

## QUARTERLY ALTERNATE DISPUTE RESOLUTION ROUND-UP (MAY 2025 – AUGUST 2025)

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1. **The Supreme Court criticized the Arbitration Bill 2024 for not recognizing the power to implead non-signatories and urged the union to make changes:**

In the case of *ASF Buildtech Private Limited v Shapoorji Pallonji & Company Pvt. Ltd.*,<sup>1</sup> the Supreme Court expressed its dissatisfaction with the absence of explicit statutory recognition of the power of arbitral tribunals to implead or join non-signatory parties. The court noted that despite the earlier omissions in the Arbitration and Conciliation Act, 1996, [“**Arbitration Act**”], the newly proposed Arbitration and Conciliation Bill, 2024, failed to address the issue.

2. **The High Court may grant Article 227 interim relief in arbitration proceedings in exceptional cases:**

In the case of *M/S Jindal Steel and Power Ltd. & Anr. v M/S Bansal Infra Projects Pvt. Ltd. & Ors.*,<sup>2</sup> the Supreme Court refused to interfere with the High Court’s order that granted interim protection and held that while the Arbitration Act mandates minimal judicial interference, a High Court may, in exceptional cases exercise its supervisory jurisdiction under Article 227<sup>3</sup> to grant the interim relief where denial of such protection would result in irreparable harm.

3. **Interim Relief under Section 9 of the Arbitration Act must be sought with “reasonable expedition”:**

Bombay High Court in the case of *Ashoka Buildcon Ltd. v Maha Active Engineers India Pvt. Ltd. & Anr.*<sup>4</sup> observed that relief under section 9<sup>5</sup> of the Arbitration Act is discretionary and must be guided by the settled principles of interim relief, i.e., existence of a prima facie case, balance of convenience, and irreparable harm. An appellate court can interfere with the discretionary

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<sup>1</sup> *ASF Buildtech (P) Ltd. v Shapoorji Pallonji & Co. (P) Ltd.*, 2025 SCC OnLine SC 1016.

<sup>2</sup> *M/S Jindal Steel and Power Ltd. & Anr. v M/S Bansal Infra Projects Pvt. Ltd.*, 2025 SC 544.

<sup>3</sup> Constitution of India, 1950, art 227.

<sup>4</sup> *Ashoka Buildcon Ltd. v Maha Active Engineers India Pvt. Ltd. & Anr.*, 2024 BHC 8120.

<sup>5</sup> The Arbitration and Conciliation Act 1996, s 9.

order of the trial court only when it is exercised arbitrarily and in ignorance of the settled principles.

**4. Objections under section 37 of Code of Civil Procedure [“CPC”] cannot be moved by the judgment debtor against the execution of the award under section 36 of the Arbitration Act:**

The Delhi High Court in the case of *Anglo-American Metallurgical Coal Pvt. Ltd. v MMTCL Ltd.*<sup>6</sup> clarified that the provisions of CPC are only applicable to the extent of enforcement of an award, and the judgment debtor cannot move the objections under section 37 of CPC<sup>7</sup> in an application for execution of award under section 36 of the Arbitration Act<sup>8</sup> as it would undermine the provision of section 34<sup>9</sup> i.e., challenge the award on limited grounds and go against the intent of the Arbitration Act as it would effectively amount to opening a second round for challenging the award.

**5. While deciding the application for the appointment of an arbitrator, the court cannot examine whether the claim is barred by res judicata:**

The Delhi High Court in the case of *Hindustan Construction Company Ltd v Indian Strategic Petroleum Reserves Ltd.*,<sup>10</sup> the court held that under section 11 of the Arbitration Act,<sup>11</sup> it is not open for the referral court to examine the issue whether the claim is barred by res judicata and such examination falls with the arbitral tribunal.

**6. Waiver to Section 12(5) of the Arbitration Act has to be given after the constitution of the tribunal:**

The Delhi High Court in the case of *M.V. Omni Projects (India) Ltd. v Union of India through Chief Engineer Northern Railways & Anr.*,<sup>12</sup> while referring to the judgment by the Supreme Court of India in the case of *Bharat Broadband v United Telecom*<sup>13</sup> observed that a party giving no objection to the application under Section 12(5) of the Arbitration Act<sup>14</sup> has to give no objection after the constitution of the arbitral tribunal. The waiver of applicability has to be done after the

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<sup>6</sup> *Anglo-American Metallurgical Coal Pty. Ltd. v MMTCL Ltd.*, 2021 SCC OnLine Del 5610.

<sup>7</sup> The Code of Civil Procedure 1908, s 37.

<sup>8</sup> The Arbitration and Conciliation Act 1996, s 36.

<sup>9</sup> The Arbitration and Conciliation Act 1996, s 34.

<sup>10</sup> *Hindustan Construction Company Ltd. v Indian Strategic Petroleum Reserves Ltd.*, 2017 SCC OnLine Del 9309.

<sup>11</sup> The Arbitration and Conciliation Act 1996, s 11.

