

ADR Weekly

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National

Delhi Court Holds that Not Objecting to Non-Compliance of Arbitration Act Provisions Amounts to Waiver Under Section 4: The Delhi Commercial Court Bench of Justice Raj Kumar Tripathi held that a party who proceeds with arbitration without objecting to any non-compliance of the Arbitration Act provisions, without undue delay, shall be deemed to have waived their right to object under Section 4 of the Arbitration Act. The petitioner, a government-owned telecom company, challenged an arbitral award passed against it by a sole arbitrator who was its own employee. The court found that the petitioner did not raise any objection regarding the arbitrator's ineligibility at any stage during the arbitration proceedings, nor in the initial petition. The objection was raised for the first time during the final hearing. Applying Section 4 of the Arbitration Act, the court held that the petitioner's conduct amounted to a deemed waiver, and they could not be permitted to raise the ground of the arbitrator's ineligibility at this stage. [*M/s Telecommunications Consultants India Limited v. Veekay Connectors Pvt. Ltd., OMP (Comm.) No.01/2022*]

Delhi High Court Holds That Not Every Legal Mistake by Arbitral Tribunal Amounts to Patent Illegality: The court held that the scope of challenge under Section 34 of the Arbitration Act is limited to the grounds stipulated in the Act. It further ruled that the doctrine of "patent illegality" applies only to violations of the substantive law of India, the Arbitration Act, or the rules applicable to the substance of the dispute. It does not apply to every legal mistake made by the arbitral tribunal. The case involved a dispute between the directors of Amrit Bansapati Company Ltd (ABCL) and Bunge India Pvt Ltd over the interpretation of a Non-Compete Agreement (NCA) and a Business Transfer Agreement (BTA). ABCL directors had challenged an arbitral award that dismissed their claims, arguing it was based on extraneous considerations and was patently illegal. The court observed that the parties could have contractually determined which party would be liable for any taxes, but the agreements did not have such a clause. Therefore, the tribunal's award holding the respondent not responsible was justified. [*Naresh Kumar Bajaj and Ors. v. Bunge India Pvt. Ltd., O.M.P. (COMM) 228/2019*]

Himachal Pradesh HC Rules on Time Limits for Arbitration Award Challenges: The Himachal Pradesh High Court has held that Section 5 of the Limitation Act cannot be applied to petitions filed under Section 34 of the Arbitration Act to challenge arbitral awards. The ruling came in a case where the State of HP sought to challenge an arbitral award after the prescribed three-month period. The Court emphasised that while Section 34(3) allows for a 30-day extension beyond the three-month period upon showing sufficient cause, no further extensions are permissible. The State had received the award on February 20, 2023, but filed objections on June 16, 2023 - 27 days



The Court rejected the State's arguments about administrative delays, citing Supreme Court precedents that government entities cannot receive special treatment in such matters. The application for condonation of delay was dismissed. [*The State of H.P. & Anr. v. M/s Garg Sons Estate Promoters Pvt. Ltd.*, OMP(M) No. 74 of 2023]

Delhi High Court clarifies limits on enforcement courts' powers over foreign arbitral awards: The Delhi High Court has ruled that courts enforcing foreign arbitration awards under Section 48 of India's Arbitration Act can only refuse enforcement but cannot set aside such awards. The ruling came in International Air Transport Association's (IATA) USD 19.1 million enforcement petition against Spring Travels Pvt Ltd (STPL) over unpaid airline ticket sales. STPL challenged the Singapore-seated ICC award claiming lack of jurisdiction due to bypassing the Travel Agency Commissioner review process. Justice Jasmeet Singh rejected STPL's objections, finding they had waived pre-arbitration requirements through their conduct and failed to prove denial of natural justice. The court emphasised its secondary jurisdiction role, citing Vedanta and other precedents establishing that only courts at the arbitration seat have primary jurisdiction to set aside awards. IATA was successful in enforcing the USD 19.1 million award plus interest. [*International Air Transport Association v. Spring Travels Pvt Ltd*, Delhi High Court, O.M.P.(EFA)(COMM.) 1/2023]

Delhi High Court upholds contractual status quo during arbitration despite termination notice: The Delhi High Court has ruled that parties must maintain status quo during arbitration proceedings as per their agreement, even after contract termination. The ruling came in Innovative Facility Solutions' Section 9 petition against Affordable Infrastructure's termination of a 2016 service agreement for maintaining leased buildings. Justice Jasmeet Singh granted interim relief, finding that the agreement's clause 6.3 requiring status quo during disputes was binding. The court distinguished between preserving arbitration subject matter and enforcing specific performance, rejecting arguments about adequate damages and the applicability of the amended Specific Relief Act. The court emphasised its limited role under Section 9 to preserve disputed matters until the arbitral tribunal determines the termination's validity. [*M/s Innovative Facility Solutions Pvt Ltd v. M/s Affordable Infrastructure*, Delhi High Court, O.M.P.(I)(COMM.) 369/2024]

