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TOP STORIES

All India Annual Digest Of Arbitration Cases-2022- Supreme Court And High Courts

Parina Katyal 29 Dec 2022 4:19 PM



Supreme Court:

Issue Of Arbitrability Should Be Left To Arbitrator Unless On The Face It Is Found That Dispute Is Non- Arbitrable: Supreme Court

Case Title: VGP Marine Kingdom Pvt Ltd versus Kay Ellen Arnold

Citation: 2022 LiveLaw (SC) 914

The Supreme Court reiterated that while considering application under Section 11(6) of the Arbitration and Conciliation Act, the dispute with respect to the arbitrability should be left to the arbitrator, unless on the face it is found that the dispute is not arbitrable.

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Arbitral Tribunal Must Give Reasons For Fixing Interest Rate; Award Holder Not Entitled To Interest For Delay Caused By It : Supreme Court

Case Title: Executive Engineer (R and B) versus Gokul Chandra Kanungo

Citation: 2022 LiveLaw (SC) 824

The Supreme Court recently held that a case where the award holder was responsible for delaying the proceedings which led to a huge lapse of time would be a fit case of exercising power under Article 142 to reduce the rate of interest on the sum of award.

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The Court further held that the Arbitration and Conciliation Act casts a duty upon the arbitral tribunal to give reasons as to how it deems the rate

of interest to be reasonable. The bench of Justices B.R. Gavai and B.V. Nagarathna held that no interest would be payable for the period on which there were lapses on the part of the award holder.

Arbitration - Court Can Undertake Preliminary Inquiry Under Section 11 To Ascertain If Dispute Is Arbitrable: Supreme Court

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Case Title: Emaar India Ltd. versus Tarun Aggarwal Projects LLP

Citation: 2022 LiveLaw (SC) 823

The Supreme Court has held that the High Courts while appointing the arbitrator can launch a preliminary inquiry to decide the issue of 'Excepted Matters' when an objection to that effect is taken by the respondent.

The bench of Justices M.R. Shah and Krishna Murari held that if any dispute falls within the 'excepted' category provided in the contract between the parties, then it falls outside the scope of arbitration, therefore, no arbitration can happen with respect to those matters.

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Disputes Related To Tax Concessions Are Not Arbitrable: Supreme Court

Case Title: M/s Shree Enterprise Coal Sales Pvt Ltd. versus Union of India

Citation: 2022 LiveLaw (SC) 774

The Supreme Court has held that disputes related to tax concessions are not arbitrable.

The division bench of Justice Dhananjaya Y Chandrachud and Justice Hima Kohli has observed that the High Court was in error in holding that the terms of e-auction provided that any dispute was arbitrable. The Apex Court ruled that undoubtedly, a contractual dispute would be amenable to being resolved by arbitration, however, in the present case, the relief related to tax concessions was not of an arbitrable nature.

Court Exercising Power U/Sec 9 Arbitration Act Not Strictly Bound By CPC ; Should Not Withhold Interim Relief On Mere Technicality: Supreme Court

Case Title: Essar House Private Limited versus Arcelor Mittal Nippon Steel India Limited

Citation: 2022 LiveLaw (SC) 765

The Supreme Court observed that a court exercising power under Section 9 of the Arbitration and Conciliation Act is not strictly bound by provisions of CPC and should not withhold relief on mere technicality. The Court ruled that proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending Arbitral Award is not imperative for grant of relief under Section 9, and that a strong possibility of diminution of assets would suffice.

Arbitration Clause Has To Be Given Effect Even If It Does Not Expressly State That Decision Of Arbitrator Is Final & Binding On Parties: Supreme Court

Case Title: Babanrao Rajaram Pund versus Samarth Builders & Developers

Citation: 2022 LiveLaw (SC) 747

The Supreme Court observed that an arbitration clause has to be given effect even if it does not expressly state that the decision of the arbitrator will be final and binding on the parties.

The deficiency of words in agreement which otherwise fortifies the intention of the parties to arbitrate their disputes, cannot legitimise the annulment of arbitration clause, the bench comprising Justices Surya Kant and Abhay S. Oka observed.

Mere Use Of Words "Arbitration" Or "Arbitrator" In A Clause Won't Make It Arbitration Agreement: Supreme Court

Case Title: Mahanadi Coalfields Ltd. versus IVRCL AMR Joint Venture

Citation: 2022 LiveLaw (SC) 657

The Supreme Court observed that an arbitration agreement should disclose a determination and obligation on behalf of the parties to refer the disputes to arbitration.

The Bench comprising Justices DY Chandrachud and AS Bopanna noted that mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration.

There Cannot Be Two Arbitration Proceedings With Respect To Same Contract/ Transaction: Supreme Court

Case Title: M/s Tantia Constructions Limited versus Union Of India

Citation: 2022 LiveLaw (SC) 624

Observing that it is of the "firm opinion that there cannot be two arbitration proceedings with respect to the same contract/transaction", the Supreme Court stated that when a dispute has earlier been referred to arbitration and an award was passed on the claims made, then it is "rightful" to refuse to refer to arbitration- in exercise of Section 11(6) of the 1996 Arbitration Act- a fresh arbitration proceeding sought to be initiated with respect to some further claims.

Section 11(6A) Arbitration Act Does Not Prevent Courts From Considering Issue Of Arbitrability: Supreme Court

Case Title: Indian Oil Corporation Limited versus NCC Limited

Citation: 2022 LiveLaw (SC) 616

Despite the insertion of Section 11(6A) in the Arbitration and Conciliation Act 1996, the Courts are not denuded of the power to examine the issue of non-arbitrability and jurisdiction at the stage of considering application of appointment of arbitrators under Section 11, held the Supreme Court recently.

Court While Deciding 'Section 11' Application Seeking Appointment Of Arbitrator Can Consider Whether Dispute Falls Within 'Excepted Clause' : Supreme Court

Case Title: Indian Oil Corporation Limited versus NCC Limited

Citation: 2022 LiveLaw (SC) 616

The Supreme Court held that, at the stage of deciding application for appointment of arbitrator, a Court can consider whether the dispute falls within the excepted clause.

The Court observed that the question of jurisdiction and non-arbitrability can be considered by a Court at the stage of deciding an application under Section 11 of Arbitration and Conciliation Act if the facts are very clear and glaring.

Court Under Section 34, 37 Arbitration Act Cannot Modify An Award; It Can Only Remand: Supreme Court

Case Title: National Highways Authority of India versus P. Nagaraju @ Cheluvaiah

Citation: 2022 LiveLaw (SC) 584

The Supreme Court observed that, under Section 34 or 37 of Arbitration and Conciliation Act, a Court cannot modify the award passed by the Arbitrator.

The option would be to set aside the award and remand the matter, the bench comprising Justices Indira Banerjee and AS Bopanna said.

Counter-Claim Cannot Be Rejected Merely Because The Claims Thereunder Were Not Notified At The Pre-Arbitral Stage: Supreme Court

Case Title: NHAI versus Transstroy (India) Limited

Citation: 2022 LiveLaw (SC) 586

The Supreme Court has held that the counter-claim of a party cannot be dismissed merely because the claims were not notified before invoking

the arbitration.

The Division Bench of Justice M.R. Shah and Justice Sanjiv Khanna held that there is a difference between the word "Claim" and "Dispute", where the former may be a one-sided thing while the latter by its definition has two sides. It observed that once the conciliation failed, the entire gamut including the counter-claim/set off would form the subject matter of arbitration.

Arbitration Act - Dispose Sec 11(5) & 11(6) Applications Pending For Over 1 Year Within 6 Months : Supreme Court To High Courts

Case Title: M/s Shree Vishnu Constructions versus The Engineer in Chief Military Engineering Service & Ors.

Citation: 2022 LiveLaw (SC) 523

The Supreme Court of India has made strong observations emphasising the need for High Courts to decide applications for appointments of Arbitrators at the earliest.

A Bench comprising Justice MR Shah and Justice BV Nagarathna has observed that if the arbitrators are not appointed at the earliest and the applications under Sections 11(5) and 11(6) of the Arbitration Act for appointment of arbitrators are kept pending for a number of years, it will defeat the object and purpose of the enactment of the Act and it may lose the significance of an effective Alternative Dispute Resolution Mechanism.

High Court Cannot Terminate The Mandate Of Arbitrator In Application Under Section 11(6) Of Arbitration Act : Supreme Court

Case Title: Swadesh Kumar Agarwal versus Dinesh Kumar Agarwal

Citation: 2022 LiveLaw (SC) 454

The Supreme Court has observed that a dispute/controversy on the mandate of the arbitrator being terminated on the ground mentioned in section 14(1)(a) of the Arbitration and Conciliation Act cannot be decided on an application filed under section 11(6) of the Act. The Supreme Court ruled that such a dispute has to be raised before the "court", as defined under section 2(e) of the Act.

"Group Of Companies" Doctrine Needs Relook, Says Supreme Court; Refers Issues To Larger Bench

Case Title: Cox and Kings Limited versus SAP India Private Limited and Anr.

Citation: 2022 LiveLaw (SC) 455

The Supreme Court has referred various aspects regarding the application of the doctrine of 'Group of Companies', which is often utilised to bind non-signatories to an Arbitration Agreement, to a larger Bench.

"There is a clear need for having a relook at the doctrinal ingredients concerning the group of companies doctrine", observed a Bench comprising Chief Justice of India, N.V. Ramana, Justices Surya Kant and A.S. Bopanna.

The Power Of The Arbitral Tribunal To Award Interest Is Discretionary And Subject To An Agreement Between The Parties: Supreme Court

Case Title: Delhi Airport Metro Express Pvt. Ltd. versus Delhi Metro Rail Corporation

Citation: 2022 LiveLaw (SC) 452

The Supreme Court has held that the power of the arbitral tribunal to award interest is subject to an agreement between the parties to the contrary. The Court held that the tribunal cannot award interest if the parties have agreed otherwise.

The Division Bench of Justice L. Nageshwar Rao and Justice B.R. Gavai held that when the parties have an agreement between themselves that governs the issue of interest, the arbitrator would lose its discretion and will be guided by the agreement between the parties.

Application Under Section 11(6) Not Maintainable For Appointment Of Arbitrator In Absence Of A Written Agreement Between Parties: Supreme Court

Case Title: Swadesh Kumar Agarwal versus Dinesh Kumar Agarwal & Ors.

Citation: 2022 LiveLaw (SC) 454

The Supreme Court has ruled that there is a difference between the arbitrator appointed under Section 11(5) and under Section 11(6) of the Arbitration and Conciliation Act, 1996 (A&C Act) and failing any written agreement between the parties on the procedure for appointing an arbitrator (s) under Section 11(2), application for appointment of arbitrator (s) shall be maintainable under Section 11(5) and not under Section 11(6).

The Bench of Justices M.R. Shah and B.V. Nagarathna held that once the dispute is referred to arbitration and the sole arbitrator is appointed by the parties by mutual consent, the arbitration agreement cannot be invoked for the second time.

Group Of Companies Doctrine Can Be Applied To Bind Non Signatory To An Arbitration Agreement: Supreme Court

Case Title: Oil and Natural Gas Corporation Ltd. versus Discovery Enterprises Pvt. Ltd

Citation: 2022 LiveLaw (SC) 416

The Supreme Court, in a judgment delivered on 27th April 2022, explained the 'Group of companies' doctrine which postulates that an arbitration agreement entered into by a company within a group of companies, can bind its non-signatory affiliates or sister concerns if the circumstances demonstrate a mutual intention of the parties to bind both the signatory and affiliated, non-signatory parties.

