingly, the DB recorded that the Tribunal considered the fact that the contract could not be performed by the Respondent as the same was awarded to a third party by the Appellant during the pendency of the arbitral proceedings.

It was further held that the scope of interference in an arbitral award under Sections 34 and 37 of the Act is limited. The DB, while referring to the judgments of ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin***[23] and ***MMTC Limited v. Vedanta Limited***[24] held that the ground of patent illegality is limited to situations where the findings of a Tribunal are arbitrary, capricious or perverse, or when the conscience of the court is shocked, or when the illegality is not trivial but goes to the root of the matter. The DB, while referring to the judgment of the Supreme Court in ***Delhi Airport Metro Express (P) Ltd. v. DMRC***,[25] held that interpretation of a contract is a matter for the Tribunal to determine and even if such interpretation gives rise to an erroneous application of law, courts will generally not interfere unless the error is palpably perverse or illegal and goes to the root of the matter.

Issue (ii): The Court observed that as per the record at the time of filing the statement of claim before the tribunal, the Appellant was yet to award the contract to a third party. Therefore, the prayer sought by the Respondent for specific performance of the contract was essentially for directions to the Appellant to continue the contract for installation of the Equipment, including paying 40% of the price of the Equipment to the Respondent. The Court affirmed the SJ's reliance

20 (2015) 3 SCC 49.
21 (2018) 2 SCC 284.
22 (1992) 1 SCC 647.
23 2021 SCC OnLine SC 508.
24 (2019) 4 SCC 163.
25 (2022) 1 SCC 131.

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on the explanation to Section 21(5) of the SR Act and held that an arbitral tribunal may exercise its power to award compensation for breach of a contract if the contract has become incapable of specific performance.

Analysis

The Court's decision reaffirms the position that contractual interpretation is within the sole domain of an arbitral tribunal, and courts under Sections 34 and 37 of the Act have limited scope of interference. Further, the decision also affirms that the court/tribunal has discretionary powers to grant compensation under Section 21 of the SR Act, if a contract has become incapable of specific performance and such relief can be granted even in absence of a specific prayer for the same or without needing to formally amend the claim.

High Court of Calcutta reiterates that a general reference to another contract would not suffice to import the arbitration clause to a different contract[26]

Brief Facts

M/s. Zillion Infraprojects Pvt. Ltd. ("**Petitioner**") filed two applications under Section 11 of the Act before the High Court of Calcutta ("**Court**") for the appointment of an arbitrator in disputes under two similar work contracts ("**Contracts**") executed between the Petitioner and Bridge and Roof Co (India) Ltd. ("**Respondent**") regarding mechanical equipment, erection and pending works of Paradwip Refinery Project of Indian Oil Corporation Limited, Paradwip, Orissa.

The principal contract was executed between Indian Oil Corporation Limited ("**IOCL**") and the Respondent, which was sub-contracted by the Respondent (contractor) to the Petitioner (sub-contractor).

A perusal of the arbitration clause in the Contracts shows that the clause has two components:

(i) The first part of the clause deals with disputes arising between the sub-contractor and contractor. It is provided that such a dispute cannot be adjudicated through arbitration or any similar forum (i.e., any other alternative dispute resolution forum). It is also provided that the sub-contractor is bound by any arbitration between IOCL and the contractor.

(ii) The second limb of the clause deals with issues pertaining to disputes between the contractor and/or the sub-contractor on the one hand and IOCL on the other hand. The second part also states that in case the sub-contractor desires the contractor to raise a dispute, the sub-contractor shall approach the contractor with such request. The decision of the General Manager of the contractor will be final and if arbitration is invoked by the contractor against IOCL, then the sub-contractor has to bear the pro-rata cost of its portion of the arbitration expenses.

The Petitioner argued that the second limb should be struck down as being violative of Article 14 of the Constitution of India ("**Constitution**") and given the intention to refer disputes to arbitration, the Petitioner ought to be permitted to independently refer its dispute with the Respondent to arbitration.

Issues

Issue (i): Whether the arbitration clause in the Contracts violates Article 14 of the Constitution?

Issue (ii): Whether the arbitration agreement between the Petitioner and Respondent violates Section 7 of the Act?

Judgment

Issue (i): The Court held that the second part of the arbitration clause is violative of Article 14 of

26 Authored by Suhani Dwivedi, Partner, Trisha Mukherjee, Principal Associate and Raunak Bose, Associate; *Zillion Infraprojects Private Limited v. Bridge and Roof Co India Limited.*, AP-Com. No. 77 of 2024 with A.P. No. 47 of 2022, High Court of Calcutta, 2024 SCC OnLine Cal 6612, judgment dated 8 July 2024.
Coram: Sabyasachi Bhattacharyya, J.

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the Constitution and liable to be struck down since: (i) the Petitioner is not allowed to participate in the arbitration with IOCL, even though it has a stake in the outcome of the arbitration, and is mandated to pay the portion of the expenses pertaining to its claim; (ii) the Respondent has the exclusive discretion to decide whether or not to include the Petitioner's claim in the reference of the dispute to arbitration. The Court held that such curtailment of right is violative of Article 14 of the Constitution as it is a contravention of the right to access to justice, which is a fundamental component of the right to equality enshrined in Article 14 of the Constitution. The effect of striking down the second limb of the arbitration clause is that the Petitioner will be at liberty to raise a dispute against IOCL alone or against both, IOCL and the Respondent before a court of competent jurisdiction (and not arbitration).

Issue (ii): The Court held that the arbitration agreement between the Petitioner and Respondent (i.e., the first part of the arbitration clause) does not violate Section 7 of the Act. Accordingly, the Petitioner cannot refer any dispute with the Respondent to arbitration. The Court held there is a specific bar to arbitration in the first part of the clause, which is exclusively for disputes between the Petitioner and the Respondent. The Court held that there is no dichotomy and the first part of the arbitration clause is not in violation of Article 14 of the Constitution. The Court cannot modify a contract under Section 11 of the Act as the parties themselves chose to not confer such a right upon themselves.

Further, the Court relied on ***NBCC (India) Ltd v. Zillion Infraprojects Pvt. Ltd.***[27] and held that Section 7(5) of the Act provides for a conscious acceptance of an arbitration clause from any document by the parties as part of their contract. It was held that in the present case, there is not a single sentence in the agreement between the Petitioner and the Respondent indicating that the arbitration clause between IOCL and the Respondent has been made a part of the contract between the Petitioner and Respondent. The Court also relied on ***M.R. Engineers & Contractors Private Ltd. v. Som Datt Builders Ltd.***[28] to hold that an arbitration clause from another contract can be incorporated into a contract only by specific reference to the arbitration clause in the other contract. In the present case, such specific incorporation is absent. Accordingly, the Petitioner cannot take advantage of the arbitration clause between IOCL and the Respondent. Admittedly, the present dispute had arisen exclusively between the Petitioner and the Respondent, and IOCL had no part to play in it.

Accordingly, the Court dismissed both applications under Section 11 of the Act. Liberty was granted to the Petitioner to file a regular civil suit before the competent civil court or any other statutory forum if the Petitioner has such a right under any statute other than the Act.

Analysis

The Court reiterated that a party cannot take advantage of the arbitration clause unless the same is specifically incorporated in the contract. It was clarified that a party cannot selectively pick and choose particular terms of the contract and shut its eyes or assail the others.

High Court of Delhi clarifies that an arbitral tribunal's approval under Section 27(1) of the Act is not required to record detailed decisions but should reflect its "conscious view" on the relevancy or materiality of evidence sought to be produced through witnesses[29]

Brief Facts

In an ongoing arbitration under a construction contract, the petitioner-contractor filed a petition under Section 27 of the Act seeking the assistance of the High Court of Delhi ("**Court**") to summon two officials from the respondent's organisation (employee) as witnesses for adducing evidence at the said arbitration proceedings. This petition was filed pursuant to an order dated 15 May 2024 of

27 2024 SCC OnLine SC 323.

28 (2009) 7 SCC 696.

29 Authored by Shruti Khanijow, Partner and Darshit Sidhabhatti, Associate; *BPT Infra Project Pvt. Ltd. v. Indraprastha ICE and Cold Storage Pvt. Ltd.*, ARB. OMP (E) (Comm) No. 20/2024 and I.A. No. 32811/2024, High Court of Delhi, 2024 SCC OnLine Del 4755, judgment dated 10 July 2024.
Coram: C. Hari Shankar, J.

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the arbitral tribunal ("**Tribunal's Order**"), recording that the witnesses' testimonies are relevant and directing the petitioner to approach the Court for the necessary assistance to summon them.

The respondent objected on the ground that the tribunal had failed to record reasons for its decision and thus, does not constitute an "*approval*" under Section 27(1) of the Act. It was the respondent's case that the approval must involve a conscious judicial application of mind to the relevance of the witnesses' evidence, rather than being granted as a matter of course.

Issue

Does Section 27(1) of the Act expressly require the tribunal to provide detailed reasons when agreeing to a party's request to summon witnesses while granting its "*approval*"?

Judgment

In assessing the merits of the objection raised by the respondent, the Court examined its decision in ***Hindustan Petroleum Corporation Ltd v. Ashok Kumar Garg***[30] and concurred that the arbitral tribunal under Section 27(1) cannot operate mechanically as merely a stamp of approval to the party's request. At the least, the approval order must reflect the arbitral tribunal's application of mind. In ***Hindustan Petroleum*** (*supra*), the Court tested the case on the above principle and concluded on facts that the order of the arbitral tribunal therein did not reflect any application of mind as to the relevance of witnesses' evidence to the case. Similarly, the Court distinguished ***Steel Authority of India Ltd v. Uniper Global Commodities***[31] on facts and concurred with the legal principle that the arbitral tribunal is required to look into the relevance or materiality of the evidence sought to be produced before allowing an application under Section 27(1) on a *prima facie* basis.