Delhi High Court rules arbitration exempt from Partnership Act registration requirements: The Delhi High Court has confirmed that Section 69 of the Partnership Act's ban on unregistered partnerships pursuing legal claims does not apply to arbitration proceedings. The ruling came in Hari Om Sharma's challenge to a 2017 arbitral award concerning disputes in two unregistered partnership firms, Ashika Textiles and Classic Processors. Justice Neena Bansal Krishna, citing Ananthesh Bhakta precedent, held that non-registration only bars court proceedings, not arbitration where partnership deeds contain arbitration clauses. The court upheld the arbitrator's decision to dissolve the partnerships from the award date rather than business closure date, finding no perversity in the award's handling of limitation periods and claim calculations. Sharma's petition challenging the award was dismissed. [*Hari Om Sharma v. Sauman Kumar Chatterjee & Anr.*, O.M.P. (COMM) 381/2017]



Delhi Court rules amended Section 12 of Arbitration Act applies retroactively: The Delhi Commercial Court has held that Section 12 of India's Arbitration & Conciliation Act as amended in 2015 applies to arbitration proceedings initiated before the amendment's enactment. The ruling came in a challenge to a USD 48,000 (Rs. 40,15,831) arbitration award involving Delhi Metro Rail Corporation (DMRC). The petitioner contested the appointment of DMRC's Senior General Manager as sole arbitrator, arguing it violated the 2015 amendment's provisions on arbitrator independence. Despite DMRC's objections based on non-retroactivity, the Court relied on the Supreme Court's Ellora Papers Mills precedent to set aside the award, finding the arbitrator's employment relationship with DMRC made them ineligible. The Court emphasised that the arbitration clause's reference to "amendments from time to time" meant parties had agreed to apply future amendments. [*Sh. Pankaj v Delhi Metro Rail Corporation Ltd., ARBTN No.7418/17*]

Allahabad High Court clarifies Section 8 Arbitration filing requirements: The Allahabad High Court has ruled that applicants seeking arbitration under Section 8 of India's Arbitration Act need not explicitly dispute plaint contents. The decision came in an appeal against a Commercial Court order involving Indian Oil Corporation Limited and a family dispute over a retail outlet operation. The Court overturned the lower court's dismissal, which had rejected arbitration because the applicant hadn't disputed liability and wasn't a direct signatory to the dealership agreement. Emphasising that filing a Section 8 application itself indicates intent to arbitrate, the Court held that judicial review scope under Sections 8 and 11 is identical but limited. The Court directed parties to arbitration under Clause 61 of their agreement. [*Atul Pratap Singh v Indian Oil Corporation Limited and Others, 2024:AHC:167917-DB*]



Global

London listed Emmerson notifies Government of Morocco of dispute over Khemisset potash mining project: Emmerson served a notice of dispute to the Government of Morocco under the 1990 UK-Morocco bilateral investment treaty. This dispute is with regards to the Khemisset potash mining project. The project was expected to be the African continent's first commercially operated potash mine and was valued earlier this year at US\$2.2 billion. Production was scheduled to start in 2023 but the government's apprehensions regarding environmental and consequences of the project caused a halt. An initial assessment was rejected by Morocco's CRUI citing waste management concerns. Emmerson then responded by coming up with a patented technology to reduce water consumption and capital expenditure. The project however still did not deserve approval from CRUI or the Moroccan government. Emerson alleges that the environmental objections are a facade to redirect a similar potash mining project in favour of Moroccan state-owned fertiliser producer OCP. The company contends that this amounts to a breach of the BIT. [[Emmerson's notice of dispute](#)]

Singapore Court of Appeal partially sets aside anti-injunction suit against Korea's Asiana Airlines: Injunctions were issued by the Singapore International Commercial Court in December preventing the airline from pursuing litigation in its home courts against directors of a Swiss catering group who were not party to an arbitration agreement. These injunctions were partially set aside by the court in a judgement delivered by Chief Justice Sundaresh Menon. The ruling upheld anti-suit injunctions restraining Asiana from pursuing Korean litigation against Swiss catering group Gate Gourmet and a joint venture vehicle in breach of an ICC arbitration clause. However, the court lifted an injunction that barred Asiana from suing Gate Gourmet's current and former CEOs, Christoph Schmitz and Xavier Rossinyol, as they were not parties to the arbitration agreement. [[Asiana Airlines, Inc v. Gate Gourmet Korea Co, Ltd and others \[2024\] SGCA\(1\) 8](#)]

Malta's Encore Investment Group brings ICSID claim against Turkey: The dispute is brought under Malta's 2003 bilateral investment treaty with Turkey. Encore is linked to Malta's Economicard Group, which provides shipping, corporate, fiduciary and legal services. The group is chaired by Maltese national John Gauci-Maistre. At the centre of the dispute is a hydropower plant located in Van, eastern Turkey. Encore Investment Group held a minority stake in the plant and claims that its stake was expropriated through Turkish court proceedings. The Maltese company thereby alleges breach of the BIT by the Turkish government. The claimant is represented by Şen Law Firm in Istanbul. [[Encore Investment Group Limited v Republic of Türkiye, ICSID Case No. ARB/24/46](#)]

