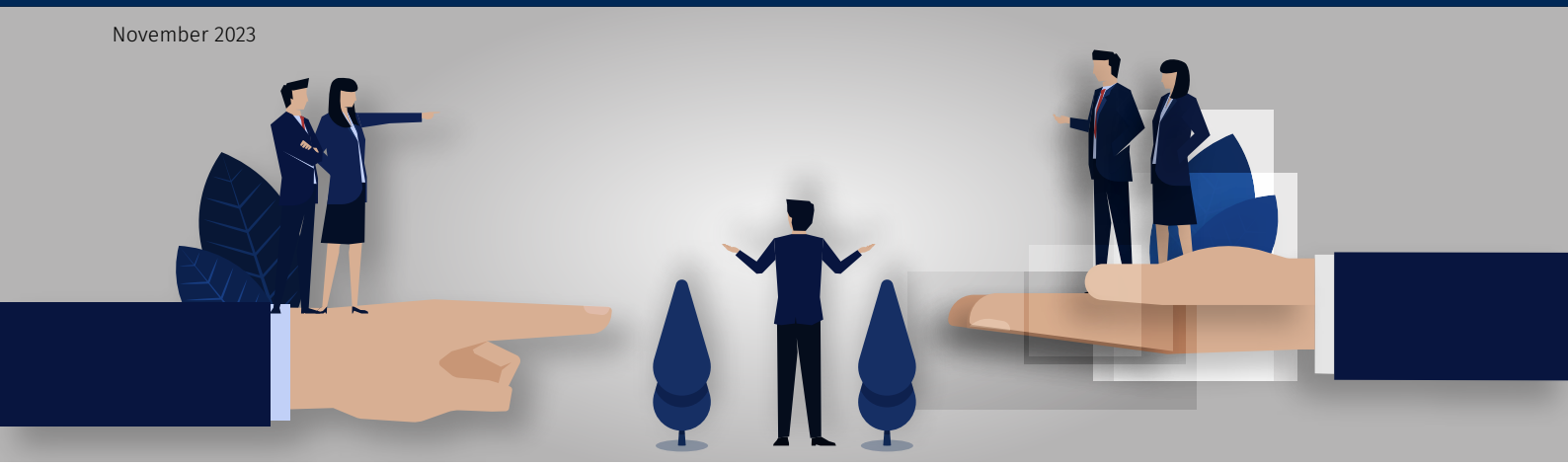
Arbitration Newsletter

Shardul Amarchand Mangaldas

November 2023



Arbitration Newsletter – November 2023

It gives us immense pleasure to circulate the twenty-fourth edition of the Arbitration Newsletter of Shardul Amarchand Mangaldas & Co. We take this opportunity to wish everyone a Happy Diwali and Prosperous New Year!

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

Mr. Shardul S. Shroff (Executive Chairman) has been appointed as a member of the Arbitration Expert Committee chaired by Mr. T. K. Viswanthan constituted by the Central Government to recommend reforms in the Arbitration and Conciliation Act, 1996 and **Tejas Karia (Partner and Head, Arbitration)** has been representing the Confederation of Indian Industry (CII) before the Committee.

We are pleased to share that Chambers and Partners Global Guide 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 a 'Star Individual' and 'Band 2 Lawyer', and **Tejas Karia (Partner and Head, Arbitration)** as a 'Band 1 Lawyer'.

Shardul Amarchand Mangaldas & Co was also ranked among the top international arbitration practices in the world, in the 2023 edition of GAR100 - a definitive guide to the world's leading firms for arbitration based on independent research by the Global Arbitration Review.

Benchmark Litigation Asia-Pacific 2023 ranked the International Arbitration practice of Shardul Amarchand Mangaldas & Co as a 'Tier 1 Practice'. It recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)**, **Tejas Karia (Partner and Head, Arbitration)**, **Aashish Gupta (Partner)** and **Binsy Susan (Partner)** as 'Litigation Stars'. **Aashish Gupta (Partner)** (for commercial and transactions) and **Bikram Chaudhuri (Partner)** were also recognised as 'Future Stars'.

Benchmark Litigation Asia-Pacific Awards 2023 awarded **Tejas Karia (Partner and Head, Arbitration)** as 'India Lawyer of the Year'. He has also been recognised amongst the 'Top 10 Influential Arbitration Lawyers' in India by Business Today.

The Asian Legal Business India Law Awards 2023 recognised Shardul Amarchand Mangaldas & Co as the 'Litigation Law Firm of the Year'.

The Indian Business Law Journal's Indian Law Firm Awards awarded Shardul Amarchand Mangaldas & Co as a 'Winner' for the practice area of Arbitration & ADR.

The Asialaw Asia-Pacific 2023-24 rankings ranked the Dispute Resolution practice of Shardul Amarchand Mangaldas & Co as 'Outstanding'. It recognised **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** and **Tejas Karia (Partner and Head, Arbitration)** as 'Elite Practitioners'.

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Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution) was recognised in Fortune India's 'Most Powerful Women in Business 2022'.

The Singapore International Arbitration Centre has renewed the appointment of **Tejas Karia (Partner and Head, Arbitration)** as a member of the Court of Arbitration of the SIAC for a period of two years.

The Forbes India Legal Power List 2022 recognised **Ila Kapoor (Partner)** amongst the 'Top 100 Individual Lawyers'.

Binsy Susan (Partner) was recognised as 'Litigator of the Year – India and Middle East' at the Asian Legal Business – Women in Law Awards 2023.

Shreya Gupta (Partner) has been re-appointed to the Young MCIA Steering Committee for 2023-25 term and has also been appointed to the Steering Committee of Indian Women in International Arbitration.

Ananya Aggarwal (Counsel) has been appointed to the expert panel of assessors with the Society for Young Advocates and Researchers, India.

Shreya Jain (Principal Associate) has been selected as an Asia-Pacific Regional Representative by the Young International Arbitration Group of the London Court of International Arbitration for a term of 18 months. She has also been selected as an India co-chair (regional representative) by the Young Institute for Transnational Arbitration (Young ITA) for the 2023-25 term.

Juhi Gupta (Principal Associate) has been appointed to the panel of tribunal secretaries of the Australian Centre for International Commercial Arbitration. She will also continue as a Young ITA India co-chair (regional representative) for the 2023-24 term.

We are also pleased to share that **Saifur Rahman** and **Akshay Sharma**, based in the firm's New Delhi office, and **Kanika Goenka** based in the firm's Mumbai office, all members of the Arbitration Practice Group of the firm, have been inducted as Partners.

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

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High Court of Delhi refuses to interfere with an interim award based on an admission made in corporate insolvency resolution proceedings[1]

Brief Facts

Bharat Heavy Electricals Ltd. ("**Appellant**") filed an appeal ("**Appeal**") under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 ("**Act**") before the High Court of Delhi ("**Court**"). The Appeal was preferred by the Appellant against an order passed by a District Judge dismissing the objections raised by the Appellant under Section 34 of the Act, against an interim award passed by a sole arbitrator ("**Arbitral Tribunal**") in an arbitration between the Appellant and Zillion Infraprojects Pvt. Ltd. ("**Respondent**").

In 2010, the Appellant entered into a contract with the Respondent for erection, testing, commissioning and trial operation of boilers. Disputes arose between the parties and the Respondent invoked arbitration. The Arbitral Tribunal commenced the hearing on 5 November 2018. Shortly after the commencement of the arbitral proceedings, Corporate Insolvency Resolution Proceedings ("**CIRP**") were initiated against the Respondent.

In view of the CIRP, the Appellant moved an application under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") requesting adjournment of the arbitration proceedings *sine die* till the continuation of the resolution process. Consequently, the Arbitral Tribunal passed an order adjourning the arbitral proceedings *sine dine*. However, the Arbitral Tribunal observed that while the Appellant (operational creditor) may not be in a position to file its counterclaims before the Interim Resolution Professional ("**IRP**"), there is no bar on the Respondent (corporate debtor) to continue with the proceedings before the Arbitral Tribunal.

The Appellant admitted [in Form B under Section 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**2016 Regulations**")] that a total sum of INR 6,903,671.85/- was liable to be adjusted as set off, from the total amount of INR 26,419,997.33/- payable to him by the Respondent. Based on the Appellant's admission before the IRP of the admitted amount, the Respondent filed an application under Section 31(6) read with Section 17 of the Act for an interim award in terms of the admitted amount. The Appellant denied having admitted any liability and argued that the pleadings filed before the IRP cannot be treated as an admission on which an interim award may be allowed since the adjudication of the same is pending. The Arbitral Tribunal allowed the application of the Respondent and issued an interim award for the admitted sum, in favour of the Respondent.

The Appellant challenged the interim award under Section 34 of the Act before the District Court, which was dismissed for being baseless and devoid of any merit. Further, the District Court directed that both, claims and counterclaims, including set off, may be heard and adjudicated by the Arbitral Tribunal. The Appellant filed the present Appeal against the judgment passed by the District Judge under Section 37(1)(c) of the Act before the Court.

The Appellant broadly argued before the Court that: (i) the alleged admissions mentioned as set off in Form B submitted before the IRP cannot be considered as a determinate amount, unless adjudicated; and (ii) as Form B was filed before the IRP and not before the Arbitral Tribunal, it cannot be treated as an unequivocal admission in the arbitration proceedings.

Issues

Issue (i): Whether the set off claimed by the Appellant in Form B under Section 7 of the 2016 Regulations may be construed as an admission?

Issue (ii): Whether the set off claimed by the Appellant in Form B under Section 7 of the 2016 Regulations can become the basis of the interim award passed by the Arbitral Tribunal?

Judgment

Issue (i): The Court observed that while giving a detailed statement of claims before the IRP in Form B

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under Section 7 of the 2016 Regulations, the Appellant also indicated an amount that may be set off against the claims. The Court held that this set off amount does not require any further adjudication by the Arbitral Tribunal and can be treated as a categorical admission by the Appellant for the purpose of passing an interim award.

Issue (ii): Relying on the judgments on admissions under Order XII, Rule 6 of the Code of Civil Procedure, 1908 ("**CPC**"), the Court observed that an admission may be based on a statement made by a party in the pleadings before the adjudicating authority or "otherwise". The Court observed that the set off claimed by the Appellant before the IRP in Form B under Section 7 of the 2016 Regulations was made in the proceedings relating to the claims/counterclaims filed by the parties against each other. Further, the Appellant's admission of set off was not couched with any explanation or any denial. Therefore, the admission was unequivocal and rightly formed the basis of the interim award.

Analysis

The Court applied the legal position laid down by the Supreme Court's decisions[2] and reiterated the limited scope of interference under Sections 34 and 37 of the Act. The Court reinforced that the scheme of the Act requires the courts to respect the finality of the arbitral award and party autonomy of having chosen to get their dispute resolved through arbitration. Further, courts cannot be permitted to independently evaluate the merits of the dispute but should limit their authority to the grounds of challenge provided under Sections 34 and 37 of the Act.

High Court of Delhi reaffirms that res judicata applies to judgments passed under Section 11(6A) of the Act[3]

Brief Facts

Petitions had been filed under Section 11(6A) of the Act seeking appointment of an arbitrator in relation to disputes that had arisen between the Petitioner (i.e., the insured company) and the Respondent (i.e., the insurer). The Petitioner availed the Respondent's Standard Fire and Special Peril policies for the Petitioner's factory in June and October 2013. In September and October 2013, two fires broke out at the Petitioner's factory. Surveyors were appointed by the Respondent and eventually the claims for both the fires were allegedly settled for INR 22 million and INR 28 million approximately, when the Petitioner signed Discharge Vouchers in favour of the Respondent.

After signing the Discharge Vouchers, the Petitioner claimed that they had been signed due to fraud, coercion and undue influence. The Respondent, on the other hand, contended that the settlement was accepted without any demur or protest and was binding on the Petitioner.

The Petitioner approached the High Court of Delhi for appointment of an arbitrator under Section 11 of the Act. The High Court allowed the petition and appointed an arbitrator. The Respondent preferred an appeal before the Supreme Court, which set aside the appointment on the ground that no arbitrable dispute existed between the parties in view of the settlement *vide* the Discharge Vouchers executed between the parties, which in turn demonstrated accord and satisfaction ("**Antique Art Export Judgment**").[4] The Petitioner preferred a review petition against the aforesaid dismissal, which too was dismissed by the Supreme Court.[5]

Thereafter, the Supreme Court, in ***Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman***[6] ("**Mayavati Trading**") overruled the Antique Art Export Judgment, holding that after the 2015 Amendment to the Act, the court's power under Section 11(6A) is confined to examining whether a valid arbitration agreement exists. Accordingly, the court cannot go into whether any accord and satisfaction has taken place.

In view of the aforementioned findings of the Supreme Court in ***Mayavati Trading*** (*supra*), the Petitioner, in the present case, filed fresh petitions under Section 11 for appointment of an arbitrator before the High Court of Delhi.

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The Petitioner *inter alia* contended that:

- The Respondent as well as the surveyor and investigator appointed by the Respondent delayed the processing of the Petitioner's claims.
- The Respondent forced the Petitioner to sign a Discharge Voucher for an undervalued claim by using unfair coercive bargaining power in its favour.
- The Supreme Court overruled the Antique Art Export Judgment on the issue of whether the signing of discharge vouchers makes the dispute non-arbitrable.
- Under Section 11(6A), the court only needs to examine whether an arbitration agreement exists.
- The judicial process under Section 11 for appointment of an arbitrator is not justiciable, even though the exercise of power is judicial. The forum under Section 11(6) is not a court under Section 2(1)(e) of the Act. Hence, there is no decision on merits while appointing an arbitrator. Accordingly, the bar of res judicata would not apply. In any case, there can be no res judicata on an erroneous decision and on a judgment passed with inherent lack of jurisdiction.
- Overruled decisions have no force of law.

The Respondent on the other hand contended that:

- The Petitioner had signed the Discharge Voucher without any undue influence or coercion and was bound by it.
- Mere overruling of the principles on which the earlier judgment was passed by a subsequent judgment of a higher forum will not have the effect of uprooting the final adjudication between the parties.

Issue

Whether the petitions under Section 11 of the Act were barred by *res judicata*?

Judgment

The High Court held that even though the Antique Art Export Judgment had been overruled, the dispute *inter se* the parties with respect to the purported dispute arising out of the Discharge Vouchers executed by the Petitioner had attained finality. Relying on ***Anil, S/o Jagannath Rana & Ors. v. Rajendra, S/o Radhakrishan Rana and Ors.***,[7] the Court held that *res judicata* applies to proceedings under Section 11 of the Act. The Court also relied on ***SBP and Co. v. Patel Engg. Ltd.***[8] to hold that even though the High Court and Supreme Court are not "Court" within the meaning of Section 2(1)(e) of the Act in a petition under Section 11(6) of the Act, the exercise of the power under Section 11(6) by the High Court or Supreme Court is a judicial function. Accordingly, while exercising its judicial function, the High Court can decide the issue on maintainability, including whether the petition is barred by *res judicata*.

The Antique Art Export Judgment was overruled by the Supreme Court in ***Mayavati Trading*** (*supra*) on the ground that it did not lay down the correct law. The Supreme Court, while overruling the Antique Art Export Judgment in ***Mayavati Trading*** (*supra*), laid down the correct law. However, the High Court held that the Antique Art Export Judgment would not be a nullity and accordingly, the judgment was binding on the parties.

Analysis

The High Court's decision reaffirms that *res judicata* is applicable to proceedings under Section 11(6A) of the Act. It further clarifies that merely because a judgment determining the rights *inter se* parties is overruled in another judgment, the same would not give the parties the right to re-agitate the dispute.

High Court of Bombay holds that the valid assignment of a contract includes assignment of the arbitration clause contained therein[9]

Brief Facts

Future Enterprises Private Limited ("**Respondent**") entered into a Master Rental Agreement ("**MRA**") with LIQ Residuals Private Limited ("**LIQ**") on 27 January 2020. Under the MRA, LIQ rented various equipment to the Respondent. On 14 February 2020, 28 February 2020 and 4 March 2020, the Respondent executed distinct rental schedules, as stipulated under the MRA, detailing the equipment it required and setting

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out the rent payable. Subsequently, LIQ issued a notification of assignment letter ("**Assignment Letter**"), notifying the Respondent about the assignment of rental payments in favour of Siemens Factoring Pvt. Ltd. ("**Applicant**"). The Assignment Letter also contained an arbitration clause similar to the clause in the MRA, save for that it entitled the Applicant to unilaterally appoint the sole arbitrator. While the Assignment Letter was not signed by the Applicant, it was acknowledged by the Respondent. Pursuant to the Assignment Letter, the Applicant and LIQ also entered into various Sale of Receivable Agreements through which the receivables payable to LIQ under the MRA were assigned to the Applicant.