The Court was of the considered view that any order passed by the arbitral tribunal under Section 27(1) should reflect a "*conscious view*" regarding the relevance or materiality of the witnesses' evidence to the case. The Court noted that Section 27(1) does not expressly require the arbitral tribunal to record detailed reasons for approving a party's request for summoning a witness. In case a detailed opinion on the relevance of their evidence is expressed at this stage by the arbitral tribunal, it may be a potential ground for an objection being taken to the effect that the issue in controversy has been pre-determined.

Further, an application under Section 27(1) cannot be dealt with by courts akin to an appeal against the order of an arbitral tribunal. The discretion to summon a witness, as requested by a party, vests with the arbitral tribunal. The court's interference ought to be in line with Section 5 of the Act and the principle of arbitral autonomy that permeates throughout the Act.

In this case, the Court found that the petitioner's application had adequately set out clear and cogent reasons for summoning the witnesses and the Tribunal's Order must therefore be regarded as having impliedly accepted the contentions of the petitioner and found the reasons adduced therein to be justified. The Court allowed the application of the petitioner under Section 27(1) in view of the fact that the Tribunal's Order recorded that the evidence of witnesses is relevant and declined to interfere with the said order.

Analysis

The Court has struck an appropriate balance in interpreting Section 27(1) of the Act. The Court observed that an objection would be valid when the tribunal either fails to apply its mind or misinterprets the law while deciding a request for summoning a witness. In such instances, judicial intervention is justified to correct the error. However, when the tribunal properly exercises its discretion, demanding detailed and reasoned orders for procedural matters like witness production would be unnecessary and counterproductive. The Court emphasised that procedural decisions, such as assistance in summoning witnesses, do not require exhaustive reasoning, as doing so would lead to undue judicial interference in the arbitration process.

30 2006 (91) DRJ 591.

31 2023 SCC OnLine Del 7586.

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Such interference would undermine the principles of arbitral autonomy and the policy of minimal judicial intervention, which are foundational to arbitration law. By allowing the petition and directing the witnesses to appear before the tribunal, the Court reaffirmed the balance between ensuring relevant evidence is collected and maintaining the tribunal's autonomy. This decision highlights the importance of trusting the arbitral tribunal's discretion in procedural matters, provided it exercises that discretion judiciously, without burdening the process with unnecessary judicial oversight.

High Court of Delhi declines to grant interest on the awarded amount for the period between the deposit by the award debtor under Section 36(3) of the Act and its eventual release[32]

Brief Facts

The High Court of Delhi ("**Court**") decided the issue of whether an enforcing award holder is entitled to interest between the date of deposit of the awarded amount and the date on which the amount is released in two separate proceedings that were adjudicated together.

OMP (ENF.) (COMM.) 126/2021

Arbitral proceedings between M/s Ramacivil India Constructions Pvt. Ltd. ("**Ramacivil India**") and the Union of India ("**UOI**") culminated in an award under which the UOI was required to pay Ramacivil India certain sums along with interest (accruing until the date of payment). UOI challenged the award under Section 34 of the Act and along with that petition, filed an application under Section 36 of the Act, seeking a stay on the award's operation. The stay was granted subject to the UOI depositing the awarded amount and the accrued interest till that date. UOI deposited the awarded amount (principal plus up-to-date interest) with the Court. Subsequently, Ramacivil India filed an application in the proceedings under Section 34 of the Act for release of the deposit and offered to furnish a bank guarantee. The Court allowed Ramacivil India to withdraw the deposited amount. Eventually, when the proceedings under Section 34 of the Act were dismissed, the Court ordered the release of the bank guarantee and the remaining deposit.

In the execution proceedings, Ramacivil India sought interest on the awarded amount for the period between the UOI's deposit and its eventual release.

OMP (ENF.) (COMM.) 9/2021

Arbitral proceedings culminated in an award whereby Veg Sanchar Vihar CGHS Ltd ("**Veg Sanchar**") was ordered to pay Saptrishi Builders Pvt Ltd ("**Saptrishi Builders**") certain sums, along with interest accruing until the date of payment. Veg Sanchar challenged the award under Section 34 of the Act and along with that petition, filed an application under Section 36 of the Act, seeking a stay on the award. The Court granted a stay, subject to Veg Sanchar depositing INR 20 million (approximately 3/4th of the awarded amount and the interest that had accrued on it till that date). Accordingly, Veg Sanchar made the deposit.

On the dismissal of the challenge to the award, an application was filed in the execution proceedings for release of the amount deposited with the Court (as opposed to OMP (ENF.) (COMM.) No. 126/2021 where such application was filed in the proceedings under Section 34 of the Act). The application was allowed. Saptrishi Builders contended that it was entitled to interest in terms of the arbitral award on the deposited amount from the date of the deposit by Veg Sanchar to the date of release.

Issues

Issue (i): Whether the benefit of interest ceasing to run once a deposit is made under Order XXI, Rule 1 of the CPC is applicable to deposits made under Section 36(3) of the Act?

32 Authored by Niyati Gandhi, Partner and Ayush Waghmare, Associate; *M/s Ramacivil India Constructions Pvt. Ltd. v. Union of India*, OMP (ENF.) (COMM.) No. 126/2021 & *Saptrishi Builders Pvt. Ltd. v. Veg Sanchar Vihar CGHS Ltd*, OMP (ENF.) (COMM.) No. 9/2021, High Court of Delhi, judgment dated 16 July 2024.
Coram: C. Hari Shankar, J.

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Issue (ii): Whether lack of an opportunity for a petitioner to withdraw the deposited amount; or the withdrawal of the deposit being made subject to a bank guarantee being furnished changes the nature of the deposit and entitles the petitioner to interest?

Judgment

Issue (i): The Court noted that the distinction between deposits under Order XXI, Rule 1(1)(a) of the CPC and Section 36(3) of the Act was "*one of form than of substance*". Accordingly, the Court made three observations. *First*, the Court observed that if, as Ramacivil India contended, a distinction was to be drawn between the deposit under Order XXI, Rule 1(1)(a) of the CPC and the deposit for securing the stay of the award's execution (thereby entitling Ramacivil India to interest on the latter deposit), the sequitur would be that Ramacivil India would have to apply for the interest in the proceedings under Section 34 of the Act and not the execution proceedings. By noting Ramacivil India's unwillingness to do so, the Court held that the proceedings under Section 34 of the Act could not be divorced from the execution proceedings.

Second, the Court observed that in any event, the proceedings under Section 34 of the Act and the execution proceedings were with respect to the same award. Following the dismissal of the challenge under Section 34 of the Act and the release of the amounts, Ramacivil India handed the calculation sheet in the execution proceedings to demonstrate the balance amount payable to it, thereby effectively bridging the gap between the two proceedings (assuming there was one in the first place). Thus, having involved the executing court in determining the balance amount payable, Ramacivil India could not later assert a dichotomy between the two proceedings. In view of this, the Court rejected the assertion that it had to be "*unmindful of Order XXI Rule 1(4)*" when ascertaining interest on the amount deposited under Section 36(3) of the Act.

Third, on referring to various rulings of the Supreme Court and its own previous decision dealing with the accrual of interest on deposits in terms of Order XXI, Rule 1(1)(a) of the CPC, the Court observed that none of the decisions carve out an exception in instances where the deposit is made for obtaining a stay of an award under challenge.

Therefore, the Court held that Ramacivil India was not entitled to additional interest on the amount deposited with the Court, except to the extent of the interest on fixed deposit earned by the amount for the time it had been directed to be deposited in a fixed deposit account, between the date of its deposit and the date of its release. Applying the same reasoning to OMP (ENF.) (COMM.) No. 9/2021, the Court refused to draw a distinction between deposits made under Order XXI Rule 1(1)(a) of the CPC and Section 36(3) of the Act.

Issue (ii): In OMP (ENF.) (COMM.) No. 9/2021, Saptrishi Builders contended that it would be entitled to interest on the deposit when it lacked the opportunity to withdraw such deposits. However, the Court disagreed with this reasoning and observed that the issue was not merely about Saptrishi Builders' delay in applying for a withdrawal of the deposit. Rather, in the Court's opinion, the principle, as it emerged from the judgments of the Supreme Court, was that the deposit by the judgment debtor constituted a deposit within the meaning of Order XXI, Rule 1(1)(a) of the CPC and with the insertion of Order XXI, Rule 1(4) [through the Code of Civil Procedure (Amendment) Act, 1976], the decree holder was not entitled to any interest on the amounts from the date of deposit till the release of such deposits.

In OMP (ENF.) (COMM.) No. 126/2021, the Court referred to the decision in ***Cobra Instalaciones Y Servicios, S.A and Shyam Indus Power Solution Pvt. Ltd. v. Haryana Vidyut Prasaran Nigam Ltd.***,[33] ("**Cobra**") wherein it was observed that where the deposited award amount was unconditionally available for withdrawal, the liability of post-award interest would cease on making the deposit. Ramacivil India attempted to distinguish ***Cobra*** (*supra*) by contending that the deposit in that case was unconditional, whereas the present case involved a conditional deposit, as demonstrated by

33 2023 SCC OnLine Del 5439.

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Ramacivil India having to furnish a bank guarantee to withdraw the deposited amount. However, the Court rejected this contention and held that it had not placed any conditions for the withdrawal of the deposit by Ramacivil India. Rather, the condition of furnishing a bank guarantee came into existence only because Ramacivil India undertook to do so. Thus, the Court found no difference between the deposit orders in ***Cobra*** (*supra*) and the present case, and held that the reasoning of the former remained applicable.