The bench comprising Justices DY Chandrachud, Surya Kant and Vikram Nath observed that a non-signatory may be bound by the arbitration agreement where: (i) There exists a group of companies; and (ii) Parties have engaged in conduct or made statements indicating an intention to bind a non-signatory.

Supreme Court To Examine Conflicting Decisions On Retrospective Impact Of 2015 Amendment To Section 11(6) Arbitration Act

Case Title: M/s Shree Vishnu Constructions versus The Engineer in Chief Military Engineering Service

The Supreme Court has decided to examine whether Section 11(6) as amended by the Arbitration & Conciliation (Amendment Act), 2015 ("2015 Amendment Act") would be applicable to arbitral proceedings commenced

before the Court prior to when the 2015 Amendment came into force on 23.10.2015, or the cases wherein notice was issued prior to 23.10.2015 or cases where notice invoking arbitration was issued prior to the amendments.

A Division Bench comprising Justices M.R. Shah and B.V. Nagarathna noted that there were divergent views on this issue.

Arbitral Tribunal Can Grant Post Award Interest On Interest Component Included In The Sum Of The Award: Supreme Court

Case Title: Indian Oil Corpn. Ltd versus U.B. Engineering Ltd and Anr.

Citation: 2022 LiveLaw (SC) 409

The Supreme Court has held that the arbitral tribunal can grant post-award interest on the sum of the award which also includes the interest component.

The Bench comprising Justice M.R. Shah and Justice B.V. Nagarathna reiterated that the word sum used under Section 31(7) of the A&C Act includes the interest awarded on the substantive claims, therefore, the post award interest would be on both the amount awarded in respect of the substantive claims and the interest awarded on such claims.

Arbitration Act : Supreme Court Asks High Courts To Submit Particulars of All Pending Section 11(6) Applications

Case Title: M/s Shree Vishnu Constructions versus The Engineer in Chief Military Engineering Service and Ors.

The Supreme Court has asked its Registry to seek particulars of the pending applications under Section 11(6) of the Arbitration and Conciliation Act, 1996 from all High Courts. It noted that the same shall reach the Apex Court by 06.05.2021.

A Bench comprising Justices M.R. Shah and B.V. Nagarathna was hearing a plea assailing an order passed by the Telangana High Court, which had decided to dismiss an application filed under Section 11(6) of the Arbitration Act for appointment of Arbitrator after 4 years.

Arbitral Award Cannot Be Set Aside Merely On The Ground Of Erroneous Application Of Law Or Misappreciation Of Evidence : Supreme Court

Case Title: Haryana Urban Development Authority, Karnal versus M/s. Mehta Construction Company & Anr.

The Supreme Court has held that apart from the grounds mentioned in Section 34(2)(b) of the Arbitration and Conciliation Act, 1996, an arbitral award can be set aside only when it is vitiated by patent illegality, and not on ground of erroneous application of law or by misappreciation of evidence.

Absence Of Arbitration Agreement Makes Article 137 Of Limitation Act Inapplicable To Arbitration Under Bihar PWCD Arbitration Tribunal Act, 2008: SC

Case Title: Bihar Industrial Area Development Authority & Ors. v. Rama Kant Singh

The Supreme Court has observed that Article 137 of the Limitation Act, 1963 would have no application in arbitration proceedings commenced

under Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (the 2008 Act) when there is no arbitration agreement between the parties.

The Division Bench of Justice Abhay S. Oka and Justice Ajay Rastogi also observed that in absence of an arbitration agreement, the Arbitration Act 1996 will also have no application and the reference to the Arbitration Tribunal and the arbitral proceedings will be governed by the 2008 Act.

Very Sorry State of Affairs: Supreme Court On Pendency Of Execution Proceedings In Arbitration Matters For More Than 20 Years In Executing Courts In UP

Case Title: M/S Chopra Fabricators and Manufacturers Pvt. Ltd. versus Bharat Pumps And Compressors Ltd. & Anr.

The Supreme Court has expressed concerns at the pendency of execution proceedings for executing the award in Arbitration Matters before subordinate courts/executing courts in the State of Uttar Pradesh. The Court observed that if the Award, under the Arbitration Act, is not executed at the earliest, it will frustrate the purpose and object of the Arbitration Act as well as the Commercial Courts Act.

Application Seeking Appointment Of Arbitrator Cannot Be Moved Before A High Court If No Part Of Cause Of Action Arose Within Its Territorial Jurisdiction: Supreme Court

Case Title: M/S Ravi Ranjan Developers Pvt Ltd versus Aditya Kumar Chatterjee

The Supreme Court observed that an application under Section 11(6) of the Arbitration and Conciliation Act for the appointment of an Arbitrator/Arbitral Tribunal cannot be moved in a High Court irrespective of its territorial jurisdiction. "It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in.

Seeking Relief Under Article 226 In Contractual Matters Where There Is Existing Arbitration Clause Is Not An Appropriate Remedy: Supreme Court

Case Title: Gujarat Housing Board & Anr. versus Vandemataram Projects Private Limited

The Supreme Court has observed that invoking Article 226 for seeking relief in a contractual matter where there is an existing arbitration clause is not an appropriate remedy and neither can the High Court examine the same.

Arbitrators Must Say Upfront Their Fees For The Number Of Sitzings, Opines Supreme Court During Hearing

Case Title: Oil and Natural Gas Corporation Ltd. versus Afcons Gunanusa

The Supreme Court, while hearing on the issue of fixation of standards for fees for arbitrators, has emphasized on "upfront" fixation of arbitrator's fee.

The Bench of Justices D.Y. Chandrachud, Sanjiv Khanna and Surya Kant was considering the issue regarding the mandatory nature of the 'model'

fee scale for arbitrators prescribed under the Fourth Schedule of the Arbitration and Conciliation Act 1996.

Arbitral Tribunal Can't Direct Interim Deposit Of Amount In Dispute When Liability To Pay Is Seriously Disputed: Supreme Court

Case Title: Evergreen Land Mark Pvt. Ltd. versus John Tinson and Company Pvt. Ltd. and Anr.

Citation: 2022 LiveLaw (SC) 389

The Supreme Court has held that the Arbitral Tribunal cannot pass an order by way of interim measure under Section 17 of the Arbitration and Conciliation Act, 1996 to deposit the amount involved in the dispute, in a case where the liability to pay such an amount is seriously disputed and the same is yet to be adjudicated upon by the Tribunal.

A Bench comprising of Justices M.R. Shah and B.V. Nagarathna partly allowed an appeal assailing the order of the Delhi High Court, which affirmed the order passed by the Arbitral Tribunal under Section 17 directing the appellant to deposit the entire rental amount even when the liability of the said amount was yet to be considered by it.

Arbitral Award Can't Be Challenged On Ground That Arbitrator Has Failed To Appreciate Facts : Supreme Court

Case Title: Atlanta Ltd. versus Union of India

Citation: 2022 LiveLaw (SC) 63

The Supreme Court has reiterated that the Appellate Court exercising power under Section 30 and 33 of the Arbitration Act, 1940 ought not to

reassess or re appreciate evidence or examine the sufficiency of the evidence.

Not Always Obligatory To Remit Matter To Arbitration Tribunal Merely Because A Party Filed Application U/s 34(4) Arbitration Act: Supreme Court

Case Title: I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.

Citation: 2022 LiveLaw (SC) 2

The Supreme Court has observed that merely because an application is filed under Section 34(4) of the Arbitration and Conciliation Act by a party, it is not always obligatory on the part of the Court to remit the matter to Arbitral Tribunal.

The bench ruled that the discretionary power conferred under Section 34(4) of the Act, is to be exercised where there is inadequate reasoning or to fill up the gaps in the reasoning, in support of the findings which are already recorded in the award. Under guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the Arbitrator, where there are no findings on the contentious issues in the award.

High Court Cannot Enter Into Merits Of The Claim In An Appeal Under Section 37 Arbitration Act: Supreme Court

Case Title: Haryana Tourism Ltd. v. Kandhari Beverages Ltd.

Citation: 2022 LiveLaw (SC) 38

The Supreme Court observed that a High Court cannot enter into the merits of the claim in an appeal under Section 37 of the Arbitration and

Conciliation Act, 1996.

'Reference To Wrong Provision, As Long As Power Exists Would Not Matter': Supreme Court On Maintainability Of Appeal Under Section 34 Instead Of Section 37 Arbitration Act

Case Title: Premier Sea Foods v. Caravel Shipping Services

Citation: 2022 LiveLaw (SC) 54

The Supreme Court has held that a reference to Section 37 instead of Section 34 of the Arbitration and Conciliation Act, 1996 would not matter as long as the jurisdictional court has the power to adjudicate the appeal.

Arbitrator Can Grant Post-Award Interest On The Interest Amount Awarded: Supreme Court

Case Title: UHL Power Company Ltd. versus State of Himachal Pradesh

Citation: 2022 LiveLaw (SC) 18

The Supreme Court has observed that post-award interest can be granted by an Arbitrator on the interest amount awarded.

Court U/s 37 Arbitration Act Has No Jurisdiction To Remand The Matter To Same Arbitrator Unless Consented By Both Parties: Supreme Court

Case Title: Dr. A. Parthasarathy v. E Springs Avenues Pvt. Ltd

Citation: 2022 LiveLaw (SC) 199

The Supreme Court has observed that a Court, under Section 37 of the Arbitration and Conciliation Act, has no jurisdiction to remand the matter to the same Arbitrator unless it is so consented by both the parties.

**Section 11 Arbitration Act- Court By Default Would Refer To Arbitration
When Contentions On Non- Arbitrability Are Plainly Arguable: Supreme
Court**

Case Title: Mohammed Masroor Shaikh versus Bharat Bhushan Gupta

Citation: 2022 LiveLaw (SC) 120

The Supreme Court has observed that while dealing with petition under Section 11 of the Arbitration and Conciliation Act, the Court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable. The bench added that in such case, the issue of non-arbitrability is left open to be decided by the Arbitral Tribunal.

**Arbitration - Party Without Notice Of Section 11(6) Petition filed By Other
Party Free To Appoint Arbitrator: Supreme Court**

Case Title: Durga Welding Works versus Chief Engineer

Citation: 2022 LiveLaw (SC) 9

The Supreme Court has held that a party to the arbitration agreement can appoint an arbitrator even after an Arbitration Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been filed by the other party before the High Court for appointment of an arbitrator if the party has not been given due notice of the same.

**Arbitral Tribunal Constituted Before 2015 Amendment Cannot Operate If
It Violates Neutrality Mandate Under Section 12(5) : Supreme Court**

Case Title: Ellora Paper Mills Ltd. versus State of Madhya Pradesh

Citation: 2022 LiveLaw (SC) 8

The Supreme Court held that an arbitral tribunal constituted as per an arbitration clause before the 2015 amendment to the Arbitration and Conciliation Act 1996 will lose its mandate if it violates the neutrality clause under Section 12(5) read with the Seventh Schedule, which were incorporated through the 2015 amendment.

Arbitral Award Patently Illegal If Arbitrator Failed To Act In Terms Of Contract Or Ignored Specific Terms Of Contract : Supreme Court

Case Title: Indian Oil Corporation Ltd. versus Shree Ganesh Petroleum Rajgurunagar,

Citation: 2022 LiveLaw (SC) 121

The role of the Arbitrator is to arbitrate within the terms of the contract, the Supreme Court has observed. The bench comprising Justices Indira Banerjee and Abhay S. Oka observed that an award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.

