



QUARTERLY ALTERNATE DISPUTE RESOLUTION ROUND-UP (AUGUST 2024 – NOVEMBER 2024)

AUGUST

1. Court's role is confined to verifying arbitration agreement and timely filing under Section 11(5) and (6) of the Arbitration Act.

The Delhi High Court in the case of *Raj Kumari Taneja v Rajindra Kumar & Anr.*¹ held that the Court only has to ensure the existence of the arbitration agreement between the parties and to confirm that the petition has been filed within three years of the service of the Section 21² notice under Sections 11(5) and (6) of the Arbitration and Conciliation Act, 1996 [“**Arbitration Act**”].³

The High Court relied on the Supreme Court decision in *SBI General Insurance Co. v Krish Spinning*,⁴ where the Court had held that under Sections 11(5) and (6) of the Arbitration Act, the role of the Court is confined to ensuring the existence of the arbitration agreement between the parties and confining that the petition was filed within three years of the service of Section 21 notice.

2. Parties cannot invoke arbitration proceedings after voluntarily submitting to Court's jurisdiction during proceedings.

The Gujarat High Court in the case of *Prabhudas Jesangbhai Patel v Vinodbhai Mohanbhai Togadiya*⁵ held that whether a party has waived their right to seek arbitration or submitted to the jurisdiction of the Court is based on the party's conduct during the suit. A party who wilfully participates in the suit and subjects himself to the jurisdiction of the Court cannot later claim the right to arbitrate the dispute.

¹ *Raj Kumari Taneja v Rajindra Kumar & Anr.* [2024] DHC 6365.

² Arbitration and Conciliation Act 1996, s 21.

³ Arbitration and Conciliation Act 1996, ss 11(5) and 11(6).

⁴ *SBI General Insurance Co. Ltd. v Krish Spinning* [2024] SCC OnLine 1754.

⁵ *Prabhudas Jesangbhai Patel v Vinodbhai Mohanbhai Togadiya* [2024] GUJHC 41973.

The court reiterated that the proposition of law remains that an application under Section 8 (1)⁶ of the Arbitration Act should be filed before submission of the first statement on substance of dispute.

3. Pre-arbitration steps cannot be treated as mandatory if could not be fructified.

The Rajasthan High Court in the case of *M/s Larsen and Toubro v Rajasthan Urban Sector Development Project & Anr.*⁷ held that where the pre-arbitration steps mentioned in the agreement could not be fructified, it could not be held that the said pre-conditions are mandatory in nature and in failure of these no arbitration can be initiated.

Furthermore, while considering the appointment of arbitrators, the Court referred to the Supreme Court's decision in *Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 and the Indian Stamps Act, 1989*⁸ to state that the High Court was only required to examine the existence of the arbitration agreement provided by Section 11(6A) of the Arbitration Act.⁹

4. Time limit under Section 29A does not apply to arbitral proceedings commenced before 2015 Amendment to the Arbitration Act.

The Delhi High Court in the case of *M/s Chinar Steel Industries v Ircan International Ltd.*¹⁰ [**“Chinar Steel Industries”**] held that the time limit under Section 29A of the Arbitration Act¹¹ is not applicable to arbitral proceedings commenced pursuant to Section 21 of the Arbitration Act¹² prior to the 2015 amendment. The High Court referred to the case of *Ministry Defence v M/s Agusta Westland International Ltd.*¹³ where the Court clarified that commencement of the arbitration proceedings under Section 21 is an important yardstick to determine the applicability of Section 29A of the Arbitration Act.

In *Chinar Steel Industries*, the Court noted that while the arbitral tribunal was constituted, or “entered into reference”, after the 2015 Amendment, the arbitration had been initiated prior to the amendment. Consequently, the time limit stipulated under Section 29A of the

⁶ Arbitration and Conciliation Act 1996, s 8(1).

⁷ *M/s Larsen and Toubro v Rajasthan Urban Sector Development Project & Anr.* [2024] RJ-JP 33112.

⁸ *Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 and the Indian Stamps Act, 1989* [2023] INSC 1066.

⁹ Arbitration and Conciliation Act 1996, s 11(6A).

¹⁰ *M/s Chinar Steel Industries v Ircan International Ltd.* (Del HC, 16 August 2024).

¹¹ Arbitration and Conciliation Act 1996, s 29A.

¹² Arbitration and Conciliation Act 1996, s 21.

¹³ *Ministry of Defence v Agusta Westland International Ltd.* [2019] SCC OnLine Del 6419.

Arbitration Act does not apply to the present case or to any arbitration proceedings initiated before the 2015 Amendment.

5. Both District Courts and High Court can extend the arbitration deadlines.

The Goa Bench of the Bombay High Court, in *Sheela Chongule v Vijay V. Chongule & Ors.*¹⁴ held that in instances where an Arbitral Tribunal is constituted by the High Court under Section 11(6), an application under Section 29A(4)¹⁵ seeking an extension of time is maintainable before the High Court in matters of domestic arbitration. Furthermore, if an Arbitral Tribunal comprising three arbitrators, constituted under Section 11(2) with the agreement and consent of the parties, fails to conclude the proceedings within the stipulated or extended period, the application under Section 29A(4) would lie before the principal civil court of original jurisdiction in a district which also includes the High Court in exercise of its ordinary original civil jurisdiction.