Analysis

Award holders should consider withdrawing deposits in a timely manner as they will not be entitled to any interest for the period between the deposit of the amount and its release. However, more clarity may be required on whether this principle also applies where the deposit is conditional i.e., the order of deposit requires the award holder to fulfil certain conditions (such as furnishing a bank guarantee) for withdrawing the deposited amount, particularly in circumstances where the award holder has not offered such a security at its own instance.

Supreme Court clarifies the scope of scrutiny under Section 11 of the Act in cases involving the "full and final settlement" of claims[34]

Brief Facts

The Supreme Court ("**Court**") heard petitions filed by SBI General Insurance Co. Ltd., the insurer, ("**Appellant**") against orders of the High Court of Gujarat ("**High Court**") dated 22 September 2023 and 1 December 2023 ("**Impugned Orders**") appointing an arbitrator under Section 11(6) of the Act in a dispute raised by the insured, ("**Respondent**"), regarding settlement of insurance claims.

The Respondent suffered losses from two fire incidents at its factory premises in 2018, which fell within the coverage period of the insurance policy between the parties ("**Insurance Policy**"). For the first fire incident, although the Respondent had made a claim for INR 17,619,967/-, it was alleged that the Appellant only paid part of the claimed sum, i.e., INR 8,419,579/- (after wrongful deductions made basis a report prepared by a surveyor appointed by the Appellant). Upon payment of this sum for the first fire incident, the Respondent signed a discharge voucher on 4 January 2019 accepting the amount provided by the Appellant as full and final settlement.

However, after over a year, on 2 March 2020, the Respondent invoked arbitration for the remaining claim amount for the first fire incident, subsequently filing a petition for appointment of an arbitrator under Section 11(6) of the Act before the High Court ("**Section 11 Petition**").

The arbitration clause in the Insurance Policy was for disputes or differences that may "*arise as to the quantum to be paid under this Policy (liability being otherwise admitted)*". The Respondent alleged that the discharge voucher was signed under financial duress, as the claim for the second fire incident had still been pending at the time the discharge voucher was signed (which would have potentially adversely affected its claims). It was thus asserted that the discharge voucher was signed under undue influence and without the Respondent's free will.

The Appellant opposed the Respondent's claim contending that: (a) the claim stood fully settled; and (b) no arbitrable dispute survived as the dispute was not one of quantum but one of liability. The Appellant further contended that the Respondent's claim was "*stale*" and requested the High Court to look into the question of arbitrability of the dispute while deciding the Section 11 Petition.

Pursuant to the Section 11 Petition filed, the High Court *vide* the Impugned Orders held that the dispute was within the ambit of the arbitration clause in the Insurance Policy and that this adjudication was a function to be discharged by an arbitrator.

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34 Authored by Ila Kapoor, Partner, and Kshipra Pyare and Devika Bansal, Associates; *SBI General Insurance Co. Ltd. v. Krish Spinning*, Civil Appeal No. 7821/2024, Supreme Court of India, 2024 SCC OnLine SC 1754, judgment dated 18 July 2024. **Coram:** D.Y. Chandrachud, CJI, J.B. Pardiwala and Manoj Misra, JJ.

Issues

Issue (i): Whether the execution of a discharge voucher towards the "*full and final settlement*" of claims arising under a contract precludes any future arbitration for such settled claims?

Issue (ii): What is the scope and standard of judicial scrutiny that an application under Section 11(6) of the Act can be subjected to when a plea of "*accord and satisfaction*" is taken by the Respondent?

Issue (iii): What is the effect of the decision in ***In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1966 and the Indian Stamp Act 1899***[35] on a referral court's scope of powers under Section 11 of the Act?

Judgment

The Court rejected the preliminary grounds taken by the Appellant and held that in the present case: (a) the quantum of liability was in dispute (since the amount claimed by the Respondent was at variance with the amount admitted by the Appellant) and the dispute fell within the ambit of the conditional arbitration clause in the Insurance Policy; and (b) the claim was not time barred as the notice invoking arbitration (dated 2 March 2020) and the Section 11 Petition (dated 25 October 2021) were within the limitation period, i.e., three years.

The Court further reiterated its observations in ***M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd.***,[36] stating that the limitation period for filing a petition under Section 11(6) of the Act only starts after a valid notice invoking arbitration has been issued by the applicant and there has been a failure or refusal by the other party to comply with the requirements of such notice. The Court also clarified that at the stage of deciding an application for appointment of an arbitrator, the court must not engage in an "*intricate evidentiary enquiry*" into the question of whether the claims raised by the applicant were time barred and that this should be left to be determined in due course by the arbitrator.

Issue (i): Relying on the doctrine of separability, the Court held that the arbitration agreement, being separate from the main contract, remains valid for resolving any disputes related to the settlement. Even if the contracting parties agree to discharge each other of any obligations, this would not *ipso facto* mean that the arbitration agreement also comes to an end, unless the parties specifically agree to do this.

The Court also referred to ***National Insurance Co. Ltd. v. Boghara Polyfab***,[37] which had clarified that the mere act of signing a "*full and final discharge voucher*" would not act as a bar to arbitration. Such a bar would operate only in situations where such discharge vouchers are validly and voluntarily executed.

Thus, where a dispute exists as to validity / alleged coercion in signing a discharge voucher and the full and final settlement of the original contract itself becomes a matter of dispute between the parties, such a dispute can be categorised as one arising "*in relation to*" or "*in connection with*" or "*upon*" the original contract, creating an arbitrable dispute.

Issue (ii): The Court held that the issue of "*accord and satisfaction*" is a complex mixed question of law and fact that falls under the arbitral tribunal's exclusive jurisdiction. Referring to the views taken in ***Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman***,[38] the Court clarified that post the Arbitration and Conciliation (Amendment) Act, 2015, it was no more open to a referral court to examine the issue of "*accord and satisfaction*" since doing so would be encroaching on the arbitral tribunal's authority.

Issue (iii): In light of the observations made by the Court in ***In Re: Interplay*** (*supra*), the Court reinforced the principles of arbitral autonomy and *kompetenz-kompetenz*, which restrict judicial

35 (2024) 6 SCC 1.
36 2024 INSC 155.
37 (2009) 1 SCC 267.
38 (2019) 8 SCC 714.

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interference at the stage of appointing an arbitrator to merely determining the "*prima facie existence of the arbitration agreement*".

According to the Court, Section 11 of the Act aims to give effect to the parties' mutual intention to resolve disputes through arbitration when they fail to appoint arbitrators themselves. By referring disputes to arbitration and appointing an arbitrator under Section 11 of the Act, the referral court upholds the original agreement between the parties to arbitrate specific disputes.

The Court observed that although the broad-based attempt by courts was to minimise judicial interference, the "*eye of the needle*"[39] test propounded in ***Vidya Drolia & Ors. v. Durga Trading Corporation***[40] and ***NTPC Ltd. v. SPML Infra Ltd.***[41] allowed the referral court to examine contested facts and appreciate *prima facie* evidence (however limited this scope of enquiry may be) to determine if claims were *ex-facie* frivolous / devoid of merit and non-arbitrable. Pertinently, the Court stated that it found it "*difficult to hold*" that these principles would continue to apply given the precedent in ***In Re: Interplay*** (*supra*).

The Court clarified that a dispute pertaining to the "*accord and satisfaction*" of claims arising out of the underlying substantive contract was not one which attacked or questioned the existence of the (separate and independent) arbitration agreement. Consequently, the Court upheld the appointment of a former High Court judge as an arbitrator to resolve the dispute between the parties.

Analysis

The Court's ruling clarifies that referral courts should restrict their adjudication to only determining the existence of an arbitration agreement, leaving substantive issues for the arbitral tribunal to decide. While reinforcing the foundational principles of arbitral autonomy and the legislative intent behind the Act, this endorsement furthers the minimisation of judicial intervention and promotes the swift, streamlined and effective resolution of disputes through arbitration.

High Court of Karnataka holds that the Commercial Courts Act does not bar an appeal against an order refusing to grant ex-parte ad-interim relief under the Act, and clarifies the scope of judicial interference in appeals against orders granting or rejecting ex-parte ad-interim relief[42]

Brief Facts

M/s KLR Group Enterprises ("**Appellant**") approached the Commercial Court in Bengaluru seeking *ex-parte* ad-interim relief under Section 9 of the Act against Mr. Madhu H. V. and certain others ("**Respondents**"). On 13 February 2024, the Commercial Court denied the Appellant's request ("**Impugned Order**"). Aggrieved by the Impugned Order, the Appellant preferred an appeal before the High Court of Karnataka ("**Court**") under Section 37 of the Act ("**Appeal**").

In the Appeal, the Respondents contested its maintainability on the ground that an order refusing *ex-parte* interim relief under Section 9 of the Act is non-appealable and barred under the proviso to Section 13(1A) of the Commercial Courts Act, 2015 ("**CCA**") read with Section 37 of the Act.

The Appellant argued that:

(i) Orders denying *ex-parte* interim measures are orders within the meaning of Section 9 of the Act and consequently, appealable under Section 37 of the Act. Moreover, such *ex-parte* interim orders are recognised under the High Court of Karnataka Arbitration (Proceedings before the

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39 The "*eye of the needle*" test outlines the referral court's power of interference under Section 11 of the Act. It involves: (a) examining the validity and existence of the arbitration agreement, including the parties and privity of the applicant to the said agreement; and (b) generally leaving questions of non-arbitrability to the arbitral tribunal, rejecting only claims that are "*manifestly and ex-facie non-arbitrable*".

40 (2021) 2 SCC 1.

41 (2023) 9 SCC 385.

42 Authored by Karan Joseph, Partner and Yash Khanna, Associate; *M/s KLR Group Enterprises v. Madhu H.V. & Ors.*, Commercial Appeal No. 56 of 2024, High Court of Karnataka, 2024 SCC OnLine Kar 65, judgment dated 19 July 2024. **Coram:** Anu Sivaraman and Anant Ramanath Hegde, JJ.

