



## SEPTEMBER

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### **1. Arbitration clause must be enforced even if it omits to expressly state that Arbitrator's decision is Final and Binding.**

In *Babanrao Rajaram Pund v Samarth Builders & Developers*,<sup>1</sup> the Hon'ble Supreme Court held that even if an arbitration clause lacks specific language like 'binding' or 'final,' it will still be considered a valid agreement for the purpose of invoking powers under Section 11 of the Arbitration and Conciliation Act, 1996 [**"Arbitration Act"**].<sup>2</sup>

While analysing the issue, the Court made it clear that there is no precise form for an arbitration clause and that Section 7 of the Arbitration Act<sup>3</sup> does not stipulate a specific form for an arbitration agreement. The Court critically analysed the impugned agreement and made it clear that the term 'disputes shall be' referred to arbitration in clause 18, meant that there was a clear reference to arbitration in the agreement. The arbitral clause was held to be not invalidated by the omission of the phrases 'final' and 'binding.'

### **2. It is not permitted for Arbitrators to unilaterally issue binding and enforceable orders determining their own fees.**

In *ONGC v Afcons Guanusa JV*,<sup>4</sup> the Supreme Court ruled that the arbitrators' fees must be agreed upon by all parties. It was held that Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees. A unilateral determination of fees violates the principles of party autonomy and the doctrine of the prohibition of in rem suam decisions. The Court maintained that 'party autonomy is a cardinal principle of arbitrations.'

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<sup>1</sup> *Babanrao Rajaram Pund v Samarth Builders & Developers* [2022] SCC OnLine SC 1165.

<sup>2</sup> Arbitration and Conciliation Act, 1996, s 11.

<sup>3</sup> Arbitration and Conciliation Act, 1996, s 7.

<sup>4</sup> *Oil and Natural Gas Corporation v Afcons Guanusa JV*, Petition for Arbitration (Civil) No 5/2022.

### **3. Tax concession-related disputes are not arbitrable.**

In *M/s Shree Enterprise Coal Sales Pvt Ltd. v Union of India*,<sup>5</sup> the Supreme Court ruled that tax concession-related disputes cannot be arbitrated. A division bench of the Court observed that the High Court of Allahabad erred in its finding that the terms of the e-auction stipulated that any dispute might be arbitrated. The Court ruled that while a contractual dispute would be amenable to resolution through arbitration, the dispute in the given matter involved a tax dispute that was not amenable to resolution through arbitration.

### **4. Accepting terms and conditions on website containing arbitration agreement is sufficient to render the agreement valid.**

In *Ingram Micro India Pvt. Ltd. v Mohit Raghuram Hegde, Proprietor Creative Infotech*,<sup>6</sup> a Single Bench of the Bombay High Court held that a party's acceptance of the terms and conditions provided on the website of the opposite party, which included an arbitration agreement, was sufficient to incorporate an arbitration clause between them.

### **5. Commercial Court cannot be regarded as a 'Person or Institution' under the Arbitration Act.**

The Bombay High Court in *Uttam Energy Ltd. v M/s. Shivratna Udyog Ltd.*,<sup>7</sup> ruled that the Commercial Courts Act, 2015 does not disturb the jurisdiction and power of the High Court in relation to the appointment of an arbitral tribunal under Section 11 of the Arbitration Act.<sup>8</sup> It added that the words 'all applications or appeals arising out of such arbitration' as used in Section 10(3) of the Arbitration Act<sup>9</sup> certainly does not contemplate an application to be filed under Section 11 of the Arbitration Act which is required to be filed before the High Court.

The Court also ruled that Commercial Courts cannot be regarded as a 'person or institution' under Section 11(6) of the Arbitration Act<sup>10</sup> and instead, stated that such person or institution would necessarily be a person or any institution which is not a Court and which would not have any judicial

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<sup>5</sup> *M/s Shree Enterprise Coal Sales Pvt Ltd v Union of India*, Civil Appeal No 6539 of 2022.

<sup>6</sup> *Ingram Micro India Pvt Ltd v Mohit Raghuram Hegde, Proprietor Creative Infotech*, [2022] SCC OnLine Bom 1777.

<sup>7</sup> *Uttam Energy Ltd. v M/s Shivratna Udyog Ltd*, Arbitration Petition No. 79 of 2022.

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

<sup>9</sup> Commercial Courts Act, 2015, s 10(3).

<sup>10</sup> Arbitration and Conciliation Act, 1996, s 11(6).

power and by virtue of such designation under sub-section (6-B) of Section 11, it shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.

**6. Mere reference to proposal containing an arbitration clause, unilaterally signed by one party, would not amount to an arbitration agreement.**

In *M/s TCI Infrastructure Limited & Anr. v M/s Kirby Building Systems (Uttaranchal) Private Limited & Anr.*,<sup>11</sup> the Bombay High Court ruled that a mere reference to a proposal containing an arbitration clause that was signed unilaterally by one party in an agreement executed by both the parties, containing independent terms and conditions does not constitute the existence of an arbitration agreement between the parties in a contract executed by both parties and containing independent terms and conditions.

The Court held that for an arbitration agreement to come into existence between the parties, there must be a document executed on behalf of both parties, showing consensus ad-idem, incorporating such an arbitration clause/agreement.

**7. Arbitration agreement not rendered invalid by non-payment/insufficiency of stamp duty.**

The Delhi High Court in *Droosbba Fabricators v Indue Private Limited*,<sup>12</sup> held that the non-payment or insufficiency of stamp duty on the underlying agreement cannot render the arbitration clause invalid. The Bench ruled that while proceeding under the jurisdiction provided by Section 11 of the Arbitration Act,<sup>13</sup> the Court must impound the instrument which has not borne stamp duty and direct the parties to take all necessary steps to cure the stamping defect in relation to the document before the Arbitrator is allowed to initiate the arbitral proceedings.

**8. Award passed by a unilaterally appointed Arbitrator is non-est; Cannot be a bar to the maintainability of petition under Section 11 of the Arbitration and Conciliation Act.**

In *Geeta Poddar v Satya Developers Pvt. Ltd.*,<sup>14</sup> the Delhi High Court reiterated that an award passed by a unilaterally appointed arbitrator is non-est. Consequently, it cannot be a bar to the maintainability of

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<sup>11</sup> *M/s TCI Infrastructure Limited & Anr v M/s Kirby Building Systems (Uttaranchal) Private Limited & Anr*, [2022] SCC OnLine Bom 2802.

<sup>12</sup> *Droosbba Fabricators v Indue Private Limited*, ARB P 695/2021.

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

<sup>14</sup> *Geeta Poddar v Satya Developers Pvt. Ltd.*, [2019] SCC OnLine Del 7406.

a petition under Section 11 of the Arbitration Act.<sup>15</sup> The court held that the appointment of the Arbitrator was non-est, and by necessary corollary, the proceedings conducted and award so rendered by him, would have no legal effect and are also non-est.

