GNLU SRDC ADR
MAGAZINE
VOLUME IV | ISSUE I

MONTHLY ROUND-UP (FEBRUARY – AUGUST, 2023)

FEBRUARY

1. **Bombay High Court states that allowing a consolidated Statement of Claims containing specific claims under different contracts does not constitute jurisdictional error.**

The Bombay High Court, in the case of *BST Textile Mills Pvt. Ltd. v The Cotton Corporation of India Ltd.,*[1] recently ruled that the arbitrator could not be held to have violated the law by allowing a consolidated Statement of Claims ["**SoC**"] without the consent of the opposing party/award debtor when specific claims pertaining to each of the nine contracts were stated separately in the SOC. The award debtor also elected to file a separate SOC.

2. **No clash of interest caused when arbitrator who once accepted the brief of party's lawyer is appointed in an unrelated matter.**

In the case of *Quess Corp v Netcore Cloud Pvt. Ltd.,*[2] the Bombay High Court held that there was no conflict of interest merely because the arbitrator had previously served as counsel and represented the opposing party's advocate in a separate, unconnected action for a different client.
Justice Bharati Dangre came to the conclusion that the disqualification relationship required under Item 3 of Schedule VII of the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"] must exist between the arbitrator and the party. The Court decided that the fact that the arbitrator had accepted a brief from the respondent's counsel on behalf of a different client did not constitute disqualification or ineligibility.

3. **Multiple arbitrations being seated over by the same arbitrator involving the same co-operative bank under the MSCS Act does not disqualify the arbitrator.**

Referring more than two arbitrations to the same arbitrator under Section 84 of the Multi-State Cooperative Societies Act, 2002 ["**MSCS Act**"], involving the same Co-operative Bank, would not

[1] *BST Textile Mills Pvt. Ltd. v The Cotton Corporation of India Ltd.* ARB.P 563/2017.
[2] *Quess Corp v Netcore Cloud Pvt. Ltd.* 23 ARB.P 24705/2022.

violate clause 22 of Schedule V of the Arbitration Act, according to the Bombay High Court's decision in *Kalpesh Shantikumar Mehta & Ors. v NKGSB Co-op Bank Ltd.& Anr.*[3]

Noting that the Central Registrar/Commissioner of Cooperative Societies appoints the arbitrator in the statutory arbitration contemplated by the MSCS Act pursuant to Section 84(4) of the MSCS Act,[4] Justice Bharati Dangre held that the embargo created under clause 22 only applies when the arbitrator is appointed by one of the parties or an affiliate of either party.

4. **Power of the arbitrator to grant interim measures is pari passu with Court's powers.**

The Calcutta High Court has ruled, in the case of *Jagrati Trade Services Pvt. Ltd. v Deepak Bhargava,*[5] that post the Arbitration and Conciliation (Amendment) Act of 2015 ["**Amendment Act**"], the powers of the arbitrator to grant interim measures under Section 17 of the Arbitration Act,[6] are pari passu with the powers of the Court under Section 9 of the Arbitration Act.

Justice Shekhar B. Saraf remarked that the test applicable for granting interim protection under Section 9 would also apply to test the validity of an order passed by the arbitrator under Section 17.

5. **Calcutta High Court lays down that an order passed under Section 11 of the Arbitration Act cannot be reviewed.**

In the recent case of *Sarada Construction v Bhupendra Pramanik,*[7] the Calcutta High Court ruled that the Arbitration Act is a complete law in and of itself and does not contain any provisions for the review of a judgment made under Section 11 of the Arbitration Act.

According to Justice Shekhar B. Saraf, the High Courts lack the inherent power of review granted to the Supreme Court under Article 137 of the Indian Constitution,[8] and as a result, they are unable to review the order they issued in accordance with Section 11 of the Arbitration Act.

6. **Delhi High Court opines that the Court cannot grant a final relief under Section 9 of the Arbitration Act.**

---

[3] *Kalpesh Shantikumar Mehta & Ors. v NKGSB Co-op. Bank Ltd. & Anr.* Comm.ARB.P 220/2022.

[4] Multi State Cooperative Societies Act 2002, s 84(4).

[5] *Jagrati Trade Services Pvt Ltd. v Deepak Bhargava & Ors.* APO 108/2022.

[6] Arbitration and Conciliation Act, s. 17.

[7] *Sarada Construction v Bhupendra Pramanik* 2023 SCC OnLine Cal 342.

[8] Constitution of India, art 137.

In *GMR Pochanpalli Expressways Ltd. v National Highways Authority of India*,[9] the Delhi High Court ruled that the Court cannot decide an application under Section 9 of the Arbitration Act where the remedy sought is final in character.

Justice Chandra Dhari Singh ruled that the remedy envisioned under Section 9 of the Arbitration Act is only “provisional” or “interim” in character, must be used to help in the enforcement of the decision, and is subject to the ultimate relief provided in the award.

The Court remarked that the remedy sought by the petitioner was final because it was neither subject to any award nor in support of any enforcement and declined to issue an injunction preventing the respondent from withholding the payment due to the purported delay.

The Court emphasized once more that under Section 9 of the Act, the Court cannot either enforce an award in the guise of an interim remedy or provide an interim relief that goes beyond the award’s stipulations.

7. **A clause mandatorily providing for conciliation before arbitration can be done away with if the circumstances so require.**

The agreement between the parties to consider conciliation before turning to arbitration is not required in nature, according to the Delhi High Court's ruling in the matter of *M/s Oasis Projects Ltd. v Managing Director, National Highway and Infrastructure Development Corporation Ltd (NHIDCL).*[10]

The Court noted that under Section 77 of the Arbitration Act, urgent situations may warrant the initiation of arbitration procedures in order to protect a party’s rights, even though conciliation processes are ongoing.

The arbitration clause called for previous conciliation. However, Justice Navin Chawla determined that the petitioner was justified in beginning arbitration for the purpose of safeguarding its rights without going through conciliation, in accordance with Section 77.[11]

[9] *GMR Pochanpalli Expressways Limited v NHAI* (2023) 1 HCC (Del) 494.

[10] *M/s Oasis Projects Ltd. v Managing Director, National Highway and Infrastructure Development Corporation Ltd. (NHIDCL)* (2023) 1 HCC (Del) 525.

[11] Arbitration and Conciliation Act 2002, s 77.

1. The scope of the arbitration clause will extend to all disputes arising out of the contract; the ambit of the arbitration is not limited to a specific dispute.

The issue before a division bench of the Allahabad High Court in *Agra Development Authority v Baba Construction Pvt. Ltd*[12] was whether the arbitration clause included all the disputes between the parties or only disputes pertaining to a particular issue.

The Court relied on *McDermott International Inc.,*[13] wherein it was held that any claim for damages made prior to invocation of arbitration becomes a dispute within the meaning of the provision of the Arbitration Act. The Court also relied on *Dharma Pratisthanam*[14] and *State of Goa v Praveen Enterprises*[15] and came to the conclusion that the arbitration clause covers all disputes arising out of the contract within its ambit, and the scope of the arbitrator is not limited to any particular dispute.

2. Objection to Unilateral Appointment can be raised in a Section 34 petition, with no requirement to raise the same before the arbitrator.

The petitioner in *Hanuman Motors Pvt. Ltd & Anr v M/s Tata Motors Finance Ltd.*[16] filed a petition under Section 34 of the Arbitration Act[17] to set aside the award passed by the arbitrator on the grounds that the respondent unilaterally appointed the arbitrator.

The Bombay High Court relied on *Naresh Kanayalal Rajwani and Ors v Kotak Mahindra Bank Ltd. & Anr*[18] and *Bharat Broadband Network Ltd. v United Telecom Ltd.*[19] and arrived at the conclusion that only if the party waives an objection against the unilateral appointment of the arbitrator in writing, the party is disentitled from raising the issue to challenge the award. If no such waiver is given in writing, the party is not disentitled from raising the said issue to challenge the arbitral award.