6. Duty of the Court and arbitral tribunal to examine what the contract provides.

The Supreme Court in the case of *Pam Developments Pvt. Ltd. v State of West Bengal & Anr.*¹⁶ emphasised the responsibility of courts and arbitral tribunals to carefully review the contractual clauses in arbitration proceedings. This was in the context of upholding the Calcutta High Court's decision to annul the arbitrator's ruling, which had awarded compensation for losses due to idle machinery and labour, despite such claims being prohibited under the contract.

Justice Pamidighantam Sri Narasimha and Justice Pankaj Mithal observed that "*...the High Court did what the Arbitrator should have done: examine what the contract provides. This is not even a matter of interpretation. It is the duty of every Arbitral Tribunal and Court alike, and without exception, for the contract is the foundation of the legal relationship. The Arbitrator did not even refer to the contractual provisions, and the District Court dismissed the objections under Section 34 with a standard phrase, as extracted hereinabove.*"

7. No prerequisite of a prior request under Section 21 of the Act for filing Section 11 arbitration applications.

¹⁴ *Sheela Chongule v Vijay V. Chongule & Ors.* [2024] BHC-Goa 1275-DB.

¹⁵ Arbitration and Conciliation Act 1996, s 29A (4).

¹⁶ *Pam Developments Pvt. Ltd. v State of West Bengal & Anr.* [2024] INSC 628.

The Calcutta High Court in the case of *Kakali Khasnobis v Mrs Reeta Paul & Anr.*¹⁷ held that for an application under Section 11(5) of the Arbitration Act,¹⁸ there is no requirement of a prior request for reference to arbitration under Section 21 of the Arbitration Act.¹⁹ The prior notice is only mandatory for the appointment of the arbitrator and not for the initiation of the proceedings itself.

The Court noted that the Petitioner had sufficiently complied with Section 11(5) of the Arbitration Act by invoking the arbitration clause vide a letter dated July 2021, a copy of which was served to the Respondents. The Respondents not only acknowledged the letter but also did not raise any objections to the notice itself. The only objection raised by the Respondents pertained to the unilateral appointment of an arbitrator, which was subsequently addressed by the Petitioner through the application before the High Court under Section 11 of the Arbitration Act.

8. Orders by Arbitral Tribunal in relation to discovery and inspection are not interim awards if they don't resolve the disputed issues.

In *Aptec Advanced Protective Technologies AG v Union of India & Anr.*,²⁰ the Delhi High Court, referencing its earlier decision in *Rhiti Sports Management Pvt. Ltd. v Power Play Sports & Events Ltd.*,²¹ held that an order issued by an arbitral tribunal addressing applications related to the discovery and inspection of documents does not qualify as an interim award unless it resolves the issue between the parties.

Justice Anup Jairam Bhambhani observed that although the Arbitrator's decision addressed various aspects of the dispute, it did not resolve the fundamental issues at the core of the case. The Arbitrator's order was confined to matters of document discovery and inspection, which cannot be regarded as resolving the dispute between the parties. An interim award must address and resolve a matter that is capable of being conclusively determined in the final award.

9. An arbitral award can be enforced at any location within the country where a decree is executable.

¹⁷ *Kakali Khasnobis v Mrs. Reeta Paul & Anr.* (Cal HC, 21 August 2024).

¹⁸ Arbitration and Conciliation Act 1996, s 11.

¹⁹ Arbitration and Conciliation Act 1996, s 21.

²⁰ *Aptec Advanced Protective Technologies AG v Union of India & Anr.* [2024] DHC 6202.

²¹ *Rhiti Sports Management Pvt. Ltd. v Power Play Sports & Events Ltd.* [2018] SCC OnLine Del 8678.

In *M/s Mahindra & Mahindra Financial Services Ltd. v Mr. Neelambar Singh Patel & Ors.*,²² the Madhya Pradesh High Court while referring to the Supreme Court's decision in *Sundaram Finance Ltd. v Abdul Samad*,²³ held that an arbitral award can be enforced through execution at any location in the country where the decree is executable. The Bench further clarified that obtaining a transfer of the decree from the court with jurisdiction over the arbitral proceedings is not required.

10. The correct date for determining the conversion rate of an award amount expressed in foreign currency is the date the award becomes enforceable.

In the case of *DLF Ltd. & Anr. v Koncar Generators and Motors Ltd.*,²⁴ the Supreme Court of India has clarified two main issues regarding the conversion rate for foreign arbitral awards expressed in foreign currency: the correct date for determining the foreign exchange rate for converting the award amount into Indian Rupees and the relevant date for conversion when the award debtor deposits an amount before the Court during ongoing challenge proceedings. The Court reaffirmed that the appropriate date for currency conversion is when the award becomes enforceable, which occurs after all objections to its enforceability are resolved. This principle is based on Section 49²⁵ of the Arbitration Act, which states that a foreign arbitral award is deemed enforceable as a Court decree once objections under Section 48²⁶ are settled.

The Court referenced the landmark case *Forasol v ONGC*²⁷ to support this position, emphasising that currency conversion should occur on the date of enforcement to accurately reflect the award's value at that time. Regarding partial payments made by the award debtor during enforcement, the Supreme Court ruled that if a portion of the arbitral award is deposited in Court, the conversion rate for that amount should be based on the exchange rate on the date of deposit. This approach ensures that the award holder does not benefit from a potentially higher exchange rate at a later date, thereby maintaining fairness in the process.

²² *M/s Mahindra & Mahindra Financial Services Ltd. v Mr. Neelambar Singh Patel & Ors.* CR No. 240/2012 (MP HC).