Court U/Sec 34 Arbitration Act Can Remand Matter To Arbitrator For Fresh Decision If Both Parties Consented: Supreme Court

Case Title: Mutha Construction versus Strategic Brand Solutions (I) Pvt. Ltd.

Citation: 2022 LiveLaw (SC) 163

The Supreme Court observed that the principle that a court while deciding a petition under Section 34 of the Arbitration and Conciliation Act has no jurisdiction to remand the matter to the Arbitrator for a fresh decision is applicable only when the said petition is decided on merits.

High Courts:

Allahabad High Court:

Section 9 Application, Against Cashing Unconditional BG; Court To Consider Only Terms Of BG: Allahabad High Court

Case Title: U.P. Expressways Industrial Development Authority versus M/s. Sahakar Global Ltd.

The Allahabad High Court has ruled that while dealing with an application under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act), seeking to restrain the invocation or encashment of the Bank Guarantee, the Court is only required to consider the terms of the Bank Guarantee Agreement and not the conditions contained in the main Contract between the parties, in terms of which the guarantee was furnished.

The bench of Justices Attau Rahman Masoodi and Om Prakash Shukla held that while dealing with an application under Section 9, the Court is not required to interpret the contract and/or form a *prima facie* opinion as to whether the beneficiary of the Bank Guarantee has wrongfully invoked the Bank Guarantee. The Court ruled that such an exercise can only be done in a substantive proceeding before the Arbitral Tribunal.

Participation In Arbitral Proceedings Without Protest, In Absence Of Agreement On Seat; Venue Is Also The Seat Of Arbitration: Allahabad High Court

Case Title: M/s. Zapdor-Ubc-Abnjv Delhi versus U.O.I.

The Allahabad High Court has ruled that where the parties have failed to specifically mention the seat of arbitration and have participated in the

arbitral proceedings at a place without any protest, the parties shall be said to have determined, by their conduct, the said venue of arbitral proceedings as also the seat of arbitration. Hence, the courts at the said place would have exclusive jurisdiction to supervise the arbitral proceedings.

The Single Bench of Justice Sangeeta Chandra held that an order rejecting an application seeking return of the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act) involves no adjudication under Section 34 and hence, the same is not appealable under Section 37 of the A&C Act; therefore, a petition under Article 227 of the Constitution of India is maintainable against the said order.

Section 47 CPC Application Is Not Maintainable In Execution Proceedings Under Arbitration Act, 1940: Allahabad High Court

Case Title: Bharat Pumps and Compressors versus Chopra Fabricators

Citation: 2022 LiveLaw (AB) 269

The Allahabad High Court has held that an application under Section 47 of the CPC is not maintainable in the execution proceedings under Section 17 of the Arbitration Act, 1940.

The Single Bench of Justice Piyush Agarwal held that an arbitration award is not a decree as defined under Section 2(2) of CPC and therefore, the objection under section 47 of CPC, which can be filed only in execution of a decree (as defined under section 2(2) CPC), is not maintainable in the proceedings seeking execution of the award.

Application For Extension Of Time For Passing The Award Lies Only Before The High Court Which Appointed The Arbitrator: Allahabad High Court

Case Title: Indian Farmers Fertilizers Cooperative Ltd. versus Manish Engineering Enterprises

The Allahabad High Court has held that the Court for the purpose of an application under S. 29A of the A&C Act would only be the High Court that appointed the arbitrator.

The Single Bench of Justice Rohit Ranjan Agarwal held that the Principal Civil Court does not have the jurisdiction to entertain an application for an extension of time. The Court held that Sub-section 6 of Section 29A allows the Court to substitute the arbitrator(s) and conferring this power on the Principal Civil Court would lead to an inconceivable situation where the mandate of an arbitrator appointed by the High Court could be substituted by an inferior Court.

Electricity Act Will Not Apply When Contract Is For Supply Of Materials Simpliciter, Court Can Appoint Arbitrator: Allahabad High Court

Case Title: CG Power and Industrial Solutions Ltd. versus U.P. Power Transmission Corporation Ltd.

Citation: 2022 LiveLaw (All) 191

The Allahabad High Court has held that the embargo under S.86 of the Electricity Act which provides that only the Regulatory Commission can appoint an arbitrator does not apply when the agreement is for supply simpliciter and does not have an element of transmission, distribution, and

trading of electricity, and that the Court can appoint an arbitrator in such cases.

The Single Bench of Justice Sangeeta Chandra held that a party that has supplied some material for the construction of an electricity sub-station would not fall within the meaning of a licensee or supplier under the Electricity Act, and when the contract is purely commercial arising out of a contract for supply and does not involve an element of trade in electricity, the provisions of Electricity Act are not attracted.

Andhra Pradesh High Court:

Weight Of Arbitration Award (Delivery) Cannot Be Just 55 Grams: Andhra Pradesh High Court

Case Title: Sampathrao Sudhakar versus Emirates International Airlines

Citation: 2022 LiveLaw (AP) 134

The Andhra Pradesh High Court has held that an arbitration award would weight more than 55 grams and a consignment weighing 55 grams cannot be deemed to be a valid delivery of award.

The bench of Justice R. Raghunandan Rao also held that an arbitral award passed in violation of Section 7 and 11 of the A&C Act would be a nullity.

Once Registered As MSME, The Nature Of Activity Cannot Be A Bar To Any Relief Under The Act: Andhra Pradesh High Court

Case Title: Dalapathi Constructions versus The State of Andhra Pradesh & Ors.

The Andhra Pradesh High Court has held that once an enterprise is registered with the local MSME Council, it is entitled to all the benefits of the Act and the nature of activity between the parties cannot stand as a bar to any relief provided under the act.

The bench of Justice R. Raghunandan Rao held that MSME Council cannot dismiss an application under Section 18 of the Act on the ground that the activity between the parties was merely a 'trading activity', thus, not covered by the provisions of the act.

Review Of Judgment/Order Passed Under Section 11 Of The A&C Act Is Not Permissible: Andhra Pradesh High Court

Case Title: Nagireddy Srinivasa Rao versus Chinnari Suryanarayana & Ors.

The Andhra Pradesh High Court has held that review of an order/judgment passed under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act) is not permissible.

The Bench of Justice R. Raghunandan Rao held that power of review is the creature of a statute and in absence of any such provision in a statute, an order/judgment cannot be reviewed on its merit unless it is for some procedural irregularity.

Arbitration Agreement Not A Bar For Referring Parties To Facilitation Council Under MSME Act: Andhra Pradesh High Court

Case Title: M/s. Dalapathi Constructions versus The State of Andhra Pradesh & Ors.

The Andhra Pradesh High Court has ruled that a reference to the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) for conciliation and subsequent arbitration, is not barred on account of the presence of an arbitration agreement between the parties.

The Single Bench of Justice R. Raghunandan Rao held that even if the arbitration agreement between the parties provides for a different method of constituting an Arbitral Tribunal, the party can be referred to the Facilitation Council under Section 18 of the MSMED Act for recovery of its dues.

The Arbitration Clause Contained In A Manual Issued By The Government As A Generic Guideline Is Not Binding: Andhra Pradesh High Court

Case Title: TBS India Telematic and Biomedical Services Pvt. Ltd. versus Commissioner of Health and Family Welfare

The Andhra Pradesh High Court Bench of Chief Justice Prashant Kumar Mishra has held that arbitration clause contained in a government manual as generic guidelines cannot be invoked by the parties.

The Court also observed that there cannot be an arbitration clause in a sub-contract, or in a separate document when there is no binding agreement between the parties in the first place.

Arbitration Clause In Unstamped Charter Party Agreement Can Invoke Jurisdiction Under Section 9 Of A&C Act: Andhra Pradesh High Court

Case Title: VR Commodities Private Limited versus Norvic Shipping Asia Pte. Ltd.

The Andhra Pradesh High Court has ruled that an arbitration clause contained in a substantive agreement is an independent and autonomous clause, and even if the substantive agreement is not duly stamped as per the Indian Stamp Act, 1899, the arbitration clause is admissible in evidence before the Court who can take into consideration the arbitration clause to decide an application for grant of interim measures under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Bench, consisting of Chief Justice Prashant Kumar Mishra and Justice M. Satyanarayana Murthy, held that since the arbitration agreement is not chargeable with stamp duty under the Indian Stamp Act, by applying the doctrine of separability the arbitration agreement is admissible in evidence before the Court since it is a separate contract.

Bombay High Court:

Court Empowered To Grant Money Claim Under Section 9 Of A&C Act On Basis Of Admitted Claim: Bombay High Court

Case Title: J P Parekh & Son & Anr. versus Naseem Qureshi & Ors.

The Bombay High Court has reiterated that the power of the Court under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act) to grant interim measures of protection, is wider than the power under the provisions of the Code of Civil Procedure, 1908 (CPC).

The bench of Justice Bharati Dangre concluded that the Court is empowered to pass an order under Section 9 of A&C Act granting the applicant's money claim, on the basis of an admitted claim or acknowledged liability.

Application Of Hudson's Formula For Computation Of Loss In Construction Contract, Not Unreasonable: Bombay High Court

Case Title: The State of Maharashtra & Ors. versus Bharat Constructions

The Bombay High Court has ruled that while deciding the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act), the Court is not precluded from considering the findings and conclusions contained in the dissenting opinion of a minority member of the Arbitral Tribunal.

The bench of Justice Manish Pitale observed that the majority opinion in the arbitral award, while computing the compensation to be awarded to the claimant for the loss suffered by it, had referred to the Hudson's formula. Referring to the Supreme Court's decision in *McDermott International Inc. versus Burn Standard Co. Ltd. & Ors. (2006)*, the High Court held that Hudson's formula is widely accepted in construction contracts for computation of losses. Thus, the award passed by the majority members of the Arbitral Tribunal could not be said to be unreasonable so as to warrant interference under Section 34.

Clause Merely Providing Departmental Remedies, For Faster Resolution Of Disputes; Does Not Constitute An Arbitration Agreement: Bombay High Court

Case Title: M/s. Mehra & Company versus State of Maharashtra

The Bombay High Court has ruled that the power of appointment of arbitrator by the High Court under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act), cannot be deemed to have a precedential value. However, the Court held that the same cannot be a reason to

completely ignore the interpretation placed by the High Court in its previous decisions, in respect of the identical clauses contained in the agreement, while dealing with an application under Section 11.

The single bench of Justice Sandeep V. Marne ruled that where a clause merely provides for departmental remedies to a contractor for faster resolution of disputes, the same would not constitute an arbitration agreement.

A&C Amendment Act of 2015 Applies Even If Arbitration Commenced Prior, In Case It Is Stated That Amendment Act Applies: Bombay High Court

Case Title: M/s Skoda Auto Volkswagen India Private Limited versus M/s Commercial Auto Products Private Limited

The Bombay High Court has ruled that where an arbitration agreement between the parties provided for the application of the Arbitration & Conciliation Act, 1996 (A&C Act), along with any statutory modification or re-enactment to the A&C Act existing at the time being in force, it constituted an agreement between the parties as contemplated under Section 26 of the A&C (Amendment) Act, 2015.

Thus, the bench of Justices Mangesh S. Patil and Abhay S. Waghvase held that the parties were bound by the 2015 Amendment Act, notwithstanding the fact that the arbitral proceedings commenced prior to the cut-off date, i.e., 23.10.2015.

Participation In Arbitral Proceedings, Does Not Disentitle Party To Challenge Award On Ground Of Unilateral Appointment Of Arbitrator: Bombay High Court

Case Title: Naresh Kanayalal Rajwani & Ors. versus Kotak Mahindra Bank Limited & Anr.