<sup>12</sup> *M.V. Omni Projects (India) Ltd. v Union of India through Chief Engineer Northern Railways & Anr.*, 2024 DHC 7874.

<sup>13</sup> *Bharat Broadband Network Ltd. v United Telecoms Ltd.*, (2019) 5 SCC 755.

<sup>14</sup> The Arbitration and Conciliation Act 1996, s 12(5).

arbitrators are appointed, with the names and details, and a waiver before the constitution of the arbitral tribunal is no waiver.

**7. Plea of waiving the arbitration clause falls within the domain of the tribunal and cannot be examined by the referral court under section 8 of the Arbitration Act:**

The Delhi High Court in the case of *Porto Emporios Shipping Inc. v Indian Oil Corporation Ltd.*<sup>15</sup> allowed an application under Section 8 of the Arbitration Act<sup>16</sup> and observed that the plea of waiver of the arbitration clause is a plea concerning rights *in personam* and does not render the dispute non-arbitrable. Furthermore, the determination of the plea falls within the jurisdiction domain of the arbitral tribunal.

**8. Arbitration clause prevails over the exclusive jurisdiction clause, and the court at the designated seat will retain jurisdiction:**

The Delhi High Court in the case of *M/S KLA Const Technologies Pvt. Ltd. v M/S Gulshan Homz Pvt. Ltd.*<sup>17</sup> held that where an exclusive jurisdiction clause is made “subject to” the arbitration clause and the arbitration clause designate a different territorial jurisdiction, the arbitration clause will prevail. In the case of conflict, the jurisdiction of the court will be decided by the seat designated in the arbitration agreement, which will override the exclusive jurisdiction clause in the agreement.

**9. Court, while referring parties to arbitration, cannot direct that the arbitral award cannot be filed before it:**

The Jammu & Kashmir and Ladakh High Court in the case of *Ghulam Rasool Bhat v Shafeeq Fruit Co.*<sup>18</sup> held that the court cannot direct the award, passed after the conclusion of the arbitral proceedings. The court further referred the case *K. K. Modi v K. N. Modi*,<sup>19</sup> where the Supreme Court held that for an agreement to be considered an arbitration agreement, it must fulfill the essential criteria that the decision of the arbitral tribunal will be binding on the parties and the tribunal’s jurisdiction must arise from the consent of the parties, a court order or the statute.

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<sup>15</sup> *Porto Emporios Shipping Inc. v Indian Oil Corpn. Ltd.*, 2025 SCC OnLine Del 3288.

<sup>16</sup> The Arbitration and Conciliation Act 1996, s 8.

<sup>17</sup> *KLA Const. Technologies (P) Ltd. v Gulshan Homz (P) Ltd.*, 2025 SCC OnLine Del 3998.

<sup>18</sup> *Ghulam Rasool Bhat v Shafeeq Fruit Co.*, 2025 SCC OnLine J&K 389.

<sup>19</sup> *K.K. Modi v K.N. Modi*, (1998) 3 SCC 573.

### 1. Unilateral appointment does not preclude challenge to arbitrator's eligibility under section 12(5):

The Delhi High Court<sup>1</sup> held that a party who had unilaterally appointed an arbitrator cannot be estopped from later objecting to the qualification of the arbitrator under Section 12(5)<sup>2</sup> of the Arbitration and Conciliation Act, 1996 [**“Arbitration Act”**]. The bench consisting of Justices Vibhu Bakhru and Tejas Karia made it clear that mere fact of appointment is not waiver under the proviso to Section 12(5), which is an express written waiver.

The Court held that an arbitrator whose association with parties comes under the disqualifications enumerated in the Seventh Schedule is de jure ineligible, and an award passed by such arbitrator is not legally enforceable. Post the Supreme Court judgment in *Bharat Broadband Network Ltd. v United Telecoms Ltd.*, the Court reasserted that ineligibility under Section 12(5) necessarily terminates the mandate of the arbitrator under Section 14(1)(a).<sup>3</sup>

Notably, the Court also made it clear that consent to extend the term of an arbitrator under Section 29-A (3)<sup>4</sup> cannot be construed as a written waiver of ineligibility. Appearance in arbitral proceedings or conduct acquiescence is not enough.

The judgment reinforces that Section 12(5) overrides the general waiver provision under Section 4 of the Arbitration Act<sup>5</sup> and mandates strict compliance to uphold the principles of independence and impartiality in arbitration. A waiver of disqualification must be explicit, unequivocal, and in writing, without which, even the party who made the unilateral appointment retains the right to challenge it.

### 2. Arbitral jurisdiction not barred by PMLA attachment or criminal proceedings:

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<sup>1</sup> *M/s Mahavir Prasad Gupta and Sons v Govt. of NCT of Delhi*, (Del) CM(M) 64/2023.

<sup>2</sup> Arbitration and Conciliation Act 1996, s 12(5).

<sup>3</sup> Arbitration and Conciliation Act 1996, s 14(1)(a).

<sup>4</sup> Arbitration and Conciliation Act 1996, s 29A (3).

<sup>5</sup> Arbitration and Conciliation Act 1996, s 4.