**9. Interlocutory orders passed in arbitral proceedings, not resulting in termination of arbitral proceedings, cannot be challenged under Article 227 of the Constitution.**

In *VRS Natarajan v OYO Hotels & Homes*,<sup>16</sup> the Delhi High Court held that a Writ Petition under Article 227 of the Constitution,<sup>17</sup> being directed against an interlocutory award passed by an Arbitral Tribunal on grounds which would be available to the petitioner against any final award which may come to be passed in the said proceedings is not maintainable.

The Hon'ble Court ruled that no statutory or legal proscription exists, to the raising of such a contention as a ground to challenge the final award which may come to be passed in the arbitral proceedings and hence, the challenge under Article 227 was not maintainable against the interlocutory order.

**10. Existence of arbitration agreement can be presumed if no denial is made in respondent's reply.**

The Karnataka High Court in *S.R. Ravi v Karnataka State Tourism Development Corporation*,<sup>18</sup> held that pursuant to Section 7(4)(c) of the Arbitration Act,<sup>19</sup> an arbitration agreement is deemed to exist if the petitioner asserts its existence in its notice of arbitration and the respondent does not deny its existence in its response to the notice. It was found that the phrases 'statements of claim and defence' in Section 7(4)(c) of the Arbitration Act are to be interpreted broadly and that a response to a notice of arbitration comes within the scope of the Section.

**11. Under the Arbitration and Conciliation Act, arbitrators may award interest on interest.**

In *Mahanadi Coalfields Ltd. v B.S. Agarwal, Engineers and Contractors*,<sup>20</sup> the Orissa High Court ruled that the arbitrator can award separate interest on claims which are in nature of interest for delayed payment.

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

<sup>16</sup> *VRS Natarajan v OYO Hotels & Homes*, [2022] SCC OnLine Del 2755.

<sup>17</sup> The Constitution of India, 1950, Article 227.

<sup>18</sup> *S R Ravi v Karnataka State Tourism Development Corporation*, Civil Miscellaneous Petition No 180 of 2020.

<sup>19</sup> Arbitration and Conciliation Act, 1996, s 7(4)(c).

<sup>20</sup> *Mahanadi Coalfields Ltd v B S Agarwal, Engineers and Contractors*, ARBA No 47 of 2005.

It held that Section 31(7)(a) of the Arbitration Act<sup>21</sup> is wide in scope and that there exists no bar in the provision regarding the award of interest on interest. Additionally, the Court observed that the bar under Section 3 of the Interest Act, 1978<sup>22</sup> does not apply to interest awarded under the Arbitration Act.

## OCTOBER

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<sup>21</sup> Arbitration and Conciliation Act, 1996, s 31(7)(a).

<sup>22</sup> Interest Act, 1978, s 3.

- 1. The power granted by Section 9 of the A&C Act is not completely independent of the well-known criteria governing the issuing of interim injunctions that govern the courts in general.**

One of the main issues before the Bombay High Court in *Kalpataru Limited v Middle Class Friends Co-operative Housing Society Limited*<sup>23</sup> was whether Letter of Interest [“LOI”], bid documents and other such similar contracts can be considered to be a concluded contract. The two-judge bench held that tender documents and LOI granted to the successful bidder cannot be concluded as a final contract. The court held that the powers under Section 9 of the A&C act are not totally independent from the principles that govern the granting of interim injunction.

- 2. Associate member of a joint venture cannot invoke the dispute resolution clause in its individual capacity.**

A single judge bench of Delhi High Court in *Consulting Engineers Group Ltd v National Highway Authority of India (NHAI)*<sup>24</sup> held that consulting engineer group could not approach the court by invoking the dispute resolution clause in its independent capacity. In addition, the court relied mainly on two cases to reach this decision. First, in *Geo miller Co. Pvt Ltd v Bihar urban infrastructure development corporation Ltd and Anr*,<sup>25</sup> the Delhi High Court had held that in cases where an agreement is with consortium, the intention is not for one member to invoke the arbitration clause separately. Secondly, in *Gammon India Ltd v Commissioner of Customs, Mumbai*<sup>26</sup>, the Supreme Court held recognized a joint venture as a single legal entity held that actions by one of the members would not be recognizable.

- 3. The period of limitation for initiating arbitration would start only after the parties exhaust pre-arbitration steps (negotiation, mediation etc).**

Division bench of the Delhi High Court in *Welspun Enterprises Ltd v NCC Ltd*<sup>27</sup> held the following:

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<sup>23</sup> *Kalpataru Limited v Middle Class Friends Co-operative housing society limited*, Commercial Arbitration Appeal (LDG) No 194 of 2022.

<sup>24</sup> *Consulting Engineers Group Ltd v National Highway Authority of India*, [2022] LiveLaw (Del) 942.

<sup>25</sup> *Geo miller C. Pvt Ltd v Bihar urban infrastructure development corporation Ltd and Anr*, [2016] SCC OnLine Del 6248.

<sup>26</sup> *Gammon India Ltd v Commissioner of Customs, Mumbai* [2011] 12 SCC 499.

<sup>27</sup> *Welspun Enterprises Ltd v NCC ltd*, FAO(OS)(COMM) No 9/2019 & CM No 2239/2019.

- (a) Dispute resolution clauses provide for a multi-tier dispute resolution mechanism and the entire purpose of such a process is to provide the parties an opportunity to resolve the dispute before resorting to adversarial proceedings.
- (b) The period of limitation would run when a party acquires the right to refer the dispute for arbitration.
- (c) If the contract between the parties contemplates pre-arbitration steps before commencing arbitration, then the period of limitation would start only after the parties have completely exhausted such steps.

#### **4. A “notified claim” under the contract, falls outside the scope of arbitration.**

The petitioner in *M/s. Janta Associates and Co. Ltd. v Indian Oil Foundation & Anr*<sup>28</sup> filed a petition under Section 11 of the Arbitration Act before the Delhi High Court for the appointment of a sole arbitrator in accordance with the general conditions of contract [“GCC”]. The court referred the opening sentence of Clause 9.0.1.0. of the GCC and stated that the said clause indicates that disputes arising out of a Notified Claim, as included in the Final Bill, have to be referred to an arbitral tribunal.

The court referred to an observation made in a recent supreme court judgement of *Indian oil corporation v NCC Ltd*<sup>29</sup> wherein the apex court had held that certain matters are excluded from the scope of arbitration, including whether a particular dispute is a notified claim or not. Therefore, the court rejected the petitioners request to refer the dispute to arbitration at this stage.