On 21 June 2022, the Applicant issued a legal notice, calling upon the Respondent to pay a sum of INR 48,806,155/- and interest from the date of default. Alleging that the Respondent had failed to comply with the demands in the legal notice, the Applicant approached the High Court of Bombay ("**Court**"), seeking the appointment of a sole arbitrator to adjudicate the dispute between the parties.

The Respondent relied on Section 7 of the Act to contend that a written agreement to arbitrate disputes was required between the parties. However, since the Applicant admittedly did not sign the Assignment Letter, no such written arbitration agreement existed between the parties. Therefore, the Applicant could not have invoked arbitration. On the other hand, the Applicant contended that the MRA clearly contemplated that LIQ could assign its contractual rights, which also included the right to arbitrate disputes. The Applicant also contended that the notification of assignment placed the Applicant in LIQ's shoes and thus, all rights, discretions and remedies available to LIQ stood assigned to the Applicant.

Issue

Whether the assignment of contractual rights would also confer the right to invoke arbitration upon the assignee?

Judgment

The Court held that LIQ had validly assigned its rights under the MRA to the Applicant by way of the Assignment Letter, which was also not disputed by the Respondent. Accordingly, the Court held that it follows that even LIQ's right to invoke arbitration was assigned to the Applicant. This was supported by the express language of the Assignment Letter, which *inter alia* provided that "*by this assignment, the assignee has stepped into the shoes of the LIQ under the subject Contract* [i.e., the MRA] *and will be entitled to enjoy, exercise and enforce all rights, discretions and remedies of the LIQ* [...]".

The Court also relied on its judgment in ***DLF Power Limited v. Mangalore Refinery and Petrochemicals Limited***[10] to hold that a separate arbitration agreement was not required between the contracting party and assignee as long as the parent contract containing the arbitration clause was validly assigned to the assignee. The Court also emphasised the provisions of the MRA entitling LIQ to assign its rights and the Respondent's acceptance of the assignment, all of which clearly evidenced the parties' intention to implement the rights, obligations, duties and benefits of the MRA.

Further, the Court distinguished the facts of the present case from ***Inox Wind Ltd. v. Thermocables Ltd.***,[11] wherein the Supreme Court had held that an assignee cannot be assumed to have consented to an arbitration agreement without a specific reference to the arbitration clause being assigned. The Court held that the present facts were different from that of ***Inox Wind*** (*supra*) since *inter alia*: (i) the MRA expressly contemplated 'LIQ' to include its assigns; (ii) the MRA expressly permitted LIQ to absolutely assign its rights to receive rental payments to any bank or financial institution; (iii) the Assignment Letter clearly stipulated that the Applicant stepped into LIQ's shoes and provided for arbitration, which Letter was accepted by the Respondent; and (iv) the Respondent acted upon the Assignment Letter and made payments to the Applicant. Therefore, the intention of the parties was to also assign the right to arbitrate to the Applicant.

Therefore, the Court upheld the Applicant's invocation of arbitration to be valid. However, since the unilateral appointment clause in the Assignment Letter was invalid, the Court exercised its powers under Section 11(6) of the Act and appointed the sole arbitrator.

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Analysis

The Court's decision reiterates that the assignment of contractual rights would also include the assignment of the right to invoke arbitration in favour of the assignee. In the present case, LIQ had only assigned its rights under the contract to the Applicant, whereas in the decisions cited by the Court, the entire contract had been assigned. However, this ruling is consistent with earlier decisions, such as ***Kotak Mahindra Bank v. Mr. S. Nagabhushan & Ors.***,[12] wherein the High Court of Delhi held that once the rights, title, interest and benefits under a contract were assigned, the right to seek adjudication of disputes through arbitration also stood assigned.

High Court of Delhi allows a party to initiate fresh arbitration proceedings to pursue counterclaims even though it failed to file a counterclaim in an ongoing arbitration[13]

Brief Facts

Super Milk Products Private Limited ("**Respondent**") had invoked arbitration against Prime Interglobe Private Limited ("**Petitioner**") and filed a petition under Section 11 of the Act before the High Court of Delhi ("**Court**"), seeking appointment of an arbitrator to decide its claims.[14] The arbitrator directed parties to file their claims and counterclaims respectively. The Petitioner failed to file its counterclaims in time and sought multiple extensions, before ultimately filing an application under Section 16 of the Act, challenging the jurisdiction of the tribunal. The Section 16 application was dismissed. Despite additional time being granted to file its counterclaim, the Petitioner filed only its statement of defence, and not its counterclaim.

Thereafter, and well after the evidence in the arbitration was recorded, the Petitioner filed an application to file its counterclaim. It sought to justify the delay *inter alia* on the ground that the Respondent's actions (at issue in the arbitration) jeopardised its business, rendering the Petitioner unable to meet the costs of prosecuting its counterclaims in time. The Respondent opposed the application stating that sufficient opportunities had been granted and that during the same period of alleged financial distress, the Petitioner had nonetheless filed several petitions against the Respondent before the Court and the National Company Law Tribunal.

The Petitioner's application was dismissed by the arbitrator on the basis of inordinate delay ("**Order**"). The Petitioner did not contest the Order but served a fresh notice of arbitration on the Respondent and sought the appointment of another tribunal to adjudicate its counterclaims. The Respondent objected to this notice contending that a second arbitration ought not to lie in respect of disputes which had already been referred to arbitration. Thus, the Petitioner approached the Court under Section 11 of the Act, which was decided by the Court in this case.

Issue

Whether the Petitioner was barred from approaching the Court in view of the reference of disputes in the pending arbitration, where the arbitrator had refused to entertain the counterclaims on grounds of inordinate delay?

Judgment

The Court found that the Petitioner's claims had not been made the subject matter of the earlier Section 11 petition filed by the Respondent. The Court also noted that the parties' submissions in the said petition did not lead to the inference that the Petitioner's claims were necessarily also intended to be referred to the arbitrator in the same arbitration.

While it is generally open to the other party to file its counterclaims in the same proceeding, the constitution of a tribunal based on a claimant's petition *per se* does not signify that the Court has referred claims of the counterclaimant as well, in a manner that would bar its right to assert the counterclaims at a future date.

Further, the Court found that the facts of the present case were analogous to the facts in ***Airone Chartes Pvt Ltd v. Jetsetgo Aviation Services Pvt. Ltd.***,[15] where a coordinate bench of the Court held that

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striking off counterclaims from the record due to delay does not necessarily bar the counterclaimant's subsequent request to refer the counterclaims to a different tribunal under Section 11 of the Act. It also made a passing reference to the deadwood principle adopted in ***Vidya Drolia and Others v. Durga Trading Corporation***,[16] which clarified that the scope of enquiry under Section 11 is limited. Thus, the Court relied on this principle to refuse an elaborate enquiry into the maintainability of the Petitioner's claims.

The Court concluded that the Petitioner's claims merited reference to arbitration and proceeded to appoint an arbitrator.

Analysis

The Court's decision validates the right of a party to resort to arbitration of its claims, so long as the claims are within limitation. The decision is a shot in the arm to parties who were prevented from pursuing legitimate counterclaims. This is a welcome move that prevents procedural issues (such as compliance with timelines in an arbitration triggered by the counter party) from prejudicing a party's substantive rights.

While it may not be economical or efficient to initiate different proceedings between the same parties under the same contract, this could benefit parties that are unable to gather the requisite evidence within time agreed to file a counterclaim. An option is still available to courts to appoint the same tribunal to avoid multiplicity of litigation, where feasible. Since the judgment is clear that the counterclaims were allowed to be agitated as they were within limitation, it is unlikely that the decision could be misused by parties who wish to belatedly bring up claims barred by limitation.

The Court's approach embodies the pro-arbitration principle of limited interference at the reference stage, given that the Court explicitly refused to enquire into the maintainability of the claims by holding that a Section 11 petition is not the appropriate stage for such enquiry.

High Court of Delhi holds that recourse to Section 34(4) of the Act cannot be opted for to consider new material evidence[17]

Brief Facts

Air Liquide North India Private Limited ("**Respondent**") entered into a Sales and Purchase Agreement ("**Agreement**") wherein it was supposed to supply liquid oxygen and liquid nitrogen to Inox Air Products Private Limited ("**Petitioner**"). However, disputes arose between the Petitioner and the Respondent ("**Parties**") during the performance of the Agreement, which were referred to arbitration.

During the course of the arbitral proceedings, the Petitioner (respondent in the arbitration) filed documents which were taken on record, and it was further recorded by the arbitral tribunal ("**Tribunal**") that the documents, in any case, would have to be proved in accordance with law. However, after cross-examination of the Respondent's (claimant in the arbitration) witness, it was agreed between the Parties to dispense with oral evidence and that the matter will straight away be fixed for arguments. It was also agreed that whatever oral evidence was recorded will not be read.

After culmination of the arbitral proceedings, the Tribunal passed the award ("**Award**") in favour of the Respondent, which was challenged before the High Court of Delhi ("**Court**") on the ground that the Tribunal failed to consider the additional documents filed by the Petitioner.

After notice was issued in this matter, the Respondent moved an application under Section 34(4) of the Act seeking to eliminate the ground for setting aside the Award, relating to non-consideration of the Petitioner's documents.

Issue

Whether the invocation of Section 34(4) of the Act by the Respondent for eliminating the ground of challenge to the Award by remanding the matter to the Tribunal is justified in light of the facts and circumstances of this case?

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Judgment

On application of the principles established by existing judgments on the issue, the Court was of the opinion that it would not be a fit case to take recourse to Section 34(4) of the Act. The issue of the Petitioner herein pertains to non-consideration of material evidence and not where the finding in the Award has been rendered without any or adequate reasons. However, it was also opined that as per the settled law in ***Ipay Cleaning Services Private Limited v. ICICI Bank Limited***,[18] ***Bentwood Seating System Ltd v. Airport Authority of India***,[19] ***Coal India Limited v. Hyderabad Industries Ltd.***[20] And ***BTP Structural (I) Pvt. Ltd. v. Bharat Petroleum Corp. Ltd.***,[21] if the matter is taken back to the Tribunal, the Petitioner's ground of challenge can be only eliminated if the Tribunal considers the documents, which it failed to do so in the first instance, thereby exceeding the power under Section 34(4) of the Act.

This course would also fall foul of the principle established in ***Kinnari Mullick v. Ghanshyam Das Damani***[22] and ***Radha Chemicals v. Union of India***,[23] which put the recourse under Section 34(4) of the Act on the same footing as a remand, but even less effective, as it is a remand without the power to reach a different conclusion. Hence, the consideration of the evidence by the Tribunal, which was not done in the first instance, would be meaningless as the conclusion has to remain unchanged. Accordingly, the Respondent's application was dismissed by the Court.

Analysis

As is evident from this case., there is no dearth of precedents on the legal recourse that can be taken under Section 34(4) of the Act. However, the Court was crystal clear in reiterating that consideration of the material left out at the first instance would be effective only if the Tribunal had the jurisdiction to reconsider or alter the ultimate Award, which is not the case.

The Court did not agree with the argument of the Respondent that the Supreme Court in ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.***[24] left open the possibility of other grounds on which Section 34(4) of the Act can be invoked. This is primarily because this judgment is referred to in the landmark cases of ***Ipay*** (*supra*) and ***Bentwood*** (*supra*), which decisions clearly indicate that consideration of fresh material does not fall within the grounds available.

Dismissing the Respondent's application, the Court observed that although there have been cases where the tribunal was required to rehear the case, fact-based conclusions cannot be allowed to take away from the analysis in the above-mentioned judgments with regard to the scope and effect of Section 34(4) of the Act, which cannot allow the arbitral tribunal to reopen the conclusion arrived at in any scenario.

Supreme Court holds that referral courts are duty bound to carry out a prima facie test to screen and strike down ex-facie meritless and dishonest litigation under Section 11(6) of the Act[25]

Brief Facts

NTPC ("**Appellant**") and SPML ("**Respondent**") entered into a contract under which the Respondent was to carry out certain installation services ("**Contract**") for the Appellant. In terms of the Contract, the Respondent furnished performance bank guarantees and advanced bank guarantees worth INR 149,689,136/- (together, "**Bank Guarantees**").

Pursuant to the completion of the Contract, the Appellant released final payments under the Contract to the Respondent after receiving a "No-Demand Certificate" from the Respondent.

However, the Appellant withheld the Bank Guarantees provided by the Respondent on account of pending disputes and liabilities between the parties regarding other projects.

The Respondent objected to the withholding of the Bank Guarantees and, for the first time, raised a demand for payment of INR 720,153,899/- as liabilities recoverable from the Appellant under the Contract. The Respondent, by way of a letter dated 12 June 2019, called upon the Appellant to appoint

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an adjudicator to resolve pending disputes between the parties in terms of the General and Special Conditions of Contract.

When no action was taken by the Appellant, the Respondent preferred a Writ Petition under Article 226 of the Constitution, praying for the release of the Bank Guarantees. The High Court of Delhi ("**DHC**") passed an interim order dated 8 July 2019 in the Writ Petition, restraining the Appellant from encashing the Bank Guarantees and directed the Respondent to keep the Bank Guarantees alive ("**Interim Order**").

Subsequently, negotiations between the parties resulted in a settlement agreement on 27 May 2020 ("**Settlement Agreement**"). The terms of the Settlement Agreement *inter alia* included that the Appellant would release the withheld Bank Guarantees. The Respondent, in turn, agreed to withdraw the pending Writ Petition and undertook not to initiate any other proceedings, including arbitration under the Contract.

Following the Settlement Agreement, the Appellant released the Bank Guarantees on 30 June 2020. The Respondent too withdrew the Writ Petition, as recorded in the DHC's order of 21 September 2020. However, after the Settlement Agreement was performed, the Respondent repudiated the same on the ground that it was entered into under duress and economic coercion. The Respondent filed an application under Section 11(6) of the Act before the DHC, seeking the constitution of an arbitral tribunal for the resolution of disputes under the Contract ("**Arbitration Petition**").

The DHC, by way of its judgment dated 8 April 2021, held that the question of whether disputes under the Contract stood discharged/novated in terms of the Settlement Agreement could not be considered *ex-facie* untenable or frivolous. The DHC thus directed the appointment of a retired judge of the DHC as arbitrator on behalf of the Appellant (the Respondent had already appointed its arbitrator), and directed the respective arbitrators to appoint the presiding arbitrator.

The Appellant preferred a Special Leave Petition before the Supreme Court ("**Court**"), challenging the DHC's judgment dated 8 April 2021.

Issue

Whether the DHC erred in appointing an arbitrator under Section 11(6) of the Act in the facts and circumstances of the case?

Judgment

The Court referred to its precedents in *inter alia* ***Vidya Drolia*** (*supra*),[26] ***Pravin Electricals Pvt. Ltd. v. Galaxy Infra and Engg. Pvt. Ltd.***,[27] ***Sanjiv Prakash v. Seema Kukreja***,[28] ***BSNL v. Nortel Networks India (P) Ltd.***[29] and ***Secunderabad Cantonment Board v. B. Ramachandraiah & Sons***[30] to hold that the jurisdiction of courts under Section 11(6) of the Act is narrow and requires two enquiries:

- The primary enquiry is about the existence and validity of an arbitration agreement. This includes an enquiry as to the parties to the agreement and the applicant's privity to the said agreement. This aspect requires a thorough examination by the referral court.
- The secondary enquiry is with respect to the non-arbitrability of the dispute. As a general rule, the arbitral tribunal is the preferred first authority to determine questions of non-arbitrability. Referral courts may only go into the aspect of non-arbitrability when a *prima facie* scrutiny of facts leads to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. Such a *prima facie* review through the "*eye of the needle*" is necessary for the referral court to fulfil its duty of protecting parties from being forced to arbitrate when the dispute is demonstrably non-arbitrable leading to wastage of public and private resources.

