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NLU DELHI

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CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

QUARTERLY DIGEST OF ARBITRATION JUDGEMENTS

APRIL 2024 - JUNE 2024

SUPREME COURT

HIGH COURTS

TOPICS COVERED

1. ENFORCEMENT AND SETTING ASIDE OF AWARD UNDER SECTION 34

DELHI METRO RAIL CORPORATION LTD. V. DELHI AIRPORT METRO EXPRESS PRIVATE LTD.

2024 SCC OnLine SC 522 – Supreme Court of India

CASE DETAILS:

Date of Application	12 August 2022
Date of Judgment	10 April 2024
Nature of Application	Curative Petition
Bench Strength	Three-Judge Bench
Judge(s)	C. J. D. Y. Chandrachud, J. B.R. Gavai & J. Surya Kant
Provisions of the Arbitration and Conciliation Act	Sections 34 & 37

RATIO:

Guided by the principles established in *Rupa Hurra*, the Supreme Court has traditionally been very cautious about revisiting or overturning its own rulings through curative jurisdiction, only doing so in exceptional cases where a clear miscarriage of justice is apparent. The Court's decision to overturn the arbitral award in this case via a curative petition represents a departure from this norm. It is important to recognize that such actions should not become a regular practice. The Supreme Court itself has stressed that curative jurisdiction should be applied sparingly and not lead to a proliferation of court interventions. Additionally, any judicial involvement in arbitral processes or decisions should remain within the confines of the legal framework established by the Arbitration and Conciliation Act, 1996.

CASE SUMMARY

Brief Facts:

The consortium-respondent Delhi Airport Metro Express Private Limited (DAMEPL) won a 2008 contract to build and operate the Delhi Airport Metro Express under a public-private partnership with the Delhi Metro Railways Corporation (DMRC). DAMEPL was granted exclusive rights to implement and manage the project, while DMRC handled land acquisition and civil structures. DAMEPL was responsible for the railway systems and had to complete the project in two years, maintaining it until August 2038.

In April 2012, DAMEPL requested a deferral of the concession fee due to delays by DMRC. Although operations began smoothly in February 2011, retail activities lagged. Discussions led to a Joint Inspection Committee in July 2012 to address defects claimed by DAMEPL. DAMEPL halted operations in July 2012, citing safety concerns, and listed defects they attributed to DMRC's construction and design. DAMEPL warned DMRC to fix the defects within 90 days or face termination of the agreement. When DMRC didn't comply, DAMEPL terminated the contract on October 8, 2012. DMRC sought conciliation and then arbitration in October 2012. Operations resumed in January 2013 and DAMEPL handed over assets to DMRC in June 2013. An arbitral tribunal in August 2013 ruled in favor of DAMEPL, awarding them termination payment, operational expenses, and refunds, while DMRC was entitled to a concession fee. DMRC challenged the award, but the Delhi High Court dismissed their petition. A subsequent appeal partially was partly allowed. DAMEPL then filed a Special Leave Petition to the Supreme Court which successfully restored the original award. The current curative petition was filed to challenge the restoration of the award.

Issues:

(i) Whether the curative petition is maintainable in the facts and circumstances of the case?

(ii) Whether the Supreme Court was justified in restoring the arbitral award which had been set aside by the Division Bench of the High Court on the ground that it suffered from patently illegality?

Arguments:

Before the Tribunal, DMRC argued that it took immediate action to address the defects after receiving the cure notice. This included consulting SYSTRA, the original design consultant, and holding meetings with the Ministry of Urban Development, in which DAMEPL actively participated. DMRC contended that the true reason for the termination notice was that DAMEPL found the project financially unviable. Consequently, DMRC sought to nullify the termination notice and requested the Tribunal to direct DAMEPL to resume its obligations under the 2008 agreement.

Conversely, DAMEPL contended that the defects were due to DMRC's faulty design. They argued that the defects were not remedied within the 90-day period, resulting in significant adverse effects, justifying the termination of the concession agreement. The Tribunal was tasked with determining the validity of the termination notice and framed the following Issues whether there were any defects in the civil structure of the airport metro line; if such defects existed, whether they had a material adverse effect on DAMEPL's performance under the Concession Agreement (CA); and if the defects had a material adverse effect, whether DMRC remedied these defects or took effective steps to do so within 90 days of the notice from DAMEPL, thereby breaching the CA as per clause 29.5.1 (i).

Decision:

The Tribunal assessed the structural defects and whether effective measures were taken to address them during the cure period. It found that 72% of the girders had cracks with uncertain causes and unmeasured depths, and that DMRC's repair efforts were deemed inadequate. Twists in about 80 girders and gaps between the shear key and girders were also left unresolved by DMRC, compromising the structure's integrity and breaching DMRC's obligations under the 2008 agreement, which adversely affected the concessionaire. The Tribunal then addressed the legal issues, including whether DAMEPL was justified in terminating the agreement despite repair costs being only Rs. 14 crores out of a total project cost of Rs. 5700 crores. It concluded that the presence of uncured defects during the cure period made the repair costs irrelevant. Additionally, the Tribunal determined that the CMRS certificate, which mandated speed restrictions, did not affect the validity of the termination, as the line's purpose was not met.

The Single Judge of the High Court, reviewing the challenge to the arbitral award under Section 34 of the Arbitration Act, upheld the award. The Judge noted that as long as the arbitral award was reasonable and plausible, intervention was unwarranted, even if alternative perspectives existed. It was determined that the Tribunal had thoroughly examined the evidence and reached a reasonable conclusion.

However, the Division Bench of the High Court, exercising its authority under Section 37 of the Arbitration Act, partially overturned the arbitral award, finding it perverse and blatantly illegal. The Bench's decision was based on several factors: (1) the immediate termination was invalid, (2) DAMEPL's correspondence did not reference CMRS's speed and safety restrictions, which the Tribunal failed to address, leaving the award insufficiently reasoned, and (3) the Tribunal's findings were flawed for overlooking the binding nature of the CMRS certificate and misinterpreting its relevance to the termination's validity.

The Supreme Court reversed the Division Bench's decision and reinstated the arbitral award for several reasons. First, there was no ambiguity about the termination date, and the Tribunal's interpretation of the contract provisions was within its exclusive jurisdiction. Second, the award was reasonable, with the Tribunal's factual determination about the

uncured defects not open to challenge. Third, DMRC had not claimed before the Tribunal that the CMRS certificate was binding proof of defects being cured or effective steps taken. Additionally, the Supreme Court found no error in the Tribunal's separation of the CMRS certificate issue from the defects issue. The Tribunal, comprised of engineers, should not be evaluated with legal standards. DMRC's review petition against this judgment was dismissed in November 2021.

Consequently, the Supreme Court addressed two key questions: (i) the maintainability of the curative petition, and (ii) the justification for reinstating the arbitral award that the Division Bench of the High Court had set aside for patent illegality. The Court referred to Rupa Hurra v. Ashok Hurra, which established that curative petitions can be entertained to prevent gross miscarriages of justice and abuse of the Court's process, but only in the rarest of cases. The Court reiterated the limited scope for court interference with arbitral awards under Sections 34 and 37 of the Arbitration Act, emphasizing that such interference should only occur in exceptional circumstances. In this case, the Supreme Court found that the Arbitral Tribunal failed to explain what constituted "effective steps for curing the breach" within the cure period and overlooked vital evidence, particularly the CMRS certificate, which showed that DMRC had taken steps to address the defects. The Tribunal's focus on the conditions imposed by CMRS, rather than the steps taken by DMRC, led to a lack of reasoning in the arbitral award. Consequently, the Supreme Court set aside the Division Bench's decision and restored the arbitral award, emphasizing the limited scope of judicial scrutiny of arbitral decisions, especially when the Tribunal is composed of engineers. The Court dismissed DMRC's review petition against this judgment in November 2021.

TELECOMMUNICATION CONSULTANTS INDIA LTD (TCIL) V. NGBPS LTD

2024 SCC OnLine Del 4257 – Delhi High Court

CASE DETAILS:

Date of Application	19 July 2019
Date of Judgment	28 May 2024
Nature of Application	Condonation of Delay
Bench Strength	Division Bench
Judge(s)	J. Vibhu Bakhru, J. Tara Ganju
Provisions of the Arbitration and Conciliation Act	Section 37

RATIO

The court's decision hinged on the principle that applications seeking condonation of delay must provide detailed reasons for every day of the delay. The court emphasized that the procedural complexities within a PSU do not warrant a deviation from the strict timelines prescribed under the Arbitration and Conciliation Act, 1996.

CASE SUMMARY

Brief Facts:

In this case, the appellant, TCIL, sought to challenge an arbitral award passed in favor of the respondent, NGBPS Ltd. The dispute arose from a contract between TCIL and NGBPS Ltd for the supply, installation, and commissioning of certain telecommunications equipment. TCIL was dissatisfied with the arbitral award and filed an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. However, the appeal was filed with a significant delay, and TCIL sought condonation of this delay on the grounds that intra-departmental analysis and discussions within the administrative hierarchy of the appellant caused the delay.

Issues:

Whether the court can condone a delay of 118 days in filing an appeal under Section 37?

Arguments:

TCIL argued that the delay in filing the appeal was due to the time taken for intra-departmental analysis and discussions to formulate a decision on challenging the arbitral award. The appellant submitted that as a Public Sector Undertaking ("**PSU**"), it should be treated differently, implying that the procedural complexities within a PSU justify a more lenient approach to the condonation of delay. NGBPS Ltd contended that the reasons provided by TCIL for the delay were insufficient and lacked specifics. The application for condonation of delay was bereft of particulars and failed to explain the delay for each day. The respondent argued that the law does not favor condoning extensive delays without substantial justification, emphasizing the need for strict adherence to timelines under the Arbitration and Conciliation Act, 1996.

Decision:

The Court dismissed TCIL's application for condonation of delay. The court held that the reasons provided by TCIL, such as intra-departmental analysis and administrative hierarchy, were not sufficient to justify the extensive delay in filing the appeal. The court noted that the delay in filing the appeal was almost twice the period available for preferring the appeal. Therefore, in the absence of any particulars explaining the delay adequately, the court declined to condone the delay.

KLD CREATION INFRASTRUCTURE PVT.LTD V. NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED

2024 SCC OnLine Del 3946 – Delhi High Court

CASE DETAILS:

Date of Application	18 May 2024
Date of Judgment	21 May 2024
Nature of Application	Challenge of Award
Bench Strength	Single Bench
Judge(s)	J. Pratibha M Singh
Provisions of the Arbitration and Conciliation Act	Sections 9, 37

RATIO

The court adhered to the principle of minimal judicial intervention in arbitration matters. Its role was limited to verifying the existence of a valid arbitration agreement and appointing an arbitrator, leaving the merits of the dispute to be decided by the arbitrator. The court also acknowledged that the Petitioner had followed the contractually mandated conciliation process before approaching the court for the appointment of an arbitrator.

CASE SUMMARY

Brief Facts:

M/S KLD Creation Infrastructure Pvt. Ltd. (the Petitioner) was awarded a contract by National Highways & Infrastructure Development Corporation Limited (the Respondent) for the rehabilitation and up-gradation of a road in Tripura. The contract, referred to as the "EPC Contract," outlined specific obligations for both parties. The Respondent was required to provide 90% of the Right of Way ("**ROW**") free from encumbrances before a specified date and within 30 days of the contract signing. The Petitioner alleges that the Respondent failed to meet these obligations, causing delays and financial difficulties for the Petitioner. The Respondent also allegedly delayed payments and approvals, further hindering the Petitioner's ability to complete the project as per the agreed timeline. Despite these challenges, the Petitioner claims to have continued the work, even after being declared a "Non-Performer" by the Respondent. The contract was eventually terminated by the Respondent, leading the Petitioner to invoke the dispute resolution mechanism under the contract.

Issue:

Whether the Court should appoint an independent sole arbitrator to adjudicate the disputes between the Petitioner and the Respondent arising from the EPC Contract?

Arguments:

The Petitioner argued that the Respondent's failure to provide the encumbrance-free ROW, as per the contract, was a major cause of the project delays and financial difficulties. They also highlighted the Respondent's delays in payments and approvals as contributing factors to their inability to meet the project milestones. The Petitioner claimed that the Respondent's actions were a breach of the EPC Contract and sought the appointment of an independent arbitrator to resolve the dispute.

The Respondent, in their reply, did not dispute the existence of the arbitration clause in the EPC Contract. This implies an acceptance of the Petitioner's right to invoke arbitration for dispute resolution.

Decision:

The court, after hearing both parties and reviewing the contract, acknowledged the existence of a valid arbitration agreement. It recognized that the Petitioner had exhausted the conciliation process as required under the contract and was therefore entitled to seek arbitration. The court appointed a sole arbitrator to adjudicate the dispute. The court clarified that all rights and contentions of both parties would be open for consideration by the arbitrator.

M/S DIVYAM REAL ESTATE PVT LTD V. M/S M2K ENTERTAINMENT PVT LTD

2024 SCC OnLine Del 3786 – Delhi High Court

CASE DETAILS:

Date of Application	3 August 2012
Date of Judgment	22 May 2024
Nature of Application	Challenge of Award
Bench Strength	Single Bench
Judge(s)	J. Anup J Bhambhani
Provisions of the Arbitration and Conciliation Act	Sections 34

RATIO

Arbitral awards must be grounded in evidence and cannot be based on mere conjecture or speculation. While arbitrators have a degree of flexibility in assessing damages, their decisions must be reasonable, justifiable, and supported by the evidence presented during the proceedings. Arbitral awards should be clear, coherent, and consistent in their reasoning. Contradictory findings or conclusions that lack a logical basis can undermine the validity of an award. Conclusions drawn by an Arbitrator in disregard of evidence on record shall make the Award liable to be set aside as being perverse and patently illegal.

CASE SUMMARY

Brief Facts:

In this case, the dispute arose from a Memorandum of Understanding ("**MoU**") dated February 20, 2006. The Petitioner, Divyam Real Estate, had agreed to construct a mall in Ahmedabad, Gujarat, named "R-3 Mall." The Respondent, M2K Entertainment, was to lease space within this mall to operate a multiplex. However, the agreement soured when the Petitioner allegedly terminated the Respondent's contract prematurely by entering into an agreement with a third party on March 9, 2006. The Respondent contended that this termination was illegal and sought redress through arbitration, which resulted in the passing of an Award. The said award is being challenged.

Issues:

1. Whether the Arbitral Award's award of loss of profit to the respondent was based on sufficient evidence?
2. Whether the respondent suffered any loss justifying the award of compensation for loss of profit?
3. Whether the Arbitral Award's reasoning was self-contradictory?

Arguments:

The Petitioner initially challenged the Arbitral Award on two main grounds: (1) the MoU was merely an "agreement to agree" and not a legally binding contract, and (2) the award of Rs.20,00,000 for loss of profit was based on conjecture and lacked evidentiary support. However, during the court proceedings, the Petitioner narrowed their focus to the second ground, specifically contesting the validity of the loss of profit award. They argued that the award was arbitrary and lacked a foundation in the evidence presented during the arbitration.

The Respondent defended the Arbitral Award, asserting that there was sufficient evidence on record to substantiate the loss of profit awarded. They pointed to an affidavit submitted by their Deputy Manager, which detailed the expenses incurred in reliance on the MoU and the projected loss of profit based on industry norms. The Respondent contended that the Petitioner was essentially seeking a re-evaluation of the evidence, which was beyond the scope of a challenge under Section 34 of the Arbitration & Conciliation Act 1996.

Decision:

The Court meticulously examined the Arbitral Award and the arguments presented by both parties. The court concluded that the award of Rs. 20 lakhs for loss of profit were indeed untenable. The court found that the Arbitral Award's reasoning on this issue was contradictory and lacked clarity. The Arbitrator had, on one hand, acknowledged the

speculative nature of whether the Respondent would have made any profit at all. Yet, on the other hand, the Arbitrator proceeded to award a substantial sum for loss of profit without providing any concrete evidence or logical basis for this determination. The court emphasized that while arbitrators have discretion in assessing damages, this discretion must be exercised judiciously and in accordance with the evidence presented. In this case, the court found that the Arbitrator's decision regarding the loss of profit was arbitrary and unsupported by the record, warranting the setting aside of that portion of the award.

GOVT OF NCT OF DELHI V. M/S DSC LIMITED

2024 SCC OnLine Del 4147 – Delhi High Court

CASE DETAILS:

Date of Application	22 April 2015
Date of Judgment	29 May 2024
Nature of Application	Challenging Award
Bench Strength	Single Bench
Judge(s)	J. Neena Bansal Krishna
Provisions of the Arbitration and Conciliation Act	Section 34

RATIO

The court clarified the distinction between "excepted matters" and arbitrable issues. While the quantification of liquidated damages was an excepted matter, thus non-arbitrable, the determination of whether there was a delay was within the arbitrator's jurisdiction, and therefore, determination of delay by the Arbitrator, on the part of the contractor, is not 'Excepted Matter.' The court upheld the arbitrator's decision as it was based on a thorough examination of the evidence and documents presented.

CASE SUMMARY

Brief Facts:

The Government of the National Capital Territory of Delhi ("**GNCTD**") awarded a contract to M/S DSC Limited ("**DSC"**) for the construction of an elevated road over Barapulla Nalla starting from Sarai Kale Khan to Mathura Road, Delhi. The project was to be completed within 18 months, with a commencement date of 11.09.2008 and an initial completion date of 10.03.2010, which was later revised to 01.10.2010. However, the project faced delays, and the GNCTD considered the completion date to be 25.11.2011, based on a letter from DSC dated 10.02.2011. Due to the delay, the GNCTD levied liquidated damages on DSC as per the contract terms.

DSC disputed the delay and invoked the arbitration clause in the contract. The GNCTD resisted arbitration, arguing that the levy of liquidated damages was an "excepted matter" and not subject to arbitration. However, a sole arbitrator was appointed, who determined that the project was completed on 22.09.2010, and there was no delay on the part of DSC. The arbitrator concluded that the GNCTD was not entitled to levy liquidated damages. Aggrieved by the arbitral award, the GNCTD filed a petition under Section 34 of the Arbitration and Conciliation Act,1996, challenging the award.

Issue:

Whether the Arbitral Award's finding on the levy of liquidated damages was subject to judicial intervention under Section 34?

Arguments:

The GNCTD argued that the arbitrator's decision was incorrect and that the project was not completed until 25.11.2011. They contended that the contractor had caused delays and that the liquidated damages were justified. The GNCTD also argued that the issue of liquidated damages was an "excepted matter" under the contract, falling under the exclusive jurisdiction of the Superintending Engineer, and therefore, the arbitrator did not have the authority to decide on this issue.

The contractor argued that the project was completed on 22.09.2010, as per the arbitrator's findings. They contended that there were no delays on their part and that the GNCTD's claim for liquidated damages was baseless. The contractor also argued that the petition filed by the GNCTD was time-barred.

Decision:

The Court dismissed the GNCTD's petition. The court upheld the arbitrator's decision, stating that it was a well-reasoned order based on the evidence and documents presented. The court

also clarified that while the quantification of liquidated damages was an excepted matter, the determination of whether there was a delay was not. Since the arbitrator had found that there was no delay on the part of the contractor, the question of liquidated damages did not arise.