#### **5. Arbitral tribunal can award interest despite a contractual agreement prohibiting subject to no such pleading regarding the prohibition has been made.**

In *The Union of India v R.K. Constructions the Madras High Court*<sup>30</sup> opined that in the adversarial system, adjudication is always carried by pleading and producing evidence and if a party wants to resist the same then the party must plead and bring on record the same. In the present, case the Court held that it was the petitioner’s responsibility to plead and bring the contractual agreement on record in which the prohibition has been agreed to.

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<sup>28</sup> *M/s Janta Associates and Co Ltd v Indian Oil Foundation & Anr*, ARB P 792/2020 & IA 1807/2021.

<sup>29</sup> *Indian oil corporation v NCC Ltd*, Civil Appeal No 341 of 2022.

<sup>30</sup> *The Union of India v R K Constructions*, Arb OP (Com Div) No 148 of 2022.

**6. Award cannot be set aside merely because the arbitrator was appointed in more than two arbitral proceedings between the parties.**

The Delhi High court in *Bharat Foundry and Engineering Works v Intec Capital Ltd*<sup>31</sup> relied on the decision by Supreme Court in *HRD Corporation v GAIL Ltd*<sup>32</sup> to hold that mere appointment of an arbitrator in more than two arbitrations, in last three years, would not *per se* make him ineligible to be appointed as an arbitrator unless it is established by attending facts that the arbitrator's neutrality was indeed compromised.

**7. Invoking the concept of “Group of Companies”, an arbitration agreement can be binding on non-signatories.**

In *Esha Kedia v Milan. R. Parekh & Ors*,<sup>33</sup> the Delhi High Court held that signatures which were obtained by threat or coercion, cannot be considered while looking at an application under Section 11 of the Arbitration Act for appointing an arbitrator. The court also opined that a company is considered a single entity which has its own separate rights and liabilities, therefore an agreement entered into by a member company cannot be binding on other companies.

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<sup>31</sup> *Bharat Foundry and Engineering Works v Intec Capital Limited*, FAO 145/2021.

<sup>32</sup> *HRD corporation v GAIL Ltd*, [2022] 12 SCC 471.

<sup>33</sup> *Esha Kedia v Milan R Parekh & Ors*, ARB P 809/2019.

# NOVEMBER

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## **1. Clear and explicit reference mandatory to make an arbitration clause to be a part of an agreement.**

While interpreting Section 7(5)<sup>34</sup> of the Arbitration Act, the Bombay High Court in case of *JSW Steel Limited v Bellary Oxygen Company Private Limited & Anr.*<sup>35</sup> held that, there must be a clear and explicit reference to make an arbitration clause to be a part of an agreement. The Court while applying the test, found that both the agreements are workable in absence of each other, and hence cannot be concluded to be inextricably interlinked. Hence, arbitration clause contained in the first agreement cannot be invoked to a dispute arising out of the subsequent agreement, when no express mention of the same is there in the subsequent contract.

## **2. Arbitrator's power under Section 28(3) prevents him to act against the express understanding of the parties.**

The Calcutta High Court in case of *M/S. Universal Seaport Private Limited v The Chairman, Board of Trustees for the Port of Kolkata*<sup>36</sup>, while setting aside the arbitral award held that an Arbitrator draws its jurisdiction from the contract itself and therefore, cannot invoke principles of public law like Article 14<sup>37</sup> while deciding a dispute between private contractual parties, rather should act within the four-walls of the contract itself. The Court noted Section 28(3)<sup>38</sup> of the Arbitration Act, which allows the arbitrator to determine the dispute based on the “trade usages”, is applicable to certain cases in which there is an ambiguity or uncertainty in the contract on some aspect. However, the same cannot be applied in contravention of the express agreement.

## **3. Presence of arbitration clause in an agreement is immaterial for availing benefit under MSMED Act.**

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<sup>34</sup> Arbitration and Conciliation Act, 1996, s 7(5).

<sup>35</sup> *JSW Steel Limited v Bellary Oxygen Company Private Limited & Anr.*, [2022] LiveLaw (Bom) 462.

<sup>36</sup> *M/S Universal Seaport Private Limited v The Chairman, Board of Trustees for the Port of Kolkata*, [2022] LiveLaw (Cal) 332.

<sup>37</sup> Constitution of India, art. 14.

<sup>38</sup> Arbitration and Conciliation Act, 1996, s 28(3).

The Andhra Pradesh High Court in case of *Dalapathi Constructions v The State of Andhra Pradesh & Ors*,<sup>39</sup> held that the Micro, Small and Medium Enterprises Development Act, 2006<sup>40</sup> [“MSMED Act”] applies to an enterprise as soon as it is registered with the MSME council. Rejecting the respondent’s contention, the bench ruled that the presence of arbitration clause in an agreement is immaterial for the application of MSMED Act, as the act possess an overriding effect over the arbitration clause. Section 18<sup>41</sup> of the MSMED Act, provides a statutory remedy to any registered MSME to file their dispute before the MSME council, hence presence of an arbitration clause cannot take way the right under Section 18.

In the present case, the petitioner entered into agreement with the respondent for establishing a manufacturing plant and acquired machinery for the same. Later, the agreement was terminated but the parties entered into another agreement where the respondent promised to buy the said machinery and other related products, but the same was not fulfilled. The petitioner then filed an application before the MSME council, which rejected the application on the grounds that the dispute has arose from a mere trading activity, and not from a manufacturing or service activity. However, the Court relying on *Shah & Parikh v Urmi Trenchless Technology*,<sup>42</sup> set aside the order and observed that Section 18<sup>43</sup> of MSMED act applies to all registered MSMEs irrespective of the nature of their activity.

#### **4. Under Section 34, courts cannot set aside arbitral award unless it appears clearly and fundamentally ultra vires.**

The Uttarakhand High Court in the matter of *M/s Ravindra Kumar Gupta and Sons v Union of India & Ors*.<sup>44</sup> interpreted the application of section 34<sup>45</sup> of the Arbitration Act. It ruled that under Section 34, it is only permissible for the court to disagree with the arbitral tribunal’s conclusions and adopt a different stance when the award is clearly and fundamentally unconstitutional, or where there is a violation of the law that affects public interest and policy. The Court ruled that such jurisdiction can only be exercised in certain cases where the arbitral award is granted in want of good faith or against public policy, which was not in the present case.

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<sup>39</sup> *Dalapathi Constructions v The State of Andhra Pradesh & Ors*, [2022] SCC OnLine AP 2013.

<sup>40</sup> Micro, Small and Medium Enterprises Development Act, 2006.

<sup>41</sup> Micro, Small and Medium Enterprises Development Act, 2006 s 18.

<sup>42</sup> *Shah & Parikh v Urmi Trenchless Technology*, [2019] SCC OnLine Bom 340.

<sup>43</sup> Micro, Small and Medium Enterprises Development Act, 2006, s 18.