In this case, the Court held that the plea that the Settlement Agreement was entered into under duress or economic coercion was not *bona fide* and was only a tool to wriggle out of the Settlement Agreement from a mere perusal of the facts:

- The Settlement Agreement was entered into between the parties when the encashment of the Bank Guarantees was prohibited in terms of the Interim Order.

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- The Respondent had only filed the Arbitration Petition after taking benefit of the implementation of the Settlement Agreement as the Bank Guarantees were released and in fact, the Respondent withdrew its Writ Petition.

The Court thus concluded that the claims sought to be submitted to arbitration were raised as an afterthought. The Court held that in cases such as this, the DHC ought to have exercised the *prima facie* test to screen and strike down *ex-facie* meritless and dishonest litigation, and protect parties from being forced to arbitrate. The Court thus set aside the DHC's judgment.

Analysis

The Court, by way of this judgment, has clarified the scope of scrutiny to be exercised by a referral court under Section 11(6) of the Act. However, by setting aside the DHC's judgment, the Court may have opened the window for more rigorous scrutiny at the Section 11(6) stage, which may go against the goal of ensuring that an arbitral tribunal remains the preferred forum to determine questions of arbitrability of disputes.

Supreme Court clarifies that the timeline to seek the setting aside of arbitral awards is inviolable[31]

Brief Facts

On 24 August 2016, an arbitral award was passed against the appellant under the Act. As per Section 34(3) of the Act, a period of three months is prescribed within which an application under Section 34 of the Act may be filed to set aside an arbitral award. The proviso to the Section further allows an extension of 30 days, upon showing sufficient cause.

In the instant case, the prescribed period of three months expired on 24 November 2016. The appellant had not filed an application within the said period. The extendable period of 30 days expired on 24 December 2016, which date fell during the winter/Christmas vacation of courts, during which courts are closed and no applications can be filed.

The District Court reopened after the vacation on 2 January 2017. On this day, the appellant filed the application for setting aside the award along with an interlocutory application for condonation of delay, mentioning the winter vacations as sufficient cause.

The application was dismissed by the District Court, which refused to condone the delay and held that the period beyond 120 days (i.e., 90 + 30 days) was not condonable as per Section 34 of the Act ("**Impugned Order**"). The appellant filed an appeal against the Impugned Order before the High Court of Karnataka, which was also dismissed. Pursuant thereto, an appeal was filed before the Supreme Court ("**Court**").

Issue

Whether the delay in preferring the application under Section 34(3) of the Act can be condoned, in circumstances where the condonable period of 30 days fell during the winter/Christmas vacation of courts and the application was filed on the first day courts reopened after the vacation?

Judgment

On the basis of Section 34(3) of the Act, Section 10 of the General Clauses Act, 1897 and Section 4 of the Limitation Act, 1963 ("**Limitation Act**"), the Court observed that the advantage of exclusion of the period when courts are not functioning shall be available only if an application for setting aside an arbitral award is filed within the prescribed period of limitation, i.e., the three months period. The advantage shall not be available when this period falls in the extendable period, i.e., the 30-day period, the allowance of which is discretionary in nature. The Limitation Act permits a party to institute any suit/appeal/application on the day when court reopens, where the prescribed period for such suit, appeal or application expires on any day when the court is closed.[32] However, the definition of the term

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"*period of limitation*" is the period prescribed for any suit, appeal or application by the Schedule of the Act, and the "*prescribed period*" means the period of limitation computed in accordance with the provisions of the Limitation Act.[33]

The Court held that the discretionary extendable period of 30 days beyond the period of 90 days, which may be granted by the court on sufficient cause being shown, cannot be considered the 'period of limitation' or the 'prescribed period'. Thus, Section 4 of the Limitation Act is not attracted to the instant case. The Court relied on its decision in ***Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Ltd***.,[34] where it was held that the Limitation Act shall apply to arbitration matters except to the extent that its applicability shall be excluded by the provision contained in Section 34(3) of the Act.

Considering the above, the Court held that no error in law had been committed by either the District Court or High Court and thus, dismissed the appeal.

Analysis

In this case, the Court distinguished the 30 days beyond the three months period under Section 34(3) of the Act as being outside the 'period of limitation' for making an application for setting aside an arbitral award. The Court clarified that the timeline for filing an application for setting aside an arbitral award under the Act is not extendable, even when courts are closed due to vacations. Thus, it is necessary that timelines are planned well in advance when the course of action is decided by litigants.

A similar view was taken by the High Court of Calcutta in ***Siddha Real Estate Development Private Limited v. Girdhar Fiscal Services Private Limited***.[35] In this case, it was observed that the Court's order dated 23 March 2020 extending the limitation period due to Covid-19 would only apply to the first 30 days for filing a written statement under Order VIII, Rule 1 of the CPC and not to the additional 90 days that follow the prescribed period for matters covered by the Commercial Courts Act, 2015.

High Court of Delhi compels a third party to participate in an arbitration with a signatory to the arbitration agreement based on 'inextricably linked' contracts[36]

Brief Facts

The Petitioners are owners of units in a commercial building complex developed by Respondent No. 3 ("**Developer**"). The Developer appointed Respondent No. 1 as the maintenance agency for the building under a Service Agreement ("**Service Agreement**"). The Service Agreement provides for revenue sharing between the Developer and Respondent No. 2 and records that Respondent No. 2 has been hired on a principal-to-principal basis by the Developer. Respondent No. 1 further appointed Respondent No.2 as the property manager to maintain common areas etc. (Respondent Nos. 1 and 2 are collectively referred to as "**Agencies**").

The Petitioners entered into a maintenance agreement with the Agencies ("**Maintenance Agreement**"), which contained an arbitration clause. Disputes arose between the Petitioners and the Agencies, *inter alia*, in relation to the extent of the super area attributable to the Petitioners' units for calculation of maintenance charges and the amount of maintenance fee payable by the Petitioners. The Petitioners commenced arbitration against the Agencies under the Maintenance Agreement. Respondent No. 1 unilaterally appointed an arbitrator, against which the Petitioners approached the High Court of Delhi ("**Court**") under Section 11 of the Act contending that such unilateral appointment is null and void. The Petitioners further contended that the Developer is a necessary party to the proposed arbitration and ought to be impleaded.

Issue

Whether the Developer, who is not party to the arbitration agreement, should be impleaded in the proposed arbitration?

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Judgment

The Court allowed the impleadment of the Developer in the proposed arbitration based on a *prima facie* finding that: (i) the Agencies performed their functions only in terms of the authorisation granted by the Developer by which the Developer had delegated "all rights" in relation to the maintenance of the complex to the Agencies; (ii) the Service Agreement was inextricably linked with the Maintenance Agreement; and (iii) the Developer controls the functions and activities of Respondent No. 1. The Court further held that there is direct commonality of subject matter between all the Agreements. Further, noticing the revenue sharing arrangement in the Service Agreement, the Court concluded that the Developer was a direct beneficiary of the Maintenance Agreement.

While the Court cites precedent from the Supreme Court on the basis of which the "group companies doctrine" was established, it held that the impleadment in this case has not been allowed on the basis of the group companies doctrine but rather, on the legal relationship (such as "[...] *agent-principle relations, apparent authority* [...]") between the Developer and the Agencies. It further relied on Supreme Court decisions[37] to apply the principle of estoppel, which prohibits a party from deriving benefit from a contract while disavowing the obligation to arbitrate under the same agreement.

Finally, the Court also prefaced that its decision is based on a *prima facie* evaluation of the facts and would be subject to a further detailed examination by the arbitral tribunal. In the interest of consistency, the Court also reasoned that its approach is aligned with the decision of a coordinate bench of the Court involving a similar dispute between the Respondents and owners of other units in the same complex,[38] which allowed the impleadment of the Developer.

Analysis

Arbitration is fundamentally based on consent of parties, rather than judicial compulsion. Therefore, the exceptional circumstances that justify the impleadment of a third party entail high thresholds.

In this case, the Court has diluted the thresholds for impleadment of non-signatories to an arbitration agreement. The broad interpretation of 'control', 'inextricable link' and 'beneficiary' would now make it easier for parties to implead associate companies or even third parties, in a scenario where there are a series of related transactions. The difference between a composite transaction/inextricably linked transaction and agreements that are merely related to each other has been blurred.

Given that the Court has disregarded the explicit noting in the Service Agreement that the Developer's engagement of the Agencies was on a principal-to-principal basis, parties might have to consider using stronger language in their agreements denoting their intention to not bind any other party (which is not party to the agreement) to any potential arbitration between the parties to the agreement. Such an exercise may be worthwhile, lest courts conjure an arbitration agreement where none exists.

Supreme Court holds that an arbitration agreement contained in an instrument that is not duly stamped would render such agreement non-existent in law unless the instrument is validly stamped under the Stamp Act[39]

Brief Facts

Respondent No. 1 ("**Indo Unique**") had applied for grant of work of beneficiation/washing of coal to the Karnataka Power Corporation Ltd. ("**KPCL**") in an open tender. KPCL awarded the work to Indo Unique ("**Work Award**") and entered into a contract on 18 September 2015 ("**Principal Contract**"). Pursuant to the Award, Respondent No. 1 furnished bank guarantees for INR 292.9 million in favour of KPCL through its bankers.

Respondent No. 1 sub-contracted the work (transportation of coal) under the Work Award to the Appellant ("**Work Order**"). Clause 9 of the Work Order provided for furnishing a security deposit. Clause 10 of the Work Order contained an arbitration clause / arbitration agreement ("**Arbitration Agreement**").

Under the Principal Contract, certain disputes and differences arose with Indo Unique, which led to the

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invocation of the bank guarantees by KPCL. Resultantly, Respondent No. 1 invoked the bank guarantee furnished by the Appellant under Clause 9 of the Work Order, which led to the present proceedings.

Respondent No. 1 applied to the Commercial Court, Nagpur under Section 8 of the Act, seeking reference of the dispute to arbitration. The Commercial Court denied the reference to arbitration. A writ petition was filed by Respondent No. 1 before the High Court of Bombay, challenging this order. One of the contentions raised was that the Arbitration Agreement was unenforceable as the Work Order was unstamped.

Briefly, the issue before the three-judge Bench of the Supreme Court ("**Three Judge Bench**") was whether the Arbitration Agreement was enforceable, even if the Work Order is unstamped and unenforceable under the Indian Stamp Act, 1899 ("**Stamp Act**"). The Three Judge Bench held that the findings in ***SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.***[40] and ***Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.***,[41] namely that the non-payment of stamp duty on a commercial contract would invalidate even the arbitration agreement contained therein, and render it non-existent in law and unenforceable, is not the correct position in law.

However, in view of the finding in ***Vidya Drolia*** (*supra*) by a coordinate bench, which affirmed the judgment in ***Garware*** (*supra*), the aforesaid issue was required to be authoritatively settled by a Constitution Bench of the Supreme Court. Accordingly, the matter was referred to a five-judge bench of the Supreme Court for final determination.

Reference

Whether the statutory bar contained in Section 35 of the Stamp Act[42] that is applicable to instruments not duly stamped under Section 3 read with the Schedule to the Stamp Act would also render the arbitration agreement contained in such an instrument (which is not chargeable to payment of stamp duty) non-existent, unenforceable or invalid, pending payment of stamp duty on the instrument?

Judgment

K.M. Joseph, Aniruddha Bose and C.T. Ravikumar, JJ. passed the majority judgment ("**Judgment**"). Ajay Rastogi and Hrishikesh Roy, JJ. passed individual dissenting opinions. The Court, through the Judgment, held that:

- An unstamped (or insufficiently stamped) instrument exigible to stamping (**Unstamped Instrument**) is: (i) not a contract under Indian law, (ii) unenforceable and (iii) non-existent, until it is sufficiently stamped as per the applicable stamp act.
- An unstamped (or insufficiently stamped) arbitration agreement that attracts stamp duty (**Unstamped Arbitration Agreement**) cannot be acted upon until it is sufficiently stamped as per the applicable stamp act.
- An arbitration agreement (even if it does not attract stamp duty under the applicable stamp act) contained in an Unstamped Instrument is non-existent under Indian law until the underlying Unstamped Instrument is sufficiently stamped.

The Judgment specified that it was not pronounced with reference to parties seeking interim reliefs under Section 9 of the Act.

Analysis

In sum, the underlying contract must be sufficiently stamped for it (and the arbitration agreement contained therein) to be valid, enforceable in law and admissible in evidence. A court (as defined under the Act) cannot appoint an arbitrator if it concludes that the underlying instrument (that contains the arbitration clause / agreement) is not duly stamped under the applicable stamp act.

Practically, arbitration proceedings may be commenced prior to or simultaneously with the underlying Unstamped Instrument being adjudicated / stamped, since commencement is within the claimant's control. However, the respondent in such a scenario is likely to raise objections and not take part in

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the arbitrator appointment process, necessitating the claimant to approach the court for appointment under Section 11 of the Act. In such a scenario, the court is required to scrutinise whether the underlying contract (including the arbitration agreement, where required) has been sufficiently stamped, and only if it has, can it appoint an arbitrator to adjudicate the dispute.

The Judgment has led to some confusion on whether interim reliefs under Section 9 of the Act can be granted under an Unstamped Instrument / arbitration agreement. The High Court of Bombay was recently faced with this issue in ***Ranjit Vardichand Jain v. Nirmal Gagubhai Chhadwa & Ors***.[43] After considering the position in the Judgment, the High Court held that "*the principle of inadequacy of stamping, assuming there is improper stamping as contended, will not preclude this Court from granting interim relief*".

High Court of Bombay rejects allegations of bias against the tribunal and enforces a foreign award under Section 48 of the Act[44]

Brief Facts

HSBC PI Holdings (Mauritius) Limited ("**HSBC**") entered into a Share Subscription Agreement ("**Agreement**") with Avitel Post Studioz Limited ("**Avitel**") for the investment of USD 60 million. Prior to and during the execution of the Agreement, Avitel made several representations and undertakings that the invested monies would be utilised for the fulfillment of a contract with the British Broadcasting Corporation worth USD 1-1.3 billion. An amended shareholders agreement was also executed subsequently as a condition of completion.

It thereafter came to light that there were several discrepancies regarding the legitimacy, business operations and clientele of Avitel. Disputes arose when it was revealed that Avitel had shut down and it was not operating, and that it neither had any relationship with the British Broadcasting Corporation, nor had any contract with it. It was alleged that the monies invested by HSBC were siphoned out of the Avitel group through payments made to fake suppliers and/or service suppliers, allegedly owned by Avitel.

In light of these disputes, HSBC initiated arbitration proceedings. As per the Agreement, the law governing the contract was Indian law and the jurisdiction was Singapore. The arbitration was to be conducted in accordance with the Rules of the Singapore International Arbitration Centre and Part I of the Act was excluded, with the exception of Section 9 of the Act. Avitel participated in the arbitration, and the arbitration culminated in an award wherein Avitel was directed to pay HSBC a sum of USD 60 million.

HSBC thereafter approached the High Court of Bombay ("**Court**") under Section 9 of the Act, seeking the deposit of USD 60 million by Avitel. The interim relief sought for by HSBC was granted. HSBC also filed a petition under Section 48 of the Act before the Court seeking enforcement of the award ("**Section 48 Petition**").

The order was unsuccessfully challenged by Avitel before the Supreme Court. The Supreme Court, while rejecting Avitel's Special Leave Petition, directed it to deposit the sum of USD 60 million. These directions were disobeyed and further action followed for contempt.

In the Section 48 Petition, Avitel raised several grounds to resist enforcement but only pressed into service the ground of bias against the chairperson of the tribunal, Mr. Christopher Lau, SC and the emergency arbitrator, Mr. Thio Shen Yi.

Avitel's sole contention was the allegation of bias due to the purported conflict of interest between HSBC, and Mr. Lau and Mr. Shen Yi. It was contended that there existed business interests between affiliates of HSBC, and Mr. Lau and Mr. Shen Yi, thereby clearly giving rise to bias. It was emphasised that in the facts and circumstances of the present case, there was a duty of disclosure on the part of

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the said arbitrators about their alleged relationship with HSBC and due to their failure to make such disclosure, the foreign award was rendered unenforceable. It was also contended that the gateway of Section 48 of the Act would have to be met, without which enforcement of a foreign award would not be possible.

