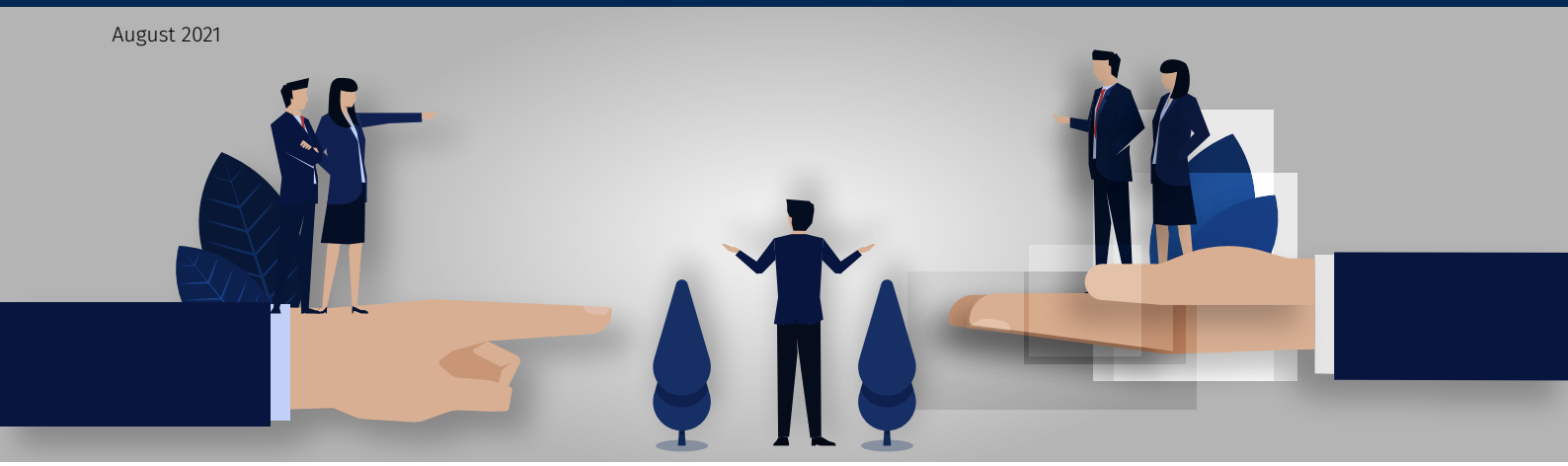
August 2021



Arbitration Newsletter – August 2021

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

In this edition, we have analysed the impact of recent arbitration related judgments of the Supreme Court of India and Indian High Courts.

We are pleased to share that Shardul Amarchand Mangaldas & Co was identified as a 'Tier 1 Firm' in International Arbitration by the Benchmark Litigation Asia-Pacific Rankings 2021. **Pallavi Shroff (Managing Partner and National Practice Head Dispute Resolution)** and **Tejas Karia (Partner – Head Arbitration**) were recognised as 'Litigation Stars', and **Aashish Gupta (Partner)** was recognised as a 'Future Star'.

Shardul Amarchand Mangaldas & Co was awarded as one of the best 'Arbitration & ADR' practices at the Indian Law Firms Awards 2021 announced by the Indian Business Law Journal.

Pallavi Shroff (Managing Partner and National Practice Head Dispute Resolution) has been reappointed to the ICC International Court of Arbitration as an Alternate Member. **Tejas Karia (Partner – Head Arbitration**) has been reappointed as member of Court of Arbitration of Singapore International Arbitration Centre for another term of 2 years.

Juhi Gupta (Senior Associate) has been selected as the first Regional Chair (India) of the Young ITA, the under-40 wing of the Institute for Transnational Arbitration, for the 2021-23 term. **Shreya Jain (Senior Associate)** has been selected as Vice Chair, Newsletter and Blog Committee, of Racial Equality for Arbitration Lawyers (R.E.A.L.) for the 2021-2023 term. She is one of the two India-based lawyers on R.E.A.L.'s leadership committees. She has also been selected as a co-founder and member of the Executive Committee of the India chapter of Energy Related Arbitration Practitioners.

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

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Arbitration Case Law Updates

Supreme Court holds that an emergency award in India-seated arbitrations is an order under Section 17(1) of the Act and enforceable under Section 17(2) of the Act[1]

Brief Facts

Three agreements were entered between the parties: (i) Shareholders' Agreement dated 12 August 2019 amongst the Respondents; (ii) Shareholders' Agreement dated 22 August 2019 between Amazon.com NV Investment Holdings LLC ("**Amazon**"), Future Coupons Pvt. Ltd. ("**FCPL**") and Respondents Nos. 3-13; and (iii) Share Subscription Agreement dated 22 August 2019 between Amazon, FCPL and Respondents Nos. 3-13.

The resultant basic understanding between the parties was that Amazon's investment in the retail stores/assets of Future Retail Limited ("**FRL**") would continue to vest in FRL, as a result of which FRL could not transfer its retail assets without FCPL's consent which, in turn, could not be granted unless Amazon had provided its consent. Also, FRL was prohibited from encumbering/transferring/selling/divesting/disposing of its retail assets to "restricted persons", being prohibited entities.

On 26 December 2019, Amazon invested INR 14.31 billion in FCPL which "flowed down" to FRL on the very same day. On 29 August 2020, Respondents entered into a transaction with the Mukesh Dhirubhai Ambani group (prohibited entity) which envisages the amalgamation of FRL with the group, the consequential cessation of FRL as an entity, and the complete disposal of its retail assets in favour of the said group.

The seat of the arbitral proceedings was New Delhi, and as per the arbitration clause agreed upon by the parties, Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") applied.

Amazon initiated arbitration proceedings and filed an application on 5 October 2020 seeking emergency interim relief under the SIAC Rules, asking for injunctions against the aforesaid transaction. The Emergency Arbitrator passed an "interim award" dated 25 October 2020 ("**EA**"), essentially injuncting Respondents from taking any steps in relation to the disputed transaction.

Respondents thereafter went ahead with the impugned transaction, describing the award as a nullity. FRL file a civil suit before the High Court of Delhi ("**DHC**"), in which it sought to interdict the arbitration proceedings and asked for interim relief to restrain Amazon from writing to statutory authorities by relying on the EA. However, the DHC refused to grant any interim injunction.

Meanwhile, Amazon filed an application under Section 17(2) of the Arbitration and Conciliation Act, 1996 ("**Act**") before Single Judge of the DHC to enforce the EA. On 8 February 2021, Division Bench of DHC stayed order of Single Judge dated 2 February 2021, whereby Single Judge had restrained the Respondents from proceeding with the impugned transaction.

On 18 March 2021, the Single Judge passed a detailed judgment holding that EA is an order under Section 17(1) of the Act, and enforceable under the Act, and issued a show-cause notice under Order XXXIX, Rule 2-A of the CPC, after imposing INR 2 million as costs after holding that the injunctions granted by EA were deliberately flouted by Respondents.

By the second impugned judgment dated 22 March 2021, Division Bench of the DHC referred to its earlier order dated 8 February 2021 and stayed the Single Judge's detailed judgment dated 18 March 2020. Against the said order, Special Leave Petitions were filed before the Supreme Court.

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Issues

Issue (i): Whether an "award" delivered by an Emergency Arbitrator under SIAC Rules is an order under Section 17(1) of the Act?

Issue (ii): Whether a Court's order passed under Section 17(2) of the Act in enforcement of the award of an Emergency Arbitrator, is appealable?

Judgment

Issue (i): On a conjoint reading of the provisions of the Act coupled with emphasis on party autonomy and there being no interdict, either express or by necessary implication, against an Emergency Arbitrator would show that an Emergency Arbitrator's orders, if provided for under institutional rules, would be covered by the Act.

Given that the definition of "arbitration" in Section 2(1)(a) means any arbitration, whether or not administered by a permanent arbitral institution, when read with Sections 2(6) and 2(8), would make it clear that even interim orders that are passed by Emergency Arbitrators under the rules of a permanent arbitral institution would, on a proper reading of Section 17(1), be included within its ambit. It is significant to note that the words "arbitral proceedings" in Section 17(1) are not limited by any definition and thus encompass proceedings before an Emergency Arbitrator.

The definition of "arbitral tribunal" contained in Section 2(1)(d), meaning "a sole arbitrator or a panel of arbitrators", only applies "unless the context otherwise requires". The heart of Section 17(1) is the application by a party for interim reliefs and nothing in Section 17(1), when read with the other provisions of the Act, interdicts the application of rules of arbitral institutions that the parties may have agreed to. This being the position, at least insofar as Section 17(1) is concerned, when institutional rules apply, the "arbitral tribunal" would include an Emergency Arbitrator, the context of Section 17 "otherwise requiring" and the context being interim measures that are ordered by arbitrators. The same object and context would apply even to Section 9(3), which makes it clear that the court shall not entertain an application for interim relief once an arbitral tribunal is constituted unless the court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious. Since Section 9(3) and Section 17 form part of one scheme, it is clear that an "arbitral tribunal" as defined under Section 2(1)(d) would not apply and the arbitral tribunal spoken of in Section 9(3) would be like the "arbitral tribunal" spoken of in Section 17(1) which would include an Emergency Arbitrator appointed under institutional rules.

Accordingly, an Emergency Arbitrator's order is exactly like an order of an arbitral tribunal once properly constituted, and is covered by Section 17(1) of the Act and can be enforced under the provisions of Section 17(2).

Issue (ii): The expression "any proceedings", occurring in Section 9(1) and Section 17(1), would be comprehensive enough to take in enforcement proceedings. The arbitral tribunal cannot itself enforce its orders, which can only be done by a court with reference to the CPC. But the court, when it acts under Section 17(2), acts in the same manner as it acts to enforce a court order made under Section 9(1), meaning thereby that the arbitral tribunal's order gets enforced under Section 17(2) read with the CPC.

