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1. **“Not all arbitrators may have legal training; some decisions rely on equity,” the Supreme Court on the extent of judicial intervention in arbitral awards.**

The Supreme Court, in *Batliboi Environmental Engineers Ltd. v Hindustan Petroleum Corp. Ltd. and Anr.*,²⁵¹ ruled that when an arbitral award under Section 28(3)²⁵² of the Arbitration and Conciliation Act, 1996 [“**Arbitration Act**”] has to be declared void, the arbitrator has the authority to reasonably interpret contract terms. As the final decision on the construction of contract terms lies with the arbitrator, such interpretation cannot be a reason to annul the award. The Bench also observed that an arbitral tribunal is the ultimate master of quality and quantity of evidence. An award cannot be regarded invalid merely for being passed on little or no evidence or on the grounds that the arbitrator is not trained in law. In cases where the decisions are made on equity, being just and fair, such decisions cannot be set aside, alleging arbitrariness.

2. **Security offered by a party for a stay of arbitral award must be ‘clean, unblemished with good exchange value’.**

The Calcutta High Court, in *Sarat Chatterjee and Co. (VSP) Private Ltd. v Sri Munisubrata Agri International Ltd.*²⁵³ emphasised that the security provided by an award-debtor for the stay of an arbitral award must have genuine currency value and should not be based on a speculative or uncertain value, even if there is an earlier division-bench judgment securing goods for the award amount. The Court rejected the argument of using unsold goods as security, expressing concern about the proposed security and emphasising the need for actual currency value.

3. **In the presence of conflicting arbitration clauses in two connected agreements, priority should be given to the clause in the main agreement.**

²⁵¹ *Batliboi Environmental Engineers Ltd. v Hindustan Petroleum Corp. Ltd. and Anr.* [2023] SCC OnLine SC 1208.

²⁵² Arbitration and Conciliation Act 1996, s 28(3).

²⁵³ *Sarat Chatterjee & Co. (VSP) (P) Ltd. v Sri Munisubrata Agri International Ltd.* [2023] SCC OnLine Cal 2548.

The Delhi High Court, in *Amit Guglani v L&T Housing Finance Ltd.*²⁵⁴ ruled that priority should be given to the clause in the primary or umbrella agreement in the presence of conflicting arbitration clauses in two interconnected agreements. The Court stated that when disputes arise under two connected agreements with different arbitration clauses, the dispute's resolution and determination of arbitration seat should be according to the clause set out in the primary agreement.

4. Section 42 bars multiple court petitions; only the first court can examine fraud or collusion allegations.

The Delhi High Court, in *Liberty Footwear Co. v Liberty Shoes Ltd.*²⁵⁵ clarified that under Section 42²⁵⁶ of the Arbitration Act, a petition under Section 9²⁵⁷ will be barred if it is filed in a court other than where the initial application was made. Section 42 grants exclusive jurisdiction to the first court in arbitration cases. Only the first court can address petitions alleging fraud, collusion, or malafide. If the court determines that the proceedings were tainted by fraud or there exists a lack of jurisdiction, Section 42 would not apply.

5. No award of agreed liquidated damages without proof of actual loss.

The Delhi High Court, in *Vivek Khanna v OYO Apartments Investment*, clarified that the agreed sum for liquidated damages does not eliminate the need for the claiming party to prove actual loss. The Court emphasised that such a sum is not a penalty but a pre-estimate of potential loss in case of a contract breach. Liquidated damages are not payable if no actual loss is suffered, and the quantification of loss does not require substantiation if the parties agree upon a pre-estimated sum.

6. Once the party unconditionally accepts, the arbitrator's determined fees are not subject to challenge.

The Madras High Court, in *EDAC Engineering v Industrial Fans (India) Pvt. Ltd.*²⁵⁸ ruled that if a party unconditionally agrees to the fees set by the arbitral tribunal during the arbitration process, it is barred from subsequently disputing the tribunal's fees through a petition under Section 39(2)²⁵⁹ of the Arbitration Act.

²⁵⁴ *Amit Guglani v L & T Housing Finance Ltd.* [2023] SCC OnLine Del 5206.

²⁵⁵ *Liberty Footwear Co. v Liberty Shoes Ltd.* [2023] SCC OnLine Del 5125.

²⁵⁶ Arbitration and Conciliation Act 1996, s 42.

²⁵⁷ Arbitration and Conciliation Act 1996, s 9.

²⁵⁸ *EDAC Engineering v Industrial Fans (India) Pvt. Ltd.* [2023] SCC OnLine Mad 6010.

²⁵⁹ Arbitration and Conciliation Act 1996, s 39(2).

7. The place designated for arbitration does not transform into the arbitration seat if exclusive jurisdiction is granted to courts in a different location.

The Rajasthan High Court, in *Aseem Watts v Union of India*²⁶⁰ held that when exclusive jurisdiction is vested in the court of a different location, designating a place as the venue of arbitration does not automatically make it the seat of arbitration. The Bench also emphasised that if a place is labelled as a ‘venue’ and exclusive jurisdiction is granted to the courts of another location, it serves as a clear indication to the contrary, preventing the designated place from becoming the seat of arbitration.

8. Party eligible for interim protection under Section 9(1) of the Arbitration Act, regressive to relegate to CPC procedure.