HSBC contended that there existed no bias whatsoever and that if situations in a particular case were covered by clauses under the exhaustive International Bar Association Guidelines on Conflicts of Interest in International Arbitration ("**IBA Guidelines**"), it was impermissible to entertain contentions of bias beyond its scope and ambit. Emphasis was laid on judgments of the Supreme Court to elucidate the narrow scope available to courts while dealing with objections to the enforcement of a foreign award under Section 48 of the Act.

Issue

Whether the foreign award was enforceable under Section 48 of the Act given allegations of bias against the arbitral tribunal?

Judgment

Rejecting Avitel's contentions, it was held that: (i) if the facts and circumstances of the case did not give rise to the requirement of disclosure by the arbitrators, there could be no bias at all; and (ii) for an award to be against the public policy of India, it ought to be clearly established as such and in the absence thereof, the award cannot be said to be against the public policy of India and rendered unenforceable.

Accepting HSBC's contentions and its reliance on the judgments of the Supreme Court in ***Vijay Karia & Ors. v. Prysmian Cavi E Sistemi SRL & Ors.***[45] and ***Renusagar Power Co. Ltd. v. General Electric Co.***[46] as regards the tendency of award debtors to indulge in speculative litigation while resisting enforcement of foreign awards and the narrow scope of Section 48 of the Act, it was observed that Avitel indulged in speculative litigation.

Noting the New York Convention and the above judgments of the Supreme Court, it was observed that there existed a pro-enforcement bias in such cases. While adjudicating cases where the element of bias, conflict of interest and duty of disclosure are contended, the court is expected to adopt a pragmatic and commonsensical approach.

The Court further opined that the position of law in the backdrop of the IBA Guidelines is clear and there is no question of any mud sticking to the foreign award in the present case, which deserves to be enforced. The Court acknowledged that the IBA Guidelines can be said to be part of the public policy of India but that Avitel was not able to show any violation of these Guidelines. Avitel's contention that the present circumstances were not specifically covered under the red lists or orange list of the IBA Guidelines, but that there existed a duty of disclosure on the part of the arbitrator, did not find favour with the Court. Even assuming that such a duty existed, it was held that the court would examine such bias under the reasonable third person test under clause 2(b) of the IBA Guidelines. Avitel had to therefore demonstrate from the point of view of a reasonable third person, having knowledge of the relevant facts, that justifiable doubt had arisen as to the impartiality or independence of the arbitrators. Applying the said test, the Court held that Avitel had failed to demonstrate that the chairperson and emergency arbitrator were under a duty of disclosure and that having failed to do so, a likelihood of bias had arisen.

Applying the said position of law to the present case, it was held that HSBC was entitled to enforce the foreign award and that Avitel's objections deserved to be rejected.

Analysis

The High Court of Bombay has adopted a welcome pro-enforcement approach, which amplifies India's efforts to be seen as a pro-arbitration destination. The grounds raised by Avitel were found to be

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too remote and far-fetched to constitute bias. The Court recognised that unsuccessful parties would go to any lengths to resist enforcement and that the approach in dealing with such cases should be circumspect so as to allow award debtors minimal maneuverability in their attempts to escape liability under arbitral awards.

High Court of Calcutta clarifies that allegations of fraud between the parties do not render the dispute inadmissible to arbitration[47]

Brief Facts

Raj Drug Agency, Respondent No. 1, is a sole proprietorship company that deals in pharmaceuticals and medical drugs. The company's sole owner is Respondent No. 2. Respondent No. 2 provided Respondent No. 4, who was an associate of all the Respondents, with the authority to run the business and manage the bank accounts in 2000. This agreement was extended for an additional ten years in 2015. The Petitioner, a Non-Banking Financial Company licensed by the Reserve Bank of India, is engaged in the business of extending customised loan services to its customers.

The parties entered into an agreement dated 28 November 2020 ("**Agreement**") wherein the Petitioner advanced a loan of INR 2.545 million to the Respondents, returnable in 36 monthly instalments of INR 93,934/-. The money was credited to Respondent No. 1's bank account.

A dispute arose between the parties when the Electronic Clearing Service (ECS) issued by Respondent No. 1 to discharge the monthly instalments was dishonoured by the bank as Respondent No. 1's bank account was frozen/blocked. Accordingly, the Petitioner issued a notice under Section 25 of the Payment and Settlement System Act, 2007 demanding payment of the due amount within the statutory period. However, the Respondents failed to repay in the stipulated time and the loan was recalled. The petitioner filed an application under Section 9 of the Act before the High Court of Calcutta ("**Court**"). The Court allowed the application and directed an injunction on the property of the Respondents and the bank account to the extent of the due amount. Thereafter, the Petitioner preferred an application under Section 11 of the Act before the Court for the appointment of an arbitrator. In the Section 11 proceedings, Respondent Nos. 2 and 3 raised allegations of fraud against Respondent No. 4, on the basis of which they argued that they were not parties to the Agreement.

Issue

Whether a mere allegation of fraud *inter se* the parties and the possibility or existence of criminal proceedings in respect of the same would render the dispute non-arbitrable?

Judgment

The Court relied on the judgment of the Supreme Court in ***Rashid Raza v. Sadaf Akhtar***[48] wherein the Supreme Court laid down a two-fold test to determine allegations of fraud for the purpose of Section 11: (1) does the plea permeate the entire contract and above all, the agreement of arbitration, rendering it void?; or (2) whether the allegations of fraud touch upon the internal affairs of the parties *inter se* having no implication in the public domain? The Supreme Court ruled that if the answer to either of the foregoing tests was positive, the reference to arbitration must be denied. Further, the Court relied on the judgment of the Supreme Court in ***Avitel Post Studioz v. HSBC PI Holdings***[49] wherein the Supreme Court had elaborated the above two-fold test.

The Court considered the facts of the case in light of the Supreme Court's established legal framework. It held that a clear inference that the agreement was not entered into by the Respondent Nos. 2 and 3 cannot be drawn because the money was credited to Respondent No. 1's bank account and Respondent No. 2 had given Respondent No. 4 the authority to manage the business, including the bank accounts.

The Court held that allegations of fraud levelled by Respondent Nos. 2 and 3 are *inter se* the Respondents and do not have any public law implications. Thus, the second test is not satisfied. Moreover, the mere

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possibility or existence of criminal proceedings arising out of the same facts would not put the dispute beyond the scope of arbitration as explained in the aforementioned judgments.

Accordingly, the Court allowed the Section 11 application and appointed a sole arbitrator.

Analysis

This decision re-affirms the established position that a court will determine a dispute to be non-arbitrable and refuse to refer it to arbitration or to appoint an arbitrator only in clear circumstances where it specifically finds that the arbitration agreement does not exist, i.e., where the party against whom a breach is alleged has not entered into the arbitration agreement.

High Court of Bombay holds that a term providing for the unilateral appointment of an arbitrator is severable from an otherwise valid arbitration agreement[50]

Brief Facts

The applicants filed three applications before the High Court of Bombay ("**Court**") for the appointment of an arbitrator. As the arbitration clauses in all three matters were similar, the Court decided all the matters together.

The arbitration agreements involved in Misc. Civil Application Nos. 10/2022 and 11/2022 were identical. Clause 13(A)(b) of the arbitration agreements provided that "*no person other than the person appointed by the Competent Authority of CIL/CMD Subsidiary Company (as the case may be) as aforesaid should act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to Arbitration at all*". Similarly, Clause 25(ii)(3) of the subject arbitration agreement in Misc. Civil Application No. 543/2022 provided that "*no person, other than a person appointed by such Chief Engineer CPWD or the administrative head of the CPWD, as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not to be referred to arbitrator at all*".

These clauses, which provided for the unilateral appointment of an arbitrator ("**Disputed Clauses**"), were rendered invalid by the insertion of Section 12(5) by the Arbitration and Conciliation (Amendment) Act, 2015 ("**2015 Amendment**") read with the Supreme Court's decision in ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited***.[51] In Misc. Civil Application No. 543/2022, an arbitrator had been appointed; however, the proceedings were adjourned by the arbitrator on account of a challenge under Section 12(5) of the Act.

Issue

Whether the Disputed Clauses can be enforced so as to render the arbitration agreements invalid?

Judgment

The Court held that the Disputed Clauses cannot be enforced and the mutual intention of the parties to arbitrate their disputes must be upheld. Placing reliance on the Supreme Court's decisions in ***Jagdish Chander v. Ramesh Chander and Ors.***[52] and ***Babanrao Rajaram Pund v. Samarth Builders and Developers and Anr.***,[53] the Court held that when the unequivocal intention and obligation of the parties to refer their disputes to arbitration is manifest from the arbitration agreement, such intention ought to be given effect to.

Therefore, having consented to arbitration, a party cannot be permitted to wriggle out of it on the basis that the concerned term of the arbitration agreement required the arbitration to only be conducted by a particular individual. Instead, such a term is severable and must be severed from the rest of the arbitration agreements, which contained all the essential elements to constitute a valid agreement, in furtherance of the parties' mutual intention to arbitrate their disputes. In the words of the Court:

> "*The choice of getting the dispute resolved by arbitration is one thing and the choice of a specific arbitrator, is another thing and both are severable from each other. In case the choice to get the arbitration proceeding decided by specific person/arbitrator falls through for any*

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reasons whatsoever, as in this case on account of the introduction of Section 12 (5) r/w VIIth Schedule of [the Act], that by itself would not mean that the intention to arbitrate has been wiped out as what is affected by Section 12 (5) r/w VIIth Schedule is the choice of the arbitrator, and nothing else. The intention to arbitrate still remains".

The Court also referred to the full bench decision of the High Court of Delhi ("**DHC**") in ***Ved Prakash Mithal v. Union of India and Ors.***,[54] which involved an arbitration agreement containing a clause analogous to Clause 25(ii)(3). In interpreting such a provision, the DHC held that the contract containing the arbitration agreement is a business document to which it must give business efficacy so as to effectuate the intention of the parties. The DHC also held that it may be impossible to appoint an arbitrator where the office of the Chief Engineer itself is abolished. However, as long as the office exists, there is no insuperable obstacle to the appointment of an arbitrator by the court. The DHC also held that the Chief Engineer performs a ministerial function and cannot be allowed to defeat the arbitration agreement.

Accordingly, the Court allowed all three applications and appointed the same sole arbitrator to arbitrate the disputes in all three matters.

Analysis

By this decision, the Court has taken a decidedly pro-arbitration approach while interpreting the arbitration agreements in question, to give effect to the evident intention and obligation of parties to arbitrate. It is a well-established position that a clause providing for the unilateral appointment of an arbitrator will not render the entire arbitration agreement unworkable. Instead, the court will appoint an arbitrator as long as all the essential elements to constitute a valid arbitration agreement are present.

Supreme Court clarifies status of arbitration proceedings where notice invoking arbitration is issued prior to the 2015 Amendment to the Act[55]

Brief Facts

A civil appeal was filed by M/s Shree Vishnu Constructions ("**Appellant**") before the Supreme Court against an order of the High Court of Telangana dismissing an application under Section 11 of the Act.

The facts leading to the appeal entailed an agreement between the Appellant and Respondents for repairs and additions to the Air Force Academy, Hyderabad. Upon completion of the same, the Appellant received the payment and the Appellant issued a "no further claim certificate". Subsequently, the Appellant sent a notice invoking arbitration to the Respondents and preferred an application under Section 11(6) of the Act before the High Court of Telangana.

Before the High Court, the Appellant had argued that under Section 11(6A) of the Act, as introduced by the 2015 Amendment, the court's jurisdiction is limited to whether there exists an arbitration agreement. On the other hand, the Respondents had argued that as per Section 21 read with Section 26 of the 2015 Amendment, the 2015 Amendment is not applicable in cases where the arbitration began before the 2015 Amendment.

On the basis of the "no further claim certificate" and other facts, the High Court dismissed the application on the ground of accord and satisfaction. Before the Supreme Court ("**Court**"), the Appellant relied on ***Board of Control for Cricket in India (BCCI) v. Kochi Cricket Private Limited and Ors.***[56] to argue that the 2015 Amendment applies even where the arbitration began before the 2015 Amendment. Furthermore, Section 26 applies prospectively and the date of reference would be the date of commencement of judicial proceedings. Therefore, since the Section 11 proceedings began after the 2015 Amendment, the 2015 Amendment should apply.

On the other hand, the Respondents relied on Section 26 and the date of the notice invoking arbitration (which was prior to the 2015 Amendment) to argue that the unamended Act will apply, and not the 2015

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Amendment. The Respondents placed reliance on ***Union of India v. Parmar Construction Company***[57] to argue *inter alia* that where the notice invoking arbitration was sent before the 2015 Amendment, the unamended Act shall apply and not the 2015 Amendment.

Issue

If the notice invoking arbitration is issued prior to the 2015 Amendment, does the unamended Act or the 2015 Amendment apply to the arbitration proceeding?

Judgment

The Court primarily relied on ***Parmar Construction Company*** (*supra*) to reject the appeal. In this case, the Supreme Court had held that the date of issuance of the notice invoking arbitration is to be considered the date of commencement of the arbitration proceeding. Consequently, as per Section 26 of the 2015 Amendment, the 2015 Amendment shall not be applicable and the parties will be governed by the unamended Act. A similar view was also taken in ***Union of India v. Pradeep Vinod Construction Company***[58] and ***S.P. Singla Constructions Private Limited v. State of Himachal Pradesh***,[59] which specifically discussed whether Section 11(6) of the unamended Act would be applicable in a case where the notice invoking arbitration is issued prior to the 2015 Amendment.

The Court further noted that ***BCCI*** (*supra*) relates to court proceedings under Sections 34 and 36 of the Act (as amended by the 2015 Amendment), and any observations made in that case must be construed with respect to court proceedings that have commenced on or after the 2015 Amendment, under those sections only. An application under Section 11(6) of the Act was not the subject of those proceedings. Additionally, the Court noted that there was no issue before the court in ***BCCI*** (*supra*) regarding what would happen in a situation where the notice invoking arbitration is issued prior to the 2015 Amendment but the application under Section 11(6) is filed after the 2015 Amendment.

The Court also held that the decisions in ***Parmar Construction Company*** (*supra*) and ***Pradeep Vinod Construction*** *(supra)* cannot be said to be *per incuriam* or in conflict with the decision in ***BCCI*** (*supra*), as claimed by the Appellant. However, Section 26 of the 2015 Amendment does mention that the 2015 Amendment can be applied to arbitral proceedings that commenced before the 2015 Amendment, if the parties agree. In the present case, the notice invoking arbitration was issued on 26 December 2013 and the application under Section 11(6) was filed on 27 April 2016. By applying the aforementioned principles of law, it was determined that the unamended Act will be applicable to the arbitration proceedings and not the 2015 Amendment.

Therefore, the Court upheld the High Court's dismissal of the application under Section 11(6) of the Act.

Analysis

The Court's decision is significant as it clarifies the scope of challenge under Section 26 of the 2015 Amendment and the ambit of ***BCCI*** (*supra*). It also expands the scope of Section 26 by expanding the section into two halves, each with its own wide meaning. Consequently, the 2015 Amendment would not apply to arbitral proceedings that begin prior to the 2015 Amendment.

In this vein, the Court clarified what needs to be done when the notice invoking arbitration was issued before 2015 Amendment and an application under Section 11(6) was filed after the amendment. In such cases, date of notice invoking arbitration is to be considered as the date of commencement of arbitration proceeding. The Court's reasoning behind this interpretation was to ensure consistency and avoid any potential conflict between the date of commencement of arbitral proceeding and the applicability of the amendment. By considering the notice issuance date as the commencement, it aligns with the intention of Section 26 and avoids retrospective Application of the 2015 Amendment.

Additionally, the Court also discouraged the practice of relying on judgments on entirely different issues when judgments directly on the issue in contention are available, and implied that caution should be exercised while doing so.

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Supreme Court clarifies that the referral court under Section 11(6A) of the Act is required to conclusively decide the existence and validity of the arbitration agreement at the pre-referral stage[60]

Brief Facts

An appeal was filed before the Supreme Court ("**Court**"), against an order of the High Court of Delhi ("**High Court**"), whereby the High Court referred the dispute between the parties to arbitration and appointed a sole arbitrator.

