Arbitration Newsletter

Shardul Amarchand Mangaldas

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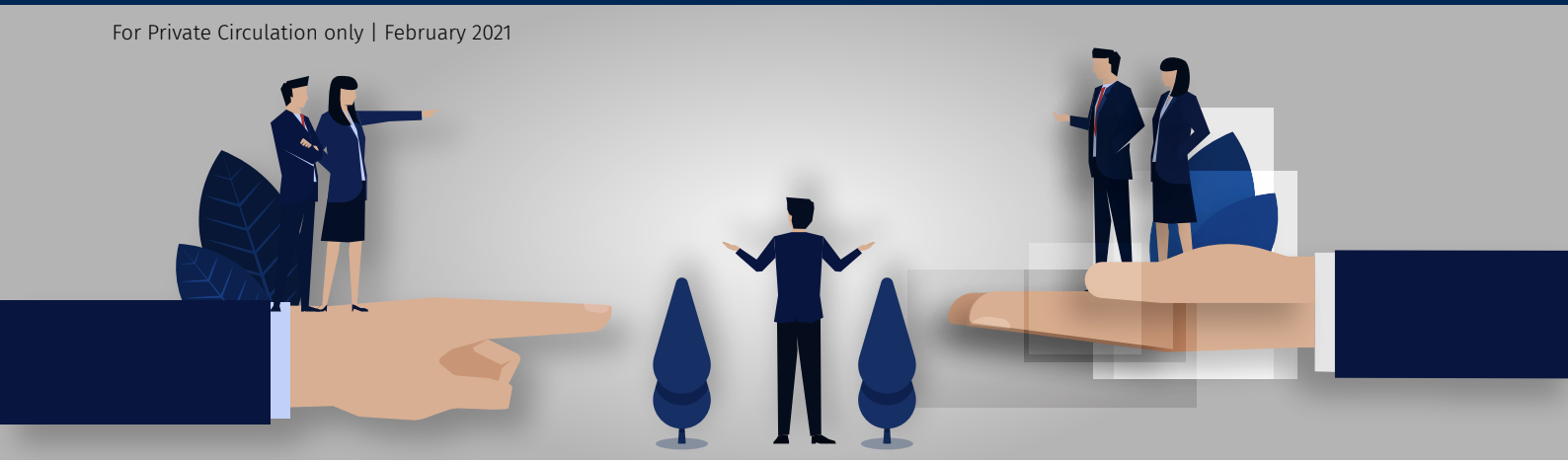

Arbitration Newsletter – February 2021

Wishing you a very Happy 2021!

It gives us immense pleasure to circulate the sixteenth edition of the Arbitration Newsletter of Shardul Amarchand Mangaldas & Co.

At the outset, we sincerely wish that you, your family and colleagues have been, and continue to be, healthy and safe.

We are pleased to inform you that **Pallavi Shroff (Managing Partner and National Practice Head-Dispute Resolution)** was recognised by India Business Law Journal among 50 legal icons. The Chambers & Partners Asia Pacific Guide 2021 ranked Dispute Resolution practice of Shardul Amarchand Mangaldas & Co as a 'Band 1' practice. It also ranked **Pallavi Shroff (Managing Partner and National Practice Head-Dispute Resolution)** as a 'Star Individual' for Dispute Resolution and a 'Band 2' lawyer for Dispute Resolution: Arbitration, as well as **Tejas Karia (Partner – Head Arbitration)** as a 'Band 2' lawyer for Dispute Resolution: Arbitration.

Shardul Amarchand Mangaldas & Co has been recommended by Legal 500 Asia Pacific as a top-tier Firm in 14 practice areas including Dispute Resolution. **Pallavi Shroff (Managing Partner and National Practice Head-Dispute Resolution)** has been listed in the elite 'Hall of Fame' for Dispute Resolution and **Tejas Karia (Partner – Head Arbitration)** has been named as a 'Leading Individual' for Dispute Resolution: Arbitration.

Pallavi Shroff (Managing Partner and National Practice Head-Dispute Resolution) was recognised by Fortune India among India's 50 most powerful women in business, 2020, and also recognised as 'Woman Lawyer of the Year' by BW Global Legal, 2020 and by Lawyers of India Award - Bar Association of India, 2020.

We are also pleased to share that **Gauhar Mirza**, a member of Arbitration Practice Group of the firm and based in the firm's New Delhi office, has been inducted as a Partner.

We hope you enjoy reading this edition and find it useful to your practice.

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Arbitration Case Law Updates

High Court of Delhi holds that ex-parte disposal of petitions under Section 9 of the Act violates principles of natural justice[1]

Brief Facts

New Morning Star Travels ("**Petitioner**"), being a bus service, purchased 16 vehicles under loan-cum-hypothecation agreements with Volkswagen Finance Private Limited ("**Respondent**"), and defaulted on the repayment of certain instalments of the loan due to COVID-19 adversely affecting the Petitioner's business. Thereafter, the Petitioner came to know that 16 petitions under Section 9 of the Arbitration and Conciliation Act, 1996 ("**Act**") were filed by the Respondent with a prayer for *ex-parte* relief. The trial court passed 16 identical ex-parte orders ("**Orders**") wherein loan recall notices were issued by the Respondent and the Petitioner was called upon to pay the total outstanding of INR 7,139,808/-. Moreover, on the ground that the Petitioner did not pay the said amount and expressing an apprehension that the vehicles may be disposed of, the trial court appointed a receiver to take possession of the vehicles. In this manner, the main petition under Section 9 of the Act was disposed of without notice calling upon the Petitioner to file a reply or be present at the hearing. Therefore, the Petitioner filed a writ petition before the High Court of Delhi ("**High Court**") challenging the Orders passed by the trial court.

Issue

Whether a Court may pass *ex-parte* ad-interim orders disposing of Section 9 petitions?

Judgment

The Court, upon perusal of the Orders, held that Section 9 petitions cannot be disposed of *ex-parte* without giving notice to the respondent therein, especially when coercive orders are being passed. It was clarified that the power to pass ad-interim orders under Section 9 of the Act is not in doubt. However, disposal of the petitions, without issuing notice and hearing the respondent as well as directing coercive orders of possession would amount to violation of the principles of natural justice.

The Court observed that standards to be adopted for grant of interim measures under Section 9 of the Act are akin to standards applied for grant of interim injunction under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 ("**CPC**") and for appointment of a receiver under Order XL of the CPC. Therefore, disposal of Section 9 petitions without even hearing the respondent is contrary to all settled tenets.

Moreover, the grant of *ex-parte* injunctions, *ex-parte* interim measures or appointment of receivers at the *ex-parte* stage would be governed by principles akin to Order XL of the CPC wherein there has to be a grave and imminent apprehension that the property cannot be retrieved if notice is issued. The appointment of receivers at the *ex-parte* stage in matters such as vehicle loans ought to satisfy the test of imminent threat. The court ought to come to a conclusion that there was a deliberate intention not to repay the loan. The Court also held that the trial court should have considered the number of instalments due and payable, the conduct of the borrower including the irregularity of payment, the total amounts paid till date, any other extenuating or other factors such as the present pandemic which could justify non-payment etc.