²³ *Sundaram Finance Ltd. v Abdul Samad* (2018) 3 SCC 622.

²⁴ *DLF Ltd. & Anr. v Koncar Generators and Motors Ltd.* [2024] INSC 593.

²⁵ Arbitration and Conciliation Act 1996, s 49.

²⁶ Arbitration and Conciliation Act 1996, s 48.

²⁷ *Forasol v Oil & Natural Gas Commission* (1984) 1 SCR 526.

SEPTEMBER

1. An award cannot be set aside merely because the Appellate Court's view is a better view.

On 27 September 2024, the Supreme Court delivered a judgment in the case *Punjab State Civil Supplies Corporation Ltd. & Anr. v M/s Sanman Rice Mills & Ors.*²⁸ The case arose from a challenge to a judgment by the High Court of Punjab and Haryana, which had set aside an arbitral award under Section 34 of the Arbitration Act.²⁹

The division bench comprising Justices Pankaj Mithal and PS Narasimha reiterated that the powers of the appellate Court under Section 37 of the Arbitration Act³⁰ is limited to the grounds specified in Section 34,³¹ emphasising that an arbitral award cannot be disturbed merely because an appellate court believes a different view is preferable. The Court clarified that its interference is confined to instances where the award contravenes substantive law or public policy, thereby upholding the integrity of arbitral proceedings.

2. Once a valid arbitration agreement exists, it is not appropriate for Courts to address contested issues involving complex facts at the referral stage.

In a recent ruling, the Supreme Court of India reiterated the principle that once the validity of an arbitration agreement is established, Courts should refrain from addressing complex factual disputes at the referral stage. This decision emerged from the case *Cox & Kings Ltd. v SAP India Pvt. Ltd. & Anr.*,³² where the petitioner, Cox & Kings, sought to include SAP India's parent company as a party in arbitration proceedings despite it not being a signatory to the arbitration agreement.

The three-judge bench, comprising Justices Sanjiv Khanna, Vikram Nath, and Suryakant, held that Courts are not required to assess the merits of whether a non-signatory is bound by the arbitration agreement during the referral process. Instead, such determinations should be reserved for the arbitral tribunal, in line with the doctrine of *kompetenz-kompetenz* outlined in Section 16 of the Arbitration Act.³³ This ruling aligns with previous judgments that have

²⁸ *Punjab State Civil Supplies Corporation Ltd. & Anr. v M/s Sanman Rice Mills & Ors.* [2024] INSC 742.

²⁹ Arbitration and Conciliation Act 1996, s 34.

³⁰ Arbitration and Conciliation Act 1996, s 37.

³¹ Arbitration and Conciliation Act 1996, s 34.

³² *Cox & Kings Ltd. v SAP India Pvt. Ltd. & Anr.* [2024] INSC 670.

³³ Arbitration and Conciliation Act 1996, s 16.

established a restricted scope for judicial interference at this stage, reinforcing the autonomy of arbitral tribunals in determining jurisdictional matters.

3. In exercise of jurisdiction under Section 34 of the Arbitration Act, Courts need to apply their mind to the grounds of challenge before deciding whether it is necessary to interfere with the arbitral award.

In the case of *Kalanithi Maran v Ajay Singh and Anr.*,³⁴ a three-judge bench of the Supreme Court emphasized the necessity for Courts to thoroughly consider the grounds for challenge when exercising their jurisdiction under Section 34 of the Arbitration Act.³⁵ This ruling arose after a Single Judge Bench of the Delhi High Court upheld an arbitral award in favour of Mr. Maran and KAL Airways. Mr. Singh, the Respondent, sought to overturn this decision before a Division Bench, which subsequently remanded the matter back to the Single Judge due to insufficient clarity and substance in the original order.

The Supreme Court supported the Division Bench's decision, noting that the Single Judge's ruling lacked substance and failed to adequately address the arguments presented by both parties. The Court highlighted that the earlier order was neither conclusive nor determinative, thus necessitating a reconsideration of the Section 34 petition.

This case underscores the significant supervisory role of Courts at the arbitration seat. While it is recognized that grounds for challenging an award under Section 34 are limited by statute, it remains imperative that Courts actively engage with these grounds to determine if judicial intervention is warranted.

4. A party seeking arbitration encounters a scenario where the opposing party either fails to respond to a notice under Section 21 of the Arbitration Act or refuses to consent to arbitration, the only remedy available is to approach the Court under Section 11(5) or Section 11(6) of the Arbitration Act.

In the case of *Meenakshi Agrawal v M/s Rototech*,³⁶ the Delhi High Court clarified important procedural aspects regarding arbitration under the Arbitration Act. The Court held that if a party seeking arbitration faces a situation where the opposing party either does not respond to a notice issued under Section 21 of the Arbitration Act³⁷ or refuses to consent to arbitration,

³⁴ *Kalanithi Maran v Ajay Singh and Anr.* [2024] SCC OnLine SC 1876.

³⁵ Arbitration and Conciliation Act 1996, s 34.

³⁶ *Meenakshi Agrawal v M/s Rototech* [2024] DHC 6813.

³⁷ Arbitration and Conciliation Act 1996, s 21.

the only available remedy is to approach the Court under Section 11(5)³⁸ or Section 11(6)³⁹ of the Arbitration Act.

The Court further emphasized that a party cannot unilaterally confer jurisdiction upon an arbitrator, even if an arbitrator has already been appointed. It noted that an arbitrator does not have the authority to summon the opposing party to participate in arbitration proceedings independently.