VIJAY MAHESHWARI V SPLENDOR BUILDWELL PRIVATE LIMITED AND ANR.

2024 SCC OnLine Del 3462 – Delhi High Court

CASE DETAILS:

Date of Application	22 April 2015
Date of Judgment	29 May 2024
Nature of Application	Challenging Award
Bench Strength	Single Bench
Judge(s)	J. Neena Bansal Krishna
Provisions of the Arbitration and Conciliation Act	Section 34

RATIO

The court emphasized that the MoU, which promised assured returns, was never signed and therefore did not constitute a binding contract. The court considered the petitioner's email communication seeking a refund as evidence that they were not ready and willing to perform their part of the contract. The court concluded that the petitioner had not established a prima facie case for the interim relief sought, as there was no clear right, title, or interest in the disputed units, and thus, the court reiterated that Section 9 of the Arbitration and Conciliation Act, 1996, is intended for interim measures and not for determining the final rights of the parties. The final rights and the interpretation of the contract would be within the domain of the Arbitral Tribunal.

CASE SUMMARY

Brief Facts:

The petitioner, Vijay Maheshwari, entered into three Tripartite Agreements with the respondents, SplendorBuildwell Private Limited and Ishayu Builders and Developers Private Limited, for the sale of three office spaces in a complex being developed by the respondents. The petitioner paid a total of Rs. 77,85,000/- as part consideration for the units. Alongside the agreements, the petitioner was given an unsigned Memorandum of Understanding ("**MoU**") promising assured returns on the investment.

However, the petitioner never received a signed copy of the MoU. Despite repeated follow-ups, the respondents failed to execute the conveyance deed for the units or provide the assured returns. The respondents eventually refunded the principal amount paid by the petitioner, claiming that the agreements had been terminated at the petitioner's request. The petitioner denied consenting to the termination and filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking to restrain the respondents from selling or transferring the units.

Issue:

Whether the petitioner established a prima facie case warranting judicial interim relief under Section 9?

Arguments:

The petitioner argued that the respondents had fraudulently withheld the signed copy of the MoU and failed to fulfil their contractual obligations. They claimed that the respondents unilaterally terminated the agreements and refunded the principal amount without the petitioner's consent, intending to sell the units at a higher price to someone else. The petitioner sought interim relief to prevent the respondents from disposing of the units.

The respondents argued that the petitioner had requested the termination of the agreements and that the entire principal amount had been refunded. They claimed that the petitioner was not entitled to any relief, including the interim injunction granted earlier, as they had not been ready and willing to perform their part of the contract. The respondents also contended that the petitioner's claim for assured returns was invalid as the MoU was never signed.

Decision:

The Court's decision to dismiss the petitioner's claims was based on a thorough examination of the evidence and arguments presented by both parties. The court delved into the email correspondence between the parties, recognizing its significance in understanding the intent and actions of both sides. The emails revealed that the petitioner, through their son, had

expressed frustration over the delays and lack of communication from the respondents. Crucially, the emails also indicated that the petitioner had sought a refund of their investment, suggesting a willingness to terminate the agreements.

The court also noted that the petitioner had retained a portion of the refunded amount (Rs. 30,00,000/-) while claiming additional dues. This further supported the court's conclusion that the petitioner was not genuinely interested in enforcing the agreements but was primarily concerned with recovering their investment and any potential returns.

The court's analysis of the evidence led to the determination that the petitioner had not established a prima facie case for the interim relief sought. The absence of a signed MoU, coupled with the petitioner's own actions seeking a refund, weakened their claim for specific performance of the agreements. The court emphasized that interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, is intended to preserve the status quo and prevent irreparable harm pending the final resolution of the dispute. In this case, the court found that the petitioner had not demonstrated a clear right to the properties or a risk of irreparable harm that would justify the grant of an injunction. The decision also serves as a reminder that interim relief under Section 9 is an extraordinary remedy that should be granted only when there is a strong prima facie case and a genuine risk of irreparable harm.

CFM ASSET RECONSTRUCTION PVT. LTD. AND ANR. V. M/S. SAR PARIVAHAN PVT. LTD

2024 SCC OnLine Bom 1659 – Bombay High Court

CASE DETAILS:

Date of Application	6 May 2024
Date of Judgment	13 June 2024
Nature of Application	Challenging Award
Bench Strength	Single Judge Bench
Judge(s)	J. Firdosh Pooniwalla
Provisions of the Arbitration and Conciliation Act	Section 34

RATIO:

The Court held that even if a case doesn't fall under Section 36(3) Second Proviso, the Court can consider whether to grant an unconditional stay, if it finds sufficient cause, such as a perverse finding based on unproven evidence. Moreover, an arbitral award can be set aside if it suffers from patent illegality, such as relying on unproven evidence, and the principles of natural justice require that both parties be given a fair opportunity to present their case and respond to the opposing party's claims.

CASE SUMMARY

Brief Facts:

CFM Asset Reconstruction Pvt. Ltd. (Petitioner 1) and IntegroFinservPvt. Ltd. (Petitioner 2) filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an arbitral award dated November 23, 2023. The dispute originated from a Loan Agreement dated January 29, 2010, between L&T Finance Company (the original lender) and M/s. SAR Parivahan Pvt. Ltd. (Respondent 1), where the lender advanced a loan of Rs. 2,85,70,000/-. This loan was secured by hypothecation of 5 Volvo FM 400 Tippers and guaranteed by the directors of Respondent 1 (Respondents 2 and 3).

The Respondents defaulted on the loan, leading to the lender invoking arbitration and appointing a sole arbitrator. The lender subsequently assigned the debt to Petitioner 1, who in turn assigned it to Petitioner 2. The Petitioners sold the hypothecated assets for Rs. 1.10 crores and reduced their claim to Rs. 59,97,210/-. The Respondents filed a counterclaim alleging that the assets were sold at an undervalued price and sought compensation of Rs. 2,35,43,476/-. The arbitrator ultimately awarded the Petitioners their claim amount but also awarded the Respondents their counterclaim, resulting in a net payable amount of Rs. 65,72,558/- from the Petitioners to the Respondents.

Issue:

Whether the arbitrator made an error in valuing the compensation payable, thereby entitling judicial intervention under Section 34?

Arguments:

The Petitioners argued that the arbitrator erred in relying on a valuation report submitted by the Respondents without proper proof or oral evidence. They contended that the report was merely an opinion and should not have been accepted as conclusive evidence of the assets' value. The Petitioners also argued that they were not given a reasonable opportunity to respond to the counterclaim and that the arbitrator proceeded *ex-parte* without considering their application for substitution.

The Respondents supported the arbitral award, arguing that the arbitrator had followed the agreed-upon procedure of relying on documentary evidence. They contended that the Petitioners had not challenged this procedure during the arbitration and therefore could not raise objections now. The Respondents also claimed that the Petitioners had not filed a reply to the counterclaim or the valuation report, and therefore, the arbitrator was justified in accepting the report.

Decision:

The Court admitted the petition and granted an unconditional stay on the arbitral award. The court's decision was based on several key findings. The court found that the arbitrator's decision to award the Respondents' counterclaim was primarily based on a valuation report that was not substantiated by any oral evidence. The court emphasized that even in cases where parties agree to rely on documentary evidence, expert opinions like valuation reports must be supported by oral testimony from the expert. The court determined that the Petitioners were not given a reasonable opportunity to respond to the Respondent's counterclaim. The Respondents had served an incomplete copy of the counterclaim without annexures, and despite the Petitioners' request for a complete copy, the arbitrator proceeded *ex-parte*. The court concluded that the arbitrator's reliance on the unproven valuation report and the denial of a fair opportunity to the Petitioners constituted patent illegalities in the award. Considering the circumstances, the court deemed it fit to grant an unconditional stay on the arbitral award to prevent substantial loss to the Petitioners, who would otherwise have to pay an amount based on an unsubstantiated claim.

TAMILNADU GENERATION AND DISTRIBUTION CORPORATION LIMITED V STATE OF U.P.

WRIT - C No. - 10525 of 2024 – Allahabad High Court

CASE DETAILS:

Date of Application	20 March 2024
Date of Judgment	27 May 2024
Nature of Application	Writ petition challenging award
Bench Strength	Single judge bench
Judge(s)	J. Manoj K Gupta
Provisions of the Arbitration and Conciliation Act,	Section 19

RATIO:

Under the MSMED Act, 2006, particularly Sections 18 and 19, it is mandatory for a party challenging an arbitral award to deposit 75% of the awarded amount before filing objections under Section 34 of the Arbitration and Conciliation Act, 1996. The Supreme Court's previous judgments reinforce that bypassing this statutory pre-condition by invoking the High Court's writ jurisdiction is not permissible. The decision underscores the principle that statutory remedies and conditions must be complied with to ensure fairness and adherence to legal obligations in the dispute resolution process.

CASE SUMMARY

Brief Facts:

The case involves the petitioners challenging an award passed by the Zonal Micro and Small Enterprises Facilitation Council ("**MSEFC**"), Meerut Zone, under the Micro, Small, and Medium Enterprises Development ("**MSMED**") Act, 2006. The award was in favor of the third respondent, granting them a sum of ₹1,49,48,762. The petitioners, Tamil Nadu Generation and Distribution Corporation Limited, and its associates had issued a purchase order to the third respondent for the supply of specific electrical materials. However, the respondent allegedly failed to supply the goods as per the agreed terms. Consequently, the petitioners initiated correspondence regarding the non-supply, but the third respondent approached the Facilitation Council, leading to the impugned award.

Issue:

Whether the petitioner was entitled to set aside an arbitral award through a writ petition?

Arguments:

The petitioners contended that the award should be set aside on the grounds of violation of natural justice. They argued that during the last hearing, no opportunity was given to present their arguments, and the award was reserved without their participation. Additionally, they claimed that the video link for the hearing was not sent to their counsel but to the head office, which hindered their ability to present their case. In response, the third respondent's counsel raised a preliminary objection regarding the maintainability of the writ petition, citing the availability of an alternative remedy under Section 34 of the Arbitration and Conciliation Act, 1996. This provision allows for objections to be filed against the award, subject to the deposit of 75% of the awarded amount as mandated by Section 19 of the MSMED Act, 2006. The third respondent argued that the petitioners should have pursued this statutory remedy instead of invoking the writ jurisdiction of the High Court.

Decision:

The court considered the arguments and highlighted the statutory framework governing dispute resolution under the MSMED Act, 2006. Sections 18 and 19 of the Act were particularly relevant, with Section 18 outlining the procedure for reference to the Facilitation Council and Section 19 specifying the requirement of depositing 75% of the award amount before challenging it in court. The court referred to the Supreme Court's judgment in the case of *M/s India Glycols Limited vs. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri*, where it was held that bypassing the statutory requirement of depositing 75% of the awarded amount by invoking the High Court's writ jurisdiction is not permissible.

The Supreme Court emphasized that the statutory remedy under Section 34 of the Arbitration and Conciliation Act, 1996, should be availed, and the pre-deposit condition under Section 19 of the MSMED Act, 2006, must be complied with. In light of the statutory provisions and the Supreme Court's precedent, the High Court dismissed the writ petition. The court held that the petitioners should have adhered to the statutory requirement of depositing 75% of the awarded amount and pursued their remedy under Section 34 of the Arbitration and Conciliation Act, 1996, instead of directly approaching the High Court.

JASVINDER KAUR V. NATIONAL HIGHWAYS AUTHORITY OF INDIA

2024 SCC OnLine All 1954 – Allahabad High Court

CASE DETAILS:

Date of Application	7 February 2023
Date of Judgment	29 May 2024
Nature of Application	Challenge of Award
Bench Strength	Single judge bench
Judge(s)	J. Shekhar Saraf
Provisions of the Arbitration and Conciliation Act,	Sections 34, 37

RATIO:

The ratio decidendi of the case is that the duty to deliver a signed copy of the arbitral award is unequivocally cast upon the arbitral tribunal as per Section 31(5) of the Arbitration and Conciliation Act, 1996. The limitation period for challenging an arbitral award under Section 34(3) of the Act starts from the date the party receives the signed copy of the award.

The court emphasized that procedural fairness and the principles of arbitration necessitate that the signed copy of the award must be delivered to the parties involved, and any delay or lapse on the part of the arbitrator should not disadvantage any party.

CASE SUMMARY

Brief Facts:

In this case, the dispute arose from a notification issued by the National Highways Authority of India ("**NHAI"**) on June 17, 2013, under Section 3D of the National Highways Act, 1956, for land acquisition. The appellant, Smt. Jasvinder Kaur objected to the compensation rate determined by the Competent Authority and sought a higher amount, which was subsequently rejected. Unhappy with this decision, she invoked arbitration under Section 3G(5) of the NHAI Act. The arbitrator rendered an award on January 31, 2023, backdated to October 11, 2022. The appellant challenged this arbitral award by filing an application under Section 34 of the Arbitration & Conciliation Act, 1996, before the District Judge in Rampur. However, the District Judge dismissed her application on February 7, 2023, citing it as time-barred because it was filed beyond the prescribed limitation period. Aggrieved by the dismissal, the appellant filed an appeal under Section 37 of the Arbitration & Conciliation Act, 1996, before the High Court of Judicature at Allahabad.

Issue:

Whether the Appellant not receiving a signed copy of the arbitral award would entitle them to challenge the award under Section 34?

Arguments:

The appellant argued that the District Judge had failed to consider the date on which the signed copy of the arbitral award was actually served to her, which is crucial for calculating the limitation period. She contended that the signed copy of the award was received on February 1, 2023, and thus, her application filed on February 7, 2023, was within the limitation period. She cited several judgments, including *Smt. Sudha v. Union of India*, to support her argument that the absence of service of a signed copy affects the limitation period. Additionally, she argued that there was no evidence showing that the award was pronounced on October 11, 2022, as the respondents claimed.

The respondents countered by arguing that the appellant was aware of the award being reserved for orders on October 11, 2022 and that she delayed applying for the certified copy beyond the limitation period, indicating a lack of interest. They maintained that the District Judge was correct in identifying a 37-day delay in filing the application under Section 34.

Decision:

The High Court focused on the issue of whether the District Judge was justified in dismissing the application due to the appellant not being served a signed copy of the arbitral award. The court emphasized that under Section 31(5) of the Arbitration Act, it is mandatory for the arbitral tribunal to deliver a signed copy of the award to the parties, and this delivery is

crucial for triggering various limitation periods. Citing the Supreme Court's judgment in *Union of India v. Tecco Trichy Engineers*, the court reiterated that the delivery of a signed copy is not merely procedural but substantive. The limitation period for challenging an arbitral award begins from the date the signed copy is received by the party. Given that the appellant received the certified copy of the award on February 1, 2023, and filed her application on February 7, 2023, the High Court concluded that her application was within the limitation period. Consequently, the court allowed the appeal, setting aside the order dated February 7, 2023, passed by District Judge, Rampur, thereby providing relief to the appellant.

MOTHER DAIRY FRUIT AND VEGETABLE PVT. LTD. V. KEVENTERAGRO LIMITED

SPECIAL CIVIL APPLICATION NO. 7782 of 2024 – Gujarat High Court

CASE DETAILS:

Date of Application	18 April 2024
Date of Judgment	8 May 2024
Nature of Application	Stay of award execution
Bench Strength	Division Bench
Judge(s)	J. Sunita Agarwal, J Aniruddha Mayee
Provisions of the Arbitration and Conciliation Act,	Sections 34, 36

RATIO:

The court has discretion in deciding whether to grant a stay of execution and the conditions for such a stay. Furthermore, the court held that a proposal to furnish a bank guarantee is not enough for Stay of Award. The claim should establish prima facie merits, as well. The petitioner must demonstrate a prima facie case and show that they have a fair chance of success in the proceedings under Section 34.

CASE SUMMARY

Brief Facts:

Mother Dairy Fruit and Vegetable Pvt. Ltd. (the petitioner) filed a special civil application in the High Court of Gujarat at Ahmedabad against KeventerAgro Limited (the respondent) challenging a judgment and order dated April 18, 2024, passed by the Commercial Court at Vadodara. The order pertained to the execution of an arbitral award dated September 29, 2023, where the petitioner was directed to pay the respondent Rs. 2,93,89,575/- along with interest at 10% from July 3, 2006, until realization, and arbitration costs of Rs. 6,45,000/-. The petitioner had filed an application under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award and sought a stay of execution under Section 36(3) of the Act. The petitioner offered to furnish a bank guarantee of the equivalent amount as security, but the Commercial Court dismissed the application, insisting on a 100% deposit of the awarded amount.

Issue:

Whether sufficient grounds existed for a stay in execution of award, and whether the Court had the discretion to determine conditions for stay in execution of award?

Arguments:

The petitioner argued that the Commercial Court had not exercised its discretion judiciously in refusing to accept a bank guarantee as security for the stay of execution. They contended that the court should have accepted the bank guarantee instead of insisting on a deposit of the entire awarded amount. The petitioner relied on Order XLI Rule 1(3) of the Code of Civil Procedure, which allows for the furnishing of security in lieu of a deposit, and cited several Supreme Court decisions to support their argument.

The respondent argued that the court's decision was in line with established legal principles and cited several Supreme Court and High Court decisions where courts had directed the deposit of the entire awarded amount for a stay of execution. They contended that there was a likelihood of the decree-holder's claim being frustrated if a stay was granted without a 100% deposit.

Decision:

The High Court of Gujarat dismissed the petitioner's application under Article 227 of the Constitution of India. The court upheld the Commercial Court's decision to require a 100% deposit of the awarded amount for the stay of execution. The court reasoned that the petitioner had not presented any arguments on the merits or demerits of the award before the Commercial Court, merely requesting a stay based on the furnishing of a bank guarantee. The court emphasized that the discretion to allow a deposit or bank guarantee lies with the

Commercial Court, and its decision was within the legal framework. The court also highlighted that arbitration is meant for quick dispute resolution, and automatic stays would defeat this purpose. Additionally, the court noted that the Arbitration Act aims for minimal court intervention, and interference is limited to specific conditions under Section 34. Since the petitioner did not make a prima facie case for a stay, the court found no reason to interfere with the Commercial Court's order.

THE STATE OF TRIPURA AND ORS. V. BINODE BEHARI DAS

MANU/TR/0177/2024 – Tripura High Court

CASE DETAILS:

Date of Application	16 August 2023
Date of Judgment	24 April 2024
Nature of Application	Application for timely completion
Bench Strength	Division Bench
Judge(s)	C.J. Aparesh Kumar Singh & J. Arindam Lodh
Provisions of the Arbitration and Conciliation Act	Section 37

RATIO:

Non-applicability of mind and non-assigning of reasons while making an award under Section 34 of the Arbitration and Conciliation Act, 1996 contradicts principles of morality and justice, making the award subject to being overturned for evident illegality. A decision under Section 34 can be appealed under Section 37 of the Arbitration Act, with the grounds for challenge being the same for both sections. Section 37 is the sole appellate recourse against a Section 34 ruling within the statutory framework. However, the Constitution permits parties to seek relief under Article 136 against decisions made in appeals under Section 37. This discretionary jurisdiction allows the Court to grant Special Leave to Appeal. Section 37(3) specifies that no second appeal is permitted from an order under Section 37, but it does not affect the constitutional right under Article 136. Thus, the Court can review the exercise of jurisdiction by courts under Sections 34 and 37 at a third stage.