Courts) Rules, 2001 as orders under Section 9 of the Act. Therefore, they are subject to appeal.

(ii) This question was laid to rest by a co-ordinate bench of the Court in ***Sorting Hat Technologies v. Vishal Vivek***,[43] which held that such an appeal would be maintainable.

The Respondents argued that:

(i) Orders denying *ex-parte* interim relief under Section 9 of the Act are not final orders as the application would be pending before the lower court for final consideration.

(ii) The proviso to Section 13(1A) of the CCA prescribes that only orders covered under Order XLIII of the CPC are appealable. An order denying *ex-parte* relief under Section 9 of the Act is not covered under Order XLIII of the CPC and is therefore, non-appealable.

(iii) The decision rendered in ***Sorting Hat*** (*supra*) was not conclusive and therefore, ought not to be considered by the Court. Rather, the decision of a Single Judge in ***Symphony Services Corporation v. Sudip Bhattacharjee***[44] ought to be followed, which held that ad-interim orders in proceedings under Section 9 of the Act are non-appealable.

Issue

Whether the phrase "*granting or refusing to grant any measure under Section 9*" appearing in Section 37 of the Act includes only a final order under Section 9 of the Act or also includes an *ex-parte* interim measure in view of the proviso to Section 13(1A) of the CCA?

Judgment

The Court held that the Impugned Order was appealable under Section 37 of the Act and Section 13(1A) of the CCA did not bar its maintainability for the following reasons:

(i) Section 37(1)(b) of the Act allows for appeals "*granting or refusing to grant <u>any measure</u> under Section 9*". Therefore, the scope of Section 37 of the Act does not only include final orders but also *ex-parte* interim measures.

(ii) The proviso to Section 13(1A) of the CCA prescribes that only orders of the nature listed in Order XLIII, Rule 1 of the CPC <u>and</u> orders under Section 37 of the Act are appealable. The Court observed that appeals under Section 37 of the Act are not linked in any way to appeals Order XLIII, Rule 1, and must solely be governed by considerations under Section 37. Moreover, a conjoint reading of Section 13(1A) of the CCA and Section 37 of the Act does not prescribe in any manner that only final orders are appealable. Therefore, Section 13(1A) of the CCA did not act as a bar to the Impugned Order.

(iii) As such, measures granting or refusing *ex-parte* interim measures, similar to the Impugned Order, are appealable under Section 37 of the Act, whether those proceedings are pending before a commercial court or a court exercising jurisdiction under the Act.

(iv) The Court also held that an order denying *ex-parte* relief is in the nature of a final order as the relief of an *ex-parte* order stands declined because once notice is issued to the other side, there is no opportunity to grant an *ex-parte* order. Consequently, orders denying or granting *ex-parte* interim measures under Section 9 of the Act have all the attributes of a final order and are subject to appeal.

(v) The decision of the Single Judge in ***Symphony Services*** (*supra*) was accordingly overruled.

(vi) The Court did caveat its ruling by stating that any appeal against the granting of an *ex-parte* interim measure ought to be entertained only in exceptional cases as it was efficacious for an aggrieved party to challenge such order before the commercial court or a court under the Act by entering appearance and seeking vacation of the order.

Analysis

The Court has now settled the question of whether the refusal to grant an *ex-parte* ad-interim order under Section 9 of the Act by a commercial court and a court under the Act, is appealable. In doing so, the Court has set aside the decision of the Single Judge in ***Symphony Services*** (*supra*) and distinguished a judgment of the High Court of Meghalaya in ***National Thermal Power Corporation Ltd. v. Meghalaya Power Distribution Corporation. Ltd. & Ors.***,[45] which held such appeals to be non-maintainable.

43 Commercial Appeal No. 274/2022.

44 (2008) 2 KLJ 24.

45 2021 SCC OnLine Megh 134 .

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Parties can now prefer appeals under Section 37 of the Act instead of being relegated to filing proceedings under Articles 226 and 227 of the Constitution of India.

Crucially, the Court has once again emphasised judicial restraint in matters of arbitration by stating unequivocally that the scope of interference in an appeal against an order: (i) granting *ex-parte* relief is to be entertained only in exceptional circumstances as the aggrieved party will have the opportunity to seek vacation of the *ex-parte* order before the same court that passed it; and (ii) refusing *ex-parte* relief is limited as the appellate court is only required to consider whether the granting of such relief can be deferred till the appearance of the respondent.

High Court of Delhi observes that findings in an arbitral award that are based on no evidence and/or are perverse are vulnerable to challenge[46]

Brief Facts

Trans Engineers India Private Limited ("**Petitioner**") was engaged by Otsuka Chemicals (India) Private Limited ("**Respondent**") for expansion of its plant in Rajasthan. An agreement was executed between the Petitioner and the Respondent outlining the Petitioner's responsibilities of supplying, erecting, manufacturing, and commissioning various equipment and materials for the project. The dispute arose when the Petitioner claimed price for additional works performed by it, on request of the Respondent, but the Respondent refused to pay for the same. This dispute was referred to arbitration wherein the Petitioner argued that the additional works were based on written modifications, which expanded the original scope of work. The Respondent made counterclaims *inter alia* for liquidated damages due to delayed completion of the project. The arbitrator passed an award ("**Award**") dated 7 March 2022, rejecting the claims as well as the counterclaims made by the parties. Aggrieved, the Petitioner approached the High Court of Delhi ("**Court**") under Section 34(2)(b)(ii) (challenging an arbitral award on grounds of public policy) and Section 34(2A) (challenging an arbitral award on basis of patent illegality appearing on the face of the award) of the Act to assail the Award, arguing that the arbitrator overlooked the contractual agreement, the evidence provided, and disregarded the basis for additional payments under the agreement.

The Petitioner contended that:

(i) The arbitral tribunal had overlooked the contractual agreement between the parties and had re-written the terms of the contract between the parties.

(ii) The arbitral tribunal had ignored vital documentary and oral evidence on record in relation to the additional works performed by the Petitioner and proof of the extra costs incurred by the Petitioner.

The Respondent contended that:

(i) The interpretation of the clauses of the contract is in the exclusive domain of the arbitral tribunal, and the Award does not warrant any interference under Section 34 of the Act.

(ii) The arbitral tribunal's reading of the contractual documents is reasonable and plausible.

Issues

Issue (i): Whether the arbitral tribunal failed to take into account the contractual agreement between the parties?

Issue (ii): Whether the arbitral tribunal ignored vital documentary evidence on record in relation to the additional works performed by the Petitioner and proof of the extra costs incurred by the Petitioner?

Judgment

Issue (i): The Court examined the following contractual documents to assess the contractual framework between the parties: (a) offer dated 30 August 2016 ("**Offer**") from the Petitioner to the Respondent; (b) minutes of meeting dated 15 September 2016 ("**MOM**") that set out the scope of work

46 Authored by Binsy Susan, Partner, Neha Sharma, Principal Associate and Deeksha Pokhriyal, Associate; *Trans Engineers India Pvt. Ltd. v. Otsuka Chemicals (India) Pvt. Ltd.*, OMP (Comm) No. 310/2022, I.A. Nos. 11536/2022 and 1013/2023, High Court of Delhi, 2024 SCC OnLine Del 4964, judgment dated 22 July 2024.
Coram: Sachin Datta, J.

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and the price awarded to the Petitioner; (c) two purchase orders dated 16 September 2016 ("**POs**") issued by the Respondent to the Petitioner; and (d) agreement dated 20 January 2017 ("**Agreement**") executed between the parties.

The MOM mentioned that: (a) the work was awarded to the Petitioner based on the piping and instrumentation drawing ("**P&ID**") of 26 July 2016 for a price of INR 710 million; and (b) it will charge extra for major modifications in P&ID after 26 July 2016. Although the Offer was based on a P&ID of 20 August 2016, the MOM and the POs consciously omitted to make reference to the P&ID of 20 August 2016 (and instead referred to the P&ID of 26 July 2016). Further, the Agreement also provided that the Respondent will pay an additional amount for any change in the scope of work. The arbitral tribunal failed to take into account these contractual documents and erroneously held that the Offer was the foundation of the Agreement and the Petitioner was executing work as per the P&ID of 20 August 2016 (and not as per the P&ID of 26 July 2016 only). The Court concluded that the Award failed to take into account the fundamental contractual framework.

Issue (ii): The Court observed that misreading of the basic contractual framework of the contract between the parties also vitiates the subsequent examination/evaluation done in the Award. The Court noted that the finding in the Award that the equipment claimed by the Petitioner as 'extra' were either reflected in the P&ID of 26 July 2016 or in the P&ID of 20 August 2016 was inexplicable as the P&ID of 20 August 2016 was not even on record before the arbitral tribunal. The Court observed that once the arbitral tribunal reached the conclusion (erroneously) that the P&IDs of 20 August 2016 were relevant for the purpose of assessing extra/additional work, at the very least, the said P&IDs (of 20 August 2016) should have been directed to be placed on record. Additionally, the Award itself acknowledged execution of "*additional work*" by the Petitioner.

For the above reasons, the Court concluded that the Award was unsustainable and therefore, set it aside.

Analysis

The Court has once again held that misreading/misunderstanding of the basic contractual framework vitiates an arbitral award at its root and renders it vulnerable to challenge under Sections 34(2)(b)(ii) and 34(2A) of the Act. The Court reaffirmed the position that the interpretation of a contract by an arbitral tribunal should be such that it is within the realm of reasonable possibilities and if the interpretation is unreasonable and far-fetched to an extent that no reasonable person would accept it, then the award might be deemed perverse. This decision highlights the interplay between arbitral awards and judicial intervention for securing justice. This interplay reflects a judicial attitude that respects the autonomy of arbitral tribunals while ensuring that justice is served by appreciating facts and circumstances in a manner which is not unreasonable.