As was held in ***Kandla Export Corporation v. OCI Corporation***,[2] the Act is a self-contained and exhaustive code on matters pertaining to arbitration. Accordingly, Section 37 is a complete code so far as appeals from orders and awards made under the Act are concerned.

Section 37 provides for appeals only from an order granting or refusing to grant any interim measure under Section 17, which in turn would only refer to the grant or non-grant of interim measures under Section 17(1)(i) and 17(1)(ii) of the Act. Therefore, no appeal lies under Section

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37 of the Act against an order of enforcement of an Emergency Arbitrator's order made under Section 17(2) of the Act.

Analysis

This judgment is a significant breakthrough for recognition of emergency awards as orders passed under Section 17(1) of the Act, and, therefore, enforceable under Section 17(2) of the Act. Parties in India-seated arbitrations can now straightaway approach the Court for enforcement of an order passed by emergency arbitrator and need not specifically apply to courts under Section 9 of the Act to first obtain a fresh interim relief in terms of the emergency arbitrator's order.

High Court of Calcutta clarifies that claim of an award-holder, which is not part of a resolution plan, shall stand extinguished[3]

Brief Facts

In October 2008, Sirpur Paper Mills ("**Petitioner**") filed an application under Section 34 of the Act before a Single Judge of High Court at Calcutta ("**Court**") against an arbitral award dated 7 July 2008 ("**Award**") passed in an arbitration between I.K. Merchants Private Limited ("**Award-holder**") and the Petitioner.

During pendency of proceedings under Section 34 of the Act, the management of Petitioner company had been taken over by a new entity, JK Paper Limited, subsequent to the approval of a Resolution Plan by the National Company Law Tribunal ("**NCLT**") under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). The Award-holder failed to submit its claim before the Resolution Plan and the approved Resolution Plan of the Petitioner did not make any provision for any payment to the Award-holder.

By an interim order dated 10 January 2020, the Court held that corporate insolvency resolution proceedings ("**CIRP**") cannot be used to defeat a dispute which existed prior to initiation of CIRP. Thereafter, the Petitioner filed an application for recalling the order dated 10 January 2020. The recalling application was rejected by the Court on 3 February 2020.

The Respondent contended that: (i) the principle of *res judicata* applies to different stages of the same proceeding and the issues have been finally decided by the Court in its earlier orders dated 10 January 2020 and 3 February 2020; (ii) upon filing of an application under Section 34 of the Act, the Award was automatically stayed and the Respondent could not have approached the NCLT for lodging its claim; (iii) once a Section 34 application is filed, the dispute raised by the party amounts to a pre-existing dispute, which takes the Respondent outside the purview of IBC; and (iv) the Petitioner company continues to exist and hence, it is under an obligation to pay dues to the Award-holder.

Issues

Issue (i): Whether the orders dated 10 January 2020 and 3 February 2020 would stand in the way of considering the maintainability of the application under Section 34 of the Act?

Issue (ii): Whether the Award-holder could have lodged its claim before the NCLT during pendency of the Section 34 proceedings?

Issue (iii): Whether a court can recognise and accept the futility of Section 34 proceedings on the claim of an award-holder being extinguished upon approval of a resolution plan and a successful resolution applicant taking over the management of an award-debtor?

Judgment

Issue (i): The Court rejected the ground of *res judicata* raised by the Respondent and held that the earlier orders would not stand in the way of considering the maintainability of an

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application under Section 34 of the Act. The question of maintainability can be considered at any point of time because (i) the Court had refrained from expressing any views on the maintainability of the Section 34 application in its earlier orders; and (ii) a decision making process must be attuned to a dynamic legal landscape shaped by legislative intervention and judicial pronouncements. There was sufficient reason for the Court to revisit its earlier order dated 10 January 2020 in view of judgments passed by the Supreme Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta***[4] and ***Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited***.[5]

Issue (ii): The Court placed reliance on ***Board of Control for Cricket in India v. Kochi Cricket Private Limited***,[6] which held that applications under Section 34 of the Act, which were pending at the time of the judgment, would be governed by the amended Section 36 of the Act. Therefore, the Award-holder was free to enforce the Award in absence of any stay of the Award. The Award-holder was not immobile from pursuing its claim in respect of the Award under the Act or before a forum contemplated under the IBC or otherwise. The Court also held that the Award-holder was under an obligation to take steps under the IBC instead of waiting for the adjudication of the application under Section 34 of the Act.

Issue (iii): The Court placed reliance on the Supreme Court's findings in ***Essar*** (*supra*) that an approved resolution plan is binding on a corporate debtor, and its employees, members, creditors, guarantors and other stakeholders. The Court further relied on ***Edelweiss*** (*supra*) to hold that a successful resolution applicant starts running the business of a corporate debtor on a "*fresh slate*" when it takes over the business. It further relied on the findings that claims which are not part of a resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding with respect to a claim not forming part of a resolution plan. The Court also held that "*In essence an operational creditor who fails to lodge a claim in the CIRP literally missed boarding the claims-bus for chasing the fruits of an award even where a challenge to the Award is pending in a Civil Court*". The Court concluded that it would be a waste of judicial time to decide the application under Section 34 of the Act on merits since the claim of the Award-holder extinguished upon approval of the Resolution Plan. Accordingly, it disposed of the Section 34 application as being infructuous.

Analysis

The decision reiterates that a successful resolution applicant cannot be faced with undecided claims after a resolution plan has been accepted. The adjudication of whether an arbitral award should be set aside or sustained would not reach its logical conclusion or be of any consequential relief to either party. The judgment reemphasised that pre-existing and undecided claims, which have not featured in the collation of claims and have not been considered by a resolution professional, shall be treated as extinguished upon approval of a resolution plan under Section 31 of the IBC.

High Court of Delhi passes practice directions for renewal, verification and/or extension of bank guarantees[7]

Brief Facts

IRCON International Limited ("**Applicant**")[8] filed an application under Section 151 of the Code of Civil Procedure, 1908 ("**CPC**") seeking appropriate directions from the High Court of Delhi ("**Court**") for renewal of bank guarantees furnished by Hindustan Construction Company Limited ("**Respondent**"), which expired on 20 November 2020. The Respondent submitted the bank guarantees in compliance of an earlier order of the Court allowing release of the amount awarded in the arbitral awards deposited by the Applicant while seeking stay on the operation of the arbitral awards under challenge.

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Issues

Issue (i): Whether the rights of the Applicant remained unprotected owing to the non- renewal of the bank guarantees by the Respondent?

Issue (ii): Whether the circumstances required the Court to issue general practice directions regarding the extension or renewal of bank guarantees?

Judgment

Issue (i): The Court held that the Respondent had extended the bank guarantees within the stipulated time and the Applicant's rights were accordingly protected. However, the same was not put to the notice of the Applicant and therefore, the Applicant had to move the said application for extending the bank guarantees.

Issue (ii): The Court sought assistance from the parties and considered that in order to streamline the process of extending bank guarantees, it was much needed to plug-in the loopholes and issue appropriate practice directions for the submission, renewal and verification of bank guarantees that are ordered to be furnished before a court as a condition for release of sums deposited by the opposite party during the pendency of proceedings or otherwise. Accordingly, the Court held that:

i.) A bank guarantee furnished by a party for release of an amount deposited in court must contain a term stating that in case the bank guarantee is not renewed before ten days from expiry, it shall be encashed without any further demand. The said direction is prospective in nature and only applicable for fresh bank guarantees issued in future;

ii.) The Court directed the Registry to normalise the process of verifying bank guarantees through video conferencing and sought modifications in applicable rules to ensure bank officials are not required to be physically present in court;

iii.) The Court further directed the Registry to automatically list the matter before the Registrar, two-four weeks before the date of expiry of the bank guarantee.

Analysis

The order passed by the Court takes into consideration the pressing issues faced by litigating parties in respect of the issuance, verification, renewal or extension of bank guarantees. A bank guarantee acts as a security against an amount released by a court in favour of a decree holder to safeguard the interest of the judgment debtor. Although a court passes directions to verify a particular bank guarantee, three-four weeks before the expiry of the bank guarantee, more often than not, parties end up seeking directions from the appropriate court for the renewal or extension of the bank guarantee. This results in unwanted litigation, and an unnecessary cost and time burden on the parties. Thus, in order to curb the difficulties faced by litigating parties, the practice directions issued by the Court in the present case are a step in the right direction. As the practice directions passed are general in nature and not confined to this particular case, they will apply to all prospective cases where a court directs any party to furnish a bank guarantee.

High Court of Delhi holds that non-payment of stampduty on commercial contracts does not invalidate arbitration clause contained therein[9]

Brief Facts

IMZ Corporate Pvt. Ltd. ("**Petitioner**") filed a petition under Section 11 of the Act before the Hon'ble High Court of Delhi ("**Court**") for appointment of arbitrator ("**Petition**") as per the arbitration clause provided in the Memorandum of Understanding dated 1 January 2020 ("**MoU**") executed with MSD Telematics Pvt. Ltd. ("**Respondent**").

Disputes had arisen between the parties and the Petitioner alleged that the Respondent committed serious breaches of the MoU, which also amounted to criminal offences. Hence, the Petitioner invoked arbitration by way of a notice dated 4 July 2020. Petitioner requested

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the Delhi International Arbitration Centre ("**DIAC**") to appoint an arbitrator. Accordingly, DIAC also sent a notice to the Respondent for the same. Since no response was received from the Respondent, the Petitioner approached the Court.

Before the Court, the Respondent raised issues as to the maintainability of the Petition, as follows:

a) The Petition is pre-mature as contingencies under sub-sections (a), (b) or (c) of Section 11(6) of the Act have not arisen.
b) The MoU is forged and fabricated and hence, the same would be rendered void. A police complaint has also been registered by the Respondent. Further, the said allegations are grave and permeate into the entire document, which leads to *erga omnes* effect.
c) The Petitioner has not complied with the pre-arbitration steps.
d) The subject matter of the dispute is non-arbitrable as the same falls within the jurisdiction of the NCLT.
e) The MoU in question is an unstamped document. Non-payment of stamp duty on a commercial contract would invalidate the arbitration agreement.