CASE SUMMARY

Brief Facts:

A tender notice was published on August 12, 2011, for the construction of Kailashahar Girl's H.S. School. The respondent-contractor was awarded the project, and an agreement was executed on January 30, 2012. The project's stipulated completion period was 24 months, starting from February 14, 2012. Although the work was completed on May 22, 2017, beyond the stipulated period, no fines or compensation were imposed. A dispute arose regarding the final bill payment, leading to the appointment of an arbitrator on June 24, 2019. The arbitrator framed three Issues (1) validity of withholding Rs. 1,70,000 for extension of time, (2) responsibility for the delay, and (3) entitlement to price escalation and overhead claims. The arbitrator passed an award of more than Rs. 88 lakhs in favour of the contractor. The arbitrator's award was challenged under Section 34 of the Act, before the District Judge, Unakoti District, Kailashahar. The petition was dismissed on April 20, 2023, upholding the arbitral award, leading to this appeal.

Issue:

Whether the Arbitrator's failure to provide reasons for the award warranted judicial interference of staying the award under Section 34?

Arguments:

The Counsel for the appellants argued that the judgment delivered by the District Judge contains a flawed legal interpretation. Furthermore, both the judgment and arbitral award are legally unsound, exceeding the scope of the contractual agreement between the parties. Moreover, the District Judge overlooked the fact that the respondent-contractor is not entitled to price escalation under Clause 44 of the Agreement, given the 24-month completion period. Additionally, the Arbitrator failed to provide reasoning for the price escalation amount of Rs. 76,37,504.00, contrary to the requirements of the Arbitration and Conciliation Act, 1996. Meanwhile, counsel for the respondent contractor argued that the District Judge's judgment was sound and does not warrant intervention by this court. Regarding the issue of maintainability, the respondent contractor asserted that judicial interference with arbitral awards is restricted. Courts cannot review or reassess the arbitrator's findings, decisions, or evidence, nor can they evaluate the sufficiency of evidence. As the arbitrator is the parties' chosen adjudicator, the court can only set aside the award if it contains blatant errors or illegality apparent on its face. Since the parties agreed to arbitration, they should not be permitted to retract their initial position.

Decision:

The Court relied on multiple judgments of the Supreme Court, including Welspun Specialty Solutions Ltd. vs. ONGC,[1] emphasizing that Section 34 of the Arbitration Act restricts challenges to arbitral awards to specified grounds. The Court must exercise caution and defer

[1] MANU/SC/1059/2021

to the Arbitrator's decision, unless the award is perverse or contrary to public policy. The Arbitrator's decision is final, and courts should respect party autonomy in choosing alternative dispute resolution. Interfering with arbitral awards on factual aspects would frustrate the purpose of alternative dispute resolution. The Court cannot undertake an independent assessment of the award's merits and must only ensure that the exercise of power under Section 34 is within the scope of the provision. The learned single Judge erred in holding the award "perverse and contrary to public policy" without providing reasons. The Arbitrator failed to assign reasons for the award, rendering it irrational and based on no evidence, a patent illegality. The Court can set aside such an award under Section 34(2-A). The judgment of the learned District Judge is unsustainable for not considering grounds raised under Section 34. The Arbitrator is duty-bound to assign reasons for their decision, and non-assigning of reasons amounts to a fundamental breach of natural justice, leading to patent illegality. The Court can interfere with such an unreasoned award under Section 34 and Section 37 of the Arbitration Act. The scope of interference under Section 37 is limited to ensuring the court's power under Section 34 is not exceeded.

Within the statutory framework of the Arbitration Act, Section 37 serves as the sole appellate recourse against a ruling under Section 34. Nevertheless, the Constitution allows parties to seek relief under Article 136 against a decision made in an appeal under Section 37. This Court’s authority to grant Special Leave to Appeal under Article 136 is discretionary and exceptional. Indeed, Section 37(3) of the Arbitration Act explicitly states that no second appeal is permitted from an order passed under Section 37, yet this does not infringe upon the constitutional right under Article 136. Consequently, this Court can effectively review the exercise of jurisdiction by courts acting under Sections 34 and 37 of the Arbitration Act at a third stage.

The Commercial Court failed to exercise its jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996. Consequently, the judgment and order dated 20.04.2023 from the Commercial Court are annulled. The arbitral award dated 06.03.2022 issued by the Sole Arbitrator is also annulled. The case is remanded to the Arbitrator for a new decision on all previously framed issues.

T. UTHRA AND ORS. V. BOHRA & CO.

MANU/TN/1969/2024 – Madras High Court

CASE DETAILS:

Date of Application	3 April 2023
Date of Judgment	16 April 2024
Nature of Application	Set aside the arbitration award
Bench Strength	Single Judge Bench
Judge(s)	J. Krishnan Ramasamy
Provisions of the Arbitration and Conciliation Act	Section 12(5); Section 13; Section 34

RATIO:

The Court clarified the interpretation of Section 12(5) of the Act, stating that an Arbitrator must not be an employee, consultant, advisor, or have any business relationship with the respondent. If such a person is appointed, they are ineligible under Section 12(5) and cannot nominate another Arbitrator. Furthermore, the Court addressed whether a petitioner who participated in arbitration without challenging the Arbitrator's appointment under Section 13 can still challenge it under Section 34 for violating Section 12(5). The Court affirmed this right, regardless of participation in the proceedings or the lack of a petition under Section 13. Section 12(5) requires an express written agreement to waive its applicability, and no such agreement exists in this case. Therefore, any unilateral appointment of an Arbitrator is invalid, and such an appointment can be challenged under Section 34. An authority acting without jurisdiction renders its decision void, allowing the Court to invalidate arbitration proceedings if the Arbitrator's appointment violates Section 12(5).

CASE SUMMARY

Brief Facts:

A married couple (petitioners) who operated buses approached the respondent in 2012 to finance the purchase of two new buses. The respondent agreed to lend them Rs.30,00,000/- (Rs.15,00,000/- for each bus) and had the petitioners sign two blank agreements, two promissory notes, and other blank documents without providing them with copies. When the respondent delayed the payment, the petitioners requested to cancel the agreement. Despite the petitioners informing the respondent about the cancellation, the respondent allegedly forged the agreements and issued a notice on 30.06.2021. At that time, the second petitioner was recovering from open-heart surgery and could not respond to the notice. Additionally, the respondent appointed a Sole Arbitrator without notifying the petitioners or issuing an arbitration notice. The Arbitrator subsequently passed an award on 23.12.2022, directing the petitioners to pay Rs.6,98,205/-. With no other recourse, the petitioners filed this original petition to set aside the award dated 23.12.2022.

Issue:

Whether the petitioner's participation in the arbitral proceedings, and prior failure to challenge the appointment of the sole arbitrator, would disentitle them from challenging the appointment under Sections 13 and 34 after the award had been passed?

Arguments:

The petitioner's counsel argued that an Arbitrator's appointment without the other party's consent is legally invalid. In this case, no written agreement waiving this requirement exists, making the appointment void and any award by the Arbitrator subject to being set aside. He further stated that the unilateral appointment violates Section 12(5) of the Act and falls under Explanation (2) of Section 34(2)(b), contradicting fundamental policy of the Indian law, as held by the Supreme Court. Additionally, the Arbitrator did not allow the petitioner to file a counter and contest the matter. Therefore, he requested the court to annul the award. On the other hand, the respondent's counsel vigorously disputed the petitioners' claims. He argued that if there is a unilateral appointment of an Arbitrator, the petitioner should have immediately challenged it under Section 13 of the Act before the Arbitral Tribunal. However, the petitioner did not pursue this remedy in the current case. Therefore, the petitioner cannot challenge the award at this stage. Additionally, he asserted that the original petition lacks merit and should be dismissed.

Decision:

The Court, referring to the case of *Perkins Eastman Architects v HSCC India Ltd*,[2] delved into interpretation of Section 12(5) of the Act and clarified the position of law in this regard.

[2] MANU/SC/1628/2019

It held that an Arbitrator can be appointed as long as they are not an employee, consultant, advisor, or have any past or present business relationship with the respondent. If someone with such connections is appointed, they are ineligible under Section 12(5) of the Act. Likewise, these individuals cannot nominate anyone as an Arbitrator.

Moreover, the Court relied on the case of *Pratapchand Nopaji v Kotrike Venkata Setty*,[3] where the principle of *qui facit per alium facit per se* was applied, meaning actions done through another are considered done by oneself. If an Arbitrator becomes ineligible by law, they cannot nominate another. The Arbitrator's ineligibility under Section 12(5) means they cannot delegate this authority. To elaborate further, the Court referred to the *TRF Ltd. vs. Energo Engineering Projects Ltd.*,[4] wherein the Supreme Court ruled that someone with an interest in the dispute must not have the power to appoint an Arbitrator and this principle is emphasized by the Arbitration and Conciliation (Amendment) Act, 2015. Consequently, the Court addressed the question whether a petitioner, having participated in arbitration proceedings without challenging the Arbitrator's appointment under Section 13, can still challenge the appointment under Section 34 for violating Section 12(5). The Court answered in affirmative and held that the petitioner can challenge the Arbitrator's appointment under Section 34, regardless of participation in the proceedings or a lack of challenge under Section 13.

Proviso to Section 12(5) requires an express written agreement for waiving the applicability of this section. In the present case, no such agreement exists, meaning no implied authority can be inferred. If an Arbitrator's appointment is challenged under Section 34 for being unilateral, such a challenge is valid. An authority acting without jurisdiction renders its decision a nullity. Therefore, the Arbitrator's appointment and the award are held to be void if there is no express written waiver under Section 12(5). This Court can rectify such issues at any stage, invalidating arbitration proceedings if the Arbitrator's appointment is improper under Section 12(5).

[3] MANU/SC/0028/1974
[4] MANU/SC/0755/2017

PRINCIPAL SECRETARY TO THE GOVT. OF ODISHA V. JAGANNATH CHOUDHURY

2024 SCC OnLine Ori 1670 – Orissa High Court

CASE DETAILS:

Date of Application	29 November 2021
Date of Judgment	20 May 2024
Nature of Application	Challenge of award
Bench Strength	Single Judge Bench
Judge(s)	J. Dash
Provisions of the Arbitration and Conciliation Act	Sections 37

RATIO:

The court held that no reappreciation of evidence is permitted under section 34 of the Arbitration Act, and that the Arbitrator's views must be respected. The court emphasized the limited scope of judicial intervention in arbitral awards, stating that it should not be interfered with lightly unless it contravenes the fundamental policy of Indian law or suffers from perversity or patent illegality. It also held that the limitation period for arbitration starts from the date when the cause of action accrued.

CASE SUMMARY

Brief Facts:

The Respondent, M/s. Jagannath Choudhury, a Super Class Contractor, was awarded a contract by the Appellant, the Principal Secretary to the Government of Odisha, for the construction of the Jambhira Earth Dam Reach-IV(B) under the Subarnarekha Irrigation Project (SIP), Odisha. The agreement, signed in 1995-96, stipulated a contract price of Rs.2,50,68,948.00 and a completion date of November 28, 1997. However, due to the influence of the Chief Engineer, the Respondent completed the work, including some extra items not initially included in the agreement, by March 1997. Despite completing the work ahead of schedule, the Respondent was not paid in full. The Respondent claimed a total of Rs. 2,12,59,430.07 for the executed work, Rs. 25,11,166.95 for price escalation, Rs. 5,15,858.00 for idle machinery charges due to villager opposition, and Rs. 5,45,719.00 as a refund of the security deposit, along with 18% interest on the payable amount and the cost of arbitration.

The Appellant-State contested these claims, arguing that the dispute was not arbitrable, the reference was not maintainable due to the Respondent not furnishing a security deposit as per the agreement, and that the claims were barred by limitation. They also disputed the Respondent's claims regarding the extra items of work and the amount payable for price escalation.

Issue:

Whether the arbitral award warranted judicial interference under Section 37?

Arguments:

The Appellants argued that the Arbitrator erred in allowing the claims, as they were barred by limitation. They contended that the final bill was cleared in 1997, and the Respondent's first request for outstanding dues was made much later, in 2000. They also argued that the Arbitrator had rewritten the terms of the agreement by considering work covered under the Bill of Quantities ("**BOQ**") as extra items, thereby exceeding his authority. Additionally, they argued that the award of interest was untenable due to an express bar in the agreement.

The Respondent argued that the Arbitrator's findings were based on evidence and should not be interfered with. They contended that the cause of action for raising the claim arose when they filed the application under Section 11(6) of the A&C Act, as the matter of payment was pending and not responded to by the Appellant. They also argued that the Arbitrator had considered all materials and arrived at a reasoned decision, including disallowing certain claims.

Decision:

The Court upon hearing the appeal under Section 37 of the Arbitration and Conciliation Act,1996, upheld the arbitrator's decision on most of the claims. The court confirmed that the dispute was arbitrable and the reference was maintainable. It also agreed with the arbitrator's findings on the Respondent's entitlement to payment for the executed work, price escalation, and the refund of the security deposit.

However, the court modified the arbitral award concerning the rate of interest. The arbitrator had awarded interest at 18% per annum, but the court found this to be excessive and without proper justification. The court reduced the interest rate to 9% per annum, considering it to be a more reasonable rate in the given circumstances. The court's decision was based on a detailed examination of the evidence, arguments, and relevant legal principles. It aimed to strike a balance between upholding the arbitrator's findings on the merits of the case and ensuring that the award was fair and reasonable in terms of the interest rate.

M/S LILADHAR LAXMINARAYAN AGRAWAL V. MANAGING DIRECTOR M.P. RAJYA BEEJ EVAM VIKAS NIGAM

MISC. APPEAL No. 3747 of 2005 – Madhya Pradesh High Court

CASE DETAILS:

Date of Application	1 May 2024
Date of Judgment	13 May 2024
Nature of Application	Stay in award
Bench Strength	Single Judge Bench
Judge(s)	J. Vishal Dhagat
Provisions of the Arbitration and Conciliation Act	Sections 34

RATIO:

While the Arbitration and Conciliation Act, 1940, mandates the filing of the award, there's no explicit bar on the court hearing objections before the filing. The court emphasized that the crucial aspect is the court's jurisdiction over the subject matter, and the word "may" in Section 31 of the Act doesn't preclude the court from entertaining applications related to the award before it's formally filed. Thus, Section 31 of the Arbitration Act, 1940 does not bar the Court from entertaining applications pre-filing of the Award.

CASE SUMMARY

Brief Facts:

The appellant, M/s Liladhar Laxminarayan Agrawal, entered into an agreement with the respondents, M.P. Rajya Beej Evam Vikas Nigam, to purchase food grains. A dispute arose regarding payment, leading to arbitration being invoked in 1996. An award was passed in 1997, but it was successfully challenged, following which the Court remanded the matter back to the arbitrator. The arbitrator passed a second award in 2002, which dismissed the claim of the appellant. This prompted the appellant to file an application under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award. This application was dismissed, leading to the present appeal.

Issues:

Whether reference Court of Additional District Judge has committed illegality and procedural impropriety in deciding reference case without award being filed in the Court?

Arguments:

The appellant argued that the lower court erred in deciding the case without the award being filed before the Court by the arbitrator, in accordance with Section 14 of the 1940 Act. They contended that the arbitrator had misconducted the proceedings. They sought to set aside the award and requested a refund of the disputed amount with interest.

The respondents supported the lower court's order, arguing that it had correctly dismissed the application as the grounds raised did not fall under the scope of Sections 30 and 33 of the Arbitration Act, 1940, read with the Arbitration and Conciliation Act, 1996.

Decision:

The High Court of Madhya Pradesh dismissed the appeal, finding no illegality or procedural impropriety in the lower court's decision. The court clarified the interpretation of Section 31 of the Arbitration and Conciliation Act, 1940, stating that it doesn't prevent the court from hearing objections before the award is filed. The court also found that the lower court had correctly applied the 1940 Act, as the arbitration proceedings had commenced before the 1996 Act came into effect. On the merits of the case, the court found no reason to interfere with the arbitrator's decision, as it was not in violation of the agreement and there was no evidence of misconduct.

TELECOMMUNICATION CONSULTANTS INDIA LTD. V. SHIVAA TRADING

MANU/DE/2916/2024 – Delhi High Court

CASE DETAILS:

Date of Application	27 May 2022
Date of Judgment	9 April 2024
Nature of Application	Setting aside arbitral award
Bench Strength	Single Judge Bench
Judge(s)	J. Anup Jairam Bhambhani
Provisions of the Arbitration and Conciliation Act	Sections 4, 7, 12, 13, 14 and 34

RATIO:

The Delhi High Court reaffirmed that an award by a unilaterally appointed arbitrator can be challenged due to the invalidity of the appointment and the resulting lack of jurisdiction. The Court referenced the Supreme Court's decision in Bharat Broadband Network Ltd. v. United Telecom Limited, stating that mere participation in the proceedings does not constitute an 'express waiver' under Section 12(5) of the Arbitration and Conciliation Act. The Court concluded that any decision by a unilaterally appointed arbitrator is void ab initio, and the appointing party retains the right to challenge jurisdictional defects at any stage.

CASE SUMMARY

Brief Facts:

The disputes originated from a contract between the petitioner and Madhya Pradesh Rural Road Development Authority for road construction. To execute the contract, the petitioner and respondent entered into a Memorandum of Understanding (MoU) on 10.09.2007, based on which work orders were issued to the respondent. However, due to various alleged defaults by the respondent, the petitioner terminated the contract on 31.01.2013 and completed the remaining work at the respondent's risk and cost. In this context, the petitioner invoked arbitration under the MoU through a notice dated 11.10.2017. On 10.09.2018, the petitioner appointed a Sole Arbitrator to resolve the disputes and filed their statement of claims on 17.12.2018. The respondent filed its statement of defense and counterclaims on 15.08.2019. An award was passed on 17.12.2021, which is now being challenged in this petition.

Issue:

Whether the Arbitrator appointed was ineligible under Section 12(5), thereby warranting setting aside of the award?

Arguments:

The petitioner's counsel argues that the award should be challenged because the Arbitrator appointed under clause 19 of the MoU was de jure ineligible under Section 12(5) of the A&C Act. The appointment on 10.09.2018 is void according to various Supreme Court judgements, such as *Bharat Broadband Network Ltd vs. United Telecom Limited*,[5] which states that an Arbitrator's appointment can be challenged if the grounds under Section 12(5) are met. He emphasizes that without a written agreement after disputes arise, the Arbitrator's mandate is automatically terminated under Section 12(5) and the Seventh Schedule. He also notes that Section 4's deemed waiver concept does not apply to Section 12(5), requiring an express written waiver after disputes arise. Additionally, the counsel sought to justify the delay in filing by citing *Balvant N. Viswamitra & Others vs. Yadav Sadashiv Mule*,[6] which holds that actions by a court lacking jurisdiction are void ab initio and can be challenged at any stage. The question of delay in filing would not arise.