High Court of Delhi holds that an arbitral tribunal cannot award certain types of damages if specifically excluded by way of contractual clauses[47]

Brief Facts

The Airports Authority of India ("**AAI**") floated a 'Request for Proposal' ("**RFP**") inviting proposals for selecting Managed Service Providers for providing a pilot E-Boarding Biometric Boarding System to be deployed at four airport locations.

M/S Plus91 Security Solutions ("**Appellant**") claimed that it entered into a Memorandum of Understanding ("**MoU**") with NEC Corporation India Private Limited (Erstwhile NEC Technologies Private Limited) ("**Respondent**") to jointly collaborate on securing such RFP. Conversely, the Respondent claimed that the Appellant had approached the Respondent for execution of such MoU

47 Authored by Aashish Gupta, Partner and Chandni Ghatak, Associate; *M/S Plus91 Security Solutions v. NEC Corporation India Private Limited (Erstwhile NEC Technologies Private Limited)*, FAO (OS) (Comm) No. 36/2024, High Court of Delhi, 2024 SCC OnLine Del 5114, judgment dated 29 July 2024.
Coram: Vibhu Bakhru and Tara Vitasta Ganju, JJ.
NEC Corporation India Private Limited was represented before the High Court of Delhi by the team of Shardul Amarchand Mangaldas & Co comprising Aashish Gupta, Partner and Chandni Ghatak, Associate.

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for enabling it to secure suitable quotations due to which the parties had entered into such MoU.

Notably, Clause 10 of the MoU *inter alia* debarred both parties from claiming any special damages or loss of profits arising from such MoU.
Upon the Respondent securing the RFP, the Appellant contended that in terms of the MoU, the Respondent was obligated to issue purchase orders of an approximate value of INR 843,079,040/-, as provided in Annexure-A of the MoU.

Disputes arose between parties in respect to the above and accordingly, arbitration proceedings were commenced. In such proceedings, the Appellant (i.e., claimant therein) made several claims including a claim for loss of profits.

By way of an award dated 17 March 2023 ("**Award**"), the arbitral tribunal concluded that the MoU was a binding contract and in terms of the MoU, the Appellant was required to be assigned work of an approximate value of INR 843,079,040/-. The Respondent's failure to do so resulted in a breach of the MoU. The arbitral tribunal rejected the contention that in terms of Clause 10 of the MoU, parties were excluded from claiming any damages or loss of profit. Referring to the decision of the High Court of Delhi ("**Court**") in ***Simplex Concrete Piles (India) Ltd. v. Union of India***,[48] it was held that Clause 10 of the MoU was not binding. Ultimately, the arbitral tribunal rejected the evidence regarding quantum of damages, however assessed loss on account of net profits at 10% of the value of INR 843,079,040/- and awarded a sum of INR 84,307,904/-.

The Award was assailed by the Respondent before the Court under Section 34 of the Act on the ground that the arbitral tribunal had misinterpreted the terms of the MoU and the award of loss of damages was contrary to the express terms of the MoU. The Ld. Single Judge set aside the Award and *inter alia* held that: (i) the MoU was only a statement of intent and agreement to enter into a definitive agreement on a case-to-case basis; and (ii) Clause 10 of the MoU reinforced the parties' intent of not permitting any claims for consequential loss as their association was exploratory. The application of the ratio of ***Simplex*** (*supra*) was erroneous since the said decision was rendered in a completely different context.

Aggrieved, the Appellant preferred an intra-court appeal under Section 37(1)(c) of Act, challenging the decision of the Ld. Single Judge setting aside the Award.

Issues

Issue (i): Whether the MoU obliged the Respondent to issue purchase orders to the extent of INR 84,307,904/-?

Issue (ii): Whether awarding damages on account of loss of profits contrary to the express terms of the agreement between parties stands vitiated by patent illegality?

Judgment

Issue (i): The Court noted that a holistic reading of the various clauses of the MoU would indicate that: (i) the parties had specifically agreed to enter into project-wise agreements for any project undertaken jointly, which would *inter alia* define their roles and liabilities; (ii) each party would act as an independent contractor and neither would make any binding commitments on the other; (iii) in the event of termination, no separate termination charges would be payable; and (iv) the parties had expressly agreed that neither would be liable for certain heads of damages including loss of revenue or profit arising from or in connection with the MoU. Accordingly, there was no obligation set out in the MoU or Annexure-A, which obliged the Respondent to issue purchase orders in the Appellant's favour.

Issue (ii): The Court noted that the claim for loss of profit awarded by the arbitral tribunal was contrary to

48 2010 SCC OnLine Del 821.

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the express terms of the MoU. It was held that it is essential to maintain the bargain entered between parties. The Court noted that Clause 10, which limited the parties' liability, was clearly part of the contractual bargain and the same cannot be disregarded. Disregarding such stipulation would amount to rewriting the bargain between the parties, which was impermissible. Accordingly, the Court held that the Award, being contrary to the terms of the MoU, was vitiated by patent illegality.

The Court also noted that Clause 10 only excluded certain kinds of damages and did not bar compensation for any direct expenditure or costs incurred by the parties. Thus, the Appellant's contention that such clause extinguished all remedies of damages was unmerited.

Insofar as the application of the ratio of ***Simplex*** (*supra*) was concerned, the Court held that the judgment had no application to the facts at hand.

Analysis

The Court has reiterated the principle that the express terms of a contract must be interpreted and applied in its truest sense, since such terms are representative of the bargain consciously entered into by parties. The present judgment further clarifies that exclusion clauses, which are commonplace in commercial contracts, cannot be rendered otiose merely because such clauses debar parties from raising claims pertaining to certain heads of damages.

Supreme Court holds that the relevant date for determining the conversion rate of a foreign award expressed in a foreign currency is the date when the arbitral award becomes enforceable[49]

Brief Facts

DLF Ltd. along with another entity ("**Appellants**") entered into a contract with Koncar Generators ("**Respondent**"), a Croatian company, for design, engineering, manufacturing, and supply of two generators by the Respondent. Disputes arose between them that were referred to arbitration in which the Respondent was awarded a sum of Euros 1,093,989, along with interest *vide* the award dated 12 May 2004 ("**Award**").

The Respondent filed for execution of the award in 2004 while the Appellants filed a petition under Section 34 of the Act for challenging the Award, which was dismissed on 28 April 2010 ("**Section 34 Order**"). The Appellants then filed objections against the award under Section 48 of the Act ("**Objections**") before the trial court and an appeal under Section 37 of the Act against the Section 34 Order, thereafter ("**Section 37 Appeal**").

The High Court of Delhi vide its order dated 15 October 2010 dismissed the Section 37 Appeal and directed the Appellants to deposit an amount of INR 70,500,000, which was deposited by the Appellants on 22 October 2010.

The trial court dismissed the Objections *vide* order dated 2 April 2011 ("**Trial Court Order**"). The Appellants filed a revision petition against the Trial Court Order, wherein the High Court of Delhi vide order dated 3 June 2011 stayed the operation of the Trial Court Order, subject to the Appellants depositing a further amount of INR 5,000,000 which shall be disbursed to the successful party on the final adjudication of this dispute. Subsequently, the revision petition came to be dismissed by the High Court of Delhi on 1 July 2014, by which the award attained finality as this order was not challenged any further.

The execution petition was allowed by the trial court, wherein it was held that the relevant date to convert the Award amount expressed in Euros to Indian Rupees (the foreign exchange rate) is 1 July 2014, i.e., the date on which all the objections against the Award were finally decided as it is

49 Authored by Tejas Karia, Partner and Head, Arbitration, Avlokita Rajvi, Counsel, Lakshya Khanna, Senior Associate, and Sanskriti Sinha, Associate; *DLF Ltd. and Another v. Koncar Generators and Motors Ltd.*, Civil Appeal No. 7702 of 2019, Supreme Court of India, 2024 SCC OnLine SC 1907, judgment dated 8 August 2024.
Coram: P.S. Narasimha and Aravind Kumar, JJ.

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only on such date that the Award is deemed to be a decree. The Appellants filed a revision petition against this order, which was dismissed by the High Court. Therefore, the Appellant approached the Supreme Court contending that the amount which had been deposited during pendency of objections stood converted on date of deposit and this amount could not be converted again.

Issues

Issue (i): What is the correct and appropriate date to determine the foreign exchange rate for converting the Award amount expressed in foreign currency to Indian Rupees?

Issue (ii): What would be the date of such conversion, when the award debtor deposits some amount before the court during the pendency of proceedings challenging the Award?

Judgment

Issue (i): The Supreme Court held that the statutory scheme of the Act makes a foreign arbitral award enforceable when the objections against it are finally decided. Therefore, as per the Act and the principle in ***Forasol v. Oil and Natural Gas Commission***,[50] the relevant date for determining the conversion rate of foreign award expressed in foreign currency is the date when the Award becomes enforceable.

The Court applied the principle laid down in ***Forasol*** (*supra*) that the date of the decree under Section 17 of the Arbitration Act, 1940 is the proper date for conversion as it is only then that the arbitral award becomes enforceable. However, the statutory scheme under the Act does not require such a judgment or decree to be passed for a foreign award to be enforceable. Rather, the enforceability of a foreign award is automatic and deemed under Section 49 of the Act after the objections against such an award under Section 48 are finally decided and disposed of. At this point, the Award is enforceable as a decree of a court (Section 49). Hence, the date on which the objections are finally decided and dismissed would be the proper date for determining the exchange rate to convert an amount expressed in foreign currency.

In the present case, this date is 1 July 2014, when the High Court dismissed the revision petition against the Trial Court Order dismissing the Appellants' objections. No further appeal was preferred from this order and hence, it attained finality.