Issues

Issue (i): Whether or not the Petition is maintainable? [(a) to (d) above]

Issue (ii): Whether the arbitration clause forming a part of the MoU can be acted upon, when the same was not stamped? [(e) above]

Judgment

Issue (i): The Court held that there is no conclusive finding regarding fraud and forgery allegations by any court and thus, the Court was inclined to follow the principle, *"when in doubt, do refer"* as enunciated in ***Vidya Drolia v. Durga Trading Corporation***.[10] The Court also held that since the parties have initiated criminal proceedings and litigation before the NCLT, making them follow any pre-arbitration steps and relegating them to mutual negotiations would not serve any purpose. Further, it was observed that the filing of a petition before the NCLT by the director of the Petitioner alleging oppression and mismanagement against the Respondent, does not mean that contractual disputes cannot be submitted to arbitration. Hence, the case of non-arbitrability would not survive. The Court also held that the contingencies under Section 11 were duly met. Thus, the Court held that none of the contentions of the Respondent call for rejection of the Petition.

Issue (ii): At first, the Court contemplated impounding the MoU for non-payment of stamp duty. However, after hearing the parties, the Court was of the view that such a recourse is not necessary in view of the judgment of the Supreme Court in the case of ***N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.***,[11] wherein it was held that the non-payment of stamp duty on the commercial contract would not invalidate the arbitration agreement and render it unenforceable. The rationale for such a ruling lies in the doctrine of separability of the arbitration agreement. The Supreme Court had held that the arbitration agreement is a separate and distinct agreement from the underlying commercial contract. Thus, it would survive independent of the substantive contract.

Following the decision in ***N.N. Global*** (*supra*), the Court held that the plea of the agreement being unstamped would not prevent the Court from appointing an arbitrator while exercising jurisdiction under Section 11 of the Act.

Analysis

The Court relied upon the reasoning of ***N.N. Global*** (*supra*), which overruled the decisions in ***SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.***[12] and ***Garware Wall Ropes Ltd. v. Coastal Marine Constructions and Engg. Ltd.***[13] However, since the judgment in ***Garware Wall Ropes*** (*supra*) had been affirmed in ***Vidya Drolia*** (*supra*), the Supreme Court in ***N.N. Global*** referred

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the issue on effect of non-stamping on main contract on validity of arbitration agreement contained therein to a larger bench.

Despite the issue being referred to the larger bench, the Court relied upon the reasoning in ***N.N. Global*** (*supra*) holding that the arbitration agreement is independent and distinct from the underlying commercial contract as it provides the mode of dispute resolution. Since there is no stamp duty payable on an arbitration agreement, it would survive independent of the underlying commercial contract and would not be rendered invalid, un-enforceable or non-existent, even if the substantive contract is not admissible in evidence, or cannot be acted upon on account of non-payment of stamp duty.

We are of the view that this decision has rightly relied upon in ***N.N. Global*** (*supra*), although the question of whether or not non-payment of stamp duty on an instrument would render the arbitration agreement contained therein unenforceable is referred to larger bench.

Despite the Respondent arguing that till the time the law is settled by a larger bench, the ruling of the Supreme Court in ***Garware Wall Ropes*** (*supra*) as affirmed in ***Vidya Drolia*** (*supra*), would be applicable. However, the said submission of the Respondent was not accepted by the Court and the arbitrator was appointed. This is welcome step in view of the clear law laid down by the Supreme Court in ***N.N. Global*** (*supra*).

This decision will help to avoid delaying tactic by parties on the technical ground of non-payment of stamp duty on the main agreement as the arbitration agreement being a separate contract is not affected by the non-stamping of the main contract.

High Court of Delhi clarifies the scope of Section 9 of the Act[14]

Brief Facts

Thar Camps Pvt. Ltd. ("**Petitioner**") filed a petition under Section 9 of the Act before the High Court of Delhi ("**Court**"), seeking interim relief in the form of either: (i) the amounts claimed by it be deposited by M/s Indus River Cruises Pvt. Ltd. ("**Respondent No. 1**"); or (ii) the amount be secured by restraining removal of three vessels leased by Respondent No. 1.

The Petitioner and Respondent No. 1 had entered into a Vessel Operation and Management Agreement ("**VOMA**"), through which the Petitioner was contracted for operating and managing the three vessels. The three vessels were in turn leased to Respondent No. 1 by their respective owners under the Bareboat Charter Agreements, to which the Petitioner was not privy. The owners of the three vessels in question were not parties to the VOMA.

Against this background, the Petitioner alleged that Respondent No. 1 failed to make payments due to it for the services rendered under the VOMA. The Petitioner therefore sought to secure these payments (allegedly amounting to over INR 360 million) by restraining removal of the vessels. The Petitioner also sought to interlink the Respondents, claiming that all of them were the "*corporate avatars*" of Respondent No. 3, and that the Court must "*lift the corporate veil*".

The owners of the three vessels opposed the request for interim relief *inter alia* on the ground that: (i) they were independent corporate entities who were entitled to repossess their vessels; and (ii) the 'subject matter of the dispute' between the Petitioner and Respondent No. 1 was not the vessels but the dues allegedly owed by Respondent No. 1 to the Petitioner.

Issues

Issue (i): Whether the three vessels constitute the "*subject-matter*" of the arbitration agreement/dispute as per Section 9(1)(ii)(a) of the Act?

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Issue (ii): Whether the Petitioner is entitled to obtain an interim order for securing the amount in dispute as per Section 9(1)(ii)(b) of the Act?

Issue (iii): Whether the Court must lift the corporate veil of the Respondent entities to effectively adjudicate upon this matter?

Judgment

Issue (i): The Court distinguished between the expressions "*subject matter of the arbitration agreement*" and "*amount of the dispute*". In doing so, the Court placed reliance on the decision in ***Intertoll ICS Cecons O&M v. NHAI***,[15] wherein it was held that 'subject-matter' for the purpose of Section 9(1)(ii)(a) of the Act refers to the tangible goods in respect of which there could be an order of preservation or interim custody. In contrast, where the claim is of a monetary nature, Section 9(1)(ii)(b) of the Act would be applicable for 'securing the amount in dispute'. The Court further relied on the decisions in ***Kalu Parvathi v. G. Krishnan Nair***[16] and ***Kaloot Sao v. Munni Sao***,[17] wherein it was clarified that 'subject-matter' could not be understood as the property involved in the suit, but had to be understood with respect to the relief claimed in the suit and the cause of action on which the suit was based.

Upon placing reliance on the aforesaid decisions, the Court analysed the provisions of the VOMA and held that: (i) the VOMA was a contract for provision of services as opposed to a transfer of title or possession in goods; (ii) the Petitioner's claim was for the alleged short payment for provision of such services; and (iii) the cause of action was the provision of services by the Petitioner and alleged default of Respondent No. 1 in making payment for the same. Accordingly, the Court rejected the Petitioner's stand and held that the 'subject-matter' of the arbitration was not the vessels but was rather the services provided by the Petitioner on such vessels.

Issue (ii): In assessing the amount in dispute as per Section 9(1)(ii)(b) of the Act, the Court considered the Petitioner's claim for securing an amount of INR 180 million for violation of Clause 6(A) read with Clause 9(i) of the VOMA. Clause 6(A) specifies the amounts due to the Petitioner for its services, whereas Clause 9(i) prohibits either party from terminating the contract within the lock-in period of five years.

In this regard, the Court primarily relied on ***Tower Vision v. Procall***[18] and ***Union of India v. Raman Iron Foundry***,[19] wherein it was held that: (i) when there is a breach of contract, the party which commits the breach does not at the instant incur any pecuniary obligation, nor does the aggrieved party become entitled to a debt due from the other party; (ii) the only right that the aggrieved party has is the right to sue for damages; and (iii) a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and the damages are assessed by a court or other adjudicating authority. Upon placing reliance on the said decisions, the Court considered the Petitioner's entitlement in case of premature termination during the lock-in period. The Court held that whether or not the VOMA was being prematurely terminated and the damages sustained as a consequence of the same, were clearly matters which need to be determined during the arbitration.

Issue (iii): The Court rejected the Petitioner's contention to lift the corporate veil and held that lifting of corporate veil in the present case would be an "*involved and intricate exercise, to be undertaken during the arbitral proceedings, should it be deemed necessary*". Further, the Court observed that such an exercise must be undertaken only when the companies behind the veil are dummy entities that are meant to create a smokescreen and shield the controlling person, which was not conclusively evident from the material on record. In any case, the Court opined that the exercise of lifting the corporate veil was not relevant in view of its findings on the earlier issues.

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Analysis

The present decision has clarified the scope of Section 9 of the Act. The judgment clearly delineates the scope of the term 'subject-matter' of the arbitration as contained in Section 9(1)(ii)(a) and distinguishes it from 'securing the amount in dispute' under Section 9(1)(ii)(b). The Court has reinforced that Section 9 cannot be utilised to secure any claims, which are merely speculative in nature.

High Court of Bombay sets aside an INR 48 billion award against the BCCI on the ground of patent illegality[20]

Brief Facts

The Board of Control for Cricket in India ("**BCCI**") and Deccan Chronicle Holdings Limited ("**DCHL**") entered into a franchise agreement dated 10 April 2008 ("**Agreement**") for the Indian Premier League franchise, Deccan Chargers. Disputes arose between the parties, which led to BCCI putting DCHL on notice of a 30-day curative period and subsequently, terminating the Agreement for DCHL's material breaches. DCHL challenged the termination and initiated arbitration proceedings against BCCI on 15 September 2012. The arbitration took place before a sole arbitrator who issued an award on 17 July 2020 in favour of DCHL, requiring BCCI to pay approximately INR 48 billion to DCHL for wrongful termination of the Agreement ("**Award**"). BCCI challenged the Award before the High Court of Bombay ("**Court**") under Section 34 of the Act.

