

# ADR Weekly

October 21 - 25 2024

## National

- **Supreme Court quashes petition raising issue of Arbitration and Conciliation Act, 1996 being overridden by Public Premises Act, 1971:** A division bench of the Supreme Court in its judgement delivered by Justice P.S. Narasimha rejected appellant's petition raising the issue of whether the Public Premises Act, 1971 overrides the Arbitration and Conciliation Act, 1996. In the present case, the court found that such an issue does not even arise from the facts of the case. In making this assertion the judgement relied upon a previous decision rendered by the apex court in the case of SBI General Insurance Co. Ltd. v. Krish Spinning which discussed the scope of referral court's interference when a valid arbitration clause exists. The court further ordered the appellant to bear the costs of what it deemed to be an unnecessary litigation. [*Central Warehouse Corporation v. Sidhartha Tiles and Sanitary Pvt Ltd., 2024 INSC 805*]
- **Madras High Court clarifies jurisdictional issues for agreements not expressly specifying seat of arbitration:** The judgement delivered by Justice K. Kumaresh Babu iterated that the case was beyond the scope of its jurisdiction since the Interest Subsidy Agreement between the parties was entered into in Pune. The court relied on various judgments of the Apex Court where it had been held that when the seat of jurisdiction had not been mentioned and only venue had been mentioned and a particular Court had been vested with the jurisdiction, then the seat of the Court of which exclusive jurisdiction has been placed would be the place where the proceedings under the Arbitration and Conciliation Act, 1996 could be taken out. Relying on the dicta laid down in these cases, the court said that Clause 15 of the agreement between parties relating to governing law can be used to determine the seat of arbitration which would consequently be Pune. [*Eltech Appliances Private Limited Versus Bajaj Finance Limited, Arb.O.P.(Comm.Div.) No.60 of 2024*]
- **Delhi High Court asserts that petition under Section 11 of the Arbitration and Conciliation Act, 1996 not to be treated as one made to a court for the purposes of Section 42, overturns lower court judgement while exercising powers under Article 227:** The judgement delivered by a Division Bench of the High Court comprising Justice Yashwant Varma and Justice Ravinder Dudeja clarified its jurisdiction, holding that petitions under Article 227 to the High Court with respect to orders of the Commercial Courts at the level of the District Judge are mountable and the jurisdiction of the High Court is not affected by Section 8 of the Commercial Courts Act. The issue in the case was whether a petition made



- under Section 11 of the Arbitration and Conciliation Act, 1996 would attract Section 42 of the Act by virtue of being a petition made to a court. The bench held that the District Judge had made a manifest error and relied on earlier decisions of the Apex Court such as the State of West Bengal. v. Associated Contractor, asserted that a petition made under Section 11 is not to be considered as one made to a court. [*CP Rama Rao Sole Proprietor v. National Highways Authority of India, W.P.(C).11484/2023*]
- **Bombay High Court holds that its jurisdiction cannot be exercised to subvert provisions of the MSMED Act:** Justice Arun Pednekar in a judgement of the Bombay High Court clarified that while grounds exist to challenge the Award rendered by the Facilitation Council/Tribunal under section 34 of the Arbitration Act, in view of the India Glycols Limited judgement, the court cannot exercise its writ jurisdiction to obviate the requirement of deposit as contemplated under section 19 of the MSMED Act. The writ petition was dismissed while the court further clarified that observations made with respect to the petition should not be taken into consideration for any purpose by the court if award is challenged under Section 34 of the Arbitration Act. [*Duro Shox Pvt Ltd. v. State of Maharashtra, WRIT PETITION NO. 6690 OF 2024*]
- **Allahabad High Court re-asserts position on Section 23(4) of the Arbitration and Conciliation Act, 1996:** A Division Bench of the Allahabad High Court comprising of Justice Arun Bhansali and Justice Vikas Budhwar, while hearing appeals under Section 37 of the Arbitration Act, reiterated that the issue of whether the provisions of Section 23(4) of the Act is mandatory and what would be the consequences is no more res integra as the Calcutta High Court decided on the same in Yashovardhan Sinha HUF v. Satyatej Vyapaar. [*Bharat Sanchar Nigam Limited v. Chaurasiya Enterprises, 2024:AHC:167768-DB*]



## Global

- **The UK Court of Appeal has rejected Spain and Zimbabwe's 'state immunity' appeals against ICSID awards:** The Court dismissed attempts by both states to set aside arbitration awards using state immunity claims. The cases involved Infrastructure Services Luxembourg's €120M award against Spain (regarding solar energy tariffs) and Border Timbers' \$124M award against Zimbabwe (concerning land expropriation). The Court unanimously ruled that neither country could use the UK's 1978 State Immunity Act (SIA) to challenge ICSID arbitration awards. The Court held that by signing the ICSID Convention, states agree in writing to submit to jurisdiction regarding enforcement of ICSID awards under Article 54. While the SIA applies as a complete code to ICSID award recognition, it can be read consistently with the requirement to recognize authenticated ICSID awards through specific exceptions. Zimbabwe was allowed to remit its setting aside application based on other "exceptional" non-immunity defences. [*Infrastructure Services Luxembourg and Energia Termosolar v Kingdom of Spain and Border Timbers and Hangan Development v Republic of Zimbabwe*, [2024] EWCA Civ 1257]
- **ETG initiates arbitration against Mozambique over seized foodstuffs in London:** Trading company ETG has filed a USD 120 million arbitration request against Mozambique following the government-supervised seizure of pigeon peas intended for export to India by rival company Royal Group. ETG claims the seizure violated Mozambique's 2023 Investment Law guaranteeing fair and equitable treatment and constituted expropriation. Royal Group contends the seizure was to enforce a prior USD 60 million compensation claim it won against ETG in 2022 over a separate dispute involving seized soya beans in India. While arbitration proceedings commence in London, litigation continues in Mozambique where the Judicial Court of Nacala-Porto has allowed Royal Group to sell the seized goods pending litigation outcome. ETG is represented by ALN Kenya | Anjarwalla & Khanna and Signature Litigation. [*ETG v Government of Mozambique*]
- **ICC reaches 29,000th arbitration case with Brazilian energy dispute:** The International Chamber of Commerce (ICC) has marked its 29,000th arbitration case with a domestic Brazilian energy sector dispute seated in Rio de Janeiro. Initially filed under UNCITRAL rules for ad hoc administration, the parties later opted for ICC rules. This milestone reflects ICC's growing presence in Brazil, where it has managed over 650 cases since establishing dedicated case management in 2017. Brazil ranked second for same-nationality disputes at ICC in 2023 with 21 cases, involving 80 Brazilian entities including 12 state-owned organisations. Energy sector disputes represented 21% of ICC's 2023 caseload, second only to construction and engineering. The announcement coincides with recent ICC leadership developments, including Claudia Salomon's re-election as president and Diamana Diawara's appointment as bureau co-president. [*ICC Case No. 29000, Brazilian Energy Dispute*]

