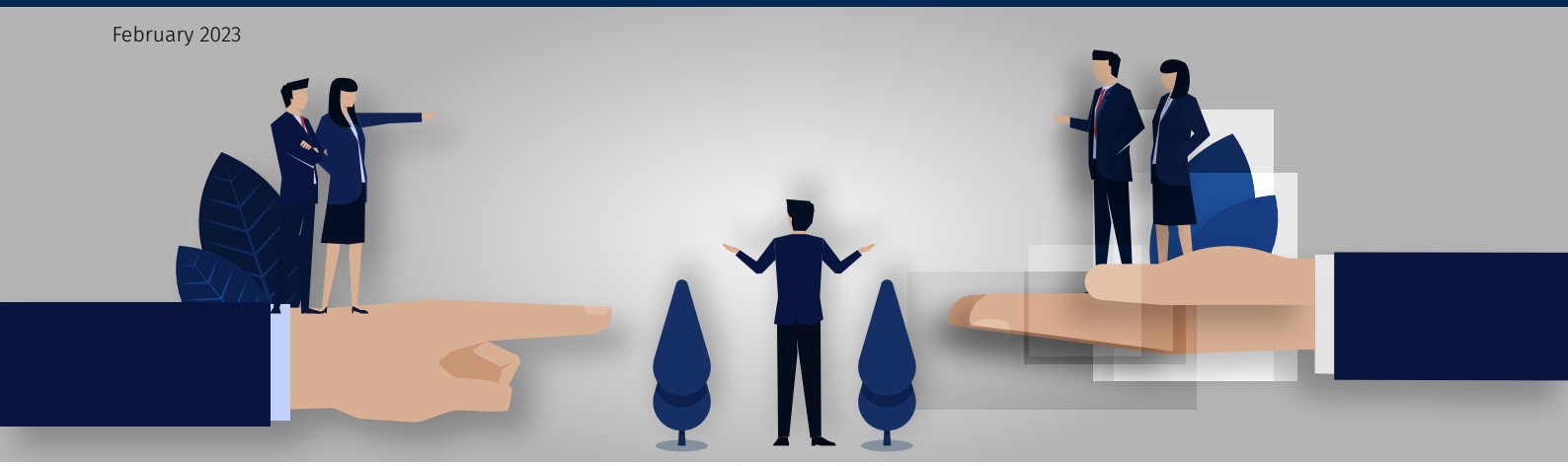
Arbitration Newsletter

Shardul Amarchand Mangaldas

February 2023



Arbitration Newsletter – February 2023

It gives us immense pleasure to circulate the twenty-third 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 Chambers and Partners Asia-Pacific 2023 ranked the Dispute Resolution practice of Shardul Amarchand Mangaldas & Co as a 'Band 1 Practice'. It also recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** as an 'Eminent Practitioner' and 'Star Individual', and **Tejas Karia (Partner and Head, Arbitration)** as a 'Band 1 Lawyer'.

Legal 500 – Asia Pacific 2023 ranked Shardul Amarchand Mangaldas & Co as a 'Tier 1' firm in Dispute Resolution (Arbitration). It also recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** in its 'Hall of Fame' and **Tejas Karia (Partner and Head, Arbitration)** as a 'Leading Individual.

The Who's Who Legal Guides 2022 recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)**, **Tejas Karia (Partner and Head, Arbitration)** and **Ila Kapoor (Partner)** as 'Global Leaders' in arbitration.

Tejas Karia (Partner and Head, Arbitration) has been re-appointed to the ICC Commission on Arbitration and ADR.

Binsy Susan (Partner) was recognised as one of India's 'Top 40 Disputes Lawyers' by the Asian Legal Business.

Ila Kapoor (Partner) and **Gauhar Mirza (Partner)** have been appointed as members of the Steering Committee, Young International Arbitration and Mediation Centre (India).

The India Business Law Journal recognised **Karan Joseph (Partner)** as one of 'India's Future Legal Leaders'.

Shruti Sabharwal (Partner) and **Surabhi Lal (Senior Associate)** have respectively been appointed as Mentor and Facilitator of the Young ITA Mentorship Program 2022 (India).

We are also pleased to share that **Suhani Dwivedi (Partner)**, a member of the Arbitration Practice Group of the firm and based in the firm's Kolkata office, has been inducted as a Partner.

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

In this edition

Arbitration Case Law Updates

High Court of Delhi clarifies that a "confirming party" to a contract may invoke arbitration, despite not being a signatory to the arbitration agreement[1]

Brief Facts

A petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**" or "**Act**") was filed before the High Court of Delhi ("**Court**") for appointment of a sole arbitrator to adjudicate the disputes between the Petitioners and the Respondents.

The Petitioner No. 1 and Respondent No. 1 had executed a collaboration agreement on 1 February 2005 ("**Collaboration Agreement**") for the commercial development of a property located in Jodhpur, Rajasthan ("**Property**"). As per the terms of the Collaboration Agreement, Respondent No. 1 was required to obtain necessary clearances, whereas Petitioner No. 1 had to carry out the development works and was accordingly granted possession of the Property.

Thereafter, a joint venture agreement ("**JVA**") was executed on 4 April 2010 between Petitioner No. 2, Respondent No. 1 and Respondent No. 2 for renovation and development of the Property. Notably, Petitioner No. 1 was only a confirming party to the JVA and had no rights/obligations under the said agreement. Subsequently, Respondent No. 1 arbitrarily revoked possession of the Property from Petitioner No. 1. As a result, Petitioner No. 1 filed a civil suit before the Commercial Court, Jaipur, seeking possession of the suit Property. In addition, an application under Section 8 of the Act was filed by Petitioner No. 1. The same was allowed and Petitioner No. 1 was granted liberty to initiate arbitration proceedings in respect of the disputes arising out of the JVA.

Accordingly, Petitioner No. 1 issued a notice invoking arbitration under Clause 15.12 of the JVA to Respondent No. 1. The same was refused by Respondent No. 1. Therefore, the Petitioners approached the Court under Section 11(6) of the Act for appointment of a sole arbitrator to adjudicate the disputes between the parties under the JVA. Respondent No. 1 opposed the said petition *inter alia* contending that Petitioner No. 1 was only a confirming party to the JVA and hence, was not entitled to invoke arbitration in terms of the arbitration clause provided therein.

Issue

Whether a confirming party with no rights/liabilities under an agreement, may invoke the arbitration clause contained in the agreement?

Judgment

The Court reaffirmed the general principle that a non-signatory to an arbitration clause cannot be compelled to arbitrate, as there can be no presumption that the said party has acceded to arbitration. However, the Court clarified that the said rule is not inflexible and the surrounding circumstances may be examined to conclude whether a party has acceded to arbitration in a given factual scenario.

The Court placed reliance on the Hon'ble Supreme Court's ruling in ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc***.,[2] regarding the two theories that may be applied to compel non-signatories to an arbitration agreement to arbitrate. These were reiterated by the Court to be:

(i) The theory of implied consent used to discern the intentions of the parties; and
(ii) The legal doctrines of agent-principal relations, piercing of veil, joint venture relations, succession and estoppel.

Examining the intention of the parties in the present case, the Court held that notwithstanding the fact that Petitioner No. 1 was only a confirming party to the JVA, the fact that it had signed the JVA which contained the arbitration clause, implied that it had consented to all the disputes being decided through arbitration. In essence, since the JVA was signed by all four parties to the present petition, the arbitration clause contained in the same would also be binding on all the parties.

In this edition

Analysis

The Court's ruling is significant in further expanding the doctrine laid down in cases such as ***Chloro Controls*** (*supra*) that even a non-signatory to an arbitration agreement may be compelled to arbitrate. In general, arbitration is invoked for disputes between parties who possess mutual rights or obligations under a contractual understanding. Hence, the question remained unanswered as to whether a confirming party to a contract, i.e., a mere observer to verify the terms of the agreement could be considered as a signatory to the arbitration clause. The Court's decision is of paramount importance as it clarifies that a confirming party to a contract is not *ipso facto* excluded from invoking arbitration under the same. Instead, it is the court's duty to examine the surrounding circumstances and discern the intentions of the parties to such a contract. Hence, the Court's ruling is a welcome affirmation of the fundamental principle of *favorem presumption* in arbitration law.

Supreme Court appoints an arbitrator and consolidates arbitrations despite the agreements being unstamped and the underlying question of law pending in reference before a Constitution Bench[3]

Brief Facts

Group entities of Weatherford ("**Weatherford/Petitioners**") and group entities of Baker Hughes ("**Baker Hughes/Respondents**") had entered into the following three agreements for provision of certain services at Vedanta Limited's ("**Vedanta**") oil fields in Rajasthan:

(i) Onshore Lease Agreement dated 20 November 2018 ("**Lease Agreement**") between Weatherford Drilling International (BVI) Limited (WDI) and Baker Hughes Asia Pacific Limited (BHAP);

(ii) Onshore Drilling Service Agreement dated 20 November 2018 ("**Drilling Service Agreement**") between Weatherford Drilling International Holdings (BVI) Limited (WDIH) and Baker Hughes Singapore Pte (BHS); and

(iii) Onshore Service Agreement dated 5 February 2019 ("**WOTME Agreement**") between Weatherford Oil Tool Middle East Limited (WOTME) and BHS.

The Lease Agreement, Drilling Service Agreement and WOTME Agreement are together referred as "**Agreements**". While sufficient stamp duty was paid on the WOTME Agreement as per the Maharashtra Stamp Act, 1958 ("**Stamp Act**"), the Lease Agreement and Drilling Service Agreement remained unstamped.

Disputes arose between the Petitioners and Respondents owing to the early termination of the Agreements by the Respondents in April 2020.

In December 2020, Weatherford invoked arbitrations against Baker Hughes under the Agreements, claiming approximately USD 8 million ("**Arbitrations**") as post-termination contractual dues. The arbitration clauses in the Agreements ("**Arbitration Agreements**") were identical and provided for disputes for claims less than USD 10 million to be referred to and resolved by arbitration seated in Mumbai, under the Act and by a mutually appointed sole arbitrator.

The Respondents did not cooperate in the mutual appointment of the sole arbitrator on grounds that the Arbitration Agreements were non-existent, invalid and unenforceable because the underlying Agreements were unstamped as per the Stamp Act. That said, the Respondents proposed the consolidation of the Arbitrations, which the Petitioners accepted.