Conversely, the respondent's counsel argues that the petitioner's claims are invalid because the petitioner appointed the Sole Arbitrator and did not object during the arbitral proceedings. The challenge only arose after the unfavorable award. He asserts that it is unfair for the petitioner to now contest the Arbitrator's jurisdiction and contends that if the award had been favorable, the petitioner would not have raised this issue. He argues that the petitioner cannot

[5] MANU/SC/0543/2019
[6] MANU/SC/0625/2004

change positions on jurisdiction and that the precedents cited by the petitioner do not apply to this case.

Decision:

The Court referred to multiple judgments, wherein the Supreme Court has clearly established that a challenge under Section 12(5) of the A&C Act applies when an arbitrator is de jure ineligible to perform their function due to falling into one of the categories specified in the Seventh Schedule. In such cases, the arbitrator inherently lacks jurisdiction, rendering their appointment and any arbitral proceedings void ab initio. The Supreme Court has also stipulated that any waiver under Section 12(5) must be express, in writing, and granted after disputes have arisen between the parties for it to be valid.

In the present case, no such waiver was granted by the parties. It is well-established law that a jurisdictional defect rendering a decision void can be challenged at any stage, as it undermines the authority of the court or tribunal.

Therefore, the award was set aside on the ground that the appointed Arbitrator was de jure ineligible, rendering all arbitration proceedings and became void ab initio and without legal effect.

2. JUDICIAL MANDATE UNDER SECTION 29A

CHIEF ENGINEER (NH) PWD (ROADS) V. M/S BSC & C AND C JV

2024 SCC OnLine SC 1801 – Supreme Court of India

CASE DETAILS:

Date of Application	22 April 2024
Date of Judgment	13 May 2024
Nature of Application	Special Leave to Appeal
Bench Strength	Two-Judge Bench
Judge(s)	J Abhay Okay, J Ujjal Bhuyan
Provisions of the Arbitration and Conciliation Act	Section 29A

RATIO

The court's decision was based on the interpretation of Section 29A of the Arbitration and Conciliation Act, 1996. The court clarified that the power to extend the time for an arbitral award and the consequential power to substitute arbitrators under this section vest only in the principal Civil Court of original jurisdiction in a district, including a High Court, only if it has ordinary original civil jurisdiction.

CASE SUMMARY

Brief Facts:

The case involved a dispute between the Chief Engineer (NH) PWD (Roads) (the Petitioner) and M/S BSC & C and C JV (the Respondent) regarding the extension of time for an arbitral award under Section 29A of the Arbitration and Conciliation Act, 1996. The High Court of Meghalaya at Shillong had passed a judgment and order in this matter, which was challenged by the Petitioner through a Special Leave Petition (SLP) before the Supreme Court of India.

Issues:

Whether there is merit in the Special Leave Petition concerning the extension of time limits f or making an arbitral award under Section 29A?

Arguments:

The Petitioner argued that the High Court had erred in its interpretation and application of Section 29A of the Arbitration Act. They contended that the High Court did not have the jurisdiction to extend the time limit for the arbitral award or to substitute arbitrators, as it lacked ordinary original civil jurisdiction.

Decision:

The Court allowed the SLP, to uphold the principle that the powers under Section 29A of the Arbitration Act must be exercised by the appropriate court with the requisite jurisdiction. The court clarified that the power to extend the time limit for an arbitral award under Section 29A(4) lies with the principal Civil Court of original jurisdiction in a district, which includes a High Court only if it has ordinary original civil jurisdiction. In this case, the High Court of Meghalaya did not have such jurisdiction.

GLOWSUN POWERGEN PRIVATE LIMITED V. HAMMOND POWER SOLUTIONS PRIVATE LIMITED

O.M.P.(MISC.)(COMM.) 120/2024 – Delhi High Court

CASE DETAILS:

Date of Application	19 February 2024
Date of Judgment	28 May 2024
Nature of Application	Extension of mandate of tribunal
Bench Strength	Single Judge Bench
Judge(s)	J. Dinesh Kumar Sharma
Provisions of the Arbitration and Conciliation Act	Section 29A

RATIO

The court emphasized that the mandate of an arbitral tribunal could be extended even after its expiration if there was sufficient cause, as stipulated in Section 29A(5) of the Arbitration and Conciliation Act, 1996. The court's decision was primarily based on the principle that significant investments of time, effort, and resources in the arbitration process should not be wasted. The court relied on precedents and the legislative intent to provide flexibility in extending the arbitration timelines to ensure the completion of the arbitral process.

CASE SUMMARY

Brief Facts:

Glowsun Powergen Private Limited ("**Petitioner**") and Hammond Power Solutions Private Limited ("**Respondent**") entered into arbitration proceedings that commenced on November 23, 2021. The pleadings were completed by June 22, 2022. According to Section 29A of the Arbitration and Conciliation Act, 1996, the initial 12-month period for completing arbitration expired on June 21, 2023. Subsequently, a six-month extension was granted, expiring on December 21, 2023. Despite these extensions, the arbitration process could not be completed by the final deadline of February 29, 2024. The petitioner filed a petition seeking a further extension of the mandate of the Arbitral Tribunal by one year, despite its pending status for over 27 months.

Issue:

Whether there can be an extension of the mandate of the Arbitral Tribunal, which had expired, and subsequent regularization of the arbitration proceedings?

Arguments:

The Petitioner argued that significant time, effort, and resources had been invested in the arbitration process, which had progressed substantially but required more time for completion. It was emphasized that the delay was not intentional and that extending the mandate would prevent the arbitral efforts from being rendered futile. The Respondent opposed the extension, arguing that the mandate of the Arbitral Tribunal could not be extended after its expiration. They asserted that the petitioner's conduct had caused significant delays since the inception of the arbitration proceedings, resulting in the current pending status even after 27 months.

Decision:

The court acknowledged that while the petitioner's delays were not commendable, it would be imprudent to render the extensive arbitration efforts futile. Therefore, the court extended the mandate of the Arbitral Tribunal until December 31, 2024, and regularized the period lapsed from February 29, 2024, to the date of the order. The court also urged the parties and the Arbitrator to avoid any further delays and expedite the proceedings.

SARIKA CHATURVEDI V. AGARWAL AUTO TRADERS

2024 SCC OnLine Del 4063 – Delhi High Court

CASE DETAILS:

Date of Application	8 July 2022
Date of Judgment	22 May 2024
Nature of Application	Substitution of Arbitrator
Bench Strength	Single Bench
Judge(s)	J. Pratibha M Singh
Provisions of the Arbitration and Conciliation Act	Section 29A

RATIO

The decision establishes that parties cannot be allowed to manipulate or delay arbitration proceedings through deliberate actions, such as, unnecessarily questioning the authority of the arbitrator. The court's decision rests on the principle that while courts should generally avoid interfering in arbitration proceedings, they have a duty to ensure the integrity and efficiency of the process. The reasoning highlights the importance of respecting the arbitrator's authority and adhering to the agreed-upon procedures.

CASE SUMMARY

Brief Facts:

Ms. Sarika Chaturvedi (the Petitioner) entered into a loan agreement with Agarwal Auto Traders (the Respondent) for a sum of Rs. 10 lakhs. The agreement contained an arbitration clause specifying Mr. H.L. Tiku as the arbitrator in case of disputes. A dispute arose regarding the repayment of the loan, leading the Petitioner to invoke arbitration. However, Mr. Tiku recused himself due to allegations made by the Respondents. Subsequently, the court appointed a new arbitrator. Despite the new arbitrator's efforts, the arbitration proceedings were marred by repeated delays and a lack of cooperation from both parties. The Respondent, in particular, engaged in actions that appeared to undermine the arbitrator's authority, including questioning her mandate. Frustrated by these obstacles, the arbitrator eventually withdrew from the proceedings. This led the Petitioner to file a petition seeking the appointment of yet another arbitrator.

Issues:

1. Whether the recusal of the arbitrator necessitates the appointment of a new arbitrator?
2. Whether the Respondent's conduct constitutes an attempt to undermine the arbitration process?
3. Whether the Respondent should be sanctioned for delays and non-compliance with the arbitration proceedings?

Arguments:

The Petitioner argued that the repeated delays and lack of cooperation from the Respondent, coupled with their attempts to undermine the arbitrator's authority, necessitated the appointment of a new arbitrator. They emphasized that the Respondent's conduct had made it impossible for the arbitration to proceed smoothly and that a fresh start with a new arbitrator was required to ensure a fair and efficient resolution of the dispute.

The Respondent countered by arguing that their actions, such as questioning the arbitrator's mandate, were not intended to be disruptive. They attributed these actions to ambiguities in the order appointing the arbitrator and claimed that they were acting in good faith. They expressed their willingness to proceed with the arbitration and urged the court not to appoint a new arbitrator.

Decision:

The court, after considering the arguments of both parties and reviewing the history of the arbitration proceedings, decided not to appoint a new arbitrator. The court acknowledged the difficulties faced by the appointed arbitrator due to the parties' conduct but emphasized that such attempts to derail arbitration proceedings should not be tolerated. The court held that the

Respondent's actions, particularly their email questioning the arbitrator's mandate, were unnecessary and appeared to be a deliberate attempt to frustrate the process. However, instead of appointing a new arbitrator, the court decided to extend the existing arbitrator's mandate and directed her to recommence the proceedings from the point of her withdrawal. The court also imposed costs on the Respondent as a penalty for their delaying tactics.

SS STEEL FABRICATORS AND CONTRACTORS V. NARSING DÉCOR

2024 SCC OnLine Del 4416 – Delhi High Court

CASE DETAILS:

Date of Application	27 July 2023
Date of Judgment	19 June 2024
Nature of Application	Extension of Arbitral Mandate
Bench Strength	Single Judge Bench
Judge(s)	J. Manoj Jain
Provisions of the Arbitration and Conciliation Act	Section 29A

RATIO:

The court held that it is empowered to extend the mandate of the Arbitral Tribunal even after its expiry, exercising its discretion under Section 29A of the Arbitration & Conciliation Act, 1996.

CASE SUMMARY

Brief Facts:

M/s SS Steel Fabricators and Contractors (the petitioner) filed a claim before the Arbitral Tribunal against Narsing Decor (the respondent). However, the petitioner's claim was terminated on May 10, 2023. The respondent then filed a counterclaim, and the petitioner was declared *ex-parte* in those proceedings due to their non-appearance despite being served notices. The respondent pursued the counterclaim diligently, completing pleadings on March 15, 2023, examining three witnesses, and presenting final arguments on May 3, 2024. With the award expected to be pronounced on June 20, 2024, the respondent applied Section 29A of the Arbitration & Conciliation Act, 1996, seeking an extension of time for the conclusion of the arbitration proceedings.

Issue:

Whether there were grounds for extending the time mandate of the arbitration?

Arguments:

The respondent argued that they had pursued the matter diligently and that any delay was due to the petitioner's non-cooperation. They provided details of the dates and stages of the arbitration proceedings, demonstrating their active participation. The respondent also highlighted that they had borne the fee expenses that would typically be incurred by the petitioner.

The petitioner's arguments are not explicitly mentioned in the provided context, as they were declared *ex-parte* in the counterclaim proceedings. However, their non-participation in the proceedings and failure to respond to notices suggest a lack of interest or cooperation in the arbitration process.

Decision:

The Court granted the respondent's application and extended the mandate of the Arbitral Tribunal until June 30, 2024. The court acknowledged the respondent's active and diligent participation in the proceedings, including the timely completion of pleadings, examination of witnesses, and presentation of final arguments. The court noted the petitioner's non-participation in the proceedings despite being served with notices, which contributed to the delay in concluding the arbitration, however, the court found no evidence of any deliberate attempt by the respondent to delay the proceedings. The court considered the fact that the award was expected to be pronounced soon and that an extension would not significantly delay the resolution of the dispute.

Based on these factors, the court exercised its discretion under Section 29A of the Act, to extend the time for the conclusion of the arbitration proceedings, ensuring a fair and just resolution of the counterclaim.

DREDGING & DESILTATION CO. PVT. LTD. V. THE BOARD OF TRUSTEES OF PARADIP BOARD TRUST

MANU/OR/0402/2024 – Orissa High Court

CASE DETAILS:

Date of Application	20 June 2007
Date of Judgment	12 April 2024
Nature of Application	Extension of arbitral mandate
Bench Strength	Single Judge Bench
Judge(s)	C. J. Chakradhari Sharan Singh
Provisions of the Arbitration and Conciliation Act	Sections 2, 11, 23, and 29A

RATIO:

The word "Court" in Section 29A must be interpreted contextually in order to include High Courts without original ordinary civil jurisdiction into its ambit. Due to conflicting co-ordinate bench judgements, issue referred to a larger bench.

CASE SUMMARY

Brief Facts:

In a dispute between the petitioner and the opposite party, late Justice D. P. Mohapatra, a retired Supreme Court Judge, was appointed as the Presiding Arbitrator under Section 11(6) of the Act. After his passing, an application (I.A. No. 28 of 2022) was filed to appoint a new Presiding Arbitrator. The High Court appointed Dr. A. K. Rath on 09.12.2022. On 25.01.2023, the Arbitration Centre was instructed to collect case records from the late Justice Mohapatra's residence. On 10.02.2023, the Tribunal was reconstituted, and fees were to be assessed by the Arbitration Centre, which was delayed, causing multiple adjournments. By November 2023, the petitioner deposited its share of fees, and the opposite party agreed to do the same. Arguments were held in December 2023 and January 2024. Due to administrative delays, both parties requested a six-month extension for completing the arbitration and issuing the award under Section 29-A(5) of the Act.

Under Section 2(1)(e)(i) of the Act, "Court" refers to the principal Civil Court of original jurisdiction in a district, including the High Court in its ordinary original civil jurisdiction. The High Court of Orissa does not meet this definition, raising the question of whether it has the jurisdiction to extend the arbitration period under Section 29-A(4) of the Act.

Issue:

Whether a High Court without ordinary original civil jurisdiction possesses power under Section 29A to extend the time mandate of an arbitrator?

Arguments:

Counsel for the petitioner relied on a judgement by the Kerala High Court in *URC Construction Pvt. Ltd. v. BEML Ltd.*[7], which held that for domestic arbitration, an application under Section 29-A(5) of the Act to extend the period in Section 29-A(4) must be submitted to the principal civil court of original jurisdiction or the High Court in its original civil jurisdiction. The counsel however noted a later Division Bench decision by the Kerala High Court, which overruled the URC Construction ruling, and argued that the division bench ruling needed reconsideration by a Larger Bench. Further, he suggested that the High Court of Orissa has jurisdiction under Sections 29-A(4) and 29-A(5) of the Act, rather than the civil court of original jurisdiction, citing the definition of "Court" in Section 2(1)(e) of the Act.

He contended that the term "Court" in Section 29-A(4) should be interpreted contextually, as the definition in Section 2(1)(e) allows for exceptions. He argued that strictly interpreting "Court" would create inconsistencies within the Arbitration and Conciliation Act – while the

[7] MANU/KE/1699/2017

High Court would have the power to appoint an Arbitrator under Section 11, it would be only the civil court which has the power to substitute an Arbitrator under Section 29-A.

Decision:

It was held that the Single-Judge Benches in the cases of *KCS Private Limited v Rosy Enterprises*[8] and *Liladitya Deb v Tara Ranjan Pattanaik*[9], had failed to consider the phrase "*unless the context otherwise requires*" in Section 2(1) of the Act while interpreting the word "Court" in Section 29A. The Court deemed the above-mentioned judgments to be incorrect and disagreed with the established stance. However, the Supreme Court in Dr. Vijay Laxmi Sadho v. Jagdish emphasized that disagreements among benches of equal strength should be referred to a larger Bench to maintain legal consistency. Hence, in order to adhere to judicial discipline, the Court referred the issue of interpreting the word “Court” in Section 29A to a larger bench.

The court proposed the following legal questions for a larger Bench:

1. Should the definition of "Court" in the Arbitration and Conciliation Act, 1996, always follow Section 2(1)(e), regardless of context?
2. Should "Court" in Sections 29-A(4) and 29-A(5) be interpreted as the High Court, applying contextual interpretation as allowed by Section 2(1)?
3. Do the decisions in KCS Private Limited and Liladitya Deb correctly interpret "Court" in Sections 29-A(4) and 29-A(5)?

[8] MANU/OR/0585/2018
[9] MANU/OR/0267/2021

SEW VIZAG COAL TERMINAL PVT. LTD V. BOARD OF TRUSTEES FOR THE PORT OF VISAKHAPATNAM

2024 SCC OnLine AP 1712 – Andhra Pradesh High Court

CASE DETAILS:

Date of Application	28 April 2023
Date of Judgment	10 May 2024
Nature of Application	Extension of Arbitral Mandate
Bench Strength	Single Judge Bench
Judge(s)	J. Dhiraj Thakur
Provisions of the Arbitration and Conciliation Act	Section 29A

RATIO:

The court held that the power to extend the mandate of an arbitrator under Section 29A lies with the Principal Civil Court of original jurisdiction in the district, or the High Court only if it is exercising its original civil jurisdiction. Since the High Court did not have original civil jurisdiction in this case, and the arbitrator was not appointed under Section 11, the court concluded that it lacked jurisdiction to entertain the application. The court's decision was based on the interpretation of Section 29A of the Arbitration and Conciliation Act, 1996, and the definition of "Court" under Section 2(1)(e) of the Act.

CASE SUMMARY

Brief Facts:

SEW Vizag Coal Terminal Pvt. Ltd. and the Board of Trustees for the Port of Visakhapatnam entered into a Concession Agreement for the development of a berth at Visakhapatnam Port on a Design, Build, Finance, Operate, and Transfer ("**DBFOT**") basis. The agreement included an arbitration clause. Disputes arose between the parties, leading to the termination of the agreement by the respondent and subsequent invocation of arbitration by the applicants. An arbitral tribunal was constituted, but the process faced delays due to the death of the applicant's nominee arbitrator, necessitating the reconstitution of the tribunal. The applicants filed multiple applications seeking extensions for the tribunal to pass the award, including the present application under Section 29A of the Arbitration and Conciliation Act, 1996.

Issues:

Whether an application under Section 29A seeking extension of the mandate of the arbitral tribunal, is at all maintainable before the High Court?

Arguments:

The applicants sought an extension of the arbitral tribunal's mandate to pass the award, citing the delays caused by the reconstitution of the tribunal due to the death of their nominee arbitrator. They relied on a previous judgment *(M/s. K. V. Ramana Reddy vs. RasthriyaIspat Nigam Limited)* to argue that the High Court had the jurisdiction to entertain such an application.

The respondent raised a preliminary objection regarding the maintainability of the application under Section 29A before the High Court. They argued that the applicants had already approached the Special Judge for Trial and Disposal of Commercial Disputes at Visakhapatnam with the same relief and that the previous judgment cited by the applicants was not applicable in this case as the arbitrator was appointed without the intervention of the High Court.

Decision:

The Court dismissed both the interlocutory application and the arbitration application. The court's decision was primarily based on a recent Division Bench ruling in the case *Dr. V. V. Subba Rao vs. Dr. Appa Rao Mukammala*. This ruling clarified that the High Court's jurisdiction to entertain applications under Section 29A of the Act, which deals with extending the mandate of an arbitral tribunal, is limited to cases where the arbitrator was appointed under Section 11 of the Act. In the present case, the arbitrator was appointed as per the terms of the Concession Agreement between the parties, not under Section 11.

