

MONTHLY ROUND-UP (FEB 2024 – JUL 2024)

FEBRUARY

1. Company related claims are arbitrable even though it is non-signatory to the Arbitration Agreement.

In *M/S Opuskart Enterprises & Ors. v. Kaushal Kishore Tyagi*,¹ the Delhi High Court ruled that disputes arising among partners concerning their business activities, whether conducted through the firm or the company, fall within the ambit of arbitrable matters. The Court rejected the notion that a firm or company cannot engage in arbitration proceedings solely due to its non-signatory status in the arbitration agreement.

The Court, presided over by Justice Pratibha M. Singh, observed that the broad nature of the arbitration clause in the partnership deed supports the view that disputes related to business matters between partners, whether conducted through the firm or the company, are arbitrable. Additionally, the Court invoked the Group of Companies doctrine, emphasizing that non-signatory affiliates may be considered parties to an arbitration agreement if there exists mutual intention.

2. Striking off company's name by ROC post-commencement of arbitration is not a ground to set aside award.

In *M/s Exotic Buildcon Pvt. Ltd. v. M/s Medors Biotech Pvt. Ltd.*,² the Delhi High Court has ruled that arbitral awards cannot be set aside under Section 34 of the Arbitration & Conciliation Act, 1996 [“**Arbitration Act**”]³ on the basis of a company's name being struck off by the Registrar of Companies [“**ROC**”] after the commencement of arbitration. A Division Bench of the High Court dismissed the appellant's appeal seeking to set aside the arbitral award,

¹ *M/S Opuskart Enterprises & Ors v Kaushal Kishore Tyagi*, 2024 DHC 290.

² *M/s Exotic Buildcon Pvt Ltd v M/s Medors Biotech Pvt Ltd*, 2024 DHC 577.

³ Arbitration and Conciliation Act 1996, s 34.

emphasizing that the cancellation of a company's incorporation does not affect the realization of owed amounts or the discharge of obligations.

While recognizing the need for a struck-off company to take steps to restore its name on the register of companies to pursue its claim, the High Court held that setting aside the arbitral award on this ground is unwarranted. The Court considered the timing of the ROC's action and the arbitration reference, noting that the parties were referred to arbitration before the respondent's name was struck off. The historical context of widespread company striking-offs in 2015 was also taken into account while arriving at this decision.

3. The limitation for filing a petition under Section 11 of the Arbitration Act, 1996 arises upon failure to appoint arbitrator within 30 days from the issuance of the notice.

The Delhi High Court in *Information TV Pvt. Ltd. v Jitendra Dahyabhai Patel*⁴ held that a petition under Section 11 of the Arbitration Act can only be filed after the notice in respect of the particular claim(s)/dispute(s) to be referred to arbitration, as contemplated by Section 21 of the Arbitration Act,⁵ is made, and there has been a failure to make the appointment of an arbitrator within 30 days. The bench held that the cause of action arises upon the failure to make the appointment of the arbitrator within 30 days from the issuance of the notice invoking arbitration.

4. Limitation for challenging award under Section 34 is absolute; condonation of delay impermissible unless party shows diligence and bona fide reasons.

In *National Research Development Corp. & Anr. v Chromous Biotech Pvt. Ltd.*,⁶ the Delhi High Court held that the time limit for limitation under Section 34(3) of the Arbitration Act⁷ is absolute in nature, and it is impermissible to condone the delay in challenging an arbitral award under Section 34 unless the party demonstrates diligence and bona fide reasons beyond its control for the delay.

The court also emphasized the minimal supervisory role of the courts in the arbitral process to determine the impermissibility of extension beyond the stipulated period.

⁴ *Information TV Pvt Ltd v Jitendra Dahyabhai Patel*, 2024 DHC 927.

⁵ Arbitration and Conciliation Act 1996, s 21.

⁶ *National Research Development & Anr v Chromous Biotech Pvt Ltd* 2024 DHC 131.

⁷ Arbitration and Conciliation Act 1996, s 34(3).

5. Cannot raise an allegation of bias after the award has been passed under Section 31.

The Delhi High Court in *Allied-Dynamic Joint Venture v Ircon International Ltd.*,⁸ held that challenging an arbitral award on the grounds of arbitrator bias is not permissible if such a challenge was not brought up during the arbitration proceedings.

The High Court noted that the arbitration was invoked prior to the 2015 Amendments to the Arbitration Act, and thus, disqualification of an employee from being appointed as an arbitrator in terms of Section 12(5)⁹ read with the Seventh Schedule of the Arbitration Act would not be attracted. The High Court also noted the joint venture's conduct during the arbitration proceedings, as Allied-Dynamic did not seek a formal adjudication of disputes in respect to their allegation of bias. Although the petitioner claimed to have raised the issue of bias through letters, no formal adjudication or request for a change of arbitrator based on bias was made during the proceedings. Therefore, the award could not be challenged under Section 34 of the Arbitration Act.

6. An award under the Micro, Small, and Medium Enterprises Development Act, 2006 (MSME Act) Act¹⁰ cannot be challenged through the invocation of writ jurisdiction without availing the remedy under S 34 of the Arbitration Act.¹¹

In the case of *State Trading Corporation of India Ltd. v Micro and Small Enterprises Facilitation Council Delhi and Anr.*¹², the Delhi High Court has refused a party from filing a writ petition under Articles 226/227¹³ challenging an award passed under the Micro, Small, and Medium Enterprises Development Act, 2006 [“MSME Act”] without taking recourse under Section 34 of the Arbitration Act.¹⁴ The Delhi High Court, in another case as well¹⁵, had held that the aggrieved party should avail the alternate remedy available under the Arbitration act before approaching the court under Article 226¹⁶ unless there are extraordinary or exceptional circumstances while clarifying that remedy under Article 226 is not absolute and is at the discretion of the High Court.

⁸ *Allied-Dynamic Joint Venture v Ircon International Ltd, Delhi*, O.M.P. (COMM) 461/2016.

⁹ Arbitration and Conciliation Act 1996, s 12(5).

¹⁰ Micro, Small, and Medium Enterprises Development Act 2006.

¹¹ Arbitration and Conciliation Act 1996, s 34.

¹² *State Trading Corporation of India Ltd v Micro and Small Enterprises Facilitation Council Delhi and Anr.*, LPA 91/2024.

¹³ The Constitution of India 1950, art 227.

¹⁴ Arbitration and Conciliation Act 1996, s 34.

¹⁵ *Shri Balaji Enterprises & Ors v Reserve Bank of India & Anr.*, 2024 SCC OnLine Del 689.

¹⁶ The Constitution of India 1950, art 226.

In another case concerning MSMEs, the Delhi High Court in *JKG Infratech Pvt. Ltd. v Larsen & Toubro Ltd.*¹⁷ held that the MSME Facilitation Council cannot refer enterprises to Arbitration under Section 18 of the MSME Act¹⁸ for contracts that were signed by such MSMEs before they were registered under the MSME Act.

7. High Court not competent to extend Arbitrator’s mandate under Section 29(4), jurisdiction lies exclusively with Court which appointed the Arbitrator.