The Court relied on ***Sundaram Finance Ltd., v. NEPC India Ltd.***[2] and ***Firm Ashok Traders and Anr. v. Gurumukh Das Saluja and Ors.***[3] to hold that Section 9 petitions cannot be disposed of *ex parte* without giving notice to the respondents, but courts can pass an *ex parte* ad-interim order pending the application filed under Section 9 of the Act. It also cited ***Cholamandalam DBS Finance Ltd. v. Sudheesh Kumar***,[4] which expressly laid down guidelines that ought to be followed in applications under Section 9 with respect to seizure of vehicles.

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Analysis

The Court rightfully reversed the decision of the trial court and set right the situation, preserving the sanctity of the principle of *audi alteram partem* since principles of natural justice are the bedrock of any adversarial judicial system and as such, ought to be complied with. It is also pertinent that the Court has preserved the power of courts to grant *ex-parte* orders while specifying that the same cannot be done without issuing notice and more broadly, reiterated that the power to issue *ex-parte* orders ought to be exercised sparingly while making adverse orders. The Court also protected the interests of the Respondent while directing the Petitioner to make immediate repayment of INR 2.5 million out of the defaulted sum, while remanding the matter to the trial court. For litigating parties, this judgment will mean that they have to take early action to give an adequate opportunity of hearing to the opposite party and also ensure to demonstrate the presence of an imminent threat in their pleadings when asking for an *ex-parte* ad-interim prayer.

High Court of Delhi holds that exclusive jurisdiction clause regarding appointment of arbitrator shall prevail over the seat clause[5]

Brief Facts

Cars24 Services Pvt. Ltd. ("**Applicant**") and Cyber Approach Workspace LLP ("**Respondent**") entered into a lease deed, whereby the Respondent leased a premises to the Applicant for running an office. The Applicant was to deposit an interest free refundable security deposit of INR 5.28 million and pay the monthly lease rental of INR 0.73 million to the Respondent. Owing to the COVID-19 pandemic, the Applicant claimed that it had to suspend its operations completely. The Applicant issued a notice to the Respondent seeking to terminate the lease deed, invoking Clause 13.2 thereof (which dealt with *force majeure*). Correspondingly, the Applicant requested the Respondent to refund the interest free refundable security deposit of INR 5.28 million paid by it. The Respondent denied any liability towards the Applicant.

Thereafter, the Applicant issued a separate notice invoking arbitration for the resolution of the dispute in accordance with Clauses 25.2 to 25.4 of the lease deed. The said provisions of the lease deed provided that disputes shall be referred to a sole arbitrator to be appointed mutually by the parties, failing which either party may approach a court of competent jurisdiction in Haryana for appointment of the sole arbitrator. The seat of arbitration was provided as New Delhi. The Applicant's notice also suggested the name of an advocate as the sole arbitrator. However, the Respondent rejected the Applicant's suggestion to appoint the advocate and instead recommended the name of Hon'ble Mr. Justice Badar Durrez Ahmed, J.

Since the parties could not come to a consensus regarding the identity of the arbitrator to arbitrate the disputes between them, the Applicant approached the High Court of Delhi ("**Court**") by means of an application under Section 11(5) of the Act.

Issue

Whether the Court had jurisdiction to appoint an arbitrator in light of the lease deed, which provided that the jurisdiction for appointment of the sole arbitrator vests in a court of competent jurisdiction in Haryana?

Judgment

The Court dismissed the application due to lack of jurisdiction. The Court acknowledged that a clause fixing the seat of arbitration was akin to an exclusive jurisdiction clause and therefore, courts having jurisdiction over the seat so fixed would ordinarily possess jurisdiction over the arbitral proceedings in their entirety. However, in the specific facts of the instant case, wherein the contract contained a separate exclusive jurisdiction clause for appointment of an arbitrator, the Court would be doing violence to the contractual covenant if it conferred jurisdiction to appoint an arbitrator on a court in another territorial location.

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The Court distinguished various precedents on account of the said factual distinction, including ***BALCO v. Kaiser Aluminium Technical Services***[6] and ***Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.***[7] The Court summarised its findings by observing as under:

> *"Where, therefore, the seat of arbitration is at place X, and exclusive jurisdiction over the subject matter of the suit is conferred on courts at place Y, a petition under Section 11 would unquestionably lie before the courts at place X. The present case, however, is different, as the exclusive jurisdiction conferred by the arbitration agreement is not in respect of the subject matter of the suit but specifically for appointment of an arbitrator. It would be doing violence to the said clause, therefore, if this Court were to treat the exclusive jurisdiction clause as limited to the subject matter of the suit, and exercise Section 11 jurisdiction contrary to the mandate thereof".*

Analysis

The decision reiterates the importance of the contractually determined "seat of arbitration" in deciding which court would have the territorial jurisdiction to deal with petitions relating to the arbitral proceedings, whether preferred under Sections 9, 11 or 34 of the Act.

However, at the same time, the judgment highlights the importance of the agreement between the parties. It is important to note that counsel for both parties had submitted that the Court had jurisdiction; however, the Court laid emphasis on the contractual agreement between the parties, which provided otherwise. This heightens the importance of drafting arbitration clauses in agreements so as to accurately capture the intent of the parties.

High Court of Delhi clarifies scope of Section 37 of the Act[8]

Brief Facts

Edelweiss Asset Reconstruction Co. Ltd. ("**Appellant**") filed an appeal ("**Appeal**") under Section 37 of the Act before a Single Judge of the High Court of Delhi ("**Court**") against an order ("**Impugned Order**") passed in an arbitration between M/s GTL Infrastructure Ltd. ("**Respondent No. 1**") and M/s GTL Ltd. ("**Respondent No. 2**"). The Impugned Order, which was passed pursuant to an application filed by Respondent No. 2 under Section 17 of the Act, directed Respondent No. 1 to pay INR 2.4 billion to Respondent No. 2, and to deposit INR 2 billion in an escrow account to be maintained by Respondent No. 2. The Appellant was not party to the pending arbitration proceedings between the Respondents in which the Impugned Order was passed but contended that it had a first charge over all the movable assets and bank accounts of Respondent No. 1 including the monies which were directed to be paid to Respondent No. 2 under the Impugned Order by virtue of two agreements, i.e., the Trust and Retention Agreement ("**TRA**") and the Master Restructuring Agreement ("**MRA**").

Respondent No. 1 filed an appeal against the Impugned Order under Section 37(2) of the Act, which appeal was dismissed by order dated 4 March 2020 ("**4 March Order**"). Respondent No. 2 filed an application for enforcement of the Impugned Order under Section 36 of the Act. The Appellant was neither impleaded in the first nor the second proceedings. The Appellant filed a suit before the High Court of Bombay seeking *inter alia* a permanent injunction restraining Respondent No. 1 from transferring the amount directed to be paid under the Impugned Order, prior to fully discharging the outstanding dues of the Appellant in terms of the TRA and the MRA ("**Suit**").

The Respondents challenged the maintainability of the Appeal on the following grounds: (i) Impugned Order is an interim award under Section 31(6) and not an interim order under Section 17 of the Act; (ii) Impugned Order stood merged with the 4 March Order; (iii) pendency of the Suit before the High Court of Bombay is a bar to filing the Appeal; and (iv) being a third-party to the arbitration proceeding, the Appellant could not have filed the Appeal.