<sup>44</sup> *M/s Ravindra Kumar Gupta and Sons v Union of India & Ors*, [2022] LiveLaw (Utt) 41.

<sup>45</sup> Arbitration and Conciliation Act, 1996, s 34.

**5. The constitution of an arbitral tribunal under section 18, is not barred because of Section 31 of the CIC Act.**

The Madras High Court has clarified the extent of the bar contained under Section 31<sup>46</sup> of the Credit Information Companies (Regulation) Act, 2005 [“CIC Act”] in its ruling in the matter of *Kirankumar Moolchand Jain v TransUnion CIBIL Ltd.*<sup>47</sup> It was held that the bar is not applicable to the constitution of an arbitral tribunal provided under section 18<sup>48</sup> of the CIC Act. The goal and intent of section 31 of the CIC Act is to prevent the parties from resolving disputes in any way other than those allowed under the CIC Act, because Section 18 of the CIC Act provides for the arbitration of disputes, the provisions of Section 31 would not preclude the formation of an arbitral tribunal to adjudicate disputes in accordance with the CIC Act’s requirements.

**6. Arbitration clause not affected by the maintainability of the petition under MSMED Act.**

In *M/s. Deetech Projects Pvt. Ltd. v M/s. Batliboi Environmental Engineering Ltd.*,<sup>49</sup> the Madras High Court distinguished between the awards based on merits and non-merits given by Facilitation Council under the MSMED Act.<sup>50</sup> The question before the Court was to decide upon the applicability of res-judicata based on a decision given by Facilitation Council. It was ruled that the arbitration clause in the parties’ contract would remain in effect if the Facilitation Council declines to exercise jurisdiction on the grounds that the petition is not maintainable. Thus, if the Facilitation Council has not adjudicated the matter based on merits, then its decision would not serve as res-judicata and would not restrict further arbitral proceedings.

The respondent argued that the petitioner has renounced and waived its right under the arbitration clause to resolve the dispute through arbitration since it had first chosen to have the dispute resolved under the MSMED Act. The respondent contended that whenever the parties exercise the statutory procedure provided by the MSMED Act, the arbitration clause is deemed to be terminated. However, the court rejected the contention raised by respondent and observed that as the decision by the Facilitation Council was not based on merits it would not bar any further arbitral proceedings.

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<sup>46</sup> Credit Information Companies (Regulation) Act, 2005, s 31.

<sup>47</sup> *Kirankumar Moolchand Jain v TransUnion CIBIL Ltd.*, [2022] LiveLaw (Mad) 461.

<sup>48</sup> Credit Information Companies (Regulation) Act, 2005, s 18.

<sup>49</sup> *M/s Deetech Projects Pvt Ltd v M/s Batliboi Environmental Engineering Ltd.*, [2022] LiveLaw (Mad) 465.

<sup>50</sup> Micro, Small and Medium Enterprises Development Act, 2006.

**7. Under Section 15(2), period of limitation to appoint a substitute arbitrator starts on the day of removal or recusal of the arbitrator.**

The Delhi High Court in the case of *Tricolor Hotels Limited v Dinesh Jain*,<sup>51</sup> rejecting the application of condonation of delay under section 5<sup>52</sup> of the Limitation Act, 1963 [“**Limitation Act**”], held that the period of limitation for appointing a substitute arbitrator under section 15(2)<sup>53</sup> of the Arbitration Act initiates on the date of recusal or removal of the arbitrator. The Court held that section 137<sup>54</sup> of the Limitation Act is not based on knowledge and the Act specifically provides for instances where the knowledge of a party is essential for the purpose of commencement of the limitation period.

**8. No unqualified person can serve as an arbitration even appointed before the enforcement of Section 12(5).**

In a recent case,<sup>55</sup> an agreement was signed by the parties wherein the arbitration clause mentioned that respondent’s General Manager would be appointed as the sole arbitrator. However, the respondent requested for the recall of the said order and appointed another arbitrator to settle the dispute. The High Court of Delhi held that in view of section 12<sup>56</sup> of Arbitration Act, independence and impartiality of an arbitrator is a continuing requirement and a person who is ineligibly acting as an arbitrator is not allowed to continue just because the arbitral proceedings began before section 12(5)<sup>57</sup> came into force. Further, it was held that section 12(5) would apply regardless of whether notice of arbitration was given pre or post-amendment, subject to the condition that the appointment was made on a date when section 12(5) was in force.

**9. Limitation period for Section 34 application doesn’t get automatically extended if application under Section 33 is filed.**

In the case of *Vidhur Bhardwaj v Horizon Crest India Real Estate & Ors*,<sup>58</sup> the application was filed under section 33 of the Arbitration Act after the limitation period has expired and the same was disposed of as not maintainable. After which, the petitioner filed an application under section 34 of the Act which was dismissed as non-maintainable due to expiry of limitation period. Hence, the present petition was

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<sup>51</sup> *Tricolor Hotels Limited v Dinesh Jain*, [2022] LiveLaw (Del) 1082.

<sup>52</sup> Limitation Act, 1963, s 5.

<sup>53</sup> Arbitration and Conciliation Act, 1996, s 15(2).

<sup>54</sup> Limitation Act, 1963, s 137.

<sup>55</sup> *Ram Kripal Singh Construction Pvt Ltd v NTPC*, [2022] LiveLaw (Del) 1090.

<sup>56</sup> Arbitration and Conciliation Act, 1996, s 12.

<sup>57</sup> Arbitration and Conciliation Act, 1996, s 12(5).

<sup>58</sup> *Vidhur Bhardwaj v Horizon Crest India Real Estate & Ors*, [2022] LiveLaw (Del) 1094.

filed against the dismissal order. The petitioner argued that application under section 34 was filed well within time because the limitation period for an application under section 34 of the Act is to be counted from the day when the application under section 33 was dismissed.

It was ruled that the deadline for submitting the petition under section 34<sup>59</sup> of the Arbitration Act will not automatically be extended if an application under section 33<sup>60</sup> of the Arbitration Act is filed and is non-maintainable due to the expiry of the limitation period.

#### **10. Arbitration proceedings can be initiated even when proceedings under SARFAESI Act are pending.**

In the matter of *Hero Fincorp. Limited v Techno Trexim (I) Pvt. Ltd. & Ors*,<sup>61</sup> it was reiterated once again that the arbitration proceedings could still be initiated even if proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002<sup>62</sup> [“**SARFAESI Act**”] are going on. The single-judge bench held that proceedings under SARFAESI Act would not be a bar to arbitration proceedings and that both can go on simultaneously.