The ruling underscores the necessity of adhering to proper procedures when initiating arbitration and highlights that parties must act within the framework established by law.

5. The legal position of non-condonation of delay exceeding 120 days in filing a Section 37 appeal under the Arbitration Act may need to be reviewed in view of Section 43 of the Arbitration Act.

In the case of *M/s SAB Industries Ltd. v The State of Himachal Pradesh & Anr.*,⁴⁰ a two-judge bench of the Supreme Court examined the implications of non-condonation of delays exceeding 120 days for filing an appeal under Section 37 of the Arbitration Act,⁴¹ This review was prompted by a challenge to an order from the Himachal Pradesh High Court, which had condoned a delay of 166 days in such an appeal.

The Petitioner contested the High Court's decision by referencing the Supreme Court's ruling in *Union of India v Varindera Constructions Ltd.*,⁴² which established that delays beyond 120 days in filing a Section 37 appeal cannot be condoned. The Supreme Court acknowledged this argument and issued a notice, indicating that its previous decision in *Varindera Constructions Ltd* may need to be reconsidered, as it had explicitly stated that condoning delays beyond 120 days is not permissible.

This case highlights the ongoing legal discourse regarding the limits of judicial discretion in arbitration-related appeals and the potential need for re-evaluation of established precedents considering current statutory provisions.

6. Application to extend time to pass award is maintainable even if the period under Section 29A(4) of the Arbitration Act expires.

³⁸ Arbitration and Conciliation Act 1996, s 11(5).

³⁹ Arbitration and Conciliation Act 1996, s 11(6).

⁴⁰ *M/s SAB Industries Ltd. v State of Himachal Pradesh & Anr.* (SC, 17 September 2024).

⁴¹ Arbitration and Conciliation Act 1996, s 37.

⁴² *Union of India v Varindera Constructions Ltd.* (2020) 2 SCC 111.

A bench consisting of Justice Sanjiv Khanna and Justice R. Mahadevan, in the case of *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd.*,⁴³ held that an application for extension of time to pass an award under Section 29A(4) of the Arbitration Act⁴⁴ is maintainable, even after the expiry of the period for making the arbitral award, i.e., before the expiry of the mandate of the arbitral tribunal. By doing so, they upheld the view of the High Courts of Delhi, Jammu and Kashmir and Ladakh, Kerala, Madras, Bombay and Calcutta in various cases.

Prior to this, the Calcutta High Court had in *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd.*⁴⁵ had held that when the mandate of the arbitral tribunal to pass an award had expired, i.e., the period of 12 months was over, then the application presented by the parties for an extension of time under Section 29A(4) cannot be invoked. This judgement overrules the above judgement and the view taken by the Division Bench of the High Court of Judicature at Patna.

The Court arrived at this conclusion by adopting a purposive interpretation of the word “terminate”, holding that the word must be understood in terms of the syntax of the provision. It considered the fact that it was followed by a continuing expression and held that the expression “prior to or after the expiry of the period specified” should be understood with the reference to the power of the Court to grant an extension of time.

7. An arbitral award won't be invalid merely because of violation of law; a fundamental policy of law must be violated.

In the judgement of *OPG Power Generation Pvt. Ltd. v Enexio Power Cooling Solutions India Pvt. Ltd. & Anr.*,⁴⁶ Justice Chandrachud, Justice JB Pardiwala and Justice Manoj Mishra observed that mere violation of law is not enough in order to interfere with an arbitral award. It must be in conflict with the fundamental aspects of public policy and justice. For something to contravene the “fundamental policy of Indian law”, it must contravene fundamental principles which act as a basis for the administration of justice and enforcement of the law.

The scope for judicial interference in arbitral awards under Section 34⁴⁷ is narrow, particularly after the 2015 amendment. It can be challenged only on grounds of violation of public policy.

⁴³ *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd.* [2024] INSC 686.

⁴⁴ Arbitration and Conciliation Act 1996, s 29A (4).

⁴⁵ *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd* [2023] CHC-OS 5103.

⁴⁶ *OPG Power Generation Pvt. Ltd. v Enexio Power Cooling Solutions India Pvt. Ltd. & Anr.* [2024] INSC 711.

⁴⁷ Arbitration and Conciliation Act 1996, s 34.

Under Explanation 1 of the Section, the award must violate fundamental principles which are essential to the administration of justice, such as violation of the principles of natural justice.

Under Explanation 1 of Section 34(2)(b)(ii), the Court, relying on the decision in *Renusagar Power Co. Ltd. v General Electric Co.*⁴⁸, held that an arbitral award can be set aside if it is in conflict with the basic notions of justice and morality. “Morality”, according to the Court extends only to sexual morality, as any further extension would mean that it would apply to agreements which conflict societal norms, although not illegal. The Court also clarified that interference on grounds of morality would happen only if it shocks the Court’s conscience.

8. An arbitration agreement can be binding on non-signatories if the relationship of the non-signatory party with the signatories and their conduct decides the intent of the party to be bound by the arbitration agreement.

In the case of *Ajay Madhusudhan Patel & Ors. v Jyotindra S. Patel & Ors.*⁴⁹ a two-judge bench of the Supreme Court ruled that an arbitration agreement is not necessarily non-binding on a non-signatory party. The party may have intended to be bound by the arbitration agreement, even if he is not a signatory, through his conduct or relationship with signatory parties. What determines the intention of the non-signatory to be bound by the agreement is the mutual intent of the parties, the relationship of a signatory and non-signatory, commonality of the subject matter, the composite nature of the transactions and the performance of the contract.