Before the Court, BCCI argued that the Award was perverse, patently illegal, bereft of any reasons and based on irrelevant material. BCCI also contended that the Award went beyond the contractual terms and imported public law principles, which is impermissible. On the other hand, DCHL argued that the Court cannot interfere with the Award given the minimum curial interference permitted by Section 34 and that the findings in the Award were not only possible but also plausible and reasoned.

Issues

Issue (i): Whether the findings in the Award in relation to termination of the Agreement were based on valid considerations?

Issue (ii): Whether the arbitrator could render findings on public law principles?

Issue (iii): Whether the arbitrator granted reliefs beyond the pleadings?

Issue (iv): Whether the Award suffered from lack of reasons?

Judgment

Before delving into the issues, the Court noted that its interference with the Award would be limited to the narrow confines of Section 34, which was settled by the Supreme Court in ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI***.[21] It reiterated that an award can only be set aside if the grounds provided under Section 34 exist and that merit based interference is proscribed.

Issue (i): The Court held that the arbitrator's finding that BCCI's termination of the Agreement was pre-mature as it was effected one day prior to the expiry of the 30-day cure period. It also found that the arbitrator ignored vital evidence, including a judicial order which demonstrated that the termination was not pre-mature.

Further, the arbitrator's interpretation of the termination clause was held to be fundamentally misconceived. The clause made a clear distinction between remediable and irremediable breaches, with only the former requiring BCCI to give a cure notice; however, the arbitrator bundled these distinct categories, which was an impossible view and resulted in erroneous

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findings, including that BCCI was mandatorily required to give a cure notice for an insolvency event. Accordingly, the Court concluded that the arbitrator's failure to appreciate the distinction is a "*fatal defect that goes to the root of the matter*".

The Court also held that the arbitrator arrived at several findings ignoring *prima facie* material evidence on record, which is impermissible in law. However, the Court clarified that it was not re-appreciating evidence or undertaking a review on merits.

Issue (ii): The Court critiqued the Award for containing findings on the basis of two public law principles: (i) substantial compliance (by DCHL to cure its defaults); and (ii) the doctrine of proportionality (of BCCI's termination with its consequences). Given their inherent subjectivity, these principles can only be considered if contractually stipulated (which the Agreement did not). Therefore, findings based on such public law principles, which were not contractually stipulated, rendered the Award entirely perverse and unsustainable, and involved travelling outside the terms of the Agreement.

Issue (iii): The Court also held that the arbitrator's ruling that BCCI unfairly discriminated against DCHL is impossible given that DCHL did not even plead this case. Notwithstanding this, even if DCHL had pleaded this case, the arbitrator created non-existent obligations for BCCI under the Agreement, thereby re-writing express unambiguous contractual terms. Even the arbitrator's grant of damages in lieu of specific performance was unsustainable because DCHL did not seek such relief and had dropped its claim for specific performance.

Issue (iv): The Court found numerous findings in the Award to be speculative for being unreasoned or based on improper, inadequate and unintelligible reasons, including the award of damages. Section 31(3) of the Act requires an award to state the reasons upon which it is based unless parties have agreed otherwise. The Court also noted that while a Section 34 court cannot examine the sufficiency or reasonableness of reasons, it must examine whether reasons exist at all and providing 'reasons' requires a careful consideration of evidence and rival arguments.

Analysis

Given the increasing pro-arbitration attitude of courts in India, which entails minimising judicial interference in the arbitral process, this decision assumes significance and is likely to prove instructive to understand the contours and application of the ground of patent illegality to set aside domestic awards. Although perversity and absence of reasons are two dimensions of patent illegality, as can be ascertained from the Supreme Court's decisions in ***Ssangyong*** (*supra*) and ***M/s. Dyna Technologies Pvt. Ltd. v. M/s. Crompton Greaves Ltd.***,[22] there remains scope for more judicial clarity on the ambit of 'perversity' within the patent illegality test.

However, there are some observations in this decision, such as "*It is without reasons. It is not a possible view. The finding is both perverse and patently illegal*", which may raise the question that does lack of reasoning fall within perversity or is it a distinct dimension of patent illegality? It is worth noting that in ***PSA Sical Terminals Pvt. Ltd. v. The Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Ors.***,[23] the Supreme Court recently held that a finding based on no evidence at all or an award that ignores vital evidence would be perverse and therefore, liable to be set aside on the ground of patent illegality.

To conclude, the Court reiterated the settled principles of patent illegality as set out in ***Ssangyong*** (*supra*) and restrained itself from re-appreciating evidence or undertaking a merits-based review while dealing with an application under Section 34 of the Act. Thus, whilst courts in India are adopting a pro-arbitration approach, patently illegal and perverse awards will not be upheld.

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High Court of Delhi holds that a foreign State cannot claim sovereign immunity against enforcement of an arbitral award arising out of a commercial transaction[24]

Brief Facts

The Petitioners, KLA Const Technologies Pvt. Ltd. ("**KLA**") and Matrix Global Pvt. Ltd. ("**Matrix**"), filed two separate petitions under Section 36 of the Act before the High Court of Delhi ("**Court**"), seeking enforcement of arbitral awards against the Embassy of Islamic Republic of Afghanistan ("**Afghanistan**") and the Ministry of Education, Federal Democratic Republic of Ethiopia ("**Ethiopia**") respectively ("**Enforcement Petitions**").

The brief facts in KLA's case are that Afghanistan had awarded a contract to KLA for rehabilitation of its Embassy in New Delhi. Disputes arose between the parties during the course of execution of work, pursuant to which KLA initiated arbitration against Afghanistan in India. Afghanistan appeared in the arbitration till a certain date, after which it stopped appearing. The arbitrator passed an *ex parte* award partially allowing KLA's claims.

The brief facts in Matrix's case are that Matrix had entered into a contract for supply and distribution of books in Ethiopia for a certain consideration. Matrix raised several invoices but Ethiopia only made partial payments and cancelled the contract. Matrix initiated arbitration in India to recover its balance payment. Ethiopia did not appear in the arbitration and the arbitrator passed an *ex parte* award in favour of Matrix.

The awards passed in favour of KLA and Matrix had attained finality pursuant to which the Enforcement Petitions were filed. The Enforcement Petitions were heard *ex parte* as the Respondents did not appear despite service of the Petitions. During the pendency of the Enforcement Petitions, the Court directed the Central Government to examine whether the Petitioners would be required to take the Central Government's consent under Section 86(3) of the CPC for enforcement of these awards. The Central Government informed the Court that such consent is not necessary as execution proceedings in respect of an arbitral award cannot be regarded as a 'Suit' for the purposes of Section 86(3).

The Petitioners contended that: (i) there is no requirement for obtaining the consent of the Central Government under Section 86(3) of the CPC for execution of an arbitral award against a foreign State and this requirement cannot be imported as strict principles of CPC do not apply to arbitration proceedings; (ii) an award passed in an international commercial arbitration held in India would be construed as a "*Domestic Award*" under the Act and would be enforceable under Section 36 of the Act; (iii) the legal fiction created under Section 36 is for the limited purpose of enforcing an arbitral award as a "*decree*" of the Court by providing it an associated legitimacy and validity, and is not intended to make it a decree under the CPC; (iv) a foreign State does not have sovereign immunity against an arbitral award arising out of a commercial transaction; and (v) an arbitration agreement constitutes a waiver of sovereign immunity.

Issues

Issue (i): Whether the prior consent of the Central Government is necessary under Section 86(3) of the CPC to enforce an arbitral award against a foreign State?

Issue (ii): Whether a foreign State can claim sovereign immunity against enforcement of an arbitral award arising out of a commercial transaction?

Judgment

Issue (i): The Court *inter alia* held that the Central Government is not required to give its consent under Section 86(3) of the CPC for enforcement of an arbitral award against a foreign State. This is because Section 36 of the Act treats an arbitral award as a "*decree*" of a Court for the limited

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purpose of enforcing an award and not for the purposes of CPC. Section 36 cannot be read in a manner that would defeat the underlying rationale of the Act, namely speedy, binding, and legally enforceable resolution of disputes.

Additionally, the Court held that a foreign State cannot contend that its consent must be sought again at the stage of enforcement, in ignorance of the fact that the award itself is an outcome of a voluntary arbitration process.

Issue (ii): The Court held that an arbitration agreement in a commercial contract between a party and a foreign State constitutes an implied waiver of the defence of sovereign immunity by the foreign State against enforcement of an award. Once a foreign State enters into a commercial transaction and opts to wear the hat of a commercial entity, it cannot seek sovereign immunity, i.e. sovereign immunity is available to a State only when it is acting in its sovereign capacity and not otherwise. The purpose and nature of the transaction would be the determining factors in ascertaining the true nature of the foreign State's activity. The Court also noted that if foreign States are permitted to frustrate enforcement of arbitral awards by pleading sovereign immunity, the very edifice of international commercial arbitration would collapse.

The Court directed the Respondents to deposit the respective award amounts within four weeks, failing which the Petitioners were granted liberty to seek attachment of the Respondents' assets.

Analysis

The present decision is yet another remarkable attempt by the Court to ensure that Indian arbitration law aligns with international arbitration jurisprudence and that it is not plagued with the rigours of domestic procedural laws. The Court has reinforced that an arbitration agreement, when entered into for purely commercial purposes, is binding on all signatories, even if one of the parties is a sovereign State. The Court conclusively held that once a sovereign State enters into a contract purely for commercial purposes, it is bound by the dispute resolution mechanism it has voluntarily consented to. This judgment will assure private parties, who enter into commercial contracts with sovereign States, that the fruits of awards passed in their favour under such contracts will be adequately protected and that these awards will not end up being mere paper decrees.