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Issues

Issue (i): Whether the Appeal was maintainable?

Issue (ii): Whether a court, while exercising appellate jurisdiction under Section 37 of the Act, can modify an interim order passed by the arbitral tribunal?

Judgment

Issue (i): The Court rejected all the grounds raised by the Respondents and held the Appeal to be maintainable as: (i) the language of the Impugned Order made it clear that it was an interim order under Section 17 of the Act, as it used terms such as "*at this stage of the proceedings*" and "*presently in dispute*"; (ii) Appellant was not a party to the proceedings in which the 4 March Order was passed and therefore, it could not be precluded from filing the present Appeal; (iii) the remedy of an appeal available under a statute cannot be denied to an eligible appellant even if the appellant has elected to seek similar reliefs in other proceedings prior to filing the appeal available under the statute. Therefore, according to the Court, the pendency of the Suit before the High Court of Bombay cannot take away the statutory right available under Section 37 of the Act; and (iv) the Court concurred with the decision of the High Court of Bombay in ***Prabhat Steel Traders Private Ltd. v. Excel Metal Processes Pvt. Ltd.***,[9] which held that since the arbitral tribunal has the power to grant interim relief under Section 2(1)(h) read with the amended Section 17 of the Act, which is capable of affecting the rights of third parties to the arbitration proceedings, an aggrieved third party can file an appeal under Section 37 of the Act. It further placed reliance on the Supreme Court's findings in ***SBI v. Ericsson India Ltd.***[10] wherein it was held that an arbitral tribunal has no jurisdiction to affect the rights and remedies of third party secured creditors while adjudicating the disputes before it.

Issue (ii): Although the general position of law is that a court is precluded from modifying an arbitral award when challenged under Section 34 of the Act, the court can modify the interim order passed under Section 17 of the Act while exercising its appellate jurisdiction under Section 37 of the Act. The Court relied on the Supreme Court's judgment in ***Tirupati Balaji Developers (P) Ltd. v. State of Bihar***,[11] to hold that the appellate jurisdiction under Section 37 of the Act would include the power to modify an interim order passed by the arbitral tribunal. However, the Court clarified that such a power would not give a *carte blanche* to courts and it ought to be exercised keeping in mind the principles of minimal judicial interference espoused by the Act.

The Court modified the Impugned Order and ordered that all payments that were directed to be deposited with Respondent No. 2 or in the escrow account, will be deposited in the account created and maintained in accordance with the TRA, subject to further orders passed by the arbitral tribunal.

Analysis

The Court's decision reiterates that the rights of secured creditors of parties ought to be protected despite being third parties to the arbitration proceedings. This will safeguard the interests of third party secured financial creditors and prioritise their claim over that of the unsecured creditors.

Although the present decision has broadened the scope of a court's power while dealing with appeals against interim orders passed by arbitral tribunals, there is no clarification regarding the situations where this will be applicable. This may lead to a surge in applications seeking modifications of interim orders by dissatisfied parties and will possibly result in more judicial interference by courts, consequently undermining the powers of an arbitral tribunal under Section 17 of the Act.

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High Court of Delhi holds that foreign law can govern an arbitration agreement between two Indian parties[12]

Brief Facts

Dholi Spintex entered into a sale contract with Louis Dreyfus for supply of 600 metric tonnes of American imported raw cotton in bales to Dholi Spintex. Since the shipment and delivery of the raw cotton bales was delayed, Dholi Spintex refused to take delivery of the goods, pursuant to which, Louis Dreyfus initiated arbitration proceedings before the International Cotton Association ("**ICA**") under Clause 6 of the contract. Arbitration under the ICA byelaws is conducted under the English Arbitration Act, 1996. Dholi Spintex sought an anti-arbitration injunction before the High Court of Delhi and objected to the arbitration on the following grounds: (i) the contract was between two Indian companies and was to be performed in India. Therefore, the law governing the contract must be Indian law; (ii) Clauses 6 and 7 of the contract made it clear that by conferring exclusive jurisdiction upon the courts of New Delhi, the parties intended for Indian law to govern the arbitration proceedings; and (iii) byelaw 200 of the ICA byelaws is opposed to and directly contravenes Indian public policy, which envisages that Indian parties cannot contract out of Indian law.

Issues

Issue (i): Whether two Indian parties can choose a foreign law as the substantive law of the contract?

Issue (ii): Whether the express designation of a court under Clause 7 of the contract providing for exclusive jurisdiction at New Delhi is determinative of the seat of arbitration?

Issue (iii): Whether the petition is maintainable under Section 45 of the Act?

Judgment

Issue (i): The Court held that even though an agreement to refer disputes to arbitration may be a part of the substantive contract, the said agreement is independent of the substantive contract and survives despite termination or repudiation or frustration of the substantive contract. The arbitration agreement/clause does not govern the rights and obligations of the parties under the substantive contract and is only concerned with the manner of settling disputes. Therefore, the arbitration agreement can be governed by a proper law of its own, which is not the same as the law governing the substantive contract as it is an independent agreement.

The Court also stated that the general practice for trading in American cotton is parties subjecting themselves to arbitration under the ICA byelaws and consequently, two Indian parties cannot be barred from entering into an agreement for a foreign seated arbitration. In the presence of a foreign element in the agreement, the parties could definitely agree to international commercial arbitration governed by the laws of England. Therefore, Clause 6 of the contract is not null and void.

The Court referred to the Supreme Court's decisions in: (i) ***Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.***,[13] which stressed on party autonomy in arbitration and held that it is a virtual backbone that allows parties to choose foreign law as proper law for arbitration; and (ii) ***Technip SA v. SMS Holding Pvt. Limited & Ors.***,[14] wherein it was held that applicability of foreign law can be objected to only in cases where the law amounts to flagrant or gross breach of morality and justice, and that foreign law cannot be discarded only because it is contrary to Indian statute, as the same would defeat the basis of private international law.

Issue (ii): The Court held that the express designation of the court having jurisdiction under Clause 7 of the contract is not definitive of the seat of arbitration. Even though the term "venue"

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has been used by the parties in Clause 6 of the contract, they have agreed to conduct the arbitration in accordance with the ICA rules and agreed for the seat of arbitration to be London and not New Delhi. The Court held that Clause 7 of the contract, wherein the parties agreed that the substantive law governing the contract is Indian Law and jurisdiction is with an Indian court, would be relevant only when the parties, through an agreement, decide not to settle their disputes through arbitration but by approaching Indian courts.

Issue (iii): It was held that the Court can interfere in an international arbitration only to the extent of determining whether a valid arbitration agreement exists between the parties and whether the agreement is null, void, inoperative or incapable of being performed. The Court cannot enter into a full-fledged inquiry into the merits of the matter. Therefore, the Court dismissed the suit as not being maintainable and refused to grant an anti-arbitration injunction.

Analysis

In the present case, the High Court of Delhi has allowed Indian parties to choose a foreign law to govern an arbitration agreement between them, *inter alia*, on the principles of party autonomy and conflict of laws. Reliance was also placed on the decision of the Supreme Court in the case of ***Reliance Industries & Anr. v. Union of India***,[15] wherein it was held that when there is a foreign element involved in the contract, three sets of law may apply to the arbitration: (i) law governing the substantive contract; (ii) law governing the arbitration agreement and performance of that agreement; and (iii) law governing the conduct of the arbitration. The decision is in line with the pro-arbitration approach being adopted by Indian courts and categorically rules out attempts at post-fact rewriting of contracts entered into with open eyes.