In *K.I.P.L. Vistacore Infra Projects J.V v Municipal Corporation of the City of Ichalkarnji*,¹⁹ the Bombay High Court held that the term “Court” used in Sub-Section (4) and in the Scheme of Section 29A of the Arbitration Act²⁰ must be construed in reference to the context. The Court observed that an arbitrator appointed by the High Court or Supreme Court in the case of International Commercial Arbitration would not be subject to the Principal Civil Court of Original Jurisdiction in a subordinate district exercising the power under Sub-Section (4) or, for that matter, the power under Sub-Section (6) to substitute an arbitrator while extending the period referred to in Sub-Section (4).

The Hon’ble High Court concluded that introducing the meaning assigned to the term “Court” in Section 2(1)(e)²¹ into Section 29A would run contrary to the legislative intent. Such an interpretation would defeat the purpose of the provision by allowing a “Court” as defined under Section 2(1)(e) to exercise power vested in the High Court to extend the mandate of the arbitrator and even substitute the arbitrator or arbitral tribunal itself.

8. Issuance of “No Claim Certificate” does not render dispute non-arbitrable.

The Gujarat High Court in *Poll Cont Associates v Narmada Clean Tech Ltd.*²² ruled that the reference to the arbitration can be refused only when the Court concludes that the claim is non-arbitrable without even the slightest doubt.

The single bench of Chief Justice Sunita Agarwal, allowing a Section 11 application of the Arbitration Act seeking the appointment of an Arbitrator, reiterated that it could only carry on a prima-facie assessment as a general rule of law and the decision on arbitrability lies

¹⁷ *JKG Infratech Pvt Ltd v Larsen & Toubro Limited*, 2024 SCC OnLine Del 809.

¹⁸ Micro, Small, and Medium Enterprises Development Act 2006, s 18.

¹⁹ *K.I.P.L. Vistacore Infra Projects J.V v Municipal Corporation of the City of Ichalkarnji*, 2024 SCC Online Bom 327.

²⁰ Arbitration and Conciliation Act 1996, s 29A(4).

²¹ Arbitration and Conciliation Act 1996, s 2(1)(e).

²² *Poll Cont Associates v Narmada Clean Tech Ltd*, 2024 SCC OnLine Guj 1123.

primarily within the Arbitrator's ambit. The Bench refuted the Respondent's contention that the disputes are no longer arbitrable because they become "stale" once the No Claim Certificate is issued. In this regard, the High Court referred to the 'Eye of the Needle' principle propounded by the Supreme Court in *NTPC Ltd. v SPML Infra Ltd.*,²³ which means that the jurisdiction of the Courts under Section 11(6) of the Arbitration Act is very narrow and warrants just two inquiries. The primary inquiry has to be whether an arbitration agreement existed between the parties (this includes the question of privity of contract), and the secondary inquiry has to be whether the dispute is arbitrable. The High Court further clarified that arbitrability of the dispute, as a general rule, also lay under the Arbitrator's ambit. However, the referral Court may reject claims which are ex-facie and manifestly non-arbitrable.

9. Mere negotiations do not delay the cause of action for the purpose of limitation.

In the case of *Sri Athelli Mallikarjun & Ors. v S.S.B Constructions & Anr.*,²⁴ the Telangana High Court reaffirmed the established legal principle that mere negotiations do not postpone the cause of action for limitation. The Court clarified that a dispute between parties cannot be referred to arbitration when the notice invoking arbitration is *ex facie* time-barred.

The Court held that since the Arbitration Act does not specify the limitation period for filing an application under Section 11, recourse must be taken to the Limitation Act, 1963. Notably, the notice invoking arbitration issued by the Applicants was over five years after the rejection of their claims by the Respondent. The Court emphasized the necessity for a clear notice invoking arbitration, specifically setting out the particular dispute within three years from the rejection of a final bill.

10. The High Court of Calcutta held that an arbitration agreement cannot be inferred from the conduct of the parties alone

The Calcutta High Court, in the case of *Tarit Mitra and Anr. v Sharad Goenka*²⁵, while adjudicating on a civil suit for possession of premises from the tenants wherein the tenants sought to refer the dispute for arbitration under an application under Section 8 of the Arbitration Act,²⁶ held that an arbitration based on the tenancy agreement, which had

²³ *NTPC Ltd v SPML Infra Ltd*, 2023 9 SCC 285.

²⁴ *Sri Athelli Mallikarjun & Ors v S.S.B Constructions & Anr*, Arbitration Application No. 169 of 2022.

²⁵ *Tarit Mitra and Anr v Sharad Goenka*, IANo. GA/1/2024.

²⁶ Arbitration and Conciliation Act 1996, s 8.

expired and was not novated or renewed could not be invoked due to non-existence of an explicit agreement showing that the disputes related to the tenancy should be resolved through arbitration. Therefore, in the absence of such a written indication, the requirements of Section 7 of the Arbitration Act²⁷ have not been fulfilled. The arbitration clause formed a part of the tenancy agreement, which had expired and not renewed. Therefore, while tenancy could be concluded from the conduct of the parties, an agreement regarding the applicability of the arbitration clause cannot be inferred from the conduct of the parties alone.

In another case,²⁸ the Bombay High Court also held that the parties should have a separate arbitration agreement between them for reference to arbitration under the MSME Act. This clarifies that an arbitration agreement cannot be deemed and has to be explicitly laid down.

11. The International Olympic Committee's decision to suspend the Russian Olympic Committee upheld by the Court of Arbitration for Sports

The Court of Arbitration for Sport has dismissed Russia's bid to reverse the International Olympic Committee's decision to suspend its official status²⁹. The IOC took this action after Russia attempted to absorb Ukrainian sports organisations following the 2022 invasion of Ukraine. Established in 1984, the CAS is a global organization dedicated to resolving sports-related disputes through arbitration. CAS is headquartered in Lausanne, Switzerland, and operates courts in New York City, Sydney, and its primary location in Lausanne.

The CAS panel overseeing the appeal upheld the IOC's October 12 decision, stating that the Olympic organization did not violate the principles of legality, equality, predictability, or proportionality in suspending the Russian Olympic Committee.

²⁷ Arbitration and Conciliation Act 1996, s 7.

²⁸ *M/s Bafna Udyog v Micro & Small, Facilitation Council and Another*, arbitration petition no. 201 of 2023.

²⁹ *Russian Olympic Committee (ROC) v International Olympic Committee (IOC)*, CAS 2023/A/10093 ROC v IOC.

MARCH

- 1. Arbitral tribunal appointment may be refused if Section 11(6) petition or claim is clearly time-barred. Parliament should consider introducing a limitation period for filing Section 11 applications.**

In *M/S Arif Azim Co. Ltd. v M/S Aptech Ltd.*,¹ the Supreme Court urged the Parliament to bring an amendment to the Arbitration & Conciliation Act, 1996 [“**Arbitration Act**”] prescribing a specific period of limitation within which a party may approach the Court under section 11 of the Arbitration Act² for the appointment of arbitrators.

The Division Bench observed that: “*this Court, while dealing with similar issues in many other matters, has observed that the applicability of Section 137³ of the Limitation Act, 1963 to applications under Section 11(6) of the Act, 1996 is a result of legislative vacuum as there is no statutory prescription regarding the time limit... Various amendments to the Act 1996 have been made over the years so as to ensure that arbitration proceedings are conducted and concluded expeditiously. We are of the considered opinion that the Parliament should consider bringing an amendment to the Act, 1996 prescribing a specific period of limitation within which a party may move the Court for making an application for appointment of arbitrators under Section 11 of the Act, 1996.*” The Supreme Court also observed that the limitation period starts only after the applicant sends a valid notice to initiate arbitration and the other party fails or refuses to comply with the demands outlined in that notice.