High Court of Calcutta clarifies that an arbitral tribunal cannot go beyond its jurisdiction[25]

Brief Facts

Lindsay International Private Limited ("**Lindsay / Petitioner**") entered into a contract with IFGL Refractories Limited ("**IFGL / Respondent**") for supply of refractory products in terms of twelve purchase orders ("**POs**"). The General Terms and Conditions of this contract included an arbitration clause.

In terms of the POs, IFGL was required to sell these refractory items to Lindsay on an exclusive basis, which were in turn sold to Arcelor Mittal ("**AM**"). IFGL was restrained from selling these products directly to AM. Further, Lindsay was required to pay IFGL within three days of receiving the payment from AM. However, Lindsay defaulted in its payment obligation under the contract, despite having received payments from AM for a few of the POs.

Meanwhile, on 28 October 2016, the parties entered into a memorandum of understanding ("**MOU**") for settling all pending disputes, which did not have an arbitration clause. It was IFGL's position that the MOU contained an admission that Lindsay had received INR 42.1 million from AM which is due and payable to IFGL. According to IFGL, since Lindsay failed to pay this amount, IFGL repudiated the MOU on 5 December 2016.

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On account of the default, IFGL invoked arbitration against Lindsay and filed its statement of claim. Lindsay, in its statement of defence ("**SOD**") dated 20 September 2019, argued that IFGL wrongfully terminated the MOU and that the MOU had superseded the contract. Accordingly, it was Lindsay's position that there was no arbitration agreement between the Parties.

Subsequently, on 23 January 2020, Lindsay filed an application ("**Application**") seeking amendment of its SOD under Section 23 of the Act and sought leave to file a counter claim before the arbitral tribunal. It was Lindsay's position that IFGL and AM, in complete disregard of the contractual arrangement, were directly dealing in the supply of refractory items and that IFGL unilaterally repudiated the MOU on the basis that terms of the MOU cannot absolve Lindsay of its payment obligations under the contract. The arbitral tribunal by its order ("**Order**"), rejected the Application for being barred by limitation.

Thereafter, Lindsay filed a challenge against this Order before the High Court of Calcutta ("**Court**") under Section 34 of the Act arguing that the Order was an interim award.

Issue

Issue (i): Whether the Application was maintainable under Section 23(3) of the Act?

Issue (ii): If so, whether the Order/award was amenable to challenge under Section 34 of the Act?

Judgment

Issue (i): The Court relied on Sections 23(2A) and 23(3) of the Act and *inter alia* held:

i.) First, a counter-claim or set off by a respondent must fall within the scope of the arbitration agreement. Since there was no arbitration agreement under the MOU, a claim for alleged breach of the MOU was beyond the scope of the arbitration agreement.

ii.) Second, an arbitral tribunal is well empowered to reject amendment of pleadings, either on grounds of inordinate delay or other factors that it deems fit in the facts of the case. In this context, the Court also referred to the arbitral tribunal's findings that the cause of action for suing IFGL for breach of the MOU arose on 5 December 2016 while the Application was filed on 23 January 2020, i.e., after a delay of more than three years. However, since the Court held that the Application was not maintainable on the basis of (i) above, the Court did not go into the question of whether the arbitral tribunal was right in rejecting the Application on the ground of inordinate delay alone.

Issue (ii): The Court held that since the Application (and the counter-claim) filed by Lindsay were beyond the scope of the arbitration agreement, the arbitral tribunal could not issue an interim award based on the Application / counter-claims.

To arrive at the above conclusion, the Court analysed the contours of Sections 2(c) and 31(6) of the Act. Particularly, the Court relied on Section 31(6), which provides that an "*arbitral tribunal may pass interim award on any matters with respect to which it may make a final arbitral award*". Relying on these provisions and certain judgments,[26] the Court ruled that the order of the arbitral tribunal rejecting an amendment to the SOD to include damages as set-off / counter-claim is not an interim award *per se*, primarily because these claims were governed by the MOU, which was a separate contract in itself that did not contain an arbitration clause. Hence, the Court held that the Order could not be challenged under Section 34 of the Act.

Analysis

The Court rightly notes that an order of an arbitral tribunal, which goes beyond the terms of the arbitration agreement and on which an arbitral tribunal cannot pass a final relief, would not tantamount to an "*interim award*". Thus, such an order cannot be challenged in Section 34 proceedings. However, such order passed by an arbitral tribunal dismissing amendments/ claims will be a nullity and presumably would not have any impact on a party's ability to

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pursue its claims outside the purview of the arbitration agreement. This judgment will act as a guide for arbitrators so that they do not adjudicate and decide any claims or applications for amendment of claims, which fall outside their jurisdiction regardless of the status and maintainability of the claims in law.

Supreme Court clarifies applicability of Limitation Act and maintainability of counter claim in arbitration proceedings initiated under Section 18(3) of MSMED Act[27]

Brief Facts

The Appellants, M/s Silpi Industries ("**Silpi**") and M/s Khyaati Engineering ("**Khyaati**"), filed two separate appeals before the Supreme Court ("**Court**") against the judgments/orders passed by the High Court of Kerala and the High Court at Madras respectively.

The brief facts in Silpi's case are that Silpi filed the present appeal against the judgment passed by the High Court of Kerala ("**Impugned Judgment**") under Section 37 of the Act, which held that: (i) provisions of the Limitation Act, 1963 ("**Limitation Act**") are applicable to arbitration proceedings initiated under the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**"); and (ii) in view of Section 23(2A) of the Act, a counter claim is maintainable in arbitration proceedings commenced under the MSMED Act.

The brief facts in Khyaati's case are that Khyaati filed a claim petition before the Micro and Small Enterprises Facilitation Council ("**Council**") constituted under the MSMED Act for resolution of contractual disputes with Prodigy Hydro Power Pvt. Ltd. ("**Prodigy**"). Pursuant to the Council issuing a notice, Prodigy filed an application under Section 11(6) of the Act before the High Court at Madras for appointment of a second arbitrator. Khyaati opposed this application on the ground that it had already approached the Council for resolution of the disputes and that Prodigy can file its counter claim in these proceedings. Prodigy contended that the Council had been constituted to only deal with disputes raised by suppliers and that the Council cannot hear a counter claim filed by a buyer. The High Court at Madras allowed Prodigy's application and appointed the second arbitrator on the ground that the MSMED Act only deals with the claims of the seller and given that the buyer cannot make a counter claim, proceedings before the Council cannot be proceeded with ("**Impugned Order**").

Issues

Issue (i): Whether the provisions of the Limitation Act are applicable to arbitration proceedings initiated under Section 18(3) of the MSMED Act?

Issue (ii): Whether a counter claim is maintainable in such arbitration proceedings?

Judgment

Issue (i): The Court held that provisions of the Limitation Act are applicable to arbitration proceedings initiated under Section 18(3) of the MSMED Act. This is because: (i) Section 18(3) of the MSMED Act makes provisions of the Act applicable to arbitration proceedings initiated under the said clause as if there is an agreement between the parties under Section 7(1) of the Act; and (ii) it is apparent from a reading of Section 43 of the Act that the Limitation Act applies to arbitrations, as it applies to proceedings in court. The Court concurred with the view taken by the High Court of Kerala, which rightly relied on ***Andhra Pradesh Power Coordination Committee & Ors. v. Lanco Kondapalli Power Ltd. & Ors.***[28] to hold that the Limitation Act is applicable to arbitration proceedings initiated under Section 18(3) of the MSMED Act.

Issue (ii): The Court held that a counter claim is maintainable in arbitration proceedings initiated under the MSMED Act as: (i) Section 18(3) of the MSMED Act clearly states that provisions of the Act are made applicable to arbitration proceedings initiated under the

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MSMED Act; and (ii) Section 23 of the Act expressly allows for filing of a counter claim. In holding the aforesaid, the Court *inter alia* opined that if a counter claim filed by the buyer is not allowed, then it may result in conflicting findings by various forums inasmuch as the seller may approach the Council for resolution of disputes under the MSMED Act whereas the buyer may approach the civil court or any other forum with a claim on the same issue. Additionally, the Court held that even if there is an arbitration agreement between the parties, a seller covered under the MSMED Act can certainly approach the Council for resolution of disputes and such arbitration agreement is to be ignored in light of the statutory obligations and mechanism provided under the MSMED Act.

Analysis

The Court's decision has brought clarity on the application of provisions of the Limitation Act to arbitration proceedings initiated under the MSMED Act, thereby providing certainty to parties to ascertain if the claims instituted by them are within the time limits prescribed under the Limitation Act.

As regards the issue of maintainability of a counter claim in arbitration proceedings initiated pursuant to the provisions of the MSMED Act, the decision has brought much needed clarity by holding that a counter claim is maintainable, given the divergent views taken by the High Court at Madras and the High Court of Kerala in the aforesaid appeals. Additionally, the decision will ensure that parties do not institute any parallel proceedings in relation to the same claim, which may result in conflicting findings by various forums.

High Court of Delhi reiterates that a sole arbitrator cannot be unilaterally appointed by one of the parties to the dispute[29]

Brief Facts

In 2006, South Delhi Municipal Corporation ("**SDMC**") awarded a contract to M/s Jyoti Sarup Mittal ("**Petitioner**") for completion of works by December 2008 ("**Contract**"). The Petitioner completed the works in May 2010 and SDMC issued the completion certificate in January 2012. The final bill was submitted by the Petitioner in August 2011, however, it was cleared only in March 2017. The Petitioner claimed that the final bill, as cleared, did not account for several items including its claim for extension of time owing to various hindrances allegedly attributable to SDMC.

The Petitioner pursued the Executive Engineer, SDMC ("**Respondent**") for finalisation of the pending issues. The Petitioner claimed that its efforts for release of balance payment did not yield any result. Accordingly, it invoked the dispute resolution clause in terms of the Contract, however, it did not receive any response from the Respondent.

Thereafter, the Petitioner wrote letters to the Engineer-in-Chief, SDMC and Commissioner, SDMC to appoint a sole arbitrator in accordance with the Contract to adjudicate the dispute. As the arbitrator was not appointed, the Petitioner approached the High Court of Delhi ("**Court**") under Section 11 of the Act for appointment of the arbitrator.