The Delhi High Court<sup>6</sup> has ruled that jurisdiction of the arbitral tribunal is not affected by provisional attachment of assets under the PMLA or parallel investigations by the CBI or ED. Justice Amit Mahajan ruled that such proceedings do not exclude arbitration unless the dispute is one touching the bone of serious fraud vitiating the arbitration agreement itself.

Referring to the case of *A. Ayyasamy v A. Paramasivam*, the Court once again enunciated that fraud of a sophisticated kind is the sole requirement where fraud affecting the validity of the agreement renders a dispute non-arbitrable. Fraud or criminality by themselves are not enough to stay the arbitral proceedings. And *Deep Industries Ltd. v ONGC*, the Court once again enunciated that interference under Article 227<sup>7</sup> must be exercised with caution and only where there is clear illegality, reaffirming limited judicial intervention in arbitral proceedings.

### **3. Mere professional association with law firm does not disqualify advocate from acting as arbitrator:**

The Calcutta High Court<sup>8</sup> has clarified that a previous professional connection of an advocate with a law firm, for example, receiving briefs on non-related cases, does not necessarily disqualify them from serving as an arbitrator in proceedings in which such a law firm is involved. Justice Shampa Sarkar ruled that the association is not under the disqualifications enumerated under Section 12(5)<sup>9</sup> read with the Seventh Schedule of the Arbitration Act.

The Court emphasized the point that Seventh Schedule Category 3 disqualification only arises when the arbitrator himself has appeared on the law firm's side in a hearing in the court and not where the firm has instructed the arbitrator on behalf of other parties. No such direct representation or link between the arbitrator and parties to the dispute was established in this case.

Again, it was stressed that Section 12(5) calls for disqualification only if there exists a specified relationship with the representative or party. Without a direct relationship that can raise reasonable doubts about impartiality, prior professional association of a representative with the firm is neither a conflict of interest nor invalidates the appointment.

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<sup>6</sup> *Lata Yadav v Shivakriti Agro Pvt. Ltd. & Ors.*, (Del) CM(M) 53/2025.

<sup>7</sup> The Constitution of India 1950, art 227.

<sup>8</sup> *Damodar Valley Corporation v AKA Logistics Pvt. Ltd.*, AP-COM/178/2025.

<sup>9</sup> Arbitration and Conciliation Act 1996, s 12(5).

#### **4. Writ Court cannot entertain reliefs already pursued before Arbitrator and Commercial Court:**

Chhattisgarh High Court<sup>10</sup> held that parties cannot turn to the court of writ to pray for the same reliefs where the same issues have already been brought before an arbitrator and then decided by a commercial court. The Chief Justice Ramesh Sinha and Justice Bibhu Datta Guru led bench observed that the jurisdiction of the writ under Article 226<sup>11</sup> cannot be invoked where efficacious and effectual alternative remedies are available.

Refusing the writ petition, the Court asserted that litigants cannot circumvent the statutory process of resolution of disputes by simply approaching the writ jurisdiction. After the dispute has been settled by way of arbitration as well as commercial litigation, seeking the same reliefs through a writ petition would constitute abuse of process and impairs the doctrine of finality of judicial proceedings.

#### **5. Arbitrator to decide applicability of arbitration clause; court's role limited at Section 11 stage:**

The Delhi High Court<sup>12</sup> has ruled that questions of applicability or jurisdiction of an arbitration clause are within the domain of the arbitrator and cannot be decided at the stage of the Section 11<sup>13</sup> petition under the Arbitration Act. Justice Sachin Datta ruled that after it is not disputed that there exists an arbitration agreement, any issue of its applicability or relevance must be decided by the arbitral tribunal itself.

The Court also decided on the legitimacy of the appointment process defined under the agreement, where the petitioner could choose one of the three nominees as an arbitrator. Following the Supreme Court's judgment in *Central Organization for Railway Electrification v ECI-SPIC-SMO-MCML (JV)* (2024), the Court decided that such a process, which gives unilateral appointment authority to one party, is not valid anymore. It is thus the court's responsibility to appoint an independent, sole arbitrator.

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<sup>10</sup> *Angelique International Ltd. v Union of India (Ministry of Railways) & Ors.*, WPC No. 2946 of 2025.

<sup>11</sup> The Constitution of India 1950, art 226.

<sup>12</sup> *Indraprastha Gas Ltd. v M/s Chintamani Food and Snacks*, ARB.P. 355/2024.

<sup>13</sup> Arbitration and Conciliation Act 1996, s 11.

The judgment reiterates the doctrine of equality of parties in the appointment of arbitrators and limits judicial review at the pre-arbitral stage to determining the existence of the agreement and not deciding disputes of interpretation under it.

**6. Relying on external correspondence despite clear contractual terms constitutes patent illegality:**

The Delhi High Court<sup>14</sup> has held that where the language of the contract is clear and not ambiguous, reliance on extraneous documents such as pre-contract negotiations or letters is not allowed and a case of patent illegality. The division bench of Justice Vibhu Bakhru and Justice Tejas Karia observed that arbitral tribunals are under an obligation to interpret contracts strictly in terms of their express words, especially where the agreement specifically excludes reference to external documents.