Given that a sole arbitrator could not be mutually appointed, the Petitioners filed three petitions before the Supreme Court ("**Court**") under Section 11(6) read with Section 11(12) of the Act, seeking appointment of a sole arbitrator in the consolidated Arbitrations ("**Section 11 Petitions**").

Briefly, the Petitioners submitted that the Arbitration Agreements are in existence, valid and enforceable given that they are independent from the underlying unstamped Agreements. Therefore, the Court is not prevented from exercising jurisdiction under Section 11 of the Act and appointing the sole arbitrator. In support of its arguments, the Petitioners primarily relied on ***N.N. Global Mercantile Unique Pvt. Ltd. v. Indo. Unique Flame Ltd***.[4] and ***Intercontinental Hotels Group (India) Pvt. Ltd. v. Waterline Hotels Private Limited***.[5]

In this edition

In contrast, the Respondents contended that the Arbitration Agreements are contained in unstamped agreements that are inadmissible in evidence as per Section 34 of the Stamp Act. As a result, the Arbitration Agreements are non-existent, unenforceable and invalid, pending payment of stamp duty. Further, the Respondents also contended that the decision in the present matters should be deferred till the pending reference before the 5-judge Constitution Bench ("**Reference**") in ***N.N. Global*** (*supra*) is decided. In support of its arguments, the Respondents primarily relied on ***Vidya Drolia v. Durga Trading Corpn.***[6] and ***Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.***[7]

Issues

Issue (i): Whether an arbitration clause/agreement in an unstamped agreement (that was required to be stamped) is non-existent, unenforceable and/or invalid?

Issue (ii): Whether a court can entertain an application under Section 11 of the Act and appoint an arbitrator in terms of an arbitration clause contained in an unstamped agreement?

Judgment

Before deciding the issues, the Court noted the conflicting decisions by two 3-judge benches of the Court in ***N.N. Global*** (*supra*) and ***Vidya Drolia*** (*supra*) on the questions of law involved in these Section 11 Petitions, which had resulted in the Reference. The issue in the Reference is as follows:

"*Whether the statutory bar contained in Section 35 of the Stamp Act, 1899 applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Act, would also render the arbitration agreement contained in such an instrument, which is not chargeable to payment of stamp duty, as being non-existent, unenforceable, or invalid, pending payment of stamp duty on the substantive contract/instrument?*"

Issue (i): At the outset, the Court reiterated the fundamental principles that an arbitration agreement is separable from the underlying contract and that the tribunal is competent to rule on its own jurisdiction. Thereafter, the Court relied on ***N.N. Global*** (*supra*), where on similar facts, it was held that the Stamp Act does not require an arbitration agreement to be stamped. Further, the Court held that an arbitration agreement would not be rendered invalid, unenforceable 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. That said, the adjudication of the rights and obligations under the substantive commercial contract could not proceed before complying with the mandatory provisions of the Stamp Act. The Court further observed that ***Garware Wall Ropes*** (*supra*) was overruled by ***N.N. Global*** (*supra*) and the correctness of the decision in ***Vidya Drolia*** (*supra*) on this issue is in question in the Reference.

Issue (ii): The Court placed reliance on ***Intercontinental*** (*supra*) (which was decided by the Court while the Reference was pending), wherein the Court recognised the time-sensitivity in dealing with arbitration matters and it was held that matters at the pre-appointment stage cannot be left "*hanging until the larger Bench settles the issue*".

Accordingly, the Court consolidated the Arbitrations (in view of the parties' agreement on this issue) and appointed a sole arbitrator to adjudicate the disputes arising out of the Agreements, treating it as one single arbitration.

Analysis

In this pro-arbitration judgment, the Court reiterated the two fundamental tenets of arbitration, i.e., the doctrine of separability and *kompetenz-kompetenz*, and held that arbitration matters should not be left 'hanging' at the pre-appointment stage in anticipation of a decision from larger benches. Although not expressly stated, it appears that the Court preferred the approach that caused the least amount of delay to, and interference with, the underlying Arbitrations.

Further, since the Reference, the Court appointed an arbitrator only where the underlying document containing the arbitration clause was insufficiently stamped (and not unstamped), i.e., in ***Intercontinental***

In this edition

(*supra*). In doing so, the Court had also indicated that the outcome could possibly be different if such a document was unstamped (as opposed to being insufficiently stamped) but did not delve further into the issue. In view of this judgment, courts may appoint an arbitrator pending the Reference in both cases, i.e., where the document containing the arbitration clause is unstamped or insufficient stamped.

Practically, the Court has also ended the confusion that subordinate courts faced on how petitions under Section 11 of the Act (in cases of unstamped/insufficiently stamped documents) must be dealt with pending the Reference.

High Court of Delhi clarifies the scope of judicial scrutiny under Section 45 of the Act[8]

Brief Facts

The plaintiff and the defendant executed a sole distribution agreement ("**Agreement**") for supply of certain goods. In terms of the Agreement, the defendant issued a purchase order on the plaintiff for supply of the said goods. Pursuant to the purchase order, the plaintiff supplied the goods and raised three invoices on the defendant. When the defendant failed to make full payments in terms of the invoices, the plaintiff filed a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 ("**CPC**") before the High Court of Delhi ("**Court**") seeking recovery of the balance payment along with *pendente lite* and future interest from the defendant.

Upon summons being issued in the suit, the defendant filed an application seeking leave to defend. The defendant also filed an application under Section 45 of the Act on the basis that the dispute was covered under the scope of the arbitration clause and therefore, the parties should be referred to arbitration.

Issues

Issue (i): Whether the plaintiff's claim is covered under the purview of the arbitration clause in the Agreement?

Issue (ii): Whether the Court should refer the parties to arbitration, considering that the defendant also sought to file a counterclaim against the plaintiff?

Judgment

Issue (i): The Court analysed the dispute resolution clause of the Agreement ("**DR Clause**") and observed that the parties intended that only disputes relating to termination or grounds for termination of the Agreement would be referred to arbitration. All other disputes will be "*excepted matters*" and will not be covered under the arbitration clause. The Court observed that the intention of the parties was that suits relating to injunction as well as recovery suits could be filed by the plaintiff before the competent courts in India. Accordingly, the Court held that the dispute between the parties cannot be referred to arbitration as the dispute was concerned with unpaid invoices, which was not covered under the scope of the arbitration clause in the Agreement. Therefore, the present suit filed seeking recovery of monies was maintainable before this Court.

The Court placed reliance on the Supreme Court's judgments in ***Vidya Drolia*** (*supra*), ***Indian Oil Corporation Limited v. NCC Limited***[9] and ***Emaar India Ltd v. Tarun Aggarwal Projects LLP and Anr***.[10] In these cases, it was observed that in an application filed under Section 8 or Section 45 of the Act, the court is required to hold a preliminary enquiry as to whether the dispute between the parties is *ex facie* arbitrable. If on a limited review, the court finds that the dispute is in relation to '*excepted matters*', i.e., matters which are excluded by the parties from the purview of the arbitration clause, the parties cannot be forcefully referred to arbitration. The Court also referred to the judgment in ***Ms. Sancorp Confectionary Pvt. Ltd. & Anr. v. M/s Gumlink A/S***,[11] wherein while considering an application filed by the defendant under Section 45 of the Act, it was held that a court has to examine and record a *prima facie* finding as to whether there is an arbitration clause or not and whether the disputes which are sought to be referred to arbitration are covered by an arbitration agreement or not.

Issue (ii): The Court observed that the parties agreed for arbitration only in respect of disputes arising out

In this edition

of termination or expiration of the Agreement. In respect of all other disputes, the jurisdiction was given to the civil courts under the Agreement. Accordingly, the Court held that if the parties had consciously decided to have separate remedies with respect to different disputes under the Agreement, the intention of the parties must be honoured.

Analysis

The Court applied the legal position laid down by the Supreme Court's decisions with respect to the extent of judicial scrutiny while considering an application filed under Section(s) 8 and 45 of the Act. In terms of the *kompetenz-kompetenz* doctrine, the arbitral tribunal has the preferred first authority to determine and decide all questions of non-arbitrability. However, in case of an application under Sections 8 and 45 of the Act, the court may interfere when it is manifestly and *ex facie* certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable. The Court also emphasised that the limited judicial review under Section 8 and Section 45 of the Act is to protect the parties from being forced to arbitrate when the subject matter of the dispute is clearly non-arbitrable. However, when the court is in doubt, parties should be referred to arbitration.

Supreme Court holds that the MSMED Act overrides the Arbitration Act[12]

Brief Facts

The Supreme Court was considering seven appeals, which raised common issues pertaining to the interplay between the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**") and the Arbitration Act.

Issues

Issue (i): Whether the provisions of Chapter-V of the MSMED Act would have an overriding effect over the provisions of the Arbitration Act?

Issue (ii): Whether a party can refer its disputes under the MSMED Act despite having an arbitration agreement?

Issue (iii): Whether the Micro and Small Enterprises Facilitation Council ("**MSEFC**"), having acted as a conciliator, can also act as an arbitrator in view of the bar contained in Section 80 of the Arbitration Act?

Judgment

Issue (i): The Supreme Court placed reliance on two Latin maxims - "*leges posteriores priores contrarias abrogant*" (the later laws shall abrogate earlier contrary laws) and "*generalia specialibus non derogant*" (general laws do not prevail over special laws) - to observe that when there is an apparent conflict between two statutes, the provisions of the general statute must yield to those of the special act.

The Court analysed the provisions of the MSMED Act and Arbitration Act. Chapter-V of the MSMED Act is "party-specific" according to Sections 2(d) and 2(n). Further, it stipulates a specific provision for imposing liability on the buyer to make the due payment, irrespective of any agreement between the parties or of any law for the time being in force. Moreover, a dedicated statutory forum, i.e., the MSEFC is empowered under Section 17 of the MSMED Act for dispute resolution. The MSEFC is conferred with the jurisdiction to act as an arbitrator or conciliator under Section 18(4) of the MSMED Act, notwithstanding anything contained in any law for the time being in force. Lastly, Section 24 of the MSMED Act states that the provisions of Sections 15 to 23 have an effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Reliance was also placed on ***Silpi Industries etc. v. Kerala State Road Transport Corporation***[13] to conclude that the Arbitration Act governs the law of arbitration and conciliation, whereas the MSMED Act governs the specific nature of disputes arising between specific categories of entities, to be resolved by following a specific process through a specific forum. Therefore, the MSMED Act being a special law and the Arbitration Act being a general law, the provisions of the former would have precedence over the latter.