3. Amending a Section 34 petition to include fresh grounds with new factual elements for the purpose of contesting an arbitral award is not permissible.

The Delhi High Court, in *New Delhi Municipal Council v Décor India Pvt. Ltd.,*[20] reiterated that it is permissible to introduce an amendment in a petition filed under Section 34 of the Arbitration

[12] *Agra Development Authority v Baba Pvt. Ltd.* First Appeal from Order No. 1033/2021.
[13] *Mcdermott International Inc v Burn Standard Co. Ltd. & Ors* (2006) 11 SCC 181.
[14] *Dharma Pratisthanam v Madhok Construction Pvt. Ltd.* (2005) 9 SCC 686.
[15] *State of Goa v. Praveen Enterprises* (2012) 12 SCC 581.
[16] *Hanuman Motors Pvt Ltd. & Anr. v M/s Tata Motors Finance Ltd.* ARB.P 241/2022.
[17] Arbitration and conciliation Act, s.34.
[18] *Naresh Kanayalal Rajwani & Ors v kotak Mahindra Bank Ltd. & Anr* Comm.ARB.P 1444/2019.
[19] *Bharat Broadband Network Limited v United telecom Limited* (2019) 5 SCC 755.
[20] *New Delhi Municipal Council v Decor India Pvt. Ltd.* OMP (ENF.) (COMM.) 24/2021.

Act.[21] However, it is not permissible to introduce new grounds of challenge containing new material/facts when the said grounds were not introduced in the original Section 34 petition or before the Arbitral Tribunal.

The Court dismissed the application, which sought to raise additional grounds to challenge the arbitral award because the petitioner failed to meet the tests laid down by the Supreme Court in the *State of Maharashtra v Hindustan Construction Co. Ltd.*[22]

4. **The question of whether the dispute relates to the agreement containing the arbitration clause or not is within the arbitrator's jurisdiction to determine.**

The Delhi High Court, in *Newton Engineering and Chemicals Ltd. v UEM India Pvt. Ltd.,*[23] observed that it is up to the arbitrator to decide, under Section 16 of the Arbitration Act, whether the dispute between the parties arising out of a Memorandum of understanding ["**MoU**"] containing an arbitration clause or work orders which are devoid of any arbitration clause or whether they are related to both.

The Court made the above observation by relying on the Supreme Court judgement in *Sanjiv Prakash v Seema Kukreja & Ors,*[24] wherein it was held that the Court could not enter into a mini-trial while considering a Section 11 petition.[25] It is the jurisdiction of the Arbitral Tribunal to elaborate on the facts and law.

5. **Section 9 of the Arbitration Act does not encompass remedies aimed at reinstating a contract that has already been terminated.**

The Delhi High Court, in *Yash Deep Builders v Sushil Kumar Singh,*[26] observed that under the authority granted by Section 9 of the Arbitration Act, the Court is not empowered to mandate specific performance of a determinable contract. The Court concluded that a contract that is inherently determinable cannot be subjected to specific enforcement as stated in Section 14(d) of the Specific Relief Act.[27] Consequently, the Court is barred from undertaking an action that is prohibited by law.

The Court further noted that the agreement had already been concluded, and thus, the Court, by exercising powers under Section 9 of the Arbitration Act, cannot reinstate it. The Court affirmed

[21] Arbitration and conciliation Act 1996, s.34
[22] *State of Maharashtra v Hindustan Construction Co. Ltd.* (2010) 4 SCC 2018.
[23] *Newton Engineering and Chemicals Ltd. v UEM India Pvt Ltd.* ARB.P 95/2022.
[24] *Sanjiv Prakash v Seema Kukreja & Ors* 2021 SCC OnLine SC 282.
[25] Arbitration and Conciliation Act 1996, s.11
[26] *Yash Deep Builders v Sushil Kumar Singh* OMP (I) (COMM) 401/2022.
[27] Specific Relief Act 1963, s. 14(d).

that Section 9 of the Arbitration Act does not encompass remedies that involve reviving a contract that has already been terminated.

6. **The limitation period for initiating arbitration proceedings would commence from the moment of rupture, specifically, the date when settlement attempts cease to be successful.**

The Calcutta High Court, in *Zillon Infra Projects Pvt. Ltd. v BHEL*,[28] analysed the procedure for the appointment of an arbitrator under the arbitration clause. It also observed that in *Geo Miller & Company Pvt. Ltd. v Rajasthan Vidyut Utpadan Nigam Ltd.*,[29] it was held that the period of limitation for referring a dispute to arbitration begins from the date of breaking off point, i.e., the date when settlement talks fail.

The Calcutta High Court also held that a party cannot unilaterally appoint an arbitrator. The procedure is not valid if it provides for the unilateral appointment of the arbitrator. Only the Court will have the power to appoint a sole independent arbitrator to decide the disputes between the parties.

7. **An award passed by an unilaterally appointed arbitrator is not enforceable under Section 36 of the Arbitration Act and is considered void.**

The issue in *SREI Equipment Finance v Sadhan Mandal*,[30] before the Calcutta High Court, was with respect to a master lease agreement. The award debtor had failed to repay the loan amount, and the award holder invoked the arbitration clause and appointed the arbitrator unilaterally, as mentioned in the clause.

The Calcutta High Court referred to *Perkins Eastman v HSCC*[31]and *HRD Corporation v. GAIL*[32] and arrived at the conclusion that the clause in the agreement which allows for unilateral appointment of the arbitrator is invalid, and the arbitrator appointed would also be lacking jurisdiction to decide the dispute. Consequently, the award would also be a nullity.

8. **A party is entitled to challenge the appointment of an arbitrator in violation of the Arbitration Act at any stage.**

---

[28] *Zillon Infra Projects Pvt. Ltd. v BHEL* ARB. P 312/2021.
[29] *Geo Miller & Company Private Ltd. v Rajasthan Vidyut Utpadan Nigam Ltd. 2019 SCC OnLine SC 1137.*
[30] *SREI Equipment Finance v Sadhan Mandal* 2023 SCC OnLine Cal 831.
[31] *Perkins Eastman Architects DPC v HSCC (2019) 17 SCR 275.*
[32] *HRD Corporation v GAIL (2018) 12 SCC 471.*

The Madras High Court, in *P. Cheran v M/s Gemini Industries & Imaging Ltd.,*[33] held that even after participation in the arbitral proceedings or after having knowledge of the appointment of the sole arbitrator, the party can challenge the appointment. Though the appointment goes unchallenged while appointing under Section 13[34] of the Arbitration Act, the same would not take away the rights of challenging under Section 34[35] of the Arbitration Act on the grounds mentioned under Section 12(5)[36] of the Arbitration Act. If the appointment is violative of Section 12(5) of the Arbitration Act, the proceedings are liable to be vitiated from the beginning of the proceedings.

[33] *P. Cheran v M/s Gemini Industries & Imaging Ltd.* 2023 SCC OnLine Mad 1887.
[34] Arbitration and Conciliation Act 1996, s 13.
[35] Arbitration and Conciliation Act 1996, s 34.
[36] Arbitration and Conciliation Act 1996, s 12(5)

APRIL

1. **An arbitration agreement in an unstamped contract, which is exigible for stamp duty, is not enforceable.**

The five-judge Constitution Bench of the Supreme Court, in *M/s. N.N. Global Mercantile Pvt. Ltd. v M/s. Indo Unique Flame Ltd.& Ors*[37] decided on the reference pertaining to whether an arbitration clause in a contract, which is required to be stamped but has not been, is valid and enforceable. The Bench, by a 3:2 majority, held that if any instrument exigible to stamp duty has not been duly stamped, the contract, including the arbitration clause, would be rendered unenforceable by virtue of Sections 2(h)[38] and 2(g)[39] of the Indian Contract Act, 1872. The minority judgement noted that the stamp deficiency is a curable defect, which would not affect the enforceability of an arbitration agreement.