Issues

Issue (i): Whether the Petitioner's claim was barred by limitation as the claim first arose either in August 2011 when the final bill was raised or in January 2012 when the completion certificate was issued?

Issue (ii): Whether an agreement to refer the disputes to arbitration exists between the Respondent and the Petitioner as the parties did not sign the General Conditions of the Contract ("**GCC**") which contains the arbitration clause?

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Issue (iii): Whether arbitration proceedings can be conducted if the sole arbitrator is not appointed by the Commissioner, SDMC as the GCC contains a clause to the effect that only the Commissioner, SDMC can appoint the sole arbitrator and in the event that it is not possible, the matter shall not be referred to arbitration at all?

Issue (iv): Whether the Petitioner had complied with the requisite pre-arbitration procedures?

Judgment

Issue (i): The Petitioner contended that it had continuously pursued the Respondent to clear the amounts allegedly due to it and that the Respondent had requested the Petitioner to not initiate any action and assured the Petitioner that the matter would be finalised. On the other hand, it was the Respondent's case that issuance of letters does not amount to revival of a time-barred debt. Relying on the Supreme Court's judgment in ***Vidya Drolia*** (*supra*), the Court reiterated that if a dispute is *ex facie* time-barred, only then an application under Section 11 of the Act may be rejected. However, if it is a contentious issue such as in this case, then the same would fall beyond the scope of examination under Section 11.

Issue (ii): The Court observed that a signed copy of the GCC had not been produced. However, the GCC, which included the dispute resolution procedure, formed an integral part of the Contract. Thus, there existed an agreement between the parties to refer the disputes to arbitration.

Issue (iii): The Court relied on Section 12(5) of the Act introduced by the Arbitration and Conciliation (Amendment) Act, 2015 and the Supreme Court's judgments in ***TRF Ltd. v. Energo Engineering Projects Ltd.***[30] and ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.***[31] to hold that it is not permissible for the Commissioner, SDMC to unilaterally appoint an arbitrator unless the Petitioner agrees for such appointment in writing after the dispute arises. The Court observed that when Clause 25 of the GCC embodies an agreement between the parties to refer the disputes to arbitration, it is implicit in the said agreement that the arbitration must be conducted in a fair and objective manner by an impartial and independent arbitrator.

However, the Court noted that even if the scheme, which empowered the Commissioner, SDMC to unilaterally appoint an arbitrator perishes owing to Section 12(5), the attendant clause which provides that the matter should not be referred to arbitration at all in case it is not possible for the person appointed by the Commissioner, SDMC to act as an arbitrator, must be read in a restrictive manner. It cannot be read to mean that as a result of legislative amendments relating to an independent and impartial arbitrator, the agreement to refer the disputes to arbitration is rendered ineffective. The same can also not be read to interfere with the power concerning the jurisdiction of the Court to appoint an arbitrator. Even though the mechanism for appointment of the arbitrator can no longer be followed, the agreement between the parties to refer the disputes to arbitration would still survive. Therefore, if the concerned authority has failed to act on the request of the Petitioner, it is necessary for the Court to appoint an arbitrator.

Issue (iv): The Court noted that the Petitioner sent written communications to the Respondent, Superintendent Engineer, SDMC and Chief Engineer, SDMC. Therefore, the Petitioner had exhausted all avenues for resolution of the disputes before seeking a reference of the disputes to arbitration.

Analysis

The decision reaffirms the importance of the independence and impartiality of an arbitral tribunal as a foundation of an arbitration. In consonance with the recent judicial precedents on the issue, this decision will safeguard the interests of a party by preventing the other party from unilaterally appointing an arbitrator even if the same is provided for in the arbitration agreement between the parties. The Court also laid emphasis on reading the agreement in a manner such that the agreement to refer the disputes to arbitration is sustained. This consequently

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highlights the significance of drafting arbitration clauses accurately to fully capture the intent of the parties. The decision also reinforces the jurisprudence that under Section 11 of the Act, courts may reject an application for appointment of an arbitrator on the ground of limitation only when the dispute is *ex facie* time-barred.

Supreme Court settles the debate - court cannot modify an arbitral award under Section 34 of the Act[32]

Brief Facts

A Division Bench of the High Court at Madras had disposed of a set of appeals by the National Highways Authority of India ("**NHAI**") laying down that, at least in so far as arbitral awards made under the National Highways Act, 1956 ("**NHAI Act**") are concerned, Section 34 of the Act must be interpreted so as to permit modification of an arbitral award made, in order to enhance the amount of compensation awarded by the arbitral tribunal. Aggrieved by this pronouncement, NHAI approached the Supreme Court in appeal, challenging the legal position taken by the High Court.

NHAI's primary contention was that the power of courts under Section 34 of the Act is extremely limited in nature, and is restricted to either setting aside or remitting the award to the arbitral tribunal. Therefore, it argued that the power is wholly unlike that which is available to the appellate authority under the Land Acquisition Act, 1984, and does not extend to modifying, varying, or altering an award.

In light of the divergent views taken by the High Courts as to the scope of Section 34 of the Act in this regard, the apex court admitted NHAI's petition in order to settle the matter of law.

Issue

Whether the power of a court under Section 34 of the Act, to "set aside" an arbitral award includes the power to modify such an award?

Judgment

The Supreme Court ruled that the courts do not have the power to modify an arbitral award under Section 34 of the Act. Observing that an arbitral award can only be challenged under specific grounds mentioned in sub-sections (2) and (3) of Section 34 of the Act, the Supreme Court held that Section 34 of the Act is not to be considered as a regular appellate provision, as it is extremely limited in its nature and scope. Further, the Court observed that the only recourse available to the court is to set aside or remit the arbitral award in accordance with Section 34 of the Act, and no additional powers can be presumed. Thus, the Court held that the limited right available is co-terminus with the limited remedy, namely to set aside the award or remand the matter. In this vein, the Court reiterated its reasoning in ***McDermott International Inc. v. Burn Standard Co. Ltd***.,[33] that the scheme of Section 34 of the Act aims at keeping the supervisory role of the court to a minimum.

The Court further highlighted that any interpretation which favours the inclusion of a power to modify, revise or vary the award, would disregard the UNCITRAL Model Law on International Commercial Arbitration, 1985 ("**UNCITRAL Model Law**"), on which the Act of 1996 is based upon. Under the previous Arbitration Act, 1940, Sections 15 and 16 had expressly conferred the courts with a power to modify or correct an award under specified circumstances. However, the Act of 1996 departed from this approach and adopted the UNCITRAL Model Law dicta of limited judicial interference. Accordingly, the Court held that there is a clear indication that the Parliament intended to not confer any power of modification under Section 34 of the Act of 1996.

Further, the Court held that to assimilate the powers under Section 34 of the Act with Section 115 of the CPC would be fallacious. The Court observed that Section 115 of the CPC expressly sets out the three grounds on which a revision may be entertained and then states that the High

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Court may make "*such order as it thinks fit*". The Court held that as the latter phrase is missing in Section 34 of the Act, the same cannot be read in, given the legislative scheme of the Act of 1996.

Lastly, the Court observed that the scheme of arbitration under the NHAI Act and the National Highways Laws (Amendment Act), 1997 may often lead to perverse results, as the arbitrator who is an officer unilaterally appointed by the Central Government, only rubber stamps compensation. However, as the constitutional validity of the aforementioned laws was not challenged, the Court declined to further address the issue. Nonetheless, in order to prevent any grave injustice, the Court refused to interfere in the current matter on facts, or to set aside or remand the award back to the arbitral tribunal.

Analysis

With this decision, the Supreme Court has conclusively settled the debate as to whether courts can modify an arbitral award under Section 34 of the Act. In stating that a court cannot modify, vary or alter an award under Section 34 of the Act, the Court has upheld the fundamental principle of minimal judicial interference that underscores the Act of 1996, and reiterated India's pro-arbitration stance with a welcome clarification as to the scope of its powers. It is important to note that the Supreme Court has observed that the present judgment does not act as a bar to the exercise of its extraordinary powers under Article 142 of the Constitution of India, in order to achieve complete justice between the parties.

Supreme Court rules that a foreign award in an international commercial arbitration can be enforced against a non-signatory to the arbitration agreement under Part II of the Act[34]

Brief facts

A representation agreement ("**Agreement**") was entered into between a Hong Kong based entity called Integrated Sales Services ltd. ("**ISS**") and an Indian entity called DMC Management Consultants ("**DMC**") in the year 2000. While the Agreement was signed by the Managing Director of DMC, the first amendment made to the Agreement subsequently was signed by the Chairman of DMC, Mr. Arun Upadhyaya.

Disputes arose between the parties and ISS invoked arbitration proceedings against DMC. The statement of claim filed by ISS named Mr. Arun Upadhyaya and an Indian entity named Gemini Bay Transcription Limited ("**GBT**") amongst others as parties to the arbitration. This was on the ground that GBT was owned and controlled by DMC and that DMC was using GBT to divert funds away from ISS. ISS was successful in the arbitration and a foreign award was rendered. DMC, GBT and two other entities were held jointly and severally liable to pay damages to ISS under the Agreement. The sole arbitrator applied the 'alter ego doctrine' and held that the facts of the case warranted piercing the corporate veil.

In view thereof, ISS sought to enforce the said award in India. A Single Judge of the High Court of Bombay ("**High Court**") held that GBT was not a party to the arbitration agreement and therefore, the award could not have been enforced against GBT. This finding of the Single Judge was reversed by a Division Bench of the High Court in appeal. In doing so, the Division Bench held that none of the grounds for resisting enforcement of a foreign award under Section 48 of the Act were proved. GBT appealed this judgment before the Supreme Court ("**Court**"), culminating in this judgment.