The Calcutta High Court in *Prathyusha-AMR JV v Orissa Steel Expressway (P) Ltd.*,²⁶¹ approved applications for the appointment of an arbitrator under Section 11²⁶² and for interim protection under Section 9(1)²⁶³ of the Arbitration Act. The Court emphasised that a turning point in negotiations may revive the limitation period, sustaining a live claim. In granting interim protection, the Court highlighted the need for timely and effective relief, distinguishing Section 9(1) from Order 38 Rule 5 of the Code of Civil Procedure, 1908. The Court allowed the appointment of an arbitrator based on ongoing communication, insolvency proceedings, and admitted claims.

9. Calcutta High Court clarifies limits and timelines of arbitral tribunal mandate under the Arbitration Act.

The Calcutta High Court in *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd.*²⁶⁴ ruled that as per Section 29A²⁶⁵ of the Arbitration Act, the authority of an arbitral tribunal concludes unless prolonged within its specified tenure. It stressed the obligatory nature of adhering to statutory timelines for issuing awards, asserting that any continuation beyond these deadlines constitutes a jurisdictional error, given the legal termination of the mandate without provisions for renewal. The Court further clarified that any plea for an extension

²⁶⁰ *Aseem Watts v Union of India* [2023] SCC OnLine Raj 1462.

²⁶¹ *Prathyusha-AMR JV v Orissa Steel Expressway (P) Ltd.* [2023] SCC OnLine Cal 3107.

²⁶² Arbitration and Conciliation Act 1996, s 11.

²⁶³ Arbitration and Conciliation Act 1996, s 9(1).

²⁶⁴ *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd.* [2023] SCC OnLine Cal 2645.

²⁶⁵ Arbitration and Conciliation Act 1996, s 29A.

under Section 29(4)²⁶⁶ must be presented while the mandate is still in effect rather than subsequently.

10. The severability doctrine applies to arbitral awards if the rest of the parts can survive independently.

The Allahabad High Court, in *Hindustan Steelworks Construction Ltd. v New Okhla Industrial Development Authority*²⁶⁷ upheld the application of the severability doctrine in arbitral awards, permitting the isolation of independent and unaffected segments. The Court specified that there are no limitations imposed by the Arbitration Act on the Court's authority to invoke severability under Section 34²⁶⁸. It emphasised that the Court can set aside a portion of the award while maintaining the rest, provided it does not alter the tribunal's findings on any issues.

²⁶⁶ Arbitration and Conciliation Act 1996, s 29(4).

²⁶⁷ *Hindustan Steelworks Construction Ltd. v New Okhla Industrial Development Authority* [2023] SCC OnLine All 2146.

²⁶⁸ Arbitration and Conciliation Act 1996, s 34.

1. An award claiming loss of anticipated profits devoid of significant evidence is in conflict with “public policy of India” holds Supreme Court.

In *M/S Unibros v. All India Radio*,²⁶⁹ a claim of damages granted by an arbitral award for “*loss of profit*” cannot be held valid if it is against “*public policy of India.*” The interpretation of ‘*public policy*’ was done in context of the existing pronouncements by the Apex Court to compare with the spirit of the legislations, fundamental policy of law, approach of the judiciary, natural justice and apparent illegality. It was held that substantial evidence awarding claims for loss of profit is essential for the pronouncement of such an award.

2. Supreme Court adjudicated upon the eligibility of an arbitrator for unfairly revising fee and termination of their mandate on grounds not prescribed in the Schedule.

Taking note of the importance of the Schedule V and VII determining the grounds for termination of the arbitration process in the Arbitration Act,²⁷⁰ the Apex Court in *Chennai Metro Rail Ltd. v. M/s Transtonnelstroy JV*²⁷¹ held that ineligibility must be “*going to the root of the jurisdiction, divesting the authority of the tribunal, thus terminating the mandate of the arbitrator*”. The claim by the appellants on the unenumerated basis for termination of the arbitration procedure was denied.

3. Bar under Section 42 of Arbitration Act not applicable on the execution of an award holds Allahabad High Court

The Allahabad High Court in *Madhyanchal Vidyut Vitran Nigam Ltd v. Shashi Cable*²⁷² determined the non-applicability of Section 42. The section prohibits the filing of a petition in a different court when another petition has already been filed in relation to the arbitration agreement. It held that Section 42 does not prohibit the petition for claiming enforcement of the award by relying on the judgments in *Sundaram Finance*²⁷³ and *Cheran Properties*.²⁷⁴ The requirement to obtain a transfer of the decree/award from the Court would not be applicable in the scenario.

²⁶⁹ *M/S Unibros v. All India Radio* [2023] INSC 931

²⁷⁰ Arbitration and Conciliation Act 1996

²⁷¹ *Chennai Metro Rail Ltd. v. Transtonnelstroy Afcons JV* [2023] SCC OnLine SC 1370

²⁷² *Madhyanchal Vidyut Vitran Nigam Ltd v. Shashi Cable*, [2023]: AHC-LKO:66805

²⁷³ *Sundaram Finance v. Abdul Samad*, [2018] 3 SCC 622

²⁷⁴ *Cheran Properties Ltd. v. Kasturi*, [2018] 16 SCC 413

- 4. The Calcutta High Court held that the whole contract would be deemed to be duly stamped if the correspondence of the Contract contains letter with requisite stamp.**

The Calcutta High Court in *Power Mech Projects Limited v. BHEL*²⁷⁵ held that a letter with the necessary stamp, if included in the correspondence forming part of the contract, would have the deeming effect of making the whole contract as being duly stamped. The Court laid down that proviso (c) to Section 35 removes the statutory obligation of stamping each and every letter or document included in the correspondence for a party, wherein proper stamping for either one of the letters has been done.