In this edition

Issue (ii): Section 18(1) of the MSMED Act provides the party to a dispute covered under Section 17, a choice to approach the MSEFC, despite existence of an arbitration agreement between the parties. The absence of the word "*agreement*" in Section 18(1) of the MSMED Act can neither be interpreted as precluding a party covered by Section 17 of the MSMED Act from approaching the MSEFC on the ground that an existing arbitration agreement exists between the parties, nor can it be interpreted as a *casus omissus* under the statute. Rather, it is a right created in the party's favour by the MSMED Act. Therefore, merely because there is an existing arbitration agreement between the parties, no party to a dispute covered by Section 17 of the MSMED Act would be prevented from making a reference to the MSEFC under Section 18(1). The Court concluded that an agreement between parties cannot obliterate the statutory provisions. Once the statutory mechanism under Section 18(1) of the MSMED Act is invoked by any party, it would override any other agreement independently entered into between the parties, in view of the *non obstante* clauses contained in Sections 18(1) and (4) of the MSMED Act.

Issue (iii): Although Section 80 of the Arbitration Act bars a conciliator from becoming an arbitrator, the same stands superseded by Section 18 read with Section 24 of the MSMED Act. The Court held that the MSEFC, having acted as a conciliator, can also act as an arbitrator or can refer the dispute to any institute or centre for arbitration as provided for in Section 18(3) of the MSMED Act. Once the arbitration proceedings commence, then the provisions of the Arbitration Act would be applicable to the MSEFC because the bar under Section 80 of the Arbitration Act gets superseded by the provisions of the MSMED Act.

Analysis

The Supreme Court has taken an objective-based approach while analysing the interplay between the MSMED Act and Arbitration Act. The Court while determining the issues, went into an in-depth analysis of the provisions of both statutes to determine their intention and applicability.

Addressing the dichotomy, the Supreme Court untangled the complexity looming over the applicability of both statutes and recognised that MSMED Act as a special legislation for facilitating and upbringing micro, small and medium enterprises whereas Arbitration Act is a general statute of a wider ambit. The Court, while deciding the present case, chose to harmoniously read both the statutes, which does not leave any scope of complexities with respect to their applicability. Notably, the Court did not render any provision of the MSMED Act infructuous, as reference to the MSEFC was allowed despite the presence of an arbitration agreement between the parties. Therefore, the Supreme Court has given a critically important decision, which lays rest to any confusion between the provisions of both statutes.

High Court of Delhi refuses to condone the delay in seeking substitution of an arbitrator[14]

Brief Facts

The Petitioner and Respondents had entered into two Share Purchase Agreements ("**Agreements**") dated 4 November 2006. The Agreements provided for disputes to be settled by arbitration before an arbitral tribunal comprising three arbitrators.

Disputes arose between the parties, leading the Petitioner to issue a notice invoking arbitration on 27 May 2009 and appointing a nominee arbitrator. The notice also called for the Respondents to nominate the second arbitrator to the prospective tribunal within 30 days. The Respondents failed to respond to the notice or appoint their nominee arbitrator. As a result, the Petitioner approached the High Court of Delhi ("**Court**") under Section 11 of the Act. During the hearing before the Court, both parties consented to the appointment of a sole arbitrator, who was appointed by the Court on 12 May 2010.

The parties completed pleadings before the arbitral tribunal and were set to commence final arguments on 24 August 2015. However, on 27 July 2015, the sole arbitrator recused himself from adjudicating the dispute citing personal reasons and communicated to the parties by email. The Petitioner claimed that it did not have access to its email during the time and hence, was not aware of the arbitrator's recusal. The Petitioner's counsel, too, claimed that they were not aware of the recusal until two weeks after the arbitrator's email.

In this edition

The Petitioner filed a petition under Section 15 of the Arbitration Act before the Court on 1 August 2018, seeking substitution of the arbitrator ("**Petition**"), and an application on 22 September 2018 seeking condonation of delay in filing the Petition.

Issues

Issue (i): Whether the Petition was barred by limitation?

Issue (ii): Whether any delay in filing the Petition must be condoned?

Judgment

Issue (i): The Court rejected all the grounds raised by the Petitioner to argue that the Petition was filed within limitation. The Court affirmed that Article 137 of the Limitation Act, 1963 ("**Limitation Act**"), which stipulates a 3-year limitation period for residuary matters, would apply to the Petition. The Court noticed that the Petitioner had not produced any documentary evidence or cogent substantiation to support its claim that it was not aware of the arbitrator's recusal.

Importantly, this was rendered irrelevant by the Court's finding that the limitation period would be calculated from the time of the arbitrator's recusal (i.e., when the right to file the Petition accrued), and not when the Petitioner or their counsel became aware of the arbitrator's recusal (as was claimed by the Petitioner). In doing so, it followed settled law that a party's "knowledge" of its right accruing would be immaterial in calculating limitation, unless the Limitation Act expressly provided so.

The Petitioner had also argued that limitation ought to be calculated by excluding the 30-days that the arbitration clauses in the Agreements provided the Respondent to nominate a (substitute) arbitrator. The Court rejected this argument and held that since the original tribunal had been constituted by its order under Section 11 of the Arbitration Act, the parties had no right to appoint an arbitrator using the procedure under the arbitration clause. The Court applied the principle that once a party approaches a court to appoint an arbitrator under Section 11 of the Arbitration Act, none of the parties can resort to the procedure under their arbitration agreement and their rights stand forfeited.

Thus, the Petition was held to be barred by limitation.

Issue (ii): In the first instance, the Court recognised that the 3-year limitation period was itself unduly long and inconsistent with the intent of the Arbitration Act to enable speedy resolution of disputes. With that background, it remarked that only delay caused by exceptional circumstances merited to be condoned upon an application under Section 5 of the Limitation Act. Even though the actual delay in filing the Petition was merely five days, it found the Petitioner's conduct to be "*lackadaisical*" and unjustified. Therefore, it refused to condone the Petitioner's application to condone the delay in filing the Petition, thus dismissing both the Petition as well as the condonation application.

Analysis

This decision sounds a warning bell to parties, clearly indicating that courts will come down heavily on delays that are attributable to the parties, and particularly those that are actively exacerbated by their conduct. In doing so, the Court has not only relied on existing precedent that supports its position but has also drawn from legislative trends that infuse swiftness in the arbitration process. Therefore, it is clear that courts will not stand by practices that weaponise delays to draw out adjudication.

Further, this decision further cements the principle that when parties elect to approach courts under Section 11 of the Arbitration Act, their right to constitute the tribunal by following the procedure mentioned under their arbitration agreement stands permanently foreclosed.

In this edition

High Court of Delhi clarifies the scope of impleading a non-signatory to an arbitration agreement and referring allegations of fraud to arbitration under the Act[15]

Brief Facts

The petitions seeking appointment of an arbitrator were taken up together by the High Court of Delhi ("**Court**"). The Petitioner had entered into a partnership deed on 10 March 2014 ("**Partnership Deed**") with one Simran Sodhi ("**Respondent No. 1**"), for the manufacturing and trading of various goods under the name 'S.S. Manufacturing' ("**Respondent No. 2**" or "**the Firm**"). Over time, the Firm suffered substantial losses. The Petitioner and Respondent No. 1 levelled allegations of misappropriation of the Firm's funds against each other.

Respondent No. 1 alleged that the Petitioner had withdrawn funds of the Firm for personal use and not made payment towards losses incurred by the Firm or its tax liabilities. The Petitioner alleged that goods belonging to the Firm were illegally sold as those belonging to Rugs Enterprise Private Limited ("**Respondent No. 3**") and proceeds thereof were misappropriated by Respondent Nos. 1 and 3. The Petitioner further alleged that Respondent No. 3 had obtained a GST number through a forged rent agreement ("**Rent Agreement**") with M/s Kamal Fashions Private Limited, the lessor of the land where the Firm's manufacturing unit was relocated. The Petitioner thereafter, commenced arbitral proceedings under Section 21 of the Act for the claims against Respondent Nos. 1 and 3.

In reply, Respondent No. 3 contended that its reference to the proposed arbitration is beyond the scope of the arbitration clause in the Partnership Deed. Respondent No. 3 contended that: (i) it had no role in the negotiations or operations/management of the Firm; (ii) it was not a signatory to the arbitration agreement; (iii) it had no relation to either party to the arbitration agreement at the time of execution of the Partnership Deed; (iv) it does not come within the doctrine of 'group of companies'; and (v) it never consented to its participation in any dispute *inter se* the Petitioner and Respondent No. 1. Further, Respondent No. 3 relied on case law to contend that the allegations of fraud/forgery against it were not arbitrable.

Issues

Issue (i): Whether the impleadment of Respondent No. 3 as a party to the proposed arbitration is impermissible as per the Act?

Issue (ii): Whether claims based on allegations of fraud/forgery can be referred to arbitration under the Act?

Judgment

Issue (i): The Court relied on its judgment in ***KKR India Private Financial Services Limited & Anr. v. Williamson Magor & Co. Limited & Ors.***[16] and held that the group of companies doctrine is inapplicable in cases involving partnership firms. The attempt to implead a company, i.e., Respondent No. 3, to an arbitration agreement between partners in a partnership firm is impermissible since a partnership cannot be equated with a company to invoke the said doctrine. The Court remarked that the group of companies doctrine is applicable in cases where the arbitration agreement is entered into by one of the companies in a group and the non-signatory affiliate or sister/parent company is bound by the arbitration agreement when the facts indicate the mutual intention of all parties to bind the non-signatory affiliate to the agreement. The Court observed that there was nothing to suggest that Respondent No. 3 engaged in any negotiations or performance of commercial obligations, indicating its intention to bind itself to the arbitration agreement. Thus, the Court held that Respondent No. 3 cannot be referred to the arbitration.