Issue (ii): The Supreme Court held that when the award debtor deposits an amount before the court during the pendency of objections and the award holder is permitted to withdraw the same, even if against the requirement of security, this deposited amount must be converted as on the date of the deposit. After the conversion of the deposited amount, the same must be adjusted against the remaining amount of principal and interest pending under the arbitral award. This remaining amount must be converted on the date when the arbitral award becomes enforceable, i.e., when the objections against it are finally decided.

Through a deposit, the award debtor parts with the money on that date and provides the benefit of that amount to the award holder. Provided that the award holder is permitted to withdraw this amount, it can convert, utilise, and benefit from the same at that point in time. Considering that the deposited amount inures to the benefit of the award holder, it would be inequitable and unjust to hold that the amount does not stand converted on the date of its deposit.

The Supreme Court while referring to ***Gurpreet Singh v. Union of India***,[51] ***Nepa Limited v. Manoj Kumar Agrawal***,[52] and differentiating between ***P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M. Ramanathan Chettiar***[53] and ***Delhi Development Authority v. Bhai Sardar Singh and Sons***,[54]

50 1984 Supp SCC 263.
51 (2006) 8 SCC 457.
52 2022 SCC OnLine SC 1736.
53 (1968) 3 SCR 367.
54 C.A. 3867 of 2010.

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observed that once there is a deposit by the award debtor and the award holder is permitted to withdraw the same, even if such withdrawal is conditional and subject to the final decision in the matter, the court must consider that the award holder could access and benefit from such deposit. It is then the burden of the award holder to furnish security, as required by the court's orders, to utilise the amount or to make an application for modification of the condition if it is unable to fulfil the same.

Therefore, the deposit of INR 70,500,000 must be converted as on the date of such deposit, i.e., 22 October 2010, when the rate of exchange as submitted by the Appellants was 1 Euro = INR 59.17.

However, since the order of 3 June 2011 permits withdrawal of INR 5,000,000 on the completion of the proceedings, the appropriate date for determining the exchange rate would be the date on which the revision proceedings were complete, i.e., on 1 July 2014.

Analysis

Converting foreign currency arbitral awards into Indian Rupees is a complex issue, largely due to the volatility of exchange rates. Therefore, this judgment is monumental in reducing uncertainty that might arise over the applicable exchange rate. Clear rules for conversion as clarified in this decision will further streamline the enforcement process for awards containing foreign currency by making it more efficient and predictable.

High Court of Delhi extends the arbitral tribunal's mandate even after its expiry and also clarifies the scope of proceedings under Section 29A(4) of the Act[55]

Brief Facts

High Court of Delhi ("**Court**") decided the issue of whether an arbitral tribunal's mandate can be extended even after its expiry in two separate proceedings (involving the same petitioner) together.

In an arbitration between Apex Buildsys Ltd. ("**Petitioner**") and Vadera Interiors and Exteriors ("**Vadera Interiors**"), the tribunal's mandate expired on 25 March 2019. Subsequently, in September 2020, the Petitioner (undergoing liquidation proceedings since 2020) moved an application under Section 29A(4) of the Act before the Commercial Court, Dwarka for an extension of the arbitrator's mandate. The Commercial Court rejected this application on 17 December 2022 for lack of jurisdiction. Thereafter, in May 2023, the Petitioner approached the Court seeking such extension.

Vadera Interiors objected to the extension application on two grounds: (i) the arbitrator's conduct amounted to an abandonment of the arbitral proceedings; and (ii) there was an inordinate delay on the Petitioner's part in seeking an extension of the arbitrator's mandate (the Petitioner had tried to justify the delay on the basis of the ongoing liquidation proceedings).

In another arbitration between the Petitioner and Shakti Pump India Ltd. ("**Shakti Pump**"), the same arbitrator was appointed on 18 July 2017. By operation of Section 29A(1) and Section 29A(4) read with Section 23(4) of the Act, the arbitrator's mandate expired on 17 January 2019. Subsequently, in September 2020, the Petitioner moved an application before the Commercial Court, Dwarka for an extension of the arbitrator's mandate, which was rejected by an order dated 17 December 2022 for want of jurisdiction. Eventually, the Petitioner approached the Court seeking an extension of the mandate.

Shakti Pump opposed the application on several grounds, including that: (i) the arbitrator's appointment was unilateral and hence unlawful; (ii) given the liquidation proceedings, the

55 Authored by Bikram Chaudhuri, Partner and Ayush Waghmare, Associate; *Apex Buildsys Ltd. v. Vadera Interiors and Exteriors*, O.M.P. (Misc.) Comm. No. 227/2023, I.A. No. 36911/2024 and *Apex Buildsys Ltd. v. Shakti Pump India Ltd.*, O.M.P. (Misc.) Comm. No. 260/2023, High Court of Delhi, 2024 SCC OnLine Del 5826, judgment dated 21 August 2024.
Coram: C. Hari Shankar, J.

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Petitioner was statutorily barred under the Insolvency and Bankruptcy Code, 2016 ("**IBC**") from filing the extension application. Conversely, the Petitioner argued that Shakti Pump's contentions did not fall within the limited scope of proceedings under Section 29A(4) of the Act.

Issues

Issue (i): Whether an arbitral tribunal's mandate could be extended even after its expiry?

Issue (ii): What is the scope of proceedings under Section 29A(4) of the Act?

Judgment

Issue (i): The Court affirmed the approach taken in its previous decisions and also relied on the observations of the Supreme Court in ***Tata Sons Pvt Ltd v. Siva Industries and Holdings Ltd***[56] to hold that the power to extend an arbitrator's mandate can be exercised even after the expiry of such mandate. Moreover, the Court observed that the fact that the mandate had already expired could not operate as a "*delimiting factor*" on its power to extend under Section 29A(4) of the Act. For identical reasons, the Court held that a case for extension was also made out for the second arbitration as well. Therefore, in both petitions, the Court extended the arbitrator's mandate by a period of six months.

Issue (ii): The Court observed that Section 29A of the Act deals with: (i) the time within which a tribunal has to render the award; (ii) termination of the tribunal's mandate by efflux of time; and (iii) the court's power to extend the mandate in an appropriate case. In doing so, the Court clarified that any objections pertaining to the legality of the arbitrator's appointment, and other such matters are beyond the ambit of proceedings under Section 29A(4) of the Act, as the Act provides a separate mechanism to deal with such scenarios. By way of example, the Court noted that where a party contends that the tribunal's mandate has terminated for reasons provided in Sections 14(1)(a) and (b) of the Act, it can follow the procedure exhaustively set out in Sections 14 and 15 of the Act. Thus, affirming the decision of a coordinate bench in ***Anay Kumar Gupta v. Jagmeet Singh Bhatia***,[57] the Court highlighted the limited scope of proceedings under Section 29A(4) of the Act and stated that such proceedings are only concerned with whether the arbitral tribunal's mandate has expired and whether a case for grant of extension of the mandate is made out.

Analysis

The Court's position has effectively been affirmed in the Supreme Court's recent decision in ***Rohan Builders*** (*supra*). The Court's approach on the scope of proceedings under Section 29A(4) of the Act is also consistent with its previous decisions and will help in ensuring that applications for extension of a Tribunal's mandate do not result in an all-encompassing review of the conduct of the arbitration. Thus, any grievances that are unrelated to the expeditious disposal of the arbitral proceedings (for instance, alleged bias of the arbitrator) will have to be raised through other relevant mechanisms provided under the Act. The Court's holding is also in line with the legislative intent underlying the introduction of Section 29A of the Act.[58]

Supreme Court clarifies the scope of Sections 29A(4) and (5) and holds that parties can apply to extend an arbitral tribunal's mandate even after the mandate has expired[59]

Brief Facts

Different High Courts across India have passed conflicting judgments on the question of whether parties' can apply to extend an arbitral tribunal's mandate *after* its expiry under Sections 29A(4)

56 (2023) 5 SCC 421.

57 2023 SCC OnLine Del 3939.

58 2018 SCC OnLine Del 12699.

59 Authored by Shreya Jain, Partner and Shivani Sanghavi, Associate; *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*, arising out of Special Leave Petition (Civil) No. 23320 of 2023, Supreme Court of India, SCC OnLine SC 2494, judgment dated 12 September 2024.
Coram: Sanjiv Khanna and R. Mahadevan, JJ.

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and (5) of the Act.[60]

The present case arose out of appeals arising from the High Court of Calcutta's judgment in ***Rohan Builders*** (*supra*).[61] The High Court was considering three applications ("**Applications**") for extension of an arbitral tribunal's mandate under Section 29A(4) and Section 29A(5) of the Act. In all three cases, the tribunal's mandate had expired before the Applications were filed and the respondents opposed the Applications.

Rejecting all Applications, the High Court of Calcutta held that courts cannot extend a tribunal's mandate where parties apply to extend it after the mandate's expiry, on the following grounds:

(i) *Purposive interpretation*: The High Court noted that Section 29Awas enacted to facilitate expeditious disposal of arbitrations and permitting parties to seek extensions after the mandate's expiry would defeat the provision's object;

(ii) *Literal interpretation*: The High Court noted that "*Extend*" means to enlarge an existing right, not the renewal of an expired right. Thus, the use of the word "*extend*" in Section 29A necessarily means that the tribunal's mandate must be a *continuing* one;

(iii) *Legislative intent*: The High Court noted that the 176th Law Commission Report Amendments to Arbitration and Conciliation Act ("**176th Report**") recommended that the mechanism "*suspend*" arbitral proceedings until an application for extension is made to the court. The High Court held that by using the word "*terminate*" instead of "*suspend*" in the provision's final text, the legislature intended to enforce a strict statutory timeline for passing the award.

The High Court's judgment in ***Rohan Builders*** (*supra*) was criticised and distinguished by the High Court of Bombay,[62] High Court of Delhi[63] and High Court of Calcutta[64] in subsequent cases, among others. Relying on the decisions of these High Courts, the petitioners in ***Rohan Builders*** (*supra*) filed appeals before the Supreme Court ("**Appeals**").