The Court objected to the use by the arbitral tribunal of negotiations and communications between parties to interpret Clause (3.4.1.5) of the General Conditions of Contract (GCC), although the clause was clearly worded. It reaffirmed that deviation from clear contractual language not only undermines party autonomy but also violates the requirement of public policy under Section 34 of the Arbitration Act.<sup>15</sup>

Repeating once again that an award made for disobedience of express terms of contract is vitiated by patent illegality, the Court set aside the award insofar as it had been made on the basis of inadmissible interpretive aids and materials outside the contractual context.

**7. Plea of duress not maintainable after accepting full and final settlement under court order:**

The Kerala High Court<sup>16</sup> has ruled that a party may not thereafter say that there was duress or coercion after it had agreed to a final and complete settlement under the aegis of a court order and had expressly admitted the same in writing. The bench of Justices Syam Kumar V.M. and Sushrut Arvind Dharmadhikari ruled that such an acceptance excluded any subsequent claim that the settlement was not voluntary.

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<sup>14</sup> *Oil and Natural Gas Corporation Ltd. v JSIW Infrastructure Pvt. Ltd.*, FAO (OS) (COMM) 59/2024.

<sup>15</sup> Arbitration and Conciliation Act 1996, s 34.

<sup>16</sup> *State of Kerala v S. Ajayakumar & Ors.*, WA NO. 550/2014.

The controversy concerning claims under five building contracts under which the petitioner had made allegations of non-payment by the State. Previous writ petitions for payment had been dismissed by the High Court on the basis that the controversy concerned facts in dispute not amenable to being adjudicated under Article 226.<sup>17</sup>

Thereafter, the Respondent-State paid the amount in accordance with the directions of the Court. It expressed in unequivocal terms that payment was the final and full settlement of all the payables. The petitioner also dispatched a settlement acceptance letter. The Court held that where a party clearly accepts such terms and has accepted satisfaction of claims, any later claim of coercion or necessity is meritless and cannot be legally sustained.

#### **8. Section 21 notice not mandatory if dispute is known to opposite party:**

The Rajasthan High Court<sup>18</sup> held that failure to issue a notice under Section 21<sup>19</sup> The Arbitration Act does not render a Section 11<sup>20</sup> application unsustainable where the respondent was already on notice regarding the dispute and enforcement of the arbitration clause. Justice Anoop Kumar Dhand observed that the object of a Section 21 notice is to prevent surprise and not to give priority to form over substance where the dispute is already on the surface.

The Court was hearing a Section 11 application made by the borrowers whose property had been mortgaged under the loan agreement with an arbitration clause included in it. In default, their account fell in the category of an NPA and SARFAESI proceedings were commenced by the respondent.

Overriding the objection on the basis of maintainability, the Court emphasized that the prior notice of invocation of arbitration by the lender ensured that the lack of formal notice cannot be made the reason to oppose the proceedings. It also reaffirmed the doctrine stated in *M.D. Frozen Foods Exports Pvt. Ltd. v Hero Fincorp Ltd.*, which clarified that SARFAESI proceedings, being enforcement in nature, can also coexist with arbitration, which is adjudicatory in nature.

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<sup>17</sup> The Constitution of India 1950, art 226.

<sup>18</sup> *Shekharchand Sacheti & Anr. v S.M.F.G. India Home Finance Co. Ltd. & Anr.*, S.B. Arbitration Application No.81/2024.

<sup>19</sup> Arbitration and Conciliation Act 1996, s 21.

<sup>20</sup> Arbitration and Conciliation Act 1996, s 11.



**1. Issues of misjoinder of parties and incorporation by reference fall within the purview of the arbitral tribunal:**

In *Bimla Devi Jaiswal v M/s Indus Towers Ltd.*,<sup>1</sup> the Calcutta High Court held that issues of misjoinder or non-joinder of parties, and incorporation of an arbitration clause by reference are matters to be decided by the Arbitral Tribunal. The dispute stemmed from a roof licence agreement containing an arbitration clause, followed by a supplementary agreement dated executed between successors of the original parties. The Petitioner sought appointment of an Arbitrator for non-payment of rent, while the Respondent argued that the arbitration clause had expired with the principal agreement and was not incorporated into the supplementary contract.

The Court found that the supplementary agreement was expressly co-extensive and co-terminus with the principal agreement and had adopted all its terms. Since the Respondent admitted acting under the principal agreement and stepping into the shoes of the licensee, incorporation was established. Relying on *Ajay Madhusudan Patel v Jyotrindra S. Patel*,<sup>2</sup> and *Cox and Kings Ltd. v SAP (India) Pvt. Ltd.*,<sup>3</sup> the Court reiterated the competence-competence principle that jurisdictional questions are for the Tribunal. It thus confined its inquiry to a prima facie examination of the arbitration agreement and appointed a Tribunal to resolve the dispute.