2. **Limited scrutiny of the Court under Section 11 of the Arbitration Act through the "Eye of the Needle" test is necessary and compelling.**

The Division Bench comprising of CJI D.Y. Chandrachud and Justice P.S. Narasimha, in *NTPC Ltd. v M/s SPML Infra Ltd.,*[40] have put forth that the Courts, while examining under Section 11(6)[41] of the Arbitration Act at the pre-reference stage, are not expected to act mechanically. The limited scrutiny of Courts at the pre-reference stage through the "Eye of the Needle" test is necessary and compelling. Moreover, the Bench also noted that the referral Court has the duty to prevent the parties from engaging in arbitration over non-arbitrable matters. This interference is considered to be legitimate in view of preventing wastage of public and private resources.

3. **Arbitrators must apply the test of Reasonable Third Person when considering the arbitrator's disclosure requirements if the case does not fall under the IBA Guidelines.**

The Bombay High Court, in the case of *HSBC PI Holdings (Mauritius) Ltd. v Avitel Post Studio Ltd. and Ors*,[42] was dealing with the enforcement of a foreign arbitral award. While deciding, the Court observed that Section 48 of the Arbitration Act[43] recognises the "pro-enforcement bias," as given

[37] *N.N. Global Mercantile (P) Ltd. v Indo Unique Flame Ltd.* (2023) 7 SCC 1.
[38] Indian Contract Act 1872, s 2(h).
[39] Indian Contract Act 1872, s 2(g).
[40] *NTPC Ltd. v SPML Infra Ltd.* 2023 SCC OnLine SC 389.
[41] Arbitration and Conciliation Act 1996, s 11(6).
[42] *HSBC PI Holdings (Mauritius) Limited v Avitel Post Studioz Limited & Ors* 2023 SCC OnLine Bom 901.
[43] Arbitration and Conciliation Act 1996, s 48.

in the New York Convention. Further, the High Court deemed that the three lists of IBA Guidelines requiring disclosure: 'red', 'orange' and 'green', are specifically adopted in Schedules V[44] and VII[45] of the Arbitration Act. If the disclosure is not covered under any of the three lists, the arbitrator must use the 'Reasonable Third Person' test and not a subjective test, as claimed by the award debtor.

4. **The Delhi High Court has invoked the "Direct Benefits" and "Intertwined Estoppel" theory for referring non-signatories to Arbitration.**

The Delhi High Court, in *Gaurav Dhanuka & Anr. v Surya Maintenance Agency Pvt. Ltd. & Ors.,*[46] while referring the builder/developer to an arbitration between a maintenance agency and a flat owner, decided that the maintenance agency derived its authority directly from the builder through the service agreement. The "Group of Companies" doctrine was not applicable in this regard, but the "Direct benefits Estoppel" theory and "Intertwined Estoppel Theory" formed the basis for the impleadment since the builder was deriving direct benefits from the service agreement. Lastly, the service agreement was inextricably linked to the maintenance agreements containing arbitration clauses.

5. **The Delhi High Court established twin tests for the attachment of properties before passing an arbitral award.**

The Delhi High Court, in *M/s Promax Power Ltd. v M/s Tahal Consulting Engineers India Pvt. Ltd.,*[47] has held that Sections 9[48] and 17[49] of the Arbitration Act do not expressly recognise the power to pass attachment orders before passing an arbitral award. But the same can be granted if the circumstances so warrant. Justice Yashwant Varma laid out that the attachment orders should not be passed just because the claimant has a just or reasonable claim on prima facie evaluation. Moreover, it is obligatory for the claimant to prove before the Tribunal that the party is indulging in the dissipation of assets or is removing the assets before the passing of an award in view of defeating it. Mere utilisation of assets in the course of business or sustenance of losses cannot be deemed to invoke the power.

---

[44] Arbitration and Conciliation Act 1996, schedule V.
[45] Arbitration and Conciliation Act 1996, schedule VII.
[46] *Gaurav Dhanuka & Anr. v Surya Maintenance Agency Pvt. Ltd. & Ors* 2023 SCC OnLine Del 2178.
[47] *M/s Promax Power Ltd. v M/s Tahal Consulting Engineers India Pvt. Ltd.* 2023 SCC OnLine Del 2069.
[48] Arbitration and Conciliation Act 1996, s 9.
[49] Arbitration and Conciliation Act 1996, s 17.

6. **Agreement between the parties "birth-giver": No pre-award interest can be granted if the agreement does not provide for such interest.**

The Delhi High Court, in *Tehri Hydro Development Corp. India Ltd. v M/s C. E. C. Ltd.,*[50] underlined that an arbitration agreement has primacy over the Arbitral Tribunal's power to grant the pre-award interest under Section 31(7)(a) of the Arbitration Act.[51] Noting that the agreement is the "birth-giver" to Arbitral Tribunals, it is held at a higher stature, and the arbitrators must desist from deviating from the same.

[50] *Tehri Hydro Development Corporation India Limited v M/s C. E. C. Ltd.* 2023 SCC OnLine Del 2354.
[51] Arbitration and Conciliation Act 1996, s 31(7)(a).

MAY

1. **Mere negotiations between parties will not postpone the cause of action for the purpose of limitation computation.**

The Supreme Court, in *M/s B and T AG v Ministry of Defence,*[52] observed that the legislature had prescribed a limit of three years for the enforcement of a claim, and this statutory time period cannot be defeated on the ground that the parties were negotiating. Therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued. Any subsequent negotiations between the parties after the cause of action has arisen will not postpone the cause of action for the purpose of calculating the limitation period.

2. **The Amendment Act is not applicable to arbitration proceedings where notice invoking arbitration was issued prior to the amendment.**

The Supreme Court has held that the Amendment Act shall not be applicable to an arbitration proceeding where the notice invoking arbitration was issued prior to the coming into force of the Amendment Act, even if the application under Section 11 of the Arbitration Act,[53] seeking appointment of an arbitrator, is made post the enforcement of the Amendment Act.
In M/s. Shree Vishnu Constructions v The Engineer in Chief Military Engineering Service & Ors.,[54] *the arbitral proceedings were deemed to have commenced* around 20.12.2013, when the Applicant issued the notice to the respondents seeking appointment of an arbitrator to resolve their disputes. *"It is observed and held that in a case where the notice invoking arbitration is issued prior to the Amendment Act, 2015 and the application under Section 11 for appointment of an arbitrator is made post-Amendment Act, 2015, the provisions of pre-Amendment Act, 2015 shall be applicable and not the Amendment Act, 2015,"* the Court held.

3. **It is the duty of the Referral Court to examine the existence of an arbitration agreement under Section 11(6A) of the Arbitration Act.**

In *Magic Eye Developers Pvt. Ltd. v M/s. Green Edge Infrastructure Pvt. Ltd. & Ors.,*[55]*the Supreme Court* held that, as per Section 11(6A) of the Arbitration Act,[56] it is the duty cast upon the referral Court to consider the dispute/issue with respect to the existence of an arbitration agreement. The Court

[52] *M/s B and T AG v Ministry of Defence 2023 SCC OnLine SC 657.*
[53] Arbitration and Conciliation Act 1996, s 11.
[54] *M/s Shree Vishnu Constructions v The Engineer in Chief Military Engineering Service & Ors (2023) 8 SCC 329.*
[55] *Magic Eye Developers Pvt. Ltd. v M/s. Green Edge Infrastructure Pvt. Ltd. & Ors (2023) 8 SCC 50.*
[56] Arbitration and Conciliation Act 1996, s 11(6A).

clarified that when the validity of an arbitration agreement is concerned, as the same goes to the root of the matter, it has to be conclusively decided by the referral Court at the referral stage itself. The Division Bench, comprising Justice M.R. Shah and Justice C.T. Ravikumar, also observed that in the absence of an agreement, there cannot be any reference to the arbitration. They noted that the intention behind the insertion of Section 11(6A) in the Arbitration Act was to confine the pre-referral jurisdiction of the Court to (i) the existence and validity of the arbitration agreement and (ii) non-arbitrability of dispute.