#### **11. Interlocutory order of Arbitral Tribunal can't be challenged without exhausting alternate remedy.**

The Delhi High Court in case of *Future Coupons Private Limited & Ors. v Amazon.com NV Investment Holdings LLC & Anr.*,<sup>63</sup> while dismissing the petition filed under Article 227,<sup>64</sup> held that an interlocutory order of an Arbitral Tribunal cannot be challenged when there is another remedy available to aggrieved party. The Court also observed that the order of the arbitral tribunal dismissing the application under section 32(2)(c)<sup>65</sup> of the Act for dismissing the arbitral proceedings along with the order allowing the respondent (Amazon) to make amendments in their statement of claims is indeed an interlocutory order and hence cannot be challenged as there is no such statutory provision in the Arbitration Act.

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<sup>59</sup> Arbitration and Conciliation Act, 1996, s 34.

<sup>60</sup> Arbitration and Conciliation Act, 1996, s 33.

<sup>61</sup> *Hero Fincorp. Limited v Techno Trexim (I) Pvt Ltd & Ors*, [2022] LiveLaw (Del) 1101.

<sup>62</sup> Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002

<sup>63</sup> *Future Coupons Private Limited & Ors v Amazon.com NV Investment Holdings LLC & Anr.*, CM (M) 1140/2022 & CM APPL 45939/2022, CM APPL 45940/2022, CM APPL 45941/2022.

<sup>64</sup> Constitution of India, art. 227.

<sup>65</sup> Arbitration and Conciliation Act, 1996, s 32(2)(c).

However, the single-judge bench noted that since the final arbitral award can be challenged under section 34(2)(a)(iv)<sup>66</sup>, the petitioner can challenge the same before the Arbitral Tribunal and therefore, a statutory remedy does exist with the petitioner. The Hon'ble Court therefore dismissed the present petition placing reliance on the judgement of the Apex court in case of *Bhaven Constructions v Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.*<sup>67</sup> that restricted courts to exercise jurisdiction under Article 227 against the interlocutory orders of the arbitral tribunal, except for cases when there is any other remedy left or the order has been passed in want of good faith.

## **12. Arbitrator himself has the jurisdiction to decide whether the arbitration agreement is valid or not.**

In case of *PVR Limited v Imperia Wishfield Private Limited*,<sup>68</sup> the Delhi High Court, while accepting an application to appoint an arbitrator under section 11<sup>69</sup> of Arbitration Act, ruled that the validity of an arbitration agreement is also an arbitral issue to be decided by the Arbitrator and hence, the court cannot intervene on the issue while entertaining a petition under section 11 of the Arbitration Act. The single judge bench also highlighted the doctrine of severability to say that an arbitration clause is always a severable part of an agreement and can stand even if the agreement is terminated.

The Court placing reliance on “*when in doubt, do refer*” stance, of the Apex court propounded in case of *Intercontinental Hotels Group (India) Private Ltd. & Anr. v Waterline Hotels Private Limited*,<sup>70</sup> holding that whether an arbitration agreement is valid or not is in itself an arbitrable issue and an arbitrator is well within its rights to decide on its own jurisdiction.

## **13. Section 11 of the SARFAESI Act can't be invoked even if financial institution itself is a borrower.**

In *Bell Finvest India Ltd. v A U Small Finance Bank Limited*<sup>71</sup> it was ruled by the Delhi High Court that though section 11<sup>72</sup> of SARFAESI Act provides for arbitration in disputes among financial institutions, the same cannot be interpreted to mean that every transaction between the financial institutions can be termed to fall under the ambit of section 11. The single-judge bench observed that

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<sup>66</sup> Arbitration and Conciliation Act, 1996, s 34(2)(a)(iv).

<sup>67</sup> *Bhaven Constructions v Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.*, [2022] 1 SCC 75.

<sup>68</sup> *PVR Limited v Imperia Wishfield Private Limited*, 2022 LiveLaw (Del) 1109.

<sup>69</sup> Arbitration and Conciliation Act, 1996, s 11.

<sup>70</sup> *Intercontinental Hotels Group (India) Private Ltd & Anr v Waterline Hotels Private Limited* [2022] 7 SCC 662.

<sup>71</sup> *Bell Finvest India Ltd v A U Small Finance Bank Limited*, 2022 LiveLaw (Del) 1057.

<sup>72</sup> Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002, s 11.

even if the petitioner is a financial institution, it only possesses a lender-borrower relationship with the respondent bank.

In the present case the petitioner, a Non-Banking Finance Company (NBFC), took a loan of Rs. 10 cr. from the respondent bank, which eventually turned into NPA. The respondent bank therefore, initiated the recovery proceedings before the DRT under section 13<sup>73</sup> of the SARFAESI Act, to which the petitioner objected and argued that since the dispute is between the financial institutions, the same shall be resolved through arbitration under section 11 of SARFAESI Act and DRT do not have any jurisdiction in the matter. Aggrieved by the denial of respondent to appoint an arbitrator, the present petition was filed before the Hon'ble High Court of Delhi. The court however, relying on the judgement of *Vidya Drolia and Transcore v UOI*<sup>74</sup> ruled that a lender-borrower dispute is non-arbitrable and should be settled before DRT.

**14. Mere fact that the arbitrator is also adjudicating two other arbitral proceedings not a ground to set aside the award, necessary to show that the arbitrator was biased.**

In the case of *Bharat Foundry and Engineering Works v Intec Capital Limited*,<sup>75</sup> Delhi High Court held that circumstances mentioned under Schedule V do not by itself render the arbitrator ineligible. Just because an arbitrator has been appointed in more than two arbitral proceedings between the parties, the award can't be said aside. For the award declared by such arbitrator to be declared invalid, it is needed to show that the arbitrator was biased, and did not act independently.

**15. Arbitrator can adjudicate only the 'notified' claims, failure to notify does not indicate a waiver of the requirement.**

In the case of *L&T Hydrocarbon Engineering Limited ["L&T"] v Indian Oil Corporation Ltd ["IOCL"]*,<sup>76</sup> IOCL and L&T entered into an agreement, and the IOCL failed to make payment as per the contract. Subsequently, arbitration was started. Petitioner claimed that selecting an arbitrator from the provided list can't be valid as it affects the right of the petitioner to choose its arbitrator. A single judge bench of Delhi High Court held that an arbitrator gets the jurisdiction only to adjudicate those claims which are notified by the specified authority. Simultaneously, the court also held that the process of

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<sup>73</sup> Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002, s 13.

<sup>74</sup> *Vidya Drolia v Durga Trading Corpn*, [2019] 20 SCC 406.

<sup>75</sup> *Bharat Foundry and Engineering Works v Intec Capital Limited* 2022 LiveLaw (Del) 1058.

<sup>76</sup> *L&T Hydrocarbon Engineering Limited v Indian Oil Corporation Ltd*, [2022] LiveLaw (Del) 1075.

forwarding a selected panel of arbitrators is no longer valid, as it restricts the free choice given to a party to select the arbitrator.