- 5. Non-inclusion of arbitration clause within the main agreement is not significant in case another agreement containing arbitration clause is specifically incorporated.**

The Calcutta High Court in *Power Mech Projects Limited v. BHEL*²⁷⁶ held that the non-inclusion of a clause for arbitration in the main agreement is inconsequential if it includes specifically another agreement providing an arbitration clause. Section 7(5) of the Arbitration Act provides for the arbitration agreement's incorporation by reference, and where the earlier agreements containing arbitration clauses are incorporated, the application of the said section becomes inevitable.

- 6. Delhi High Court states that Settled claims under a resolution plan cannot be the subject of arbitration and reference to such claims would amount to reopening the resolution plan itself**

The Delhi High Court in the case of *IOCL v. Arcelor Mittal Nippon Steel India Limited*²⁷⁷ pronounced that the approval of a resolution plan by the Committee of Creditors [“CoC”] and by the adjudicating authority would extinguish all prevailing claims by any of the parties against the corporate debtor, and no fresh challenges concerning any claim as part of the resolution plan can take place.

- 7. Delhi High Court concludes that order to secure disputed sum under Section 9 without proper pleadings cannot be passed**

The High Court of Delhi in *Dr. Vivek Jain v. PrepLadder Pvt. Ltd.*²⁷⁸ held that the petitioner must broadly satisfy the conditions under Order XXXVIII of the Code of Civil Procedure

²⁷⁵ *Power Mech Projects Ltd. v. BHEL* AP 444 of 2023

²⁷⁶ *ibid.*

²⁷⁷ *IOCL v. Arcelor Mittal Nippon Steel India Limited* [2023] SCC OnLine Del 6318

²⁷⁸ *Dr. Vivek Jain v. PrepLadder Pvt. Ltd.* [2023] SCC OnLine Del 6370.

before the relief under Section 9 of the Arbitration Act can be passed. This relief can be sought only if it is shown that the defendant is trying to dispose of a part/whole of the property with the intention to obstruct the execution of decree passed against them.

8. When agreement confers exclusive jurisdiction on a Court in a different place, can the place of arbitration amount to seat? asks Gujarat High Court

In *InstaKart Services v. Megastone Logiparks*²⁷⁹ the Gujarat High Court ruled that in the presence of conflicting exclusive jurisdiction clause, the place of arbitration only refers to the seat and cannot be synonymously used as the seat of arbitration. The bench led by Justice Sunita Agarwal concluded that the place where arbitration is held would be the venue of arbitration, even if an exclusive jurisdiction clause confers jurisdiction on the court in a different place.

²⁷⁹ *InstaKart Services v. Megastone Logiparks* R/Petn u/ Arbitration Act No. 159 of 2022.

- 1. Court adjudicating the arbitral award under Section 34 of the Act has the power to recalculate compensation awarded under NHAI Act, 1956.**

Justice Jaspreet Singh of the Allahabad High Court, while deciding an appeal in *Chandra Kisbori v. Union of India Thru. Chairman Of National Highway Authority Of India And 2 Others*²⁸⁰ under Section 37 of the Arbitration and Conciliation Act, 1996²⁸¹ decided that a court adjudicating an arbitral award under Section 34²⁸² can recalculate the compensation awarded under the National Highway Authority of India Act, 1956.

He laid down that the court can do so if the calculation is patently illegal or if the award is against the public policy of India.

- 2. Despite N N Global Judgement, Court can still grant interim relief under Section 9 for insufficiency of stamp duty.**

A single judge bench consisting of Justice Bharati Dangre, in *L&T Finance Limited v. Diamond Projects Limited*,²⁸³ held that the judgement of the Constitutional Bench of the Supreme Court of India in the N N Global Case²⁸⁴ does not have any effect on the power of the court to grant interim relief.

The court reasoned that under Section 9,²⁸⁵ the court is not required to determine the validity of the arbitration agreement unlike under Section 8 or 11. The bench also opined that the court has to follow the three-fold test to determine the granting of interim relief i.e., (a) prima facie case (b) balance of convenience and (c) irreparable injury. The Court held that an inadequately/insufficiently stamped instrument/document/agreement shall not preclude the party from seeking interim measures as contemplated under Section 9 of the A&C Act.

- 3. Mandatory Injunction can be granted at interim stage under Section 9 of the Act when a builder commits multiple breaches**

²⁸⁰ *Chandra Kisbori v. Union of India Thru. Chairman Of National Highway Authority Of India And 2 Others* Appeal under Section 37 of Arbitration and Conciliation Act 1996 No. 55 of 2022.

²⁸¹ Arbitration and Conciliation Act 1996, s 37.

²⁸² Arbitration and Conciliation Act 1996, s 34.

²⁸³ *L&T Finance Limited v. Diamond Projects Limited* 2023 BHC 13473.