High Court of Delhi allows amendment to the statement of claim at the stage of evidence, in a petition filed under Section 34 of the Act[16]

Brief Facts

The Petitioners had inadvertently not sought a relief of equitable set off in respect of the transaction that occurred between the parties. Accordingly, they moved an application to amend the Statement of Defence ("**SOD**") filed before the tribunal ("**Application**") in terms of Order VI, Rule 17 of the CPC before commencement of Respondent's evidence. The Application was dismissed by the tribunal on account of delay *vide* order dated 17 October 2020 ("**Impugned Order**"). The Petitioners filed a petition under Section 34 of the Act ("**Petition**") before a Single Judge of the High Court of Delhi ("**Court**") against the Impugned Order.

Before the Court, the Petitioners submitted that Impugned Order was in the nature of an *interim award* and thus can be challenged under Section 34 of the Act. The Court was apprised that Statement of Claim was filed on 27 August 2019, thereafter SOD was filed on 14 November 2019 and issues were framed on 8 January 2019. But due to the lockdown, the proceedings did not take place and on 15 June 2020, the Application was filed. Hence, delay (if any) ought not to have been treated as one which would necessitate closing the right of the Petitioners to amend their SOD so as to claim equitable set-off. Reliance was placed on Section 23(3) of the Act to submit that the Application of Petitioners should have been allowed, considering that the scope of said provision is wide and it provides for amendment of claim or defence, at any time during the course of arbitral proceedings. The amendment to the SOD as sought by the Petitioners, is in the nature of *equitable-set off*, which defence was already taken in the SOD. Hence, no prejudice would be caused to the Respondent, if the Application would have been allowed.

The Respondent contested the maintainability of the Petition on the ground that Impugned Order does not amount to an interim award. It was further submitted that an interim award has to be on a matter with respect to which final award can be made. Hence, interim award has to be in the nature of a part decree as envisaged under Section 2(2) of the CPC, which

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conclusively determines the right of the parties in the suit. The rejection of the Application is merely procedural in nature and the intention of the Act is clear that there should be minimal intervention of the courts. It was also argued that it is trite law that amendment should not be allowed after the trial has commenced.

Issues

Issue (i): Is the Impugned Order an '*interim award*' and in view of the same, whether the Petition was maintainable?

Issue (ii): Whether the Tribunal was justified in rejecting the Application filed by the Petitioners seeking amendment in SOD, at the stage of evidence?

Judgment

Issue (i): The Court held the Impugned Order to be an '*interim award*' and thereby amenable to challenge under Section 34 of the Act. The Court relied on the judgment in ***Cinevistaas Ltd. v. Prasar Bharti***[17] passed by the coordinate bench wherein it was observed that a final judgment would either 'dismiss or decree in part or in full'. The Court further relied upon the observation made in ***Cinevistaas*** (*supra*) to the effect that if a 'valuable right' is lost, it would be an interlocutory judgment. If an issue is conclusively determined prior to the final award, the same constitutes an 'interim award'. The Court relied on the observation that it needs to be seen whether the substantive rights of a party are affected, while determining what kind of an order constitutes 'interim award' under Section 2(1)(c) of the Act.

Issue (ii): While allowing the Petition, the Court directed the tribunal to allow the amendment in the SOD. The Court analysed the timelines of the arbitration proceedings and observed that the only development which had effectively taken place is the framing of issues and filing of affidavit of evidence by the Respondent and, therefore, the delay is not fatal in nature. The Court took into consideration the judgments in ***State of Bihar v. Modern Tent House & Anr***.[18] and ***Baldev Singh v. Manohar Singh***,[19] relied upon by the Petitioners, wherein the Supreme Court had allowed the amendment to the written statement even after conclusion of the evidence. The Court perceived that in the present case, the rejection of the Application has led to substantive rights of the parties being decided, which means that the Petitioners cannot in future claim the relief which they sought by way of the Application. Hence, the Petition was allowed subject to payment of costs (INR 1,00,000).

Analysis

While minimal judicial intervention as a concept has helped India to develop a pro-arbitration regime, it is very important to maintain a fine balance that permits erroneous views to be set straight through judicial involvement. In the present case, the Court has comprehensively analysed various judgments and concluded that when an order affects or decides the substantive rights of a party in the arbitration, it would constitute an interim award in terms of the Act.

Further, the Court has reiterated the liberal approach of allowing amendment at any stage of the arbitration proceedings, more so after the commencement of the proceedings in order to ensure that Section 23(3) of the Act is interpreted liberally.

Supreme Court holds landlord-tenant disputes governed by the Transfer of Property Act, 1882 to be arbitrable[20]

Brief Facts

The Supreme Court was tasked with deciding the reference to three judges made *vide* ***Vidya Drolia and Others v. Durga Trading Corporation***,[21] as it doubted the legal ratio expressed in ***Himangni Enterprises v. Kamaljeet Singh Ahluwalia***[22] that landlord-tenant disputes governed

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by the provisions of the Transfer of Property Act, 1882 ("**TOPA**") are not arbitrable . *Himangni* (*supra*) had held that though the Delhi Rent Act was not applicable, it does not follow that the Act would be applicable so as to confer jurisdiction on the arbitrator and even in cases of tenancies governed by the TOPA, the dispute would be triable by the civil court and not by the arbitrator. To the contrary, ***Vidya Drolia*** (*supra*) had observed that there is nothing in TOPA to show that a dispute relating to the determination of lease, arrears of rent etc. cannot be decided by an arbitrator.

Issues

Issue (i): What are the legal principles for determining non-arbitrability of disputes?

Issue (ii): Between courts and arbitral tribunals, who decides the question of non-arbitrability of disputes?

Judgment

Issue (i): The Court propounded a fourfold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable: (i) when cause of action and subject matter of the dispute relates to actions *in rem*, that do not pertain to subordinate rights *in personam* that arise from rights *in rem*; (ii) when cause of action and subject matter of the dispute affects third party rights; have *erga omnes* effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable; (iii) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and (iv) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

Applying the above principles to determine non-arbitrability, the Court held that insolvency or intracompany disputes, grant and issue of patents and registration of trademarks, criminal cases, matrimonial disputes relating to the dissolution of marriage and restitution of conjugal rights, and matters relating to probate and testaments, are non-arbitrable.

The Court overruled the ratio in ***N. Radhakrishnan v. Maestro Engineers and Others***,[23] inter alia observing that allegations of fraud can be made a subject matter of arbitration when they relate to a civil dispute, subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to non-arbitrability. The Court also set aside the full bench decision of the High Court of Delhi in ***HDFC Bank Ltd. v. Satpal Singh Bakshi***[24] which held that the disputes which are to be adjudicated by the Debt Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are arbitrable; instead the Supreme Court held such disputes to be non-arbitrable.

The Court thereafter held that landlord-tenant disputes governed by the TOPA are arbitrable as they are not actions *in rem* but pertain to subordinate rights *in personam* that arise from rights *in rem*. Such actions normally would not affect third-party rights or have *erga omnes* affect or require centralised adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the TOPA do not expressly or by necessary implication bar arbitration. TOPA, like all other statutes, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which protect the tenants.