Relying on the Supreme Court's decision in *Voestalpine Schienen GmbH v Delhi Metro Corporation Limited*,<sup>77</sup> the Hon'ble Court deleted the clause which restricted petitioner's right to appoint his own arbitrator. Further relying on another decision of the Supreme Court,<sup>78</sup> the bench rejected petitioner's contention, and remanded the matter to the General Manager to decide whether the matter is to be referred for arbitration or not.

#### **16. High Court having original jurisdiction can only set aside an arbitration award.**

In the case of *Yashpal Chopra v Union of India*<sup>79</sup>, Supreme Court held that a petition to set aside arbitration award is maintainable before a High Court only when it has original civil jurisdiction. If the High Court doesn't have original jurisdiction, the concerned District Court can be considered the "court" under section 2(e)<sup>80</sup> of the Act, and therefore, an application under section 34<sup>81</sup> should lie before the concerned District Court, and not the High Court.

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<sup>77</sup> *Voestalpine Schienen GmbH v Delhi Metro Corporation Limited* [2017] 4 SCC 665.

<sup>78</sup> *Indian Oil Corpn Ltd v NCC Ltd.* [2022] SCC OnLine SC 896.

<sup>79</sup> *Yashpal Chopra v Union of India*, 2022 LiveLaw (SC) 900.

<sup>80</sup> Arbitration and Conciliation Act, 1996, s 2(e).

<sup>81</sup> Arbitration and Conciliation Act, 1996, s 34.

### **1. Scope of Section 11(6) of the Arbitration Act.**

The Apex Court in a recent judgement set aside the Delhi High Court judgement that was passed under Section 11(6) of the Arbitration Act. It held that at such a stage the High Court was required to hold a preliminary study over whether the dispute fell within the scope of the arbitration agreement and if arbitration was possible. If the Courts are ex-facie certain that the arbitration agreement is non-existent, it is their duty to undertake a preliminary enquiry into the same.<sup>82</sup>

### **2. Enforcement of Award- The Need of the Hour.**

The Supreme Court of India in an oral observation stated that without proper enforcement of arbitration awards India's aspirations to become an international arbitration hub shall remain unfulfilled. The Supreme Court brought to notice the fact that previously the award had already been upheld by the Supreme Court, yet the award was again under intense challenges.<sup>83</sup>

### **3. Delhi High Court held that the requirement of notice of arbitration is a sine qua non for commencing an arbitral proceeding.**

The High Court of Delhi has held that a notice of arbitration is an essential requirement without which an arbitration proceeding cannot be commenced. Without the notice of arbitration, the invocation of the Court's jurisdiction stands invalid. This notice is not a mere technicality according to the Bench comprising of Justice Prateek Jalan, rather it is an essential and compulsory requirement.<sup>84</sup>

### **4. The High Court of Delhi has held that the High Courts do not inherently have the power to review an order passed under Section 11 of the Arbitration and Conciliation Act.**

According to the ruling of the Delhi High Court, orders passed under Section 11 of the Arbitration Act cannot be reviewed by the High Courts of India. It was held that the power to review has not been inherently provided for under Section 11. Unless there is a specific provision conferring power

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<sup>82</sup> *M/s Emaar India Ltd v Tarun Aggarwal Projects LLP & Anr*, [2022] SCC OnLine SC 1328.

<sup>83</sup> *Delhi Airport Metro Express Pvt Ltd v Delhi Metro Rail Corporation Ltd*, [2022] SCC OnLine SC 549.

<sup>84</sup> *Rahul Jain v Atul Jain* ARB P 539 of 2017.

to review, similar to that enjoyed by the Supreme Court through Article 137, the High Court's cannot overstep without being empowered to do so.<sup>85</sup>

**5. The Disclosure by the Arbitrator is not a discretionary but a mandatory requirement without which the Awards stands vitiated- Delhi High Court.**

The High Court of Delhi has held that disclosure by the arbitrator under Section 12 r/w 6<sup>th</sup> Schedule of the Arbitration Act is not a discretionary but a mandatory requirement. The failure to disclose would give rise to doubts regarding the impartiality of the arbitrator thus vitiating the proceedings itself along with any consequent awards. To ensure the integrity of the arbitrator necessary information must be disclosed as an obligation on their part. The Court also reiterated that an award passed by the unilaterally appointed arbitrator is non-est in law.

**6. Calcutta High Court reiterated that Section 9 of the Arbitration and Conciliation Act is a provision that is also applicable to foreign seated arbitration.**

Section 9 of the Arbitration Act provides for interim relief for foreign seated arbitral proceedings in addition to domestic arbitral proceedings. This was held by Justice Shekhar B Saraf of the Calcutta High Court. Simply because the parties chose a foreign seat of arbitration does not vitiate the application of Part I of the Arbitration Act.<sup>86</sup>

**7. Arbitration and Conciliation Act 2015 is applicable even if arbitration commenced prior in case specified in agreement.**

The Bombay High Court ruled on a matter involving the applicability of the Arbitration and Conciliation (Amendment) Act, 2015. Even though the arbitral proceedings had commenced prior to 23.10.2015, the parties had an understanding to be bound by the amendment act even it was bound by the 1996 Arbitration Act.<sup>87</sup>

**8. Courts to consider only terms of Bank Guarantee.**

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<sup>85</sup> *Kush Raj Bhatia v M/s DLF Power & Services Ltd*, ARB P 869/2022.

<sup>86</sup> *Chemex Oil Private Limited v Seastarr International Pvt Ltd* AP 707 of 2022.

<sup>87</sup> *M/s Skoda Auto Volkswagen India Private Limited v M/s Commercial Auto Products Private Limited*,

The Allahabad High Court has made a crucial decision in relation to Section 9 of the Arbitration Act. The Court held that when under the Arbitration Act, the Bank sought to restrain the invocation or encashment of Bank Guarantee, only the terms of the bank guarantee agreement and not the main contract agreement be considered.<sup>88</sup>

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<sup>88</sup> *UP Expressways Industrial Development Authority v M/s Sabakar Global Ltd*, [2022] SCC OnLine All 782.

## JANUARY

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### **1. The matter concerning the enforcement of arbitral award in the case of Delhi Metro and DAMEPL heats up again.**

The matter of *Delhi Airport Metro Express Private Limited* [“**DAMEPL**”] *v* *Delhi Metro Rail Corporation*<sup>89</sup> [“**DMRC**”] has undergone certain recent developments as the DMRC vide an affidavit has submitted before the Delhi High Court that the Delhi government has refused to pay its share in the dues to DAMEPL. The matter began when the DAMEPL moved the Delhi High Court to have the arbitral award to the tune of Rs. 7,200 crores, of which the DMRC has paid only Rs. 2,600 crores to date. The DMRC recently submitted in the High Court that the government vide a letter in December 2022 has signified a reservation to pay its contribution to settle the dues. The matter was most recently heard on January 19, 2023, with the counsels being unavailable, the same was then listed for January 31, 2023.