The Bombay High Court has ruled that merely because a party participated in the arbitration proceedings, it is not disentitled from challenging the arbitral award on the ground that the arbitration proceedings were vitiated due to the unilateral appointment of the Arbitrator by the opposite party, falling foul of Section 12(5) read with the Seventh Schedule of the Arbitration and Conciliation Act, 1996 (A&C Act).

The bench of Justice Manish Pitale held that Section 12(5) of the A&C Act can be waived only in terms of the proviso to Section 12(5).

Arbitration Clause In An Agreement Can't Be Invoked For Another Agreement, Operating Independently: Bombay High Court

Case Title: JSW Steel Limited versus Bellary Oxygen Company Private Limited & Anr.

The Bombay High Court has ruled that mere reference to an Agreement containing an arbitration clause, in a subsequent Agreement, will not bring about a consequence envisaged under Section 7(5) of the Arbitration & Conciliation Act, 1996 (A&C Act), to the effect that the arbitration agreement would be incorporated into the subsequent Agreement.

The bench of Justice G.S. Kulkarni ruled that where the two Agreements operate independently, having no interconnection, the applicant cannot overcome the specific exclusion of an arbitration agreement in the second Agreement, by invoking the arbitration agreement contained in the first Agreement.

Execution Of Agreement, In Bid Document As Condition Precedent;

Failure To Execute, Not A Concluded Contract: Bombay High Court

Case Title: Kalpataru Limited versus Middle Class Friends Co-operative Housing Society Limited

The Bombay High Court has ruled that where reference to a future contract is made in the tender documents and in the Letter of Intent (LoI) issued to a successful bidder, in such terms which shows that the parties do not intend to be bound until the said contract is signed between them, there is no concluded contract between them which can be specifically enforced.

The Division Bench of Justices R.D. Dhanuka and Kamal Khata added that the terms and conditions of the contract, which were not agreed by and between the parties, cannot be drafted by the Court or the arbitrator for incorporating them in the agreement. The Court ruled that it cannot re-write a contract or suggest any conditions of a contract to be incorporated, by passing an order against the parties.

Reliance On Evidence Filed After Conclusion Of Hearing; Award Is

Patently Illegal: Bombay High Court

Case Title: Secretary to the Government of India, Ministry of Shipping, Road Transport and Highways & Anr. versus The Additional Commissioner, Nagpur & Ors.

The Bombay High Court has ruled that where the only documentary material relied upon by the claimant in the arbitral proceedings, is introduced on record surreptitiously and after the conclusion of hearing, the arbitral award is vitiated on account of patent illegality.

The Single Bench of Justice Rohit B. Deo held that the power of the court under Section 34 (4) of the Arbitration and Conciliation Act, 1996 (A&C Act) to remand the matter back to the arbitrator is discretionary, which must be exercised judiciously and only in appropriate cases. The Court added that where the integrity of the arbitral proceedings was compromised, and crucial evidence was introduced on record after conclusion of hearing, it was not an appropriate case to exercise discretion under Section 34 (4).

Reference Made Under MSMED Act; District Court Has Power To Extend Mandate Or Substitute Arbitrator Under Section 29A Of A&C Act: Bombay High Court

Case Title: M/s. Magnum Opus IT Consulting Private Limited versus M/s. Artcad Systems

The Bombay High Court has ruled that the provisions of Section 29A of the Arbitration & Conciliation Act, 1996 (A&C Act), which enables the Court to extend the mandate of the Arbitrator or substitute the Arbitrator, would be applicable to the reference made under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act).

The Single Bench of Justice Anuja Prabhudessa held that there is no provision under the MSMED Act to extend the mandate of the arbitrator or substitute the arbitrator, hence, if the provisions of Section 29A of the A&C Act are made inapplicable to the reference made under the MSMED Act, it would render the arbitral scheme under the MSMED Act otiose.

Mere Reference To Proposal Containing An Arbitration Clause, Unilaterally Signed By One Party, Would Not Amount To An Arbitration

Agreement: Bombay High Court

Case Title: M/s. TCI Infrastructure Limited & Anr. versus M/s. Kirby Building Systems (Uttaranchal) Private Limited & Anr.

The Bombay High Court has ruled that in an agreement executed by both the parties which contains independent terms and conditions, a mere reference to a proposal containing an arbitration clause which was unilaterally signed by one party, would not amount to an arbitration agreement coming into existence between the parties.

The Single Bench of Justice Manish Pitale held that for an arbitration agreement to come into existence, there must be a document incorporating an arbitration clause or agreement which is executed by both the parties, showing a consensus ad-idem between them.

Accepting Terms And Conditions on Website Containing Arbitration

Agreement, Valid: Bombay High Court

Case Title: Ingram Micro India Pvt. Ltd. versus Mohit Raghuram Hegde, Proprietor Creative Infotech

The Bombay High Court has reiterated that reference of a dispute to arbitration can only be refused in cases of "serious allegations of fraud", which is made out when either of the tests propounded by the Apex Court in *Avitel Post Studioz Limited & Ors. versus HSBC PI Holdings (Mauritius) Limited (2020)*, are satisfied.

The Single Bench of Justice G.S. Kulkarni ruled that a declaration made by a party in the KYC executed by it, accepting the terms and conditions provided on the opposite party's website, which included an arbitration

agreement, was sufficient for incorporation of an arbitration clause between them.

Commercial Court Cannot Be Regarded As A "Person Or Institution"

Under Section 11(6) Of The A&C Act: Bombay High Court

Case Title: Uttam Energy Ltd. versus M/s. Shivratna Udyog Ltd.

The Bombay High Court has ruled that the jurisdiction and power of the High Court in relation to the appointment of an arbitral tribunal under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act), has not been divested by the Commercial Courts Act, 2015.

The Court added that the term "all applications or appeals arising out of such arbitration", as provided under Section 10 (3) of the Commercial Courts Act, does not take within its ambit the application which is required to be filed under Section 11 (6) of the A&C Act before the High Court for seeking appointment of arbitrator(s).

Notice Under Section 21 Of A&C Act Issued; Court Not Barred From

Exercising Jurisdiction Under Section 9: Bombay High Court

Case Title: Relcon Infrojects Ltd. & Anr. versus Ridhi Sidhi Sadan, Unit of Shree Ridhi Co.op. Housing Society Ltd. & Ors

The Bombay High Court has ruled that merely because a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (A&C Act) to refer the disputes to arbitration is issued by a party, the Court is not barred from exercising jurisdiction under Section 9 of the A&C Act for interim measures.

The Court added that it is not constrained to refer the parties to arbitration and convert the proceedings under Section 9 into an application under Section 17 of the A&C Act, to be adjudicated by the arbitral tribunal.

Implicitly Admitted Liability Does Not Prevent Reference Of Dispute To Arbitration If Arbitration Agreement Exists: Bombay High Court

Case Title: USP Studios Pvt. Ltd. versus Ganpati Enterprises & Ors

Observing that a judicial authority must make a reference to arbitration if even a semblance of dispute exists between two parties who have an arbitration agreement, the Bombay High Court has held that impliedly admitted liability cannot prevent reference of dispute to arbitration.

Arbitral Tribunal Not Barred Under Section 79 Of The RERA Act From Passing An Order Of Injunction: Bombay High Court

Case Title: Ashok Palav Coop. Housing Society Ltd. versus Pankaj Bhagubhai Desai & Anr

The Bombay High Court has ruled that the Arbitral Tribunal is not a Civil Court within the meaning and purview of the Code of Civil Procedure, 1908 and thus, the arbitral proceedings cannot be said to be barred under Section 79 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act).

The Single Bench of Justice G.S. Kulkarni held that the bar of Section 79 of the RERA Act would not apply to an Arbitral Tribunal and thus, the Arbitral Tribunal is not barred from passing an order of injunction under Section 17 of the Arbitration and Conciliation Act, 1996 (A&C Act).

**Contract Discharged By Settlement – Dispute Under Contract Is A
Deadwood; Cannot Be Referred To Arbitration: Bombay High Court**

Case Title: Vishwajit Sud & Co. versus L & T Stec JV, Mumbai

The Bombay High Court has ruled that once a settlement is arrived at by the parties, the contract between the parties stands discharged by mutual agreement and hence, the dispute arising under the said contract is a deadwood which cannot be referred to arbitration.

The Single Bench of Justice G.S. Kulkarni held that a party cannot be allowed to resurrect the dead issues and foist an unwarranted arbitration after the contract between them stood discharged by a complete accord and satisfaction in terms of the settlement agreement arrived between them.

**Pendency Of Arbitration Is Not A Bar To The Maintainability Of An
Admiralty Suit For Arrest Of The Ship: Bombay High Court**

***Case Title: Vision Projects Technologies Pvt. Ltd. versus OSV Crest
Mercury 1***

Citation: 2022 LiveLaw (Bom) 270

The High Court of Bombay has held that the pendency of an arbitration proceeding between the parties on the same cause of action is not a bar to the institution of an admiralty suit.

The Bench of Justice N.J. Jamadar held that merely because the vessel owner has instituted an arbitration against the charterer, the same would not preclude the charterer from filing an admiralty suit for recovery of its dues and arrest of the vessel in an action in rem.

Section 29A Of The A&C Act Applies Prospectively, Does Not Apply To Arbitration That Commenced Before The 2015 Amendment: Bombay High Court

Case Title: Meenanath Fatarpekar versus MicroStrategy India Pvt. Ltd.

Citation: 2022 LiveLaw (Bom) 268

The High Court of Bombay has held that Section 29A of the A&C Act that provides a timeline of 12 months for passing an arbitral award would not apply to arbitration that commenced before the 2015 Amendment to the Act.

The Bench of Justice G.S. Kulkarni held that provisions of Section 29A of the A&C Act, which was incorporated into the principal act via the 2015 Amendment Act, would not apply to an arbitration proceeding commenced on 3rd Feb 2015 as in terms of Section 26 of the 2015 Amendment Act, the amendment came in to force on 23rd October 2015.

Invocation Of Arbitration Has To Be In Clear Terms; Merely Stating Claims Would Not Suffice: Bombay High Court

Case Title: M/s. D.P. Construction versus M/s. Vishvaraj Environment Pvt. Ltd.

The Bombay High Court has ruled that invocation of arbitration has to be in clear terms, as specified in Section 21 of the Arbitration and Conciliation Act, 1996 (A&C Act), and that a mere reference to the claims and disputes sought to be raised by a party, and the existence of an arbitration clause, would not itself mean that arbitration has been invoked by such a party.

The Single Bench of Justice Manish Pitale observed that Section 21 of the A&C Act specifically refers to a request for the dispute to be referred to arbitration as regards the commencement of the arbitral proceedings. Hence, the Court ruled that unless there is a request by a party that the dispute is to be referred to arbitration, merely stating the claims and disputes in a notice would not suffice.

Place Designated As The "Venue" Of Arbitration In Its Entirety, Is The "Seat" Of Arbitration: Bombay High Court

Case Title: Priya Malay Sheth versus VLCC Health Care Ltd.

Citation: 2022 LiveLaw (Bom) 242

The Bombay High Court has reiterated that whenever a place is designated as the "venue" of the arbitration proceedings in its entirety in an Arbitration Clause, the said place would necessarily be the "seat" of the arbitral proceedings.

The Single Bench of Justice G.S. Kulkarni held that such part of the Arbitration Agreement wherein the parties had agreed upon the venue of the arbitration proceedings, would be required to be read as distinct and independent from the arbitral mechanism agreed between the parties.