The Court accordingly overruled the ratio in *Himangni* and held that landlord-tenant disputes are arbitrable as the TOPA does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations.

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Issue (ii): The Court held that the scope of judicial review and jurisdiction of the court under Sections 8 (*power to refer parties to arbitration*) and 11 (*appointment of arbitrators*) of the Act is identical but extremely limited and restricted. The general rule and principle is that the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of Section 34(2)(a)(i), (ii) or (iv) or Section 34(2)(b)(i) of the Act.

Rarely as a demurrer, may the court interfere at the Section 8 or 11 stage when it is manifestly and *ex facie* certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably 'non-arbitrable'. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; or when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings.

Analysis

The Supreme Court has extensively considered the various judgments and scholarly writings on the underlying issues, in order to answer the reference in such impeccable detail. While drawing the contours of exercise of power by a court under Section 8 or 11, the Supreme Court has rightly cautioned that there are certain cases where the *prima facie* examination may require a deeper consideration; the court's challenge is to find the right amount of, and the context, when it would examine the *prima facie* case or exercise restraint. Courts may choose to identify the issues which require adjudication pertaining to the validity of the arbitration agreement. The scope of the court examining the *prima facie* validity of an arbitration agreement includes only: (a) whether the arbitration agreement was in writing; (b) whether the arbitration agreement was contained in exchange of letters, telecommunication, etc; (c) whether the core contractual ingredients qua the arbitration agreement were fulfilled; (d) on rare occasions, whether the subject-matter of dispute is arbitrable. The approach regarding the interpretation of an arbitration agreement would depend upon various factors including the language, the parties, nature of relationship, the factual background in which the arbitration agreement was entered, etc. In case of pure commercial disputes the appropriate principle of interpretation would be of liberal construction due to the presumption of one-stop adjudication. The Court has thoughtfully observed that a legal order needs a right balance between avoiding arbitration obstructing tactics at referral stage and protecting parties from being forced to arbitrate when the matter is clearly non-arbitrable, leaving it open for courts to exercise such discretion subjectively.

High Court of Delhi rules on the legal status of emergency arbitrator under the Act[25]

Brief Facts

In August 2020, Reliance Retail Ventures Limited ("**RRVL**") announced its acquisition of Future Retail Limited ("**FRL**") for approximately USD 3.38 billion ("**Disputed Transaction**"). Aggrieved by this announcement, Amazon.com NV Investment Holdings LLC ("**Amazon**") commenced emergency arbitration proceedings in October 2020 under the Rules of the Singapore International Arbitration Centre ("**SIAC**"). Amazon sought a stay against the Future Group proceeding with and completing the Disputed Transaction. On 25 October 2020, the SIAC emergency arbitrator ("**Emergency Arbitrator**") restrained Future group entities from proceeding with the Disputed Transaction ("**EA Award**").

Amazon did not approach an Indian court seeking enforcement of the EA Award. Instead, it wrote to various statutory and regulatory authorities in India annexing a copy of the EA Award and requesting that the Disputed Transaction be kept on holding pending resolution of the dispute between the parties.

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Shortly thereafter, FRL filed a commercial suit before the High Court of Delhi ("**Court**"). FRL did not challenge the EA Award (which would not have been maintainable) and instead challenged Amazon's use of the EA Award in India. FRL sought interim relief from the Court to restrain Amazon from making such representations *inter alia* on the basis that the EA Award could not be recognised under the Act and that Amazon's conduct amounted to tortious interference. The Court issued an interim order on 21 December 2020 denying interim relief to FRL.

Issue

Whether the Emergency Arbitrator lacked legal status under the Act, i.e., whether the Act recognises an emergency arbitrator?

Judgment

The Court rejected FRL's arguments that an order of the Emergency Arbitrator lacks legal status under the Act. The Court based its decision on the following grounds:

First, that party autonomy is the backbone of arbitration. Given that the parties expressly chose the SIAC Rules as the curial law to govern the conduct of the arbitration proceedings, the SIAC Rules will govern the arbitration proceedings at every stage. Indian courts would not respect such express choice of the parties only if it contravenes the public policy of India and the mandatory provisions of Indian law. The Court found that the provision for emergency arbitration in the SIAC Rules violates neither as the SIAC Rules allow the aggrieved party to approach either an emergency arbitrator or the relevant judicial authority for interim relief.

Second, the Court found that the absence of 'emergency arbitrator' in the definition of 'Arbitral Tribunal' in Section 2(1)(d) of the Act does not indicate that emergency arbitration is impermissible under the Act. FRL argued that the legislature did not expressly include this in the definition in spite of a specific recommendation to that effect in the 246th Law Commission Report. The Court relied on the decision of the Supreme Court in ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.***[26] to reject this argument. It found that the development of law cannot be thwarted by a court merely because a provision recommended in a Law Commission Report is not enacted by the legislature.

Third, the Court also found that Part I of the Act does not exclude emergency arbitration and therefore, does not make emergency arbitration impermissible. The Court based this finding on three reasons: (i) that parties in an international commercial arbitration seated in India can, by agreement, derogate from the provisions of Section 9 of the Act, as evidenced by the text of the provision; (ii) that where parties have chosen a curial law different from a law governing the arbitration, the court would look at the curial law to determine matters relating to the conduct of the arbitration, to the extent the curial law does not contravene the public policy or any mandatory requirement of the law of the seat; and (iii) that Sections 9, 27, 37(1)(a) and 37(2) of the Act can be derogated from by agreement of parties by virtue of the proviso to Section 2(2) of the Act in an international commercial arbitration seated in India.

Analysis

In the present case, the Court's observations in relation to the legal status of the EA Award are certainly encouraging. However, given that the Court did not directly address the issue of the validity of the EA Award (as this was not an application by Amazon to seek enforcement of the EA Award), it provided no further guidance in relation to enforceability of the Emergency Arbitrator's order in India, in an India-seated international commercial arbitration.

Separately, Amazon also filed a petition against the Future Group (as respondents) before the High Court of Delhi specifically seeking direct enforcement of the EA Award under Section 17 of the Act, which makes interim orders of an arbitral tribunal enforceable as orders of a court of competent jurisdiction. The Future Group opposed this application on the basis that an emergency arbitrator

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is not an arbitral tribunal, the EA Award is not an order under Section 17(1) and not enforceable under Section 17(2), and that the EA Award cannot be recognised under the Act.

In an order dated 2 February 2021, J.R. Midha, J. recorded the Court's preliminary findings on the parties contentions.[27] The Court held that an emergency arbitrator does fall within the definition of 'arbitral tribunal' under the Act, and that the EA Award is recognised under the Act, is an order of a court under Section 17(1) and enforceable under Section 17(2).

Notably, Amazon has not adopted the 'duplication approach' to enforce the EA Award, i.e., it did not approach the Court in a Section 9 application, asking the Court to independently apply its mind and give duplicate reliefs to the petitioner as set out in the Emergency Arbitrator's order. This was the case in ***Avitel Post Studioz Ltd & Ors. v. HSBC PI Holdings (Mauritius) Ltd***.[28] In ***Avitel***, the petitioner was able to indirectly enforce the order of the emergency arbitrator by duplicating it in an order under Section 9 of the Act. Further guidance is awaited in the reasoned order of the Court, which will clarify the enforceability of an emergency arbitrator's order under Section 17 of the Act, i.e. in India-seated arbitrations.