Therefore, the court concluded that it lacked the jurisdiction to hear the application and dismissed it, leaving it open for the applicants to approach the appropriate forum as per the law.

3. VALIDITY OF THE ARBITRATION AGREEMENT

DHANSAR ENGINEERING COMPANY PRIVATE LIMITED V. EASTERN COALFIELDS LIMITED

MANU/WB/0698/2024 – Calcutta High Court

CASE DETAILS:

Date of Application	4 August 2023
Date of Judgment	18 April 2024
Nature of Application	Locating valid arbitral agreement
Bench Strength	Single Judge Bench
Judge(s)	J. Ravi Krishan Kapur
Provisions of the Arbitration and Conciliation Act	Section 7; Section 11

RATIO:

The court stated that for an arbitration clause to be incorporated from one document to another, there must be explicit intent on part of both parties. An agreement needing further consent for arbitration is not an enforceable arbitration agreement but an agreement to create one in the future. An arbitration clause cannot be incorporated by a later Circular unless specifically referenced in the original contract. Section 7(5) mandates a clear reference in the contract. Without mutual intent to incorporate the clause, there is no valid arbitration agreement.

CASE SUMMARY

Brief Facts:

The respondent issued an online tender for hiring heavy earth-moving machinery and coal removal at the Narayankuri O.C. Patch of the Kunustoria Area. The applicant was the successful bidder among several entities. A letter of acceptance was issued to the applicant on March 31, 2017, followed by a work order on May 24, 2017. An agreement between the parties was formalized on August 30, 2017, and a Supplementary Work Order was issued on February 8, 2019. It is alleged that the applicant failed to meet the conditions outlined in the Notice Inviting Tender (NIT), leading the respondent to terminate the contract. On April 7, 2017, Coal India Limited (CIL), the respondent's parent company, issued a circular mandating that disputes with private contractors be referred to arbitration. Citing this circular, the applicant filed an application (AP 772 of 2022) seeking the appointment of an arbitrator, but it was dismissed on December 1, 2022, for lack of a valid arbitration clause. The applicant then filed a Special Leave Petition challenging the dismissal. The Hon'ble Supreme Court allowed the applicant to file a review application. Hence, this application has been submitted.

Issues:

Whether a valid arbitration agreement exists, in the absence of any mutual intention to incorporate an arbitration clause from another document into the existing contract between parties?

Arguments:

The petitioner claims that the order dated December 1, 2022, contains a clear error as the Court relied on clause 5 of the Circular instead of the relevant clause 2. They argue that clause 2 governs the arbitration clause for future contracts, including the one dated August 1, 2017, making the Circular binding and mandatory. Therefore, the arbitration clause was incorporated by reference, complying with section 7 of the Arbitration and Conciliation Act, 1996. The petitioner requests the order to be reviewed and an Arbitrator appointed.

The respondent argues that there are no valid grounds for review under Order 47 Rule 1 of the Code of Civil Procedure 1908, as a review only applies to obvious errors and not to re-examine decisions. They cite *Kamalesh Verma vs. Mayawati & Ors*[10] and *S. Madhusudan Reddy vs. V. Narayana Reddy*[11] in support. Additionally, the respondent contends that the petitioner cannot change their stance from earlier litigation, invoking the doctrine of estoppel.

[10] MANU/SC/0810/2013
[11] MANU/SC/1013/2022

Decision:

The court relied on multiple judgments, including *Kamlesh Verma vs. Mayawati & Ors*[12], to delineate the position of law on determining the validity of grounds on which review can be invoked. It held that the authority to review is established by statute and must be explicitly provided by law or impliedly necessary. This power must be exercised strictly within the statutory limits. A review application cannot serve as a disguised appeal. Courts have limited jurisdiction in review cases, which can only be allowed on three grounds: (i) discovery of new and important evidence not available despite due diligence at the time of the original decision; (ii) an obvious error on the face of the record; or (iii) any other sufficient reason. In the present scenario, the sole basis for the review here is an apparent error on the face of the record. Since the contract was executed after the Circular dated April 7, 2017, clause 2, not clause 5, of the Circular applies. Thus, there is a clear error in the order dated December 1, 2022, which mistakenly relied on clause 5. Therefore, the review application is justified.

Consequently, the Court ventured into considering whether there is a valid and binding arbitration agreement. The court clarified that for an arbitration clause to be incorporated from one document to another, there must be a clear intention to do so. Section 7(5) of the Act requires that both parties consciously accept the arbitration clause from another document as part of their contract. Incorporating an arbitration clause in an existing contract requires mutual agreement to refer disputes to arbitration. Relying on *Mahanadi Coalfields Ltd and Anr. Vs. IVRCL AMR Joint Venture*,[13] the court clarified that mere communication about arbitration is insufficient to establish an arbitration agreement under Section 7 of the Act.

In the present scenario, there is no reference to the Circular incorporating the arbitration clause into the contract between the parties. Although the Circular aims to make arbitration a dispute resolution mechanism for both existing and future contracts, it requires a further document between the parties to include the arbitration clause. An agreement contemplating further consent before referring to arbitration is not an arbitration agreement but an agreement to enter into an arbitration agreement in the future, which is unenforceable. An arbitration clause cannot be deemed incorporated by a subsequent Circular unless specifically referenced and included in the original contract. Section 7(5) mandates a reference in a contract containing an arbitration clause. Without mutual intention to incorporate the arbitration clause from another document into the existing contract, there is no valid arbitration agreement. The Circular dated April 7, 2017, merely expressed a desire and did not incorporate the arbitration clause into the contract. Thus, the court held that the applicant is not entitled to the requested reliefs.

[12] MANU/SC/0810/2013
[13] MANU/SC/0958/2022

MR. BIRENDRA BHAGAT V. ARCH INFRA PROPERTIES PRIVATE LIMITED

CO 4354 of 2023 – Calcutta High Court

CASE DETAILS:

Date of Application	8 March 2024
Date of Judgment	7 May 2024
Nature of Application	Revision petition
Bench Strength	Single Judge Bench
Judge(s)	J. Shampa Sarkar
Provisions of the Arbitration and Conciliation Act	Section 8

RATIO:

The court emphasized that for a clause to be considered an arbitration clause, it must clearly indicate the intention of the parties to refer all present and future disputes to an independent tribunal for adjudication and to be bound by its decision. The court also highlighted the importance of having an independent and impartial arbitrator to ensure a fair resolution of disputes.

Thus, the court held that the clauses, in question, were not arbitration clauses as they did not cover all disputes arising out of the contract and did not provide for an independent arbitrator. The court's decision was based on the interpretation of the dispute resolution clauses in the contract.

CASE SUMMARY

Brief Facts:

The plaintiff, Mr. Birendra Bhagat, as the proprietor of Bharat Construction, entered into a development agreement with the defendant, Arch Infra Properties Private Limited, for the construction of a residential housing complex named 'Starwood' in Chinar Park, Rajarhat. The project was to be completed within 20 months from December 18, 2015, with time being of the essence. The agreement outlined specific obligations for both parties. The defendant was to provide a hindrance-free worksite, ensure smooth access for the plaintiff, and make timely payments as per the agreed schedule. The plaintiff was responsible for completing the construction work as per the specifications and within the stipulated time frame.

However, as the project progressed, disputes arose between the parties. The defendant allegedly failed to make timely payments, retained a portion of the bill amount as the security deposit, and did not provide adequate space for labour hutments and site offices. Despite these challenges, the plaintiff continued the work and even undertook additional work awarded by the defendant. The defendant agreed to revise the rates for various items and permitted escalation, deviating from the original terms of the contract. The plaintiff raised multiple bills, but the defendant delayed payments, leading to accumulated unpaid dues. Eventually, the defendant terminated the contract on July 9, 2022, with the plaintiff's dues amounting to Rs. 6,34,56,754.71. The plaintiff then filed a suit for recovery of the unpaid amount and damages.

Issues:

Whether Clause 29 (a) and (b) of the contract between the parties, forms an arbitration clause?

Arguments:

The petitioner argued that the clauses in the contract regarding dispute resolution (clauses 29(a) and 28(a)) were not arbitration clauses but merely mechanisms for settling disputes related to the quality of work, materials, and drawings during the execution of the work. The petitioner contended that the dispute in question was regarding the non-payment of bills, which was not covered by these clauses. They further argued that the architect, who was designated to resolve disputes under these clauses, was not an independent party and had a relationship with the defendant, making them unsuitable as an arbitrator.

The respondent argued that the clauses in question were indeed arbitration clauses and that the parties had agreed to refer all disputes arising out of the contract to the architect for resolution. They contended that the dispute regarding non-payment of bills fell within the scope of these clauses and should be referred to arbitration.

Decision:

The Court allowed the revisional application filed by the petitioner (Mr. Birendra Bhagat) and set aside the lower court's order that had referred the dispute to arbitration. The court conducted a detailed analysis of the dispute resolution clauses in the contract (clauses 29(a) and 28(a)) and concluded that they were not arbitration clauses in the true sense. The court observed that these clauses were limited in scope, addressing only specific disputes related to the quality of work, materials, and drawings during the execution of the work. The court emphasized that the dispute in question, which pertained to the non-payment of bills, was not covered by these clauses and therefore could not be referred to arbitration.

Furthermore, the court noted that the architect, who was designated to resolve disputes under these clauses, was not an independent party and had a relationship with the defendant. This raised concerns about the impartiality of the architect as an arbitrator. The court stressed the importance of having an independent and impartial arbitrator to ensure a fair resolution of disputes. Based on these findings, the court set aside the lower court's order and allowed the suit to proceed in accordance with the law.

M/S TALBROS SEALING MATERIALS PVT. LTD. V. M/S SLACH HYDRATECS EQUIPMENTS PVT. LTD.

2024 SCC OnLine Del 4384 – Delhi High Court

CASE DETAILS:

Date of Application	18 November 2022
Date of Judgment	6 May 2024
Nature of Application	Initiating Arbitration
Bench Strength	Single Bench
Judge(s)	J. Yashwant Verma
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO

The arbitration clause in the commercial offer was incorporated into the purchase order, making it binding on both parties. The reference to two arbitrators in the clause did not invalidate it, as the intention of the parties to resolve disputes through arbitration was clear. Thus, the arbitration clause is valid despite reference to an even number of Arbitrators.

CASE SUMMARY

Brief Facts:

M/S Talbros Sealing Materials Pvt. Ltd. (the petitioner), a company specializing in sealing solutions and gaskets, intended to purchase machinery from M/S Slach HydratecsEquipmentsPvt. Ltd. (the respondent), a manufacturer of industrial equipment. The respondent, on June 27, 2020, provided a commercial offer to the petitioner, detailing the terms of the potential sale. This commercial offer included an arbitration clause, specifying that any disputes arising from the transaction would be resolved through arbitration in Delhi, with each party appointing one arbitrator.

The petitioner accepted the commercial offer and subsequently placed a purchase order for machinery worth approximately ₹25 lakhs on July 2, 2020. However, disputes arose between the parties regarding the transaction. The petitioner, relying on the arbitration clause in the commercial offer, initiated arbitration proceedings to resolve these disputes.

Issues:

Whether the arbitration agreement was valid, in light of it providing for an even number of arbitrators?

Arguments:

The petitioner argued that the arbitration clause in the commercial offer was valid and covered the purchase order. They contended that the Delhi High Court had jurisdiction to entertain the petition as the arbitration clause specified Delhi as the venue.

The respondent opposed the petition, arguing that the purchase order contained a clause stating that disputes would be subject to the jurisdiction of Faridabad, Haryana. They also argued that the arbitration clause was invalid as it provided for two arbitrators, contrary to Section 10 of the Arbitration and Conciliation Act, 1996.

Decision:

The court affirmed the validity of the arbitration clause contained in the commercial offer dated June 27, 2020. It held that this clause was an integral part of the agreement between the parties and covered the subsequent purchase order placed by the petitioner. The court asserted its jurisdiction to entertain the petition under Section 11(6), based on the arbitration clause's stipulation that the venue of arbitration would be Delhi. Despite the arbitration clause mentioning two arbitrators, the court, in line with established legal precedent, decided to appoint a sole arbitrator to adjudicate the dispute. This decision was made to streamline the arbitration process and avoid potential complications arising from the appointment of two arbitrators.

4. APPOINTMENT OF ARBITRATOR

LEASE PLAN INDIA PRIVATE LIMITED V. RUDRAKSH PHARMA DISTRIBUTOR AND OTHERS

2024 SCC OnLine Del 2687 – Delhi High Court

CASE DETAILS:

Date of Application	circa 2023
Date of Judgment	10 April 2024
Nature of Application	Appointment of arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Prateek Jalan
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO:

Serving a petition via WhatsApp and email, as specified in the agreement between the parties, constitutes valid service. Service was effectively completed through these virtual methods. The additional serving of notice through speed post further confirmed proper service of the notice

CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

CASE SUMMARY

Brief Facts:

The petitioner filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator to resolve disputes under a "Lease Agreement" dated 21.03.2018. The Agreement involves the petitioner and respondent No. 1, a partnership firm represented by respondent No. 2, with respondent No. 3 being the other partner. Although Maruti Suzuki India Ltd. was a party to the Agreement, the petitioner's counsel, Mr. Akhilesh Pradhan, indicated that no claims are being made against it.

Due to arising disputes, the petitioner claimed to have invoked arbitration through a legal notice dated 31.12.2022 addressed to respondent Nos. 1 and 2. This notice was sent via email and WhatsApp. The court was required to look into the validity of the delivery of notices.

Issue:

Whether service through email or WhatsApp was sufficient for invocation of Arbitration in case of a valid agreement?

Decision:

The Delhi High Court ruled that serving a petition via WhatsApp and email, as specified in the agreement between the parties, constitutes valid service. The Court determined that service was effectively completed through these virtual methods, as evidenced by the petitioners' affidavit. Additionally, the Court noted that a speed post was sent to the address listed in the agreement, confirming that the respondents were properly served.

INDIAN SPINAL INJURIS CENTRE V. M/S GALAXY INDIA

2024 SCC OnLine Del 4385 – Delhi High Court

CASE DETAILS:

Date of Application	16 August 2023
Date of Judgment	8 May 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Bench
Judge(s)	J. Dinesh Kumar Sharma
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO

Service of notice under Section 21 of the Arbitration and Conciliation Act, 1996, is mandatory for initiating arbitration proceedings. The notice must be received by the respondent at the correct address. Thus, mere sending of the notice is not sufficient; its receipt is essential.

CASE SUMMARY

Brief Facts:

The petitioner, Indian Spinal Injuries Centre, filed a petition under Section 11(6) read with Section 11(8) of the Arbitration and Conciliation Act, 1996, seeking the appointment of a sole arbitrator to resolve a dispute with the respondent, M/S Galaxy India. The dispute stemmed from an agreement executed between the parties on December 27, 2018, which included an arbitration clause. The petitioner had issued a notice invoking arbitration on February 2, 2022, due to the dispute. However, the respondent claimed that this notice was not served correctly, as it was sent to an incomplete address.

Issue:

Whether notice was sufficiently served in order to warrant appointing an arbitrator?

Arguments:

The petitioner argued that there was a valid arbitration agreement between the parties and that a dispute had arisen. They relied on the case *Duro Felguera, S.A. v. Gangavaram Port Limited* to emphasize the limited scope of the court's jurisdiction at this stage and requested the appointment of an arbitrator.

The respondent contended that the notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, was not served correctly. They claimed the notice was sent to an incomplete address, thus rendering the petition invalid. Additionally, the respondent argued that the petition was time-barred.

Decision:

The Court dismissed the petitioner's petition due to the incorrect service of the notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996. The court emphasized that the receipt of the notice at the correct address is a mandatory prerequisite for commencing arbitration proceedings. The court referenced the respondent's address as stated in the agreement and noted that the notice was sent to an incomplete address. Such discrepancy in the address led the court to conclude that the notice was not properly served.The court also cited previous judgments, including *Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.* and *Amit Guglani & Anr. v. L and T Housing Finance Ltd.*, to reinforce the importance of proper service of notice under Section 21. In light of the incorrect service of the notice, the court highlighted the mandatory nature of proper notice under Section 21 and its role as a prerequisite for commencing arbitration. The court's decision underscores the importance of adhering to procedural requirements in arbitration proceedings.

PITAMBAR SOLVEXPVT. LTD.AND ANR. V. MANJU SHARMA AND ORS

2024 SCC OnLine Del 3995 – Delhi High Court

CASE DETAILS:

Date of Application	14 February 2024
Date of Judgment	22 May 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Bench
Judge(s)	J. Neena Bansal Krishna
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO

The court rejected the Respondents' claim that the petition was filed in bad faith to avoid IBC proceedings, noting that the disputes arose before the IBC petition was filed. It held that mere initiation of arbitration proceedings doesn't bar corporate debtors from pursuing remedies under the IBC. Lastly, the court allowed for the possibility of conducting separate arbitrations for each agreement if the arbitrator deemed it necessary.

CASE SUMMARY

Brief Facts:

Pitambar SolvexPvt. Ltd. (Petitioner 1), a company engaged in the manufacturing of edible oils and related products, was acquired by OAgri Farms Private Limited (Petitioner 2) from the Respondents, who were the erstwhile shareholders and directors of Petitioner 1. The acquisition was based on a Share Purchase Agreement and a Credit Facility Agreement. The Petitioners alleged that the Respondents had misrepresented the financial health of Petitioner 1 by inflating the EBITDA figures, thereby inducing the Petitioners to pay a higher purchase consideration. The Petitioners claimed that the actual EBITDA was significantly lower than what was projected, causing them substantial losses. The Petitioners also alleged that the Respondents failed to fulfil their obligation of providing transitional services, further impacting the company's performance.

Issues:

Whether arbitration proceedings bar proceedings under Section 7, Insolvency and Bankruptcy Code?

Arguments:

The Petitioners argued that the Respondents had committed fraud by misrepresenting the financial figures of the company. They claimed that the actual earnings were significantly lower than what was projected by the Respondents. The Petitioners sought to invoke the arbitration clause in the agreements to resolve the dispute.

The Respondents denied the allegations of fraud and misrepresentation. They claimed that the Petitioners had admitted to the outstanding amounts and that there were no genuine disputes between the parties. They also argued that the petition was filed to avoid a petition under Section 7 of the Insolvency and Bankruptcy Code (IBC) filed by the Respondents in NCLT, Jaipur.

Decision:

The Court, upon reviewing the petition and the arguments presented by both parties, acknowledged the existence of disputes between them. The court noted that the Petitioners had invoked arbitration under the agreements and that the Respondents had also made counterclaims. The court, therefore, appointed a sole arbitrator to adjudicate the disputes. The court also addressed the Respondents' objection regarding the clubbing of two agreements in one petition, stating that the arbitrator could register two separate arbitrations if necessary. The court clarified that the initiation of arbitration proceedings does not prevent the corporate debtor from pursuing other remedies, including the Insolvency and Bankruptcy Code.