- 2. A general reference to another contract is insufficient to incorporate an arbitration clause; a specific reference is required.**

In *NBCC (India) Ltd. v Zillion Infra Projects Pvt. Ltd.*,⁴ the Delhi High Court while dealing with an application for the appointment of an arbitrator under Section 11(6) of the Arbitration Act, held that the application has to be allowed and took note of the fact that the letter of intent [“**LOI**”] stated the terms and conditions in another contract which would apply mutatis mutandis to the LOI.

¹ *M/S Arif Azim Co Ltd v M/S Aptech Ltd*, [2024] 3 S.C.R. 73.

² Arbitration and Conciliation Act 1996, s 8.

³ The Limitation Act 1963, s 137.

⁴ *NBCC (India) Ltd. v Zillion Infra Projects Pvt. Ltd.*, 2024 SCC Online SC 323.

The Supreme Court, while rejecting the approach of the High Court, held that there is no specific reference made in the LOI to incorporate the arbitration clause mentioned in another contract.

3. Refusal to enforce a foreign award should be rare, with international standards used to assess potential bias.

In *Avitel Post Studios Ltd. & Ors. v HSBC PI Holdings (Mauritius) Ltd.*⁵, the Supreme Court emphasized the principle of minimal judicial intervention in foreign arbitral awards, citing the precedent set in *Vijay Karia v Prysmian Cavi E. Sistemi SRL*.⁶ Furthermore, the Court highlighted the narrow grounds for resisting the enforcement of foreign awards, drawing from the International Law Association's recommendations for using global standards in defining "public policy" in international arbitration.

With respect to the case at hand, the Court held that the choice of Singapore as the seat of arbitration and the exclusive supervisory jurisdiction vested in the seat court. Emphasizing party autonomy and the principle of perceived neutrality, the Court rejected challenges to the award based on bias, as they were not raised before the Singapore courts.

4. The Limitation Act does not cover prolonged delays, and condonation is only granted in exceptional cases.

In *State of UP & Ors. v Rajveer Singh & Anr.*⁷, the Appellant filed an appeal under Section 37 of the Arbitration Act. The appeal was filed after a delay of four years.

The Allahabad High Court referred to *NHAI v Smt. Sampata Devi & Ors.*⁸ and held that Section 5 of the Limitation Act can be invoked but sparingly. The Court also noted that the term "sufficient cause" in Section 5 of the Limitation Act, 1963, does not cover long delays, and condonation can be granted only in exceptional circumstances.

5. When an arbitral award is essentially a money decree, a 100% deposit of the award amount is required for the grant of a stay.

⁵ *Avitel Post Studios Ltd v HSBC PI Holdings (Mauritius) Ltd*, AIR OnLine 2020 SC 691.

⁶ *Vijay Karia v Prysmian Cavi E. Sistemi SRL*, AIR 2020 SC 1807.

⁷ *State of UP & Ors v Rajveer Singh & Anr*, 2024 AHC 66171.

⁸ *National Highways Authority of India v Smt. Sampata Devi & Ors*, 2023 (12) ADJ 787.

In *M/s Balmer Lawrie & Co. Ltd. v M/s Shilpi Engineering Pvt. Ltd.*⁹, the applicant sought a stay on the execution of the award through an interim application. The High Court noted that under section 36(3) of the Arbitration Act, the Court exercises its discretion in granting a stay on the award. The High Court referred to various judgments of the Supreme Court that require the deposit of 100% of the awarded amount for stays when the award is in the form of money decree.

The Court also noted that there is no distinction between an application under Sections 36(3) and 37 of the Arbitration Act, as neither provision mentions any such differentiation.

6. Arbitral tribunal cannot be criticized for disallowing additional evidence at the final stage, especially when the document was already in the party's possession.

In *M/s Fortuna Skill Management Pvt. Ltd. v M/s Jaina Marketing & Associates*¹⁰, the Delhi High Court observed that the application for additional evidence was made three years after the petitioner had filed its statement of defence. The Court noted that the arbitral tribunals should focus on fair, speedy and inexpensive trials. However, such additional evidence can be allowed at the end of the trial only in cases where the evidence could not be produced earlier, and there were valid reasons for such non-production.

The Delhi High Court concluded that the Tribunal in the present case at hand was justified in rejecting the application, as it would lead to unnecessary delays in the proceedings.

7. A single party cannot appoint two-thirds of the arbitral tribunal.

The Delhi High Court in *Apex Buldys Ltd. v IRCON International Ltd.*¹¹, noted that Clause 73 of the contract stipulates that the arbitrators must be selected from a list of three names provided by the respondent, with the petitioner having the authority to choose only one arbitrator, while the other two are appointed by the respondent.

The Court concluded that this arrangement, which permits the employer to select two-thirds of the arbitration panel, contravenes principles of impartiality, balance, and diverse representation.

⁹ *M/s Balmer Lawrie & Co Ltd v M/s Shilpi Engineering Pvt Ltd*, Interim Application (I) No 779 of 2024.

¹⁰ *M/s Fortuna Skill Management Pvt Ltd v M/s Jaina Marketing & Associates*, O.M.P. (COMM) 511 of 2023.

¹¹ *Apex Buldys Ltd v IRCON International Ltd*, 2024 DHC 2113.

8. Under the MSME Act, the Council is not authorized to consider the maintainability of a reference during the conciliation stage.

In *National Small Scale Industries Ltd. v State of Odisha & Ors.*¹², the case involved a challenge to an order issued by the Micro & Small Enterprises Facilitation Council, Cuttack [“**Council**”], which instructed the parties to engage in conciliation proceedings after the Council entertained an application from the Petitioner questioning the reference’s maintainability.

The Orissa High Court ruled that the Council had not initiated the conciliation process as required by Section 18(2) of the MSME Act, 2006. According to Section 18(2), upon receiving a reference, the Council must either conduct the conciliation itself or enlist the help of an institution that offers alternative dispute resolution services. In this context, the High Court highlighted that the Council’s authority does not include entertaining applications that challenge the reference’s maintainability before starting arbitration proceedings.

¹² *National Small Scale Industries Ltd v State of Odisha & Ors*, W.P.(C) No. 10409 of 2014.

APRIL

1. A policy circular requiring further consent for arbitration cannot be construed as an arbitration clause.

The Calcutta High Court, in *Dhansar Engineering Co. Pvt. Ltd. v Eastern Coalfields Ltd.*,¹ ruled that a policy circular issued by a parent company contemplating arbitration does not constitute an arbitration agreement if it requires fresh consent from the contractor to refer disputes to arbitration. The court held that when a circular requires the contractor's consent for existing contracts, it cannot be construed as an arbitration agreement, as it would necessitate a new arbitration agreement between the parties before referring disputes to arbitration. The court also stated that a circular expressing a desire for arbitration would not be considered an arbitration clause unless a definite agreement is executed between the parties pursuant to such expression.

2. The decision of an arbitral tribunal to not implead a party to the arbitration is not an interim award.

The Delhi High Court, in *NHAI v M/s IRB Ahmedabad Vadodra Super Express Tollways*,² held that an arbitral tribunal's decision to refuse to implead a party to the arbitral proceedings does not constitute an "Interim Award", which can be directly challenged under Section 34³ of the Arbitration Act. The court referred to the decision of a coordinate bench in *NHAI v Lucknow Sitapur Expressway*,⁴ wherein the court held that the order of the tribunal on the issue of impleading of a party does not constitute an interim award. The court ruled that an order qualifies as an interim award only when it touches upon the merits of claims or conclusively decides a dispute between parties. It also held that the application praying for the impleading of a third party was not a matter that would be dovetailed into the final award.