Issue (ii): The Court considered various Supreme Court judgments and observed that mere allegations of fraud or even complicated allegations, which require appreciation of extensive evidence, can be adjudicated in arbitration. However, the Court noted that allegations pertaining to criminal aspects of fraud/forgery, which are likely to result in criminal sanctions, need to be adjudicated in a court of law since those lie in the realm of public law. The Court further observed that serious allegations of fraud need to be subjected to a two-fold test to determine their arbitrability, namely: (i) whether the allegations

In this edition

permeate the entire contract, including the arbitration clause, thereby rendering it void; and (ii) whether the allegations have no implications for the public domain and only pertain to internal affairs of the parties *inter se*.

Having considered this legal position, the Court held that in the present matter, there were no allegations of fraud which vitiated the Partnership Deed in its entirety or the arbitration agreement therein. The Court observed that claims regarding allegations of siphoning-off of funds and goods by Respondent No. 1 essentially arose out of the civil/contractual relationship between the Petitioner and Respondent No. 1, pertained to internal affairs of the parties, had no implications for the public domain and thus, could be resolved through arbitration.

However, the Court observed that the allegations of forgery of the Rent Agreement and the signature therein were of a serious nature and not that of fraud *simpliciter*. The Court observed that investigation into these allegations, which constituted criminal offences, would invite criminal sanctions if proved, and were in the realm of public law. Besides, the Court observed that the claim of alleged misappropriation by Respondent No. 1 through Respondent No. 3 would impact the rights of a third party (Respondent No. 3). The Court opined that any decision, which may result in criminal proceedings/sanctions and affects the rights of a third party, cannot be rendered by a private forum chosen by parties to an arbitration agreement in the absence of such third party. It was thus, held that these allegations of fraud/forgery affecting the rights of a third party cannot be referred to arbitration.

The other claims, pertaining squarely to the relationship of the parties as partners of the Firm and concerning their internal affairs, were referred to arbitration and the Court appointed an arbitrator to adjudicate the same.

Analysis

The Court's decision clarifies the position of law on impleading non-signatories to an arbitration agreement as parties to an arbitration and the arbitrability of allegations of fraud/forgery. Pertinently, the Court categorically ruled against the application of the group of companies doctrine to an arbitration agreement between partners of a partnership firm. The Court's decision on arbitrability of fraud and examination into whether the allegations were within the realm of public law or a contractual/civil dispute, demonstrates its inclination to refer issues to arbitration, unless they are strictly appropriate to be adjudicated upon by the courts. This is another welcome step away from *prima facie* ruling against the arbitrability of issues/disputes involving allegations of criminal character.

High Court of Delhi reiterates that an arbitrator cannot be appointed under Section 11 of the Act in the absence of proper invocation of the arbitration clause[17]

Brief Facts

The Petitioners had filed a petition before the High Court of Delhi ("**Court**") under Section 11 of the Act ("**Petition**") for appointment of an arbitrator to adjudicate disputes between the parties under a Memorandum of Family Settlement ("**MOFS**").

The Petitioners were Rahul, Nipur (Rahul's wife) and their two children. The Respondents were Atul Jain (Rahul's brother), Meenakshi (Atul's wife), their children (Apoorv and Ananya) and Asha (Rahul and Atul's mother).

Disputes having arisen, Rahul, Atul (purportedly representing their respective branches of the family) and Asha had entered into the MOFS, which *inter alia* sought to allot various businesses and assets to the parties to the MOFS. The MOFS also mentioned that the individual members of the family had signed the MOFS in concurrence with the fact that Rahul and Atul would represent their respective branches of the family. However, Apoorv had not signed the MOFS. The MOFS also contained an arbitration clause, stating that in case of any dispute, the same would be referred to arbitration to Sh. Abhya Kumar Jain ("**Arbitrator**").

Disputes having arisen between the parties with respect to the implementation of the MOFS, Rahul wrote

In this edition

a letter to the Arbitrator, referring to the MOFS and requesting to convene arbitral proceedings. The Arbitrator responded to Rahul (with a copy to Atul and Asha), stating that Rahul ought to issue a notice to the other parties to the MOFS and make a reference in accordance with law, and further called upon the parties to the MOFS to appear on 23 December 2016. However, none appeared on the said date. Hence, the Arbitrator issued another letter to all the nine parties to the present Petition for a meeting on 12 August 2017.

Meenakshi, Apoorv, Ananya and Asha objected to the letter *inter alia* stating that: (i) the communication did not disclose the identity of the claimant or the nature of the claims; and (ii) the Arbitrator had sent legal notices to some of the Respondents in the present matter and filed a criminal complaint against the Respondents, which affected his ability to act fairly and impartially.

Apoorv additionally objected to the arbitration claiming that: (i) he was not a party to the arbitration agreement; (ii) he had instituted a civil suit for partition of certain properties; and (iii) in the civil suit, Rahul and Nipur's application for reference of the dispute to arbitration under Section 8 of the Act had been rejected.

In light of such objections, the Arbitrator withdrew from the case. Consequently, the Petitioners filed the Petition.

Issues:

Issue (i): Whether the arbitration clause had been validly invoked? If not, was the Section 11 Petition liable to be dismissed?

Issue (ii): Whether the matter could be referred to arbitration *qua* Apoorv?

Judgment:

Issue (i): The Court relied upon ***BSNL v. Nortel Networks India Pvt. Ltd.***,[18] to state that a proper invocation of the arbitration clause is mandatory. It further observed that a Section 11 petition can only be filed after notice of the claim / dispute to be referred to arbitration is made and there is failure to appoint an arbitrator.

The Court also relied upon ***Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.***,[19] wherein it was held that without a proper notice to the opposite party, the party invoking arbitration cannot demonstrate that there was failure by one party to respond or accede to the request for invocation.

In light of the above principles and the fact that the initial communication by Rahul was addressed to the Arbitrator alone, the Court held that there was no proper invocation of arbitration. Accordingly, the Petitioners were not entitled to the relief under Section 11 of the Act.

Issue (ii): The Court noted that Apoorv had not appended his signature to the MOFS. Given the specific stipulation that the signature of each party would be appended to signify their concurrence, the Court held that no assumption of Apoorv's concurrence could be made with respect to the terms of the MOFS.

The Court additionally noted that the Petitioners had suppressed the fact that in a suit instituted by Apoorv against Rahul and Nipur, an application preferred by Rahul and Nipur under Section 8 of the Act had been dismissed, with a finding that there was no arbitration agreement between Apoorv and the Petitioners.

In view of the above findings, the Court was pleased to dismiss the Section 11 Petition.

Analysis

This case re-emphasises the need for proper invocation of the arbitration clause, even pertaining to family arrangements, which, as per convention, are to be given a pragmatic reading. It further highlights the importance of giving an opportunity to the party put on notice, to participate in the constitution of

In this edition

the tribunal as per the terms of the agreement. Additionally, it demonstrates the cases in which courts may refuse to appoint an arbitrator, without enlarging the grounds on which such petitions under Section 11 may be dismissed.

High Court of Delhi clarifies the limitation period applicable to a counterclaim vis-à-vis Sections 8 and 21 of the Act[20]

Brief Facts

Web Overseas Limited ("**Appellant**") filed an appeal under Section 37(1)(c) of the Act challenging an order of the Commercial Court dismissing a challenge to an interim award of the arbitral tribunal, which had rejected the Appellant's application seeking dismissal of the counterclaim of Universal Industrial Plants Manufacturing Company Pvt. Ltd. ("**Respondent**") as barred by limitation.

The Appellant filed a suit in 2014 seeking recovery of monies before the jurisdictional District Court. In response, on 28 August 2014, the Respondent filed an application under Section 8 of the Arbitration Act ("**Application**"), which came to be allowed on 27 January 2017. The cause of action admittedly arose on 30 July 2013. However, the Respondent filed its counterclaim before the arbitral tribunal only on 7 July 2018. The Appellant filed an application for dismissal of the counterclaim as being barred by limitation. The Respondent contended that its counterclaim was not barred by limitation because: (i) it was entitled to the benefit of Section 14 of the Limitation Act in respect of its Application; and (ii) it had issued notices dated 18 October 2013 and 5 February 2014 to the Appellant, which were to be construed as notices under Section 21 of the Arbitration Act. Therefore, the period of limitation would stop running on the dates when the said notices were received, and not on 7 July 2018, which was the date of filing the counterclaim.

The tribunal held that: (i) the Respondent's counterclaim was within limitation as the time spent in pursuing its Application was to be excluded under Section 14 of the Limitation Act; and (ii) the Respondent had not issued notices within the meaning of Section 21 of the Arbitration Act ("**Interim Award**").

In the Appellant's challenge to the Interim Award under Section 34 of the Arbitration Act, the Commercial Court disagreed with the tribunal to the extent that the notices issued by the Respondent were held to be notices under Section 21 of the Arbitration Act, thereby saving limitation ("**Impugned Order**"). The counterclaim was therefore, within limitation.

Aggrieved by the Impugned Order, the Appellant preferred an appeal before the High Court of Delhi ("**Court**").

Issues

Issue (i): Whether the Respondent was entitled to exclude the time it spent in pursuing the Application by operation of Section 14 of the Limitation Act?

Issue (ii): Whether the notices issued by the Respondent could be considered notices under Section 21 of the Arbitration Act?

Judgment

Issue (i): The Court distinguished Sections 14(1) and (2) of the Limitation Act to the extent that Section 14(2) applied to an 'applicant' pursuing its remedy, whereas Section 14(1) applied to a plaintiff. In effect, the Court was of the view that a counterclaim being in the nature of an original action, it could not be construed to be an application under Section 14(2). Thus, the Respondent could claim exclusion only under Section 14(1) of the Limitation Act, if applicable.

The Court, referring to ***Consolidated Engineering Enterprises v. Irrigation Department***,[21] held that under Section 14(1), both prior and subsequent proceedings ought to be civil proceedings initiated by the same party, and that the prior proceeding has to be prosecuted with due diligence and in good faith. The Court, referring to ***Ramadhar Shrivas v. Bhagwandas***,[22] held that for the application of Section 14(1), the 'matter in issue' in both proceedings must be identical and that such 'matter in issue' must be a matter which is strictly and substantially in issue.