Supreme Court reiterates the limited scope of judicial interference in the arbitral process under Articles 226 and 227 of the Constitution[29]

Brief Facts

Bhaven Construction ("**Appellant**") and Sardar Sarovar Narmada Nigam Ltd. ("**Respondent**") entered into a contract for the manufacture and supply of bricks, which provided for arbitration by a sole arbitrator, to be appointed as per the procedure set out thereunder. When disputes arose between the parties, the Appellant appointed a sole arbitrator as per the procedure laid down under the contract. At this stage, the Respondent preferred an application before the sole arbitrator in terms of Section 16(2) of the Act, challenging the arbitrator's jurisdiction to adjudicate the dispute. The sole arbitrator rejected the application and held that there was jurisdiction to adjudicate the dispute.

Aggrieved by the order of the sole arbitrator, the Respondent preferred a Special Civil Application under Articles 226 and 227 of the Indian Constitution before the High Court of Gujarat. A Single Judge bench of the High Court of Gujarat dismissed the Special Civil Application, holding *inter alia* that the only remedy available to the Respondent was to wait for the award to be passed by the sole arbitrator and challenge the same under Section 34 of the Act. However, upon appeal, the High Court of Gujarat set aside the order of the Single Judge. It was against this order of the High Court of Gujarat that the Appellant filed a Special Leave Petition before the Supreme Court ("**Court**").

Issue

Whether the arbitral process could be interfered with under Articles 226 and 227 of the Indian Constitution, and under what circumstances?

Judgment

The Court held that the power to allow judicial interference under Articles 226 and 227 of the Constitution must be exercised in exceptionally rare cases, when one party is left remediless under the Act or there is clear 'bad faith' shown by one of the parties. It also noted that such power must not be exercised beyond the procedure established under the Act, in order to prevent the efficiency of the arbitral process from being diminished. Placing reliance on ***M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited***,[30] the Court went on to emphasise that courts must restrict their interference to orders that are 'patently lacking in inherent jurisdiction'.

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In the facts of the case, the Court found that the Respondent had failed to demonstrate exceptional circumstances to invoke the remedy under Articles 226 and 227 of the Constitution. It observed that the Respondent had not been left remediless in its challenge to the issue of jurisdiction, as it had been provided with the chance of appeal under Section 34, having failed in its challenge under Section 16 of the Act. Accordingly, the Court allowed the appeal.

Analysis

By way of the judgment, the Court has reaffirmed its position in relation to the limited scope of judicial interference with the arbitral process under Article 226 and 227 of the Constitution, and elaborated upon the cases where such interference would be warranted. While acknowledging that statutory provisions cannot bar the exercise of constitutional rights embodied in Articles 226 and 227, the Court has endorsed the legislative intention behind the framework of the Act to address issues within the ambit of the Act, without the need for an extra-statutory mechanism. Evidently, the Court has sought to reiterate its pro-arbitration stance and emphasise the need to ensure efficiency and fewer delays in the arbitral process.

Supreme Courts holds that non-payment of stamp duty on the underlying contract does not affect the validity of the arbitration agreement[31]

Brief Facts

Karnataka Power Corporation Ltd. ("**KPCL**") awarded a work order to Indo Unique Flame Ltd. ("**Indo Unique**") for beneficiation/washing of coal. Indo Unique, through SBI furnished a bank guarantee ("**BG**") of INR 292.9 million in favour of KPCL. Indo Unique entered into a sub-contract with M/s N.N. Global Mercantile Pvt. Ltd. ("**Global Mercantile**") for transportation of coal from its washery to the stockyard. Global Mercantile also furnished a BG of INR 33.6 million in favour of SBI.

Disputes arose between KPCL and Indo Unique, which led to the invocation of the BG furnished by Indo Unique. Subsequently, Indo Unique also invoked the BG furnished by Global Mercantile. Global Mercantile filed a suit against Indo Unique before the Commercial Court, Nagpur seeking a declaration that Indo Unique was not entitled to invoke the BG and that such an invocation was fraudulent. The Commercial Court issued an *ex-parte* interim order-directing *status quo* to be maintained with respect to the invocation of the BG.

Indo Unique filed an application under the Section 8 of the Act, seeking reference of disputes to arbitration. The Commercial Court rejected the application on the ground that the arbitration clause mentioned in the work order did not cover the BG. Indo Unique filed a civil revision petition before the High Court of Bombay ("**BHC**") against the order of the Commercial Court. On an objection on the maintainability of the revision petition, Indo Unique withdrew the civil revision petition and filed a writ petition before the BHC challenging the order passed by the Commercial Court refusing its application seeking reference under Section 8 of the Act. The BHC held that the application was maintainable and that allegation of fraud with respect to the invocation of BG was arbitrable. With respect to enforceability of the arbitration agreement when the underlying contract is unstamped, it was held that parties could raise this issue either under Section 11 of the Act or before the arbitral tribunal. The order of the Commercial Court was accordingly set aside. A special leave petition was filed before the Supreme Court of India ("**Court**") challenging the judgment of the BHC.

Issues

Issue (i): Whether an arbitration agreement would be enforceable if the underlying contract is unstamped?

Issue (ii): Whether fraudulent invocation of BG is an arbitrable dispute?

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Issue (iii): Whether the writ petition challenging the order of the Commercial Court was maintainable?

Judgment

Issue (i): The Court held that non-payment of stamp duty is a deficiency that is curable on the payment of the required stamp duty. The Stamp Act does not categorise an arbitration agreement as a chargeable instrument for stamp duty and there is no legal impediment regarding the enforceability of the arbitration agreement. The arbitration agreement can be acted upon irrespective of the alleged invalidity of the underlying contract. It was observed that the issue of separability[32] and the principle of *kompetenze-kompetenze*[33] are the pillars of the arbitration agreement making it self-governing.

The Court overruled two earlier judgments, i.e., ***SMS Tea Estates Ltd. v. M/s. Chandmari tea Co. Ltd***.[34] and ***Garware Wall Ropes Ltd. v. Coastal Marine Constructions***,[35] wherein it was held that an arbitration agreement cannot be acted upon, if the underlying contract is unstamped or voidable at the option of a party. Since the Court in ***Vidya Drolia & Ors. v. Durga Trading Corporation***[36] had affirmed ***Garware Ropes*** (*supra*), it referred the question as to whether non-payment/deficiency of stamp duty on the underlying contract would affect validity of the arbitration agreement, to be conclusively decided by a Constitution Bench.

Further, the Court held that in case of non/short-payment of stamp duty, the authority responsible for impounding the underlying contract would be: (i) if parties mutually agree on the appointment of the arbitral tribunal, then in that case the arbitrator/tribunal is obligated to impound the underlying contract; (ii) if parties file an application under Section 11 of the Act for appointment of arbitrator, then the High Court or Supreme Court as the case may be, is empowered to impound the underlying contract; (iii) in case an application under Section 8 of the Act is filed, the judicial authority while making the reference to arbitration is empowered to impound the underlying contract; and (iv) in case an application under Section 9 of the Act is filed, the court is empowered to impound the underlying contract.