SHREE KRISHNA KESHAV LABORATORIES LTD. V. THE ORIENTAL INSURANCE COMPANY LTD.

MANU/GJ/0564/2024 – Gujarat High Court

CASE DETAILS:

Date of Application	5 April 2023
Date of Judgment	19 April 2024
Nature of Application	Appointment of an arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Sunita Agarwal
Provisions of the Arbitration and Conciliation Act,	Sections 5, 8, 11 & 16

RATIO:

While dealing with an application under Section 11(6), the referral Court's role is limited to a mere prima facie examination of the existence of an arbitration agreement. The arbitral tribunal is generally the appropriate forum for deciding non-arbitrability, and referral courts must use the scrutiny standard of *prima facie* to interfere only for rejecting manifestly non-arbitrable claims, time-barred claims or dead claims. Courts must balance arbitration effectiveness with judicial intervention, and any doubt in non-arbitrability should lead to a reference to the arbitral tribunal

CASE SUMMARY

Brief Facts:

A fire broke out at the petitioner's factory during the active period of the insurance policy. The petitioner filed a claim with the insurance company (respondent) for Rs. 5,10,33,189/-. The surveyor inspected the premises and submitted a final report on August 8, 2022, assessing the loss at Rs. 2,48,15,934/- based on the policy's terms and conditions. However, the respondent offered only Rs. 35,88,978/- as full and final settlement, according to a discharge voucher dated January 6, 2023. The petitioner accepted this amount under protest on January 16, 2023, by making an endorsement on the discharge voucher.

On January 18, 2023, the respondent emailed the petitioner, requesting a clean discharge in exchange for the Rs. 35,88,978/-. The petitioner refused, citing a significant dispute over the compensation amount regarding the non-consideration of some machinery while deciding the quantum of damages. Consequently, the petitioner served a legal notice on January 30, 2023, to which the respondent provided an evasive reply on March 10, 2023. The dispute over the compensation amount under the policy was sent to arbitration.

Issue:

Whether the petitioner's claim fell under the ambit of the arbitral agreement, thereby justifying the appointment of an arbitrator under Section 11?

Arguments:

In response to the notice invoking the arbitration clause by the petitioner, the insurance company (respondent) and their affidavit-in-reply to the current petition, the respondent stated that they did not consider the claim for damage to a certain machinery, purchased on October 21, 2021, which was not included in the policy that began on March 31, 2021. Consequently, the surveyor's assessment of the machinery was excluded from the claim disbursement voucher due to lack of coverage under the policy. The respondent argued that the dispute is not about the compensation amount but falls outside the arbitration clause of the policy.

In response, the counsel for the petitioner argued that the denial of the claim for the machinery, whether due to non-coverage or any other reason, should be decided by the Arbitral Tribunal. They emphasized that the court should not examine the validity of the claim at the pre-referral stage, citing the Supreme Court's decision in *Duro Felguera, S.A. v. Gangavaram Port Limited*[14] and other cases. These decisions underscore the principle of arbitral autonomy and the Arbitral Tribunal's authority to rule on its own jurisdiction. The Arbitration Act aims to minimize court interference in the arbitral process, limiting judicial

[14] MANU/SC/1352/2017

intervention to necessary support for the arbitration process. The role of courts is primarily to provide assistance when required, with Section 5 emphasizing minimal judicial intervention in arbitration matters.

The petitioner's counsel highlighted that the legislative intent of the 2015 amendment to Section 11(6A) was to limit the court's role to determining the existence of an arbitration agreement, without delving into the specifics of the dispute. The court's task is to confirm whether the underlying contract includes an arbitration clause related to the dispute at hand.

Decision:

Relying on various Supreme Court judgements, the Court noted that the 2015 Amendment Act restricted the referral Court's scope to a prima facie examination of the existence of an arbitration agreement. Referring to Duro Felguera, the Court reiterated that the referral Courts should only verify if the contract contains an arbitration clause.

The Court enlisted the following guiding principles for determining the scope of Section 11(6).

1. The arbitral tribunal is generally the first authority to decide non-arbitrability.
2. Referral Courts can reject manifestly non-arbitrable claims.
3. Courts can use a prima facie test to dismiss frivolous claims.
4. Courts should only interfere if it is clear that the claims are time-barred or dead.
5. The scrutiny standard is prima facie, avoiding full fact reviews.
6. If there is any doubt, disputes should be referred to arbitration.
7. Limited scrutiny is essential to prevent non-arbitrable matters from being arbitrated.
8. Courts must balance arbitration effectiveness and judicial intervention.

In this case, the Court found that the machinery, purchased after the policy inception, was not covered under the insurance policy. Therefore, the insurance company is not obligated to indemnify the petitioner for this loss. The petitioner's claim fell outside the arbitration agreement, and referring the matter to arbitration would be inappropriate. The Court concluded that there is no subsisting arbitration agreement concerning the machinery dispute. Thus, the referral Court could not simply pass the matter to an arbitrator.

SMART CHIP PRIVATE LIMITED V. JHARKHAND STATE COOPERATIVE BANK LIMITED

2024 SCC OnLine Jhar 1577 – Jharkhand High Court

CASE DETAILS:

Date of Application	8 December 2023
Date of Judgment	17 May 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Judge Bench
Judge(s)	ACJ Shree Chandrashekhar
Provisions of the Arbitration and Conciliation Act	Sections 11

RATIO:

The ratio decidendi in this case is the affirmation of the arbitrability of disputes arising from agreements with cooperative societies, even when alternative dispute resolution mechanisms exist under specific cooperative society legislation. The court emphasized the primacy of arbitration agreements and the limited scope of judicial intervention under Section 11 of the Arbitration and Conciliation Act, 1996. It also highlighted the importance of a prima facie determination of the existence of an arbitration agreement for the appointment of an arbitrator.

CASE SUMMARY

Brief Facts:

M/s. Smart Chip Private Limited filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of a sole arbitrator to resolve a dispute with Jharkhand State Cooperative Bank Limited. The dispute arose from a contract for the supply and installation of micro-ATMs and software. The Cooperative Bank objected to the application, arguing that the dispute should be referred to the Registrar of Cooperative Societies under Section 48 of the Bihar Cooperative Societies Act, 1935, as the applicant was an agent of the bank.

Issue:

Whether the case was to be referred to arbitration or the Registrar of Cooperative Societies?

Arguments:

The petitioner argued that the dispute was covered by an arbitration clause in the contract and that the court should appoint an arbitrator under the Arbitration and Conciliation Act, 1996. They relied on the Supreme Court's decision in *Supreme Cooperative Group Housing Society v. H.S. Nag & Associates (P) Ltd.* to support their position that disputes with cooperative societies can be arbitrated.

The respondent contended that the dispute fell under the jurisdiction of the Registrar of Cooperative Societies as per Section 48 of the Bihar Cooperative Societies Act, 1935, and that the arbitration application was not maintainable. They cited the case of *Indu Builders v. State of Jharkhand* to support their argument.

Decision:

The High Court of Jharkhand allowed the arbitration application and appointed a sole arbitrator to resolve the dispute. The court held that the arbitration clause in the contract was valid and binding on the parties. It rejected the respondent's argument that the dispute should be referred to the Registrar of Cooperative Societies. The court emphasized that the existence of an arbitration agreement is sufficient to invoke the court's jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, and that the court's role is limited to a prima facie determination of the agreement's existence.

PCM CEMENT CONCRETE PVT. LTD. V. UNION OF INDIA

Arb. P. 35/2023 – Gauhati High Court

CASE DETAILS:

Date of Application	10 April 2024
Date of Judgment	18 June 2024
Nature of Application	Appointment of arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Michael Zothankhuma
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO:

The ratio decidendi in this case is that when there are conflicting decisions by benches of equal strength in the Supreme Court, High Courts must follow the earlier decision. In this instance, the earlier decisions in *TRF Limited* and *Perkins Eastman* held that a person ineligible to be an arbitrator cannot nominate another person as an arbitrator. This conflicted with a later decision in *Central Organization for Railway Electrification*, which held that when a contract agreement provides for a specific method of appointing arbitrators, that method should be followed. The court chose to follow the earlier decisions, as per the ruling in *Union Territory of Ladakh*.

CASE SUMMARY

Brief Facts:

PCM Cement Concrete Pvt. Ltd. entered into a contract with the Union of India (represented by the General Manager of Northeast Frontier Railway) and the Chief Track Engineer of the Northeast Frontier Railway to build and operate a godown with a private siding under the Private Entrepreneurship Godown Scheme of the FCI. Disputes arose between the parties, leading the petitioner to seek the appointment of an arbitrator as per the contract agreement's arbitration clause. The clause stipulated that disputes would be resolved by a three-member arbitral tribunal appointed by the General Manager of N.F. Railway. However, the petitioner objected to this, arguing that the General Manager had an interest in the dispute and was not neutral, thus making him ineligible to appoint arbitrators. Despite the petitioner's objections and refusal to waive their right under Section 12(5) of the Arbitration and Conciliation Act, 1996, the respondents proceeded to constitute an arbitral tribunal consisting of three serving/retired railway officers. The petitioner then filed a writ petition for the appointment of an independent arbitrator.

Issues:

Whether the respondent Railways could have appointed serving/retired Railway Officers as Arbitrators, in the absence of any waiver given by the petitioner under Section 12(5) of the Act?

Arguments:

The petitioner claimed that the General Manager of N.F. Railway, responsible for appointing arbitrators as per the contract, was not neutral due to an interest in the dispute. Appointing serving/retired railway officers as arbitrators violated Section 12(5) of the Arbitration and Conciliation Act, 1996, and the precedent set in *Perkins Eastman Architects DPC and Anr Vs. HSCC (India) Limited*. The petitioner had not waived their right under Section 12(5) of the Act, which would have allowed the respondents to appoint such arbitrators.

Respondents argued that the arbitration clause in the contract agreement explicitly provided for the appointment of arbitrators from among serving or retired railway officers. The respondents had appointed arbitrators in accordance with the arbitration clause. The proposed arbitrators by the court were not acceptable as they did not align with the arbitration clause.

Decision:

The court ruled that the respondent Railways could not appoint serving/retired Railway Officers as arbitrators without a waiver from the petitioner under Section 12(5) of the Act. It set aside the arbitral tribunal constituted by the Railways and, considering the respondents' alternative prayer for a single arbitrator, appointed a retired judge of the High Court as the sole arbitrator to resolve the dispute. The parties were directed to appear before the arbitrator within one month.

DURGA KRISHNA STORE PVT LTD V. UNION OF INDIA

Arb.P. 14/2022 – Gauhati High Court

CASE DETAILS:

Date of Application	16 June 2022
Date of Judgment	19 April 2024
Nature of Application	Appointment of arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Arun Dev Choudhary
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO:

The ratio decidendi in this case is that when parties have not waived their right to object to the appointment of an arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996, and the proposed arbitrator falls under the categories of ineligibility mentioned in the 7th Schedule of the Act, the court can appoint an independent arbitrator. This is particularly relevant in cases where the contract agreement includes a panel of arbitrators who might have a relationship with one of the parties, thus raising concerns about neutrality. Thus, the panel of arbitrator proposed by the railways would have certain relationship with railways, and thus, would be violative of the 7th Schedule.

CASE SUMMARY

Brief Facts:

Durga Krishna Store Pvt. Ltd. entered into a contract with the N.F. Railway for a project. The contract included an arbitration clause. Disputes arose, leading to the termination of the contract by the N.F. Railway. The petitioner claimed monetary compensation, and the respondents requested the petitioner to waive their right under Section 12(5) of the Arbitration and Conciliation Act, 1996, to allow the appointment of an arbitrator from their panel. The petitioner did not respond, implying they had not waived this right. Subsequently, the petitioner filed an application under Section 11 of the Arbitration and Conciliation Act, 1996, for the appointment of an arbitrator.

Issues:

Whether lack of response to a request for waiver constitutes implied consent under Section 12(5) of the ACA, 1996?

Arguments:

The petitioner argued that the N.F. Railway's proposed arbitrators, being ex-employees, would not be neutral due to their relationship with the respondents. They emphasized that they had not waived their right under Section 12(5) of the Act, which would have allowed the respondents to appoint such arbitrators.

The respondents argued that the contract's General Conditions of Contract (GCC) allowed for the appointment of arbitrators from their panel. They contended that the petitioner's lack of response to their request for a waiver under Section 12(5) implied consent.

Decision:

The Court, considering that the petitioner had not waived their right and that the N.F. Railway's proposed arbitrators might not be neutral, appointed Hon'ble Mr. Justice Achintya Malla Bujor Barua, a former judge of the court, as the sole arbitrator. The court directed the petitioner to take necessary steps under Section 11(8) of the Act to enable the arbitrator to provide a written disclosure. The matter was listed for further hearing on June 26, 2024.

PALLAB GHOSH AND ANR.V. SIMPLEX INFRASTRUCTURES LIMITED

2024 SCC OnLine Gau 751 – Gauhati High Court

CASE DETAILS:

Date of Application	9 May 2024
Date of Judgment	13 June 2024
Nature of Application	Appointment of arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Michael Zothankhuma
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO:

The ratio decidendi in this case is that the arbitration clause in a real estate agreement can be invoked to claim interest for delay in handing over possession of an apartment, even if a statutory remedy is available under the Real Estate (Regulation and Development) Act (RERA). The court concluded that the RERA Act does not bar the invocation of arbitration and that the remedies under both acts are concurrent. It also emphasized that when parties have agreed to an arbitration clause, they can choose arbitration over the statutory remedy.

CASE SUMMARY

Brief Facts:

The petitioners, Pallab Ghosh and Smt. Kakali Roy, entered into an agreement with Simplex Infrastructures Limited for the purchase of an apartment. The agreement included an arbitration clause. The possession of the apartment was not delivered on time, and the petitioners sought to invoke the arbitration clause to claim interest for the delay. The respondents argued that the dispute should be adjudicated under the RERA Act, as it provides a specific remedy for such situations.

Issues:

Whether this Court should appoint the second Arbitrator for the respondents, on account of the respondents not having appointed an Arbitrator in terms of the arbitration clause made in the contract agreement?

Whether there is any bar to invoke the arbitration clause in the contract agreement, for claiming payment of interest, for not handing over possession of the apartment on time, when a statutory remedy is available under the RERA Act?

Arguments:

The existence of a remedy under RERA does not bar the invocation of arbitration. Several court judgments have upheld the validity of arbitration in similar cases. The RERA Act itself states that its provisions are in addition to, and not in derogation of, any other law. The petitioners have a right to choose between arbitration and the statutory remedy.

The RERA Act is a specialized legislation that provides a comprehensive mechanism for resolving disputes related to real estate. The authority under RERA has powers that an arbitrator does not, such as the power to call for information, conduct investigations, and impose penalties. The orders passed under RERA can be enforced more effectively than arbitral awards.

Decision:

The Court held that the arbitration clause in the agreement could be invoked by the petitioners to claim interest for the delay in handing over the apartment. It appointed a retired judge as the sole arbitrator to decide the dispute, considering the petitioners' concerns about the cost of a three-member tribunal. The court's decision reaffirms the principle that arbitration remains a valid and preferred mode of dispute resolution, even in the presence of statutory remedies

JCL INFRA PVT. LTD. V. THE UNION OF INDIA

Arb.P./22/2023 – Gauhati High Court

CASE DETAILS:

Date of Application	27 June 2023
Date of Judgment	3 June 2024
Nature of Application	Appointment of arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Kalyani Rai Surana
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO:

The ratio decidendi in this case is that an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, for the appointment of an arbitrator, can be dismissed if it is time-barred. The court relied on Section 21 and Section 43 of the Arbitration Act, which, in conjunction with Article 137 of the Limitation Act, 1963, establish a three-year limitation period for such applications. The court emphasized that it is the duty of the courts to examine and reject time barred claims to prevent parties from being drawn into costly arbitration processes.

CASE SUMMARY

Brief Facts:

M/s. JCL Infra Pvt. Ltd. (the petitioner) entered into a contract with the Union of India and the Chief Engineer/Con-IV, North Frontier Railways (the respondents) on July 20, 2010. The petitioner completed the contract work in June 2017. However, disputes arose regarding the release of the security deposit and PVC bill, leading the petitioner to invoke the arbitration clause in the contract agreement on January 28, 2023. The petitioner filed an application under Section 11(6) of the Arbitration Act for the appointment of an arbitrator.

Issues:

Whether an application under Section 11(6) of the Arbitration Act was time-barred in the present matter, citing Section 21 and Section 43(1) & 43(2) of the Arbitration Act?

Arguments:

The petitioner argued that the respondents had not acted upon their requests for the release of the security deposit and PVC bill, necessitating the appointment of an arbitrator to resolve the dispute. They contended that the final bill signed by the respondents on November 19, 2018, was not agreeable to them.

The respondents argued that the application under Section 11(6) of the Arbitration Act was time-barred, citing Section 21 and Section 43(1) & 43(2) of the Arbitration Act. They relied on the Supreme Court's judgment in *B and T AG Vs. Ministry of Defense* to support their claim that the application was beyond the limitation period.

Decision:

The Court dismissed the Arbitration Petition, holding that it was barred by limitation. The court determined that the petitioner's right to apply for arbitration accrued either on the date of completion of the contract work (June 2017) or the date of signing the final bill (November 19, 2018). Since the application was filed on January 28, 2023, it was beyond the three-year limitation period prescribed by Article 137 of the Limitation Act. The court clarified that while the petitioner's claim for arbitration was time-barred, they could still pursue alternative legal remedies to address their grievances.

BLUE CITY INDANE V. INDIAN OIL CORPORATION LTD

S.B. Arbitration Application No. 18/2020 – Rajasthan High Court

CASE DETAILS:

Date of Application	28 August 2023
Date of Judgment	7 May 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Rekha Borana
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO:

Only disputes arising from the terms and conditions of the agreement can be referred to arbitration. Unrelated disputes, thus, are ineligible for Arbitration. The court held that it will not create obligations that are not explicitly mentioned in the agreement.

CASE SUMMARY

Brief Facts:

In 2018, M/s Blue City Indane (the applicant) was granted a distributorship of LPG (liquefied petroleum gas) by Indian Oil Corporation Ltd. (the respondent) for the Bhadwasiya area of Jodhpur, Rajasthan. The parties entered into a distributorship agreement dated April 13, 2018. Despite the applicant's efforts, they could only distribute an average of 1500-2000 LPG cylinders. In contrast, other distributors in nearby areas had significantly more connections, ranging from 25,000 to 30,000. This disparity in the allocation of connections caused substantial financial losses to the applicant. The applicant repeatedly requested the respondent to either increase their number of connections or transfer connections from other distributors to them. However, the respondent did not take any action to address the applicant's concerns. This lack of resolution led to a dispute between the parties.

Issues:

Whether in the present matter, the disputes are arbitrable or not, should be left for the Arbitrator to decide and this Court is not required to go into the said question?

Arguments:

The applicant argued that a dispute existed between the parties and should be referred to arbitration as per the arbitration clause in the agreement. They contended that the arbitrability of the dispute should be left to the arbitrator to decide.