3. A petition under Section 34 filed after the grace period expiry during court break is not entertainable even if filed on the reopening day.

¹ *Dhansar Engineering Co Pvt Ltd v Eastern Coalfields Ltd*, [2024] SCC OnLine Cal 4028.

² *National Highway Authority of India v IRB Ahmedabad Vadodra Super Express Tollways Pvt Ltd*, [2024] SCC OnLine Del 2397.

³ Arbitration and Conciliation Act 1996, s 34.

⁴ *National Highway Authority of India v Lucknow Sitapur Expressway Ltd.*, [2022] SCC OnLine Del 4527.

The Delhi High Court, in *MyPreferred Transformation & Hospitality Pvt. Ltd. & Anr. v Faridabad Implements Pvt. Ltd.*,⁵ ruled that a petition under Section 34⁶ of Arbitration Act is not entertainable if filed after the expiry of the 30-day condonable grace period given under the proviso to Section 34(3), even if this period ends during court breaks and the petition is filed on the court's reopening day. The court clarified that Section 10⁷ of the General Clauses Act, 1897, which typically allows acts to be done on the next working day when the last day falls on a court holiday, does not extend to petitions challenging arbitration awards. The court referred to the Apex Court judgment in *Bhimashankara Sabakari Sakhare Karkhane Niyamita v Walchandnagar Industries Ltd.*,⁸ wherein the Supreme Court held that proviso to Section 10 of the General Clauses Act excludes its applicability to proceedings to which the Limitation Act applies and since the arbitral proceedings are governed by the Limitation Act, 1963,⁹ the benefit of Section 10 would not be available.

4. An award by a unilaterally appointed arbitrator can be challenged even by the appointing party.

The Delhi High Court, in *Telecommunication Consultants India Ltd. v Shivaa Trading*,¹⁰ ruled that an award passed by a unilaterally appointed arbitrator can be challenged for invalidity of such appointment and lack of jurisdiction, even by the party who made such an appointment. The court held that a defect of jurisdiction can be challenged at any stage as it affects the power of the tribunal to decide the dispute. The court relied on the decision of the Supreme Court in *Bharat Broadband Network Ltd. v United Telecom Ltd.*,¹¹ wherein the court held that unilateral appointment could also be challenged by the appointing party. It also held that mere participation in arbitral proceedings does not constitute an 'express waiver' under Section 12(5)¹² of the Arbitration Act.

5. Attempts by the arbitrator to reach a settlement are not tantamount to conciliation proceedings under Part III.

⁵ *MyPreferred Transformation & Hospitality Pvt Ltd v Faridabad Implements Pvt Ltd.*, [2024] SCC OnLine Del 2437.

⁶ Arbitration and Conciliation Act 1996, s 34.

⁷ The General Clauses Act 1897, s 10.

⁸ *Bhimashankar Sabakari Sakhare Karkhane Niyamita v Walchandnagar Industries Ltd.*, [2023] 8 SCC 453.

⁹ The Limitation Act 1963.

¹⁰ *Telecommunication Consultants India Ltd v Shivaa Trading*, [2024] SCC OnLine Del 2937.

¹¹ *Bharat Broadband Network Ltd v United Telecoms Ltd.*, [2019] 5 SCC 755.

¹² Arbitration and Conciliation Act 1996, s 12(5).

In *MFAR Constructions Pvt. Ltd. v Bengal Shristi Infrastructure Development Ltd.*,¹³ the Calcutta High Court held that attempts made by an arbitrator to encourage the parties to reach a settlement would not be a conciliation proceeding under Part III of the Arbitration Act since the same is covered under Section 30¹⁴ of the Arbitration Act. In the present appeal, the arbitral award had been set aside by the Commercial Court, Alipore, by holding that the arbitrator had taken part in a conciliation exercise between the parties. The High Court held that efforts by parties in resolving their dispute during the pendency of the arbitral proceedings were akin to settlement as under Section 89 read with Order 23 Rule 3 of the Code of Civil Procedure, 1908, and is not a process of conciliation.

6. Insolvency disputes and matters relating to winding up are arbitrable in nature.

The Telangana High Court in *Shameen Sultana Khan v Faizunnisaa Begum*¹⁵ applied the doctrine of kompetenz-kompetenz while holding that disputes relating to insolvency and winding up matters are arbitrable since, under Section 16(1)¹⁶ of the Arbitration Act, the arbitral tribunal can rule on its own jurisdiction and judicial intervention at the application stage ought to be minimised. An application under Section 11¹⁷ of the Arbitration Act had been filed to adjudicate a dispute relating to the settlement of accounts arising from the dissolution of a partnership firm under Section 43¹⁸ of the Indian Partnership Act, 1932. The court held that objections relating to the arbitrator's jurisdiction regarding the applicant's claim can be raised before the arbitral tribunal.

7. Courts must scrutinise fundamental issues before referring disputes to arbitration under Section 11(6A).

The Delhi High Court, in *Deepak Maurya v Saraswathi Supari Processing Unit & Ors.*¹⁹, held that the Court must not mechanically send disputes to an arbitral tribunal under Section 11(6A)²⁰ of the Arbitration Act. The court is required to consider fundamental issues and ensure the existence of an arbitrable dispute before making such a reference. The court emphasised that while its jurisdiction at the reference stage is limited, it must not act in a mechanical

¹³ *MFAR Constructions Pvt Ltd v Bengal Shristi Infrastructure Development Ltd*, [2024] SCC OnLine Cal 3786.

¹⁴ Arbitration and Conciliation Act 1996, s 30.

¹⁵ *Shameen Sultana Khan v Faizunnisaa Begum*, [2024] SCC OnLine TS 612.

¹⁶ Arbitration and Conciliation Act 1996, s 16(1).

¹⁷ Arbitration and Conciliation Act 1996, s 11.

¹⁸ The Indian Partnership Act 1932, s 43.

¹⁹ *Deepak Maurya v Saraswathi Supari Processing Unit & Ors*, ARB.P. 420/2023.

²⁰ Arbitration and Conciliation Act 1996, s 11(6A).

manner. The referral to arbitration can only be made if the petitioner demonstrates the existence of an arbitrable dispute. The Court referred to the Supreme Court's decision in *DLF Home Developers Ltd. v Rajapura Homes Pvt. Ltd. & Anr.*,²¹ underscoring the duty of courts to scrutinise preliminary issues within the statutory framework before referring disputes to arbitration.

8. Arbitral tribunal can't go outside reference order and cannot widen its jurisdiction by dealing with disputes not referred to it.

The Punjab and Haryana High Court, in *Talwandi Sabo Power Ltd. v Punjab State Power Corp. Ltd.*,²² ruled that an arbitral tribunal cannot extend its jurisdiction beyond the reference order. The High Court held that an Arbitral Tribunal is bound by the terms of the reference made to it and cannot go beyond the scope of the reference order. It reiterated that the Tribunal's jurisdiction is derived solely from the reference made to it, and it cannot entertain disputes outside the scope of the arbitration clause.