**2. Exclusive jurisdiction clause prevails over arbitrator's procedural order in determining seat of arbitration:**

In *Viva Infraventure Pvt. Ltd. v New Okhla Industrial Development Authority*,<sup>4</sup> the Delhi High Court has clarified that when parties agree on an exclusive jurisdiction clause in their arbitration agreement, the Courts named therein will be treated as the seat under Section 20(1) of the Arbitration Act.<sup>5</sup> The Court held that an Arbitrator has no authority to declare a different seat through a procedural order since such discretion is confined only to fixing a venue for

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<sup>1</sup> *Bimla Devi Jaiswal v Indus Towers Ltd.* (2025) SCC OnLine Cal 5405.

<sup>2</sup> *Ajay Madhusudan Patel & Ors. v Jyotrindra S. Patel & Ors.* (2025) 2 SCC 147.

<sup>3</sup> *Cox & Kings Ltd. v SAP (India) Pvt. Ltd.* (2025) 1 SCC 611.

<sup>4</sup> *Viva Infraventure Pvt. Ltd. v New Okhla Industrial Development Authority* (2025) SCC OnLine Del 4684.

<sup>5</sup> Arbitration and Conciliation Act 1996, s 20(1).

hearings under Section 20(3).<sup>6</sup> The Court emphasized that the foundation of arbitral proceedings lies in the agreement between the parties, and any departure from that bargain cannot be made without their express consent.

In doing so, the Court highlighted that an exclusive jurisdiction clause reflects a deliberate intention to confer supervisory powers on a specific court, and this must be respected without dilution. The judgment further distinguished between “seat” and “venue”, noting that the juridical seat stems directly from the contract, while the venue serves only as a matter of convenience. By dismissing the Section 29-A (5) petition for lack of territorial jurisdiction,<sup>7</sup> the Court reinforced the binding nature of party-agreed clauses and restricted the possibility of arbitrators extending their role into matters that affect supervisory control.

### **3. Parties cannot be restrained from performing contractual obligations under a final partial award when both the award and the contract remain in force:**

In *Union of India v Vedanta Ltd.*,<sup>8</sup> the Delhi High Court considered whether parties could be restrained from acting under a Final Partial Award [“FPA”] when the Award and the Production Sharing Contract [“PSC”] remained in force. The dispute arose from a PSC governing oil and gas operations in Rajasthan. The Arbitral Tribunal had issued a declaratory award, later reclassified as an FPA, which clarified interpretational issues. The Appellant sought to prevent the Respondents from relying on the FPA until final quantification of amounts was made.

The Court rejected this contention, holding that non-compliance would render the FPA a “paper award.” Since the Award was declaratory and not stayed, it remained binding and guided performance under the PSC. The Court clarified that the Respondents’ recovery of post-exploration costs was not unilateral enforcement but fulfilment of contractual obligations as interpreted by the FPA. It further noted that unrecovered costs could be carried forward under Articles 14 and 15 of the PSC. Concluding that the appeal lacked merit, the Court dismissed it under Section 37 of the Arbitration Act.<sup>9</sup>

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<sup>6</sup> Arbitration and Conciliation Act 1996, s 20(3).

<sup>7</sup> Arbitration and Conciliation Act 1996, s 29-A (5).

<sup>8</sup> *Union of India v Vedanta Ltd. & Anr.* [2025] SCC OnLine Del 4808.

<sup>9</sup> Arbitration and Conciliation Act 1996, s 37.

**4. Impleading a non-signatory without independent cause of action cannot defeat a section 8 application under the arbitration act:**

In *Murshidabad Zilla Parishad v Asian Care Development Pvt. Ltd.*,<sup>10</sup> the Calcutta High Court examined whether impleading a non-signatory without any independent cause of action could defeat a Section 8 application under the Arbitration Act.<sup>11</sup> The dispute arose from a lease agreement containing an arbitration clause, with the suit seeking injunctions and declarations based on the contract. The trial court, relying on *Sukanya Holdings v Jayesh H. Pandya*,<sup>12</sup> [“**Sukanya Holdings**”] had refused to refer the matter to arbitration.

The High Court reversed this decision finding that Respondent had been impleaded only to obstruct arbitration. It emphasized that the 2015 amendment to Section 8 extends the benefit of reference to those “claiming through or under” signatories, and modern precedents, particularly *Cox and Kings Ltd. v SAP (India) Pvt. Ltd.*,<sup>13</sup> have diluted the restrictive approach of *Sukanya Holdings*. Since the disputes arose entirely from the lease agreement, the Court allowed the appeal, set aside the trial court’s order and referred the parties to arbitration.

**5. In absence of contrary indicia, “venue” mentioned in the arbitration agreement is construed as the “seat” of arbitration:**

In *Devi Prasad Mishra v M/s Nayara Energy Ltd.*,<sup>14</sup> the Allahabad High Court held that where an Arbitration Agreement mentions only one place as the “venue” of arbitration, such place shall also be treated as the “seat” of arbitration unless the agreement indicates otherwise.