In this edition

The Court thereafter observed that applications under Section 8 of the Arbitration Act are made only to refer parties to arbitration, and to terminate the action instituted by a plaintiff in a suit or other proceeding. Counterclaims being not strictly or substantially in issue in these applications, the application of Section 14(1) is precluded.

In the present case, the Court perused the Application and observed that the Respondent had not made any averments in relation to its counterclaim. On a reading of Section 8(3) of the Arbitration Act, the Court was also of the view that the filing of its Application did not preclude the Respondent from initiating arbitration in respect of its counterclaim. The Respondent had therefore, not been diligent in pursuing its remedy for the purposes of Section 14 of the Limitation Act.

The Respondent, relying on ***Five Square Agro Gold Pvt. Ltd. v. Mayank Mohan Agarwal***,[23] sought to contend that the filing of its Application itself was to be construed as commencing arbitration under Section 21 of the Arbitration Act.

Disapproving of such an approach, the Court observed that an application under Section 8 does not commence arbitral proceedings and is not a substitute for a notice under Section 21 of the Arbitration Act. Sections 8 and 21 operate in different areas. The commencement of arbitration within the meaning of Section 21 means the date on which a request to refer a dispute to arbitration is received. Section 21 is limited to arbitral proceedings in respect of the 'particular dispute'. The Court thus, drew a distinction between 'reference of parties' and 'reference of disputes' to arbitration. In the present case, the Respondent had not set out any 'reference of disputes' as its Application did not state material particulars of its counterclaim, but was only a request made to a judicial authority for the 'reference of parties' to arbitration.

Further, even if an application under Section 8 were to be allowed, it was up to the parties to thereafter commence arbitration. If no such steps were taken, it would be erroneous to assume that arbitration had commenced by mere filing of an application under Section 8.

Issue (ii): In its first notice, the Respondent, while stating that certain sums were due from the Appellant, did not expressly call upon the Appellant to pay these sums or make a request for reference of the dispute to arbitration. It merely stated that if the Appellant did not desist from advancing threats through its correspondence, the Respondent would initiate appropriate legal proceedings before the "*competent court of jurisdiction*".

In its second notice, the Respondent called upon the Appellant to make payments but did not make a reference of the dispute to arbitration. Therefore, neither of the two notices included a request that the disputes relating to the Respondent's claims be referred to arbitration. These notices were therefore, not notices within the meaning of Section 21. In these circumstances, the notices could not be construed as having saved the Respondent's counterclaim from being barred by limitation.

The Court accordingly allowed the Appeal and set aside the Interim Award and the Impugned Order.

Analysis

The Court's decision makes it clear that a party must be diligent in making sure that arbitration is commenced and that its counterclaim is filed on time notwithstanding the pendency of an application under Section 8 of the Arbitration Act. It is also advisable that an application under Section 8 must contain material particulars of the proposed counterclaim, though this in itself would not entitle an applicant to claim exclusion under Section 14 of the Limitation Act.

The Court further clarified the scope of Section 21 of the Arbitration Act to the extent that for a notice to commence arbitration, it must specifically seek to refer the 'matter in issue' to arbitration. The mere filing of an application under Section 8 or the issuance of a notice calling for payment, without seeking reference of the dispute to arbitration, would not amount to commencement of arbitration under Section 21.

In this edition

High Court of Bombay holds that there must be consensus ad idem between parties to arbitrate disputes for a valid and binding arbitration agreement to exist[24]

Brief Facts

GTL Infrastructure Limited ("**GTL**") and Vodafone Idea Limited ("**VIL**") entered into a Master Service Agreement ("**MSA**") and an Operation and Maintenance Agreement ("**OMA**") (collectively, the "**Agreements**"). Under the Agreements, GTL provided VIL with infrastructure to enable VIL to install its telecom equipment. Disputes arose and VIL terminated both Agreements. GTL invoked arbitration under both Agreements for payment of its outstanding dues and invited VIL to nominate its arbitrator ("**Notice of Arbitration**"). Since VIL contended *inter alia* that the pre-arbitral steps in the dispute resolution clauses in the Agreements had not been fulfilled, GTL filed applications under Section 11(6) of Act before the High Court of Bombay ("**Court**") to constitute arbitral tribunals in respect of disputes under both Agreements. The dispute resolution clauses in both Agreements provided that if the dispute is not resolved by the Coordination Committee (under the MSA) or mediation (under the OMA), then the "*matter may, if mutually agreed upon by the parties be submitted for arbitration* [...]".

Issue

Whether a valid and binding arbitration agreement exists between the parties?

Judgment

The Court held that an arbitration agreement did not exist between the parties. The Court explained that in order to determine the existence of an arbitration agreement under Section 11, it is imperative to give greater importance to the substance of the arbitration clause, which is predicated on the "*evident intention*" of parties. This means that parties must have mutually consented to arbitrate their disputes in unequivocal terms and not leave any scope for departing from such arrangement.

The Court observed that the arbitration clauses in both Agreements mandated the pre-arbitration mechanism by using "*shall*" whereas the resort to arbitration was consciously made optional by the use of "*may*". Therefore, this itself made the intention of the parties clear. The Court cited various judicial decisions to conclude that the use of "*may*" does not bring about an arbitration agreement between parties; it only contemplates a future possibility, which gives parties the choice or discretion to refer their dispute to arbitration. Further, such lack of common intention to agree on arbitration cannot be superseded by any subsequent conduct of parties after the dispute has arisen. Accordingly, the Court rejected GTL's contention that VIL had construed the clause to be an arbitration agreement since it responded to GTL's Notice of Arbitration and held that the intention of parties to enter into an arbitration agreement must only be gathered from the terms of the agreement. However, the Court clarified that the correspondence exchanged between parties can be looked at to determine if they had concluded an arbitration agreement.

Therefore, the Court ruled that no valid and binding arbitration agreement existed between the parties and declined to grant relief under Section 11(6) of the Act.

Analysis

The judgment reiterates the Supreme Court's recent decision in ***Babanrao Rajaram Pund v. Samarth Builders and Developers & Anr.,***[25] that consensus ad idem is an essential component of an arbitration agreement. Likewise, in the present case, the Court held that a valid arbitration agreement should disclose the clear and unequivocal common intention of parties to submit their disputes to binding arbitration. Hence, an agreement that gives parties the option to decide in the future about whether or not to refer a dispute to arbitration is not an arbitration agreement. It follows that parties who intend to arbitrate their disputes should carefully draft the dispute resolution/arbitration clause in their contracts to clearly reflect such agreed intention.

In this edition

High Court of Bombay refuses relief under Section 9 in relation to disputes entailing consequences on consumers at large[26]

Brief Facts

World Phone Internet Services Pvt. Ltd. ("**Applicant**") filed an application under Section 9 of the Act before High Court of Bombay ("**Court**") against One OTT Intertainment Ltd. In Centre ("**Respondent**"). The Applicant sought an injunction against the Respondent, restraining it from suspending internet services of the customers/subscribers.

The services were provided pursuant to a Memorandum of Understanding ("**MoU**") which was signed to mutually leverage the parties' strengths to scale up their business across India, and contained an arbitration clause enabling dispute settlement between the parties by arbitration. On 28 October 2022, the Respondent raised a demand for payment of INR 93.4 million, and stated its intention of terminating the MoU. In order to prevent significant business disruption (including loss of internet service to end consumers), the Applicant filed an application under Section 9 of the Act seeking to restrain the Respondent from suspending the internet services of the subscribers.

The Respondent raised a preliminary objection that the dispute between the parties was not arbitrable, and thus challenged the maintainability of the application under Section 9 of the Act. In the Respondent's submission, the dispute ought to be referred to the Telecom Dispute Settlement and Appellate Tribunal ("**TDSAT**") constituted under the Telecom Regulatory Authority of India Act, 1997 ("**TRAI Act**").

Issue

Whether disputes between service providers/licensees regulated under the TRAI Act can be settled by arbitration, despite the TRAI Act providing for TDSAT as the forum of dispute resolution?

Judgment

The Court followed the principle that where special legislations designate a specific forum for dispute resolution that ousts the jurisdiction of civil courts, that statutory forum must be approached. As a result, the dispute cannot be referred to arbitration.

In this case, the Court noted that the TRAI Act confers the TDSAT with the jurisdiction in respect of disputes between service providers as defined in TRAI Act, which included licensees. Given that the parties were service providers as defined under TRAI Act, the provisions of TRAI Act were held to be applicable, which ousted the jurisdiction of civil courts and arbitral tribunals over the dispute between the parties. Therefore, the Court held that the dispute would fall within the jurisdiction of the TDSAT, in view of Section 14(a)(ii) of the TRAI Act.

Importantly, the Court referred to the well settled doctrine that disputes with a public or *in rem* character cannot be settled by arbitration. Thus, it found the principle to apply in this case as the outcome of the dispute had ramifications on consumers' ability to avail internet services. Accordingly, the Court held the application under Section 9 of the Act to not be maintainable.

Analysis

This decision follows a long line of cases that has sought to bring in clarity regarding arbitrability of a dispute based on subject matter. This decision sheds light on how far purely commercial disputes between regulated entities (such as service providers under TRAI Act) can be decided by arbitration. Crucially, the aspect of consumers being affected by the outcome of the dispute persuaded the Court to direct parties to the statutory forum rather than private arbitration.

The decision signals that parties entering into commercial relationships with regulated entities must be mindful that arbitration may not readily be available as an option for dispute resolution, particularly when the dispute entails consequences for third parties / consumers.

In this edition

High Court of Delhi addresses the import of the term 'location' and the power of a High Court to review its decision passed under Section 11 of the Act[27]

Brief Facts

The High Court of Delhi ("**Court**") was seized with the interpretation of the term 'location' used in an arbitration clause. The concerned arbitration clause provided that "*the arbitration proceeding shall be held at an appropriate location in New Delhi*". There was also an exclusive jurisdiction clause, which conferred jurisdiction only on the courts of Gurgaon/High Court of Chandigarh. A petition under Section 11 of the Act was preferred by the Petitioner, which came to be dismissed for want of territorial jurisdiction. Thereafter, a review petition was preferred by the before the Court under Order XLVII, Rule 1 read with Section 114 of the CPC.

Issues

Issue (i): Whether the word '*location*' in an arbitration clause can be construed as the 'seat' of the arbitration?