4. **An award can be said to be suffering from patent illegality only if it is an illegality apparent on the face of it.**

In *Reliance Infrastructure Ltd. v State of Goa*,[57] the Supreme Court held that an award could be said to be suffering from "patent illegality" only if it is an illegality apparent on the face of the award and not to be searched out by way of re-appreciation of evidence.
While allowing the appeal, the bench of Justices Dinesh Maheshwari and Sanjay Kumar held that the High Court had erred in its decision while calculating the merits of the award. They observed that the term "patent illegality" has a limited meaning and cannot be used to set aside an arbitral award simply because the award uses different expressions that may be construed as an "error" but not as patently illegal. The Court found that there was no evidence of "patent illegality" in the award and that the alleged errors did not fall within the scope of Section 34 of the Arbitration Act.

5. **Invalidity of the appointment procedure does not automatically invalidate the arbitration agreement.**

The Bombay High Court has ruled that an invalid appointment procedure does not invalidate the entire arbitration agreement. In *Sunil Kumar Jindal v Union of India,*[58]the Court held that the intention of the parties to arbitrate is separate from the procedure for appointing the arbitrator. Even if the appointment procedure is invalid, the Court can sever the invalid part and uphold the rest of the arbitration agreement. This is because the parties' intention to arbitrate is still evident.
Justice Avinash G. Gharote reasoned that the choice of getting a dispute resolved through arbitration is one thing, and the choice of appointing a specific arbitrator is another. What is impacted by Section 12(5) of the Arbitration Act[59] is the choice of the arbitrator and not the intention of the parties to arbitrate the dispute; thus, such intention must be respected. Both the prerogatives are separate and, therefore, are severable from each other. This means that even if

[57] *Reliance Infrastructure Ltd. v State of Goa* 2023 SCC OnLine SC 604.
[58] *Sunil Kumar Jindal v Union of India* 2023 SCC OnLine Bom 1691.
[59] Arbitration and Conciliation Act 1996, s 12(5).

the appointment procedure is invalid, the Court can uphold the arbitration agreement if the parties' intention to arbitrate is evident.

6. **Single composite invocation under Section 21 of the Arbitration Act pertaining to consolidated claims in respect of 3 purchase orders cannot be labelled as invalid.**

In *Godrej & Boyce Mfg. Co. Ltd. v Shapoorji Pallonji and Co. Pvt Ltd,*[60] the Calcutta High Court observed that the joinder of the causes of action could prevent unnecessary multiplicity of proceedings and facilitate quick settlement of the disputes. It held that a single composite invocation of arbitration under Section 21 of the Arbitration Act,[61] pertaining to a consolidated claim arising out of three different Purchase Orders containing separate arbitration clauses, cannot be labelled as invalid or unlawful.

Justice Sabyasachi Bhattacharyya observed that *"the single composite invocation under Section 21 of the 1996 Act vide communication dated August 22, 2022, pertaining to a consolidated claim in respect of three purchase orders, cannot be labelled as invalid or unlawful, sufficient to vitiate the same".*

7. **An award passed after inordinate, substantial, and unexplained delay is contrary to public policy.**

The Delhi High Court in *Department of Transport, GNCTD v Star Bus Services Pvt. Ltd.,*[62] has inter alia held that an award passed after inordinate, substantial, and unexplained delay is contrary to justice and, therefore, in conflict with the public policy of India. The Delhi High Court affirmed that such awards may be challenged under Section 34 of the Arbitration Act.[63]

Justice Chandra Dhari Singh observed that since the Arbitration Act does not provide for delay as a ground for setting aside an award, a case-to-case analysis of the same has to be adopted by the courts. In the present case, the parties did not file an application to extend the mandate of the arbitrator. As a result, the award was rendered without the arbitrator's jurisdiction, which is a violation of the law. The Delhi High Court set aside the award on the grounds that it was made after an inordinate delay and after the arbitrator's mandate had expired. The impugned award was against the public policy of India and was therefore amenable to challenge under Section 34 of the Arbitration Act.

---

[60] *Godrej & Boyce Mfg. Co. Ltd. v Shapoorji Pallonji and Company Pvt. Ltd.* ARB. P. 140/2023.
[61] Arbitration and Conciliation Act 1996, s 21.
[62] *Department of Transport, GNCTD v Star Bus Services Pvt. Ltd.* 2023 SCC OnLine Del 2890.
[63] Arbitration and Conciliation Act, s 34.

8. **Issues falling within the exclusive jurisdiction of the Estate Officer under the Public Premises Act are non-arbitrable.**

The Delhi High Court held that the disputes relating to the determination of a lease or the arrears of rent payable in respect of public premises are questions statutorily mandated to be determined exclusively by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ["**Public Premises Act**"]. Thus, the same are non-arbitrable.
In *S.S. Con-Build Pvt. Ltd. v Delhi Development Authority*,[64] the Court observed that the Public Premises Act was enacted for the purpose of setting up a speedy machinery for the eviction of persons found to be in unauthorized occupation of public premises. Moreover, Section 15 of the Public Premises Act[65] ousts the jurisdiction of courts in respect of eviction of persons from public premises and in relation to other connected aspects. Pursuant to the Public Premises Act, it is observed that all issues which relate to the determination of disputes relating to the occupation of public premises and questions incidental to it fall within the exclusive jurisdiction of the Estate Officer. It was, thus, held that the disputes raised by the petitioner were non-arbitrable. Consequently, the petition was dismissed.

9. **Delay in resuming the arbitration proceedings shall not render the claim time-barred.**

The Calcutta High Court, in *East India Minerals Ltd. v The Orissa Mineral Development Co. Ltd.*,[66] has held that once the arbitral proceedings have been commenced pursuant to reference under Section 21 of the Arbitration Act, any delay in the conclusion/resumption of such proceedings would not wipe out the arbitral reference. It held that arbitral proceedings cannot be rendered inoperative for the reason that there was some delay in the conclusion of the proceedings or that the proceedings were stalled and its resumption took a long time.

The Court observed, while exercising powers under Sections 14 & 15 r/w Section 11 of the Arbitration Act that it cannot delve into the question of whether the claims would be barred by limitation due to the delay in the conduct of the arbitral proceedings. Such claims must be raised before and adjudicated by the Arbitral Tribunal.

[64] *S.S. Con-Build Pvt. Ltd. v Delhi Development Authority* 2023 SCC OnLine Del 2633.
[65] Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, s 15.
[66] *East India Minerals Limited v The Orissa Mineral Development Co. Ltd.* ARB. P. 677/2022.

10. **The arbitrator's mandate can be terminated if his appointment falls within grounds enumerated in Schedule VII of the Arbitration Act.**

In *Maj. Pankaj Rai v NIIT Ltd.*,[67] the Delhi High Court held that the mandate of the arbitrator(s) could be terminated, inter alia, on the grounds of ineligibility, if his appointment falls within the criteria enumerated in Schedule VII of the Arbitration Act.
"Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1)(a), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as "ineligible", the Court held.