9. Arbitrator's mandate would not be terminated when the delays in arbitral proceedings are not attributable to it.

The Bombay High Court in *Glencore India Pvt Ltd v Amma Lines Ltd*²³ ruled that an arbitrator's mandate does not terminate when proceedings exceed agreed timelines if delays are attributable to the party seeking termination. The court held that while generally, an arbitrator's mandate expires upon failure to conclude proceedings within the agreed time period in arbitrations not governed by Section 29A,²⁴ this does not apply when the tribunal acted expeditiously, and delays were caused by the parties themselves. The court dismissed a petition challenging the tribunal's extension of its mandate, upholding the order that extended the mandate, as the petitioner had caused substantial delays in filing documents and examining witnesses.

²¹ *DLF Home Developers Ltd v Rajapura Homes Pvt Ltd & Anr*, [2021] 16 SCC 743.

²² *Talwandi Sabo Power Ltd v Punjab State Power Corp Ltd*, [2024] 2024:PHHC:057870.

²³ *Glencore India Pvt Ltd v Amma Lines Ltd*, [2024] MANU/MH/2359/2024.

²⁴ Arbitration and Conciliation Act 1996, s 29A.

- 1. The arbitrator's power under Section 32(2)(c) can be exercised only if the continuation of proceedings has become unnecessary or impossible.**

The Supreme Court, in *Dani Wooltex Corp. & Ors. v Sheil Properties Pvt. Ltd. & Anr.*,¹ held that the power under Section 32(2)(c)² of the Arbitration Act can only be exercised if the continuation of proceedings becomes unnecessary or impossible. The mere existence of a reason is insufficient, the reason must render continuation unnecessary or impossible. The Court stated that abandonment of a claim, either express or implied, can be a ground for invoking Section 32(2)(c). Implied abandonment requires proven facts that clearly indicate abandonment. Non-appearance or failure to schedule a hearing by the claimant does not automatically constitute abandonment. The Court referred to Section 32(2), highlighting that termination can occur due to the claimant's withdrawal or mutual agreement of the parties. The Court emphasised that procedural lapses or non-appearance alone do not justify termination unless unequivocally established through compelling evidence.

- 2. Arbitral award liable to be set aside for disregard of evidence by the arbitrator.**

The Delhi High Court, in *M/S Divyam Real Estate Pvt. Ltd. v M/S M2k Entertainment Pvt. Ltd.*³ ruled that an arbitral award must be set aside if the arbitrator has not rendered clear findings on the contentious issue and the conclusions drawn by the arbitrator disregard evidence on record and do not clearly address contentious issues. The Court stated that such awards are perverse and patently illegal by relying on the Supreme Court judgement in *I-Pay Clearing Services Pvt. Ltd. v ICICI Bank Ltd.*,⁴ where the court held that “if there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself.”

- 3. The court has the authority to appoint a sole arbitrator even though the arbitration agreement specifies a three-member tribunal.**

¹ *Dani Wooltex Corp v Sheil Properties Pvt Ltd* [2024] SCC OnLine SC 970.

² Arbitration and Conciliation Act 1996, s 32(2)(c).

³ *Divyam Real Estate Pvt Ltd v M2K Entertainment Pvt Ltd*, [2024] SCC OnLine Del 3786.

⁴ *I-Pay Clearing Services Pvt Ltd v ICICI Bank Ltd*, [2022] 3 SCC 121.

The Delhi High Court, in *M/S Twenty-Four Secure Services Pvt. Ltd. v M/S Competent Automobiles Co. Ltd.*,⁵ ruled that it has the authority to appoint a sole arbitrator even when the arbitration agreement specifies a three-member tribunal. Under Section 11(6)⁶ of the Arbitration Act, the court can appoint an arbitrator if the parties cannot reach an agreement for the appointment of arbitrators. The court referred to the Supreme Court's decision in *Union of India v Singh Builders Syndicate*,⁷ which upheld the appointment of a sole arbitrator by the High Court despite the arbitration agreement calling for a three-member tribunal.

4. A party cannot dispute a court's jurisdiction over a Section 34 application after having filed a Section 9 application in that same court.

The Allahabad High Court, in *M/S Devi Dayal Trust & Ors. v M/S Rajhans Towers Pvt. Ltd.*,⁸ ruled that once a party files a Section 9⁹ application before one court under the Arbitration Act, they cannot subsequently dispute the jurisdiction of that court when dealing with any other application arising from the same arbitration agreement. Section 42 of the Arbitration Act grants exclusive jurisdiction to the court where the first application under Part-I of the Act is filed, ensuring uniformity and preventing conflicting judgments. This provision aims to avoid parallel proceedings and facilitates expedited dispute resolution. The court emphasised that applications under Section 8¹⁰ and Section 11¹¹ are exceptions to this rule, as they require specialised adjudication and may be filed before different authorities. The ruling also emphasised the principle of estoppel, barring parties from disavowing the jurisdiction of the court where they initially sought relief.

5. Arbitral award can't be set aside merely due to incorrect application of law or misinterpretation of evidence.

The Allahabad High Court, in *National Highways Authority of India v Rampyari & Anr.*,¹² held that arbitral awards should only be set aside if they exhibit "patent illegality" evident on the face of the record. The court ruled that incorrect application of law or misinterpretation of evidence are not sufficient grounds for annulment. The decision emphasised that

⁵ *M/S Twenty-Four Secure Services Pvt Ltd v M/S Competent Automobiles Co Ltd*, [2024] ARB.P. 24/2024.

⁶ Arbitration and Conciliation Act 1996, s 11(6).

⁷ *Union of India v Singh Builders Syndicate*, [2009] 4 SCC 523.

⁸ *Devi Dayal Trust v Rajhans Towers Pvt Ltd*, [2024] SCC OnLine All 1681.

⁹ Arbitration and Conciliation Act 1996, s 9.

¹⁰ Arbitration and Conciliation Act 1996, s 8.

¹¹ Arbitration and Conciliation Act 1996, s 11.

¹² *National Highways Authority of India v Rampyari*, [2024], SCC OnLine All 1902.

interference in arbitral awards is limited to the grounds available under Section 34¹³ of the Arbitration Act, and should only occur if there is a clear violation of law or a glaring error on the face of the record.

6. An extension of limitation cannot be claimed by invoking Section 32(5) once the party becomes aware of the contents of the award.

The Allahabad High Court, in *Bharatiya Rashtriya Rajmarg Pradhikaran v Neeraj Sharma & Ors.*,¹⁴ ruled that under Section 31(5)¹⁵ of the Arbitration Act, once a party knows the contents of the award, it cannot seek an extension of limitation. Even if a signed copy of the award is not formally received, if the party has acted upon the award, it implies awareness, nullifying the effect of non-signing. This interpretation aligns with the legislative intent to ensure parties are informed about awards to take necessary legal actions within prescribed timelines. The Court emphasised that literal interpretation leading to unjust outcomes contradicts the purpose of arbitration as a speedy dispute resolution mechanism. It applied the doctrine of estoppel, stating that a party, once it acts upon an award, cannot benefit from procedural irregularities. Therefore, knowledge of the contents of the award triggers the limitation period under the Arbitration Act.

7. The timeline under Section 34 of the Arbitration Act is to be strictly adhered to, and Section 5 of the Limitation Act does not apply to such applications.