Issue (ii): Whether the court has the power to review its own order under the statutory scheme of the Act?

Judgment

Issue (i): While interpreting the term 'location' in the arbitration clause, the Court analysed various judicial precedents to trace the contours of the concept of 'place' and 'seat'. The Court placed reliance on the decision in ***Roger Shashoua v. Mukesh Sharma***,[28] and observed that while 'place' is where the arbitration may take place suiting the convenience of parties, 'seat' determines the jurisdiction of the courts where the parties may agitate any controversy stemming from the arbitration. Further, the Court referred to the test for determination of seat as laid down by the Supreme Court in ***BGS SGS Soma JV v. NHPC Ltd.***,[29] which was: (i) express designation of 'venue' and no designation of any alternative place as 'seat'; (ii) combined with a supranational body of rules governing the arbitration; and (iii) no significant contrary *indicia* specifying the seat. The Court also placed reliance on the position of law set out by the Supreme Court in ***Mankastu Impex Pvt. Ltd. v. Airvisual Ltd.***,[30] which had drawn the distinction between 'venue' and 'seat' to clarify that the expressions could not be used interchangeably.

Insofar as the issue regarding jurisdiction being exercised by courts wherein cause of action arose is concerned, the Court analysed the Supreme Court's decision in ***Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee***,[31] wherein it was held that the Legislature could not have intended to permit the filing of applications under Section 11(6) of the Act in any court, where neither the respondent resided in or carried on business nor where any part of the cause of action arose. Applying the law culled out in the aforementioned cases, the Court observed that while the clause clearly provided the place of arbitration as New Delhi, there was a *contra indicia* as it specified that exclusive jurisdiction would vest in courts at Gurgaon/High Court of Chandigarh. The Court concluded that since the cause of action arose in Gurgaon, the courts at Gurgaon would have exclusive jurisdiction and refused to review the impugned order.

Issue (ii): The Court observed that it could not exercise powers of review since a High Court cannot review an order passed under Section 11 of the Act as such power is not expressly conferred upon a court under the Act. A similar view was also taken by the High Court of Kerala,[32] which held that a general power of review available to the High Court under other jurisdictions cannot be extended to review orders passed under Section 11 of the Act. Further, in consonance with the view taken by the Supreme Court in ***Jain Studios Ltd v. Shin Satellite Public Co. Ltd.***,[33] that once a case has been decided on merits, the applicant on the ground of review cannot be permitted to argue the main matter afresh, the Court refused to entertain the present review petition. This was more so, since the Court herein found that the Petitioner was seeking to challenge the findings of the Court, which was essentially in the realm of an appeal and could not be brought within the scope of '*error apparent on the face of the record*'.

Analysis

By way of the instant decision, the High Court of Delhi has affirmed the position that a High Court is not

In this edition

conferred with the power to review decisions passed by it under Section 11 of the Act. Additionally, the decision has re-affirmed the tests for identification of a 'seat' in an arbitration proceeding arising out of an underlying arbitration agreement, which does not expressly provide for a 'seat'.

High Court of Delhi clarifies that Section 14 of the Act cannot be invoked to raise a challenge to appointment of an arbitrator on the grounds of bias[34]

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) read with Section 15(2) of the 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) read with 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.***,[35] which clarified the legislative intent 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

In this edition

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.

High Court of Delhi holds that an arbitration clause in a preceding contract can apply to disputes arising out of a subsequent contract[36]

Brief Facts

On 24 January 2019, *vide* the Business Advisory and Management Agreement ("**Business Agreement**"), Rajasthan Explosives and Chemicals Limited ("**Respondent**") appointed Super Blastech Solutions ("**Petitioner**") to provide business advisory support.

Certain disputes arose between the Petitioner and Respondent, which they proposed to resolve amicably by negotiations in accordance with Clause 11 of the Business Agreement. In furtherance of the negotiations, the Petitioner and Respondent decided to terminate the Business Agreement and entered into the Memorandum of Understanding dated 24 February 2022 ("**MOU**"), which recorded that both the parties will execute a Memorandum of Settlement on mutually agreed terms and conditions. Pursuant to the MOU, the Memorandum of Settlement dated 16 March 2022 ("**MOS**") was entered between the Petitioner and Respondent, setting out the terms of settlement. As per the MOS, it was decided that the Petitioner would continue to supervise the operations of the Respondent till 31 May 2022.

Soon after entering into the MOS, various disputes arose between the parties. The Petitioner invoked arbitration as per Clause 11 of the Business Agreement. Since the Respondent did not act thereafter in terms of Clause 11, the Petitioner filed a petition under Section 11 of the Act before the High Court of Delhi ("**Court**"), seeking appointment of an arbitrator to adjudicate the disputes between the parties.

Issue

Whether the arbitration clause of the Business Agreement would be applicable to disputes arising out of the MOS?

Judgment

The Court observed that the arbitration clause contained in the Business Agreement clearly stipulated that in the event any dispute, controversy or claim arose between the parties relating to the agreement or any interpretation thereof, the parties would attempt to settle the disputes amicably by good faith negotiation. The Court found that when disputes arose, the parties entered into the MOU for termination of the Business Agreement and in pursuance thereof, the MOS was executed. After examination of the aforesaid facts, the Court found that the subsequent MOU and MOS emanated from the Business Agreement. The Court held that the disputes pertained to non-compliance of the terms and conditions of the MOS, which dealt with settlement of the disputes arising out of the Business Agreement. Therefore, the Court rejected the Respondent's contention that the disputes sought to be adjudicated were neither related to nor within the scope of the Business Agreement.

The Court referred to Clause 10.8 of the Business Agreement, which stated that the dispute resolution clause shall survive the termination of the Business Agreement, to hold that the arbitration clause had survived, even after termination of the Business Agreement.

Even otherwise, the Court found that there was commonality of disputes that had arisen pursuant to the transaction between the parties owing to various deeds/MOU signed between the parties, which were intrinsically linked to the Business Agreement.

In this edition

The Court relied upon ***N.N. Global*** (*supra*) and ***Mulheim Pipecoatings GmbH v. Welspun Fintrade Limited & Anr.***,[37] to hold that even if a contract ends by way of termination or a subsequent agreement between the parties, the arbitration clause would not be rendered inoperative, except where the contract containing the arbitration clause was completely extinguished and substituted by a new contract that exclusively and entirely governs the relations between the parties. The Court held that in the facts of the case, the arbitration clause would survive for resolution of disputes even after termination of the contract containing the arbitration clause (i.e., the Business Agreement) because the MOS essentially contained terms of settlement of disputes which originated from the Business Agreement. Accordingly, the Court rejected the submission that the dispute was not related to the Business Agreement.

Lastly, the Court relied on ***A. Ayyasamy v. A. Paramasivam & Ors.***[38] to hold that under Section 11 of the Act, courts would generally refer the matter to arbitration unless the court is *ex facie* satisfied that the disputes are not arbitrable.

Therefore, the Court allowed the Section 11 petition and appointed a sole arbitrator to .adjudicate the disputes.

Analysis

The Court has held that parties to a contract containing an arbitration clause (which has been terminated) can be referred to arbitration in a dispute arising out of a subsequent contract between the same parties (which does not contain an arbitration clause) if:

(i) The subsequent contract emanated / originated from the preceding contract; or

(ii) If there is commonality of disputes and the subsequent contract was intrinsically linked to the preceding contract.

The above findings have been given by the Court in the specific facts and circumstances of the case where the subsequent contract (i.e., MOS) related to the scope of the preceding contract (i.e., Business Agreement) and also expressly referred to the preceding contract.

High Court of Calcutta holds that order of an emergency arbitrator in a foreign seated arbitration is an additional factor, which may be taken into account while considering an application under Section 9 of the Act[39]

Brief Facts

The Petitioner, Uphealth Holdings Inc., is a public listed company incorporated in the USA and subject to the Security and Exchange Commission, USA. The Petitioner entered into a Share Purchase Agreement ("**SPA**") in October 2020 with Respondent No. 1, Glocal Healthcare Systems Pvt. Ltd., and Respondent Nos. 2-4 being promoter directors of Respondent No. 1, and paid approx. INR 21 billion to acquire 94.8% stake in Respondent No. 1.

The SPA specified that it was governed by the laws of India and that Indian courts had jurisdiction over disputes which may arise between the parties. The arbitration clause recorded that parties would refer the disputes to the International Chamber of Commerce ("**ICC**") for final determination with the venue being Chicago, Illinois.

The Petitioner alleged breach of reciprocal obligations under the SPA by the Respondents including, *inter alia,* non-transfer of shares of the Respondent company, non-filing of statutory compliances with authorities, failure to provide financial results of Respondent No. 1 and refusal to furnish duly stamped transfer forms in favour of the Petitioner. It submitted a request for arbitration before the ICC and invoked emergency arbitrator provisions under the ICC Rules for appointment of an emergency arbitrator. Once the emergency arbitrator allowed the Petitioner's claims, it filed an application under Section 9 of the Act before the High Court of Calcutta ("**Court**"), seeking interim reliefs similar to what had been granted by the emergency arbitrator.

In this edition

The Respondents contested the application on the grounds that: (i) the present disputes were not arbitrable in nature; (ii) the order of the emergency arbitrator cannot be enforced under the Act; and (iii) the Respondents had already referred the matter before the National Company Law Tribunal ("**NCLT**"), Kolkata and filed a criminal complaint, thus barring the Court's jurisdiction.

Issues

Issue (i): Whether filing proceedings before the NCLT is a bar to the arbitral process under Section 9?

Issue (ii): Whether an order of an emergency arbitrator in a foreign seated arbitration can be enforced under the Act?

Judgment

Issue (i): At the very outset, the Court dismissed the Respondents' contention that its jurisdiction under Section 9 was barred by, *inter alia,* the initiation of proceedings before the NCLT. It held that the arbitration clause was wide and explicit, and the dispute was capable of adjudication by arbitration. The Court distinguished the decision in ***Rakesh Malhotra v. Rajinder Kumar Malhotra & Ors.***[40] cited by the Respondents.

Issue (ii): The Court relied on ***Raffles Design International India Private Limited & Anr. v. Educomp Professional Education Limited***[41] to hold that the Act does not provide for enforcement of orders passed by an emergency arbitrator in cases of a foreign seated arbitration, and that there is no *pari materia* provision under Part II of the Act similar to Section 17(2) of the Act.