Amendment To Section 34 Application Of The A&C Act Would Not Be Permissible If It Intends A New Challenge: Bombay High Court

Case Title: Friends & Friends Shipping Pvt. Ltd versus Central Warehousing Corporation

The Aurangabad Bench of Bombay High Court has held that an amendment to the application under Section 34 of the A&C Act would not

be allowed if it leads to absolutely new grounds to challenge the award.

The Single Bench of Justice Mangesh S. Patil held that in an appropriate case it is permissible to allow the amendment to application under Section 34 even beyond the period provided under Section 34(3) of the Act, however, the amendment can only add some facts to the pending challenge but it cannot be allowed if it constitutes a fresh challenge.

An Enabling Clause Does Not Constitute A Binding Arbitration Agreement Between The Parties: Bombay High Court

Case Title: Derivados Consulting Pvt. Ltd. versus Pramara Promotions Pvt. Ltd.

The Bombay High Court has ruled that once the parties have agreed to use the word 'may', the parties have conferred a discretion to enter into an arbitration agreement in the future; and that such an enabling clause does not constitute any binding arbitration agreement between the parties.

The Single Bench of Justice G. S. Kulkarni held that the use of the word "may" does not bring about any arbitration agreement between the parties, when tested on the touchstone of Section 7(1) of the Arbitration and Conciliation Act, 1996 (A&C Act), which defines the arbitration agreement.

Interim Relief Under Section 9 Of A&C Act - Incidental To Recovery Of Possession Of Property; Small Causes Court Alone Would Have

Jurisdiction: Bombay High Court

Case Title: BXIN Office Parks India Pvt. Ltd. versus Kailasa Urja Pvt. Ltd.

The Bombay High Court has ruled that reliefs which are incidental to the possession of the licensed premises cannot be sought in an application

for interim measures under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act), in view of the exclusive jurisdiction conferred on the Court of Small Causes under Section 41 of the Presidency Small Cause Courts Act, 1882 (PSCC Act).

The Single Bench of Justice G.S. Kulkarni reiterated that the bar contained in Section 41 of the PSCC Act applies not only to a suit for recovery of possession of immovable property but also to all other incidental reliefs which can be claimed by a party in a suit for recovery of possession and hence, the jurisdiction to grant such incidental reliefs would also lie with the Small Causes Court.

Mere Erroneous Application Of Law; Award Need Not Be Set Aside:

Bombay High Court

Case Title: National Highways Authority of India versus The Additional Commissioner, Nagpur and Ors.

The Bombay High Court has reiterated that when the court is convinced that the Arbitrator has erred only on specific issues and that the arbitral award is otherwise sustainable, the court is not mandatorily required to set aside the entire award under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Single Bench of Justice Manish Pitale ruled that though the arbitral award granting interest to land owners on enhanced compensation from the date of the notification for acquisition, and not from the date of taking possession, is contrary to the mandate of Section 3H (5) of the National Highways Act, 1956 (NHA); however, it constituted a mere erroneous

application of the law and hence, the award cannot be said aside on the said ground.

A Reference To Arbitration Can Be Declined By The Court If The Dispute Is A Deadwood: Bombay High Court

Case Title: D.K. Infrastructure Pvt. Ltd. versus Kishore Agarwal and Anr.

The Bombay High Court has held that once the Court is satisfied regarding the existence of an arbitration agreement between the parties, the Court can decline to make a reference to arbitration only if it is satisfied that the dispute is non-existent or that it has become a deadwood.

The Single Bench of Justice N.J. Jamadar reiterated that the scope of enquiry under Section 11(6) of the Arbitration and Conciliation Act, 1996 is extremely limited and that the arbitrability of the dispute is required to be determined by the Arbitral Tribunal.

Court Can Pass An Order Of Interim Measures Under Section 9 Of The A&C Act Against A Third Party: Reiterates Bombay High Court

Case Title: Choice Developers versus Pantnagar Pearl CHS Ltd. & Ors.

The Bombay High Court has reiterated that the Court is free to pass an order under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act) to grant interim measures of protection against a third party who is impleaded in the petition filed under Section 9.

The Single Bench of Justice G.S. Kulkarni held that the minority members of a Society cannot act against the will of the majority members of the Society and obstruct the redevelopment work in the Society.

**Arbitral Proceedings Cannot Be Imposed On A Debenture Trustee Under
A Scheme Of Compromise, In The Absence Of An Arbitration Agreement:
Bombay High Court**

Case Title: HMG Industries Ltd. versus Canara Bank

Citation: 2022 LiveLaw (Bom) 224

The Bombay High Court has held that even though a Scheme of Compromise entered into under Section 391 of the Companies Act, 1956 overrides all the agreements between the affected parties, arbitral proceedings cannot be imposed by a Company on a Debenture Trustee by virtue of the said Scheme only, in the absence of an arbitration agreement between them.

The Single Bench of Justice A.K. Menon ruled that the Debenture Trustee was an independent obligation of the Company and thus, the arbitration clause contained in the Scheme was not binding on the Debenture Trustee.

**Mere Pendency Of A Civil Suit Is Not An Absolute Bar To A Petition Under
Section 11 Of The A&C Act: Bombay High Court**

Case Title: Priya Rishi Bhuta & Anr. versus Vardhaman Engineers and Builders & Ors.

Citation: 2022 LiveLaw (Bom) 221

The High Court of Bombay has held that mere pendency of a Civil Suit is not an absolute bar to a petition under Section 11 of the A&C Act as long as the petitioner can withdraw its suit before the defendant files its statement on the issue.

The Single Bench of Justice G.S. Kulkarni held that it is also permissible for the Civil Court to consider an application of the plaintiff to permit withdrawal of the suit when there is an arbitration agreement, and refer the parties for arbitration.

Undisputed Claims Can't Be Set-Off Against Unliquidated Damages That Are Not Ascertained: Bombay High Court

Case Title: Ocean Sparkle Limited versus Oil and Natural Gas Corporation Ltd. & Ors.

The Bombay High Court recently has observed that set-off of unliquidated damages that are not ascertained or admitted against an undisputed claim is not tenable.

Single Bench of Justice G.S. Kulkarni reiterated that a Section 9 Court would not be unduly bound by procedural law contained in the Code of Civil Procedure, 1908, the underlying principle being to make arbitration an effective form of dispute resolution; and that a performance bank guarantee ("PBG") cannot be invoked contrary to the provision for its invocation in the PBG itself.

Novation Of Partnership Deed, Arbitration Clause Contained In The Deed Can Be Invoked: Bombay High Court

Case Title: Praful A. Mehta versus Nainesh M. Gandhi

The Bombay High Court has ruled that the allegation of forgery is required to be dealt with at the stage of trial before the Arbitrator.

The Single Bench of Justice A. K. Menon dismissed the contention that an arbitration clause cannot be invoked as a result of novation of the

agreement containing the arbitration clause. The Court added that even though there had been a novation of the partnership deed containing an arbitration clause, an Arbitrator could be appointed for adjudication of disputes against the partner with respect to the partnership firm.

The Court Shall Refer The Parties To Arbitration When There Is A Duality Of Expert Opinion As To The Genuineness Of The Agreement: Bombay High Court

Case Title: M/s Atul & Arkade Realty versus I.A. & I.C. Pvt. Ltd

The Bombay High Court has held that when an allegation as to the fraud and forgery committed in the execution of the agreement is made and there is a duality of expert opinion on the genuineness of the agreement, the court shall refer the matter to the arbitrator.

The Single Bench of Justice N.J. Jamadar has held that when the underlying document in which the arbitration agreement is contained is alleged to be affected by fraud and forgery and there is uncertainty as to the veracity of the signatures on the agreement, the Court shall appoint the arbitrator to decide on the dispute.

Claim For Recovery Of Security Deposit Or Damages Under License Agreement Is Arbitrable & Not Barred By Section 41 Of The Small Cause Courts Act: Bombay High Court

Case Title: Bafna Motors Private Limited versus Amanulla Khan

The Bombay High Court has reiterated that where the parties to a Leave and License Agreement are governed by an Arbitration Agreement, determination of the dispute relating to recovery of the security deposit

under the said License Agreement through arbitration is legally permissible.

The Single Bench of Justice N.J. Jamadar held that the expression "charges" as provided under Section 41 of the Presidency Small Cause Courts Act, 1882, which confers exclusive jurisdiction to the Small Causes Court with respect to a dispute between a licensor and a licensee relating to recovery of an immovable property situated in Greater Bombay or recovery of licence fee, charges or rent, cannot subsume in its fold a claim for damages.

Agreement On The Name Of The Arbitrator Would Not Amount To A Waiver Of Notice Under Section 21 Of The A&C Act: Bombay High Court

Case Title: Malvika Rajnikant Mehta & Ors versus JESS Construction

The High Court of Bombay has held that simply because the arbitration agreement provides for the name of the arbitrator, the same would not amount to a waiver of notice under Section 21 of the A&C Act.

The Single Bench of Justice N.J. Jamadar has held that the use of the word "Unless otherwise agreed by the parties" in Section 21 means that the parties can dispense with the requirement of giving a notice of arbitration, however, the mere fact that the parties have named the Arbitrator would not imply that the parties have agreed to waive the requirement of the notice contemplated under Section 21 of the Act.

Merely Because An Application Under Section 7 Of IBC Is Filed, It Is Not An Embargo On The Court Exercising Jurisdiction Under Section 11 Of The A&C Act : Bombay High Court

Case Title: Jasani Realty Pvt. Ltd. versus Vijay Corporation

Citation: 2022 LiveLaw (Bom) 162

The High Court of Bombay has held that merely because an application under S.7 of IBC is filed before the adjudicating authority which is pending consideration does not oust the jurisdiction of the High Court to entertain an application filed under S. 11 of the A&C Act.

The Single Bench of Justice G.S. Kulkarni has held that an application filed under S.7 of the IBC creates an erga omnes effect or involves third party rights only after it has been admitted by the adjudicating authority, however, before its admission, there is no embargo on the power of the court to decide on an application filed under S.11 of the A&C Act for the appointment of an arbitrator.

Court Lacking Jurisdiction To Appoint An Arbitrator, Cannot Do So Based On No Objection By The Opposite Party: Bombay High Court

Case Title: Purushottam s/o Tulsiram Badwaik and Ors. versus Anil s/o Hariram Malewar and Ors

Citation: 2022 LiveLaw (Bom) 146

The Bombay High Court has ruled that a Court cannot appoint an Arbitrator when the only proceeding before it is an application for grant of interim measures under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act), solely on the ground that the opposite party has not objected to the appointment of an Arbitrator.

The Single Bench of Justice Manish Pitale held that even if an arbitration clause exists, appointment of an Arbitrator can only take place in

accordance with the law. The Court added that merely because no objection is endorsed by the opposite party, a Court will not be foisted with the jurisdiction to appoint an Arbitrator.

Court Can't Grant Interim Relief Under Section 9 Of A&C Act, If The Contract Is Determinable: Bombay High Court

Case Title: Chetan Iron LLP versus NRC Ltd.

The Bombay High Court has held that an application for interim relief in the form of specific performance of the contract would not be maintainable when the nature of the contract is determinable.

The Single Bench of Justice G.S. Kulkarni has held that specific performance cannot be granted in respect of an agreement that can be terminated by either of the parties without assigning any reasons. It held that Section 14(1)(c) and Section 41(e) of the Specific Relief Act would be attracted when the interim relief for specific performance is prayed for in respect of an agreement that is in its nature determinable.