It is also notable that the definition of “parties” under the Arbitration Act includes both signatories and non-signatories. The intention of the parties is to be gauged by the circumstances surrounding the participation of the non-signatory in the negotiation, performance and termination of the contract containing the arbitration agreement, or the underlying contract.

9. Twelve-month period for arbitral award begins from the completion of pleadings, not from the statement of defence.

In the case of *Emco Ltd. v Delhi Transco Ltd.*⁵⁰ the Delhi High Court held that Section 29A(1) of the Arbitration Act,⁵¹ read with Section 29A(4) implied that the mandate of the arbitral tribunal terminates if the arbitral tribunal does not issue the award within 12 months of

⁴⁸ *Renusagar Power Co. Ltd. v General Electric Co.* [1993] INSC 342.

⁴⁹ *Ajay Madhusudhan Patel & Ors. v Jyotindra S. Patel & Ors* [2024] INSC 710.

⁵⁰ *Emco Ltd. v Delhi Transco Ltd.* [2024] DHC 6878.

⁵¹ Arbitration and Conciliation Act 1996, s 29A (1).

completion of pleadings under Section 23(4).⁵² This means that the 12 month period is to be calculated not from the date of filing the Statement of defence, but from the date of completion of pleadings.

The inclusion of Section 23(4) is because it refers to the Statement of defence, but this does not mean that the date is to be calculated as such. Such an interpretation would effectively rewrite the provision. In furtherance of the same, the High Court also held that rejoinders and replications are considered to be a part of pleadings.

⁵² Arbitration and Conciliation Act 1996, s 23(4).

1. **Arbitral award to carry mandatory post-award interest under Section 31(7)(b) irrespective of any agreement between parties.**

The Supreme Court, in *R. P. Garg v Chief General Manager*,⁵³ ruled that the sum directed to be paid under an Arbitral Award under Section 31(7)(b) of the Arbitration Act⁵⁴ should carry interest from the date of the award till its realisation.

In this case wherein the executing Court had declined to grant interest on account of a clause in the arbitration agreement prohibiting the grant of interest, the Supreme Court held that such agreement between the parties would not affect the interest granted with respect to the post-award period since under Section 31(7)(b) it is mandatory for the sum directed to be paid to carry interest. This statutory requirement cannot be avoided by means of a contract between the parties. The Court, relying on *Morgan Securities & Credits Pvt. Ltd. v Videocon Industries Ltd.*,⁵⁵ clarified that the phrase “*unless the award otherwise directs*” related to the Arbitrator’s discretion in stipulating the rate of interest rather than the entitlement of post-award interest.

2. **Proceedings under Arbitration Act during subsistence of arbitration agreement not affected by eviction order issued under the Public Premises Act.**

In *Central Warehousing Corp. v Sidhartha Tiles & Sanitary Pvt. Ltd.*,⁵⁶ the Supreme Court held that an arbitrator could be appointed by the High Court under Section 11 of the Arbitration Act⁵⁷ under a valid arbitration clause of the lease agreement for the determination of right of renewal of the lease and revision of storage rates during subsistence of the contract despite eviction order under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [**Public Premises Act**].

The Court ruled that the Public Premises Act does not override the Arbitration Act because it relates to the eviction of a tenant in unauthorised occupation of public premises after the expiration of the lease, and thus, this does not preclude the scope of appointment of the arbitrator for the determination of disputes which arose during the subsistence of the lease

⁵³ *R. P. Garg v The Chief General Manager, Telecom Department & Ors.* [2024] INSC 743.

⁵⁴ Arbitration and Conciliation Act 1996, s 31(7)(b).

⁵⁵ *Morgan Securities & Credits Pvt. Ltd. v Videocon Industries Ltd.* (2023) 1 SCC 602.

⁵⁶ *Central Warehousing Corporation & Anr. v M/s Sidhartha Tiles & Sanitary Pvt. Ltd.* [2024] INSC 805.

⁵⁷ Arbitration and Conciliation Act 1996, s 11.

agreement since the Public Premises Act does not bar or overlap the ambit and scope of proceedings initiated under the Arbitration Act.

3. Well-reasoned arbitral awards cannot be interfered with under Section 34 as the arbitral tribunal is the master of evidence.

The Delhi High Court, while upholding the Arbitral Award in *PEC Ltd. v ADM Asia Pacific Trading Pte. Ltd.*,⁵⁸ reiterated that the Arbitral Tribunal is the master of evidence, and that the scope of interference in an Arbitral Award under Section 34 of the Arbitration Act⁵⁹ was limited when the findings of fact have been based on the appreciation of evidence and documents on record. In the present case, the Appellant contended that the terms of the Charter Party Agreement between the Respondent and the owner of the concerned ship had to be read into the Contract governing the parties while determining the rate of demurrage by considering the Charter Party Agreement as the principal contract while awarding damages.

The Arbitral Tribunal, relying on *MMTC Ltd. v International Commodities Export Corporation of New York*,⁶⁰ had held that though a Charter Party Agreement had been signed by the Respondent and the shipowner, to which the Appellant had not been privy, the Agreement could not be incorporated as a part of the Contract since it was a Cost and Freight Contract, and the role of the Appellant was limited to the discharge of cargo once the ship had arrived at the nominated port. Thus, the Appellant had been held to be liable to pay damages for delay in discharging the cargo within the stipulated time since the incorporation of the Charter Party Agreement into the Contract would lead to contradictory terms because the Contract had already provided for a fixed pre-determined rate of demurrage.