The appellant, Magic Eye Developers Pvt. Ltd., had originally opposed the reference of the dispute to arbitration on the ground that the entire dispute arose from a Memorandum of Understanding ("**MOU-1**"), which did not contain an arbitration clause/agreement. On the other hand, the respondents had contended before the High Court that certain other agreements, *viz.*, two shareholders' agreements ("**SHA-1** and **SHA-2**") and another memorandum of understanding ("**MOU-2**") were interlinked/interconnected with the MOU-1, and the said agreements contained arbitration agreement(s). In light thereof, it was contended that the dispute(s) under the MOU-1 also ought to be referred to arbitration.

The High Court, while relying on ***Vidya Drolia*** (*supra*) (wherein it was held that in an application filed under Section 11(6) of the Act, the court may *prima facie* examine the arbitrability of the dispute), and observing that the issue of arbitrability of the dispute could be addressed by the arbitral tribunal given the complexity of the transaction involved, referred the dispute to arbitration and appointed the arbitrator.

The appellant contended that in terms of Section 11(6A) of the Act, which was inserted by way of the 2015 Amendment, the referral court seized of an application under Section 11(6) of the Act was required to consider and examine the existence of the arbitration agreement, and the said exercise should not be left to the tribunal. In this regard, it was contended that there was a difference between the existence and validity of the arbitration agreement on one hand, and the non-arbitrability of the dispute on the other. Accordingly, it was contended that it was incumbent upon the referral court to conclusively decide the existence and validity of the arbitration agreement before appointing the tribunal, and such exercise should not be left to the tribunal. Additionally, it was contended that the question of existence and validity of the arbitration agreement went to the root of the matter, and accordingly, there was a duty cast on the referral court to protect parties from being forced to arbitrate (in the absence of a valid arbitration agreement).

The respondents on the other hand relied upon the Court's decision in ***Chloro Controls India Private Limited v. Severn Trent Water Purification Inc.***,[61] to contend that all the four agreements in question, *viz.*, SHA-1, SHA-2, MOU-1 and MOU-2 were interconnected and were required to be read together. It was accordingly contended that since the other agreements contained arbitration clause(s), the dispute had been rightly referred to arbitration.

Issue

Whether the referral court at the pre-referral stage is required to conclusively decide the existence and validity of the arbitration agreement between the parties, prior to appointing an arbitral tribunal under Section 11(6) of the Act?

Judgment

The Court clarified that if the dispute/issue with respect to the existence and validity of the arbitration agreement was not conclusively and finally decided by the referral court while exercising pre-referral jurisdiction under Section 11(6), and was instead left to the arbitral tribunal to decide, it would be contrary to Section 11(6A) of the Act. The Court held that it was the duty of the referral court to first conclusively protect parties from being forced to arbitrate, when any arbitration agreement did not exist and/or the arbitration agreement was not valid.

The Court relied upon its decision in ***NTPC Ltd. v. SPML Infra Ltd.***,[62] and observed that the pre-referral

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jurisdiction of the court under Section 11(6) of the Act was very narrow and inheres the following two inquiries:

- Existence and validity of the arbitration agreement, which would include an inquiry into the parties to the agreement and the applicant's privity to the said agreement.
- Arbitrability (or non-arbitrability) of the dispute in question.

The Court held that insofar as the existence and validity of the arbitration agreement is concerned, the said issue went to the root of the matter and accordingly, had to be conclusively and finally decided by the referral court at the pre-referral stage itself. The Court held that the said inquiry should not be left to the arbitral tribunal. In this regard, the Court also placed reliance on its decision in ***N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.***,[63] wherein it was held that the intention behind the insertion of Section 11(6A) was to confine the court acting under Section 11 to examining and ascertaining the existence of an arbitration agreement.

With reference to the inquiry into the arbitrability (or non-arbitrability) of the dispute in question, the Court observed that as laid down in ***Vidya Drolia*** (*supra*) the referral court may even examine the *prima facie* arbitrability of the dispute, in cases where on facts and law the dispute is outright non-arbitrable.

Analysis

The Court's ruling conclusively defines the scope of jurisdiction of the referral court seized of an application under Section 11(6) of the Act. It, in effect, mandates referral courts to render a conclusive and final decision on the existence and validity of the arbitration agreement. The said ruling may go a long way in preventing wastage of public and private resources inasmuch as in cases where the existence and validity of the arbitration agreement itself is in question, the proceedings would effectively be terminated at the pre-referral stage itself without an arbitral tribunal having to be constituted.

High Court of Delhi holds that third-party funders cannot be mulcted with liability, which they have neither undertaken nor are aware of[64]

Brief Facts

Tomorrow Sales Agency Private Limited ("**TSA**") entered into a Bespoke Funding Agreement ("**BFA**"), whereby TSA agreed to provide financial assistance to Respondent Nos. 2 to 5 (collectively referred as "**Claimants**") for pursuing their claim for recovery of damages of approximately INR 2.5 billion against Respondent No. 1, SBS Holdings Inc. ("**SBS**") and Global Enterprise Logistics Pte Ltd., Singapore ("**GEL**") for breach of their contractual undertaking.

The Claimants had instituted arbitral proceedings under the Singapore International Arbitration Centre Rules. An arbitral award dated 22 December 2022 ("**Award**") was delivered by the tribunal, rejecting the Claimants' claims against SBS with certain amounts awarded in favour of SBS.

Thereafter, SBS had filed a petition under Section 9 of the Act before the High Court of Delhi ("**Court**") against the Claimants as well as TSA to secure the awarded amount. SBS had prevailed in securing interim measures in terms of an order dated 7 March 2023 passed by the Ld. Single Judge. Aggrieved by this order, TSA filed an appeal under Section 37 of the Act.

Issue

Whether a person that was not a party to the arbitral proceedings or the award (rendered in respect of disputes *inter-se* the parties to the arbitration), could be forced to pay the amount awarded against a party to the arbitration?

Judgment

The Court was unable to accept that it was a logical sequitur that a third-party beneficiary, who may be bound by an arbitration agreement, would necessarily be bound by the arbitral award and obliged

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to discharge the same as if it was the party against whom the award was made. A third party may be bound by the arbitral award only if it had been compelled to arbitrate and was a party to the arbitration proceedings.

The Court held that, indisputably, even a signatory to an arbitration agreement against whom an arbitration agreement was not invoked and was not joined as a party to the arbitral proceedings, would not be bound by the arbitral award rendered pursuant to the said proceedings. Thus, there was no question of enforcing an arbitral award against a non-signatory, who was not a party to the arbitral proceedings.

Further, the Court held that consent is fundamental to arbitration. Thus, the principles on which non-signatories may be held to be bound by the arbitration agreement have no application where the signatories to an arbitration agreement have expressly agreed to the contrary.

The Court held that it was trite law that a decree is to be executed in its term and it is not open for the executing court to go behind the decree. As TSA was not a party to the Award, it cannot be treated as a judgment-debtor. Further, Section 9 of the Act is available in aid of enforcement of the arbitral award. However, the Award in this case was not against TSA and therefore, cannot be enforced against TSA under Section 36(1) of the Act.

The Court also observed that: (i) TSA did not accept that it was indebted to the Claimants; and (ii) none of the clauses of the BFA provide any obligation for TSA to fund an adverse award.

Interestingly, the Court observed that third-party funding is essential to ensure access to justice. In absence of third-party funding, a person having a valid claim would be unable to pursue the same for recovery of amounts that may be legitimately due. It is essential for the third-party funders to be fully aware of their exposure. They cannot be mulcted with liability, which they have neither undertaken nor are aware of. Any uncertainty in this regard would dissuade third-party funders to fund litigation.

The Court also cautioned that it was necessary to ensure that there is transparency and that the third-party funding is not exploitative. The fact that a party is funded by a third-party is a relevant fact in considering whether an order for securing the other party needs to be made. However, permitting enforcement of an award against a non-party, which has not accepted any such risk, is neither desirable nor permissible. Whilst there is no cavil that certain rules are required to be formulated for transparency and disclosure in respect of funding arrangements in arbitration proceedings, it would be counterproductive to introduce an element of uncertainty by mulcting third party funders with a liability which they have not agreed to bear.

The Court also distinguished UK Courts' judgments and held that there were no rules applicable to the present proceedings for awarding costs against third parties. Even Rule 2 of Order XXA of the CPC provides that the costs shall be in accordance with the rules as the High Court may make in that behalf. The Court has not framed any rule which contemplates recovery of costs from persons who are not parties to the suit/action. Therefore, if a person proposes to pursue any claim against another person, it would be necessary for the said claimant to institute a substantive action in that regard.

Therefore, the Court allowed the appeal and set aside the Ld. Single Judge's order dated 7 March 2023, to the extent it was directed against TSA.

Analysis

The Court has provided the much-needed clarification on the liability of third-party funders in India and held that third-party funders who are not a party to the arbitral proceedings or the award, cannot be held liable for the awarded amount merely because they have funded a party in arbitral proceedings. In absence of statutory recognition of third-party funding in India, this judgment will go a long way in enabling third-party funding in arbitration and ensuring access to justice, while providing immunity to the funder from paying the awarded amount.

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High Court of Delhi holds that insufficiently stamped agreements, which have been admitted into evidence, will not impact the enforcement or validity of arbitral awards[65]

Brief Facts

ARG Outlier Media Private Limited ("**Petitioner**") and HT Media Limited ("**Respondent**") had executed an 'Agreement of Barter' ("**Agreement**"), in relation to which disputes arose between the parties. The sole arbitrator ("**Arbitrator**"), adjudicating the disputes between the parties, had passed an arbitral award dated 17 February 2023 ("**Award**") directing the Petitioner to pay the Respondent a sum of INR 50 million along with *pendente lite* and post-award interest as well as costs.

The Award was challenged by the Petitioner under Section 34 of the Act before the High Court of Delhi ("**Court**"). As per the Petitioner, after appending their signatures on the Agreement in New Delhi, the Respondent had transmitted the Agreement to Mumbai, thus creating a requirement for the Agreement to be stamped in accordance with the Maharashtra Stamp Act, 1958 ("**MSA**"), which had not been fulfilled. Accordingly, the Petitioner challenged the Award, *inter alia*, contending that since the Agreement was insufficiently stamped, it should not have been acted upon by the Arbitrator.

Issue

Whether the Agreement should have been impounded by the Arbitrator on account of it being insufficiently stamped?

Judgment

The Court referred to an order passed by the Arbitrator dated 13 February 2020 ("**Section 16 Order**"), disposing of the Petitioner's application under Section 16 of the Act, where the Petitioner had challenged the admissibility of the Agreement on the ground of improper stamping. The Arbitrator had found in the Section 16 Order that the Agreement was properly stamped, observing that: (a) it was agreed that the Agreement had been executed in New Delhi; (b) everything under the Agreement was to happen in New Delhi; and (c) the document was even signed in New Delhi by one of the parties.

The Court held that the Arbitrator's finding was a mixed question of facts and law, and that it was settled law that the court exercising jurisdiction under Section 34 of the Act does not sit as a court of appeal against the arbitral tribunal's findings. The Court held that its jurisdiction under Section 34 was limited and a contravention of a statute that was not linked to a public policy or public interest, could not be a ground for setting aside an award. Resultantly, the Court found that in exercise of its limited jurisdiction, it could not interfere with the Award even if the Arbitrator had made a mistake in interpreting the MSA.

Further, the Court observed that no challenge was made by the Petitioner on the ground that the Agreement was not properly stamped in its reply to the Respondent's legal notices or in its reply to the Respondent's petition under Section 11 of the Arbitration Act. Even in its affidavit of admission/denial of the Respondent's documents in the arbitration proceedings, the Agreement was admitted and no such objection to its admissibility in evidence was taken by the Petitioner.

The Court also observed that Section 36 of the Stamp Act provides that where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61 of the Stamp Act,[66] be called in question at any stage of the same suit or proceeding or on the ground that the instrument has not been duly stamped. In this regard, the Court referred to ***Javer Chand & Ors. v. Pukhraj Surana***.[67] In this decision, the Supreme Court had relied upon Section 36 of the Stamp Act and held that once the court, rightly or wrongly, decided to admit the document in evidence, such an order was not liable to be reviewed or revised by the same court or even by a court of superior jurisdiction.

Further, the Court also referred to its earlier judgment in ***SNG Developers Limited v. Vardhman Buildtech Private Ltd***.[68] In this decision, the Court had held that the petitioner, having admitted the copy of the agreement filed by the respondent without reservation at the stage of admission and denial of documents, could not be allowed to raise the ground of insufficient stamping at a later stage.

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Accordingly, the Court held that since the Petitioner had failed to utilise the opportunity provided by the Arbitrator to re-agitate the issue of the Agreement not being properly stamped in the final arguments, the Petitioner was debarred from challenging the Award on this ground.

The Court distinguished the position that an improperly stamped agreement could not be admitted in evidence as held by the Supreme Court in ***N.N. Global*** (*supra*) by holding that once an agreement has been admitted in evidence by the arbitrator, the award passed by relying on such agreement cannot be faulted on this ground.

It was further held that since the Court does not act as a court of appeal against the Award, it may not even have the powers vested in Section 61 of the Stamp Act. Even assuming that Section 61 of the Stamp Act applied, it was observed that in view of proviso (b) to Section 61 of the Stamp Act,[69] the Court would only impound the document and refer it to the Collector of Stamps for adjudication of the proper stamp duty and penalty, but the same shall not, in any manner, affect the enforcement or the validity of the Award.

Analysis

This judgment is an important step towards making the arbitration regime in India more conducive to all stakeholders, especially after the Supreme Court's judgment in ***N.N. Global*** (*supra*), which had raised concerns that it would impact the arbitration landscape of India. ***N.N. Global*** (*supra*) added an additional layer of scrutiny by the courts, thereby undermining confidence in India-seated arbitrations. The Court has clarified that arbitral awards arising from disputes where insufficiently stamped agreements have been admitted into evidence, are not liable to be set aside under the Act. As a result, award debtors will be deterred from raising objections in petitions under Section 34 of the Act regarding insufficiency of stamp duty on agreements admitted into evidence by arbitral tribunals.

High Court of Delhi clarifies the scope of Section 34 of the Act[70]

Brief Facts

The National Highways Authority of India and Trichy Thanjavur Expressway Ltd. filed cross petitions under Section 34 of the Act before the High Court of Delhi ("**Court**"), seeking the setting aside of an award dated 7 August 2022 as corrected *vide* order dated 15 November 2022.

Issue

Whether courts are empowered to partially set aside an arbitral award under Section 34 of the Act?

Judgment

The Court first considered that under the proviso to Section 34(2)(a)(iv), courts have powers to apply the principle of severability. The Court stated that the proviso is not only an acknowledgement that partial setting aside is not a concept foreign to its powers under Section 34, but also that parts of an award can be legitimately viewed separately and distinctly. It observed that an arbitral award comprises different decisions rendered on multiple claims, each based on distinct facts and separate obligations even though they arise from a composite contract. If such claims are separate, complete and self-contained in themselves, any decision rendered thereon would be able to stand and survive irrespective of an invalidity, which might be present in other decisions. As long as a claim is not subordinate, in the sense of being entwined or interdependent upon another claim, a decision rendered on the same by the tribunal would constitute an award in itself.

Hence, once an award is understood to be consisting of separate components, each standing separately and independent of the other, the Court did not find any hurdle in applying the doctrine of severability and accordingly, partially setting aside the award. The Court clarified that the invocation of such a power would be valid within the scope of Section 34 of the Act as it is still within the confines of the "setting aside" powers of the Court.

The Court considered the precedent established by the Supreme Court in ***NHAI v. M. Hakeem***,[71] wherein

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it was held that a court under Section 34 would not have the powers to "modify" the arbitral award. However, the Court distinguished the modification of an arbitral award, which would mean a variation or modulation of the ultimate relief accorded by a tribunal, from the partial setting aside of an award. It noted that partially setting aside an award would not amount to a modification or variation of the relief in the award. Such exercise of power by the court would be confined to annulling or "setting aside" only an offending part of the award.

Thus, the Court ruled that under Section 34, courts have the power to partially set aside arbitral awards, while cautioning that the part proposed to be annulled should stand independent from other parts of the award.