The respondent claimed that the notice invoking arbitration was never served on them. They argued that the agreement did not obligate them to allot or transfer a specific number of connections to the applicant. They also mentioned that attempts to transfer connections from other distributors were unsuccessful due to legal challenges by those distributors. Additionally, they cited a Bombay High Court decision that quashed a policy allowing the transfer of connections between distributors.

Decision:

The Rajasthan High Court dismissed the applicant's petition for the appointment of an arbitrator. The court's decision was based on the interpretation of the arbitration clause in the distributorship agreement and the nature of the dispute. The court found that the dispute raised by the applicant, regarding the allocation and transfer of LPG connections, did not fall within the scope of the arbitration clause. The agreement did not contain any provisions that obligated the respondent to provide a specific number of connections or to transfer connections from other distributors. The court emphasized that only disputes arising from the terms and conditions of the agreement could be referred to arbitration. Since the dispute did

not pertain to any specific provision of the agreement, the court concluded that it was not arbitrable and dismissed the application.

SMT. SYEDA SANA SUMERA AND ORS. V. KAMRAN MIRZA AND ORS.

ARBITRATION APPLICATON No.207 OF 2022 – Telangana High Court

CASE DETAILS:

Date of Application	20 April 2024
Date of Judgment	3 May 2024
Nature of Application	Appointment of sole arbitrator.
Bench Strength	Single Judge Bench
Judge(s)	J. K Lakshman
Provisions of the Arbitration and Conciliation Act	Sections 11(5) and 11(6)

RATIO:

The Court held that the scope of power of High Court under Section 11 is extremely limited, and the Court can't go into disputed questions of facts. When parties have a valid arbitration agreement and there are disputes that fall under its purview, the court should appoint an arbitrator to resolve those disputes. The court's role is limited to determining the existence of a prima facie arbitration agreement and not delving into the merits of the disputes themselves.

CASE SUMMARY

Brief Facts:

The applicants (Smt. Syeda Sana Sumera, Barkat Alam Khan, and Pradeep Gupta) and the respondents (Kamran Mirza, Nariman Mirza, Sameena Sultan, and Nawsherwan Mirza) entered into a registered Agreement of Sale-cum-Irrevocable General Power of Attorney on June 24, 2019, concerning a land sale in Hyderabad. The agreement included an arbitration clause (Clause 8) stating that any disputes would be resolved through arbitration under the Arbitration and Conciliation Act, 1996.

Disputes arose between the parties regarding the fulfilment of obligations under the agreement. The respondents allegedly failed to complete the land development, issued false notices, and filed baseless cases against the applicants. The applicants invoked the arbitration clause and sent a legal notice to the respondents, requesting them to nominate an arbitrator. The respondents, however, denied the validity of the agreement and refused to participate in arbitration.

Issues:

Whether the scope of the court under Section 11 included the power to examine the prima facie validity of an arbitration agreement?

Arguments:

The applicants argued that a valid arbitration agreement exists in the form of Clause 8 of the subject agreement. The respondents have failed to fulfil their obligations under the agreement. Thus, the disputes between the parties are arbitrable in nature. They also argued that the respondents' claims of the agreement being void are baseless.

The respondents, on the other hand, claimed that the subject agreement is void due to the applicants' alleged violations and non-payment of consideration. They further argued that the arbitration clause is not applicable as the agreement is invalid. There are pending civil disputes and third-party claims related to the property, making arbitration inappropriate.

Decision

The High Court of Telangana allowed the arbitration application. It appointed Sri Justice A. Rajasheker Reddy, a former judge of the High Court, as the sole arbitrator to adjudicate the disputes between the parties. The court emphasized that its role was limited to determining the existence of a prima facie arbitration agreement and not deciding the merits of the disputes, which would be the arbitrator's responsibility.

VALMAR PROJECTS LLP V. ISTHARA PARKS PRIVATE LIMITED

ARBITRATION APPLICATION Nos.6 AND 7 OF 2024 – Telangana High Court

CASE DETAILS:

Date of Application	3 June 2024
Date of Judgment	27 June 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Alok Adhare
Provisions of the Arbitration and Conciliation Act	Sections 11(6)

RATIO:

The ratio in this case is that the mere filing of a petition under Section 9 of the Insolvency and Bankruptcy Code (IBC) does not bar the initiation of proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996. The court also clarified that a notice under Section 21 of the 1996 Act need not quantify the amount of the claim.

CASE SUMMARY

Brief Facts:

Valmar Projects LLP (the applicant) entered into a Facilities Service Agreement and a Catering Service Agreement with Isthara Parks Private Limited (the respondent) on February 23, 2022, and March 16, 2022, respectively. Disputes arose between the parties, leading to the termination of the agreements on May 23, 2023. The respondent then issued a notice under Section 8 of the IBC on August 5, 2023, and subsequently filed a petition under Section 9 of the IBC before the National Company Law Tribunal (NCLT), Hyderabad. In response, the applicant filed two arbitration applications under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator to resolve the disputes.

Issues:

Whether the matter in question required reference to an arbitral tribunal in light of notice issued under section 21?

Arguments:

The applicant argued that the existence of the arbitration agreement and the disputes between the parties were not disputed by the respondent. The agreements envisaged the reference of disputes to a sole arbitrator. The pendency of the proceeding before the NCLT did not bar the court from dealing with the arbitration applications on merits. The notice under Section 21 of the 1996 Act did not need to quantify the amount of the claim.

Respondent, on the other hand, claimed that the arbitration applications were filed as a counterblast to the proceeding initiated by the respondent before the NCLT. The applicant had initiated the proceedings with ulterior motives. The applications filed under Section 11(6) of the 1996 Act were not maintainable. The notice issued under Section 21 of the 1996 Act did not contain any demand or claim, and therefore, the matter did not require reference to an arbitral tribunal.

Decision:

The High Court of Telangana allowed the arbitration applications and appointed Mr. Justice P. Naveen Rao, a former Acting Chief Justice of the High Court, as the sole arbitrator to adjudicate the disputes between the parties. The court directed the parties to appear before the sole arbitrator on February 13, 2024, along with a copy of the order.

SRI SAI KRISHNA CONSTRUCTIONS V. HARVINS CONSTRUCTIONS (P) LIMITED

Arbitration Application 221/2023 – Telangana High Court

CASE DETAILS:

Date of Application	5 December 2023
Date of Judgment	19 June 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Alok Adhare
Provisions of the Arbitration and Conciliation Act	Sections 11(6)

RATIO:

The ratio in this case is that for a court to refer a dispute to arbitration under Section 11(6) of the Arbitration and Conciliation Act, 1996, there must be prima facie evidence of a valid arbitration agreement. The court emphasized the need for basic formalities like signatures on all pages of the agreement to establish its existence. In this case, the court dismissed the applications due to the lack of such evidence, highlighting the importance of proper execution of arbitration agreements.

CASE SUMMARY

Brief Facts:

The applicant, Sri Sai Krishna Constructions, a partnership firm, filed two arbitration applications (221 of 2023 and 32 of 2024) under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator to resolve disputes arising from sub-contract agreements dated October 3, 2011, with the respondent, Harvins Constructions (P) Limited. The applicant claimed that the respondent engaged them as a subcontractor for nine out of ten works, including the Telugu Ganga Project awarded by the erstwhile Government of Andhra Pradesh.

Issues:

Whether a valid arbitration agreement prima facie existed?

Arguments:

Applicant claimed that the respondent was a signatory to the agreements dated October 3, 2011.The issue of the validity of the arbitration agreement could be examined by the arbitrator under Section 16 of the Act. Thus, the respondent's contention that the agreement was forged and fabricated was an afterthought.

Respondent argued that the court, under Section 11(6) of the Act, must first establish the existence of an arbitration clause. The agreements in question were written on the same stamp paper as another agreement (subject of a different arbitration application) where an arbitrator had already been appointed. The first three pages of the agreements in the instant applications lacked the parties' signatures, indicating a lack of prima facie evidence for the existence of an arbitration clause.

Decision:

The High Court of Telangana dismissed both arbitration applications due to the applicant's failure to prove the prima facie existence of a valid arbitration agreement. The court highlighted that the first three pages of the disputed agreements lacked the parties' signatures, making it impossible to establish the existence of an arbitration clause. This decision underscores the importance of adhering to the formalities of executing arbitration agreements to ensure their enforceability.

YESHWANT BOOLANI (DEAD) THROUGH LRS. TARUN DHAMEJA V. SUNIL DHAMEJA AND ANR.

Arbitration Case No. 19 of 2024 – Madhya Pradesh High Court

CASE DETAILS:

Date of Application	15 May 2024
Date of Judgment	31 May 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Subodh Abhyankar
Provisions of the Arbitration and Conciliation Act	Sections 11(6) and Section 40

RATIO:

The court held that when an arbitration clause in a partnership deed explicitly states that arbitration is optional and requires mutual consent for the appointment of an arbitrator, one party cannot unilaterally invoke arbitration without the other party's agreement. The court emphasized the importance of clear and unambiguous language in arbitration clauses, particularly when it comes to the optionality of arbitration and the requirement for mutual consent.

CASE SUMMARY

Brief Facts:

The applicant, Tarun Dhameja, the son of a deceased partner (Yeshwant Boolani) in the partnership firm M/s. Dhameja Home Industries, sought to be inducted as a partner and inherit his father's share. He invoked the arbitration clause in the partnership deed to resolve the dispute with the remaining partners (the respondents). However, the arbitration clause stated that arbitration was optional and required mutual consent for the appointment of an arbitrator. The respondents did not consent to arbitration.

Issues:

Whether the respondent's consent was required to invoke arbitration?

Arguments:

The applicant argued that he was entitled to be inducted as a partner and inherit his father's share in the firm. He contended that the arbitration clause, while optional, could be invoked to resolve the dispute. He relied on Section 40 of the Arbitration and Conciliation Act, 1996, which states that an arbitration agreement is not discharged by the death of a party and can be enforced by or against the legal representative of the deceased.

The respondents argued that the applicant was not yet a partner in the firm and therefore could not invoke the arbitration clause. They emphasized that the arbitration clause was optional and required mutual consent, which they had not given. They relied on Clause 21 of the partnership deed, which gave them the discretion to decide whether or not to induct the legal heir of a deceased partner.

Decision:

The Madhya Pradesh High Court dismissed the application, holding that the arbitration clause was optional and could not be invoked unilaterally by the applicant without the respondents' consent. The court emphasized the clear language of the clause, which stated that arbitration was optional and required mutual consent for the appointment of an arbitrator. The court also noted that the applicant was not yet a partner in the firm and therefore did not have the standing to invoke the arbitration clause. However, the court granted the applicant liberty to pursue other legal remedies available to him.

TRAVANCORE RURAL DEVELOPMENT PRODUCER COMPANY LTD. V. DIVYA LAKSHMI SANAL AND ORS.

2024:KER:38896 – Kerala High Court

CASE DETAILS:

Date of Application	15 May 2024
Date of Judgment	7 June 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. G Girish
Provisions of the Arbitration and Conciliation Act	Sections 11(6)

RATIO:

The ratio in this case was that while an arbitration clause allowing unilateral appointment of an arbitrator is not valid, the clause itself is not entirely void. The court can sever the invalid portion and appoint an arbitrator to resolve the dispute, especially when the parties have expressed a clear intention to resolve disputes through arbitration.

CASE SUMMARY

Brief Facts:

The Travancore Rural Development Producer Company Ltd., a producer company, filed an application under Section 11 of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator. The dispute arose from a loan availed by the first respondent, with the second and third respondents as guarantors, under the Members Mutual Fund Scheme launched by the applicant company. The loan agreements included an arbitration clause that allowed the applicant company to unilaterally appoint an arbitrator in case of disputes. The respondents defaulted on the loan, and the applicant referred the matter to a unilaterally appointed arbitrator, who issued an award in favour of the applicant. However, the execution of the award was dismissed by the District Court due to the invalidity of the unilateral appointment of the arbitrator.

Arguments:

The respondents did not appear before the court or file any counter-arguments. The applicant's counsel argued that while the arbitration clause allowing unilateral appointment was invalid, the clause itself was not entirely void, and the court could appoint an arbitrator to resolve the dispute.

Issues:

Whether arbitration clause allowing unilateral appointment of an arbitrator is valid. Further, if the same is invalid, whether the clause itself be entirely void?

Decision:

The relevant clauses that allowed for unilateral appointment for arbitrators was against the law. However, the Court refused to invalidate the clauses, and instead held them to be valid, apart from the portions conferring unilateral appointment power. Hence, the Court allowed the application and appointed the arbitrator.

The court appointed Adv. Mr. Biju B.K. as the sole arbitrator to adjudicate the dispute. The court also directed the Registry to communicate the order to the arbitrator and obtain a Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996.

5. SCOPE OF INTERIM RELIEF UNDER S. 9

JAGDISH TYRES PVT. LTD. V INDAG RUBBER LIMITED

2024 SCC OnLine Del 3961 – Delhi High Court

CASE DETAILS:

Date of Application	18 May 2024
Date of Judgment	21 May 2024
Nature of Application	Challenge of Award
Bench Strength	Single Bench
Judge(s)	J. Pratibha M Singh
Provisions of the Arbitration and Conciliation Act	Sections 9, 37

RATIO

The court clarified that Section 9 of the Arbitration and Conciliation Act, 1996, is specifically intended for seeking interim measures during arbitration. It cannot be used to challenge procedural orders passed by the arbitrator, as the Petitioner attempted to do in this case. The court also emphasized the importance of parties acting diligently and adhering to timelines in arbitration proceedings. The Petitioner's failure to do so, both in terms of attending hearings and ensuring the timely submission of documents, was a crucial factor in the court's decision. Lastly, the court reaffirmed the principle of minimal judicial intervention in arbitration proceedings.

CASE SUMMARY

Brief Facts:

In this case, the Petitioner (Jagdish Tyres) filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, challenging an order passed by the arbitrator in an ongoing dispute with the Respondent (Indag Rubber). The Petitioner's primary grievance was that the arbitrator had framed issues and proceeded to the evidence stage without considering the Petitioner's amended statement of defense. This amended statement was crucial as it included bank statements that the Petitioner believed were essential to their case. The Petitioner claimed that they had emailed the amended statement to the arbitrator but, due to a technical error, it was not received.

Issues:

1. Whether the petition challenging the procedural order of the Arbitrator is maintainable under Section 9 of the Act?
2. Whether the court has the jurisdiction to intervene in the procedural matters of arbitration as outlined in the Act?

Arguments:

The Petitioner argued that the failure of the arbitrator to consider their amended statement of defense, which contained vital bank statements, was a significant error. They contended that this error had prejudiced their case as they were unable to present all relevant evidence before the arbitrator proceeded to frame issues and move towards the evidence stage of the arbitration. The Petitioner attributed the non-receipt of the amended statement to a technical error and asserted that they had acted in good faith by attempting to submit the document on time.

The Respondent vehemently opposed the Petitioner's claims. They argued that the Petitioner had a history of not being diligent in the arbitration proceedings, often failing to attend hearings on time. The Respondent also questioned the Petitioner's claim of having emailed the amended statement of defense, suggesting that it might not have been sent at all. They argued that the Petitioner was attempting to use the technical error excuse to delay the proceedings and avoid facing the consequences of their lack of diligence.

Decision:

The Court dismissed the Petitioner's petition. The court found that the Petitioner had not demonstrated sufficient diligence in the arbitration proceedings. The court noted that the Petitioner had not provided adequate evidence to support their claim that the email containing the amended statement of defense was indeed sent. Furthermore, the court observed that the Petitioner's petition was not maintainable under Section 9 of the Arbitration and Conciliation

Act, 1996.This section is specifically designed for seeking interim measures during arbitration proceedings, not for challenging procedural orders passed by the arbitrator. The court concluded that the Petitioner was attempting to misuse Section 9 to circumvent the proper appellate procedures outlined in the Act.

TATA PROJECTS LTD. V. POWER GRID CORPORATION OF INDIA LTD

FAO (COMM) 93/2024 – Delhi High Court

CASE DETAILS:

Date of Application	14 February 2024
Date of Judgment	22 May 2024
Nature of Application	Challenge of Award
Bench Strength	Division Bench
Judge(s)	J. Vibhu Bakhru, J Tara Ganju
Provisions of the Arbitration and Conciliation Act	Section 9, 37

RATIO:

Non-disclosure of a previous petition, under Section 9, in another matter, does not automatically constitute "unclean hands" if a reasonable explanation is provided, and cannot be termed as ‘egregious fraud.’ The merits of a case under Section 9 of the Arbitration & Conciliation Act, 1996, should be thoroughly examined before a decision is made. The principle of "unclean hands" should be applied cautiously and only in cases of clear and deliberate misconduct.

CASE SUMMARY

Brief Facts:

Tata Projects Ltd. (the appellant) filed an appeal under Section 37(1)(b) of the Arbitration & Conciliation Act, 1996, challenging a judgment dated May 9, 2024, that rejected their petition under Section 9 of the same Act. The original petition sought interim measures to prevent Power Grid Corporation of India Ltd. (the respondent) from invoking a bank guarantee of ₹58,64,277/. This bank guarantee was related to a contract where the appellant was to provide certain services to the respondent. The Commercial Court had rejected the petition, citing the appellant's "unclean hands" due to their withdrawal of a similar petition (OMP(I)(COMM) No.742/2024) before the District Judge, Commercial Court, Saket, on May 1, 2024. The appellant had withdrawn the earlier petition stating it was wrongly filed in the South District, Saket Courts, instead of the Commercial Court in the New Delhi District, which they believed had exclusive jurisdiction based on the arbitration agreement.

Issue:

Whether non-disclosure of a previous petition amounted to lack of “clean hands”, thereby disentitling interim relief under Section 9?

Arguments:

The appellant argued that their withdrawal of the previous petition was due to an erroneous understanding that only the District Judge, New Delhi District had jurisdiction, based on the arbitration agreement specifying New Delhi as the arbitration venue. They contended that this misunderstanding did not constitute "unclean hands" and should not disqualify them from seeking relief under Section 9.

The respondent argued that the appellant's non-disclosure of the previous petition was a deliberate attempt to mislead the court and that the well-settled law regarding unconditional bank guarantees should not be interfered with except in cases of "egregious fraud, special equities, and irretrievable injustice."

Decision:

The Court set aside the Commercial Court's judgment and remanded the matter for reconsideration on its merits. The court reasoned that the appellant's withdrawal of the previous petition, while not ideal, did not automatically equate to "unclean hands." The appellant's explanation for the withdrawal, a misunderstanding about the appropriate jurisdiction based on the arbitration agreement, was deemed reasonable by the court. The court emphasized that the Commercial Court's original judgment had not adequately addressed the merits of the case, focusing instead on the procedural aspect of the withdrawn petition. Therefore, the case was sent back to the Commercial Court with the direction to re-

evaluate the matter, considering all arguments and evidence presented by both parties and to decide on the merits of the appellant's request for interim measures to protect the bank guarantee. The court clarified that all contentions of both parties would be open for consideration in this re-evaluation.