4. Common jural relationship necessary for composite reference when there may not exist a common objective between the impugned agreements.

In *Smt. Sonia Dhir v Prestar Infrastructure Projects Ltd.*,⁶¹ the Calcutta High Court, while relying on *Ganapati Technology Services Pvt. Ltd. v State Fisheries Development Corporation Ltd.*,⁶² held that a composite reference could be made under Section 11 of the Arbitration Act⁶³ when two or more contracts are so intertwined with each other such that separate arbitral proceedings

⁵⁸ *PEC Ltd. v ADM Asia Pacific Trading Pte. Ltd.* [2024] DHC 8211.

⁵⁹ Arbitration and Conciliation Act 1996, s 34.

⁶⁰ *MMTS Ltd. v International Commodities Export Corporation of New York* [2013] SCC OnLine Del 832.

⁶¹ *Smt. Sonia Dhir & Anr. v Prestar Infrastructure Projects Ltd.* (Cal HC, 8 October 2024).

⁶² *Ganapati Technology Services Pvt. Ltd. v State Fisheries Development Corporation Ltd.* [2021] SCC OnLine Cal 4320.

⁶³ Arbitration and Conciliation Act 1996, s 11.

would prejudice the parties. The Court stated that even though both agreements may not achieve a common goal or objective, the requirement for such composite reference was that the underlying jural relationship or common platform between the agreements must be the same, thus unifying the rights flowing from the two agreements. Thus, the disputes arising from the two agreements can be clubbed so as to commonly invoke Section 21 of the Arbitration Act.⁶⁴

In the present case, the two agreements had been entered into by the parties on the same day, of which the first agreement was a leave and licence agreement between the second petitioner and the respondent while the second agreement was a service agreement between the first petitioner and the respondent. It had been contended by the respondents that a composite reference under Section 11 of the Arbitration Act⁶⁵ could be made only when a common goal or objective was sought to be achieved by both the parent agreement and ancillary agreement.

5. Arbitral proceedings are not barred by the application of Section 69 of the Partnership Act.

The High Court of Delhi, in *Hari Om Sharma v Sauman Kumar Chatterjee & Anr.*,⁶⁶ held that the ban imposed under Section 69 of the Partnership Act, 1932⁶⁷ had no application with regards to arbitral proceedings since the bar against Courts under Section 69 did not come within the purview of Section 69(3)'s expression of *other proceedings*. The Court held that the statutory bar due to non-registration would not affect reference of the dispute to arbitration if the Partnership Deed provided for reference of disputes arising inter se the partners to arbitration. The Court also observed that it is not permitted to interfere with an Arbitral Award by independently evaluating the merits of the award, it has to restrict itself as per the scope mentioned by the Statute, as held in *MMTC Ltd. v Vedanta Ltd.*⁶⁸

In a suit under Section 34 of the Arbitration Act⁶⁹ challenging the Arbitral Award which had decided the claims of the parties in relation to their partnership at Will, it was contended by the Petitioner that the Award was ultra vires since the Arbitrator had not decided the claims in accordance with the Partnership Deed and the Partnership Act. It was argued that all disputes arising from the partnership had to have been decided in accordance with the

⁶⁴ Arbitration and Conciliation Act 1996, s 21.

⁶⁵ Arbitration and Conciliation Act 1996, s 11.

⁶⁶ *Hari Om Sharma v Sauman Kumar Chatterjee & Anr.* [2024] DHC 8383.

⁶⁷ Indian Partnership Act 1932, s 69.

⁶⁸ *MMTC Ltd. v Vedanta Ltd.* (2019) 4 SCC 163.

⁶⁹ Arbitration and Conciliation Act 1996, s 34.

Partnership Act as was provided in the Partnership Deed. It was asserted by the Respondents that the claims arising from the dissolution of the partnership firms were barred under both Section 69 of the Partnership Act⁷⁰ since the partnership firms had not been registered.

6. Additional evidence cannot be brought on record during the stage of appeal under Sections 34 and 37 of the Arbitration Act.

In *State of U.T. v M/s Virat Construction*,⁷¹ the Allahabad High Court held that Courts could not re-appreciate the evidence by way of amending the appeal or raising fresh grounds at the appellate stage in order to conclude whether the Arbitral Award had suffered from patent illegality, as under Sections 34 and 37 of the Arbitration Act⁷² the Courts do not sit in appeal against the Arbitral Award. It was held that the Court could, under Sections 34 and 37 of the Arbitration Act, interfere with the Arbitral Award on merits only if the Arbitrator's findings were arbitrary, capricious, perverse or on the limited grounds as per Section 37(2) of the Arbitration Act. It was also appreciated by the Court that the extent of judicial intervention in appeal against an Arbitral Award would be absolutely subject to the time limit prescribed under the Limitation Act⁷³ with no scope of extension of period of appeal.

In the present case, the dispute arose from a claim for damages for the financial loss suffered by the Claimant due to an inordinate delay in commencing the project within the stipulated time period. On appeal under Section 34 of the Arbitration Act,⁷⁴ the Court had, in the impugned judgment, upheld the Arbitral Award since the Award had been passed after having considered the parties' contentions and terms of the contract thus, did not carry *patent illegality on the face of the award*.