However, the Court took cognisance of the fact that: (i) both parties had participated in the proceedings before the emergency arbitrator; (ii) the parties also agreed to be bound by the orders of the emergency arbitrator in the SPA; (iii) the emergency arbitrator's order has not been interfered with or set aside; and (iv) the order is elaborate, detailed and reasoned with no apparent illegality or contravention of any law.

Moreover, the Petitioner had invested a substantial sum of money in terms of the SPA and in spite of being the largest majority shareholder of the Respondent, it was being made to run from pillar to post to protect its interests. Thus, not only was the Petitioner entitled to the information and reliefs sought, it would also bear the consequence of the statutory non-filing and withholding information under the laws of the USA due to defaults by the Respondents if the relief sought under Section 9 was not granted. On the other hand, no prejudice would be caused to the Respondents in providing such information, which was in any event in compliance with the contractual obligations of the Respondents under the SPA.

Considering the above facts, it was held that the order of the emergency arbitrator, although not binding, is an additional factor which can be taken into account in determining an application under Section 9 of the Act. This approach was also held to be in conformity with the principle of autonomy of parties, which is fundamental to the Act as per the law laid down in ***Amazon.Com NV Investment Holdings LLC v. Future Retail Limited & Ors.***[42]

The Court was satisfied that the Petitioner has a *prima facie* case on merits and will suffer irreparable prejudice if its prayers were not allowed. Hence, it passed an order in favour of the Petitioner.

Analysis

The decision has provided a welcome insight into the procedure for dealing with an emergency arbitrator's order in a foreign seated arbitration.

While in ***Amazon*** (*supra*), the Supreme Court held that an award passed by an emergency arbitrator in an India seated arbitration is equivalent to an interim order of a tribunal under Section 17(1) of the Act, no provision of this nature exists for a foreign arbitration and parties are thus, constrained to approach the Indian courts under Section 9 for any emergency reliefs.

By way of this decision, the legitimacy of an emergency arbitrator's order is held as a factor to consider

In this edition

in Section 9, while also preserving the sanctity of party autonomy and ensuring speedy and efficacious remedy to parties. It also supports the principle repeatedly conveyed by courts that the power under Section 9 is expected to be exercised, not as an instrument to interdict any remedy available within the contractual framework, but rather in aid of the arbitral process, wherein timely relief in pursuance of the arbitration agreement is either not available or not efficacious.

However, clarity is awaited regarding the manner and extent to which such an order must be considered, and the circumstances in which courts may pass an order in a Section 9 proceeding that is contrary to the order of an emergency arbitrator.

High Court of Delhi decides arbitrability of disputes relating to subordinate rights in personam arising from rights in rem[43]

Brief Facts

The plaintiff was a partnership firm and the proprietor of the registered trade mark 'LIBERTY'. The defendant was the sole proprietorship concern of one of the partners in the plaintiff firm, however, the said partner did not have any personal rights in the plaintiff's registered trade mark.

The plaintiff filed a suit before the High Court of Delhi ("**Court**") seeking a permanent injunction against the defendant, alleging that the defendant was using the trade mark of the plaintiff, without authorisation. Subsequently, the defendant filed an application under Section 8 of the Act seeking reference to arbitration in terms of the arbitration agreement under the partnership deed between the partners of the plaintiff firm.

Issue

Whether the dispute regarding the use of the plaintiff's trademark by one of the partners of the plaintiff firm for his own sole proprietorship can be referred to arbitration?

Judgment

The Court referred to ***Vidya Drolia*** (*supra*) to note the distinction drawn by the Supreme Court between actions *in personam*, i.e., actions which determine the rights and interests of the parties themselves in the subject matter, and actions *in rem*, i.e., actions determining the title to the property and the rights of the parties amongst themselves as also against all the persons claiming an interest in that property. ***Vidya Drolia*** (*supra*) conclusively holds that while rights *in personam* are amenable to arbitration, disputes *in rem* are unsuitable for private arbitration and are required to be adjudicated by the courts and public tribunals. However, disputes relating to subordinate rights *in personam* arising from rights *in rem* are considered to be arbitrable.

In this light, the Court observed that the present suit is for the enforcement of a right not against a third party, which is a total stranger to the registered proprietor of the trade mark, but a party which claims a right to use the trade mark under or through the registered proprietor of the trade mark. Thus, the Court concluded that the present dispute would be governed by the observations of the Supreme Court in ***Vidya Drolia*** (*supra*), that where the claim in the suit is the enforceability of rights *in personam*, flowing out of a right *in rem*, by virtue of the plaintiff being the proprietor of the said marks, the parties are to be referred to arbitration.

The plaintiff had contended that arbitration would be implicitly barred in view of Section 134 of the Trade Marks Act, 1999 ("**Trade Marks Act**") which prescribes that a suit for infringement shall not lie in a court inferior to a district court. The Court rejected the plea regarding implicit ouster of arbitration and by placing reliance on ***Vidya Drolia*** (*supra*), the Court held that merely specifying which civil court is to adjudicate such disputes may not be enough to accept the inference of implicit non-arbitrability of such disputes.

The plaintiff had also submitted that it had distinct rights under the Trade Marks Act and the Indian Partnership Act, 1932, and having chosen the remedy under Trade Marks Act, the parties could not

In this edition

be relegated to arbitration. Rejecting the submission, the Court held that the doctrine of election of remedies is applicable only where there are two or more remedies available to the litigants, which are repugnant and inconsistent. The Court noted that in the present case, there was no such inconsistency or repugnancy shown to exist and the arbitration agreement in the partnership deed could not be breached merely by framing the suit under the Trade Marks Act.

The Court thus surmised that it is only where the court is certain that no valid arbitration agreement exists or the dispute/subject matter is not arbitrable, can the application under Section 8 of the Act be rejected. In view of the same, the defendant's application was allowed, and the parties were referred to arbitration.

Analysis

By way of this decision, the High Court of Delhi has complemented the findings of the Supreme Court in ***Vidya Drolia*** (*supra*), offering clarity on the arbitrability of intellectual property disputes pertaining to rights *in personam* arising from rights *in rem*. The judgment reaffirms that the question pertaining to arbitrability rests primarily on the assessment of the root of the dispute, whether emanating from a statute or from a contract. The shifting stance of the Indian judiciary in favour of arbitration is especially pronounced by this judgment as the Court categorically rejected the implicit ouster of arbitration in view of an existing arbitration agreement between parties.

High Court of Bombay clarifies that the court has the power to nominate an arbitrator under Section 11(6) of the Act after a party forfeits its rights to do so under the arbitration agreement[44]

Brief Facts

PSP Projects Limited ("**Petitioner**"), a company in the construction business, secured a tender from Bhiwandi Nizampur City Municipal Corporation ("**Respondent**"), for construction of dwelling units at Bhiwandi. Disputes arose due to delay and the Petitioner issued a notice invoking the arbitration clause in terms of the agreement ("**Notice**") on 30 July 2021.

The Petitioner proposed a sole arbitrator in its Notice. However, the Respondent replied to the Notice after 30 days from the date of Notice without nominating its arbitrator. It alleged that the Petitioner was deviating from the procedure for appointment of the tribunal prescribed in the arbitration clause, which states that the Petitioner would nominate its arbitrator from a panel of five names provided by the Respondent, and subsequently the Respondent would appoint its nominee from the remaining four names. The two party-appointed arbitrators would choose the presiding arbitrator from the same list.

Thus, the Petitioner filed its application under Section 11(6) of the Act before the High Court of Bombay ("**Court**") seeking appointment of a sole arbitrator, on the ground that the arbitration clause violated Section 12(5) read with the Seventh Schedule of the Act.

In support of the contention that the arbitration clause was hit by Section 12(5), the Petitioner relied on the Supreme Court's decision in of ***Voestalpine Schienen GmbH v. Delhi Metro Rail Corpn. Limited***.[45] The Petitioner contended that when a party has to choose an arbitrator from a restricted pool of names suggested by the opposite party, that clause falls foul of Section 12(5). The Petitioner also relied on ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***,[46] where the Supreme Court recognised that if only one of the parties has the right to appoint an arbitrator, such unilateral appointment would invalidate the arbitration clause.

The Respondent, while denying that the arbitration clause violated Section 12(5), contended that the Notice was premature and stillborn since it did not consider the procedure for appointing the tribunal, and also bypassed the process to refer the matter to the City Engineer and Municipal Engineer before resorting to arbitration. Thus, there was no question of the Respondent forfeiting its right to appoint an arbitrator.

In this edition

Issues

Issue (i): Whether the Petitioner was entitled to seek appointment of an arbitrator by invoking the arbitration clause or was the arbitration clause hit by Section 12(5) read with the Seventh Schedule of the Act?

Issue (ii): Whether the Respondent forfeited its right to appoint an arbitrator, having failed to appoint one within 30 days from the date of Notice and before the Petitioner filed the present petition before the Court?

Judgment

Issue (i): The Court held that the Petitioner was correct in referring the matter straight to arbitration since the issues could not have been adjudicated by the City Engineer and Municipal Engineer. Regarding the issue of whether the arbitration clause fell foul of Section 12(5), the Court considered the judgment in ***Voestalpine*** (*supra*), which was similar on facts, to hold that the arbitration clause stood vitiated, falling foul of Section 12(5) read with the Seventh Schedule of the Act.

Issue (ii): In view of the finding on the first issue, the question of whether the Respondent had forfeited its right to nominate an arbitrator was rendered academic. However, the Court answered the issue in the affirmative. It considered the judgment in ***Datar Switchgears Ltd. v. Tata Finance Ltd. & Anr.***,[47] which held that once a period of 30 days from issuance of the arbitration notice elapses and after the petitioner files a petition under Section 11 of the Act, the respondent forfeits its right to appoint its nominee arbitrator. Thus, in the present case, forfeiture cannot be avoided on the basis that the Petitioner proposed appointment of a sole arbitrator. However, the Court clarified that forfeiture of the Respondent's right would not *ipso facto* lead to the Court acceding to the Petitioner's prayer for appointment of a sole arbitrator. Rather, the Court has the power to appoint an appropriate arbitral tribunal in the interest of justice.

