Weekly Newsletter

August 01 - 09, 2024

National

SC holds that a judge is required to apply mind to the grounds of challenge and deduce whether interference is necessitated when hearing an application under S. 34 Arbitration Act: A three judge bench of Dr. DY Chandrachud, CJI, J.B. Pardiwala and Manoj Misra, JJ. while agreeing with the reasoning which led the Division Bench of the Delhi High Court to remand the proceedings to the Single Judge, said that interference with an arbitral award under Section 34 must be confined to the grounds which are permissible under the statute. But equally, the Judge hearing an application under Section 34 must apply their mind to the grounds of challenge and then deduce as to whether a case for interference within the parameters of Section 34 has been made out. [*Kalinithi Maran vs Ajay Singh and Anr.*, SLP (C) 14936 of 2024]

The SC has held that arbitral tribunals or courts are not permitted to grant interest upon interest under the Arbitration Act, 1940: The bench comprising Justices PS Narasimha and Pankaj Mithal held that an Arbitral Tribunal is not empowered to grant interest upon interest while passing an arbitral award as the Arbitration Act, 1940 does not specifically provide for the grant of interest on interest. The court reasoned that an arbitral tribunal is not empowered to grant interest upon interest because the statute/Arbitration Act doesn't specifically provide for a grant of interest upon interest. This means that the court cannot order for payment of interest on interest but only on the principal sum adjudged. [*M/s D Khosla and Company vs The Union of India*, SLP (C) 814 of 2014]

Supreme Court to examine arbitration clause restricting remedy: The Supreme Court has agreed to examine the validity of an arbitration clause that restricts the remedy of arbitration only to claims not exceeding 20% of the contract value. Led by

Justice Pankaj Mithal, the bench sought a response from the government on an appeal filed by Beaver Infra Consultants challenging a Gauhati High Court judgment that dismissed its plea for an appointment of an arbitrator in its dispute with North Eastern Frontier Railway (NEFR). The HC had refused relief on the ground that value of claims in arbitration exceed 20% of the contract value, thus arbitration as a remedy was excluded in the case. [*Beaver Infra Consultants Pvt. Ltd. vs Union of India and ors.*, SLP(C) No. 014245 of 2024]

Arbitrator appointed by the Delhi High Court to decide PVR INOX - Ansal Plaza Mall dispute: The Delhi High Court has appointed an arbitrator to resolve the dispute between PVR INOX and Ansal Plaza Mall in Greater Noida. PVR INOX claims that its four-screen multiplex at Ansal Plaza Mall was sealed due to unpaid government dues by the lessor, Sheetal Ansal. PVR INOX has filed a claim of approximately Rs 4.5 crore in the Delhi High Court, seeking arbitration to address the issue. [*PVR INOX Ltd. vs Sheetal Ansal and Ors.*, ARB.P. 518/2024]

The Kerala HC has held that the 'Group of Companies' doctrine is not applicable when the party is not referred to arbitration: In this case, the petitioner challenged an order of attachment of his vehicle made by an Arbitration Tribunal. There was a default in repayment of the loan taken from the company. The finance company argued that the petitioner claims his title through the former owners of the vehicle and by adopting 'group of companies' doctrine, the order of attachment can be considered valid. Justice C. Jayachandran however held that the doctrine would not be applicable in this case. The doctrine applies to Section 45 of the Arbitration and Conciliation Act. Applying 'groups of company doctrine', the judicial authority can refer persons who has given a 'constructive consent' to the arbitration agreement. Here, the petitioner was not referred to the arbitration. He does not have any connection with the arbitration agreement. [*Saneesha M. S. v The Village Officers and Others*, WP(C) 31882/ 2022]

The Delhi HC has held that an arbitral tribunal's decision to award damages for 'loss of profit' is patently illegal if it is against the contract: The Delhi High Court division bench of Justice Vibhu Bakhru and Justice Tara Vitasta Ganju has held that an Arbitral Tribunal's decision to award damages for loss of profit is vitiated by patent illegality if it contradicts the express terms of the agreement between the parties.

The High Court held that the Arbitral Tribunal lacks jurisdiction to award interest if the contract expressly forbids it. It held that contractual agreements barring specific damages or interest must be honored, aligning with Section 28(3) of the Arbitration Act, which mandates tribunals to consider the terms of the contract. [*M/s Plus91 Security Solutions vs NEC Corporation India Private Limited*, FAO (OS)(COMM) 36/2024]

Rajasthan HC has held that an arbitral tribunal is to be the first to adjudge non-arbitrability of dispute and ground of res-judicata, while courts are to only have a second look: The bench of Justice Nupur Bhati at the Rajasthan High Court accepted an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator and observed that the issue of non-arbitrability of a dispute under an arbitration agreement falls under the domain of the arbitral tribunal in the first instance and the courts have the power to only "second look" after passing of the arbitral award. The Court also opined that the question regarding the claim being barred by res judicata does not arise for consideration in proceedings under Section 11 of the Act, and hence, it also needs to be dealt with by the arbitral tribunal only. [*Dilip Kumar v Dharampal Choudhary & Anr.*, S.B. Arbitration Application No. 22/2024]

NLCT Mumbai holds that an arbitration clause does not bar operational creditors from filing Section 9 applications under IBC: The matter pertained to an application filed by Gauder & Co. S.A. (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 in conjunction with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The application sought to initiate the Corporate Insolvency Resolution Process (CIRP) against Isinox Limited (the Corporate Debtor). The Corporate Debtor highlighted an arbitration clause in the contract and challenged the maintainability of the application under the IBC. Finally, the NCLT noted that the presence of an arbitration clause in the contract does not bar the filing of a Section 9 application, and that a Section 9 application is not maintainable in the absence of strict proof of debt and default. [*Gauder & Co. S.A. Vs Isinox Limited*, CP (IB) No.1277/MB/2022]

Global

Shanghai hosts landmark international maritime arbitration case at North Bund: Two companies registered in Shanghai have recently agreed to arbitrate in a jointly agreed location with an arbitrator appointed by both parties to resolve the dispute in question, marking the first instance of a foreign-related maritime interim arbitration case in China. Experts said on Sunday that the ruling demonstrated a hi-gh level of flexibility and broad applicability, paving the way for its wider implementation in the future.

The Privy Council revisits intersection between insolvency and arbitration: The Privy Council issued its decision in *Sian Participation Corp (In Liquidation) v. Halimeda International Ltd*, holding that winding up proceedings should not be automatically stayed or dismissed by the court where the disputed debt is subject to an arbitration agreement. Instead, the correct test to be applied by the court in the exercise of its discretion is whether the relevant debt is disputed on genuine and substantial grounds. [*Sian Participation Corp (In Liquidation) v. Halimeda International Ltd*, [2024] UKPC 16]