7. Patent illegality of arbitral award requires contravention of substantive laws and applicable rules.

The Delhi High Court, in *Naresb Kumar Bajaj v Bunge India Pvt. Ltd.*,⁷⁵ held that the scope of interference under Section 34 of the Arbitration Act⁷⁶ was limited such that an Arbitral Award could only be challenged on grounds of patent illegality when there has been a contravention

⁷⁰ Indian Partnership Act 1932, s 69.

⁷¹ *State of Uttar Pradesh & Ors. v M/s Virat Construction* [2024] AHC 171241 DB.

⁷² Arbitration and Conciliation Act 1996, ss 34 and 37.

⁷³ Limitation Act 1963.

⁷⁴ Arbitration and Conciliation Act 1996, s 34.

⁷⁵ *Naresb Kumar Bajaj & Ors. v Bunge India Pvt. Ltd.* [2024] DHC 8134.

⁷⁶ Arbitration and Conciliation Act 1996, s 34.

of substantive laws of India, Arbitration Act, or rules which are applicable to the subject matter of the dispute, thus upholding the Nil Award by the Arbitral Tribunal.

The present suit arose from the Nil Award passed by the Arbitral Tribunal stating that since the Assessment Order had been quashed, the question of determination of the contractual obligations of the parties with respect to the indirect tax liability of the parties and contractually agreed liability of the Respondent under the Non-Compete Agreement and Business Transfer Agreement, had become an academic exercise. The Petitioners challenged the Arbitral Award as being unjust and patently illegal on the grounds that the Award had been passed on the basis of an extraneous consideration without having appreciated the terms of reference made to the Arbitral Tribunal.

NOVEMBER

1. The referral court is required to limit its inquiry solely to the issue of the limitation period.

In *Aslam Ismail Khan Deshmukh v ASAP Fluids Pvt. Ltd.*⁷⁷ the Supreme Court has ruled that while determining the issue of limitation in the exercise of powers under Section 11(6) of the Arbitration Act⁷⁸ the referral court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not.

The three-judge bench emphasized that at this stage it is inappropriate for the referral court to engage in a detailed examination of whether the claims are barred by time. The determination of such matters should be left to the arbitrator's discretion. The Court highlighted that while the arbitrator's award can be challenged by any party, courts have the authority to review the adjudication at a later stage if deemed necessary.

2. The Arbitration Act does not differentiate between private and government entities.

In *International Seaport Dredging Pvt. Ltd. v Kamarajar Port Ltd.*,⁷⁹ the Supreme Court hearing an appeal contesting the Madras High Court's decision made during an interlocutory stage of Section 34 challenge, emphasized that the Arbitration Act is self-contained and does not distinguish between government bodies and private entities. Therefore, the court's decision cannot be influenced by whether a party is a government agency or a private operator.

The bench further noted that evaluating the reliability or trustworthiness of a party is a subjective judgment. They explained that private entities may also present factors such as business size, success, and reputation to argue against being classified as unreliable. Without a specific legal provision on this matter, the court found it inappropriate to impose such a standard when deciding on conditions for staying an arbitral award.

3. An arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by Public Sector Undertakings.

⁷⁷ *Aslam Ismail Khan Deshmukh v ASAP Fluids Pvt. Ltd. & Anr.* [2024] INSC 849.

⁷⁸ Arbitration and Conciliation Act 1996, s 11(6).

⁷⁹ *International Seaport Dredging Pvt. Ltd. v Kamarajar Port Ltd.* [2024] INSC 827.

In *Central Organisation for Railway Electrification v ECI SPIC SMO MCML*,⁸⁰ the Apex Court held that the principle of party equality governs all stages of arbitration, including arbitrator appointments. While Public Sector Undertakings can empanel arbitrators, they cannot compel the other party to choose from their panel. Unilateral appointment clauses in public-private contracts lack the necessary integrity for quasi-judicial functions, contravening the fundamental arbitration principle of impartiality and the *nemo iudex* rule, a key aspect of Indian public policy.

The five-judge bench with former Chief Justice of India DY Chandrachud penning the majority opinion deemed such clauses as undermining the independence of arbitrators and creating justifiable doubts about their impartiality. Mandating a party to select an arbitrator from a pre-curated panel in a three-member tribunal violates the principle of equal participation, rendering the process prejudiced and biased. It was ruled that unilateral clauses in public-private contracts breach Article 14 of the Constitution. The decision applies prospectively to arbitrator appointments made after the judgment and specifically affects three-member arbitration tribunals.

4. The express specification of a place in an arbitration agreement serves as a valid criterion for determining the seat of arbitration.

In *Arif Azim Co. Ltd. v Micromax Informatics FZE*,⁸¹ the Supreme Court held that the explicit designation of a place in an arbitration agreement is a decisive factor in determining the seat of arbitration, as long as there are no significant contrary indications. Even if referred to as a “venue,” the designated place will be considered the seat if it serves as the anchor for arbitral proceedings. This determination grants exclusive jurisdiction to the courts of that seat, excluding the application of concurrent jurisdiction principles.

The Court also overruled the “Closest Connection Test” for identifying the seat of arbitration, noting that abstract connecting factors or choice of law rules cannot formulaically determine the seat. Simply stipulating the law governing the main contract does not imply that the same law governs the arbitration agreement or the seat. The *Shashoua* Principle was upheld, emphasising that clarity and predictability are paramount in arbitration agreements. This ruling provides a more straightforward framework for determining the seat of arbitration, reinforcing

⁸⁰ *Central Organisation for Railway Electrification v M/s ECI SPIC SMO MCML (JV)* [2024] INSC 857.