The Allahabad High Court, in *Sh. Dharmveer Tyagi & Ors. v Competent Authority, DFCC, Special Land Acquisition (Joint Officer Organization) & Ors.*,¹⁶ ruled that Section 5¹⁷ of the Limitation Act, 1963 does not apply to applications under Section 34¹⁸ of the Arbitration Act, and the timeline provided in Section 34(3) for challenging an arbitral award must be strictly adhered to. Section 34(3) mandates a three-month period for challenging an arbitral award, with a possible extension of thirty days if sufficient cause for delay is shown, not beyond that. The court emphasised that the phrase “*but not thereafter*” indicates a legislative intent to enforce strict, non-negotiable timelines for such challenges, leaving no room for court discretion beyond this period. In this case, an application under Section 34 was filed after a delay of

¹³ Arbitration and Conciliation Act 1996, s 34.

¹⁴ *Bharatiya Rashtriya Rajmarg Pradhikaran v Neeraj Sharma*, [2024] SCC OnLine All 1800.

¹⁵ Arbitration and Conciliation Act 1996, s 31(5).

¹⁶ *Sh. Dharmveer Tyagi & Ors v Competent Authority, DFCC, Special Land Acquisition (Joint Officer Organization) & Ors.* 2024:AHC:85334.

¹⁷ The Limitation Act 1963, s 5.

¹⁸ Arbitration and Conciliation Act 1996, s 34.

120 days and was rejected on these grounds. The Court's decision was supported by precedents such as *Union of India v Popular Construction Co.*¹⁹ and *Bhimashankar Sabakari Sakkare Karkhane Niyamita v Walchandnagar Industries Ltd.*,²⁰ which held that the timeline under Section 34(3) is non-negotiable, and extending this period would render the provision meaningless.

8. An arbitral tribunal does not have the power to recall or modify its award under Section 33 of the Arbitration Act.

The Allahabad High Court in *National Highways Authority of India v Musafir & Ors.*,²¹ ruled that the arbitral tribunal can only correct and interpret an award. An additional award can be made only with respect to claims that have been omitted from the arbitral award. Interpretation of the award and additional award can be made only upon a request received by a party. However, correction can be done by the arbitral tribunal on its own within thirty days from the date of the arbitral award. However, none of the provisions give the arbitral tribunal the power to recall and modify its award. Arbitral tribunals are not courts of law which are bestowed with inherent powers. Arbitrators are required to act within the confines of the arbitration agreement and the framework enshrined in the Arbitration Act. Any act which the arbitral tribunal is not empowered to do under the Arbitration Act is *void ab initio*.

9. Termination of Arbitrator's mandate does not terminate arbitral proceedings

The Delhi High Court, in *Extramarks Education India Pvt. Ltd. v Saraswati Shishu Mandir*,²² held that the termination of an arbitrator's mandate does not equate to the termination of the arbitral proceedings. Instead, it allows for the appointment of a substitute arbitrator to ensure the continuation of the proceedings under Sections 14 and 15 of the Arbitration Act. The Court observed that Section 14²³ specifies conditions such as an arbitrator becoming unable to perform functions, failing to act without undue delay, withdrawing from office, or the parties agreeing to terminate their mandate, leading to the termination of the arbitrator's mandate. Section 15²⁴ facilitates the appointment of a substitute arbitrator, allowing the arbitration to proceed from where the original arbitrator left off. The court relied on the Supreme Court's decisions in *Religare Finvest Ltd. v Widescreen Holdings Pvt. Ltd.*²⁵ and *SREI*

¹⁹ *Union of India v Popular Construction Co*, [2001] 8 SCC 470.

²⁰ *Bhimashankar Sabakari Sakkare Karkhane Niyamita v Walchandnagar Industries Ltd*, [2023] 8 SCC 453.

²¹ *National Highways Authority of India v Musafir & Ors.* 2024:AHC:81638.

²² *Extramarks Education India Pvt Ltd v Saraswati Shishu Mandir*, [2024] SCC OnLine Del 3710.

²³ Arbitration and Conciliation Act 1996, s 14.

²⁴ Arbitration and Conciliation Act 1996, s 15.

²⁵ *Religare Finvest Ltd v Widescreen Holdings Pvt Ltd*, [2024] SCC OnLine Del 2769.

Infrastructure Finance Ltd. v Tuff Drilling Pvt. Ltd.,²⁶ which clarified that the termination of an arbitrator's mandate does not terminate the arbitral proceedings but rather permits the appointment of a substitute arbitrator.

²⁶ *SREI Infrastructure Finance Ltd v Tuff Drilling Pvt Ltd*, [2017] SCC OnLine SC 1210.

1. Parties cannot be compelled to arbitrate if the clause explicitly allows discretion: Madhya Pradesh High Court.

The Madhya Pradesh High Court bench of Justice Subodh Abhyankar in *Yeshwant Boolani*¹ held that in case of a discretionary clause in the agreement, the parties cannot be compelled to opt for arbitration without mutual consent. The agreement must clearly specify the choice and the necessity of mutual consent. The High Court emphasized the significance of clauses 21 and 23 in the partnership deed, stating that the firm's continuity upon a partner's death, insolvency, or retirement depended on the remaining partners' discretion, and arbitration of disputes required mutual consent. The Applicant, the son of a deceased partner, claimed a right to partnership under Clause 21, but the court noted this was subject to the other partners' approval. Citing Section 40 of the Arbitration Act,² and relevant Supreme Court precedents, the court affirmed that arbitration clauses are enforceable against legal heirs. However, it distinguished the present case from others where ambiguous arbitration clauses were deemed binding, concluding that the explicitly optional nature of the clause precluded compelling arbitration without mutual agreement. Consequently, the application was dismissed, allowing the applicant to seek other legal remedies.

2. Courts are duty-bound to scrutinize and dismiss time-barred claims to avoid costly arbitration: Gauhati High Court.

The Gauhati High Court dismissed a PIL³ seeking directions to prevent the State of Assam from encroaching on subjects allocated to the Karbi Anglong Autonomous Council under the 6th Schedule of the Constitution⁴ and governed by the 2011 Memorandum of Settlement. The bench observed that it is the court's responsibility to scrutinize and dismiss time-barred claims to prevent parties from being ensnared in lengthy and expensive arbitration proceedings. The division bench, comprising Chief Justice Vijay Bishnoi and Justice Kardak Ete, concluded the matter based on the State Government's assurance of adherence to the Settlement's conditions. The Union of India also affirmed its commitment

¹ *Yeshwant Boolani (Dead) through Lrs Tarun Dhameja v Sunil Dhameja and Anr*, [2024] MPHC Arb Case No. 19 of 2024.

² The Arbitration and Conciliation Act 1996, s 40.

³ *M/S Jcl Infra Pvt Ltd v The Union of India & Anr*, , Arb.P./22/2023.

⁴ The Constitution of India 1950, sch 6.

to the Settlement. The court decided no further order was necessary and disposed of the petition.

3. Arbitrator's conclusions ignoring evidence would render award perverse, patently illegal and liable to be set aside: Delhi High Court.