²⁸⁴ *N.N. Global Mercantile Pvt. Ltd. v Indo Unique Flame Ltd.* (2021) 4 SCC 379.

²⁸⁵ Arbitration and Conciliation Act 1996, s 9.

A Bombay High Court bench of Justice Manish Pitale, in *Swasbray Co-op. Housing Society Ltd v. Shanti Enterprises*,²⁸⁶ opined that a court exercising powers under Section 9²⁸⁷ can grant a mandatory injunction at the interim stage when the builder has committed multiple breaches leading to a loss of confidence of the cooperative society in the builder.

The bench also opined that mandatory relief cannot be granted in every case but the Court would ought to grant it in cases where withholding the remedy would be unjust and unconscionable.

4. An exclusive jurisdiction clause in one agreement overrides a generic jurisdiction clause in another agreement between the parties

The bench of Justice Shekhar Saraf of the Calcutta High Court, in *R.P. Infosystems Pvt Ltd v. Redington (India) Limited*,²⁸⁸ held that when an arbitration agreement clause confers exclusive jurisdiction on the Court at a particular place or the seat of the arbitration is declared, it would mean that all the courts would not have the jurisdiction to entertain petitions arising out of the agreement.

The bench held that the moment such an exclusive jurisdiction clause is included, it overrides other generic jurisdictions contained in any other agreement between the parties.

5. Arbitration would be considered an alternative remedy making writ petitions non maintainable for disputed questions of facts

The Calcutta High Court bench consisting of Justice Sabyasachi Bhattacharya in the case of *ILEAD Foundation v. State of West Bengal*,²⁸⁹ held that when a petition involves disputed questions of facts requiring detailed assessment.

The bench further elaborated that the availability of alternative remedies does not always bar writ petitions. However, it would be beyond the domain of a High Court in writ jurisdiction to conduct a detailed assessment of material facts and evidence. Therefore, proper adjudication would require referring the dispute to arbitration.

6. When terms and conditions of invoice are accepted and acted upon, the arbitration clause included therein is binding.

²⁸⁶ *Swasbray Co-op. Housing Society Ltd v. Shanti Enterprises* 2023 BHC 13075.

²⁸⁷ Arbitration and Conciliation Act 1996, s 9.

²⁸⁸ *R.P. Infosystems Pvt Ltd v. Redington (India) Limited* AP/626/2018.

²⁸⁹ *ILEAD Foundation v. State of West Bengal* WPA/25102/2022.

A bench consisting of Justice Shekhar B Saraf, opined in the case of *R.P. Infosystems Pvt Ltd v. Redington (India) Limited*,²⁹⁰ that the arbitration clause contained in a tax invoice would be considered valid if the invoice is accepted and acted upon.

The bench further elaborated that when a party accepts an invoice which includes within it a clear arbitration clause and then acts upon the invoice, the party cannot later refute the existence of such arbitration clause. The bench also laid down that arbitration clauses have no particular shape or form. The only requirement that exists is that the intent of the parties to arbitrate should be clear.

²⁹⁰ *R.P. Infosystems Pvt Ltd v. Redington (India) Limited* AP/626/2018.

1. Arbitration clauses in unstamped agreements are valid.

In *Re, Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*,²⁹¹ a seven-judge constitutional bench of the Supreme Court held that arbitration clauses in unstamped or inadequately stamped agreements are enforceable.

The Court held that non-compliance with stamp duty requirements constitutes a curable defect, rendering the agreement valid but temporarily inadmissible as evidence in Court proceedings. Notably, the Court emphasized that disputes concerning the adequacy of stamp duty do not fall within the purview of sections 8 or 11 of the Arbitration Act,²⁹² but rather constitute issues for determination by the arbitral Tribunal itself. This approach stands in stark contrast to the Court's prior pronouncements in *N.N. Global Mercantile Pvt. Ltd. v M/s. Indo Unique Flame Ltd.*²⁹³ *And Ors* and *SMS Tea Estates Pvt. Ltd. v Chandmari Tea Co. Pvt. Ltd*²⁹⁴ wherein the Court held that an unstamped or insufficiently stamped document could not be enforced as per section 35 of the Indian Stamp Act, 1899.²⁹⁵

2. Supreme Court upholds the applicability of 'Group of Companies' in Indian Arbitration jurisprudence.

The Supreme Court in *Cox and Kings Ltd v. SAP India Pvt Ltd.*²⁹⁶ held that the 'Group of Companies' doctrine through which an arbitration agreement can bind non-signatories will be valid in Indian arbitration proceedings.

The Court held that the approach in *Chloro Controls India Private Limited v. Severn Trent Water Purification*²⁹⁷ to the extent that it traces the 'group of companies' doctrine to the phrase 'claiming through or under' as given under Section 8 of the Arbitration Act²⁹⁸ was erroneous and against the well settled principles of contract in commercial law. The Constitution Bench emphasized the necessity of maintaining the 'group of companies' doctrine within Indian arbitration jurisprudence, highlighting its significance in deciphering the parties' intentions, especially in intricate transactions involving multiple entities and agreements. The Court

²⁹¹ *Re, Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899* Curative Petition (C) No. 44 of 2023.

²⁹² Arbitration and Conciliation Act 1996, ss 8 and 11.

²⁹³ *N.N. Global Mercantile Pvt. Ltd. v Indo Unique Flame Ltd.* (2021) 4 SCC 379.