Issue

Whether the High Court of Calcutta correctly interpreted Section 29A(4) in ***Rohan Builders*** (*supra*) by finding that an application for extension of time under Sections 29A(4) and (5) can only be entertained, if filed before the expiry of the arbitral tribunal's mandate?

Judgment

The Supreme Court overturned ***Rohan Builders*** (*supra*) and held that an application to extend an arbitral tribunal's mandate is maintainable even if it is filed after the expiry of the mandate, so long as the application makes out a sufficient cause for extension.

The Supreme Court ruled on the maintainability of applications for extension under Section 29A, which were filed after the tribunal's mandate expired. However, it did not consider the Applications in ***Rohan Builders*** (*supra*) on merits. The Supreme Court held that an application for extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) is maintainable even after the expiry of the 12-month or the extended 6-month period, as the case may be. The Supreme Court based its decision on the following grounds:

(i) Section 29A(4) provides that "*If the award is not made within the period specified in sub-section(1) or the extended period specified under sub-section(3), the mandate of the arbitrator(s) shall*

60 See, for example, (i) decisions of High Courts which interpret Section 29A as allowing parties to apply to extend the arbitral tribunal's mandate even after its expiry: *Ashok Kumar Gupta v. MD Creations and Ors*, 2024 SCC OnLine Cal 6909; *ATS Infrastructure Ltd. and Anr. v. Rasbehari Traders*, 2023 SCC OnLine Del 8645; *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.*, 2023 SCC OnLine Del 7135; and *Nikhil Malkan v. Standard Chartered Investment and Loans (India) Ltd.*, 2023 SCC OnLine Bom 2575; and (ii) decisions of High Courts which hold that only applications filed before the expiry of an arbitral tribunal's mandate are maintainable and can be entertained under Section 29A: *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*, 2023 SCC OnLine Cal 2645; *South Bihar Power Distribution Company Limited v. Bhagalpur Electricity Distribution Company Pvt. Ltd.*, Civil Writ Jurisdiction Case No. 20350 of 2021 and other connected matters, judgment dated 26 April 2023.

61 2023 SCC OnLine Cal 2645.

62 *Nikhil Malkan v. Standard Chartered Investment and Loans (India) Ltd.*, 2023 SCC OnLine Bom 2575.

63 *ATS Infrastructure Ltd. and Anr. v. Rasbehari Traders*, 2023 SCC OnLine Del 8645; *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.*, 2023 SCC OnLine Del 7135.

64 *Ashok Kumar Gupta v. MD Creations and Ors*, 2024 SCC OnLine Cal 6909.

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*terminate unless the court has, **either prior to or after the expiry of the period so specified**, extended the period*" (emphasis added). The Court noted that the underlined phrase is unambiguous and, as such, courts can extend the mandate any time before or after the stipulated period.

(ii) The Court noted that merely because: (a) the 176th Report recommends suspension of arbitral proceedings, pending an application; and (b) the word "*terminate*" is used instead of "*suspend*" in Section 29A, does not mean that extension cannot be granted after expiry of the tribunal's mandate. The Court noted that the High Court of Calcutta's reasoning is fallacious and that courts should eschew a literal interpretation if it results in manifest absurdity. In particular, the word "*terminate*" cannot be read in isolation but must be considered in conjunction with the provision's full context. When Section 29A(4) is read in its entirety, the word "*terminate*" discloses the legislature's intent that a tribunal's mandate will terminate upon expiry *unless* the court has extended it either prior to or after the expiry.

(iii) The Court also observed that the 176th Report notes that if an arbitration (delayed beyond the stipulated mandate) is terminated, this would result in a waste of time and money as the claimant would be forced to commence separate proceedings. The 176th Report recorded that the ultimate aim is to ensure an award gets passed "*even if* [...] *delays have taken place*";

(iv) The Court noted that courts should refrain from imposing a bar of limitation where no limitation period is prescribed by the legislature (see ***North Eastern Chemicals Industries (P) Ltd. and Anr. v. Ashok Paper Mill (Assam) Ltd.***[65]);

(v) The Court criticised the High Court of Calcutta's narrow interpretation of Section 29A and noted that it impedes arbitration, rather than facilitating it. It observed that courts must strive to give meaningful life to enactments and avoid interpretations which produce an unreasonable result, if an equally possible, acceptable and practical interpretation exists;

(vi) The Court also considered that Section 29A(5) provides that courts can only extend a tribunal's mandate in cases where parties provide a sufficient cause for extension. This would deter parties from filing frivolous applications for extension.

Accordingly, holding that the Applications were maintainable, the Supreme Court directed that the Appeals should be listed for final hearing.

Analysis

This judgment settles the controversy on whether parties can apply to extend an arbitral tribunal's mandate post the expiry of the mandate under Section 29A. This is an important tool to ensure that the mechanism for extension remains practical and accessible to deserving parties. In some cases, it may not be feasible for parties to make this application within the 12 or 18-month period, as the case may be. It would be overly restrictive if the application was not allowed, merely on that technicality alone. Further, it would result in a waste of time and costs spent by parties in pursuing the arbitration thus far and being forced to start a fresh arbitration.

Notably, the Supreme Court's decision also aligns with the recommendation of the Expert Committee Report on Arbitration dated 7 February 2024 ("**Expert Committee Report**"). The Expert Committee Report recommends amending Section 29A to the effect that: (i) parties can make an application for extension of time even after the expiry of the specified time limit, provided that the application is filed without undue delay and with sufficient cause; and (ii) once a court grants an extension under Section 29A, the mandate of the arbitral tribunal will revive.

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Legally Speaking with Tarun Nangia (4 May 2024)

Tarun Nangia on his show "*Legally speaking with Nangia*" on NewsX conducted a panel discussion on the inauguration of the Arbitration Bar of India, where **Tejas Karia (Partner and Head, Arbitration)** was a speaker.

65 2023 SCC OnLine SC 1649.

CII Annual Business Summit, Delhi (18 May 2024)

Dr Shardul Shroff (Executive Chairman) moderated a panel discussion at the Annual Business Summit by the Confederation of Indian Industry (CII) on "*Reshaping the Future of ADR in India through Integration of Technology and Institutional Arbitration*".

PACT International Mediation Advocacy Training, New Delhi (26 May 2024)

The Peacekeeping and Conflict Resolution Team (PACT), a leading mediation and training firm, in collaboration with Maxwell Mediators, Singapore and Shardul Amarchand Mangaldas & Co organised the International Mediation Advocacy Training, where **Tejas Karia (Partner and Head, Arbitration)** was a speaker.

ICC YAAF Webinar (28 May 2024)

Ila Kapoor (Partner) was a speaker at a virtual fireside chat on "*Leaning into a Career in International Arbitration – Global Perspectives*" organised by the ICC YAAF Qatar – ICC Young Arbitration and ADR Forum (YAAF). The session was co-moderated by **Kshipra Pyare (Associate)**.

Young ITA Webinar (17 June 2024)

Shreya Jain (Partner) and Juhi Gupta (Counsel) organised and moderated the Young ITA webinar on "*Non-signatories in International Arbitration*".

IIMM Seminar, New Delhi (29 June 2024)

The Indian Institute of Materials Management (IIMM) organised a seminar on "*Public Procurement – A Paradigm Shift*" at which **Prakhar Deep (Principal Associate)** was a panellist in a session on "*Dispute Resolution in Contract – Liquidated Damages and Other Damages*".

3rd BW Legal World Future of Legal Education Summit, New Delhi (30 June 2024)

BusinessWorld (BW) Legal organised the third edition of its World Future of Legal Education Summit. **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the panel discussion on "*Building a Successful Career in ADR: Practitioner's Perspective*".

SCL Conference, Kochi (6-7 July 2024)

The Society of Construction Law (SCL) organised a conference at which **Tejas Karia (Partner and Head, Arbitration)** moderated a session on "*Conundrum of Variations in EPC Contracts*" and **Prakhar Deep (Principal Associate)** participated in a session on "*Role of Discovery and Experts in Construction Arbitration*".

CIArb Course on International Arbitration, New Delhi (13 July 2024)

The Chartered Institute of Arbitrators, India (CIArb India) in collaboration with the Mumbai Centre for International Arbitration (MCIA) organised a full day programme on "*An Introduction to International Arbitration.*" **Tejas Karia (Partner and Head, Arbitration)** was a speaker at the event.

2nd Bengaluru Dispute Resolution Conclave, Bengaluru (13 July 2024)

Karan Joseph (Partner) was a panellist in a discussion on "*Navigating Arbitration in India: Unveiling Challenges and Possible Mitigation Strategies*".

KLI Meet 2024, New Delhi (19 July 2024)

Tejas Karia (Partner and Head, Arbitration) was a speaker at the Kluwer Law International (KLI) Meet 2024 on "*Evolving Trends and Transformations in Arbitration shaping up the future of justice and adaptation to global challenges*".

IAMC India Mediation Weekend, Hyderabad (21 July 2024)

Tejas Karia (Partner and Head, Arbitration) and **Shruti Khanijow (Partner)** participated in a panel discussion on "*Mediation in Intellectual Property Disputes*" at the International Arbitration and Mediation Centre (IAMC) India Mediation Weekend. Shardul Amarchand Mangaldas & Co was

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a sponsor of this event. **Shruti Khanijow (Partner)** conducted India's first mock international commercial mediation in association with the Singapore International Mediation Centre and the IAMC.

IIAM Arbitration Training Program, New Delhi (27 July 2024)

The Indian Institute of Arbitration and Mediation (IIAM) conducted an arbitration training program on "*Professional Certificate in Commercial Arbitration*". **Tejas Karia (Partner and Head, Arbitration)** was a faculty speaker on "*Commencement of Arbitration and Constitution of Arbitral Tribunal*".