The Delhi High Court bench of Justice Anup Jairam Bhambhani,⁵ ruled that an arbitrator's award must be set aside if it lacks clear findings on contentious issues or disregards evidence, deeming it perverse and patently illegal. This decision arose from a case where the arbitrator awarded Rs. 20 lakhs to the respondent for loss of profit due to a contract breach, despite acknowledging the speculative nature of the claim. The arbitrator noted that the respondent's claimed losses from ticket sales, advertising, and concessions were based on estimates and lacked a straightforward formula. Despite this, the arbitrator awarded the amount as a "reasonable loss of profit" without a clear basis in the evidence presented. The High Court found the arbitrator's reasoning sparse and cryptic and concluded that the award was unsupported by evidence. The court emphasized that awards made in disregard of evidence or lacking findings on contentious issues are liable to be set aside in line with previous judgements.⁶ Consequently, the court allowed the petition, determining that the arbitrator failed to establish whether the respondent actually incurred or would have incurred any loss of profit.

4. Upon Confirmation of an Arbitration Agreement, the Court Should Abstain from Addressing Further Issues: Delhi High Court.

Justice Amit Bansal of the Delhi High Court ruled⁷ that the court's role is limited to verifying the existence of a valid arbitration agreement, after which it should refrain from addressing other issues, leaving them to the arbitral tribunal. Citing Clause 26 of the EPC Contract and the Arbitration and Conciliation (Amendment) Act 2015,⁸ the court highlighted that unresolved disputes following conciliation should be referred to arbitration. Once the arbitration agreement is confirmed, further examination by the court is unnecessary, as

⁵ *M/S Dnyam Real Estate Pvt Ltd v M/S M2k Entertainment Pvt Ltd*, O.M.P. (COMM) 162/2020 & I.A. 14331/2012, I.A. 10655/2022.

⁶ *I-Pay Clearing Services Pvt Ltd v ICICI Bank Ltd*, S.L.P. (C) No. 24278 of 2019.

⁷ *M/S Kld Creation Infrastructure Pvt Ltd v National Highways & Infrastructure Development Corp.Ltd.*, [2024] Del HC, ARB.P. 321/2024.

⁸ The Arbitration and Conciliation (Amendment) Act 2015.

established in *BSNL v Nortel Networks Pvt. Ltd.*⁹ Consequently, the court-appointed Mr. Amiet Andlay, Advocate, as the sole arbitrator to adjudicate the disputes between the parties.

5. Parties Cannot Challenge Arbitrator’s Procedural Orders Under Section 9 of the Arbitration Act: Delhi High Court.

The Delhi High Court bench of Justice Prathiba M. Singh has ruled¹⁰ that parties cannot challenge procedural orders made by an arbitrator under Section 9 of the Arbitration Act¹¹. The court observed that the petitioner’s attempt to use Section 9 to contest such orders was an effort to bypass the appellate provisions under Section 37,¹² which specifies appealable orders. The court, highlighting inconsistencies and lack of diligence in the petitioner’s evidence, emphasized that Section 9 is intended for interim measures, not for contesting procedural decisions. Citing the Supreme Court’s decision in *Deep Industries Ltd. v ONGC*,¹³ the High Court affirmed that Section 37 of the Arbitration Act restricts appeals to certain orders, excluding procedural matters. Consequently, the court dismissed the petition, imposing a cost of Rs. 10,000 on the petitioner for attempting to circumvent the established appeal process.

6. In the absence of a Specified Seat in an Arbitration Agreement, court jurisdiction is to be determined according to Sections 16 to 20 of the CPC: Delhi High Court.

The Delhi High Court,¹⁴ led by Justice Neena Bansal Krishna, ruled that in the absence of a specified seat for arbitration in an agreement, court jurisdiction should be determined according to Sections 16 to 20 of the Code of Civil Procedure, 1908 [“CPC”]. The bench clarified that general jurisdictional clauses, such as those specifying “Delhi jurisdiction only,” do not define the arbitration seat. Referring to the Supreme Court’s decisions,¹⁵ the High Court emphasized that the seat of arbitration is crucial for determining jurisdiction, and without a designated seat, jurisdiction is based on CPC provisions. Since the contract was executed in Madhya Pradesh and related to work in that state, the court held that only

⁹ *BSNL v Nortel Networks Private Ltd*, [2021] 5 SCC 738.

¹⁰ *Jagdish Tyres Pvt Ltd v Indag Rubber Ltd*, 2024 SCC OnLine Del 3961.

¹¹ The Arbitration and Conciliation Act 1996, s 9.

¹² The Arbitration and Conciliation Act 1996, s 37.

¹³ *Deep Industries Ltd v ONGC*, [2020] 15 SCC 706.

¹⁴ *M/S Kings Chariot v Mr Tarun Wadhwa*, 2024 SCC OnLine Del 4039.

¹⁵ *M/S Ravi Ranjan Developers Pvt Ltd v Aditya Kumar Chatterjee*, SLP(C) No. 17397-17398/2021.

Madhya Pradesh courts had jurisdiction over the dispute, leading to the dismissal of the petition.

7. Bombay High Court: High Courts’ Jurisdiction under Section 37 of the Arbitration Act is Restricted to Arbitrary, Capricious, and Perverse orders.

The Bombay High Court,¹⁶ led by Justices A.S. Chandurkar and Rajesh S. Patil, affirmed that appellate jurisdiction under Section 37 of the Arbitration Act¹⁷ is confined to reviewing orders that are arbitrary, capricious, or ignore established legal principles. The Court noted that Halliburton’s appeal challenging the denial of interim relief under Section 9 was inappropriate, as such matters fall within the discretionary power of the lower court. The High Court found the single judge’s decision reasonable, noting that disputes over contract issues and financial liabilities should be resolved through arbitration. The appeal was dismissed as the decision did not warrant interference under Section 37(1)(b) of the Arbitration Act.¹⁸

8. Arbitration Bar of India Urges Withdrawal of Government’s New Arbitration Guidelines for Procurement Contracts.

The Arbitration Bar of India [“**ABI**”] and the Indian Arbitration Forum [“**IAF**”] have raised concerns regarding the recent office memorandum issued by the Ministry of Finance entitled “Guidelines for Arbitration and Mediation in Contracts for Domestic Public Procurement.”¹⁹ Issued by the Department of Expenditure, this memorandum advises against routinely incorporating arbitration clauses in large-scale government procurement contracts, recommending that arbitration be limited to disputes valued under Rs. 10 crores and not used for higher-value disputes. In a formal representation to Finance Minister Nirmala Sitharaman, the ABI and IAF argued that this guidance contradicts the government’s earlier efforts to strengthen the arbitration framework in India, noting that such efforts were supported by endorsements from the Prime Minister and other senior officials.

¹⁶ *M/s Halliburton India Operations Pvt Ltd v Vision Projects Technologies Pvt Ltd*, Comm Appeal (L) No. 17720 of 2024.

¹⁷ The Arbitration and Conciliation Act 1996, s 37.

¹⁸ The Arbitration and Conciliation Act 1996, s 37(1)(b).

¹⁹ Department of Expenditure, ‘Guidelines for Arbitration and Mediation in Contracts for Domestic Public Procurement’ (*Finance Ministry*, 3 June 2024) <https://doe.gov.in/files/circulars_document/Guidelines_for_Arbitration_and_Mediation_in_Contracts_of_Domestic_Public_Procurement.pdf> accessed 20 July 2024.

9. Claimant's failure to request Arbitral Tribunal to fix a date for hearing cannot be inferred an abandonment of their claim: Supreme Court.