²⁹⁴ *SMS Tea Estates Pvt. Ltd. v Chandmari Tea Co. Pvt. Ltd.* (2011) 14 SCC 66.

²⁹⁵ Indian Stamp Act 1899, s 35

²⁹⁶ *Cox and Kings Ltd v SAP India Pvt Ltd* 2023 SCC OnLine SC 1634.

²⁹⁷ *Chloro Controls India Private Limited v Severn Trent Water Purification* (2013) 1 SCC 641.

²⁹⁸ Arbitration and Conciliation Act 1996, s 8.

Highlighted that the written arbitration agreement does not mean that non-signatories will not be bound by it. Instead, it emphasized that a clear legal relationship between signatories and non-signatories, coupled with demonstrated intent through conduct, can establish the latter's obligation under the agreement.

3. Referral Court can examine whether arbitration agreement violates Article 14 while considering an application under Section 11(6).

In *Lombardi Engineering Ltd v. Uttarakhand Jal Vidyut Nigam Ltd*,²⁹⁹ the Supreme Court held that while considering a petition filed under Section 11(6) of the Arbitration Act for appointment of an arbitrator under an arbitration agreement, the Court could test the validity of an arbitration clause against the anvil of arbitrariness enshrined under article 14 of the Constitution of India. The Supreme Court relied on the Grundnorm theory by Kelsen to hold that the Grundnorm in the context of an arbitration agreement would be:

- i. Constitution of India, 1950;
- ii. Arbitration Act and specifically Section 7 of Arbitration Act; and
- iii. All other Central/State Laws.

Consequently, for an arbitration agreement to be valid, it must adhere to the aforementioned Grundnorm. Rejecting UVN's contentions based on 'party autonomy', the Supreme Court affirmed that contractual consent cannot override the imperative of upholding the rule of law. In light of the above, the Supreme Court constituted the arbitral Tribunal, dismissing UVNL's argument that Lombardi violated party autonomy by first agreeing to the pre-deposit clause and subsequently challenging its constitutionality.

4. Dispute arising from cancellation of deed is arbitrable as it is an act in personam.

The Supreme Court in *Sushma Shivkumar Daga v. Madhukumar Ramkrishnaji Bajaj*³⁰⁰ allowed arbitration in a matter related to the cancellation of a Conveyance deed and registered Development Agreements. Notably, neither the Conveyance Deed nor the Development Agreements contained an arbitration clause. However, the defendant was allowed to invoke Section 8 of the Arbitration & Conciliation Act, relying on the expansive scope of the arbitration clause embedded in the Tripartite agreements that formed the foundation of these transactions.

²⁹⁹ *Lombardi Engineering Ltd v Uttarakhand Jal Vidyut Nigam Ltd* 2023 SCC OnLine SC 1422.

³⁰⁰ *Sushma Shivkumar Daga v Madhukumar Ramkrishnaji Bajaj* Diary No.- 1164 – 2022.

The plaintiff contended that the cancellation of the conveyance deed constituted an action in rem. The Court, however, rejected this argument, emphasizing that seeking cancellation or asserting rights arising from a deed falls within the realm of actions in personam and is therefore amenable to arbitration. The Court also considered the allegation of fraud raised by the appellants, deeming it to be internal affairs of the parties - an act in personam. The Court clarified that if an allegation of fraud is strictly confined to the involved parties, it would not be categorized as a serious form of fraud and would not preclude arbitration.

5. Debt owed to financial institutions under the RDDB Act is not arbitrable.

In *Tata Motors Finance Solutions Ltd v. Naushad Khan*,³⁰¹ the Bombay High Court distinguished between debts covered solely by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [“**SARFAESI Act**”] and those falling within the ambit of both the SARFAESI Act and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [“**RDDB Act**”]. The Court ruled that debts exclusively governed by the SARFAESI Act are amenable to arbitration. However, debts subject to both the SARFAESI Act and the RDDB Act are not arbitrable.

The Court observed that the RDDB Act provides a comprehensive framework for both debt determination and recovery, whereas the SARFAESI Act concentrates solely on enforcement mechanisms, lacking provisions for debt determination. Accordingly, the Court concluded that debts encompassed by the RDDB Act’s purview are non-arbitrable due to the Act's exhaustive nature.

6. Service of a signed arbitral award upon a party's lawyer or agent, by itself, does not constitute valid delivery.

The Delhi High Court in *Ministry of Health & Family Welfare and Anr. v. M/s Hosmac Projects*³⁰² held that a copy of the signed arbitral award served only on the lawyer or agent of the party in the absence of delivery to the party himself does not constitute a valid delivery.

The Court directed that for a valid delivery of an Arbitral Award under Section 31(5) of the Arbitration and Conciliation Act, 1996 (Act), the service of the award must be specifically

³⁰¹ *Tata Motors Finance Solutions Ltd v Naushad Khan* Commercial Arbitration Petition (L) No. 8654 of 2022.

³⁰² *Ministry of Health & Family Welfare and Anr. v M/ s Hosmac Projects* FAO(OS) (COMM) 326/2019.

directed to the concerned party, not their agents or advocates. The Division Bench observed that, “party as defined in Section 31(5) and Section 2(1)(b) of the Act can only mean the party themselves and not their agent, or their Advocate and to constitute proper compliance, only service on the party himself is required”.