In the present case, the Court was pleased to nominate an arbitrator for each of the parties with direction to the arbitrators to appoint a third arbitrator.

Analysis

In the present case, the Court has elucidated the consequence of non-appointment of an arbitrator in the reply to an arbitration notice. It upheld the pro-arbitration outlook of courts by clarifying that if the respondent has forfeited its right, the court need not be constrained by the petitioner's choice of arbitrator in an application under Section 11(6) of the Act, but rather has the discretion to nominate an arbitrator on the behalf of the respondent in appropriate cases.

Past Events

Webinar by Madras Chamber of Commercial and Industry's Arbitration (8 November 2022)

Ananya Aggarwal (Principal Associate) conducted a webinar on "*The Nuances of Stamping of Arbitration Agreement*" hosted by the Madras Chamber of Commercial and Industry's Arbitration, Mediation and Conciliation Centre.

IIMM Seminar on Contract Management & Dispute Resolution (12 November 2022)

Tejas Karia (Partner and Head, Arbitration) conducted a session on "*Dispute Resolution in Contracts with Emphasis on Latest Developments in Arbitration*" as part of a seminar on "*Contract Management & Dispute Resolution*", organised by the Indian Institute of Materials Management (IIMM).

RGNUL ADR Course (13 November 2022)

The Centre for Business Laws and Taxation at the Rajiv Gandhi National University of Law (RGNUL) organised a two-credit course on "*Corporate Laws and Practice*". **Vrinda Pareek (Associate)** delivered a lecture on "*Resolution of Commercial Disputes Through Arbitration and Mediation*".

In this edition

CADR Negotiation Competition (13 November 2022)

Vrinda Pareek (Associate) was an expert assessor in the quarter final rounds of the 2nd National Negotiation Competition organised by RGNUL's Centre for Alternative Dispute Resolution (CADR).

World Law Alliance Conference (14 November 2022)

The World Law Alliance organised an interactive session on "*ADR and the Vanishing Trial: The Growth and Impact of Alternative Dispute Resolution*". **Ananya Aggarwal (Principal Associate)** was a panellist at the session.

Dubai Arbitration Week (14-17 November 2022)

The Dubai Arbitration Week took place from 14-18 November 2022. **Gauhar Mirza (Partner)** and **Bikram Chaudhuri (Partner)** attended the event on behalf of Shardul Amarchand Mangaldas & Co.

ICA Training Program on Domestic and International Commercial Arbitration (18-20 November 2022)

The International Council of Arbitration (ICA) organised the Certified Training Course Program on Domestic and International Commercial Arbitration. **Tejas Karia (Partner and Head, Arbitration)** was a faculty member in the program and conducted sessions on "*Introduction to the Fundamentals of ADR*", "*Arbitration Agreement*", "*Arbitration Proceedings*" and "*Institutional v. Ad-hoc Arbitration*".

IDRC Masterclass (19 November 2022)

The Indian Dispute Resolution Centre (IDRC) organised a masterclass on "*Excellence in Commercial Dispute Resolution*". **Tejas Karia (Partner and Head, Arbitration)** was a speaker in this masterclass and shared his insights on emergency arbitration in the international perspective, enforcement of foreign awards and international arbitration during Covid-19, among other topics.

ICAI Certificate Course on Arbitration, Mediation and Conciliation (22 November 2022)

Tejas Karia (Partner and Head, Arbitration) conducted the revision session in the Certificate Course on Arbitration, Mediation and Conciliation organised by the Institute of Chartered Accountants of India (ICAI).

CIArb-YMG India Conference 2022 (25 November 2022)

Tejas Karia (Partner and Head, Arbitration) delivered the mentor's address at the 1st Chartered Institute of Arbitrators (CIArb) - Young Members Group (YMG) India Conference 2022.

SIAC Annual India Conference (26 November 2022)

The Singapore International Arbitration Centre (SIAC) organised its annual India conference on "*Contemporary Challenges and Opportunities in International Arbitration*". **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** participated in the debate on the motion that "*This House Believes that Barbers and Taxidermists are Subject to Far Greater Regulation than Arbitrators*", arguing in favour of the motion.

L&T Legal Conclave 2022 (10 December 2022)

Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution) and **Ila Kapoor (Partner)** conducted a session on "*Issues relating to International Contracts, with focus on jurisdiction, choice of law, enforcement, and risk management*" as Special Guest Speakers at the L&T Legal Conclave 2022.

BW Legal 40 Under 40 Summit and Awards 2022 (11 December 2022)

BW Legal World, in association with Upgrad, hosted the 3rd edition of the BW Legal World 40 Under 40 Best Lawyers and Legal Influencers Summit Awards, 2022. **Gauhar Mirza (Partner)** was invited as the Power Speaker for the event and shared his insights on "*Levers of Change in the Legal Ecosystem for 2023*".

MCIA Symposium on International Commercial Arbitration (17 December 2022)

The Mumbai Centre for International Arbitration (MCIA) organised a symposium on "*International Commercial Arbitration: Challenges and Opportunities*" in Bengaluru. **Karan Joseph (Partner)** spoke in a panel discussion on "*Institutional Arbitration: Works Globally not Locally?*".

In this edition

NUJS Kolkata Short Course (October-December 2022)

Surabhi Lal (Senior Associate) concluded a short course on "*Arbitration Practice and Procedure*" at NUJS Kolkata in December 2022 which provided a practical perspective to arbitration.

Course on Arbitration Law and Practice (24 December 2022, 29 January 2023 and 4 February 2023)

Bettering Results organised the 4th edition of the Course on Arbitration Law and Practice. **Tejas Karia (Partner and Head, Arbitration)** spoke on concepts, definition and principles involved in arbitration, evidence in arbitration, and drafting of arbitration agreements and notice of invocation of arbitration.

Mediation Training Workshop (21 January 2023)

Tejas Karia (Partner and Head, Arbitration) conducted a workshop on "*Mediation Laws in India*" as part of the "*Mediation Training Workshop*" organised by Bettering Results.

Young ITA Webinar (7 February 2023)

The Young Institute for Transnational Arbitration (ITA) organised a webinar for the Asia, Oceania and India region on "*Navigating the Impossible Trinity through Procedural Innovation: an APAC Perspective*". **Juhi Gupta (Principal Associate)** was a panellist at this event.

SAMCO Webinar (8 February 2023)

Shardul Amarchand Mangaldas & Co organised a webinar on "*Shareholder Disputes in India: New Challenges and Strategies*", which discussed arbitrability of shareholder disputes and was moderated by **Bikram Chaudhuri (Partner)** and **Juhi Gupta (Principal Associate)**.

Linklaters CARTAL Conference (11-12 February 2023)

National Law University, Jodhpur (NLU, Jodhpur) in association with Linklaters and the Indian Journal of Arbitration Law organised the 7th Edition of the CARTAL Conference on International Arbitration on the theme "*Sailing Through Tumult: Towards Safe Harbour*". **Tejas Karia (Partner and Head, Arbitration)** spoke in a panel discussion on "*Arbitration and Insolvency: Avoiding a Collision Course*". **Gauhar Mirza (Partner)** spoke in a panel discussion on "*Arbitration in the 21st Century: Taking Stock of Climate Change and the Environment*" and also spoke in the "*Webnyay CARTAL Career Talk*".

IAF Discussion on Code of Conduct for Arbitrators (15 February 2023)

Tejas Karia (Partner and Head, Arbitration) was a panellist in a discussion on "*Code of Conduct for Arbitrators*", organised by the Indian Arbitration Forum (IAF) in collaboration with Accuracy.

In this edition

Delhi Arbitration Weekend (17-19 February 2023)

The Delhi International Arbitration Centre (DIAC) is organising the 1st edition of its flagship event, the Delhi Arbitration Weekend. **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** was a panellist in the session on "*Increasing Diversity and Access in Arbitration: Role of the Stakeholders*", conducted on 17 February 2023.

Upcoming Events

GAR Live (18 February 2023)

GAR Live will be held in Mumbai on 18 February 2023. Shardul Amarchand Mangaldas & Co is a co-sponsor. **Shreya Gupta (Partner)** will participate in the debate on the motion "*This house believes all commercial arbitration awards should now be published in a redacted form*".

IBA Asia Pacific Regional Forum Biennial Conference (22-24 February 2023)

Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution) will be attending the IBA Asia Pacific Regional Forum Biennial Conference in Singapore. **Ila Kapoor (Partner)** will chair a panel discussion on "*Navigating dispute resolution clauses*".

Publication

Shreya Gupta (Partner), **Juhi Gupta (Principal Associate)** and **Siddharth Doshi (Associate)**, *Supreme Court of India – The dispute resolution mechanism under MSME Act overrides the provisions of the Arbitration and Conciliation Act (Gujarat State Civil Supplies Corporation Ltd v Mahakali Foods Pvt Ltd)* in LexisNexis (19 December 2022). Click here

Endnotes

1 Authored by Gauhar Mirza, Partner, Prakhar Deep, Principal Associate and Adya Joshi, Associate; *Ansal Properties & Infrastructure Ltd. v. Dowager Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.*, ARB. P. No. 1050/2021, High Court of Delhi, 2022 SCC OnLine Del 3265, judgment dated 10 October 2022.
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3 Authored by Shreya Gupta, Partner, Juhi Gupta, Principal Associate and Pratik Singhvi, Senior Associate; *Weatherford Oil Tool Middle East Limited v. Baker Hughes Singapore Pte.*, Supreme Court of India, 2022 SCC OnLine SC 1464, judgment dated 20 October 2022.
Weatherford was represented by the team of Shardul Amarchand Mangaldas & Co comprising Rishab Gupta, Of-Counsel and Pratik Singhvi, Senior Associate.
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15 Authored by Smarika Singh, Partner, Saifur R. Faridi, Principal Associate, Yashna Mehta, Senior Associate, Aman Goyal and Arjun Singh Rana, Associates; *Sandeep Singh. v. Simran Sodhi & Ors.*, ARB. P. No. 199/2022; and *Simran Sodhi v. Sandeep Singh*, ARB. P. No. 842/2019 (connected matters), High Court of Delhi, judgment dated 11 November 2022.
Coram: V. Kameswar Rao, J.

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Coram: Prateek Jalan, J.

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In this edition

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In this edition

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