In this case, the Applicant filed an application under Section 11(6) of the Arbitration Act<sup>15</sup> before the Allahabad High Court seeking appointment of an Arbitrator. The Respondent objected to the jurisdiction of the Court, arguing that Mumbai was the agreed seat of arbitration and exclusive jurisdiction was vested with the Courts at Mumbai. The Applicant contended that Mumbai was only recorded as the “venue” and not the “seat”, and that the exclusive jurisdiction clause applied only to non-arbitrable disputes. The Court, relying on

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<sup>10</sup> *Murshidabad Zilla Parishad v Asian Health Care Development Pvt. Ltd. & Ors.* [2025] SCC OnLine Cal 5829.

<sup>11</sup> Arbitration and Conciliation Act 1996, s 8.

<sup>12</sup> *Sukanya Holdings Pvt. Ltd. v Jayesh H. Pandya & Anr.* (2003) 5 SCC 531.

<sup>13</sup> *Cox & Kings Ltd. v SAP (India) Pvt. Ltd.* (2024) 4 SCC 1.

<sup>14</sup> *Devi Prasad Mishra v Nayara Energy Ltd.* [2025] SCC OnLine All 4514.

<sup>15</sup> Arbitration and Conciliation Act 1996, s 11(6).

*Indus Mobile Distribution Pvt. Ltd. v Datawind Innovations Pvt. Ltd.*,<sup>16</sup> and *B.G.S. S.G.S. Soma JV v NHPC Ltd.*,<sup>17</sup> observed that in the absence of contrary indications, the “venue” is to be treated as the “seat”. It further held that Clause 21 of the Agreement fixed Mumbai as the place of arbitration and Clause 22 conferred exclusive jurisdiction on the Courts at Mumbai. Accordingly, the application before the Allahabad High Court was held to be not maintainable.

**6. Section 34 applications under the arbitration act are of commercial nature and must be heard by the commercial division:**

In *Garden Reach Shipbuilders & Engineers Ltd. v Marine Craft Engineers Pvt. Ltd.*,<sup>18</sup> the Calcutta High Court held that pleas under Section 34 of the Arbitration Act pertaining to commercial disputes are exclusively within the jurisdiction of the Commercial Division under the Commercial Courts Act, 2015. In this case, the Respondent challenged an arbitral award by filing an application under Section 34 of the Arbitration Act.<sup>19</sup> The application was allowed setting aside the award. The Appellant appealed under Section 37 on the ground that the judge who had passed the order lacked jurisdiction since the matter was of a commercial nature and ought to have been heard by the Commercial Division.<sup>20</sup>

The Court observed that on the relevant dates, the concerned judge had determination only over non-commercial arbitration applications, while matters under Section 34 of the Arbitration Act relating to commercial disputes were assigned to another judge in terms of the roster. Holding that the defect of jurisdiction was incurable, the Court set aside the impugned order and directed that the Section 34 application be placed before the appropriate bench of the Commercial Division for fresh hearing.

**7. Section court under section 34 cannot remit without section 34(4) and absence of section 21 notice voids tribunal’s jurisdiction:**

In *Harkisandas Tulsidas Pabari v Rajendra Anandrao Acharya*,<sup>21</sup> the Bombay High Court held that arbitral proceedings cannot be remitted to the same Arbitrator after setting aside an

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<sup>16</sup> *Indus Mobile Distribution Pvt. Ltd. v Datawind Innovations Pvt. Ltd. & Ors.* (2017) 7 SCC 678.

<sup>17</sup> *BGS SGS SOMA JV v NHPC Ltd.* (2020) 4 SCC 234.

<sup>18</sup> *Garden Reach Shipbuilders & Engineers Ltd. v Marine Craft Engineers Pvt. Ltd.* [2025] SCC OnLine Cal 6072.

<sup>19</sup> Arbitration and Conciliation Act 1996, s 34.

<sup>20</sup> Arbitration and Conciliation Act 1996, s 37.

<sup>21</sup> *Harkisandas Tulsidas Pabari & Anr v Rajendra Anandrao Acharya & Ors.* [2025] SCC OnLine Bom 2697.

award under Section 34 unless specifically directed under Section 34(4).<sup>22</sup> Moreover, the absence of a notice under Section 21 of the Arbitration Act deprives the Tribunal of jurisdiction.<sup>23</sup>

Disputes had arisen under a 1994 Memorandum of Understanding [“**MoU**”] for the transfer of property rights. An initial award was set aside for procedural irregularity, but the Appellant re-approached the same arbitrator without issuing a fresh Section 21 notice. The Tribunal nevertheless issued another award, which was later set aside. The Court affirmed that the Tribunal lacked jurisdiction since proceedings were not remitted under Section 34(4), and that the failure to issue a Section 21 notice was fatal. It also upheld findings that the MoU was not a concluded contract and specific performance could not be ordered.

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<sup>22</sup> Arbitration and Conciliation Act 1996, s 34.

<sup>23</sup> Arbitration and Conciliation Act 1996, s 21.