Writ Petitions On The Ground Of 'Exceptional Circumstances' Against Order Passed By The Arbitral Tribunal Not Maintainable: Bombay High Court

Case Title: Tagus Engineering Private Limited & Ors. versus Reserve Bank of India & Anr.

AND IDFC First Bank Limited versus Bell Invest India Limited & Anr.

Citation: 2022 LiveLaw (Bom) 127

The Bombay High Court has ruled that remedy against orders passed under Section 16 of the Arbitration and Conciliation Act, 1996 lies

elsewhere and the petitioners, aggrieved by the orders passed under Section 16, cannot file Writ Petitions under Article 226 or Article 227 of the Constitution of India on the ground of 'exceptional circumstances'.

The Bench, consisting of Justices G.S. Patel and Madhav J. Jamdar, held that it is impermissible for the Court to exercise jurisdiction under Article 226 of the Constitution even on questions with respect to the jurisdictional competence of an Arbitral Tribunal, except in cases where the arbitral tribunal is a statutory tribunal created by a statute.

Court Does Not Have Adjudicatory Powers Under Section 27 Of The A&C

Act: Bombay High Court

Case Title: Dilip s/o. Bhavanji Shah versus Errol Moraes

Citation: 2022 LiveLaw (Bom) 130

The Bombay High Court has ruled that the Court does not have the jurisdiction under Section 27 of the Arbitration and Conciliation Act, 1996 (A&C Act) to consider the legality of the reasons set out by the arbitral tribunal in its order permitting the examination of a witness.

The Single Bench of Justice G.S. Kulkarni ruled that once the arbitral tribunal had formed a prima facie opinion that a particular witness is required to be examined by a party in the arbitral proceedings, the reasons laid down by the tribunal in its order cannot be revisited and scrutinized by the Court, since proceedings under Section 27 of the A&C Act are not in the nature of an appeal and the Court does not have any adjudicatory powers under Section 27.

Tax Invoices Containing Reference To Arbitration, Does Not Constitute An Arbitration Agreement: Bombay High Court

Case Title: Concrete Additives and Chemicals Pvt Ltd versus S N Engineering Services Pvt Ltd.

Citation: 2022 LiveLaw (Bom) 133

The Bombay High Court has ruled that acceptance of tax invoices by the opposite party, containing a reference to arbitration, does not lead to the presumption that an arbitration agreement exists between the parties.

The Single Bench of Justice G.S. Kulkarni held that unilateral invoices cannot bring about an arbitration agreement between the parties.

Court Can Appoint An Arbitrator During The Pendency Of An Appeal Against An Award, Set Aside On Reasons Other Than Merit : Bombay High Court

Case Title: Wadhwa Group Holdings Pvt. Ltd. versus Homi Pheroze Ghandy and Anr.

Citation: 2022 LiveLaw (Bom) 134

The High Court of Bombay has held that when an award is set aside for other reasons and not on merit, the parties are well within their rights to initiate fresh arbitration in respect of the same claims and pendency of an appeal against such an order is not a ground to refuse the appointment.

The Single Bench of Justice A.K. Menon has further held that an objection as to the claims being barred by Res Judicata, since an appeal is pending before the Court, is outside the limited scope of judicial examination

permissible under Section 11 of the A&C Act. The Court held that invocation of arbitration cannot be subjected to the fate of the appeal.

Once Parties Acknowledge Existence Of Arbitration Clause, Court Can Appoint Arbitrator Even If Stamp Duty Is Insufficiently Paid: Bombay High Court

Case Title: Pigments & Allied Vs Carboline (India) Pvt. Ltd

The Bombay High Court has recently observed that once the parties have acknowledged that an arbitration clause was embodied in the substantive contract, insufficiency of stamps cannot prevent the court from disposing an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of arbitrators.

Calcutta High Court:

Arbitral Tribunals Exercising Power U/S 17 Not Strictly Bound By CPC: Calcutta High Court

Case Title: Gainwell Commosales Pvt Ltd. versus Minsol Limited

The Calcutta High Court has held that the arbitral tribunals while exercising power under Section 17 of the A&C Act are not strictly bound by the technicalities of CPC.

The bench of Justice Shekhar B. Saraf held that the ambit of power given to the tribunals for grant of interim relief is to be guided by the basic principles of CPC, however, the strict technicalities cannot prevent the tribunal from securing the ends of justice.

Criminal Proceedings Cannot Be Initiated For Recovery Of Amount Due Under The Arbitration Award: Calcutta High Court

Case Title: Oil India Limited versus Ashok Kumar Bajoria

The Calcutta High Court has held that criminal proceedings cannot be initiated for recovery of amount due under an arbitration award.

The bench of Justice Tirthankar Ghosh held that a party aggrieved by non-payment of amount due under a post award settlement agreement, should not resort to filing a criminal case by giving a civil dispute criminal colour, as the same is an abuse of the process of law. The Court held that the correct recourse for the party would be putting the award into execution.

Not Awarding LD- Finding Of Fact By Arbitrator, Need Not To Be Interfered: Calcutta High Court

Case Title: M/s. S.B.I.W. Steels (Private) Limited versus Steel Authority of India Limited (SAIL)

The Calcutta High Court has reiterated that damage or loss is *sine qua non* for the applicability of Section 74 of the Indian Contract Act, 1872 and thus, in the absence of loss, penalty/liquidated damages cannot be claimed on breach of contract.

The bench of Justices I. P. Mukerji and Md. Nizamuddin ruled that the finding arrived at by the Arbitrator, to the effect that the party was unable to prove any loss so as to claim liquidated damages/penalty under the Contract, was a finding of fact, and that it was a reasonable inference drawn from non-production of evidence before the Arbitrator.

Section 9 Of The A&C Act Is A Provision In Aid Of The Arbitration, Applies To Foreign Seated Arbitration Also: Calcutta High Court Reiterates

Case Title: Chemex Oil Private Limited versus Seastarr International Pvt. Ltd.

The High Court of Calcutta has held that Section 9 of the A&C Act that provides for interim relief by the Court, applies to foreign seated arbitration as well.

The bench of Justice Shekhar B. Saraf held that Section 9 is a provision that is in aid of the arbitration proceedings in contrast to other provisions of Part-I of the A&C Act that relate to the conduct of the arbitration proceedings, and that it has been mandated to apply to foreign seated arbitrations as well.

Arbitrator Cannot Apply 'Trade Usages' Against The Express

Understanding Of The Parties: Calcutta High Court

Case Title: M/s. Universal Seaport Private Limited versus The Chairman, Board Of Trustees For The Port Of Kolkata

The Calcutta High Court has held that the arbitrator cannot, while adjudicating the dispute between the parties, apply trade usages against the express intention of the terms of the agreement between the parties.

The bench of Justice Shekhar B. Saraf held that by virtue of Section 28(3) of the A&C Act, an arbitrator can apply trade usages to determine the dispute between the parties, however, the same cannot be applied to the contravention of the contract but only when the latter is silent or ambiguous on some aspect. It held that the jurisprudence on arbitration bows down to party autonomy.

Dispute of Unregistered Partnership Firm Can Be Referred To Arbitration,

Bar U/S 69 Partnership Act Not Applicable: Calcutta High Court

Case Title: Md. Wasim & Anr. versus M/s. Bengal Refrigeration and Company & Ors.

The Calcutta High Court, while hearing an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act') for appointment of an arbitrator to resolve the dispute between the parties, held that the bar for instituting a suit or any other proceeding under Section 69 of the Indian Partnership Act, 1932 shall not be applicable to arbitral proceedings under Section 11 of the Arbitration Act.

Arbitrator Cannot Delegate The Task Of Quantifying The Amount Of

Award To A Chartered Accountant: Calcutta High Court

Case Title: Usha Martin Limited versus Eastern Gases Limited

The Calcutta High Court has held that the arbitrator can indeed take assistance from a third party, including a Chartered Accountant, however, it cannot completely delegate the important function of quantifying the amount of award to any third party.

The Bench of Justice Shekhar B. Saraf held that an arbitral award wherein the arbitrator failed to determine the amount of award and delegated that function to a third party cannot be sustained in the eyes of law. The Court remarked that an arbitrator cannot shun away from its duty and delegate an important function to a third party.

Writ Maintainable Against An Award Passed By Statutory Arbitrator

Violating The Principles Of Natural Justice: Calcutta High Court

Case Title: Sri Ganesh Chandra and Ors. versus The State of West Bengal and Ors.

The Calcutta High Court has held that an award passed by the statutory arbitrator under the National Highways Act, 1956 where neither the notice of arbitration was served nor the copy of the award was given to the appellants is violative of principles of natural justice.

The Bench of Justices Arijit Banerjee and Kausik Chanda held the availability of an alternative efficacious remedy under Section 34 of the A&C Act cannot be a bar to the maintainability of the writ petition against an award passed violating the principles of natural justice.

Unilateral Appointment Of Arbitrator; Calcutta High Court Replaces With A New Arbitrator

Case Title: Yashovardhan Sinha HUF versus Satyatej Vyapaar Pvt. Ltd.

The Calcutta High Court has held that an arbitration clause does not come to an end merely because it provides for an illegal method of appointment of arbitrator and the courts can remove the illegal portion and retain the remaining clause to give effect to the intention of the parties to submit their dispute to arbitration.

The Bench of Justice Shekhar B. Saraf further held that the Court while exercising powers under Section 14 of the A&C Act for appointing a substitute arbitrator will be guided by the principles of Section 11 of the Act, therefore, the Court may refuse substitution when it finds that the issue itself is not arbitrable or falls under one of the categories wherein the dispute is not required to be sent for arbitration.

Conduct Of The Parties Can't Substitute Arbitration Agreement: Calcutta High Court

Case Title: Eastern Coalfields Ltd. versus RREPL-KIPL (JV)

The Calcutta High Court has held that the Court while exercising powers under Section 11 of the A&C Act is bound to examine the existence of the arbitration agreement, in absence of the agreement, it cannot refer the parties to arbitration merely because the respondent did not raise objections.

The Bench of Justice Bebangshu Basak held that the conduct of the parties is not a substitute for an arbitration agreement.

Award Of Demurrage Charges Under Major Ports Act Is Not Valid When Contract Does Not Provide For Such Charges: Calcutta High Court

Case Title: Steel Authority of India versus Vizag Seaport Pvt. Ltd.

Citation: 2022 LiveLaw (Cal) 293

The High Court of Calcutta has held that the arbitral tribunal cannot award demurrage charges on the basis of Major Ports Act, 1963 when the contract between the parties has no provision for such damages.

The Bench of Justice Krishna Rao held that an arbitral award wherein the tribunal has awarded demurrage charges in absence of any provision in the agreement for levy of such charge would be vitiated by patent illegality.

No Claim Certificate Is Invalid If It Is A Pre-Condition To The Release Of Final Payment: Calcutta High Court

Cast Title: West Bengal Tourism Development Corporation Ltd. versus Supratik Banerjee and Anr.

The Calcutta High Court has held that a discharge voucher or No Claim Certificate would be invalid on account of 'Coercion' if it is submitted as a pre-condition to the release of final payment.

The Bench of Justice Krishna Rao held that a situation where the employer denies the payment of dues to the contractor unless it submits an undertaking to the employer not to make any further claims would fulfil the ingredients of Section 15 of the Indian Contract Act and the obtained undertaking would be invalid.

"Interim Award Is A Stopover En-Route To The Destination To Final Adjudication Of The Dispute": Calcutta High Court Explains

Case Title: Lindsay International Private Limited versus IFGL Refractories Limited

The Calcutta High Court has discussed the concept of interim award under the Arbitration Act. The court was hearing a plea by Lindsay International seeking to set aside an order which the petitioners pleaded was an interim order in terms of the Act.