Analysis

By passing the present judgment, the Court has provided clarity on the process of partially setting aside awards and achieved the ideal balance between limiting judicial interference with arbitral awards and averting injustice. However, further clarity is required on what kinds of claims can be set aside by courts while partially setting aside awards to avoid situations of overarching assumption of powers by courts under Section 34 of the Act.

High Court of Delhi provides directions on how courts should deal with unstamped or insufficiently stamped arbitration agreements under Section 11(6A) of the Act in light of the Supreme Court's decision in N.N. Global and the Stamp Act[72]

Brief Facts

In this case, the High Court of Delhi ("**Court**") heard several arbitration petitions filed under Section 11 of the Arbitration Act, which had been tagged together because they all concerned arbitration agreements that were admittedly unstamped or insufficiently stamped. The Court considered issues relating to "*receiving evidence*", i.e., the arbitration agreement in a petition filed under Section 11 in light of, and in consonance with, the decision of the Constitution Bench of the Supreme Court in ***N.N. Global*** (*supra*).

Issues

Issue (i): Whether the court is mandatorily required to impound an Unstamped Instrument or an Unstamped Arbitration Agreement in Section 11 proceedings?

Issue (ii): Whether it is mandatory to file the original arbitration agreement/instrument with the petition under Section 11 of the Arbitration Act?

Issue (iii): What is the procedure after the Unstamped Instrument or an Unstamped Arbitration Agreement is impounded?

Issue (iv): Whether the court can give time-bound directions to the Collector of Stamps ("**Collector**") to perform their adjudicatory functions under the Stamp Act?

Issue (v): Whether the arbitration agreement must be stamped in accordance with the local laws/stamping rate prescribed at the place where the arbitration agreement/instrument was executed or where the petition under Section 11 of the Arbitration Act has been filed?

Judgment

Issue (i): The Court relied on ***N.N. Global*** (*supra*) to hold that the function performed by the court in Section 11 proceedings is akin to "*receiving evidence*". Therefore, the court has to necessarily proceed in accordance with Section 33 of the Stamp Act and impound the Unstamped Instrument or Unstamped Arbitration Agreement. The Court also clarified that as per Section 33(2)(b) of the Stamp Act, the court can delegate this task of impounding to an officer appointed by the court.

Issue (ii): The Court reiterated that it is incumbent on the petitioner in Section 11 proceedings to file the original Unstamped Instrument or Unstamped Arbitration Agreement. The Court noted that only

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the original can be treated as an 'instrument' under Section 2(14) of the Stamp Act. However, where the arbitration agreement/instrument is duly stamped, the original need not be filed provided that: (a) the true/certified copy indicates that it has been duly and properly stamped; (b) there is a clear and cogent statement to that effect in the Section 11 petition; and (c) the same is not controverted by the opposite party. The Court clarified that if any issue arises concerning the sufficiency of stamping, it will be open for the court to require the concerned party to file the original arbitration agreement/instrument.

Issue (iii): The Court held that it would be open for the court, as may be deemed expedient depending on the facts and circumstances, to send the Unstamped Instrument or Unstamped Arbitration Agreement to the concerned Collector. Under Section 40 of the Stamp Act, the Collector will require payment of proper stamp duty and penalty, and subsequently certify the same by endorsement. Once endorsed, the arbitration agreement/instrument will be admissible in evidence for the purposes of Section 11 proceedings. Alternatively, the Court may require deposit of the requisite stamp duty and penalty with the court itself under Section 35(a) of the Stamp Act and thereafter, take steps under the Stamp Act such that the arbitration agreement/instrument is admissible for the Section 11 proceedings. These steps would include sending the authenticated copy of the endorsed arbitration agreement/instrument, after due payment has been made, to the Collector along with the certificate stating the amount of duty levied and such amount.

The Court noted that it would be consistent with ***N.N. Global*** (*supra*) for the court to itself collect the requisite stamp duty, together with ten times the proper duty or deficient portion in terms of Section 35(a) of the Stamp Act, particularly when the quantum of stamp duty payable is not in dispute. This would also facilitate disposing of Section 11 petitions expeditiously, as mandated by Section 11(13) of the Arbitration Act. However, the Court cautioned that while exercising powers under Section 35 of the Stamp Act, the court must adhere to the law laid down by Supreme Court in ***Black Pearl Hotels Pvt. Ltd. v. Planet M. Retail Ltd.***[73] This would mean that the court cannot delegate the duty of determining the nature of the instrument and the payable stamp duty. However, the court can delegate the task of preparing a report on this to an officer of the court, based on which the court can make the necessary final determination in respect of the payable stamp duty and penalty.

Issue (iv): The Court held that where the court has sent the original of the impounded instrument to the Collector, it shall be open for the court to issue time bound directions to the Collector to perform the adjudicatory functions in terms of the relevant provisions of the Stamp Act to ensure that the statutory mandate under Section 11(13) of the Arbitration Act is not defeated.

Issue (v): Relying on the Supreme Court's decision in ***New Central Jute Mills Co. Ltd. v. State of W.B.***,[74] the Court held that the Unstamped Instrument or Unstamped Arbitration Agreement needs to be stamped in accordance with the laws of the state in which it is executed. If the petition under Section 11 is filed in another state where higher stamp duty is payable, then the petitioner is liable to pay the deficient duty.

Analysis

This decision is timely in that it helpfully clarifies several practical questions arising from the decision in ***N.N. Global*** (*supra*). The Court's directions effectively explain the procedure and modalities for dealing with an Unstamped Instrument or an Unstamped Arbitration Agreement in Section 11 proceedings. Further, acknowledging its mandate to expeditiously dispose of Section 11 proceedings, the Court has held that courts may themselves collect stamp duty and penalty. This could help address some of the concerns raised with ***N.N. Global*** (*supra*), namely that the adjudication of stamp duty by the Collector would slow down the appointment of arbitrators under Section 11 of the Arbitration Act.

Supreme Court holds that pre-deposit clause for invoking arbitration and clause empowering one party to appoint the sole arbitrator are invalid[75]

Brief Facts

Lombardi Engineering Limited ("**Petitioner**") entered into a contract with Uttarakhand Jal Vidyut Nigam Limited, a wholly owned corporation of the Government of Uttarakhand ("**Respondent**").

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Clause 55 of the General Conditions of Contract ("**GCC**") set out the arbitration clause between the parties which provided that *"the party initiating the arbitration claim shall have to deposit 7% of the arbitration claim as security deposit...for claim amount upto 10 Crores, the case shall be referred to sole arbitrator to be appointed by the Principal Secretary/Secretary (Irrigation), GoU..."*

Following certain disputes, the Petitioner preferred an application under Section 11(6) of the Act for appointment of an arbitrator.

Issues

Issue (i): Whether the dictum as laid down in ***ICOMM Tele Limited v. Punjab State Water Supply and Sewerage Board***[76] can be made applicable to the case in hand, more particularly when Clause 55 of the GCC provides for a pre-deposit of 7% of the total claim for the purpose of invoking the arbitration clause?

Issue (ii): Whether there is any direct conflict between the decisions of the Supreme Court in ***S.K. Jain v. State of Haryana***[77] and ***ICOMM*** (*supra*)?

Issue (iii): Whether the Court while deciding a petition filed under Section 11(6) of the Act can hold that the condition of pre-deposit stipulated in Clause 55 of the GCC is violative of the Article 14 of the Constitution of India ("**Constitution**") for being manifestly arbitrary?

Issue (iv): Whether Clause 55 of the GCC empowering the Principal Secretary/Secretary (Irrigation) to appoint an arbitrator of their choice is valid?

Judgment

Issues (i) and **(ii)**: In ***S.K. Jain*** (*supra*), the arbitration clause provided that the pre-deposit sum deposited by the contractor shall be adjusted against the costs, if any, awarded by the arbitrator against the claimant party and the balance remaining after such adjustment will be refunded to the contractor. The Court dismissed the challenge to the order passed in a writ petition by the appellant, where it had prayed to quash the memo directing it to deposit 7% of the claimed amount.

In ***ICOMM*** (*supra*), the Court distinguished ***S.K. Jain*** (*supra*) by holding that the clause therein makes it clear that in all cases the deposit is to be 10% of the amount claimed and that refund can only be in proportion to the amount awarded with respect to the amount claimed, the balance being forfeited and paid to the other party, even though that other party may have lost the case. It was held that unless it is first found that the litigation is frivolous, exemplary costs or punitive damages do not follow. Additionally, the pre-deposit clause would discourage arbitration by deterring parties from invoking arbitration.

The Court referred to the High Court of Punjab & Haryana's judgments in ***The Assan Co-Op. L & C Society v. Haryana Vidyut Prasaran Nigam Ltd.***,[78] ***Garg and Company v. State of Haryana & Ors.***,[79] and ***Brij Gopal Construction Co. Pvt. Ltd. v. Haryana Shehri Vikas Pradhikaran***,[80] to hold that ***ICOMM*** (*supra*) as well as ***S.K. Jain*** (*supra*) were looked into and the High Court thought fit to follow the dictum as laid in **S.K. Jain** (*supra*). As per the Supreme Court, in ***Bathinda Railway Transhipment Cooperative L&C Society Ltd. v. Punjab Mandi Board & Ors.***,[81] the High Court of Punjab & Haryana took into consideration the decisions of this Court in the case of ***ICOMM*** (*supra*) as well as ***S.K. Jain*** (*supra*) but followed the dictum as laid down in the former as the relevant arbitration clause in the said matter was almost identical to the one in ***ICOMM*** (*supra*).

The Court further noted there was no conflict between ***S.K. Jain*** (*supra*) and ***ICOMM*** (*supra*), as the relevant arbitration clauses that fell for the consideration of this Court in both the cases stood completely on a different footing.

Based on the above, it was held that with respect to the 7% pre-deposit condition contained in Clause 55 of the GCC, nothing had been provided as to how this amount of 7% is to be ultimately adjusted at

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the end of the arbitral proceedings. This vague and ambiguous condition of 7% pre-deposit of the total claim makes the same more vulnerable to arbitrariness thereby violating Article 14 of the Constitution. Relying on ***ICOMM*** (*supra*), the Court held that even if the claim of the petitioner herein is ultimately found to be frivolous the arbitral tribunal can always award costs in accordance with Section 31A of the Act. Therefore, the Court held that Clause 55 of the GCC must be ignored.

Issue (iii): The Court referred to ***TRF Limited v. Energo Engineering Projects Limited***,[82] and ***Perkins Eastman Architects DPC and Another v. HSCC (India) Limited***[83] which had stated that when a person is ineligible to act as an arbitrator by operation of law, they cannot nominate another as an arbitrator, and accordingly held that the phrase '*operation of law*' covers the Act, the Constitution and any other Central or State law. For an arbitration clause to be legally binding, it has to be in consonance with the '*operation of law*' which includes the Grundnorm i.e., the Constitution.

The Petitioner cannot be prohibited from claiming that the pre-deposit clause is arbitrary and fell foul of Article 14 of the Constitution in a Section 11(6) petition on grounds that they had consented to the pre-deposit clause at the time of execution of the agreement.

Issue (iv): As per the Court, the neutrality of arbitrators mentioned in the Law Commission of India's Report No. 246 is relatable to impartiality and independence of the arbitrators, without any bias towards any of the parties. The main purpose of amending Section 12 by virtue of the 2015 Amendment was to provide for neutrality of arbitrators. The amended provision is enacted to identify the "*circumstances*" which give rise to "*justifiable doubts*" about the independence or impartiality of the arbitrator. The Seventh Schedule mentions those circumstances which would attract the provisions of Section 12(5) and nullify any prior agreement to the contrary.[84] Therefore, the Court held that the stipulation empowering the Principal Secretary (Irrigation), GoU to appoint a sole arbitrator should be ignored and proceeded to appoint an independent arbitrator.

Analysis

The Court has finally laid down to rest the ambiguity surrounding the application of ***S.K. Jain*** (*supra*) and ***ICOMM*** (*supra*) regarding pre-deposit clauses for invoking arbitration and held that there is no conflict the two judgments as their areas of operation are entirely different. Additionally, the Court has shed light on the hierarchy of applicable laws in determining the validity of an arbitration agreement in the following order: (i) the Constitution; (ii) the Act and any other Central/State Law; and (iii) arbitration agreement entered into by the parties in light of Section 7 of the Act.

Past Events

GAR Live, Mumbai (18 February 2023)

GAR Live was held in Mumbai on 18 February 2023. Shardul Amarchand Mangaldas & Co was a co-sponsor. **Shreya Gupta (Partner)** participated 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, Singapore (22-24 February 2023)

Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution) and **Ila Kapoor (Partner)** attended the IBA Asia Pacific Regional Forum Biennial Conference in Singapore. **Ila Kapoor (Partner)** chaired a panel discussion on "*Navigating dispute resolution clauses*". The panel discussed issues arising from poorly drafted arbitration clauses and how the law in different jurisdictions has evolved to deal with them.

Delos Remote Oral Advocacy Programme (ROAP) (27 February 2023)

Delos Dispute Resolution conducted the 2023 edition of ROAP Asia, an advanced oral advocacy training programme. **Tejas Karia (Partner and Head, Arbitration)** was a faculty member in the programme and conducted a session on cross-examination.

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ICAI Mock Arbitration (1 March 2023)

The Institute of Chartered Accountants of India (ICAI) conducted a mock arbitration for chartered accountants where **Avlokita Rajvi (Principal Associate)** and **Surabhi Lal (Senior Associate)** were the lead speakers.

Vis Pre-Moot Competition (5 March 2023)

Ananya Aggarwal (Counsel) judged the semi-finals of the 13th Indian Vis Pre-Moot Court Competition.

Bettering Results Workshop on Arbitration Practice (24 March 2023)

Bettering Results conducted a two-day workshop on Arbitration Practice, where **Tejas Karia (Partner and Head, Arbitration)** was the speaker in the session on "*Concepts, Definition and Principles involved in Arbitration*".

SIAC Gujarat Conference, GIFT City (25 March 2023)

The Singapore International Arbitration Centre (SIAC) organised its annual conference in Gujarat on "*Advancing Business Interests Through Efficient Resolution of Global Disputes*". **Tejas Karia (Partner and Head, Arbitration)** moderated the panel discussion on "*Demystifying the value of Institutional Arbitration*".

NUJS Mediation Competition (25 March 2023)

Surabhi Lal (Senior Associate) judged the quarter final rounds of the National University of Juridical Sciences (NUJS) Mediation Competition 2023.

Paris Arbitration Week, Paris (27-31 March 2023)

The Paris Arbitration Week was held from 27 to 31 March 2023. **Ila Kapoor (Partner)** and **Siddhartha Datta (Partner)** were panellists in the sessions on "*Doing Business in India – Risks and Rewards*" and "*Post M&A and Shareholder Disputes: Initiating arbitration, legal and quantum issues with respect to India and other emerging markets*".

RGNUL Guest Lecture (1 April 2023)

Prakhar Deep (Principal Associate) delivered a guest lecture at Rajiv Gandhi National University of Law, Patiala (RGNUL) on "*What all compensation / damages can a party claim in a construction contract dispute?*"

GAR Academy Course (6 April 2023)

The GAR Academy conducted a course on the "*Fundamentals of International Arbitration*", where **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the session on "*Post-Hearing & Costs Submissions*".

SYAR-National Negotiation Competition (15 April 2023)

Ananya Aggarwal (Counsel) provided guidance as an assessor at the 6th Society for Young Advocates and Researchers (SYAR) National Negotiation Competition organised in collaboration with Luthra and Luthra Law Offices, S&A Law Offices and Presolv360.

MCIA Conference, Ahmedabad (22 April 2023)

The Mumbai Centre for International Commercial Arbitration (MCIA) organised its 3rd annual conference on "*International Commercial Arbitration: The Dawn of a New Age*". **Tejas Karia (Partner and Head, Arbitration)** moderated a session on the "*Will privacy and Artificial Intelligence put a spoke in the wheel of technology in dispute resolution*" and **Shruti Sabharwal (Partner)** was a panellist in a session on "*Appointment of Arbitrators: More Disclosures – More Challenges*". Shardul Amarchand Mangaldas & Co was a co-sponsor of this event.

Young ITA Webinar (25 April 2023)

The Young Institute for Transnational Arbitration (ITA) organised a webinar for the Asia and India regions

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on "*New Era of Dispute Resolution: Innovation through Tradition*". **Juhi Gupta (Principal Associate)** was a panellist at this event.