## AUGUST

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### 1. Order of extension of arbitrator's mandate validates the arbitrator's jurisdiction between the expiry and extension of the mandate:

In *Glen Industries Pvt. Ltd. v Oriental Insurance Company Ltd.*,<sup>1</sup> the Calcutta High Court held that the order of the Court for the extension of the Arbitrator's mandate has the effect of retrospectively validating the arbitration proceedings which took place between the date of expiry of the mandate and date of filing an application for extension. By clarifying that the extension of the mandate relates back to the date of termination, irrespective as to whether the application for extension had been filed prior to or after the expiry of the extended period, the Court opined that the Arbitrator's mandate could be revived even if it had already expired on the date of making the application. The Court also relied on *Rohan Builders (India) Pvt. Ltd. v Berger Paints India Ltd.*<sup>2</sup> to state that the application for extension could be filed even after the expiry of the Arbitrator's mandate which then revives upon extension by the Court.

In the application for the extension of the Arbitrator's mandate which was filed after the expiry of the mandate of 18 months, the Court ruled that the parties to the dispute had waived their right to object to the continuation of the proceedings under Section 4 of the Arbitration Act,<sup>3</sup> by willingly participating in the arbitration proceedings after the mandate's termination. It was held that the active participation of the parties in arbitration proceedings post the termination of the Arbitrator's mandate amounted to an agreement for the extension of the mandate under Section 29-A of the Arbitration Act.<sup>4</sup>

### 2. Writ courts have limited scope of interference in orders of the arbitral tribunal:

The Delhi High Court in *Aneja Constructions (India) Ltd. v Doosan Power Systems India Pvt. Ltd.*,<sup>5</sup> reiterated that writ Courts could interfere under Articles 226 or 227 of the Constitution,<sup>6</sup> in challenges to orders passed by an Arbitral Tribunal only in exceptionally rare circumstances, or

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<sup>1</sup> *Glen Industries Pvt. Ltd. v Oriental Insurance Company Ltd.* (AP-COM/540/2025, Cal. HC).

<sup>2</sup> *Rohan Builders (India) Pvt. Ltd. v Berger Paints India Ltd.* [2024] SCC OnLine SC 2494.

<sup>3</sup> Arbitration and Conciliation Act 1996, s 4.

<sup>4</sup> Arbitration and Conciliation Act 1996, s 29-A.

<sup>5</sup> *Aneja Constructions (India) Ltd. v Doosan Power Systems India Pvt. Ltd.* & Anr. [2025] DHC 6590.

<sup>6</sup> Constitution of India 1950, arts 226 and 227.

when the orders made in bad faith or are patently perverse so as to lack inherent jurisdiction of the Tribunal.<sup>7</sup> The Court upheld the Tribunal's decision to extend the time for completion of pleading in the interest of justice and upon sufficient cause, by holding that the procedural rules of the Arbitral Institution were merely to guide the proceedings and did not have a binding effect of the conduct of arbitration proceedings.

In the arbitration proceedings between the parties, the Arbitrator had dismissed the Petitioner's request seeking closure of the Respondent's right to file counter-claim as per Rule 18 of the Rules of Domestic Commercial Arbitration of the Indian Council of Arbitration.<sup>8</sup> It had been contended by the Petitioner that the period for filing the defence statement could not be extended by the Arbitrator beyond the timeline prescribed under Rule 18 read with Sections 2(8) and 25 of the Arbitration Act,<sup>9</sup> neither was the Arbitrator empowered to condone the delay beyond the scope of Rule 18.

### **3. The Court cannot permit a non-signatory to remain present in the arbitration proceedings:**

In *Kamal Gupta v M/s L.R. Builders Pvt. Ltd.*,<sup>10</sup> the Supreme Court held that the permission given to a non-signatory to attend all proceedings before the sole Arbitrator ran contrary to the legislative intent behind maintaining confidentiality of arbitral proceedings under Sect 42-A of the Arbitration Act.<sup>11</sup> The Court further clarified that there would be no legal basis to permit a non-signatory to the Deed to remain present in the proceedings before a sole Arbitrator since the arbitral award would not be binding on the non-signatories to the Deed.<sup>12</sup> It was also held that the Court could not issue any ancillary directions regarding the arbitration proceedings which have commenced pursuant to the appointment of the sole Arbitrator since the Court had become *functus officio* on the conclusion of Section 11(6) proceedings.

An application under Section 11(6) of the Arbitration Act had been filed for the appointment of a sole Arbitrator for adjudicating the disputes between members of the Gupta family under the terms of an oral family settlement between the parties which was later reduced in a Memorandum of Understanding or Family Settlement Deed [**"Deed"**].<sup>13</sup> During the Section 11(6) proceedings

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<sup>7</sup> *Kelvin Air Conditioning and Ventilation System Pvt. Ltd. v Triumph Reality Pvt. Ltd.*, [2024] SCC OnLine Del 7137.

<sup>8</sup> Indian Council of Arbitration, 'Rules of Domestic Commercial Arbitration' (2024) r 18.

<sup>9</sup> Arbitration and Conciliation Act 1996, ss 2(8) and 25.