11. **Contractual Clause Cannot Prohibit Arbitral Tribunal from Allowing Interest on Delayed Payments.**

In *M/s Mahesh Construction v Municipal Corporation Delhi*, the Delhi High Court held that a contractual clause ousting the powers of the arbitrator to grant interest on delayed payments does not restrict him from granting interest under Section 31(7) of the Arbitration Act.[68]
While setting aside the impugned order and upholding the award passed by the Arbitral Tribunal, the Bench of Justice Manoj Kumar Ohri observed, *"A clause in a contract that prohibits payment of interest on delayed payments does not restrict the "arbitrator" to grant interest since it does not prohibit the "arbitrator" from granting interest under Section 31(7) of the Act and is a restriction on the contracting party to claim interest on delayed payments. As stated above, since interest is compensatory in nature, the arbitrator's powers are not curtailed by such narrow clauses in the contract."*

12. **The place of arbitration cannot be determined merely by the fact that the award was signed there.**

In *Gurumahima Heights Co-operative Housing Society Ltd. v M/s Admirecon Infrastructure Pvt. Ltd.*,[69] the Bombay High Court held that the place of the arbitration cannot be determined only by the fact that the arbitral ruling was signed there. It further observed that if the parties have not reached an agreement on the place of the arbitration and the arbitrator has not chosen a place, the entire circumstances of the case must be taken into account in order to make a determination respecting the same.

---

[67] *Maj. Pankaj Rai v NIIT Ltd.* 2023 SCC OnLine Del 2825.
[68] Arbitration and Conciliation Act, s 31(7).
[69] *Gurumahima Heights Co-operative Housing Society Ltd. v M/s Admirecon Infrastructure Pvt. Ltd.* ARB. P. 130/2022.

Justice Manish Pitale observed that pursuant to Section 20(1) of the Arbitration Act,[70] there was insufficient evidence to demonstrate that the parties had reached an agreement regarding the seat of arbitration. Additionally, the arbitrator could have determined the seat of arbitration in this case in accordance with Section 20(2) of the Act. However, he did not do so.

70 Arbitration and Conciliation Act 1996, s. 20(1).

JUNE

1. Potential reforms to be brought to the Arbitration Act.

The Government of India has constituted a high-level expert committee in order to receive recommendations to improve India's ecosystem of dispute resolution so as to bring it to par with global standards. The sixteen-member committee helmed by Dr T. K. Vishwanathan includes arbitrators, senior advocates, and representatives from different Government departments. The committee has been mandated to propose measures to foster a cost-effective and competitive arbitration regime in India by analysing the strengths and challenges posed by the Arbitration Act.[71]

2. Arbitral award to be set aside only upon verification of pre-deposit amount.

The Himachal Pradesh High Court, by relying on judicial precedents set by the Supreme Court,[72] in *M/s Pratap Industries Products v M/s Hindustan Construction Company Ltd.,*[73] held that in order to set aside an arbitral award under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006,[74] ["**MSMED Act**"] the Court ought to verify that the requisite amount of seventy-five percent of the impugned decree amount has actually been deposited by the applicant before setting aside the decree.

3. Venue cannot become the seat in the presence of a contrary indicia clause.

The Calcutta High Court, by applying the doctrine of harmonious construction, ruled in *Homevista Décor & Furnishing Pvt. Ltd. v Connect Residuary Pvt. Ltd.*[75] that the clause that confers exclusive jurisdiction upon a Court that is not the agreed venue of arbitration by means of a *contrary indicia* or contrary jurisdiction clause does not allow the said venue to become the seat of arbitral proceedings. The Court, having proposed exclusive jurisdiction over the proceedings, would be considered the seat of arbitration in this situation for the purpose of appointing an arbitrator.

4. All grounds are open while challenging an order under Section 34 of the Arbitration Act.

In *Kavis Fashions Pvt. Ltd. v Dimple Enterprises & Ors.*,[76] where the petitioner challenged the validity of the Arbitral Tribunal's order under Section 34 of the Arbitration Act, the Bombay High Court

---

[71] Ministry of Law & Justice, *Notice Inviting Comments from Stakeholders* (Department of Legal Affairs, 22 June 2023).
[72] *Tirupati Steels v Shubh Industrial Component & Anr.* (2022) 7 SCC 429.
[73] *M/s Pratap Industries Products v M/s Hindustan Construction Company Ltd.* 2023 SCC OnLine HP 746.
[74] Micro, Small and Medium Enterprises Development Act 2006, s 19.
[75] *Homevista Décor & Furnishing Pvt. Ltd. v Connect Residuary Pvt. Ltd.* 2023 SCC OnLine Cal 1405.
[76] *Kavis Fashions Pvt. Ltd. v Dimple Enterprises & Ors.* ARB. P. 826/2014.

held that under Section 23(3) of the Arbitration Act, which includes the phrase "*having regard to the delay in making it,*"[77] the petitioner would be allowed to challenge the final orders of an Arbitral Tribunal on all possible grounds available to the applicant and the same is not solely restricted to that of delay because Section 23(3) does not restrict the grounds for appeal by containing "*having regard only to the delay in making it*".

5. **Filing an application under the Insolvency and Bankruptcy Code does not prevent arbitral proceedings.**

The Bombay High Court, in *M/s Sunflag Iron & Steel Co. Ltd. v M/s J. Poonamchand & Sons,*[78] held that Section 238 of the Insolvency and Bankruptcy Code, 2016 ["**IBC**"] could be applicable only when an application filed before the Adjudicating Authority under Section 7 IBC has been admitted upon satisfying the conditions laid in Section 7(5) IBC. Until such acceptance is made by the authority, proceedings for the appointment of an arbitrator under Section 11(6) of the Arbitration Act are maintainable regardless of the fact that the Arbitration Act, unlike IBC, does not have an overriding effect over other laws.

6. **Bombay High Court rules on incorporating arbitration clause via GPC contract in enforcing foreign arbitral awards.**

In *Arbaza Alimentos Ltd. v MAC Impex & Ors.,*[79] the Bombay High Court held that an arbitration clause would be incorporated in an agreement if there has been a general reference to the same in a standard form of contract such as the Global Pulse Confederation ["**GPC**"] Contract No. 1, as was in the instant case. The GPC contract contains provisions to resolve disputes by way of arbitral proceedings. Hence, the Court held that the impugned foreign arbitral award would become enforceable as the arbitration proceeded in line with the Grain and Feed Trade Association Simple Disputes Arbitration Rules mentioned in the GPC contract.

7. **The possibility for the occurrence of arbitration in agreement does not constitute a binding arbitration agreement.**

The Calcutta High Court, in *Blue Star Ltd. v Rahul Saraf,*[80] held that if an agreement has an option for resolving disputes via either arbitration or litigation, such a clause cannot be considered to be

[77] Arbitration and Conciliation Act 1996, s 23(3).
[78] *M/s Sunflag Iron & Steel Co. Ltd. v M/s J. Poonamchand & Sons* 2023 SCC OnLine HP 746.
[79] *Arbaza Alimentos Ltd. v MAC Impex & Ors.* Comm. ARB. P. 8122/2020.
[80] *Blue Star Ltd. v Rahul Saraf* ARB. P. 852/2022.

a binding arbitration agreement. Arbitration to resolve disputes would occur only if both parties to the suit opt to propose the issue for arbitral proceedings.

JULY

1. **Can an ineligible person appoint an arbitrator? Supreme Court defers hearing as central government is considering reforms to the Arbitration Act.**

The Supreme Court, through a Constitution Bench, in *Central Organisation for Railway Electrification v M/s ECI SPIC SMO MCML (JV),*[81] has chosen to postpone the hearing in this case that raises the query of whether a person disqualified from being an arbitrator can designate one, pending completion of the deliberations of the sixteen-member expert committee set up by the Ministry of Law and Justice. Previous rulings have presented divergent opinions on this matter, with the Constitution Bench's decision awaiting insights from the expert committee before determining the necessity of legislative amendments. The committee, led by Dr. T.K. Vishwanathan, aims to assess the functioning of arbitration law in India and recommend reforms within the Arbitration Act. The postponement is intended to align with the timeline of the committee's report, promoting a comprehensive legal review before any legislative amendments. The Supreme Court acceded to the deferment during the hearing, recognizing the connection between the committee's examination and the raised legal queries. As the committee concludes its evaluation, the government's informed stance on potential legislative modifications will be ascertained. The case is provisionally adjourned until September 13, 2023, with the understanding that the Court will be updated on the committee's progress.