7. Arbitral Tribunal must record prima facie opinion regarding relevancy/admissibility of evidence before allowing application under section 27.

The Delhi High Court held that an application filed by the petitioner under section 27 of the Arbitration and Conciliation Act cannot be mechanically allowed by the Arbitral Tribunal and it is bound to scrutinise, at least on a prima facie level, that there is relevancy of the witness sought to be produced.

In *SAIL v. Uniper Global Commodities*,³⁰³ The Court observed that although the Arbitral Tribunal is not bound by the rules of procedure under the Code of Civil Procedure and the Evidence Act, it must still exercise discretion in permitting the examination of witnesses under Section 27. The court emphasised that while the Tribunal is entitled to conduct proceedings in the manner it deems appropriate, it must consider the relevancy and materiality of the evidence sought to be produced before allowing the petitioner to approach the court.

8. Bombay High Court holds that dispute referred to arbitration by one partner in the absence of others is invalid.

The Bombay High Court in the case of *Shailesh Ranka and Ors v Windsor Machines*³⁰⁴ Limited has held that the implied authority that the partner of a partnership firm has under s 19 of the Partnership Act does not extend to referring a dispute for arbitration in the absence of other partners. Such a reference without the consent of the remaining partners is invalid.

S 19 of the partnership act³⁰⁵ deals with the implied authority of the partner to act as an agent of the firm. However, S 19(2)(a)³⁰⁶ envisages an express bar on the implied authority to refer a dispute relating to the business of the firm for arbitration.

9. Delhi High Court holds that an arbitration panel consisting of merely 3 members is not broad based and therefore imbalanced.

³⁰³ *SAIL v Uniper Global Commodities* 2023 SCC OnLine Del 7586.

³⁰⁴ *Shailesh Ranka and Ors v Windsor Machines* Commercial Arbitration Application (L) No. 38198 of 2022

³⁰⁵ The Partnership Act, s. 19.

³⁰⁶ The Partnership Act, s. 19(2)(a).

The Delhi High Court in the case of *Smaaash Leisure Ltd. v Ambience Commericla Developers Pvt Ltd.*³⁰⁷, has held that a party cannot be compelled to choose an arbitrator from a panel of three arbitrators as it is not a broad-based panel. The arbitration panel must be diverse inclusive and fair so as to bolster the legitimacy of the proceedings.

Additionally, the court also reiterated that mere involvement in arbitration proceedings does not automatically imply a waiver of the application of Section 12(5) of the Arbitration and Conciliation Act³⁰⁸. Consequently, a party cannot be prevented from contesting the tribunal's jurisdiction solely based on their participation in the arbitration proceedings if the objection fundamentally questions the authority of the arbitrator and renders them ineligible.

10. The Delhi High Court holds that damages cannot be awarded for breach of a Memorandum of Understanding by an arbitration tribunal.

The Delhi High Court, in the case of *NEC Corporation India Private Limited v M/S Plus91 Security Solutions*³⁰⁹, has held that an arbitral tribunal lacks the authority to grant damages for breach of a Memorandum of Understanding [“MoU”]. The court opined that an MoU constitutes a definitive intention to form a contract and nothing more and therefore damages cannot be awarded for the breach of an MoU. This verdict holds significant importance for MoUs that entail no financial implications and specifically exclude the monetary liability for breach of the same.

Signing of an MoU cannot translate to mean entering into an actual contract. The act is mere exploratory in nature and therefore the court said that damages cannot be awarded for breach of an agreement.

11. Telangana High Court holds that an arbitrator cannot pass an order for restoration of dealership in light of the legal bar under S. 14(1)(c) of Specific Relief Act.³¹⁰

The Telangana High Court in the case of *Sri Venkatswara Service Station v IOCL*³¹¹ that an arbitrator cannot order for restoration of dealership due to such a contract being specifically non enforceable in light of the legal bar envisaged under s. 14(1)(c) of the Specific Relief Act.³¹²

³⁰⁷ *Smaaash Leisure Ltd. v Ambience Commericla Developers Pvt Ltd.* OMP(COMM) 180/2022.

³⁰⁸ The Arbitration and Conciliation Act, s. 12(5).

³⁰⁹ *NEC Corporation India Private Limited v M/S Plus91 Security Solutions* OMP(COMM) 244 of 2023.

³¹⁰ Specific Relief Act, s. 14(1)(c).

³¹¹ *Sri Venkatswara Service Station v IOCL* WP No. 12345 of 2011.

³¹² Specific Relief Act, s. 14(1)(c).

In this case, the Indian Oil Corporation Limited terminated the dealership awarded by it in favour of Venkateshwar Service Station. Such termination was held to be illegal by the arbitral tribunal. However, an order for restoration of the dealership is outside the authority of an arbitral tribunal.

1. The forgery of an arbitral order is a serious offence.

In *Vipul Jain v State through Government of Delhi & Anr.*³¹³ the Delhi High Court held that forging an order of an Arbitrator is a serious offence which requires detailed investigation by the Police. The application for anticipatory bail was filed by the appellant in the FIR lodged against him alleging offences of cheating, forgery and criminal intimidation.³¹⁴

The appellant was alleged to have produced before the Police a forged and fabricated order passed in an arbitration proceeding purportedly initiated by Kogta Finance Bank against the complainant in the matter of recovery of a car loan.