⁸¹ *M/s Arif Azim Co. Ltd. v M/s Micromax Informatics FZE* [2024] INSC 850.

the importance of an explicit designation within arbitration agreements to avoid jurisdictional ambiguities.

5. The unconditional withdrawal of an application for arbitrator appointment prohibits filing a second application based on the same cause of action.

In *HPCL Bio-Fuels Ltd. v Shabaji Bhanudas Bhad*,⁸² the Supreme Court while applying the principles of Order 23 Rule 1 of the Code of Civil Procedure, 1908⁸³ to applications under Section 11(6) of the Arbitration Act,⁸⁴ held that only applications filed after the withdrawal of a prior one on the same cause of action are barred. In a case appealed from the Bombay High Court, the respondent's petition under Section 11(6) of the Act, 1996, was allowed, appointing a sole arbitrator to resolve disputes with HPCL Biofuels Ltd.

However, the Supreme Court overturned this decision. The Court held that since no permission was granted when the respondent withdrew the earlier application under Section 11(6), the new application was not maintainable. It was also deemed time-barred, and the respondent could not claim benefits under Section 14(2)⁸⁵ or seek delay condonation under Section 5 of the Limitation Act, 1963.⁸⁶

6. 'Sufficient cause' should be interpreted in the context of facilitating effective dispute resolution under Section 29A of the Arbitration Act.

In *Ajay Protech Pvt. Ltd. v General Manager*,⁸⁷ the Supreme Court addressed the issue of extending an arbitral tribunal's time to pass an award, emphasising that such extensions can be granted even after the statutory period has expired. The Court examined the phrase "sufficient cause" under Section 29A of the Arbitration Act, stressing that it should be interpreted in line with the fundamental purpose of arbitration, which is to provide an effective mechanism for resolving disputes. A bench comprising Justices P.S. Narasimha and Sandeep Mehta remarked. The meaning of 'sufficient cause' for extending time must reflect the arbitration process's primary objective: resolving disputes through the mechanism agreed upon by the parties. Arbitration is designed to ensure efficiency and uphold the intent of the contractual terms. Therefore, any interpretation of 'sufficient cause' should focus on facilitating timely and

⁸² *M/s HPCL Bio-Fuels Ltd. v M/s Shabaji Bhanudas Bhad* [2024] INSC 851.

⁸³ Code of Civil Procedure 1908, Ord 23.

⁸⁴ Arbitration and Conciliation Act 1996, s 11(6).

⁸⁵ Limitation Act, 1963, s 14(2).

⁸⁶ Limitation Act, 1963, s 5.

⁸⁷ *M/s Ajay Protech Pvt. Ltd. v General Manager & Anr.* [2024] INSC 889.

effective resolution, aligning with the parties' expectations. This clarification reinforces the judiciary's role in supporting arbitration as a preferred dispute resolution mechanism.

7. Challenge under Section 34 of the Arbitration Act without filing the award is to be considered invalid filing.

In the *Vasishtha Mantena NH04 JV v Blacklead Infratech (P) Ltd.*,⁸⁸ Delhi High Court led by Justice Subramonium Prasad, ruled that a challenge to an arbitral award under Section 34 of the Arbitration Act,⁸⁹ must include the filing of the award itself. The Court emphasized that without the award, the challenge becomes futile, as the Court cannot assess or adjudicate its validity without reviewing the award's content.

Discussing the timelines under Section 34(3), the Court reiterated that applications to set aside an arbitral award must be filed within three months from the date the party receives the award. The proviso allows a further extension of 30 days if the Court finds sufficient cause for the delay, but no more. Examining the case at hand, the Court noted the petition was filed on 21 August 2023, within the permissible period but without attaching the award. It ruled such a filing invalid, reiterating that Section 34 petitions inherently require the award for the Court's scrutiny.

8. Unexplained delay in passing arbitral award can justify setting aside under Section 34.

In *HR Builders v Delhi Agricultural Marketing Board*,⁹⁰ the Delhi High Court, led by Justice Sachin Datta, ruled that an inordinate and unexplained delay in issuing an arbitral award after concluding arguments can be grounds for setting it aside under Section 34 of the Arbitration Act.⁹¹ In the case at hand, over two years elapsed between the conclusion of arguments and the issuance of the award, prompting the petitioner to file a grievance under Sections 14⁹² and 15(2) of the Arbitration Act.⁹³

The Court agreed with the petitioner, emphasising that such a delay undermines the core objective of alternative dispute resolution—delivering timely justice. Referring to *Harji Engineering Works Pvt. Ltd. v BHEL*,⁹⁴ the Court reiterated that an award issued three years after the last effective hearing, without a satisfactory explanation, is unjust and contrary to the

⁸⁸ *Vasishtha Mantena NH04 JV & Ors. v Blacklead Infratech Pvt. Ltd.* [2024] DHC 8489.

⁸⁹ Arbitration and Conciliation Act 1996, s 34.

⁹⁰ *HR Builders v Delhi Agricultural Marketing Board* [2024] DHC 8400.

⁹¹ Arbitration and Conciliation Act 1996, s 34.

⁹² Arbitration and Conciliation Act 1996, s 14.

⁹³ Arbitration and Conciliation Act 1996, s 15(2).

⁹⁴ *Harji Engineering Works Pvt. Ltd. v Bharat Heavy Electricals Ltd.* [2008] SCC OnLine Del 1080.

principles of arbitration. It observed that undue delays defeat the purpose of arbitration, rendering the process unfair and ineffective for resolving disputes.