2. **The finding of the tribunal regarding the existence of the arbitration agreement should not be interfered with unless it is manifestly clear that there was no agreement.**

The Calcutta High Court, in *Jaldhi Overseas PTE Ltd. v Steer Overseas Pvt. Ltd.,*[82] has ruled that, when exercising authority under Section 48 of the Arbitration Act,[83] the Courts are restrained from re-evaluating evidence or replacing the Arbitral Tribunal's perspective with their own. It reiterated that during the enforcement of foreign awards, judicial intervention is confined to the grounds delineated under Section 48, where the Court's role is preliminary in nature.

3. **The party's right to choose an arbitrator cannot be revived once it is surrendered to court under Section 11(6) of the Arbitration Act.**

[81] *Central Organisation for Railway Electrification v M/s ECI SPIC SMO MCML (JV)* 2023 SCC OnLine SC 855.
[82] *Jaldhi Overseas PTE Ltd. v Steer Overseas Pvt. Ltd.* 2023 SCC OnLine Cal 1628.
[83] Arbitration and Conciliation Act 1996, s 48.

The Calcutta High Court, in *Srei Equipment Finance Ltd. v Seirra InfraventurePvt. Ltd.,*[84] has ruled that once a party surrenders its right to appoint an arbitrator under Section 11 of the Arbitration Act, it cannot subsequently revive this right when a need arises to replace an existing arbitrator who is unable to fulfill their duties. The Court emphasized that the process of selecting a new panel of arbitrators should be undertaken by the Court under Sections 14[85] and 15[86] of the Arbitration Act rather than reverting to the stage where parties mutually appoint arbitrators under Section 11[87] of the Arbitration Act. This ruling aims to uphold the intent of the Arbitration Act, which focuses on expediting arbitration proceedings.

4. **Hearing of interim application under Section 9(1) under the Arbitration Act not barred by the constitution of the Arbitral Tribunal if the Court has already 'entertained' it.**

The Calcutta High Court clarified that once a Court has already "entertained" an application for interim relief under Section 9(1) of the Arbitration Act, the Court's power to continue hearing that application is not restricted by Section 9(3)[88] after the Arbitral Tribunal has been constituted. This ruling was held by Justice Moushumi Bhattacharya in *Jaya Industries v Mother Dairy Calcutta & Anr*,[89] where the petitioner had filed an application for interim relief before the Arbitral Tribunal was formed.

While Section 9(3) of the Act generally prevents the Court from entertaining any interim application after the Arbitral Tribunal has been constituted, the Court clarified that if the Court had already engaged with the application before the tribunal's formation, it could proceed with adjudicating the application. The Court referenced the Supreme Court's decision in *Arcelor Mittal Nippon Steel India Ltd. v Essar Bulk Terminal Ltd.,*[90] where it was stated that if the Court has already considered the issues presented in the application, it can continue to hear the matter despite the restriction under Section 9(3).

5. **When an arbitrator appears as counsel for an 'affiliate company' of the claimant, the award is liable to be set aside.**

---

[84] *Srei Equipment Finance Ltd. v Seirra Infraventure Pvt. Ltd.* 2023 SCC OnLine Cal 2030.
[85] Arbitration and Conciliation Act 1996, s14.
[86] Arbitration and Conciliation Act 1996, s15.
[87] Arbitration and Conciliation Act 1996, s 11.
[88] Arbitration and Conciliation Act 1996, s 9(3).
[89] *Jaya Industries v Mother Dairy Calcutta & Anr.* 2023 SCC OnLine Cal 2051.
[90] *Arcelor Mittal Nippon Steel India Ltd. v Essar Bulk Terminal Ltd.* 2021 SCC OnLine SC 797.

The Calcutta High Court, in *Gopaldas Bagri v C&E Ltd.,*[91] has ruled that an arbitral award can be set aside if an arbitrator appears as counsel for an "affiliate company" of the claimant during the arbitration proceedings without disclosing this engagement to the respondent. The Court held that such an act violates Sections 12(1), 12(2), and 12(5) of the Arbitration Act. The case revolved around disputes between parties that were referred to arbitration, and the parties appointed a senior advocate as the sole arbitrator. During the arbitration process, it was discovered that the arbitrator had appeared as an advocate for an "affiliate company" of the claimant during the proceedings. This information had not been disclosed to the respondent.

The Court ruled that Section 12(2)[92] imposes a continuous duty on the arbitrator to remain neutral and disclose any actions or omissions that could raise doubts about their neutrality. The Court also emphasized that a disclosure of past associations with a party under Section 12(1)[93] does not mean the arbitrator can continue such associations during the arbitration proceedings. The Court found that the arbitrator's failure to disclose their association with the affiliate company of the claimant was a breach of their duty and could lead to bias. Therefore, the Court set aside the arbitration award, stating that justice must not only be done but must also appear to have been done.

6. **Order of Arbitral Tribunal refusing to entertain additional counter-claims filed without an application under Section 23 is not an 'interim award'.**

The Delhi High Court in *M/s Abhijeet Angul Sambhalpur Toll Road Ltd. v NHAI*[94] has ruled that an order of an Arbitral Tribunal refusing to entertain additional counter-claims filed without the required application under Section 23 of the Arbitration Act is not considered an "interim award." Therefore, it cannot be challenged under Section 34[95] of the Act.

The Court held that an interim award is typically an order that conclusively settles some issue between the parties, essentially having a "res judicata" effect. The Court also stated that an interim award should not foreclose the right of an aggrieved party to refile counter-claims by seeking proper permission or authority from the tribunal through an application under Section 23 of the Arbitration Act. Since the order in question did not conclusively settle any issue between the parties and did not foreclose the possibility of seeking permission through an application under Section 23, the Court concluded that it could not be considered an interim award. As a result, it could not be challenged under Section 34 of the Act.

---

[91] *Gopaldas Bagri v C&E Ltd.* 2023 SCC OnLine Cal 2166.
[92] Arbitration and Conciliation Act 1996, s 12(2).
[93] Arbitration and Conciliation Act 1996, s 12(1).
[94] *M/s Abhijeet Angul Sambhalpur Toll Road Ltd. v NHAI* 2023 SCC OnLine Del 3695.
[95] Arbitration and Conciliation Act 1996, s 34.

7. **"Counter-balancing" is not achieved when two-thirds of members of the Arbitral Tribunal are appointed by one party.**

The Delhi High Court, in *Margo Networks Pvt. Ltd. & Anr. v Railtel Corporation of India Ltd.,*[96] has ruled that the principle of "counter-balancing" is not achieved when a party is required to appoint two-thirds members of an Arbitral Tribunal from a panel made by the other party. The Court made this observation as in this case where one party was mandated to select an arbitrator from a panel of arbitrators maintained by the other party, leading to an imbalanced composition of the tribunal.

The case stemmed from a dispute arising from a 'Request for Proposal' ["**RFP**"] issued by RailTel Corp. of India Ltd., which led to a dispute with Margo Networks Pvt. Ltd. The arbitration clause in the RFP required Margo to choose its nominee arbitrator from a panel of arbitrators maintained by Indian Railways, while RailTel had the right to appoint the remaining two out of three arbitrators. The Court held that the principle of "counter-balancing," as established in previous legal cases, was not achieved in a situation where one party has the right to choose one arbitrator from a panel while the other party appoints two-thirds of the arbitrators.