AIIMAS Symposium, New Delhi (27 July 2024)

The Association for India International Mediation & Arbitration Services (AIIMAS) conducted a Symposium on "*Power of Mediation in Business World*" where **Avlokita Rajvi (Counsel)** shed light on the "*Crucial Role of Mediation in Resolving Work Place Conflicts*".

ICA Webinar (9 August 2024)

The Indian Council of Arbitration (ICA) with the support of Shardul Amarchand Mangaldas & Co and the Federation of Indian Chambers of Commerce and Industry organised a webinar on "*Navigating Commercial Conflicts: Institutional ADR for Indo-UAE Business Ventures*". **Ila Kapoor (Partner)** was a speaker at this event.

CII-Andhra Pradesh Mediation Session (5 August 2024)

Shruti Khanijow (Partner) was the keynote speaker at the Confederation of Indian Industry (CII) – Andhra Pradesh State Council Meeting on "*Dispute Avoidance, Management and Resolution with Arbitration and Mediation*".

Karnavati University Session, Gandhinagar (7 August 2024)

Karnavati University conducted a session on "*Career Prospects of ADR in the Field of Corporate Resolution*" where **Tejas Karia (Partner and Head, Arbitration)** was the speaker.

ICFAI Law School Panel Discussion, Dehradun (10 August 2024)

Shruti Khanijow (Partner) was a panellist in a discussion on "*Promoting the Effectiveness of the Culture of Commercial Arbitration*" organised by the ICFAI Law School, Dehradun.

CII Conference on Commercial Dispute Resolution, Chennai (24 August 2024)

Shruti Khanijow (Partner) was a panellist in a session on "*Accelerating Commercial disputes resolution-The Role of Alternative Dispute Resolution (ADR) Mechanisms*" at the CII Conference on Commercial Dispute Resolution.

Bengaluru ADR Week, Bengaluru (26 August 2024)

Karan Joseph (Partner) was a panellist in a discussion on "*ADR and India Inc: Stories of Trust, Mistrust and Expectation*".

DELOS Training (August 2024)

Shruti Sabharwal (Partner) was a trainer at the DELOS Training on Cross Examination.

3rd Economic Times Conclave, New Delhi (6 September 2024)

Shardul Amarchand Mangaldas & Co was a supporting partner at the Economic Times-LegalWorld.com commercial dispute conclave on "*Unraveling the Dynamics of Dispute Resolution: Prepare for What Lies Ahead*".

SIAC Conference, New Delhi (7 September 2024)

The Singapore International Arbitration Centre (SIAC) organised its annual India conference in Delhi on the theme "*New Developments and Reforms in International Arbitration: The Best Path Forward*". **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** was a speaker at the conference. **Tejas Karia (Partner and Head, Arbitration)** moderated the fireside chat with

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Hon'ble Justice Sundaresh Menon, Chief Justice of the Singapore Supreme Court.

PACT Mediation Enclave, Gandhinagar (13- 15 September 2024)

PACT in collaboration with Gujarat National Law University, Gandhinagar (GNLU) and Gujarat International Maritime Arbitration Centre, and in association with Shardul Amarchand Mangaldas & Co, organised the second edition of the Mediation Championship. **Tejas Karia (Partner and Head, Arbitration)** was one of the mediation mentors for the event. **Shruti Khanijow (Partner)** was a panellist at a discussion on "*Sustaining a Mediation Practice in India*" at this event.

First year anniversary of SMART ODR, Mumbai (20 September 2024)

The Securities Exchange Board of India in collaboration with the National Stock Exchange of India organised an event to celebrate the first anniversary of the introduction of Online Dispute Resolution platform for the Indian Securities Market. **Tejas Karia (Partner and Head, Arbitration)** was a speaker at the event.

IBA Annual Conference, Mexico City (20 September 2024)

Shreya Jain (Partner) spoke at a panel titled '*Ms Arbitrator, we need an urgent decision!*' organised by the International Bar Association (IBA) Arbitration and Litigation Committees at the IBA Annual Conference, Mexico City.

Pledge India Roundtable, New Delhi (20 September 2024)

Surabhi Lal (Principal Associate) moderated the Pledge India Roundtable discussion along with other women in the field of arbitration in India.

Arbitration Bar of India and Bombay Bar Association Event, Mumbai (21 September 2024)

The Arbitration Bar of India and Bombay Bar Association organised an event on "*Judicial Support and Role of Courts in Arbitration*" where **Tejas Karia (Partner and Head, Arbitration)** gave the closing remarks.

MCIA Tribunal Secretaries Program, New Delhi (26 September 2024)

Shruti Sabharwal (Partner) was a faculty trainer at the Tribunal Secretaries Training Program organised by MCIA.

AIJA Asia Pacific Regional Meeting, Phuket (27 September 2024)

Shruti Khanijow (Partner) was a panellist-interviewer at the AIJA Asia Pacific Regional Meeting in Phuket, Thailand in the session on "*Bridging the gap – navigating business in Asia*" with a focus on an international arbitration practice.

IFSCA-GIFT City Conference, Gandhinagar (28 September 2024)

The International Financial Services Centres Authority (IFSCA) in collaboration with GIFT City and GNLU organised a conference on "*Developing Alternative Dispute Resolution and International Arbitration Centre in GIFT-IFSC*". **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the panel discussion on "*How the International Arbitration Centre in GIFT-IFSC can stand out and compete with established global ADR Centres*".

India ADR Week, Bengaluru, Mumbai and New Delhi (23-28 September 2024)

Karan Joseph (Partner) spoke at a panel on "*Strengthening Bengaluru as a destination for dispute resolution*" in Bengaluru on 23 September. **Shreya Jain (Partner)** spoke at a panel titled "*India's Unprecedented Ascent: Managing Legal and Economic Risks in a Changing World Order*" organised by FTI Consulting in Mumbai on 25 September.

AAA-ICDR India Conference, New Delhi (19 October 2024)

The International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA) organised the inaugural annual ICDR India Conference. **Tejas Karia (Partner and Head, Arbitration)** delivered the opening remarks for the conference.

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NPAC 15th Annual International Conference, New Delhi (19 October 2024)

The Nani Palkhivala Arbitration Centre (NPAC) organised the 15th Annual International Conference titled "*India and Global Arbitration: Opportunities and Challenges for 2025-2020*." **Binsy Susan (Partner)** chaired the technical session on "*Construction Law Theme*."

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Third IBA India Litigation and ADR Symposium 2024, New Delhi (8-9 November 2024)

The International Bar Association (IBA) India Working Group of the IBA Asia Pacific Regional Forum is presenting the third IBA India Litigation and Alternate Dispute Resolution Symposium 2024 on "*From fringe to focal: India at the Centre of International Dispute Resolution*." **Tejas Karia (Partner and Head, Arbitration)** will be a speaker at the session titled "*India's Institutional Arbitration Odyssey: A vision for the future of dispute resolution*".

7th ICC India Arbitration Day, New Delhi (16 November 2024)

International Chamber of Commerce (ICC) is organising the 7th edition of the ICC India Arbitration Day. **Shruti Sabharwal (Partner)** will be a speaker at the conference.

Publications

1. **Karan Joseph (Partner)**, **Dushyanth Narayanan (Senior Associate)** and **Yash Khanna (Associate)**, *Russia-Ukraine: The Crimean Anomalies*, American Review of International Arbitration, Vol. 34, No. 2 (April 2024). Click here.

2. **Karan Joseph (Partner)** and Kabir Duggal, "*Arbitration in Asia: India Chapter*" (2nd Edn.) Click here.

PRACTICE AREA EXPERTS

Pallavi Shroff
Managing Partner and
National Practice Head Dispute Resolution
+91 98100 99911
E: pallavi.shroff@AMSShardul.com

Tejas Karia
Partner and Head, Arbitration Practice sub-group
+91 98107 98570
E: tejas.karia@AMSShardul.com

Anirudh Das
Partner
+91 98100 98329
E: anirudh.das@AMSShardul.com

Aashish Gupta
Partner
+91 98189 19857
E: aashish.gupta@AMSShardul.com

Siddhartha Datta
Partner
+91 90070 68488
E: siddhartha.datta@AMSShardul.com

Ila Kapoor
Partner
+91 98717 92737
E: ila.kapoor@AMSShardul.com

Binsy Susan
Partner
+91 96500 80397
E: binsy.susan@AMSShardul.com

Smarika Singh
Partner
+91 97170 98075
E: smarika.singh@AMSShardul.com

Shruti Sabharwal
Partner
+91 98107 46183
E: shruti.sabharwal@AMSShardul.com

Karan Joseph
Partner
+91 98452 11270
E: karan.joseph@AMSShardul.com

Bikram Chaudhuri
Partner
+91 84339 48356
E: bikram.chaudhuri@AMSShardul.com

Shreya Gupta
Partner
+91 99305 43295
E: shreya.gupta@AMSShardul.com

Aditya Mukherjee
Partner
+91 98717 92744
E: aditya.mukherjee@AMSShardul.com

Suhani Dwivedi
Partner
+91 99039 08399
E: suhani.dwivedi@AMSShardul.com

Saifur Rahman Faridi
Partner
+91 70423 98852
E: saifur.faridi@AMSShardul.com

Akshay Sharma
Partner
+91 70423 98854
E: akshay.sharma@AMSShardul.com

Kanika Goenka
Partner
+91 98330 13343
E: kanika.goenka@AMSShardul.com

Shruti Khanijow
Partner
+91 87540 07143
E: shruti.khanijow@AMSShardul.com

Shreya Jain
Partner
+91 84520 04534
E: shreya.jain@AMSShardul.com

Niyati Gandhi
Partner
+91 84339 21585
E: niyati.gandhi@AMSShardul.com