GBT, *inter alia*, contended that: (i) the party seeking to enforce a foreign award needs to adduce evidence under Section 47(1)(c) of the Act to prove that a non-signatory to an arbitration agreement can be bound by the award passed and that the same was not done in the facts of the case; and (ii) a non-signatory to an arbitration agreement would be covered by Section 48(1)(a) and Section 48(1)(c) of the Act.

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Issue

Whether a foreign award rendered in an international commercial arbitration under Part II of the Act can be enforced against a non-signatory to an arbitration agreement?

Judgment

The Court observed that a party seeking to enforce a foreign award under Part II of the Act is not required to adduce any additional evidence beyond the record of the arbitral tribunal under Section 47(1)(c). This is as long as the procedural requirements enlisted in Section 47 read with the ingredients of a foreign award under Section 44 of the Act are met. In particular, the judgment held that Section 47(1)(c) is procedural in nature in its application. Therefore, the requirement to adduce additional and/or substantive evidence to prove that a non-signatory to an arbitration agreement can be bound by a foreign award ought to be dispensed with. Relying on the judgment in ***Emkay Global Financial Services Ltd. v. Girdhar Sondhi***,[35] the Court interpreted the expression "proof" in Section 48(1) as something which is "*established on the basis of the record of the arbitral tribunal*" and nothing further.

The Court noted that a non-signatory's objections will not fall within the ambit of the grounds contemplated under Section 48(1) of the Act as they are "*in themselves specific*" and it is settled law that Section 48(1) ought to be construed narrowly.

Distinguishing the English judgment in ***Dallah Real Estate v. Government of Pakistan***[36] from the facts of the present case, the Court held that a non-signatory's objections cannot fall within the scope of Section 48(1)(a) of the Act because the said provision can be urged to resist enforcement only in relation to the two situations envisaged therein, i.e., incapacity of parties and invalidity of the governing law. In any event, the import of the word "parties" as contemplated under Section 48(1)(a) cannot be extended to non-signatories as the same would run afoul of the express language of Section 48(1)(a) when read with Section 44 of the Act. On the applicability of Section 48(1)(c), the Court relied on the judgment in ***Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan***[37] to observe that the said sub-section as a ground for resisting enforcement only pertains to disputes, which can be said to be outside the ambit of the arbitration agreement in question and does not extend to determining whether a party, who has not signed an arbitration agreement, can be bound by it.

Referring to Section 46 of the Act, which provides as to when a foreign award is binding, the Court observed that the provision refers to persons as between whom the award was made and does not restrict the binding value of an award to only parties to an agreement. Accordingly, the Court held that the award would also be binding on non-signatories to an agreement.

To the argument that the damages in the present facts would fall outside the scope the arbitration agreement because the same were given in tort, the Court, relying on the judgment in ***Renusagar Power Co. Ltd v. General Electric Co.***,[38] held that Section 44 recognises the jurisdiction of an arbitrator to decide tortious claims as long as the disputes giving rise to such claims have their genesis in the arbitration agreement.

Analysis

Firstly, this judgment is an important step in bolstering India's commitment to identify as an arbitration friendly jurisprudence. It is fair to presume that this pro-enforcement outlook of Indian courts will boost investor confidence, particularly with respect to foreign parties. The judgment has streamlined the jurisprudence within the Indian framework in relation to enforcement of awards against non-signatories. While the position on enforcement of domestic awards against non-signatories is clear (***Chloro Controls (I) Pvt. Ltd. v. Severn Trent Water Purification Inc. and Ors***.[39]), there was no clarity until now with respect to foreign awards.

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Secondly, this judgment, in reading the expression "proof" in Section 48(1) of the Act akin to the position under Section 34(2)(a) of the Act, has attempted to make the standards of proof needed to make a case under Section 34 or Section 48 of the Act more uniform and consistent.

Past Events

Transnational Training Workshop on Arbitration and the European Rule of Law (11-12 May 2021)

Yashna Mehta (Senior Associate) was one of the 40 participants selected worldwide for the Transnational Training Workshop on Arbitration and the European Rule of Law, organised by Hague University of Applied Sciences. The workshop focussed on theoretical and practical issues emerging in the field of the European rule of law and arbitration at national and supranational levels.

SIAC Masterclass on Advocacy (14 May 2021)

The Singapore International Arbitration Centre organised a masterclass on advocacy, in which **Kartikey Mahajan (Counsel)** was a facilitator.

BR Foundation Online Certificate Course (30 May 2021)

BR Foundation conducted an online certificate course on "*International Dispute Settlement*" to provide participants with in-depth knowledge of growing relevance of international dispute settlement mechanisms across the globe, where **Tejas Karia (Partner – Head Arbitration)** was a speaker in the session on "*Drafting of arbitration agreement including issues in choice of law of contract, seat and venue*".

Panel Discussion on Emergence of Commercial Justice through Arbitration Law (4 June 2021)

LawWiser organised a panel discussion on how arbitration law in India has bolstered the emergence of commercial justice. **Tejas Karia (Partner – Head Arbitration)** was a panellist in the discussion.

International Summer School on Arbitration (15 June 2021)

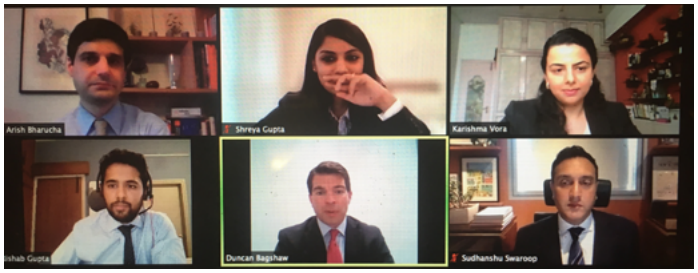
ADR HOC supported by Beihai Asia International Arbitration Centre, Singapore organised the International Summer School on Arbitration from 12-21 June 2021. **Tejas Karia (Partner – Head Arbitration)** was a speaker in the session on "*Interim Measures in Arbitration, Emergency Arbitrator, Enforcement of such orders*".

Online Certificate Course on ADR (23 June 2021)

The Committee on Economic, Commercial Laws & Economic Advisory of Institute of Chartered Accountants of India organised the Online Certificate Course on ADR (Arbitration, Conciliation & Mediation). **Tejas Karia (Partner – Head Arbitration)** was a speaker in the session on "*Overview of the Arbitration & Conciliation Act, 1996*".

Howard Kennedy-SAM Webinar (24 June 2021)

Howard Kennedy and Shardul Amarchand Mangaldas & Co. organised a webinar on the effective enforcement of arbitral awards in the UK and India. **Rishab Gupta (Partner)** was a panellist in the discussion and **Shreya Gupta (Principal Associate)** was a co-moderator.



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National Bootcamp on Performance and Practice of Arbitration (27 June 2021)

"Amicus Curiae - A Law Club" of Faculty of Law, JECRC University, Jaipur, Rajasthan organised an event called "*National Boot Camp: Performance & Practice of Arbitration*" on 26 and 27 June 2021. **Tejas Karia (Partner – Head Arbitration)** was a panellist in the session on "*The World v. Arbitration*".

Symposium on Construction Disputes/Arbitration (5 July 2021)

Masin organised on a symposium on construction disputes/arbitration in India. **Rishab Gupta (Partner)** was a speaker in the session on "*Unlawful Termination, Encashment of bank guarantees in Construction Contracts*".

CIArb India Event (8 July 2021)

CIArb India Branch organised an event titled "*Climbing the Ladder to become an Arbitrator/ Mediator – Role of CIArb in Fast Forwarding Careers in ADR*". **Tejas Karia (Partner – Head Arbitration)** was a panellist in the session focussed on the various aspects of the courses held by CIArb India Branch.

Orison Legal-MARC-YMCIA Webinar (8 July 2021)

Orison Legal, the MCCI Arbitration and Mediation Centre (MARC) and the Young Mumbai Centre for International Arbitration (YMCIA) organised a webinar on "*Betamax v STC: The Privy Council's Approach to the Public Policy Exception & its Potential Impact in Asia and Africa*". **Rishab Gupta (Partner)** was a speaker at this webinar.

RGNUL-SAM Conclave on Arbitration in Practice (17-18 July 2021)

The conclave was organised by the Editorial Board of the RGNUL Financial and Mercantile Law Review of the Rajiv Gandhi National University of Law, Punjab in collaboration with Shardul Amarchand Mangaldas & Co and SIAC. The two-day conclave commenced with a paper presentation competition which was judged by **Gauhar Mirza (Partner)**, **Hiral Gupta (Senior Associate)**, **Nishant Doshi, Manavendra Gupta** and **Jasvinder Singh (Associates)**. The winners of the paper presentation competition are offered internship with SAMCO Arbitration Group. The

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next day of the conclave witnessed an expert panel discussion which entailed deliberations and discourse around the arbitration practice in India and the allied problems that practitioners often face during arbitration proceedings. The panel discussion presented novel and innovative solutions to various practical challenges in the arbitration practice. **Tejas Karia (Partner – Head Arbitration)** and **Gauhar Mirza (Partner)** were speakers at the expert panel discussion and **Prakhar Deep (Senior Associate)** was the moderator.

YSIAC Webinar (23 July 2021)

YSIAC organised a webinar, "*In A Fishbowl with Kiran and Johan*" to discuss trending topics in international arbitration. **Lakshana R (Associate)** was a panellist at the event.

CII-ProUltimus International Webinar (7 August 2021)

The Confederation of Indian Industry (CII) and ProUltimus organised a webinar on "*Claims and disputes / arbitration in Construction and Infrastructure Sector – Indian & International Perspectives*". **Tejas Karia (Partner – Head Arbitration)** was a panellist in the session on "*Unlawful termination and the encashment of bank guarantees – legal perspective*".

BW Legal World Webinar (14 August 2021)

BW Legal World organised a webinar on "*Amazon-Future Case: Understanding Emergency Arbitration and Awards*", where **Shruti Sabharwal (Partner)** was a speaker.