8. **Under Section 29A of the Arbitration Act, the Court would not consider issues regarding fees of the Arbitral Tribunal.**

The Delhi High Court, in *Anay Kumar Gupta v Jagmeet Singh Bhatia,*[97] clarified that when exercising power under Section 29A of the Arbitration Act, which provides for an extension of time to conclude arbitral proceedings, the Court's focus is solely on whether the arbitrator has acted expeditiously in the matter. The Court ruled that it would not consider issues related to the conduct of the arbitration or the fees of the Arbitral Tribunal.

In this case, the arbitrator had fixed certain fees for the arbitral proceedings with the consent of the parties. Later, one of the parties sought the removal of the arbitrator and a substitute arbitrator, claiming that the fees were fixed wrongly. The Court emphasized that under Section 29A,[98] the ground for removal of the arbitrator is only if the arbitrator has failed to proceed expeditiously in the adjudication process. It clarified that issues related to the arbitrator's fees do not fall under this ground. The Court referred to its previous judgments to reinforce this point and reiterated that the sole basis for removal under Section 29A[99] is the lack of expedition in the proceedings.

[96] *Margo Networks Pvt. Ltd. & Anr. v RailTel Corporation of India Ltd.* 2023 SCC OnLine Del 3906.
[97] *Anay Kumar Gupta v Jagmeet Singh Bhatia* 2023 SCC OnLine Del 3939.
[98] Arbitration and Conciliation Act 1996, s 29A.
[99] Arbitration and Conciliation Act 1996, s 29A.

9. **Well-reasoned interim order of the Arbitral Tribunal, courts should not interfere under Section 37 of the Arbitration Act.**

The Delhi High Court, in *GLS Foils Products Pvt. Ltd. v FWS Turnit Logistic Park LLP,*[100] has emphasized that when considering cases under Section 37 of the Arbitration Act, the Court should refrain from interfering with well-reasoned interim orders of the Arbitral Tribunal unless those orders are palpably arbitrary or unconscionable. The Court reiterated that the focus should be on whether the arbitrator has acted expeditiously and whether the interim relief granted preserves and protects the subject matter of arbitration and balances the equities between the parties.
In this case, a party had approached the Court seeking interim relief under Section 9[101] of the Act. However, the Court directed the party to seek interim relief from the Arbitral Tribunal itself. Subsequently, the Arbitral Tribunal granted the interim relief, which was challenged by the opposing party under Section 37[102] of the Act. The Court examined the arguments presented by the challenging party and reiterated that the tribunal had thoroughly considered the circumstances and the evidence before issuing the interim order.

10. **A 'medium' enterprise can approach the MSEF council if it is a 'micro or small' enterprise at the relevant time.**

The Delhi High Court, in *Sterlite Power Transmission Ltd. v EPC Solutions LLP,*[103] has clarified that under the MSMED Act,[104] a "medium" enterprise can approach the Micro and Small Enterprises Facilitation Council ["**MSEFC**"] for resolution of disputes if it was registered as a "micro" or "small" enterprise at the relevant time, even if it subsequently upgraded to a "medium" enterprise. The Court emphasized that the key dates for determining eligibility under the MSMED Act are the date of the agreement and the date on which the goods or services were supplied.
In this case, the respondent had entered into an agreement as a "micro" enterprise, and the dispute arose during that period. Subsequently, the respondent upgraded to a "medium" enterprise. The petitioner challenged the respondent's right to approach the MSEFC after becoming a "medium" enterprise. The Court held that the relevant dates for determining eligibility under the MSMED Act are the date of agreement and the date of supply of goods or services. Therefore, since the respondent was a "micro" enterprise at those crucial times, it was eligible to approach the MSEFC for dispute resolution under the Act, even though it later became a "medium" enterprise.

---

[100] *GLS Foils Products Pvt. Ltd. v FWS Turnit Logistic Park LLP* 2023 SCC OnLine Del 3904.
[101] Arbitration and Conciliation Act 1996, s 9.
[102] Arbitration and Conciliation Act 1996, s 37.
[103] *Sterlite Power Transmission Ltd. v EPC Solutions LLP* 2023 SCC OnLine Del 3890.
[104] Micro, Small and Medium Enterprises Development Act 2006.

11. Insufficiently stamped agreement is only against the Stamp Act and cannot be a ground to set aside the award.

The Delhi High Court, in *ARG Outlier Media Private Ltd. v HT Media Ltd.,*[105] has clarified that an arbitral award cannot be set aside solely on the grounds of insufficiency of stamp duty on the agreement that contains the arbitration clause. The Court noted that an agreement with an arbitration clause that is not properly stamped cannot be admitted in evidence. However, once the agreement has been admitted and relied upon by the arbitrator to pass an award, the award itself cannot be challenged on the grounds of insufficient stamp duty. The Court's decision aligns with the principle that under Section 34 of the Arbitration Act, Courts do not act as courts of appeal against arbitral awards. Therefore, they may not have the authority to intervene in stamp duty issues, which are primarily matters related to the Indian Stamp Act.[106]

12. The Court cannot appoint an arbitrator under Section 11 of the Arbitration Act when the dispute is covered under the MSMED Act.

The Gujarat High Court, in *TBEA Energy Pvt. Ltd. v R K Engineering,*[107] has reiterated that a petition under Section 11 of the Arbitration Act for the appointment of an arbitrator by the Court would not be maintainable if the dispute is covered under the MSMED Act, and the provisions of the MSMED Act are invoked.

The Court referred to its earlier judgment and observed that if the dispute is covered under the MSMED Act, parties must approach the MSME Council, and there is no room for the appointment of an arbitrator under the Arbitration Act. The Court held that the provisions of the MSMED Act prevail over the Arbitration Act for disputes within the scope of the former. It reiterated that the resolution of disputes covered by the MSMED Act must be in accordance with the special mechanism provided under the MSMED Act, specifically Section 18.

13. Objections under Section 36 of the Arbitration Act are permissible only on issues relating to patents or inherent lack of jurisdiction of the tribunal.

The Jharkhand High Court, in *M/s ESL Steel Ltd. v Ispat Carriers Pvt. Ltd.*,[108] clarified that objections under Section 36 of the Arbitration Act are permissible only on issues relating to patent lack of jurisdiction of the tribunal or inherent lack of jurisdiction. The Court held that a challenge to an

[105] *ARG Outlier Media Private Ltd. v HT Media Ltd.* 2023 SCC OnLine Del 3885.
[106] Indian Stamp Act 1899.
[107] *TBEA Energy Pvt. Ltd. v R K Engineering* 2023 Comm. ARB. P. 25/2020.
[108] *M/s ESL Steel Ltd. v Ispat Carriers Pvt. Ltd.* 2023 SCC OnLine Jhar 1035.

arbitral award can generally be made only under the grounds listed in Section 34.[109] However, objections under Section 47 of the Code of Civil Procedure[110] ["**CPC**"] can be raised during the enforcement of an award under Section 36 of the Arbitration Act if they pertain to the tribunal's lack of jurisdiction to pass the award or if the award is non-existent or a nullity in the eyes of the law. Such defects in the award must be apparent on the face of the record and must not require further factual determination.

14. Courts can extend the arbitrator's mandate without the parties' consent under Section 29A(4) of the Arbitration Act.

The Kerala High Court, in *Hiran Valiiyakkil Lal & Ors. v Vineeth M.V & Ors.*,[111] affirmed that the mandate of an arbitrator could be extended in accordance with Section 29A(4) of the Arbitration Act, even when parties have not granted consent to extend the period. Justice Murali Purushothaman reinstated and prolonged the arbitrator's mandate to facilitate the conclusion of the arbitral proceedings.

The Court's analysis revolved around the interpretation of Section 29A(4),[112] which deals with situations where an award is not issued within twelve months from the completion of pleadings. It was clarified that the sub-section empowers the Court, regardless of the absence of an extension under Section 29A(3),[113] to extend the mandate if the award is not delivered within the stipulated period.

