

ADR Weekly

October 14 - 18 2024

National

- **Delhi HC upholds separate calculation of arbitral fees for claims and counterclaims, dismisses challenge to recalculation:** A single judge bench of Justice Sachin Datta held that the arbitral tribunal correctly applied Schedule IV of the Arbitration Act in calculating fees separately for claims and counterclaims. The Court found that invoking Section 39(2) was premature as no award had been made, and rejected the petitioner's argument that fees once fixed by mutual agreement couldn't be revised. Following *ONGC v. Afcons Gunanusa JV*, the Court affirmed that arbitral fees must be calculated separately for claim and counterclaim amounts, not as an aggregate sum. [*ICRI Corporates Private Limited v. Shooglo Network Private Limited*, O.M.P. (Misc.) (Comm.) 288/2024]
- **Bombay HC clarifies limited scope of Section 11 examination, holds substantive issues reserved for arbitral tribunal:** A single judge bench of Justice Firdosh P. Pooniwalla held that under Section 11(6A) of the Arbitration Act, the referral court's examination is confined to determining the existence of an arbitration agreement based on Section 7, with validity checks limited to formal requirements like the agreement being in writing. The Court ruled that objections regarding waiver of arbitration due to SARFAESI proceedings or pending summary suits cannot be examined at the Section 11 stage, as these substantive issues fall within the tribunal's jurisdiction under Section 16. [*Priyanka Communications & Ors v Tata Finance*, Commercial Arbitration Application No. 168 of 2023]
- **Bengaluru Court holds unsuccessful arbitration litigants cannot seek Section 9 interim relief, clarifies purpose of post-award protection:** Justice Sri Arjun S. Mallur held that a party whose claims were rejected in arbitral proceedings cannot seek interim relief under Section 9 of the Arbitration Act. Following *Dirk India* and other precedents, the Court emphasised that post-award interim measures are meant to secure property or amounts for the benefit of parties seeking enforcement, not to protect rejected claims. The Court dismissed the application with costs, noting that challenging an award under Section 34 does not enable unsuccessful parties to obtain interim protection. [*Overseas Pharma Private Limited vs Rajya Vokkaligara Sangha*, COM.A.A . 241 /2024.]



- **Allahabad HC rules that arbitral awards cannot be challenged based on subsequent Supreme Court judgments:** Justice Piyush Agrawal held that arbitral awards based on law prevailing at the time of proceedings cannot be deemed illegal due to later Supreme Court rulings. Following Punjab State Civil Supplies and other precedents, the Court emphasised that arbitrators make decisions based on the legal framework available during arbitration, and allowing retrospective application of new judicial decisions would create procedural chaos and flood courts with claims. The Court dismissed appeals challenging a 2013 land acquisition award, ruling that arbitrators cannot be expected to foresee and apply future judicial decisions. [*Vivek Nayak (Died) And Another v. The Arbitrator / Collector Aligarh And 3 Others*, 2024:AHC:165809]
- **Bombay HC rules exclusive jurisdiction clause prevails for Section 34 challenges to MSMED Act awards:** A division bench of Justices Jitendra S. Jain and M.S. Sonak held that challenges to arbitral awards under Section 34 of the Arbitration Act, even when passed under Section 18(4) of the MSMED Act, must be filed in courts with exclusive jurisdiction as per the original agreement. Resolving conflicting judgments, the Court found that while MSMED Act has overriding provisions for Sections 15-23, it provides no mechanism to challenge awards, and thus the Arbitration Act's jurisdictional provisions apply. The Court clarified that the MSME Council's location only determines the 'venue' and not the 'seat' of arbitration. [*Rohit Sood v. Gammon Engineers and Contractors Pvt. Ltd.*, Interim Application (L) No. 37553 of 2022, Arbitration Petition (ARBP) (L) No. 28089 of 2022]
- **Delhi HC affirms Arbitral Tribunals have same contempt powers as Civil Courts under Sections 17(2) and 27(5) of Arbitration Act:** A Division Bench of Justices Prathiba M. Singh and Amit Sharma held that Arbitral Tribunals possess equivalent powers to Civil Courts in dealing with contempt against themselves. The court emphasised that baseless allegations against arbitrators must be dealt with strictly, noting that the integrity of arbitration cannot be compromised by unsubstantiated claims. The ruling came in a case where ATS Group made conflict of interest allegations against the arbitrator, which were found to be frivolous and vexatious. The court, while accepting apologies from some respondents, directed the main respondent to pay Rs. 10 lakh to charity and Rs. 3 lakh as costs to the petitioners. [*Dalmia Family Office Trust & Anr. vs. Getamber Anand & Ors*, CONT.CAS.(CRL) 5/2021]



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- **Australian Arbitration Week comes to a close in Brisbane:** The 12th annual Australian Arbitration Week (AAW) took place in Brisbane from 13 - 18 October 2024. The highlight of the week was the ACICA and CIArb International Arbitration Conference. This year's theme for the conference was entitled 'Powering the Future and Going for Gold: Is Arbitration Ready?'. It addressed the global challenges facing major sectors such as energy and construction, alongside how the fundamental elements of arbitration can be developed as tools for the future. There were also various other panels over the course of the week looking into key topics such as 'AI in Arbitration', 'Expedited and Emergency Arbitration Procedures', and 'Role of the Courts in Arbitration Proceedings' among others.
- **ICSID tribunal refuses Venoklim Holding's second treaty claim:** Venoklim Holding is a Dutch company owned by Venezuelan nationals which brought its second claim before ICSID with respect to the 2010 expropriation of its stake in Venoco, a motor lubricant producer company. This claim was rejected by the tribunal, chaired by Eduardo Damião Gonçalves. The claim was under a bilateral investment treaty between Venezuela and Netherlands, but the tribunal found that the same did not provide consent for arbitration under ICSID/s additional facility rules. The nationality of the owners was considered to be another factor which made Venoklim ineligible for protections under the treaty. This marks Venoklim's second failed claim, as a previous attempt under the same treaty was also rejected in 2015. [*Venoklim Holding B.V. v. República Bolivariana de Venezuela*, ICSID Case No. ARB(AF)/17/4]
- **Carbon Streaming Corporation delivers notices of arbitration to Hong Kong based Infinite-Earth:** Carbon Streaming Corporation is a Canadian investment firm which has initiated arbitration against Hong Kong based Infinite Earth alleging breaches of agreements related to the Rimba Raya carbon-offsetting project in Indonesia. The Canadian investment firm has also filed litigation in Ontario seeking declaratory relief. Infinite-Earth developed the Rimba Raya peat swamp reserve which generates carbon credits. Carbon Streaming purchased the rights to sell the project's remaining carbon credits for CA\$22 million in 2021, after the project's extension to 2073. However, Infinite-Earth's involvement was terminated in 2023, and the Indonesian government revoked the local concession holder's licence, citing violations of carbon market regulations. [[Statement](#)]