Iuris Jura Arbitration Lecture Series (15 August 2021)

Iuris Jura organised a live lecture series on "*Drafting under Arbitration & Conciliation Act, 1996*". **Gauhar Mirza (Partner)** was a speaker at the session on "*Drafting of Statement of Claim and Statement of Defence under Section 23 of the Arbitration & Conciliation Act, 1996*".

Webinar on Use of Technology in Arbitration (18 August 2021)

Shardul Amarchand Mangaldas & Co, Beyond Law CLC and Baker McKenzie organised a webinar on "*Use of Technology in Arbitration*", where **Tejas Karia (Partner – Head Arbitration)** was a panellist.

Upcoming Events

ILSCA Webinar (21 and 22 August 2021)

Indian Law Society's Centre for Arbitration and Mediation, Pune is organising a two-day webinar on "*International Commercial Arbitration*" where **Tejas Karia (Partner – Head Arbitration)** will be addressing sessions on "*Basis of International Commercial Arbitration*" and "*Recognition and Enforcement of a Foreign Arbitral Award*".

Legisnations Summer School (28 August 2021)

Legisnations International Centre for Legal Studies is organising a summer school on "*Emerging Trends in Arbitration*", where **Tejas Karia (Partner – Head Arbitration)** will be addressing a session on "*Emergency Arbitration*".

WilmerHale - SAMCO Webinar (31 August 2021)

WilmerHale and Shardul Amarchand Mangaldas & Co are organising a webinar on "*Third Parties in International Arbitration*", which will focus on the legal and practical issues associated with binding non-signatories to arbitration agreements, joinder and consolidation, and obtaining evidence from third parties. **Tejas Karia (Partner – Head Arbitration)** and **Rishab Gupta (Partner)** will be amongst the panellists, and **Kartikey Mahajan (Counsel)** will be a co-moderator.

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CAMP-IDEX Legal Mediation Advocacy Fireside Chat Series (21 October 2021)

The Centre for Advanced Mediation Practice (CAMP) and IDEX Legal will be organising a Mediation Advocacy Fireside Chat Series. **Tejas Karia (Partner – Head Arbitration)** will be a speaker in the session on "*Dispute-Wise Contracts: Mediation Clauses as Safety Switches*".

Publications

Rishab Gupta (Partner), **Shreya Gupta (Principal Associate)**, **Juhi Gupta (Senior Associate)** and **Archismita Raha (Associate)**, *Confusion Settled: Two Indian Parties Can Choose A Foreign Seat*, Mondaq (24 May 2021). Click here

Rishab Gupta (Partner) and **Shreya Jain (Senior Associate)**, *The Missing Elephant in the Regional Comprehensive Economic Partnership (RCEP)* in the Asia-Pacific Interest Group Newsletter (June 2021). Click here

Rishab Gupta (Partner) and **Niyati Gandhi (Senior Associate)**, *Political Risk Insurance* in the Investment Treaty Arbitration Review (6th edn., June 2021). Click here

Ila Kapoor (Partner), *An Indelible Stamp on Arbitration*, The Hindu Business Line (14 August 2021). Click here

Endnotes

1 Authored by Tejas Karia, Partner & Head-Arbitration and Avlokita Rajvi, Senior Associate; Amazon.com NV Investment Holdings LLC v. Future Retail Limited & Ors., Civil Appeal Nos. 4492-4493/2021, Supreme Court, 2021 SCC OnLine SC 557, judgment dated 6 August 2021.

Coram: R.F. Nariman and B.R. Gavai, JJ.

2 (2018) 14 SCC 715.

3 Authored by Siddhartha Datta, Partner and Trisha Mukherjee, Associate, Sirpur Paper Mills Limited v. I.K. Merchants Private Limited, A.P. No. 550/2008, High Court of Calcutta, 2021 SCC OnLine Cal 1601, judgment dated 7 May 2021.

Coram: Moushumi Bhattacharya, J.

4 (2020) 8 SCC 531.

5 2021 SCC OnLine SC 313.

6 (2018) 6 SCC 287.

7 Authored by Gauhar Mirza, Partner, Prakhar Deep, Senior Associate and Nishant Doshi and Jasvinder Singh, Associates; IRCON International Limited v. Hindustan Construction Company Limited, FAO (OS) (COMM) Nos. 173-174/2018, High Court of Delhi, judgment dated 2 June 2021.

Coram: Vipin Sanghi and Jasmeet Singh, JJ.

8 IRCON International Limited was represented by the team of Shardul Amarchand Mangaldas & Co comprising Gauhar Mirza, Partner, Prakhar Deep, Senior Associate, and Nishant Doshi and Jasvinder Singh, Associates.

9 Authored by Tejas Karia, Partner & Head-Arbitration, Shruti Sabharwal, Partner, Grishma Ahuja, Principal Associate and Sushil Jethmalani, Associate; IMZ Corporate Pvt. Ltd. v. MSD Telematics Pvt. Ltd., ARB.P. No. 204/2021, High Court of Delhi, 2021 SCC OnLine Del 3016, judgment dated 4 June 2021.

Coram: Sanjeev Narula, J.

10 (2021) 2 SCC 1.

11 2021 SCC OnLine SC 13.

12 (2011) 14 SCC 66.

13 (2019) 9 SCC 209.

14 Authored by Aashish Gupta, Partner, Satya Jha and Saarthak Jain, Associates; Thar Camps Pvt. Ltd. v. Indus River Cruises Pvt. Ltd. & Ors., O.M.P. (I) (COMM.) No. 243/2020, High Court of Delhi, 2021 SCC OnLine Del 3150, judgment dated 7 June 2021.

Coram: C. Hari Shankar, J.

15 2013 SCC OnLine Del 447.

16 1969 Ker LJ 599.

17 AIR 1977 Pat 90.

18 2012 SCC OnLine Del 4396.

19 (1974) 2 SCC 231.

In this edition

20 Authored by Shruti Sabharwal, Partner, Juhi Gupta, Senior Associate and Swagata Ghosh, Associate; Board of Control for Cricket in India v. Deccan Chronicle Holdings Ltd., Comm. Arbitration Petition (L) No. 4466 of 2020, High Court of Bombay, 2021 SCC OnLine Bom 834, judgment dated 16 June 2021.

Coram: G.S. Patel, J.

21 (2019) 15 SCC 131.

22 2019 SCC OnLine SC 1656.

23 2021 SCC OnLine SC 508.

24 Authored by Ila Kapoor, Partner, Ananya Aggarwal, Principal Associate and Akriti Kataria, Associate; KLA Const Technologies Pvt. Ltd. v. The Embassy of Islamic Republic of Afghanistan, OMP (ENF) (COMM) 82/2019 & I.A. No. 7023/2019 and Matrix Global Pvt. Ltd. v. Ministry of Education, Federal Democratic Republic of Ethiopia, OMP (EFA) (COMM) No. 11/2016 & E.A. No. 666/2019, High Court of Delhi, 2021 SCC OnLine Del 3424, judgment dated 18 June 2021.

Coram: J.R. Midha, J.

25 Authored by Binsy Susan, Partner, Akshay Sharma, Principal Associate, Neha Sharma, Senior Associate and Prabhakar Yadav, Associate; Lindsay International Private Limited v. IFGL Refractories Limited, I.A. No: G.A. 1/2021 in A.P. 33/2021, High Court of Calcutta, 2021 SCC OnLine Cal 1979, judgment dated 25 June 2021.

Coram: Moushumi Bhattacharya, J.

26 McDermott International v. Burn Standard, (2006) 11 SCC 181; Container Corporation of India v. Texmaco Limited, 2009 SCC OnLine Del 1594; Harinarayan G. Bajaj v. Sharedeal Financial Consultants, 2003(2) Mh.L.J. 598.

27 Authored by Anirudh Das, Partner and Satya Jha, Associate; M/s Silpi Industries v. Kerala State Road Transport Corporation, Civil Appeal Nos. 1570-1578 of 2021 and M/s Khyaati Engineering v. Prodigy Hydro Power Pvt. Ltd., Civil Appeal Nos. 1620-1622 of 2021, Supreme Court of India, 2021 SCC OnLine SC 439, judgment dated 29 June 2021.

Coram: R. Subhash Reddy and Ashok Bhushan, JJ.

28 (2016) 3 SCC 468.

29 Authored by Smarika Singh, Partner, Yashna Mehta, Senior Associate and Adya Jha, Associate; Jyoti Sarup Mittal v. Executive Engineer-XXIII, South Delhi Municipal Corporation, ARB. P. No. 275/2021 & I.A. No. 2725/2021, High Court of Delhi, 2021 SCC OnLine Del 3674, judgment dated 12 July 2021.

Coram: Vibhu Bakhru, J.

30 (2017) 8 SCC 377.

31 2019 SCC OnLine SC 1517.

32 Authored by Gauhar Mirza, Partner, Manavendra Gupta and Adya Joshi, Associates; The Project Director, National Highways No. 45E and 220 and National Highways Authority of India v. M. Hakeem & Anr., Civil Appeal No. 2756 of 2021 arising out of SLP(C) 13020 of 2020, Supreme Court, 2021 SCC OnLine SC 473, judgment dated 20 July 2021.

Coram: R.F. Nariman and B.R. Gavai, JJ.

33 (2006) 11 SCC 181.

34 Authored by Shruti Sabharwal, Partner and Rangon Choudhury, Associate; Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd. & Anr., Civil Appeal Nos. 8343-8344/2018, Supreme Court, 2021 SCC OnLine SC 572, judgment dated 10 August 2021.

Coram: R.F. Nariman and B.R. Gavai, JJ.

35 (2018) 9 SCC 49.

36 [2010] 3 WLR 1472.

37 (1999) 5 SCC 651.

38 (1984) 4 SCC 679.

39 (2013) 1 SCC 641.

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

Shruti Sabharwal
Partner
+91 98107 46183
E: shruti.sabharwal@AMSShardul.com