[109] Arbitration and Conciliation Act 1996, s 34.
[110] The Code of Civil Procedure 1908, s 47.
[111] *Hiran Valiiyakkil Lal & Ors. v Vineeth M.V & Ors.* 2023 SCC OnLine Ker 5151.
[112] Arbitration and Conciliation Act 1996, s 29A(4).
[113] Arbitration and Conciliation Act 1996, s 29A(4).

AUGUST

1. The Court does not possess the power to modify an award under Section 34 of the Arbitration Act.

The Supreme Court, in *Larsen Air Conditioning and Refrigeration Co. v Union of India,*[114] set aside the decision of the Allahabad High Court and held that the Court has limited and extremely restricted jurisdiction under Section 34 of the Arbitration Act.[115] The Court noted that even if the Court wishes to interfere with the award, the illegality must go to the root of the matter and cannot be of a trivial nature.

2. If the head of the household is a participant in the arbitration agreement, and the rest of the members have also signed the agreement, then everyone is obligated to adhere to the terms of the arbitration clause.

The case of *Mrs. Vinnu Goel v Mr. Santosh Goes and Ors*[116] was with respect to the MoU signed between two families regarding the division of properties. The MoU was signed by members of both families on every page of the MoU. The Delhi High Court was of the view that all the members of the families are bound by the terms and conditions of the MoU, including the arbitration agreement.

3. The High Court has put a pause on arbitration proceedings that began without meeting the pre-arbitration condition of negotiation.

The Himachal Pradesh High Court, in *M/s Kundlas Loh Udhyog v M/s SRMB Srijan Pvt. Ltd.,*[117] analysed the dispute resolution clause in an agreement and held that the clause mandates the parties to explore negotiation before commencing arbitration. The Court also observed that the parties cannot invoke arbitration directly without fulfilling the pre-requisites of the Dispute resolution clause. It was binding upon the respondent to have exhausted the remedy provided in the agreement.

4. An arbitral award issued by the MSEF Council without going through the conciliation process under Section 18(2) of the MSMED Act is liable to be set aside.

[114] *Larsen Air Conditioning and Refrigeration Company v Union of India* 2023 SCC OnLine Del 5861.
[115] Arbitration and Conciliation Act 1996, s.34.
[116] *Mrs. Vinnu Goel v Mr. Santosh Goes and Ors* CS(OS) 371/ 2017.
[117] *M/s Kundlas Loh Udhyog v M/s SRMB Srijan Pvt. Ltd.* COPC No. 233 of 2023.

The dispute in *National Aluminium Company Ltd. v Orissa Coal Chem Pvt. Ltd.*[118] is with respect to the supply of hard coal-tar pitch. MSEFC directed the parties to settle the dispute. However, it did not appoint a conciliator under Section 18(2) of the MSMED Act. The council passed an award in favor of the supplier, directing the buyer to pay a certain amount to the supplier. The buyer challenged the award at the district court, and the district court directed the dispute back to MSEFC for fresh adjudication.

The supplier challenged this order under Section 37 of the Arbitration Act. The Orissa High Court held that under Section 18(2) of the MSMED Act,[119] the MSEF Council is supposed to conciliate between the parties either itself or take help from other institutions. Therefore, considering that the MSEF Council had not appointed any conciliator, the Court held that the award passed under Section 18(3) of the MSMED Act is liable to be set aside.

5. **If the majority award is set aside, a dissenting opinion from an arbitrator cannot be regarded as an award.**

In *Hindustan Construction Company Limited v National Highways Authority of India,*[120] a three-member Arbitral Tribunal passed an award. The award was unanimous on most questions, but on some issues, a dissenting view was observed by one of the arbitrators.

The Bombay High Court considered the majority view and set aside the award. The Supreme Court, after hearing the matter, observed that though a dissenting opinion might provide useful clues, it cannot be treated as an award if the majority award has been set aside. The Court also noted that the minority view only reflects the opinions of the arbitrator while disagreeing with the majority, and therefore, the dissenting opinion would not receive the standard of scrutiny to which the majority award is subjected.

6. **Application filed for appointment of an arbitrator after the expiry of the limitation period is liable to be dismissed.**

A maximum period of three years is provided according to Section 132 of the Limitation Act[121] for the appointment of arbitrator. The Allahabad High Court, in *Gurucharan Das v Tribhuvan Pal And 2 Ors,* [122]set aside an application under Section 11(4) of the Arbitration Act[123] because the application was filed 20 years after the dispute arose. The Court further observed that the applicant

---

[118] *National Aluminium Company Ltd. v Orissa Coal Chem Pvt. Ltd.* ARB. A. 8/2020
[119] Micro, Small and Medium Enterprise Development Act 2006, s.18(2)
[120] *Hindustan Construction Company Limited v National Highways Authority of India* 2023 SCC OnLine SC 1063.
[121] The Limitation Act 1963, s. 132.
[122] *Gurucharan Das v Tribhuvan Pal and Ors.* ARCO 69/2020.
[123] Arbitration and Conciliation Act 1996, s.11(4).

chose not to invoke the arbitration clause but instead pursued their claim in suit; hence, it cannot be invoked after the expiry of the limitation period.

7. **The Calcutta High Court holds that a holistic and commonsense approach should be employed, considering the language used in the arbitration clause.**

In the instant matter of *Uphealth Holdings Inc. v Glocal Healthcare Systems Pvt. Ltd.,*[124] the main issue was with respect to a Share Purchase Agreement ["**SPA**"]. A dispute arose between the parties, and the petitioner claimed that the respondent breached its obligations under the SPA.
The petitioner invoked the arbitration clause in the SPA and initiated proceedings before an emergency arbitrator. The emergency arbitrator granted relief in favour of the petitioner. The petitioner filed an application under Section 9 of the Arbitration Act[125] at the Calcutta High Court, seeking interim relief in the ongoing proceedings.

The Calcutta High Court noted that the dispute in the present case was covered by the arbitration clause in the SPA. The Court also noted that pre-arbitral steps are just procedural formalities and not absolute requirements. The Court was of the opinion that a holistic and commonsense approach is to be adopted on the basis of the text of the arbitration clause.

8. **The Court, under the restricted purview of judicial review stipulated in Section 11 of the Arbitration Act, has the authority to assess whether claims are frivolous or without merit.**

In the case of *22Light v OESPL Pvt. Ltd.,*[126] the main issue was with regard to the declining of payments by the respondent, which was against the terms of the MoU. The petitioner invoked the arbitration clause in the MoU, issued a notice of arbitration, and requested the respondent to mutually appoint an arbitrator. On failure of the parties to appoint the arbitrator, the petitioner filed a petition under Section 11 of the Arbitration Act. The Court, after going through the material on record and hearing the contention of the parties, held that the matter to be arbitrated upon is frivolous and meritless.

9. **A Section 34 petition is considered invalid if it is filed without the impugned award and a statement of truth.**

---

[124] *Uphealth Holdings Inc. v Glocal Healthcare Systems Pvt. Ltd.* ARB. P. 809/2022.
[125] Arbitration and Conciliation Act 1996, s.9.
[126] *22Light v OESPL Pvt. Ltd.* Comm. ARB.P. 215/2021

In the case of *Ministry of Youth Affairs and Sports v Ernst and Young Pvt. Ltd.,*[127] the issue was with respect to the period of limitation. The Court, after hearing the contention of both parties, ruled that the time limit for contesting an arbitral award according to Section 34 of the Arbitration Act commences from the date of the relevant email. The subsequent physical collection of the award is irrelevant in terms of the limitation period.

[127] *Ministry of Youth Affairs and Sports v Ernst and Young Pvt. Ltd.* O.M.P. (COMM) 377/2018.