Single judge bench of Justice Moushumi Bhattacharya held that the impugned decision did not qualify to be nor did it have the trappings of an interim award under Section 2(1)(c) or Section 31(6) of the Arbitration Act, 1996; hence, the impugned order could not be challenged under Section 34 of the Arbitration Act.

Clause "Every Effort" To Arbitrate; Must Be Referred To Arbitration:

Calcutta High Court

Case Title: Manika Sett versus Sett Iron Foundry and Ors

The Calcutta High Court has ruled that it is the intention of the parties that has to be deciphered while determining whether or not the parties must be referred to arbitration.

The Single Bench of Justice Shekhar B. Saraf held that where the arbitration clause between the parties provided that "every effort" should be made by them to settle the dispute by arbitration, the term "every effort" expanded the scope and ambit of the arbitration clause, and clearly conveyed the intention to refer the disputes to arbitration.

Arbitral Award With Contradictory Findings Is Liable To Be Set Aside:

Calcutta High Court

Case Title: State of West Bengal versus Tapas Kumar Hazra

The High Court of Calcutta has held that an arbitral award wherein the arbitrator has given contradictory findings is liable to be set aside.

The Bench of Justice Krishna Rao reiterated that an arbitral award wherein no reasons are given for arriving at a particular finding is also liable to be set aside.

The Objection Regarding The Non-Applicability Of The MSMED Act To

'Works Contract' Is To Be Decided In Arbitration By The MSME Council:

Calcutta High Court

Case Title: NBCC (India) Ltd. versus The State of West Bengal and Ors.

Citation: 2022 LiveLaw (Cal) 214

The Calcutta High Court held that objections regarding the non-applicability of the MSMED Act to works contract can be decided in arbitration by MSME Council.

The Division Bench of Chief Justice Prakash Shrivastava and Justice Rajarshi Bharadwaj upheld the order of the Single Bench whereby the petitioner was referred to arbitration before the MSME Council with a direction that his objection regarding the non-applicability of the MSMED Act as the contract was a works contract would be decided by the Arbitral Tribunal.

S.11 Arbitration Act | Interested Party Cannot Appoint An Arbitrator To Decide Disputes Between Parties: Calcutta High Court

Case Title: New Eureka Travels Club versus South Bengal State Transport Corporation

Citation: 2022 LiveLaw (Cal) 200

The Calcutta High Court, while adjudicating upon an application under Section 11 of the Arbitration and Conciliation Act, 1996 (Act), has held that it is a settled law that neither an interested party can be appointed as an arbitrator nor can the said interested party appoint an arbitrator to decide the disputes between the parties.

The Single Bench of Justice Shekhar B. Saraf observed that where a sole arbitrator is required to be appointed as per the parties, it is the Court that is to decide the sole arbitrator.

The Finding Of The MSME Council On Its Jurisdiction Is Not An Interim

Award: Calcutta High Court

Case Title: Board of Trustees for the Syama Prasad Mookerjee Port, Kolkata versus Marinecraft Engineers Private Limited

Citation: 2022 LiveLaw (Cal) 194

The High Court of Calcutta has held that the decision of the MSME Council on its jurisdiction is an order under Section 16 of the A&C Act and it cannot be termed as an interim award that can be directly challenged under Section 34 of the A&C Act pending adjudication on the other issues.

The Single Bench of Justice Ravi Krishan Kapur has held that the order of the MSME Council that pertains to its jurisdiction has to pass the drill of Section 16(5) and Section 16(6) of the A&C Act and the aggrieved party must wait till the passing of the final award.

No Direction Can Be Passed To Sell Property To Third Party In Section 9

Petition Of The A&C Act: Calcutta High Court

Case Title: Aditya Birla Finance Ltd versus Mcleod Russel India Ltd. and Ors.

Citation: 2022 LiveLaw (Cal) 189

The High Court of Calcutta has held that no direction can be passed to sell property to third party in Section 9 petition of the A&C Act.

The Single Bench of Justice Moushumi Bhattacharya has held that a direction to sell the subject property to an outsider who was not a party to the arbitral proceedings would result in the property going out of the girdle

of the arbitration and the purpose of a Section 9 application itself would be defeated.

Order Passed By Court Under Section 36 Of A&C Act Is An Interim Order, Can Be Modified On Grounds Of Financial Hardship: Calcutta High Court

Case Title: Damodar Valley Corporation versus Reliance Infrastructure Ltd Case

Citation: 2022 LiveLaw (Cal) 164

The Calcutta High Court has ruled that financial hardship and financial indebtedness are sufficient grounds for modifying an order passed under Section 36 of the Arbitration and Conciliation Act, 1996 (A&C Act) to direct the award debtor to deposit the awarded amount by way of cash security.

The Single Bench of Justice Ravi Krishan Kapur held that the security directed to be deposited by a Court under Section 36 of the A&C Act should be real and realisable, and it ought not to be illusory

Post-Award Interest Is Not Advisory But A Mandate Of The A&C Act: Calcutta High Court

Case Title: Future Market Networks Limited versus Laxmi Pat Surana & Anr.

Citation: 2022 LiveLaw (Cal) 156

The Calcutta High Court has ruled that award of future or post-award interest is not advisory but a mandate of the Arbitration and Conciliation Act, 1996 (A&C Act) and it should be given its due weightage.

The Single Bench of Justice Moushumi Bhattacharya reiterated that post award interest is a safeguard against delayed payment of the amount awarded to the award holder.

If Original Agreement Contains Arbitration Clause, Subsequent Agreement Extending Just Validity Need Not To Have A Separate Arbitration Clause: Calcutta High Court

Case Title: Sukumar Ray versus M/s Indo-Industrial Services and Ors.

The High Court of Calcutta has held that a subsequent agreement entered into between the parties need not contain a separate arbitration clause if it is made only to extend the validity of the original agreement that contained an arbitration clause.

The Single Bench of Justice Shekhar B. Saraf has held that if the new agreement provides for a specific reference to the terms of the earlier agreement and does not contain any clause other than the extension of the validity of the original agreement then there is no requirement to have an arbitration clause in the new agreement.

Scope Of Section 9 Of The A&C Act Cannot Be Extended To Enforcement Of The Arbitral Award: Calcutta High Court

Case Title: M/s. Satyen Construction versus State of West Bengal & Ors.

The Calcutta High Court has ruled that the scope of Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act) cannot be extended to enforcement of the arbitral award or granting the fruits of the award to the award holder as an interim measure.

The Single Bench of Justice Ravi Krishan Kapur held that the right to withdraw the amount deposited by the award debtor, pursuant to an application filed for stay of operation of the award under Section 36(2), does not constitute as an interim protection under Section 9 of the A&C Act since it transgresses into the domain of enforcement of the award.

Arbitration Agreement Not Discharged By Death Of A Party And Is Enforceable Against The Legal Representatives: Calcutta High Court

Case Title: Dr. Papiya Mukherjee versus Aruna Banerjea and Anr.

The Calcutta High Court has ruled that an arbitration agreement will not be discharged by the death of a party and it will be enforceable by or against the legal representatives of the deceased party.

The Single Bench of Chief Justice Prakash Shrivastava held that though the legal representatives were not signatories to the arbitration agreement, but being the legal representatives of the signatory to an arbitration agreement, they were bound by the agreement.

Section 37 Of The Arbitration & Conciliation Act 1996 R/W Section 13 Of The Commercial Courts Act 2015 Excludes The Applicability Of Clause 15 Of Letters Patent: Calcutta HC

Case Title: APL Metals Ltd. v. Mountview Tracom LLP & Ors.

Citation: 2022 LiveLaw (Cal) 113

The Calcutta High Court has observed that S.37 of the Arbitration & Conciliation Act (Arbitration Act) and S.13 of the Commercial Courts act exclude the applicability of Clause 15 of Letters Patent.

The Division Bench of Justice I.P. Mukerji and Justice Aniruddha Roy relied on the decision of the Apex Court in *Union of India v. Simplex Infrastructures*, (2017) 14 SCC 225, to hold that the Arbitration Act is a self-contained code and no appeal lies against an order which does not fall within the four corners of S. 37 of the Arbitration Act.

Scope Of Discretion To Stay Award U/S 19 MSME Act Wider Than U/S 36(3) Arbitration Act: Calcutta High Court

Case Title: Bharat Heavy Electricals Limited versus Optimal Power Synergy Ltd.

The Calcutta High Court has ruled that the discretion conferred upon a Court to stay an award or a decree under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) is broader in scope compared to Section 36(3) of the Arbitration and Conciliation Act, 1996 (Arbitration Act), where the discretion is limited to granting stay of an award subject to appropriate conditions.

Chhattisgarh High Court:

Court Can't Appoint Arbitrator Where Parties Fail To Raise Dispute In Time Or Avoid In-House Dispute Resolution Mechanism: Chhattisgarh HC

Case Title: M/s. S. Narinder Singh & Company, Engineers & Government Contractor versus South Eastern Coalfields Ltd. and Ors.

The Chhattisgarh High Court, while dealing with a matter pertaining an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, held that court can't entertain application for appointment of

arbitrator where parties fail to raise dispute in time or avoid in-house dispute resolution mechanism.

Non-Delivery Of Signed Copy Cannot Save Limitation; Chhattisgarh High Court Affirms Section 34 Dismissal

Case Title: Union of India versus Bhola Prasad Agrawal & Anr.

The Chhattisgarh High Court has ruled that though the delivery of signed copy of the arbitral award to each of the parties to the arbitral proceedings is *sine qua non*, however, if the award debtor had already become aware of the award, enabling him to file an application to set aside the award, mere non-delivery of the signed copy cannot be said to cause any prejudice to him.

The Single Bench of Justice Arvind Singh Chandel was dealing with an appeal filed by the applicant under Section 37 of the Arbitration and Conciliation Act, 1996 (A&C Act), against the order of the District Court dismissing the applicant's application to set aside the arbitral award on the ground of limitation.

Arbitral Award Vitiating By Serious Fraud And Criminal Conspiracy Can Be Set Aside In A Writ Petition: Chhattisgarh High Court

The High Court of Chhattisgarh has held that an arbitral award that is vitiating by fraud and criminal conspiracy would be void and non-est and can be set aside in a Writ Petition and the availability of an alternative remedy under Section 34 of the A&C Act is not a bar to the maintainability of the petition.

The Division Bench of Chief Justice Anup Kumar Goswami and Justice Rajendra Chandra Samant further held that on a plain reading of Section 34 of the A&C Act, it is revealed that fraud and conspiracy are not the ground to challenge an arbitral award.

The Court held that a writ petition would be maintainable if the challenge to the award is made on the touch-stone of offences of fraud and conspiracy.

MSME Facilitation Council Acted As Conciliator Can Also Administer The Arbitration, Bar Under S.80 Of A&C Act Does Not Apply: Chhattisgarh High Court

Case Title: SEW Infrastructure Ltd. versus Micro & Small Enterprises Facilitation Council and Anr.

Citation: 2022 LiveLaw (Chh) 28

The High Court of Chhattisgarh has observed that the bar under S. 80 of the A&C Act which prevents the conciliator from acting as an arbitrator does not apply to the MSME Facilitation Council.

The Single Bench of Justice Rajendra Chandra Singh Samant has observed that provisions of S.80 of the A&C Act cannot override the provision of the MSMED Act to prevent the council from acting as an arbitrator. It has been held that the combined reading of Section 18 and 24 of the MSMED Act, 2006, show that there is an overriding effect over the provisions of Section 80 of the A&C Act, 1996.