<sup>10</sup> *Kamal Gupta & Anr. v M/s L.R. Builders Pvt. Ltd. & Ors.* [2025] INSC 975.

<sup>11</sup> Arbitration and Conciliation Act 1996, s 42-A.

<sup>12</sup> Arbitration and Conciliation Act 1996, ss 5 and 35.

<sup>13</sup> Arbitration and Conciliation Act 1996, s 11(6).

the Court rejected the prayer for intervention made by the Respondents on the grounds that the intervention had been sought by non-signatories to the Deed whose presence were non-essential for the adjudication of the disputes between the parties to the Deed. Against this disposed Section 11(6) application, interim applications were filed to permit the non-signatory intervenors to be present during the course of arbitration proceedings before the sole Arbitrator, and the same were permitted by the Court. This order of the Court permitting non-signatories to be present during the arbitration proceedings, was challenged by the parties to the arbitration before the Supreme Court by arguing that the Court had no jurisdiction to entertain the interim applications moved by non-signatories to the Deed after the disposal of the Section 11(6) proceedings.

**4. Conduct of a party in furtherance of terms of an unsigned contract demonstrates the manifestation of acceptance of the contract, including the arbitration agreement:**

The Supreme Court in *Glencore International AG v M/s Ganesb Metals*,<sup>14</sup> reiterated that an arbitration agreement can be inferred even from an exchange of letters or communication through electronic means provided that there exists a record of the agreement irrespective of whether the contract had been signed by one of the parties to the dispute. So long as the conduct of the parties has been in furtherance of the impugned contract, there exists a manifestation of the party's due and complete acceptance of the terms and conditions contained in the contract, including the arbitration agreement. The Court further held that only prima facie proof of the existence of an arbitration agreement is required to be adduced before the referral Court under Section 45 of the Arbitration Act.<sup>15</sup>

The Appellant and Respondent No. 1 had entered into four contracts for the purchase of zinc metal. These contracts contained arbitration clauses which stated that disputes arising out of the contracts would be referred to arbitration as per the Rules of the London Court of International Arbitration, with the seat of arbitration being London. A fifth contract was sought to be entered into for the purchase of zinc metal from the Appellant with the terms and conditions of the contract being similar to that under the fourth contract. Though the Respondent No. 1 had not signed the fifth contract, it had accepted a supply of zinc metal from the Appellant following which eight invoices had been raised in pursuance to the contractual obligations arising from the fifth contract. The Respondent No. 1 had moved a civil suit before the Delhi High Court so as to

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<sup>14</sup> *Glencore International AG v M/s Shree Ganesb Metals & Anr.* [2025] INSC 1036.

<sup>15</sup> *Shin-Etsu Chemical Co. Ltd. v Aksh Optifibre Ltd. & Anr.* (2005) 7 SCC 234.



declare that the Appellant's action in invoking of the Letters of Credit for the fulfilment of the outstanding payable amount, as being null and void. The Appellant sought for a reference to arbitration as per the contract which was opposed by the Respondent No. 1 by claiming that the parties had never concluded the contract and that the Section 45 application should be dismissed. It has been held by a Single Judge of the Delhi High Court, and later affirmed by a Division Bench of the High Court, that there did not exist any binding arbitration agreement between the parties to the dispute since the contract did not bear the signature of Respondent No. 1.

**5. Existence of a live and proximate connection with the arbitration agreement is necessary to make the agreement binding on non-signatories:**

The Telangana High Court in *K. Bala Vishnu Raju v Emaar Hills Township Pvt. Ltd.*,<sup>16</sup> held that a non-signatory would be bound by an arbitration agreement upon satisfying the test of existence of a live and proximate connection to the arbitration agreement such that the requirement of actually being a signatory to the agreement becomes irrelevant. The Court clarified that non-signatories who are vitally-connected to the subject matter of the dispute can be considered as being indivisibly-connected to the arbitration agreement so as to be subject to the reliefs claimed by the party under Section 9 of the Arbitration Act. It was found that both Respondent Nos. 1 and 3 have an undeniable interest in the subject matter of the dispute between the Petitioner and Respondent No. 2 because Respondent Nos. 1 and 3 were the recipients of the consideration paid by the Petitioner on behalf of Respondent No. 2 following the terms of the Memorandum of Understanding between them. The Court held that the power to grant interim relief under Section 9 of the Arbitration Act is subject to a party-applicant but is party-indifferent with regards to the target-respondent of the reliefs.

The instant appeals arose from two applications which were filed by Respondent Nos. 1 and 3 before the Commercial Court for the deletion of their names from the array of parties in the petition filed by the Petitioner under Section 9 of the Arbitration Act. It had been held by the Commercial Court that Respondent Nos. 1 and 3 were not signatories to the Memorandum of Understanding which had been entered between the Petitioner and Respondent No. 2, and hence, were not bound by the arbitration agreement contained in the Memorandum of Understanding.

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<sup>16</sup> *K. Bala Vishnu Raju v Emaar Hills Township Pvt. Ltd. & Ors.* (C.R.P. Nos. 1014 and 1184 of 2024, Tel. HC).