IIAC-IIM Rohtak Summit (30 April 2023)

The India International Arbitration Centre (IIAC) and the Indian Institute of Management (IIM), Rohtak organised a summit on "*Arbitration and Dispute Resolution: Creating Conducive Business Climate*". **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** was a panellist in the session on "*Discussing best practices in commercial arbitration*".

GC Manthan & India International Legal Conclave (5 May 2023)

The Corporate Counsel Association of India organised its annual international legal conclave. **Pallavi Shroff (Managing Partner and National Practice Head, Dispute Resolution)** moderated a session on "*Role of AI in arbitration and challenges in the use of technology*".

APCAM International ADR Summit, Delhi (6 May 2023)

The Asia Pacific Centre for Arbitration & Mediation (APCAM) organised its first International ADR Summit where **Tejas Karia (Partner and Head, Arbitration)** was a panellist in the session on "*Moving Beyond Borders: The Critical Role of Institutions in Facilitating International Business Resolutions*".

IDRC Conclave (13 May 2023)

The Indian Dispute Resolution Centre (IDRC) organised the 2nd edition of the annual "*Arbitrate in India Conclave*" in collaboration with the Bar Council of India's India International University of Legal Education and Research, at which **Tejas Karia (Partner and Head, Arbitration)** was a speaker.

LIDW, London (15-19 May 2023)

Ila Kapoor (Partner), **Binsy Susan (Partner)** and **Shreya Gupta (Partner)** attended the London International Disputes Week (LIDW), and together with Norton Rose Fulbright, hosted a reception and a fireside chat with Mr. Harish Salve KC.

NLSIU-Trilegal International Arbitration Conference, Bengaluru (18 May 2023)

Shruti Sabharwal (Partner) spoke on "*Proper Law of Arbitration Agreements*" at the National Law School – Trilegal International Arbitration Conference at the National Law School of India University (NLSIU). She also judged the quarter final rounds of the NLS-Trilegal International Arbitration Moot Court Competition at NLSIU.

Lex Mundi Conference, Busan (18-19 May 2023)

Lex Mundi organised a 'Litigation, Arbitration and Dispute Resolution Group' gathering in Busan, South Korea. **Siddhartha Datta (Partner)** was a panellist in the discussion on "*International Arbitration: Learning from experience and sharing best practices*" and **Karan Joseph (Partner)** was a panellist in a discussion on "*Rise of Mediation and other ADRs in the context of the Singapore Mediation Convention*".

IITArb International Conference, Delhi (20 May 2023)

The Indian Institution of Technical Arbitrators (IITArb) organised its 5th International Conference on Construction Arbitration, where **Tejas Karia (Partner and Head, Arbitration)** was a panellist in the session on "*Evidentiary Proceedings in Construction Arbitration*".

Bettering Results Course (21 May 2023 and 3 June 2023)

Bettering Results conducted the 'International Commercial Arbitration Course' where **Tejas Karia (Partner and Head, Arbitration)** spoke in the sessions on "*Arbitrators and Arbitral Tribunals*".

LBSNAA Training Program, Mussoorie (22 May 2023)

The Lal Bahadur Shastri National Academy of Administration (LBSNAA) conducted a training program on "*Making Arbitration Work for the Government*" where **Tejas Karia (Partner and Head, Arbitration)** was the speaker.

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YAWP-TIAC Webinar (23 May 2023)

The Young ArbitralWomen Practitioners (YAWP) and Tashkent International Arbitration Centre (TIAC) conducted a webinar as a part of YAWP's 'Meet the Arbitral Institution Series'. **Juhi Gupta (Principal Associate)** moderated this event.

Webinar on challenging arbitral awards (24 May 2023)

Surabhi Lal (Senior Associate) conducted a webinar for the 3rd year B.A., LL.B. (Hons.) students at NLSIU on "*Challenge to an arbitral award*". The session covered practical aspects involved in pursuing a challenge to an arbitral award, stay of an award pending such a challenge, and recent decisions on these topics.

Economic Times Masterclass (25 May 2023)

Shruti Sabharwal (Partner) conducted a webinar on "*Advanced Contracting Issues*" at the Economic Times Masterclass. This was a part of "*Economic Times' ETMasterclass: Executive Training Programme*" that was attended by in-house legal counsel of a wide variety of companies.

ICA Session, London (5 June 2023)

The Indian Council of Arbitration (ICA) organised a technical session on "*The Indian Legal Market Opens Up: Are India & UK Ready?*" at the ICA Conference on "*Arbitrating Indo-UK Commercial Disputes – 2nd Edition*" in London. **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the session.

TL4 Conference, London (7 and 8 June 2023)

'Thought Leaders 4 Disputes' (TL4) organised a two-day conference in London. **Tejas Karia (Partner and Head, Arbitration)** delivered the Chair's Welcome and Closing, and moderated the Fireside Chat on "*The Judges' Perspectives on the Future Direction of Indian Courts*" on 7 June 2023. He was also a speaker in the session on "*Analysing the Growth of Commercial Dispute Resolution in India*" on 8 June 2023.

White & Case Discussion, London (8 June 2023)

White & Case organised a discussion in London, where **Tejas Karia (Partner and Head, Arbitration)** spoke on "*Interim Reliefs in Unstamped Arbitration Agreements – On Shaky Ground*".

CIArb India Webinar (17 June 2023)

CIArb India organised a webinar on "*From Aspirant to Arbitrator*" where **Tejas Karia (Partner and Head, Arbitration)** was a speaker.

Lawyers Round Table Discussion (20 June 2023)

Lawyers Round Table hosted a discussion on "*Use of AI in Dispute Resolution – Are We Ready?*", where **Tejas Karia (Partner and Head, Arbitration)** was a speaker.

Global Forum on International Arbitration, Barcelona (5-7 July 2023)

Ila Kapoor (Partner) attended the Global Forum on International Arbitration organised by Cambridge Forums in Barcelona. She presented her views on various topics that were discussed during the conference like arbitrator's etiquette, interim relief and third-party funding, sanctions and international arbitration, and practical tips on practice management issues.

LBSNAA Arbitration Workshop (7 July 2023)

The LBSNAA conducted a workshop for civil servants where **Tejas Karia (Partner and Head, Arbitration)** conducted a session on "*Concepts, Definition and Principles involved in Arbitration*" and an exercise on "*Drafting of Arbitration Clause*".

CIArb India Annual Conference, Delhi (15 July 2023)

CIArb India organised its Annual Conference on "*Corporate Dispute Resolvers: The Role of General Counsel, Professionals & the Industry*". **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the session on "*How CIArb as an Institution helps in promoting and assisting in developing an eco-system of ADR.*"

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AS Solutions Webinar (15 July 2023)

Dushyanth Narayanan (Associate) spoke at a webinar hosted by AS Solutions for businesspersons on "*Contract Drafting & Dispute Resolution*".

Bangalore Dispute Resolution Conclave, Bengaluru (23 July 2023)

Karan Joseph (Partner) delivered the inaugural address on "Bengaluru as a Dispute Resolution Hub" at the Bangalore Dispute Resolution Conclave hosted by the School of Law, Christ University in association with the International Arbitration and Mediation Centre, Hyderabad.

GHCAA Arbitration Training Program, Ahmedabad (30 July 2023)

Tejas Karia (Partner and Head, Arbitration) was a speaker in two sessions of the arbitration training program organised by the Gujarat High Court Advocates Association (GHCAA), wherein he discussed enforcement of foreign awards and best practices in arbitration, such as chess-clock method and transcription.

DIAC-NLU, Delhi Diploma Course (4 August 2023)

Shreya Jain (Principal Associate) presented a course lecture on 'Selection of Arbitrators' for the Online Diploma Course in Law and Practice in Arbitration, organised by the Delhi International Arbitration Centre (DIAC) and National Law University (NLU) Delhi on 4 August 2023.

Legally Speaking with Tarun Nangia (8 August 2023)

Tejas Karia (Partner and Head, Arbitration) was a speaker in the discussion on "*Problems faced in enforcement of awards and suggested solutions*", hosted by Tarun Nangia from NewsX.

MNLU Oxford-Style Debate (18 August 2023)

The Centre for Arbitration and Research of the Maharashtra National Law University, Mumbai (MNLU) organised an online Oxford-style debate where **Tejas Karia (Partner and Head, Arbitration)** argued against the motion that "*India Needs a Standalone Law on Domestic Arbitration*".

Legal Era Conclave, Delhi (24, 26 August 2023)

The 12th Annual Legal Era India Conclave was a three-day conference where global experts from more than 30 countries discussed the convergence of business and law. **Tejas Karia (Partner and Head, Arbitration)** moderated the session on "*Why Indian arbitration is unable to overcome the baggage of civil suits*?" and Shardul Amarchand Mangaldas & Co was the session partner. **Ila Kapoor (Partner)** was a panellist in the session on "*Global Trends in Dispute Resolution*".

SIAC Symposium, Singapore (28 August 2023)

SIAC organised its annual Symposium in Singapore. **Tejas Karia (Partner and Head, Arbitration)** spoke in the Connect & Collaborate Session on "*Illuminating Top Trends in South Asia, Africa and Middle East*" and shed light on the developments in the arbitration landscape in India.

UNCITRAL Academy 2023 – DRDE Panel Discussion, Singapore (29 August 2023)

The Singapore Ministry of Law and the United Nations Commission on International Trade Law (UNCITRAL) organised a panel discussion on "*Dispute Resolution in the Digital Economy*" (DRDE) at the UNCITRAL Academy Conference 2023. **Tejas Karia (Partner and Head, Arbitration)** was a member of the panel and addressed issues relating to the "*Role of experts and digital evidence in dispute resolution*".

Singapore Convention Week, Singapore (28 August – 1 September 2023)

Binsy Susan (Partner) was a panellist in a session on "*From Algorithms to Awards: The Role of AI in Arbitration and Mediation*" hosted by the American Arbitration Association International Centre for Dispute Resolution at the Singapore Convention Week.

NPAC International Conference on Arbitration, Delhi (1-2 September 2023)

The Nani Palkhivala Arbitration Centre (NPAC) organised its 14th annual international conference on arbitration on the theme of "*Recent Advances and Developments in Global Arbitration*". **Pallavi Shroff**

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(Managing Partner and National Practice Head, Dispute Resolution) was a panellist in a fireside chat on "*The Holy Grail of Excellence in Legal Services: What is the Way Forward for India?*". **Tejas Karia (Partner and Head, Arbitration)** moderated the panel discussion on "*Future of Arbitration in the Era of Artificial Intelligence*".

SLS Certificate Course on Commercial Arbitration, Noida (19, 26 August and 2 September 2023)

The Symbiosis Law School Noida (SLS) organised the "Certificate *Course on Commercial Arbitration in India*". **Nishant Doshi (Senior Associate)** spoke at the session on "*Introduction to Arbitration and Other Dispute Resolution Mechanisms*". **Prakhar Deep (Principal Associate)** and **Nishant Doshi (Senior Associate)** conducted the session on "*Arbitration Agreement, Pre-Reference Compliances and Commencement of Arbitral Proceedings*". **Avlokita Rajvi (Principal Associate)** and **Samarth Madan (Associate)** spoke at the session on "*Appointment of Arbitrators and Applications for Interim Measures*". **Surabhi Lal (Senior Associate)** and **Nishant Doshi (Senior Associate)** spoke at the session on "*Practical aspects of Arbitration Pleadings and Procedure*". **Prakhar Deep (Principal Associate)** and **Vrinda Pareek (Senior Associate)** conducted the session on "*Challenge to Arbitral Award and its Enforcement*". **Tejas Karia (Partner and Head, Arbitration)** conducted the session on "*Practice, Procedure and Current Trends in Arbitration*".

LawLevel Up Certificate Course (2 September 2023)

Law Level Up is conducting an ongoing 6-week arbitration certificate course that started on 19 August 2023. **Shruti Sabharwal (Partner)** is a faculty member and conducted an online session on "*Forum Selection and Arbitral Process*".

ISIL Annual Conference, Delhi (2 September 2023)

The Indian Society of International Law (ISIL) organised its 51st annual conference at which **Niyati Gandhi (Principal Associate)** spoke on "*Fair and Equitable Treatment: the Developing Countries Perspective*".

HR Sutra and CorpKonnect Masterclass (8 September 2023)

HR Sutra and CorpKonnect organised a masterclass on "*Evolving Landscape of Commercial Disputes and Dispute Resolution Mechanism in India*". **Tejas Karia (Partner and Head, Arbitration)** spoke at the session on "*Negotiation, Mediation and Conciliation – Strategies and Execution; Mediation Bill 2021 – Key Developments and Immediate and LongTerm Impact*".

Mediation Championship India, Gandhinagar (8-10 September 2023)

The Mediation Championship India, organised by the Peacekeeping and Conflict Resolution Team (PACT), took place at Gandhinagar National Law University from 8-10 September 2023. **Tejas Karia (Partner and Head, Arbitration)** was a judge in the final round of the event. Shardul Amarchand Mangaldas & Co was the headline sponsor of this event.

CIArb Webinar on ADR (14 September 2023)

CIArb India organised a webinar on "*Role of CIArb in Alternative Dispute Resolution*" where **Tejas Karia (Partner and Head, Arbitration)** spoke on "*The Role of CIArb in Enhancing the Enforceability of Awards through Education and Training*".

SIAC India Academy (14 September 2023)

SIAC conducted its India academy on "*The Making of an Advocate*". **Ila Kapoor (Partner)** was a facilitator at this academy.

COMBAR India Roundtable, Mumbai (16 September 2023)

The Commercial Bar Association (COMBAR) organised its 5th India roundtable conference in Mumbai. **Ila Kapoor (Partner)** spoke at a session covering current topics in arbitration, such as applicable law of the arbitration agreement, emergency arbitration and third parties in arbitration.

Economic Times Masterclass (22 September 2023)

Tejas Karia (Partner and Head, Arbitration) conducted a webinar on "*Commercial Contracts & Dispute*

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Management" as part of the Economic Times' "*Commercial Contract and Dispute Resolution Masterclass*".

Bettering Results Course (24 September 2023)

Bettering Results conducted the next edition of its 'International Commercial Arbitration Course' where **Tejas Karia (Partner and Head, Arbitration)** spoke at the sessions on "*Arbitrators & Arbitral Tribunals*".

Manipal Law School Advanced Certificate Program (28-29 September 2023)

The Manipal Law School and C Cubed Consultants conducted the "*Advanced Certificate Program on in Dispute Avoidance and Claims Management*". **Tejas Karia (Partner and Head, Arbitration)** spoke at the session on "*Dispute Resolution in Construction Contracts*".

INDO-UK Legal Summit, London (2 October 2023)

Association of Corporate Lawyers (ACL India) organised a two-day conference in London. **Tejas Karia (Partner and Head, Arbitration)** moderated the panel discussion on "*Litigation vs Arbitration: Aligning cost with value through innovation in technology including growing role of artificial intelligence*".

India ADR Week, Bengaluru, Mumbai and Delhi (9-14 October 2023)

India ADR Week is spread across three jurisdictions – Bengaluru, Mumbai and Delhi – between 9 and 14 October 2023. **Tejas Karia (Partner and Head, Arbitration)**, **Shruti Sabharwal (Partner)** and **Karan Joseph (Partner)** were trainers in MCIA's inaugural Tribunal Secretary Training Program 2023 that was conducted in Mumbai on 10-11 October 2023 and in Delhi on 12-13 October 2023. **Juhi Gupta (Principal Associate)** and **Swagata Ghosh (Senior Associate)** were the facilitators for the program in Delhi and Bombay respectively. **Avlokita Rajvi (Principal Associate)**, **Surabhi Lal**, **Abhijeet Sadikale** and **Pratik Singhvi (Senior Associates)** and **Samarth Madan (Associate)** successfully completed the program and are now MCIA-certified tribunal secretaries.