### **2. Madras High Court upholds arbitration award as given by the Singapore International Arbitration Centre.**

In this recent case,<sup>90</sup> the Madras High Court has upheld the award from an arbitration proceeding concerning the same parties at the Singapore International Arbitration Centre. The High Court had upheld the enforcement of the award, with interest payable on the said amount of Rs. 195 crores at 7.24% p.a. from the period beginning July, 2017. It was held by the Court that the Shriram Group were unable to provide any cogent reasoning as to why the award given by the foreign arbitration centre not be enforced.

### **3. Significant victory for India in the Devas saga.**

The Supreme Court of Mauritius has given the Indian government a sigh of relief as it recently vide an interim order enjoined the shareholders of the insolvent firm Devas Multimedia from pursuing a new arbitration proceeding against India at the UN Commission on International Trade Law. The matter finds its origin in the year 2011 when the then Manmohan Singh-led government terminated a contract entered into by Devas Multimedia and Antrix Corporation.

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<sup>89</sup> *Delhi Airport Metro Express Private Limited v Delhi Metro Rail Corporation* EX APPL (OS) 38/2022

<sup>90</sup> *GPE (India) Ltd v Twarit Consultancy Services* ARB OP (COM DIV) 88/2022.

**4. Supreme Court holds that there existed no bias against foreign arbitrators in Reliance Industries Limited arbitration matter.**

The Supreme Court of India, in the matter of *Union of India v Reliance Industries Ltd.*<sup>91</sup> has dismissed the plea of the central government aimed at barring the arbitration proceedings that have been instituted by the Reliance Industries Limited, along with British Petroleum and Niko Resources against the Petroleum and Natural Gas Ministry. The matter originates from a dismissal on similar grounds that the government had to face at the Delhi High Court. It was held while dismissing the claims of bias as held by the arbitrators that unless there is concrete proof in terms of some motivated error, the bias cannot be established.

**5. Bombay High Court passes an Order in the Times Group Case; appoints a sole arbitrator.**

Justice (Retd.) Akil Kureshi has been appointed as the sole arbitrator by the Bombay High Court in the matter of *Bennett Coleman & Co. Ltd. v MAD India Pvt. Ltd.*<sup>92</sup> The judgment passed earlier this year not only provided for the appointment of the arbitrator but also decided that a clause allowing the referral of disputes or breaches arising out of an order of advertisement to a sole arbitrator would constitute an arbitration clause. This clause was included at the back of the tax invoice in the case at hand.

**6. The Supreme Court gives ruling concerning the applicability of the provision with respect to time limit to international commercial arbitration.**

The Supreme Court has in the matter of *Tata Sons Pvt. Ltd. v Siva Industries and Holdings Ltd.*,<sup>93</sup> held that the time limit of a period of 12 months as envisaged under Section 29A<sup>94</sup> of the Arbitration Act does not apply to cases pertaining to international commercial arbitration. It was noted by the Division Bench headed by CJI DY Chandrachud that as per the provision, there is only an expectation to wrap up the proceedings under 12 months and that the same is not binding in nature. It was held that Section 29A is merely directory in nature.

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<sup>91</sup> *Union of India v Reliance Industries Ltd*, Spl Leave Pet (Civ) Diary No 40985/2022.

<sup>92</sup> *Bennett Coleman & Co Ltd v MAD India Pvt Ltd*, Comm Arb App 211/2022.

<sup>93</sup> *Tata Sons Pvt Ltd v Siva Industries and Holdings Ltd*, Arb (Civ) 38/2017.

<sup>94</sup> Arbitration and Conciliation Act, 1996, s 29A.

**7. Contracts containing arbitration clauses are required to be registered and stamped and unstamped arbitration agreement though valid are inadmissible as evidence: Amicus Curiae to a Constitution bench of the Supreme Court.**

In the case of *M/s N.N. Global Mercantile Pvt. Ltd. v M/s. Indo Unique Frame Ltd. and Ors*,<sup>95</sup> the Apex court held that Non-payment of stamp duty on the commercial contract would invalidate even the arbitration agreement and render it non-existent in the eyes of law and thus it would become unenforceable. However, the amicus curiae specified that the arbitration agreement has to be separately stamped by whether the arbitration agreement is valid or not is a substantive argument and cannot be decided by the courts. The arbitrator is to decide whether the arbitration agreement is duly stamped. The amicus curiae also stated that an unstamped arbitration agreement cannot be used as evidence for enforcement of substantive rights and obligations.

The case was an appeal from the commercial court which rejected the matter after which the matter was appealed to the High Court and then the Apex court. The matter was that there was a sub contract which had an arbitration clause. When the dispute arose between the parties, the respondent filed an application under section 8 of the Arbitration Act<sup>96</sup> and sought reference to arbitration. This application was rejected by the Commercial Courts after which the party sought a writ petition in Bombay High court where the application of section 8 was held maintainable. One of the sub issues raised was that since the sub contract which consisted the arbitration clause was unregistered and unstamped, it rendered the arbitration agreement unenforceable. This provision was under Section 35 of Indian Stamp Act, 1899.<sup>97</sup>

**8. Bombay High Court rules that limitation is a question of law and fact and cannot involve the notions of morality and justice for setting aside an arbitral award.**

In the case of *Thomas Cook (India) Limited v Red Apple Chandrarat Travel*,<sup>98</sup> Bombay High Court ruled that barring claims on grounds of limitation is a mixed question of law and fact and cannot involve the “notions of morality or justice” for setting aside an arbitral award under section 34 of the Arbitration Act.<sup>99</sup> In the arbitral award, the argument that the respondent’s claim was barred by the

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<sup>95</sup> *M/s NN Global Mercantile Pvt Ltd v M/s Indo Unique Frame Ltd and Ors*, Civil Appeal No 3802-3803/2020.

<sup>96</sup> Arbitration and Conciliation Act, 1996, s 8.

<sup>97</sup> Indian Stamp Act, 1899, s 35.

<sup>98</sup> *Thomas Cook (India) Limited v Red Apple Chandrarat Travel*, [2023] SCC OnLine Bom 97.

<sup>99</sup> Arbitration and Conciliation Act, 1996, s 34.

law of limitation was rejected by the arbitral tribunal. Subsequently, the award was challenged in Bombay High Court where the bench observed that “the ground of limitation, being a mixed question of law and fact, can never be a ground which would involve any basic notion of morality of justice for an arbitral award to be set aside. This would also entail a review on the merits of the disputes.”