Issue (ii): As regards the arbitrability of fraudulent invocation of BG, the Court held that all civil or commercial disputes, either contractual or non-contractual, which can be adjudicated upon by a civil court, in principle, could be adjudicated and resolved through arbitration, unless they are excluded expressly by a statue, or by necessary implication. It was held that matters relating to criminal fraud, such as forgery or fabrication which would fall under the realm of public law would be subject to adjudication by a court of law.[37]

Issue (iii): With respect to the maintainability of the writ petition, the Court held that it was non-maintainable as the order passed by the Commercial Court refusing reference to arbitration under Section 8 of the Act was appealable under Section 37(1)(a) of the Act.

Analysis

Challenging the validity of the underlying contract was one of the most common ways for parties to wriggle out of their obligation to submit disputes to arbitration. The Court's finding that in light of the doctrine of separability and *kompetenze-kompetenze*, the validity of the underlying contract cannot hinder or restrict parties' ability to submit their disputes to arbitration is an encouraging trend and is yet another example of the ever improving and evolving Indian arbitration law jurisprudence. However, the issue remains to be conclusively decided by a Constitution Bench. The judgment also provides greater clarity on the issue of arbitrability of fraud by holding that civil aspects of fraud are arbitrable.

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Supreme Court reinstates the requirement of security while seeking release of amount deposited under Section 36(3) of the Act[38]

The Supreme Court has recently set aside an order passed by the Single Judge of the High Court of Delhi ("**Single Judge**") in OMP (Comm) No. 484 of 2020 passed on 4 December 2020 ("**Order**") wherein the Single Judge had allowed the release of amounts deposited under Section 36(3) of the Act on merely furnishing an undertaking, while recognising the Order to be "extraordinary".

Brief Facts

NHPC filed a petition under Section 34 of the Act against HCC where the arbitral award of INR 1.6355 billion was challenged and a stay on the enforcement was granted on 25 September 2020 subject to deposit of the awarded amount. NHPC complied with the order and duly deposited the awarded amount with the Registry. HCC later preferred an application seeking release of the deposit without furnishing any security on the ground that due to its precarious financial situation none of the banks are lending it money and it is unable to pay its employees.

The Single Judge on 4 December 2020 allowed HCC's application and ordered release of the awarded amount on merely furnishing of an undertaking.

NHPC challenged the Order of the Single Judge before the Supreme Court averring that it changes the course of equities leaving NHPC remediless in the event it succeeds in the Section 34 Petition and effectively makes its Section 34 Petition infructuous. Therefore, it contended that HCC must adequately secure NHPC.

The matter was heard by the Supreme Court on 18 December 2020, 8 January 2021 and 13 January 2021. HCC tried to plead that various PSUs are filing petitions against it under Section 34 of the Act and it is on the verge of insolvency and therefore, no security deserves to be furnished.

Issue

Whether the Order is liable to be set aside?

Judgment

The Supreme Court on 29 January 2021 observed that the Order passed by the Single Judge is extraordinary in nature and the interest of the party that deposits the awarded amount under Section 36(3) of the Act needs to be protected. Setting aside the Order passed by the Single Judge, the Supreme Court remanded HCC back to the High Court of Delhi to satisfy the Registrar as to the security to be given for the aforesaid amount, which will include security of immovable properties as well.

Analysis

This order of the Supreme Court reinforces the requirement of furnishing adequate security against release of money deposited under Section 36(3) of the Act.

Past Events

SIPL-BIAC Webinar (19 November 2020)

The Students for the Promotion of International Law (SIPL) and the Bali International Arbitration Centre (BIAC) organised a panel discussion on "*Demystifying the Long Term Effects of Covid-19 on Arbitration Procedures and Opportunities*". **Shreya Gupta (Principal Associate)** was a panellist.

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SIAC and Institutional Arbitration Module (21 November 2020)

SIAC partnered with the National Academy of Legal Studies and Research (NALSAR), Hyderabad to conduct the SIAC and Institutional Arbitration Module. **Tejas Karia (Partner, Head – Arbitration)** conducted a lecture on "*Arbitral Proceedings*".

YSIAC Webinar (28 November 2020)

YSIAC conducted a webinar on "*Vodafone v. India: Next Steps and Lessons Learned*". **Rishab Gupta (Partner)** was one of the panellists at the event.

Daksha Dialogue Series (1 December 2020)

Ila Kapoor (Partner) was a speaker in one of the sessions of the Daksha Dialogue Series organised by the Dakha Fellowship. She spoke on the resolution of low-value commercial disputes during and after the COVID-19 pandemic, the enforcement of emergency arbitral awards in the Indian context and the latest developments in arbitration law and its practical impact in light of the Arbitration and Conciliation (Amendment) Ordinance, 2020.

Centre for ADR Webinar (6 December 2020)

The Centre for ADR of the National Law University, Delhi organised a webinar on the "*Future Prospects of International Arbitration: Role and Opportunities for India*". **Tejas Karia (Partner, Head – Arbitration)** was a speaker and **Shreya Jain (Senior Associate)** was the moderator.

MNLU Workshop (11 December 2020)

The Maharashtra National Law University (MNLU) organised a capacity building workshop as a part of which, **Arjun Doshi (Senior Associate)** spoke on the "*Arbitrability of Disputes*".

At Home around the World Series Webinar (22 December 2020)

Mr Steven Lim, (Barrister at 39 Essex Chambers and Independent Arbitrator) organised the 'At Home around the World Series' webinar. **Ila Kapoor (Partner)** was a speaker at this event and spoke about her experiences with practicality of managing virtual hearings, challenges to wider adoption of technology in India and the need for infrastructure development.

International Mediation Training Program (12 January 2021)

The International Mediation Training Program was organised by JLU-School of Law along with the Indian Institute of Arbitration and Mediation and NLIU Bhopal. **Shruti Sabharwal (Principal Associate)** spoke extensively during a session which was focused on the challenges in mediation and its differences from arbitration as a process.

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ILSCA Certificate Programme (13 January 2021)

ILS Centre for Arbitration and Mediation, Pune (ILSCA) conducted the Online Certificate Programme in Domestic Arbitration: Practice and Procedures from 8-17 January 2021. **Tejas Karia (Partner, Head – Arbitration)** addressed the session titled "*Step by Step Guide to Arbitration*" on 13 January 2021.

ICADR ADR Forum Event (24 January 2021)

ICADR Regional Centre, Chandigarh in association with ICADR Regional Centre, Hyderabad organised the ADR Forum Live Event 3 which was focussed on "*Interim Reliefs from Courts during Arbitral Proceedings*". **Tejas Karia (Partner, Head – Arbitration)** was a speaker at the event.

Upcoming Event

GAR Interactive: India (18 March 2021)

GAR Interactive: India will focus on discussing arbitrator conflicts and bias, India as a seat for arbitration, followed by a symposium on what would make international arbitration better.