CAPRI GLOBAL CAPITAL LIMITED V. MS KIRAN

ARB.P. 870/2023 – Delhi High Court

CASE DETAILS:

Date of Application	21 August 2023
Date of Judgment	21 May 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Judge Bench
Judge(s)	J. Anup J Bhambhani
Provisions of the Arbitration and Conciliation Act	Section 9, 37

RATIO:

The court held that the objections regarding time-barred claims under Section 11 petition should be left for adjudication by the Arbitral Tribunal. The court thus decided that any doubts regarding the time-bar nature of the proceedings should be addressed by the arbitral tribunal, not the court at this stage.

CASE SUMMARY

Brief Facts:

Capri Global Capital Limited (the petitioner), a non-banking financial company, extended a loan facility to Ms. Kiran (the respondent) and her deceased husband under a Facility Agreement dated September 28, 2017. The agreement included an arbitration clause stipulating that disputes would be resolved through arbitration in Mumbai or Delhi, as chosen by the lender.

Following a default on the loan, the petitioner initiated arbitration proceedings by issuing an Invocation Notice on March 1, 2023, claiming an outstanding amount of Rs. 6,13,562/-. This was the second invocation notice, as a previous arbitral award had been set aside due to the invalid appointment of the arbitrator. On receiving no reply for the second invocation notice, the petitioners have filed the present petition, for the fresh appointment of the arbitrator.

Issue:

Whether the petitioner's request for appointment of arbitrator was time-barred?

Arguments:

The petitioner sought the appointment of a Sole Arbitrator to resolve the dispute as per the arbitration agreement in the Facility Agreement. They argued that the respondent did not reply to the second invocation notice and that the court had territorial jurisdiction to entertain the petition. The respondent argued that the petitioner's claim was time-barred because the first invocation notice was faulty. They contended that the initial notice did not set out the petitioner's claim against the respondent, making it invalid.

Decision:

The Court allowed the petition and appointed a Sole Arbitrator to adjudicate the disputes. The court confirmed the existence of a valid arbitration agreement between the parties as per clauses of the Facility Agreement. The court also established its jurisdiction to entertain the petition, as the arbitration agreement allowed for arbitration in Delhi. The court found that the second invocation notice dated March 1, 2023, was valid, as it clearly outlined the outstanding amount and invoked arbitration. The court dismissed the respondent's argument that the claim was time-barred due to a faulty first invocation notice. The court stated that for the purpose of Section 11 proceedings, the claim could not be considered ex-facie time-barred. The court exercised its authority under Section 11 of the Act to appoint a Sole Arbitrator, considering the petitioner's nomination and the respondent's lack of response. The court also clarified that all rights and contentions of both parties regarding the claims and counterclaims would be open for the arbitrator to decide on their merits.

HALLIBURTON INDIA OPERATIONS PRIVATE LIMITED V. VISION PROJECTS TECHNOLOGIES PVT. LTD

Commercial Appeal (L) No. 17720 of 2024 – Bombay High Court

CASE DETAILS:

Date of Application	15 April 2024
Date of Judgment	6 May 2024
Nature of Application	Interim Relief
Bench Strength	Single Judge Bench
Judge(s)	J. Bharati Dangre
Provisions of the Arbitration and Conciliation Act	Section 9

RATIO:

The High Court's scope of interference in an appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996, is limited to examining whether the lower court's order was perverse or illegal. The decision to grant interim measures under Section 9 of the Act is a discretionary one, and the appellate court will not interfere unless the discretion is exercised arbitrarily or contrary to settled principles of law. Furthermore, issues like the validity of termination and invocation of force majeure are contentious and should be decided in arbitration.

CASE SUMMARY

Brief Facts:

Halliburton India Operations Private Limited ("**Halliburton**"), the contractor, entered into a contract with the Oil and Natural Gas Corporation ("**ONGC**") for the charter hire of a stimulation vessel for a period of three years. Halliburton then subcontracted with Vision Projects Technologies Pvt. Ltd. ("**VisionProjects**"), the subcontractor, to carry out the operations using Vision Project's vessel, the Lewek Altair. The vessel was required to be converted from a Platform Supply Vessel ("**PSV**") to a Well Stimulation Vessel ("**WSV**") by installing specialized equipment.

In 2021, the Directorate General of Shipping issued a notification requiring vessels carrying hydrochloric acid, like the Lewek Altair, to comply with the Offshore Service Vessel Chemical Code. This required modifications to the vessel, including the installation of lifeboats. Due to the inability to meet these requirements by the deadline of May 31, 2023, the vessel was docked at Ratnagiri Port on June 1, 2023.

Halliburton invoked the force majeure clause under the subcontract on May 13, 2023, which Vision Projects rejected. Halliburton then terminated the subcontract on August 7, 2023. However, ONGC rejected Halliburton's invocation of the force majeure clause under the main contract.

In March 2024, Halliburton filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking permission to remove its equipment from the docked vessel and to restrain Vision Projects from cold-laying the vessel. Vision Projects opposed this, claiming unpaid dues and asserting a possessory lien over the vessel.

Issues:

Whether Halliburton is entitled to interim relief for removal of equipment and restraining Vision Projects, from a judicial authority under Section 9?

Arguments:

The appellant argued that they were justified in invoking the force majeure clause and terminating the subcontract due to the vessel's non-compliance with regulations. They claimed that since the subcontractor did not challenge the termination, they should be allowed to remove their equipment. They also argued that the balance of convenience favored them as they were responsible for maintaining employees on the vessel.

While the respondent supported the lower court's order, arguing that the contractor's termination notice was defective as it did not provide the required 90-day notice. They claimed a possessory lien over the vessel until their dues were paid and argued that removing

the equipment would put them at a disadvantage. They also contended that the reliefs sought by the contractor were in the nature of final reliefs, exceeding the scope of Section 9 of the Act.

Decision:

The Court dismissed Halliburton's appeal and upheld the lower court's decision to deny their request to remove the equipment. The court determined that the issues of contract termination and force majeure invocation were contentious and should be resolved through arbitration. The court also acknowledged Vision Projects' claim for unpaid dues and their right to retain the vessel until payment.

The court emphasized that interim measures under Section 9 of the Act are intended to preserve the subject matter of the arbitration, not to grant final reliefs like the return of equipment. It concluded that the lower court's decision was not perverse or illegal, and there was no reason to interfere with its discretion in denying the interim relief sought by Halliburton.

GANGA PRASAD MEMORIAL TRUST AND ORS. V. DHK EDUSERVE LIMITED

MANU/UP/1377/2024 – Allahabad High Court

CASE DETAILS:

Date of Application	27 April 2023
Date of Judgment	29 April 2024
Nature of Application	Appointment of arbitrator
Bench Strength	Division bench
Judge(s)	CJ. Arun Bhansali & J. Vikas Budhwar
Provisions of the Arbitration and Conciliation Act,	Section 9; Section 17; Section 37.

RATIO:

The Court clarified the interpretation of the term "entertain" in Section 9(3) of the Act to mean deliberate consideration of the issues presented, involving the application of judicial mind. Entertaining a case means taking it up for consideration, which may continue until the judgment is delivered. While the Court cannot consider an application under Section 9 once an Arbitral Tribunal is constituted, unless the remedy under Section 17 is ineffective, it can proceed to adjudicate the application if it has already been entertained and the Court has applied its mind to the issues.

CASE SUMMARY

Brief Facts:

The respondent sought relief under Section 9, claiming that their primary business involves academic consultancy, teacher training, and educational delivery systems for schools operating under CBSE guidelines. These services have been provided to various societies, trusts, companies, and other educational institutions for over 20 years, with consultancy fees charged accordingly. The respondent stated that a Memorandum of Understanding was signed between the appellant and the respondent on January 30, 2017, followed by a registered agreement on December 11, 2018, outlining the terms of their arrangement. The respondent claimed that consultancy fees amounting to ₹45,57,781 were due, and the cheques issued for this amount were dishonored. A notice of breach of the agreement was sent on April 10, 2023, but received no response. Despite this, the appellant allegedly continued to use the "Sunbeam" logo and school name as per the agreement. Consequently, the respondent sought an interim injunction to prevent the appellant from using the "Sunbeam" name and logo and from operating the school under the name "Sunbeam School, Babatpur." This appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996 (the "Act"), challenges the order issued by the Commercial Court in Varanasi on January 18, 2024, which partly allowed the relief.

Issue:

Whether the Respondent was entitled to interim relief under Section 9 from a judicial body, considering that the Arbitral Tribunal had already been constituted?

Arguments:

The appellant's counsel argued that the Commercial Court wrongly granted the application without properly considering the prerequisites for an injunction. They claimed that the order was hastily made solely due to the closure of the opportunity to file a response, neglecting essential factors like prima facie case, balance of convenience, and irreparable harm. Moreover, they asserted that once the Arbitral Tribunal was established, the Court lacked jurisdiction to entertain the application under Section 9, citing Section 9(3) of the Act. The respondent's counsel countered that the Commercial Court acted appropriately, emphasizing that the appellant had been directed to cease using the name 'Sunbeam' and logo, and their recognition had been terminated. They also argued that the Court had already considered the application and associated issues, rendering the appeal meritless.

Decision:

The Court observed that the impugned order was issued solely due to the untimely filing of the response to the Section 9 application, which was consequently excluded from consideration. However, the applicant's failure to file a timely response did not automatically entitle them to the requested relief. The Commercial Court, in considering the application,

was obligated to deliberate on three essential factors - prima facie case, balance of convenience, and irreparable harm - which are crucial for granting relief in such matters. The court's failure to substantively address these aspects renders the impugned order flawed.

The court examined the issue of the impugned order violating Section 9(3) of the Act by referencing multiple judgments that interpreted the provision. In Kundan Lal v Jagan Nath Sharma and Ors.,[15] it was established that the court can only consider the grounds of an application when evaluating its merits, and that once an Arbitral Tribunal is constituted, the court cannot entertain an application under Section 9 unless the remedy under Section 17 is ineffective. Despite the Tribunal dealing with amendment applications and passing an order on 15.11.2023, this did not constitute consideration of the case on merits. Therefore, it was held that the Commercial Court's order on 18.01.2024, passed after the Tribunal's constitution on 16.11.2023, violated Section 9(3) of the Act. The appeal is allowed, the order is quashed, and the respondent's application under Section 9 is dismissed.

[15] MANU/UP/0133/1962

RIDDHI SIDDHI INFRAPROJECT PVT. LTD. V. M/S ANIL INDUSTRIES AND ORS.

D.B. Civil Misc. Appeal No. 873/2024 – Rajasthan High Court

CASE DETAILS:

Date of Application	16 March 2024
Date of Judgment	29 May 2024
Nature of Application	Appeal for extending the interim order
Bench Strength	Two Judge Bench
Judge(s)	J. Dinesh Mehta, J. Rajendra Soni
Provisions of the Arbitration and Conciliation Act	Sections 9

RATIO:

The arbitral proceedings are deemed to have commenced when the notice of appointment of the arbitrator is received by the respondent. The court has the power to extend the interim order under Section 9(2) of the Act even beyond 90 days. The court held that it should not issue broad injunctions under Section 9 if dispute involves a monetary claim. The court aimed to balance the equities between the parties by directing the respondent to furnish a solvent surety to secure the appellant's claim.

CASE SUMMARY

Brief Facts:

Riddhi Siddhi Infraproject Pvt. Ltd. (the appellant) entered into an agreement dated December 10, 2009, with M/s Anil Industries (the respondent) regarding a plot of land. A dispute arose between the parties, and on September 19, 2023, the appellant filed an application under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim relief. The Commercial Court, Bhilwara, passed an interim order on October 10, 2023, directing both parties to maintain the status quo concerning the disputed land.

The appellant subsequently filed an application under Section 11 of the Act on January 18, 2024, for the appointment of an arbitrator. However, the respondent argued that the interim order had expired after 90 days, as per Section 9(2) of the Act. In response, the appellant filed another application on December 11, 2023, requesting either a fresh order under Section 9 or an extension of the interim order. The Commercial Court rejected this application on January 24, 2024, stating that the appellant had failed to initiate arbitration proceedings within the 90-day timeframe.

Issues:

Whether in the present matter, filing an application under Section 11 was a step in furtherance of securing the appointment of an arbitrator and not the commencement of arbitral proceedings?

Arguments:

The appellant argued that the arbitral proceedings had commenced on 12.07.2023 when the respondent received the notice of appointment of the arbitrator. They contended that filing an application under Section 11 was a step in furtherance of securing the appointment of an arbitrator and not the commencement of arbitral proceedings. The appellant also argued that Section 9(2) of the Act empowers the court to extend the interim order even beyond 90 days.

The respondent argued that the appellant had intentionally delayed filing the application under Section 11 and had not filed it within the prescribed period. They contended that no indulgence should be granted to a litigant who is not vigilant about statutory requirements.

Decision:

The High Court of Judicature for Rajasthan at Jodhpur allowed the appeal and set aside the Commercial Court's order. The court held that the arbitral proceedings had commenced on July 12, 2023, when the respondent received the notice of appointment of the arbitrator, not on the date of filing the application under Section 11. The court clarified that Section 9(2) of the Act empowers the court to extend the interim order beyond 90 days.

The court also addressed the issue of the blanket injunction granted by the Commercial Court, which directed the maintenance of status quo over the entire disputed land. The court deemed this order too broad and potentially harmful to the rights of the respondent and other

stakeholders. To balance the equities, the court directed the respondent to furnish a solvent surety of Rs. 10 crores to the satisfaction of the Commercial Court within 15 days. This surety would remain in force until either party filed an application under Section 17 of the Act before the appointed arbitrator. The court clarified that the arbitrator would then pass a fresh order under Section 17, uninfluenced by the current court's decision.

6. MISCELLANEOUS

M/S SPACE 4 BUSINESS SOLUTION PVT LTD V. THE DIVISIONAL COMMISSIONER PRINCIPAL SECRETARY AND ANR.

2024 SCC OnLine Del 3996 – Delhi High Court

CASE DETAILS:

Date of Application	12 August 2024
Date of Judgment	22 May 2024
Nature of Application	Appointment of Arbitrator
Bench Strength	Single Bench
Judge(s)	J. Neena Bansal Krishna
Provisions of the Arbitration and Conciliation Act	Section 11

RATIO

The seat of the arbitration is crucial in determining the court's jurisdiction to entertain a petition under Section 11 of the Arbitration and Conciliation Act, 1996. Further, a general jurisdictional clause in a contract does not automatically determine the seat of arbitration. If no seat is specified in the Arbitration Agreement, the jurisdiction of the court shall be determined in accordance with Sections 16 to 20 Of the CPC. Thus, the court's jurisdiction is also determined by the location where the cause of action arises. If no part of the cause of action arises within the court's territorial jurisdiction, it cannot entertain the petition.

CASE SUMMARY

Brief Facts:

M/s Kings Chariot (the Petitioner), a company specializing in interior design and development work for various establishments, entered into an MEP (Mechanical, Electrical, and Plumbing) contract with the Respondent, on October 11, 2018. The contract was for the execution of interior development works at the Respondent's multi-storied hotel in Guna, Madhya Pradesh. Disputes arose between the parties, leading to the termination of the contract, and the Petitioner filing a petition under Section 11(5) of the Arbitration and Conciliation Act, 1966, seeking the appointment of a Sole Arbitrator.

Issues:

Whether interest on award can be claimed by any party as a matter of right?

Arguments:

The Petitioner argued that the Respondent had wrongfully terminated the contract and manhandled their workforce at the project site. They sought the appointment of an arbitrator to resolve the dispute as per the arbitration clause in the contract. The Petitioner contended that the contract was signed in Gurgaon, Haryana, and therefore, the Delhi High Court had jurisdiction over the matter.

The Respondent opposed the petition on two grounds: (1) the petition did not disclose any valid cause of action, and (2) the Delhi High Court lacked territorial jurisdiction to entertain the petition as no part of the cause of action arose in Delhi. The Respondent argued that the entire cause of action arose in Madhya Pradesh, and since the contract did not specify the seat of arbitration, the matter should be heard by the Gwalior Bench of the Madhya Pradesh High Court, where they had already filed an application for the appointment of a Sole Arbitrator.

Decision:

The Court dismissed the Petitioner's petition, concluding that it lacked territorial jurisdiction to entertain the matter. The court observed that the contract did not specify the seat or venue of arbitration. While the contract contained a clause stating "All disputes subjected to Delhi jurisdiction only," the court interpreted this as a general jurisdictional clause and not a designation of the seat of arbitration. Since no part of the cause of action arose in Delhi, the court held that it did not have jurisdiction over the dispute.

MANZOOR AHMAD GUNNA AND ORS. V. U.T. OF J&K

2019 SCC OnLine J&K 924 – Jammu and Kashmir High Court

CASE DETAILS:

Date of Application	6 April 2024
Date of Judgment	31 May 2024
Nature of Application	Challenge of Execution of award
Bench Strength	Single Judge Bench
Judge(s)	J. Kalyani Rai Surana
Provisions of the Arbitration and Conciliation Act	NA

RATIO:

The court's decision was based on the interpretation of the Jammu and Kashmir Arbitration Act,1945, and the Arbitration Act, 1940. The court held that under these acts, interest can only be awarded on the principal sum and not on the pendente lite interest. The court also clarified that the principles governing the grant of interest under the Arbitration and Conciliation Act, 1996, cannot be applied to cases governed by the older acts.

CASE SUMMARY

Brief Facts:

This case involved a dispute over the execution of an arbitral award related to a contract for the construction of a National Highway bypass in Srinagar. The dispute originated in 1998 and went through various legal stages, including arbitration, appeals in the High Court, and even reached the Supreme Court. The key issue was the calculation of interest on the awarded amount, specifically whether it should be simple or compound interest. The executing court, the Principal District Judge, Srinagar, had determined that the interest should be calculated as simple interest, leading to the present petition, by the petitioners, challenging this decision.

Issues:

Whether amount of interest accruing on the principal amount calculated by the Arbitrator would become a part of the awarded sum for the purpose of calculating future interest has to be considered in the light of principles laid down in Section 34 of the CPC?

Arguments:

The petitioners argued that they were entitled to compound interest on the awarded amount, citing various Supreme Court judgments. They contended that the executing court erred in relying on an overruled Supreme Court judgment to calculate simple interest.

The respondents' arguments are not explicitly mentioned in the provided context. However, based on the court's discussion, it can be inferred that they argued for simple interest calculation, relying on the Supreme Court judgment in *State of Haryana and others vs. S. L. Arora & Company*.

Decision:

The Court dismissed the petitioner's challenge regarding the calculation of interest. It meticulously examined the relevant laws, including the Jammu and Kashmir Arbitration Act, 1945, and the Arbitration Act, 1940, which were applicable in this case. It concluded that under these acts, the petitioners were only entitled to simple interest on the principal sum awarded by the arbitrator, as modified by the District Judge and High Court. The court emphasized that the interest component could not be included in the principal sum for calculating post-award and post-decree interest.

The court distinguished this case from those where compound interest is allowed, clarifying that such provisions are found in the Arbitration and Conciliation Act, 1996, which was not applicable here. The court also relied on a Delhi High Court judgment in *Indian Oil Corporation Ltd. vs. G.S. Jain & Associates*, which supported the principle of not including

interest in the principal sum for calculating post-award interest under the Act of 1940. Ultimately, the court found no reason to interfere with the executing court's decision, as it was neither grossly illegal nor perverse.