2. Malawian entity's PCA claim restrained by Delhi High Court due to breach in appointment of Arbitrator.

The High Court of Delhi granted an anti-arbitration injunction against the defendant with the effect to restrain continuance of arbitration proceedings before the Sole Arbitrator since such proceedings are not founded on the arbitration clause in the Agency Agreement between the parties.

The plaintiff in *Techfab International Pvt Ltd v Midima Holdings Ltd*³¹⁵ approached the High Court with the prayer to declare the orders passed by the Sole Arbitrator appointed by the Council for National and International Commercial Arbitration, Chennai as null and void. It had been stated that the appointment made by the Permanent Court of Arbitration, the Hague of an Arbitrator who holds arbitral proceedings in Kuala Lumpur is in violation to the arbitration agreement between the parties since the arbitration proceedings initiated by the defendant in the absence of mutual consent of parties with respect to the appointment.

3. Sections 34 and 37 of the Arbitration & Conciliation Act, 1996 cannot be utilised to modify arbitral awards.

The Supreme Court reiterated in the case of *S. V. Samudram v State of Karnataka*³¹⁶ that modification of arbitral award was not permissible when adjudicating petitions under Sections 34 and 37 of the Arbitration & Conciliation Act, 1996³¹⁷ since the arbitral award is

³¹³ *Vipul Jain v State through Government of Delhi & Anr.* [2024] DHC 256.

³¹⁴ Indian Penal Code 1860, ss 420, 467, 468, 471, 506 and 34.

³¹⁵ *Techfab International Pvt Ltd v Midima Holdings Ltd.* 2024 SCC OnLine Del 699.

³¹⁶ *S. V. Samudram v State of Karnataka & Anr.* [2024] INSC 17.

³¹⁷ Arbitration and Conciliation Act 1996, ss 34 and 37.

unassailable on the grounds of public policy, thus limiting the extent of judicial interference with arbitral awards under Sections 34 and 37 of the Arbitration & Conciliation Act, 1996.

The Appellant had approached the Arbitrator in order to settle claims amounting to Rs. 18,06,439 with interest payable at 18% p.a. which had arisen as a result of delay in payments by the Public Works Department. However, on appeal by the State, the Civil Judge reduced the claim amount to Rs. 3,71,564 with interest payable at 9% p.a.

The question before the Court was as to “*whether the High Court was justified in confirming the order under Section 34 of the Arbitration & Conciliation Act passed by the Senior Civil Judge, Sirsi, whereby the award passed by the learned Arbitrator was modified and the amount awarded was reduced.*” The Supreme Court restored the award of the Arbitrator with a direction to the State of expeditiously pay the amount awarded through arbitration.

4. Arbitral Tribunal permitted to exceed contractual provisions to grant relief when contract illegally restricts remedies of aggrieved party.

The Delhi High Court in *MBL Infrastructures Ltd v Delhi Metro Rail Corporation*³¹⁸ held that monetary damages by way of unliquidated damages could be awarded by an Arbitral Tribunal as compensation in an instance wherein the agreement stipulates that extension of time would be the only remedy available when delay has been caused by the actions of the employer especially when the contract has been terminated by the employer already, thus rendering void the contractual remedy.

It had been held by the Arbitral Tribunal that the termination of contract and encashment of performance guarantees by the Delhi Metro Rail Corporation was both illegal and unjustified since the Respondent had breached the contract by delaying the project.

5. Under Article 226, Court cannot refer disputes to arbitration in the absence of arbitration agreement.

The Patna High Court held that it was beyond the ambit of a Court in the exercise of its powers under Article 226 of the Constitution to refer a dispute to arbitration in the absence of an agreement between the parties. The Court in *State of Bihar & Ors. v Bihar Rajya Bhumi Vikas Bank Samiti*³¹⁹ stated that “*the remedy of arbitration is the creature of a contract and the same*

³¹⁸ *MBL Infrastructures Ltd. v Delhi Metro Rail Corporation* [2023] DHC 9067.

³¹⁹ *State of Bihar & Ors. v Bihar Rajya Bhumi Vikas Bank Samiti* MA No. 238 of 2021 (Pat).

cannot be utilised in the absence of a written agreement between the parties as provided under Section 7 of the Arbitration & Conciliation Act.”

The petitioner bank approached the Patna High Court in order to compel the State of the Bihar to pay outstanding dues of agricultural loans amounting to Rs. 570.79 crores along with its accrued income. The High Court directed the parties to appoint an Arbitrator under Section 11 of the Arbitration & Conciliation Act, 1996 to resolve the conflicting claims, and reserved liberty of the Appellant-State to challenge the jurisdiction of the tribunal on the ground of absence of agreement. Following an unsuccessful Special Leave Petition, the appointed Arbitrator directed the State to pay Rs. 493.7 crores along with an interest at 8% p.a. in case of delay in payment. On appeal to the High Court against the arbitral award passed, the award was set aside by holding that the Arbitrator did not have any jurisdiction to adjudicate the dispute between the parties.