As a part of India ADR Week, **Ila Kapoor (Partner)** participated in a debate on the topic "*This House Believes that There is a Need for Publication of Arbitral Awards*" on 13 October 2023 and argued in favour of the motion. Shardul Amarchand Mangaldas & Co organised a session on "*Arbitrator's Disclosure Obligations: When is it Enough?*". **Ananya Aggarwal (Counsel)** moderated the session. The Young Mumbai Centre for International Arbitration (MCIA) organised a debate on the topic "*Indian Courts' contribution in making India the next Arbitration Hub: Step forward or backward?*" on 11 October 2023. **Shreya Gupta (Partner)** was a speaker at this debate, which was co-sponsored by Shardul Amarchand Mangaldas & Co. **Kanika Goenka (Partner)** spoke at a panel discussion on "*Arbitrability of Shareholder Disputes – Time to Push the Envelope in India?*" on 11 October 2023. The Young Institute for Transnational Arbitration (Young ITA) organised a breakfast panel discussion, which was co-sponsored by Shardul Amarchand Mangaldas & Co on the topic "*Enforcement of Investor State Awards against India*" at our offices in Mumbai. **Shreya Jain and Juhi Gupta (Principal Associates)**, who serve as India Co-Chairs of Young ITA, assisted in organising this event and Shreya Jain moderated the panel. **Shreya Jain (Principal Associate)** also spoke at a breakfast panel discussion on the topic "*Managing Expert Evidence in International Arbitration*" organised by FTI Consulting, in association with Indian Arbitration Forum, Young ICCA and Racial Equality for Arbitration Lawyers (REAL) on 11 October 2023. **Niyati Gandhi (Principal Associate)** moderated a session on "*Sanctions and International Dispute Resolution*" on 12 October 2023 in Delhi.

International Commercial Arbitration session by Nirma University, Ahmedabad (20 October 2023)

Nirma University conducted a session where **Tejas Karia (Partner and Head, Arbitration)** spoke on "*International Commercial Arbitration*".

Certificate Course on ADR (26 October 2023)

The Institute of Chartered Accountants of India (ICAI) organised the "*Certificate Course on ADR*". **Avlokita Rajvi (Principal Associate)** conducted a session on "*Award Writing*".

Legal Services Conclave, Delhi (30 October 2023)

Confederation of Indian Industry (CII) organised a two-day Legal Services Conclave on the theme

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"*Globalization of Businesses: Legal Support and Institutional Solutions*". **Tejas Karia (Partner and Head, Arbitration)** was a speaker in the session on "*Institutionalizing Business & Commercial Dispute Resolutions: India's Growth Story*".

Foreign Direct Investment International Arbitration Moot, Lucknow (4 November 2023)

Niyati Gandhi (Principal Associate) was a panellist in a round table on "*ISDS in the 21st Century: Adapting to Changing Dynamics*" organised as a part of the world rounds of the Foreign Direct Investment International Arbitration Moot 2023.

Upcoming Event

NLSIU Panel Discussion on the Mediation Act (19 November 2023)

Tejas Karia (Partner and Head, Arbitration) will be a speaker in a panel discussion on the "*Mediation Act, 2023*" hosted by the ADR Board of the National Law School of India University, Bengaluru (NSLIU).

Publications

Tejas Karia (Partner and Head, Arbitration), *Will the Supreme Court decision on stamping of arbitration agreements stamp out the pro-arbitration image of India?* In Bar and Bench (28 April 2023). Click here

Ila Kapoor (Partner), *All's (Not) Well that Ends Well: The Challenge in Enforcing Domestic Awards before Indian Courts* in SCC Online Blog (12 May 2023). Click here

Tejas Karia (Partner and Head, Arbitration) and **Vrinda Pareek (Senior Associate)**, *Stamping of Arbitration Agreements: An Analysis of the Evolving Landscape in India* in Indian Review of International Arbitration (June 2023). Click here

Ila Kapoor (Partner) and **Ananya Aggarwal (Counsel)**, *Indian Supreme Court blocks arbitrations based on unstamped agreements* in Global Arbitration Review (12 June 2023). Click here

Bikram Chaudhuri (Partner) and **Juhi Gupta (Principal Associate)**, *Arbitrability of debts disputed in insolvency proceedings in Singapore (Founder Group v Singapore JHC)* in LexisNexis (20 June 2023). Click here

Shreya Gupta (Partner), **Juhi Gupta (Principal Associate)** and **Pratik Singhvi (Senior Associate)**, *Country Update: India* in Asian Dispute Review (July 2023). Click here

Ila Kapoor (Partner) and **Niyati Gandhi (Principal Associate)**, *The Investment Treaty Arbitration Review: Rationae Temporis* in The Law Reviews (21 July 2023). Click here

Shruti Sabharwal (Partner), *Addressing Asymmetry in Arbitrator Appointments: A Multi-Party Context* in SCC Online (2 August 2023). Click here

Ila Kapoor (Partner), **Shruti Sabharwal (Partner)** and **Surabhi Lal (Senior Associate)**, *A Regional Comparison of Arbitration Landscapes: India* in the Asia Business Law Journal (6 September 2023). Click here

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Endnotes

1 Authored by Binsy Susan, Partner, Neha Sharma, Senior Associate and Palak Kaushal, Associate; *Bharat Heavy Electricals Limited v. Zillion Infraprojects Pvt. Ltd.*, FAO (COMM) No. 66/2021 & C.M. Appl. No. 33889/2020, High Court of Delhi, 2023 SCC OnLine Del 973, judgment dated 21 February 2023.
Coram: Neena Bansal Krishna and Suresh Kumar Kait, JJ.

2 *National Highway Authority of India v. M. Hakeem*, (2021) 9 SCC 1; *Anglo American Metallurgical Coal Pty. Ltd. v. MMTC Ltd.*, (2021) 3 SCC 308.

3 Authored by Aditya Mukherjee, Partner and Aditya Thyagarajan, Associate; *Antique Art Export Pvt. Ltd. v. United India Insurance Company Ltd.*, Arb. P. No. 163/2022 and Arb. P. No. 164/2022, High Court of Delhi, 2023 SCC OnLine Del 1091, judgment dated 22 February 2023.
Coram: V. Kameswar Rao, J.

4 *United India Insurance Company Limited v. Antique Art Exports Pvt Ltd.*, Civil Appeal Nos. 3284/2019 and 3285/2019.

5 *Antique Arts Exports Pvt. Ltd. v. United India Insurance Co. Ltd.*, Review Petition No(s). 1406/07 of 2019.

6 Civil Appeal No. 7023 of 2019.

7 (2015) 2 SCC 583.

8 (2005) 8 SCC 618.

9 Authored by Shreya Gupta, Partner and Juhi Gupta, Principal Associate; *Siemens Factoring Pvt Ltd. v. Future Enterprises Pvt Ltd*, CARAP No. 174 of 2022, High Court of Bombay, judgment dated 1 March 2023.
Coram: Bharati Dangre, J.

10 2016 SCC OnLine Bom 5069.

11 (2018) 2 SCC 519.

12 2018 SCC OnLine Del 6832.

13 Authored by Ila Kapoor, Partner and Ananya Aggarwal, Counsel; *Prime Interglobe Private Limited v. Super Milk Products Private Limited*, ARB. P. No. 608/2022, High Court of Delhi, 2023 SCC OnLine Del 1517, judgment dated 14 March 2023.
Coram: Prateek Jalan, J.

14 ARB. P. No. 474/2019.

15 2021 SCC OnLine Del 4693.

16 (2021) 2 SCC 1.

17 Authored by Tejas Karia, Partner and Head, Arbitration and Prakhar Deep, Principal Associate; *Inox Air Products Private Limited v. Air Liquide North India Private Limited*, O.M.P. (COMM.) No. 212/2018 & I.A. No. 6847/2018, High Court of Delhi, 2023 SCC OnLine Del 1778, judgment dated 24 March 2023.
Coram: Prateek Jalan, J.

18 2022 SCC OnLine Del 7167.

19 2021 SCC OnLine Del 3989.

20 2021 SCC OnLine Cal 518.

21 2012 SCC OnLine Bom 639.

22 (2018) 11 SCC 328.

23 Civil Appeal No. 10386 of 2018, Supreme Court of India, order dated 10 October 2018.

24 (2019) 20 SCC 1.

25 Authored by Aashish Gupta, Partner and Rajarshi Roy, Associate; *NTPC Ltd. v. M/s SPML Infra Ltd.*, Civil Appeal No. 4778/2022, Supreme Court of India, 2023 SCC OnLine SC 389, judgment dated 10 April 2023.
Coram: D.Y. Chandrachud, CJI and P.S. Narasimha, J.

26 (2021) 2 SCC 1.

27 (2021) 5 SCC 671.

28 (2021) 9 SCC 732.

29 (2021) 5 SCC 738.

30 (2021) 5 SCC 705.

31 Authored by Siddhartha Datta, Partner and Trisha Mukherjee, Senior Associate; *Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Ltd. (WIL)*, Civil Appeal No. 6810/2022 in SLP (C) No. 11216/2022, 2023 SCC OnLine SC 382, Supreme Court of India, judgment dated 10 April 2023.
Coram: M.R. Shah (Retd.) and Krishna Murari (Retd.), JJ.

32 Section 4 of the Limitation Act, 1963.

33 Section 2(j) of the Limitation Act, 1963.

34 (2012) 2 SCC 624.

35 2020 SCC OnLine Cal 3258.

36 Authored by Shruti Sabharwal, Partner and Ananya Aggarwal, Counsel; *Gaurav Dhanuka & Anr. v. Surya Maintenance Agency Pvt. Ltd. & Ors.*, ARB. P. No. 1296-1297/2022 and ARB. P. No. 1324/2022, High Court of Delhi, 2023 SCC OnLine Del 2178, judgment dated 17 April 2023.
Coram: Sachin Datta, J.

37 *ONGC Ltd. v. Discovery Enterprises (P) Ltd.*, (2022) 8 SCC 42.

38 *Nexus Solutions v. Surya Maintenance Agency Pvt Ltd & Ors.*, 2023 SCC OnLine Del 2499.

39 Authored by Shreya Gupta, Partner, Juhi Gupta, Principal Associate and Pratik Singhvi, Senior Associate; *N.N. Global Mercantile Private Limited v. Indo Unique Flame Ltd. & Ors.*, Civil Appeal No(s). 3802-3803 of 2020, Supreme Court of India, 2023 SCC OnLine SC 495, judgment dated 25 April 2023.
Coram: K.M. Joseph (Retd.), Aniruddha Bose, Ajay Rastogi (Retd.), Hrishikesh Roy and C.T. Ravikumar, JJ.

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40 (2011) 14 SCC 66.

41 (2019) 9 SCC 209.

42 Instruments not duly stamped are inadmissible into evidence and cannot be acted upon.

43 2023 SCC OnLine Bom 1095.

44 Authored by Karan Joseph, Partner and Anish John, Senior Associate; *HSBC PI Holdings (Mauritius) Limited v. Avitel Post Studioz Private Limited & Ors.*, Arbitration Petition No. 833/2015, High Court of Bombay, 2023 SCC OnLine Bom 901, judgment dated 25 April 2023.
Coram: Manish Pitale, J.

45 (2020) 11 SCC 1.

46 1994 Supp. (1) SCC 644.

47 Authored by Suhani Dwivedi, Partner and Trisha Mukherjee, Senior Associate; *M/s Ugro Capital Limited v. Raj Drug Agency & Ors.*, A.P. No. 200/2022, High Court of Calcutta, 2023 SCC OnLine Cal 960, judgment dated 26 April 2023.
Coram: Shekhar B. Saraf, J.

48 (2019) 8 SCC 710.

49 (2021) 4 SCC 713.

50 Authored by Bikram Chaudhuri, Partner and Juhi Gupta, Principal Associate; *Sunil Kumar Jindal v. Union of India*, Misc. Civil Application Nos. 543/2022, 10/2022 and 11/2022, High Court of Bombay, judgment dated 4 May 2023.
Coram: Avinash G. Gharote, J.

51 (2020) 20 SCC 760.

52 (2007) 5 SCC 719.

53 (2022) 9 SCC 691.

54 AIR 1984 Del 325.

55 Authored by Smarika Singh, Partner, Yashna Mehta, Senior Associate, and Adya Jha and Arjun Singh Rana, Associates; *M/s Shree Vishnu Constructions v. Engineer in Chief Military Engineering Service and Ors.*, Civil Appeal No. 3461 of 2023, Supreme Court of India, 2023 SCC OnLine SC 600, judgment dated 9 May 2023.
Coram: M.R. Shah (Retd.) and C.T. Ravikumar, JJ.

56 (2018) 6 SCC 287.

57 (2019) 15 SCC 682.

58 (2020) 2 SCC 464.

59 (2019) 2 SCC 488.

60 Authored by Anirudh Das, Partner and Krishna Tangirala, Senior Associate; *Magic Eye Developers Pvt. Ltd. v. Green Edge Infrastructure Pvt. Ltd. & Ors.*, SLP(C) Nos. 18339-42/2021, Supreme Court of India, 2023 SCC OnLine SC 620, judgment dated 12 May 2023.
Coram: M.R. Shah (Retd.) and C.T. Ravikumar, JJ.

61 (2013) 1 SCC 641.

62 2023 SCC OnLine SC 389.

63 2023 SCC OnLine SC 495.

64 Authored by Tejas Karia, Partner and Head, Arbitration, Avlokita Rajvi, Principal Associate and Punya Mehrotra, Associate; *Tomorrow Sales Agency (P) Ltd. v. SBS Holdings Inc and Ors.*, FAO(OS)(COMM) No. 59/2023, High Court of Delhi, 2023 SCC OnLine Del 3191, judgment dated 29 May 2023.
Coram: Vibhu Bakhru and Amit Mahajan, JJ.

65 Authored by Tejas Karia, Partner and Head, Arbitration, Avlokita Rajvi, Principal Associate, Samarth Madan and Sanskriti Sinha, Associates; *ARG Outlier Media Private Limited v. HT Media Limited*, O.M.P. (COMM) No. 161/2023, High Court of Delhi, 2023 SCC OnLine Del 3885, judgment dated 4 July 2023.
Coram: Navin Chawla, J.

66 Section 61 of the Stamp Act provides that when any court, in the exercise of its civil or revenue jurisdiction or any criminal court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped, the court to which appeals lie from, or references are made by, such a court, of its own motion or on the application of the Collector, take such order into consideration.

67 (1962) 2 SCR 333.

68 (2022) SCC OnLine Del 3273.

69 Proviso (b) to Section 61 of the Stamp Act states that except for the purposes of prosecution under Section 61(4), no declaration made by a Court under Section 61 that an instrument should not have been admitted in evidence without the payment of duty and penalty, or without the payment of a higher duty and penalty than those paid, shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under Section 42.

70 Authored by Shruti Sabharwal, Partner and Rachit Bansal, Associate; *National Highways Authority of India v. Trichy Thanjavur Expressway Ltd.*, O.M.P. (Comm) No. 95/2023, High Court of Delhi, 2023 SCC OnLine Del 5183, judgment dated 6 July 2023.
Coram: Yashwant Varma, J.

71 (2021) 9 SCC 1.

72 Authored by Kanika Goenka, Partner, Juhi Gupta, Principal Associate and Abhijeet Sadikale, Senior Associate; *Splendor Landbase Ltd v. Aparna Ashram Society & Anr.*, ARB. P. No. 366/2021 tagged with others, High Court of Delhi, SCC OnLine Del 5148, judgment dated 22 August 2023.
Coram: Sachin Datta, J.

73 (2017) 4 SCC 498.

74 AIR 1963 SC 1307.

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75 Authored by Tejas Karia, Partner and Head, Arbitration, Avlokita Rajvi, Principal Associate and Sanskriti Sinha, Associate; *Lombardi Engineering Limited v. Uttarakhand Jal Vidyut Nigam Limited*, Arbitration Petition No. 43 of 2022, judgment dated 6 November 2023.
Coram: D.Y. Chandrachud, CJI and J.B. Pardiwala and Manoj Mishra JJ.

76 (2019) 4 SCC 401.

77 (2009) 4 SCC 357.

78 MANU/PH/1098/2021, ARB Pet No. 127/2019 (Section 11 Petition) and CWP No. 13539/2021.

79 CWP No. 21840/2020.

80 CWP No. 14587/2022 (O&M).

81 CWP No. 28981/2019 (O&M).

82 (2017) 8 SCC 377.

83 (2020) 20 SCC 760.

84 *Voestalpine Schienen GMBH v. Delhi Metro Rail Corporation Limited*, (2017) 4 SCC 665.

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