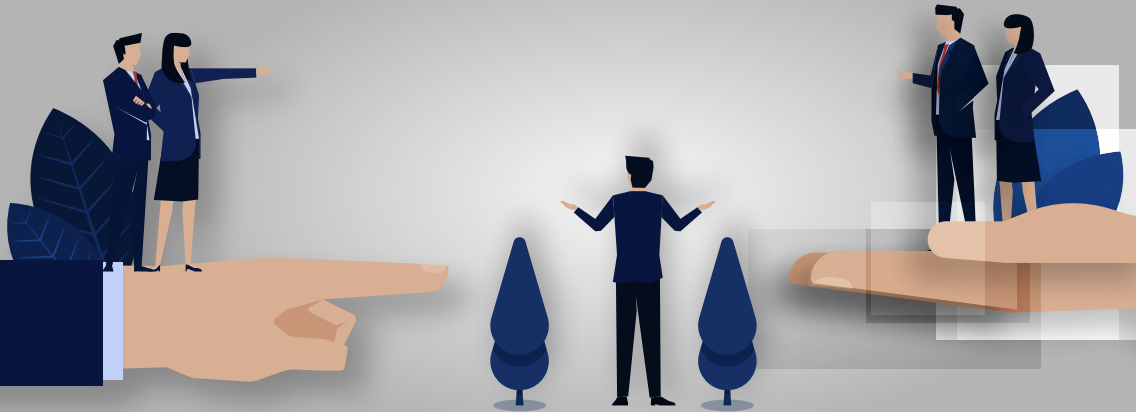


December 2022



High Court of Delhi clarifies that Section 14 of the Arbitration and Conciliation Act, 1996 cannot be invoked to raise a challenge to appointment of an arbitrator on the grounds of bias¹

Brief Facts

The Petitioner and Respondent Nos. 1 to 3 had executed a Production Sharing Contract (“**Contract**”) dated 12 April 2000 for the development, production and marketing of gas, under which certain disputes arose between the parties, which were referred to a three-member arbitral tribunal (“**Tribunal**”).

During the arbitral proceedings, the Petitioner, alleging that there existed an evident bias as well as justifiable doubts as to the independence and impartiality of the majority of the members of the Tribunal (the two arbitrators nominated by Respondent Nos. 1 to 3), preferred a petition under Section 14(2) r/w Section 15(2) of the Arbitration & Conciliation Act, 1996 (“**Act**”) before the Hon’ble High Court of Delhi (“**Court**”). The Petitioner contended that the majority of the Tribunal was unable to discharge its function and that consequently, their mandate stood terminated in terms of Section 14 of the Act.

Issue

Is a petition challenging the mandate of an arbitrator on the grounds of evident bias maintainable under Section 14 of the Act?

Judgment

The Court reiterated that while Sections 12, 13 and 14 of the Act, the trinity provisions, constitute a composite statutory scheme dealing with the subject of challenge to an arbitrator and termination of mandate, they clearly appear to construct separate causeways for a challenge that may be laid and therefore, reaffirmed the dichotomy between a *de facto* challenge and a *de jure* challenge to the mandate of an arbitrator.

According to the Court, the procedure under Section 12(3) r/w Section 13 of the Act is to be invoked when there are justifiable doubts as to the independence or impartiality of an arbitrator. These grounds are listed in Schedule V of the Act and are *de facto* in nature, as they necessarily entail a factual investigation. Accordingly, the Court affirmed that only the arbitral tribunal itself may embark on such an adjudication, which is in consonance with the principle of *kompetenz-kompetenz* enshrined under Section 16 of the Act.

The Court also relied on the judgment of the division bench of the High Court of Delhi in **Progressive Career Academy Pvt. Ltd. v. FIIT Jee Ltd.**,² which clarified the legislative intent

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behind laying out a separate procedure for challenges under Section 12(3) in terms of Section 13. The Court observed that the Parliament did not want to clothe courts with the power to annul an arbitral tribunal on the ground of bias at an intermediate or interlocutory stage and therefore, stipulated that such challenges must be only raised before the arbitral tribunal.

On the other hand, Section 12(5) read with Schedule VII of the Act prescribes disqualifications, which would automatically render an arbitrator ineligible to be either appointed or to continue. These disqualifications would inevitably result in the termination of the mandate and are therefore, *de jure* in nature. It is in this context where Section 14 comes into play, as there poses no incongruity in permitting the courts to decide challenges where an arbitrator *inherently* lacks jurisdiction.

Analysis

The decision strengthens the primacy of the arbitral tribunal to decide the questions on its own jurisdiction and impartiality, as enshrined in the UNCITRAL Model Law. The judgment also reiterates the limited scope of judicial interference under the Act, particularly for curial challenges at an intermediate stage, justifying the legislative intent of the Parliament behind envisioning separate procedures for *de jure* and *de facto* challenges to an arbitrator's mandate.

Thus, the decision solidifies the two paths that may be undertaken by parties while challenging an arbitrator's mandate. In circumstances where there exists an inherent lack of jurisdiction, a party may directly approach the courts under Section 14 of the Act. However, for issues such as perceived bias, the same would axiomatically be required to be established by facts. Hence, in such scenarios, the requisite approach would be to first proceed before the arbitral tribunal in terms of Section 13 of the Act, and then the courts.

Endnotes

1 Authored by Gauhar Mirza, Partner, Prakhar Deep, Principal Associate and Adya Joshi, Associate; *Union of India v. Reliance Industries Ltd. & Ors.*, O.M.P.(T) (COMM.) No. 125/2022 & I.A. No. 20680/2022 (Stay), High Court of Delhi, 2022 SCC OnLine Del 3544, judgment dated 9 December 2022.

Coram: Yashwant Varma, J.

2 2011 SCC OnLine Del 2271.

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