6. Issues of Arbitrator’s bias cannot be dealt under Section 29A of the Arbitration & Conciliation Act.

It has been held by the Delhi High Court in *Vivek Aggarwal & Anr. v Hemant Aggarwal & Ors.*³²⁰ that issues regarding Arbitrator’s bias while conducting arbitral proceedings between the parties cannot be determined by a Court under Section 29A of the Arbitration & Conciliation Act, 1996. Under Section 29A of the Act which deals with the time limit for arbitral award, scope of Court’s power is restricted to the examination as to whether extension is to be granted.

The parties to the current dispute had provided for an arbitration clause in a Memorandum of Settlement in order address the settlement of disputes arising out of the agreement. Owing to pendency of appeals under Section 17 and the Covid-19 pandemic, the time stipulated for the completion of the arbitral proceedings expired following which the petitioner filed an application under Section 29A twice. In the present appeal, the Court, while extending the mandate of the Arbitrator by one year, held that *“the grievance of a party with the conduct of arbitral proceedings or any other substantive challenge cannot be decided by the Court under Section 29A.”*

7. Aggregate value of claims and counter-claims under Section 34 of the Arbitration & Conciliation Act, 1996 does not include pendente lite value and future interest.

³²⁰ *Vivek Aggarwal & Anr. v Hemant Aggarwal & Ors.* [2024] DHC 289.

Delhi High Court held that in the determination of pecuniary jurisdiction of the Court under Section 34 of the Arbitration and Conciliation Act, 1996, the value of pendente lite and future interest cannot be included in the aggregate value of the claims and counter-claims which form the basis so as to determine the Specified Value provided under Section 12 of the Commercial Courts Act, 2015.³²¹

In *Simentech India Pvt Ltd v Bharat Heavy Electricals Ltd*,³²² it has been stated that under Section 12 (2) of the Commercial Courts Act, the computation of interest which is to be considered as a part of the arbitration claim can be considered only until the date of invocation of arbitration which is the definitive cut-off for calculating the aggregate value for establishing pecuniary jurisdiction of a Court.

8. Contravention of substantive law not a ground to challenge arbitral award under Section 34 of the Arbitration & Conciliation Act, 1996.

The Jharkhand High Court, while dismissing the appeal, has held that a mere contravention of substantive law by itself does not constitute a valid ground for setting aside an arbitral award subsequent to Arbitration & Conciliation Act's 2015 amendment. In line with previous Supreme Court judgements, the High Court in *Bharat Petroleum Corporation Ltd v Anant Kumar Singh*³²³ observed that “as per Section 34 (2A) as introduced vide 2015 amendment, a domestic arbitral award may also be set aside if the Court finds that it is vitiated by patent illegality appearing on the face of the award and it has been provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.”

The appeal was in response to the ruling of the Arbitrator wherein it was held that though wrong information provided by the Respondent regarding the leasehold of the impugned Bharat Petroleum retail outlet, the Appellant should restore dealership to the Respondent since the given wrong information was not very serious and was made inadvertently.

9. Directors of company cannot be made parties to arbitration by applying Group of Companies doctrine.

In *Vingro Developers Pvt Ltd v Nitya Shree Developers Pvt Ltd*,³²⁴ the High Court of Delhi held that doctrine of Group of Companies cannot be applied in order to make directors of a company parties to arbitral proceedings. Since the relationship between that of a company

³²¹ Commercial Courts Act 2015, s 12.

³²² *Simentech India Pvt Ltd. v Bharat Heavy Electricals Ltd.* [2024] DHC 254.

³²³ *Bharat Petroleum Corporation Ltd. v Anant Kumar Singh & Anr.* Commercial Appeal No. 15 of 2020 (Jha).

³²⁴ *Vingro Developers Pvt Ltd. v Nitya Shree Developers Pvt Ltd. & Ors.* ARB.P. 667/2023.

and its director is that between a principal and his agent as under Section 182 of the Contract Act,³²⁵ the agent cannot be held to be personally responsible for the acts done on the principal's behalf under Section 230.³²⁶

The petition in the instant case under Section 11(6) of the Arbitration & Conciliation Act arose owing to the failure of the parties in appointing an Arbitrator to adjudicate the dispute regarding the development of residential township under the Builder Buyer Agreements between the parties. The Court held that in the absence of an express provision in the agreement to make the directors personally liable for any action as provided in Section 230 of the Contract Act, the directors of the Respondent company cannot be held to be personally liable. Hence, the dispute between the two developers would be adjudged without making the directors party to the arbitration.

10. Reduction of interest amounts to modification of original arbitration award.

The Allahabad High Court, in *Sushil Kumar Mishra v State of U.P.*,³²⁷ held that the Court under Section 34 of the Arbitration & Conciliation Act, 1996 does not have the power to modify an award though the Court has been empowered to sever parts of the award to set aside if the severance does not impact the remaining award as was held by the Supreme Court in *Larsen Air Conditioning and Refrigeration Company v Union of India*.³²⁸

The appeal is preferred against the District Judge's order by which the rate of interest awarded to the Appellant by the Arbitrator had been reduced from 14% to 6% p.a.

³²⁵ Indian Contract Act 1872, s 182.

³²⁶ Indian Contract Act 1872, s 230.

³²⁷ *Sushil Kumar Mishra v State of U.P & Anr.* [2024] AHC 9904.

³²⁸ *Larsen Air Conditioning and Refrigeration Company v Union of India & Ors.* 2023 SCC Online SC 982.