**9. Delhi High Court rules that incorrect application of law does not make the arbitral award liable to be set aside on grounds of perversity.**

In *Bright Simons v Sproxsil Inc. & Anr.*,<sup>100</sup> Delhi High Court held that in order to conclude that the arbitral award was passed without complying with the principles of Natural Justice and is perverse, it has to be shown that the award was passed without taking the judicial approach or that the award was based on no evidence. The ruling of the court was that while adjudicating a dispute over domain names under .IN Domain Name Dispute Resolution Policy [“**INDRP Policy**”], when the arbitrator has wrongly applied the said policy, the award cannot be set aside as there is an absence of perversity. The petitioner claimed that under the INDRP Policy, the findings of the arbitrator must be confined to the submissions made and the documents provided by the party and in the present case, the arbitrator exceeded his jurisdiction. In this the court reiterated the three principles of fundamental policy of Indian Law which are, the arbitrator must take the judicial approach, the principles of natural justice must be adhered to and the decisions must not be perverse.

**10. Delhi High Court rules that an unreasoned arbitral award for costs is liable to be set aside.**

The Delhi High Court ruled in the case of *Union of India & Anr. v Alcon Builders and Engineer Pvt. Ltd*<sup>101</sup> that an arbitral award shall state the reasons on which it is based and cover each and every aspect of the award including the costs must be well reasoned and those reasons must be stated in writing. In the present case, the court set aside the award of costs on grounds of the same not being quantified and being unreasoned.

**11. Delivery of Arbitral Tribunal to made directly to those who have knowledge of the proceedings.**

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<sup>100</sup> *Bright Simons v Sproxsil Inc & Anr*, OMP (Comm) 32/2020 & IA 773/2020.

<sup>101</sup> *Union of India & Anr v Alcon Builders and Engineer Pvt Ltd*, OMP 146/2008.

The Delhi High Court in the case of *Monika Oil v M/s CL Educate Ltd*<sup>102</sup> has ruled that in order for the delivery of the arbitral tribunal to be valid and effective under the Arbitration Act, the delivery must be made to a person who has direct knowledge of the arbitral proceedings. Under Section 34(3)<sup>103</sup> of the Arbitration Act, the word ‘party’ would mean a party to the arbitral proceedings and not the agent of the party. The court further held that in cases where the award debtor is a shareholder but the proceedings do not pertain to that entity, delivery of the award to the employee of that entity would not constitute as proper delivery under the act.

**12. Madras High Court rules the “doctrine of alter ego” can be applied in exceptional cases to refer non signatories to arbitration.**

In the case of *Vatsala Jagannathan and Anr. v Tristar Accomodations & Ors.*,<sup>104</sup> The Madras High Court ruled that in the arbitration agreement, the doctrine of alter ego can be invoked in exceptional cases to refer non-signatories to arbitration agreement only when there is convincing evidence that the non-signatory is the ‘alter ego’ of the signatory. It was remarked that the doctrine of alter ego is applicable in the exceptional cases of piercing the corporate veil of the signatory company to discern the actual minds involved in the affairs of the company. In the case at hand, the petitioners argued that despite respondents 2 to 5 not parties to the arbitration agreement, were in complete control of the respondent company and therefore ‘alter ego’ of the company.

**13. Delhi High Court rules that the arbitration clause contained in a contract entered into with a partnership firm continues to operated even after the dissolution of the partnership.**

In case of *M/s Shyamjee Prepaid Services v M/s Top Steels & Mrs. Renu Devi & Anr.*,<sup>105</sup> the Delhi High Court while dismissing the review application ruled that the arbitration clause contained in a contract executed with a partnership firm, the arbitration clause will continue in effect even after the death of the partner causes the dissolution of the partnership. The ruling was given in course of the court exercising its power to conduct a procedural review of the order passed under Section 11 of the Arbitration Act.<sup>106</sup> It also stated that the courts power to review section 11 order of the act are

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<sup>102</sup> *Monika Oil vs M/s CL Educate Ltd*, [2023] SCC OnLine Del 177.

<sup>103</sup> Arbitration and Conciliation Act, 1996, s 34(3).

<sup>104</sup> *Vatsala Jagannathan and Anr v Tristar Accomodations & Ors*, Arb OP (Comm Div) No 163 of 2022.

<sup>105</sup> *M/s Shyamjee Prepaid Services v M/s Top Steels & Mrs Renu Devi & Anr*, Arb P 137/2019.

<sup>106</sup> Arbitration and Conciliation Act, 1996, s 11.

unaffected by the substantive concerns such as the arbitral tribunal's jurisdiction or the authenticity of the evidence.

**14. Delhi High Court rules that parties must exhaust the pre-arbitration remedies provided in their agreement before filing an application under section 11 of the Arbitration and Conciliation Act.**

The Delhi High court in the case of *Chabbras Associates v HSSC India Limited*<sup>107</sup> held that when the agreement entered into between parties provides for a multi-tier dispute resolution process with the first step being referring the dispute to some internal authority and invoking arbitration on being dissatisfied with the process, non-compliance with this pre-arbitration internal dispute resolution mechanism would render invocation of the arbitration clause premature and the parties would not be allowed to approach the court for appointment of an arbitrator under section 11 of the Arbitration Act<sup>108</sup> before the inter dispute resolution mechanism is exhausted.

**15. The Bombay High Court rules that when some parties to the suit are non-signatories to the arbitration agreement, a mechanical arbitral reference cannot be made by courts under section 8 of Arbitration and Conciliation Act.**

The Bombay High Court in the case of *Hungama Digital Media Entertainment Pvt. Ltd. v RBEP Entertainment Private Limited & Ors.*<sup>109</sup> ruled that in cases where some of parties to the suit are non-signatories to the arbitration agreement and the plaintiff seeks a relief against those parties, the matter cannot be mechanically referred to arbitration under section 8 of the Arbitration Act.<sup>110</sup> The case was regarding a decree of permanent injunction. The court referred to *Vidya Drolia & Ors. v Durga Trading Corporation*<sup>111</sup> and amended section to specify that if an arbitration agreement is existing between some of the parties to the suit, all the parties cannot be forced to participate in arbitral proceedings pursuant to the reference made under section 8 of the Arbitration Act.

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<sup>107</sup> *Chabbras Associates v HSSC India Limited*, ARB P 782/2022.

<sup>108</sup> Arbitration and Conciliation Act, 1996, s 11.

<sup>109</sup> *Hungama Digital Media Entertainment Pvt Ltd v RBEP Entertainment Private Limited & Ors*, Commercial IP Suit No 457 of 2022.

<sup>110</sup> Arbitration and Conciliation Act, 1996, s 8.

<sup>111</sup> *Vidya Drolia & Ors v Durga Trading Corporation*, [2021] 2 SCC 1.