The Supreme Court has, in the case of *Dani Wooltex Corporation v Sheil Properties Pvt. Ltd.*,²⁰ mere failure to participate in the arbitration proceedings or absence from the proceedings cannot establish abandonment of claim leading to termination of arbitral proceedings under Section 32(2)(c) of the Arbitration Act.²¹ The court said that an order passed terminating the arbitral proceedings based on the failure of the claimant to get their date of hearing fixed cannot be considered valid. Powers under Section 32(2)(c) of the Arbitration Act can only be exercised if the continuation of the proceedings becomes unnecessary or impossible, and failure to fix a date is no ground to conclude that the proceedings have become unnecessary. Abandonment of a claim, either express or implied, is a ground where proceedings can be considered to have become unnecessary.

²⁰ *Dani Wooltex Corporation v Sheil Properties Pvt Ltd*, 2024 SCC OnLine SC 970.

²¹ The Arbitration and Conciliation Act 1996, s 32(2)(c).

1. Doctrine of Separability; Arbitration Agreement survives termination of Main Contract: Bombay High Court

The Bombay High Court, in the case of *EBIX Cash Pvt. Lt. v State of Maharashtra and Ors.*¹ dismissed a writ petition averring that the dispute between the parties was arbitrable and covered under the arbitration clause. The facts of the case signify that a contract for an e-ticketing system for buses in Aurangabad was awarded to Ebix Cash after a tender process. Ultimately, a termination notice was served on the petitioner. The Bombay High Court followed the principle laid down by the Supreme Court in *SBI General Insurance Co. Ltd. v Krish Spinning*,² which expressed that an arbitration clause survives termination of the main contract. It reiterated the doctrine of severability enshrined under Section 16(1) of the Arbitration Act.³

2. Avoid bulky pleadings & lengthy submissions in Arbitration Appeals: Supreme Court to advocates

The Supreme Court of India⁴ expressed its displeasure over lengthy and bulky pleadings filed under Sections 34 and 37 of the Arbitration Act.⁵ The Supreme Court stressed the huge pendency of cases and inefficiency and unfairness in arbitral proceedings. It urged the Bar to refrain from incorporating all the grounds which are not available in law.

3. Retroactive Application of Judicial Decisions to Arbitral Awards would create legal & procedural chaos

The Allahabad High Court⁶ emphasized the ensuing chaos in proceedings if the retroactive application of judicial decisions is allowed. It elaborated on the Supreme Court judgement in *Union of India v Tarsem Singh and Ors.*⁷ The Court was dealing with an arbitration concluded

¹ *EBIX Cash Pvt Ltd v State of Maharashtra and Ors*, W.P. No. 6707/ 2024.

² *SBI General Insurance Co Ltd v Krish Spinning*, Civil Appeal No. 7821 of 2024 SLP (C) No. 3792 of 2024.

³ Arbitration and Conciliation Act 1996, s16(1).

⁴ *Bombay Slum Redevelopment Corp Pvt Ltd v Samir Narain Bhojwani*, Civil Appeal No. 7249 of 2024.

⁵ Arbitration and Conciliation Act, 1996 s34, 37.

⁶ *Smt. Savitri Devi v Union of India*, 2024 AHC 109223.

⁷ *Union of India v Tarsem Singh & Ors*, AIR 2019 SC 4689.

in 2008 and held that reopening of arbitration due to a judicial decision would lead to instability in arbitral proceedings.

4. Calcutta High Court strikes down Arbitration Clause as unconstitutional, upholds Subcontractor's Right to Independent Dispute Resolution

Justice Sabyasachi in *M/s Zillion Infraprojects Pvt. Ltd. v. Bridge and Roof Co. India Ltd.*⁸ declared an arbitration clause to be in contravention of Article 14 of the Indian Constitution. The said clause prevented the subcontractor from participating in arbitration proceedings despite bearing the expenses of the proceedings. In addition, it allowed the Indian Oil Corporation to unilaterally refer the dispute to arbitration, thus precluding the subcontractor from raising disputes.

5. Referral Courts Must Not Conduct Intricate Enquiry on Whether Claims Are Time-Barred

The Supreme Court elucidated⁹ on time-barred claims as highlighted in the *Azim Premji* judgement.¹⁰ It furthered the understanding under the said judgement by circumscribing the scope of enquiry of a referral court when a petition under Section 11(6) of the Arbitration Act is filed for the appointment of an arbitrator. The restricted scope must only deal with whether the petition has been filed within the limitation period of three years or not.

6. Composite Reference to Arbitration Necessary when Dispute involves the same subject matter

The Calcutta High Court bench led by Justice Sabyasachi allowed composite references from two companies to arbitration since the two arbitration agreements referred to the self-same demised property.¹¹ In this case, both the agreements were entered into by the same proposed lessee and the two co-owners for the self-same demised property. The Court held: “*if two different references were to be made, there would be ample scope of conflict of decision pertaining to the self-same subject matter between the co-owners of the self-same property.*”

⁸ *M/s Zillion Infraprojects Pvt Ltd v Bridge and Roof Co India Ltd*, AP-COM No. 77 of 2024.

⁹ *SBI General Insurance Co Ltd v Krish Spinning*, Civil Appeal No. 7821 of 2024 SLP (C) No. 3792 of 2024.

¹⁰ *M/S Arif Azim Co Ltd v M/S Aptech Ltd*, 2024 3 S.C.R. 73.

¹¹ *K2V2 Hospitality LLP v. Limton Electro Optics Pvt. Ltd & Ors.*, AP/472/2023.

7. Aggrieved Third Party Beneficiaries of domain names cannot challenge Arbitration Award under Section 34 of the Arbitration Act

The Delhi High Court in the case of *Mukesh Udeshi v Jindal Steel Power Ltd. & Anr.*¹² has held that only parties to arbitration can challenge an award under Section 34 of the Arbitration Act. Third party beneficiaries of domain names, though impacted, cannot be challenged under Section 34. The High Court relied on its own judgement in *M/s Tara Logitech Pvt. Ltd. v Religare Finvest Ltd.*¹³ to signify that only parties to the arbitration agreement can challenge award under Section 34 of the Arbitration Act.

8. Arbitral Tribunal can award compensation for breach if specific performance is not possible

The Delhi High Court, in its seminal ruling in *The Deputy Commissioner of Police v. Score Information Technologies Ltd.*¹⁴ has allowed the arbitral tribunal to award compensation in case the specific performance of the contract is unworkable. Moreover, the Court emphasized that the arbitral tribunal has the authority to interpret the provisions of the contract. Even if the interpretation is erroneous, the courts will not interfere unless it is perverse and patently illegal and goes to the root of the matter.

9. Equatorial Guinea signs the ICSID Convention

Equatorial Guinea becomes the 159th Contracting state of the ICSID Convention. Pursuant to Article 68(2) of the ICSID Convention,¹⁵ the Convention will enter into force on August 23, 2024. Interestingly, Honduras' decision to exit from the ICSID Convention will come into effect on August 25, 2024, thus, bringing the number down to 158 contracting states.

¹² *Mukesh Udeshi v. Jindal Steel Power Ltd & Anr*, O.M.P. (COMM) 213/2023 and I.A. 11241/2023.

¹³ *M/s Tara Logitech Pvt Ltd v Religare Finvest Ltd*, 2014 DHC 7410.

¹⁴ *The Deputy Commissioner of Police v. Score Information Technologies Ltd*, FAO(OS) (COMM) 357/2019.

¹⁵ Convention on the Settlement of Investment Disputes between States and Nationals of Other States (World Bank) art 68(2).