Publication

Ila Kapoor (Partner) and **Ananya Aggarwal (Principal Associate)**, *Arbitration ordinance: Reopening the floodgates to litigation*, Financial Express (3 December 2020), accessible at: https://www.financialexpress.com/opinion/arbitration-ordinance-reopening-the-floodgates-to-litigation/2141954/lite/

Endnotes

1 Authored by Siddhartha Datta, Partner and Surabhi Binani, Associate; *New Morning Star Travels v. Volkswagen Finance Private Limited*, CM (M) No. 553/2020 & CM APPL. No. 28266/2020, High Court of Delhi, judgment dated 9 November 2020.

Coram: Prathiba M. Singh, J.

2 (1999) 2 SCC 479.

3 (2004) 3 SCC 155.

4 2010 (1) CTC 481.

5 Authored by Aashish Gupta, Partner and Alind Chopra, Associate; *Cars24 Services Pvt. Ltd. v. Cyber Approach Workspace LLP*, Arbitration Petition No. 328/2020, High Court of Delhi, judgment dated 17 November 2020.

Coram: C. Hari Shankar, J.

6 (2012) 9 SCC 552.

7 (2013) 9 SCC 32.

8 Authored by Ila Kapoor, Partner, Ananya Aggarwal, Principal Associate and Akriti Kataria, Associate; *Edelweiss Asset Reconstruction Company Ltd. v. GTL Infrastructure Ltd. & Anr.*, ARB. A. (COMM) No. 13/2020 & I.A. No. 4322/2020, High Court of Delhi, judgment dated 18 November 2020.

Coram: C. Hari Shankar, J.

9 2018 SCC OnLine Bom 2347.

10 (2018) 16 SCC 617.

11 (2004) 5 SCC 1.

12 Authored by Smarika Singh, Partner, Saifur Rahman Faridi, Senior Associate and Yashna Mehta, Associate; *Dholi Spintex Pvt. Ltd. v. Louis Dreyfus Company India Pvt. Ltd.*, C.S. (COMM) No. 286/2020, High Court of Delhi, 2020 SCC OnLine Del 1476, judgment dated 24 November 2020.

Coram: Mukta Gupta, J.

13 (2017) 2 SCC 228.

14 (2005) 5 SCC 465.

15 (2014) 7 SCC 603.

16 Authored by Tejas Karia, Partner & Head - Arbitration, Grishma Ahuja, Principal Associate and Shalin Jani, Associate; *Lt. Col. H. S. Bedi Retired and Anr. v. STCI Finance Limited*, OMP (COMM) No. 546/2020 & I.A. No. 10618/2020, High Court of Delhi, judgment dated 7 December 2020.

Coram: V. Kameswar Rao, J.

17 2019 SCC OnLine Del 7071.

18 (2017) 8 SCC 567.

In this edition

19 (2006) 6 SCC 498.

20 Authored by Tejas Karia, Partner & Head-Arbitration, Varun Pathak, Counsel and Avlokita Rajvi, Senior Associate; *Vidya Drolia and Others v. Durga Trading Corporation*, C.A. No. 2402/2019, Supreme Court, 2020 SCC OnLine SC 1018, judgment dated 14 December 2020.

Coram: N.V. Ramana, Sanjiv Khanna, Krishna Murari, JJ.

21 2019 SCC OnLine SC 358.

22 (2017) 10 SCC 706.

23 (2010) 1 SCC 72.

24 2013 (134) DRJ 566 (FB).

25 Authored by Rishab Gupta, Partner, Niyati Gandhi, Senior Associate, and Naman Lohiya, Associate; *Future Retail Ltd. v. Amazon.com Investment Holdings LLC & Ors.*, C.S. (COMM) 493/2020, High Court of Delhi, 2020 SCC OnLine Del 1636, judgment dated 21 December 2020.

Coram: Mukta Gupta, J.

26 2020 SCC OnLine 656.

27 *Amazon.com NV Investment Holdings LLC v. Future Coupons Private Limited and Others*, O.M.P. (ENF)(COMM) 17/2021, High Court of Delhi, judgment dated 2 February 2021. Please note that this petition is separate from and independent of the commercial suit filed before the High Court of Delhi (before Mukta Gupta, J.). As a result, this order has been issued in a separate proceeding concerning the same parties.

28 2014 SCC OnLine Bom 929.

29 Authored by Anirudh Das, Partner and Sadhika Gulati, Associate; *Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. & Anr.*, Civil Appeal No. 14665/2015, Supreme Court, 2021 SCC OnLine SC 8, judgment dated 6 January 2021.

Coram: N.V. Ramana, Surya Kant, and Hrishikesh Roy, JJ.

30 2019 SCC OnLine SC 1602.

31 Authored by Binsy Susan, Partner, Akshay Sharma, Senior Associate and Amogh Srivastava, Associate; *M/s N.N. Global Mercantile Pvt. Ltd. v. M/s Indo Unique Flame Ltd. & Ors.* Civil Appeal Nos. 3802–3803/2020, Supreme Court, 2021 SCC OnLine SC 13, judgment dated 11 January 2021,.

Coram: D.Y. Chandrachud, Indu Malhotra and Indira Banerjee, JJ.

32 The invalidity, the termination of the contract and the ineffectiveness shall not affect the arbitration agreement until it is declared void ab initio.

33 The arbitral tribunal is competent and has the autonomy and to rule on its own jurisdiction.

34 (2011) 14 SCC 66.

35 (2019) 9 SCC 209.

36 2020 SCC OnLine SC 1018.

37 *N. Radhakrishnan v. Maestro Engineers,* (2010) 1 SCC 72.

38 Authored by Gauhar Mirza, Partner and Hiral Gupta, Associate; *M/s NHPC Ltd. v. M/s Hindustan Construction Co. Ltd.*, Civil Appeal No. 267/2021, Supreme Court, order dated 29 January 2021.

NHPC was represented before the High Court of Delhi and Supreme Court by the team of Shardul Amarchand Mangaldas & Co comprising Tejas Karia (Partner & Head-Arbitration), Gauhar Mirza (Partner), Prakhar Deep (Senior Associate), and Hiral Gupta, Nishant Doshi, Manavendra Gupta and Jasvinder Singh (Associates).

Coram: Rohinton Fali Nariman, K.M. Joseph and Ajay Rastogi, JJ.

PRACTICE AREA EXPERTS

Pallavi Shroff
Managing Partner and
National Practice Head Dispute Resolution
+91 98100 99911
E: pallavi.shroff@AMSShardul.com

Tejas Karia
Partner and Head, Arbitration Practice sub-group
+91 98107 98570
E: tejas.karia@AMSShardul.com

Anirudh Das
Partner
+91 98100 98329
E: anirudh.das@AMSShardul.com

Rishab Gupta
Partner
+91 98217 80313
E: rishab.gupta@AMSShardul.com

Siddhartha Datta
Partner
+91 90070 68488
E: siddhartha.datta@AMSShardul.com

Ila Kapoor
Partner
+91 98717 92737
E: ila.kapoor@AMSShardul.com

Binsy Susan
Partner
+91 96500 80397
E: binsy.susan@AMSShardul.com

Aashish Gupta
Partner
+91 98189 19857
E: aashish.gupta@AMSShardul.com

Smarika Singh
Partner
+91 97170 98075
E: smarika.singh@AMSShardul.com

Gauhar Mirza
Partner
+91 70423 98844
E: gauhar.mirza@AMSShardul.com