If The Agreement Stipulates For Reference To Dispute Resolution

Committee (DRC), The Claimant Must Exhaust That Remedy Before

Seeking Arbitration: Chhattisgarh High Court

Case Title: Devanshi Construction versus CPWD and others

Citation: 2022 LiveLaw (Chh) 29

The High Court of Chhattisgarh has observed that a S. 11 application is not maintainable if the Petitioner before invoking the jurisdiction of the Court has not complied with the pre-condition of referring the dispute to the Dispute Resolution Committee as provided under the Agreement.

The Chief Justice Mr. Arup Kumar Goswami held that the remedy of arbitration would only come into the picture after the Petitioner has successfully exhausted the other dispute resolution remedy provided in the agreement. The Court ruled that failure of the Petitioner to comply with a contractual stipulation would render the application for appointment of an arbitrator as pre-mature.

Delhi High Court:

Order Rejecting Application For Impleading Third Party Is Not An Interim

Arbitration Award: Delhi High Court

Case Title: National Highways Authority of India versus Lucknow Sitapur Expressway Ltd.

The High Court of Delhi has held that an order of the tribunal rejecting the application for impleading a party to arbitration is not an interim award but merely a procedural order, therefore, the same cannot be challenged under Section 34 of the Act.

The bench of Justice Yashwant Varma held that an arbitral tribunal, during the continuance of arbitral proceedings, passes many orders and for an order to fall within the rubric of interim award it has to necessarily have certain features. The Court held that for an order to be understood as an award, it has to be a decision on the merits of the dispute that conclusively determines a substantive claim, issue or question that exists between the parties.

Dispute Between Parties Under A "Non-Binding Term Sheet" Can Be Referred To Arbitration: Delhi High Court

Case Title: Welspun One Logistics Parks Fund I versus Mohit Verma & Ors.

The Delhi High Court has ruled that the dispute between the parties under an agreement titled as a "*Non-Binding Term Sheet*", can be referred to arbitration, holding that the Arbitration Clause contained in the said agreement was binding between the parties.

The bench of Justice Navin Chawla observed that though the nomenclature of the agreement was "*Non-Binding Term Sheet*", the Arbitration Clause contained in the agreement was specifically made binding on the parties. It held that whether the other covenants of the Term Sheet were non-enforceable, is not to be considered by the Court at the stage of considering an application under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act).

Moratorium Under Companies Act, 2013, Parties Cannot Be Referred To Arbitration: Delhi High Court

Case Title: DLF Ltd. versus IL&FS Engineering and Construction Company

The Delhi High Court has ruled that the moratorium granted by the National Company Law Appellate Tribunal (NCLAT), staying the institution of suits and proceedings against the Corporate Debtor, after the resolution process is initiated against it under Sections 241 and 242 of the Companies Act, 2013, is akin to an order of moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). Thus, the bench of Justice V. Kameswar Rao held that in view of the moratorium issued by the NCLAT, the Corporate Debtor cannot be referred to arbitration.

The High Court dismissed the contentions raised by the applicant that since the resolution of IL&FS was initiated under Sections 241 and 242 of the Companies Act, 2013 and not under IBC, the rigours of Section 14 of the IBC were not attracted.

Arbitration Clause Is Limited To Quantum Of Damages, Termination Of Proceedings Is Valid: Delhi High Court

Case Title: Geo Chem Laboratories Pvt Ltd versus United India Insurance Co. Ltd.

The High Court of Delhi has held that when the scope of arbitration clause is limited to quantum of damages only in the eventuality that the liability to pay is admitted by the insurance company, there can be no arbitration if the liability is denied.

The bench of Justice V. Kameswar Rao held that the suggestions given by the Surveyor in its report, though of substantial evidentiary value, are not binding on the insurance company.

Invoking CIRP Would Not Make The Dispute Non-Arbitrable: Delhi High Court

Case Title: Brilltech Engineers Pvt. Ltd. versus Shapoorji Pallonji and Co. Pvt Ltd.

The High Court of Delhi has held that the dispute would not become non-arbitrable merely because the petitioner, before filing the application for appointment of arbitrator, has filed a corporate insolvency application under Section 9 of the IBC.

The bench of Justice Neena Bansal Krishna held that it is settled position of law that jurisdiction of NCLT can be invoked only in respect of determined debts, however, merely because a petition has been filed by the petitioner asserting that a definite amount is payable by the respondent, would not imply that the claimed amount has been admitted.

MOU Terminating The Main Agreement Containing The Arbitration Clause Can Be Referred To Arbitration: Delhi High Court

Case Title: Super Blastech Solutions versus Rajasthan Explosives and Chemicals Limited

The High Court of Delhi has held that a dispute arising out of a Memorandum of Understanding (MoU) or a Memorandum of Settlement (MoS), wherein no arbitration clause is present, can be referred to arbitration if these agreements were directly linked to the main agreement.

The bench of Justice Mini Pushkarna held that dispute arising out of any subsequent agreement that arises out of the main agreement containing the arbitration clause, can be referred to arbitration.

Can Recall Section 11 A&C Act Order, If It Suffers From Patent And

Manifest Error: Delhi High Court

Case Title: Always Remember Properties Private Limited versus Reliance Home Finance Limited & Anr.

The Delhi High Court has ruled that the power exercised by the High Court under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act) is not merely an administrative function but a judicial power, and that the Court does not cease to be a Court of Record while exercising power under Section 11.

Thus, the bench of Justice Yashwant Varma held that the High Court can recall the order passed by it under Section 11 of the A&C Act if it suffers from a patent and manifest error apparent on the face of the record.

Venue Restriction Provision Contained In Section 42 of A&C Act, Not Applicable To Proceedings Seeking Enforcement Of Award: Delhi High Court

Case Title: Ramacivil India Constructions Pvt Ltd versus Union of India

The Delhi High Court has reiterated that Section 42 of the Arbitration and Conciliation Act, 1996 (A&C Act) would have no application to proceedings seeking enforcement of arbitral award.

The bench of Justice Yashwant Varma noted that execution application is neither an "arbitral proceeding" within the meaning of Section 42 of the A&C Act, nor is it a subsequent application arising out of the arbitration agreement and thus, the venue restriction provision contained in Section 42 would have no application to enforcement proceedings.

Employer Cannot Retain Performance Bank Guarantee After

Acknowledging Due Performance: Delhi High Court

Case Title: Union of India versus RCCIVL-LITL (JV)

The High Court of Delhi has held that the employer cannot withhold the performance bank guarantee after acknowledgement of the due performance of the contract by the contractor.

The bench of Justice V. Kameshwar Rao held that the employer cannot also withhold the performance bank guarantee merely for securing the amount of its counter-claims.

Challenge Relating To The Bias Of An Arbitrator Cannot Be Raised Under

Section 14 Of The A&C Act: Delhi High Court

Case Title: Union of India versus Reliance Industries Limited

The High Court of Delhi has held that a challenge to the mandate of the arbitrator on the ground of bias and a justifiable doubt with respect to its independence and impartiality, cannot be raised under Section 14 of the A&C Act.

The bench of Justice Yashwant Varma held that Section 14 of the A&C Act confers the power on the Court to terminate the mandate of the arbitrator and appoint a substitute arbitrator only in circumstances that fall within the 7th Schedule of the A&C Act that deals with *de jure* ineligibility of the arbitrator, however, ground of bias or justifiable ground as to its independence and impartiality falls within the 5th Schedule read with Section 12(3) of the A&C Act, wherein only the tribunal can decide on the challenge.

Signing A Blank Discharge Voucher Indicates That A Party Was Acting Under Pressure And Compulsion: Delhi High Court

Case Title: New India Assurance Company Limited versus Khanna Paper Mills Limited

The High Court of Delhi has held that the fact that a party signed on a blank Discharge Voucher indicates that it was acting under pressure and compulsion and it did not sign the document out of free will.

The bench of Justice C. Hari Shankar held that a discharge voucher signed out of economic duress and compulsion would not extinguish the legitimate claims of a party and it would be open to the party to claim the remaining amount.

Disclosure By The Arbitrator Is Not A Discretionary But A Mandatory Requirement, Non-Disclosure Vitiates The Award: Delhi High Court

Case Title: Ram Kumar versus Shriram Transport Finance Co. Ltd.

The High Court of Delhi has held that disclosure by the arbitrator under Section 12 r/w 6th Schedule of the A&C Act is not a discretionary but a mandatory requirement. The Court held that the failure of the arbitrator to disclose a fact that might give rise to a justifiable doubt as to his impartiality vitiates the arbitral proceedings as well as the consequent award.

The bench of Justices Vibhu Bakhru and Amit Mahajan set aside an arbitral award passed without the arbitrator making the necessary disclosure. The Court held that disclosure is a necessary safeguard to

ensure the integrity and efficacy of arbitration, therefore, the same cannot be an option but an obligation.

High Court Cannot Review The Order Passed Under Section 11 Of The A&C Act: Delhi High Court

Case Title: Kush Raj Bhatia versus M/S DLF Power & Services Ltd.

The High Court of Delhi has held that the High Courts cannot review an order passed under Section 11 of the A&C Act as the Act does not contain any provision for review.

The bench of Justice Neena Bansal Krishna held that power of review is not an inherent power but the creation of a statute, therefore, it cannot be exercised in absence of a provision. The Court held that unlike the Supreme Court, which by virtue of Article 137 enjoys the inherent power of review, there is no such power conferred on a High Court. Therefore, once an application for the appointment of the arbitrator has been heard and rejected, the same cannot be re-opened by an indirect method i.e., through a review petition.

Requirement Of Notice Of Arbitration Is Not A Mere Technicality: Delhi High Court

Case Title: Rahul Jain & Ors. versus Atul Jain & Ors.

The High Court of Delhi has held that a notice of arbitration is *sine qua non* for commencing arbitral proceedings, and that invalidity of invocation goes to the very root of the matter and hits the jurisdiction of the Court to entertain applications arising out of the arbitration proceedings.

The bench of Justice Prateek Jalan held that requirement of notice of arbitration is not a mere technicality and its non-compliance cannot be ignored merely because the instrument was a family settlement agreement.

An Issue As To Which Party Would Bear The GST Expenses Under The Agreement Is Arbitrable: Delhi High Court

Case Title: Spectrum Power Generation Limited versus GAIL (India) Limited

The High Court of Delhi has held that an issue that purely relates to the inter se liability of the parties regarding the burden of GST is not related to the taxing power of the State, therefore, the same is arbitrable.

The bench of Justice Yashwant Varma held that a dispute surmised on the Pricing Clause in an agreement wherein the inter se liabilities of the parties regarding the payment of taxes are given, can be referred to arbitration.

Time Spent On Application Under Section 8 Of A&C Act, Not Excludable For Computation Of Limitation For Counter Claim: Delhi High Court

Case Title: Web Overseas Limited versus Universal Industrial Plants Manufacturing Company Private Limited

The Delhi High Court has ruled that in a suit filed by a party, the time spent by the opposite party in pursuing its application under Section 8 of the Arbitration and Conciliation Act, 1996 (A&C Act), cannot be excluded for the purpose of computation of the limitation period for filing the counterclaims by the opposite party before the Arbitral Tribunal.

The bench of Justices Vibhu Bakhru and Amit Mahajan held that the benefit of Section 14 (1) of the Limitation Act, 1963 is available only to the plaintiff who has been prosecuting civil proceedings against the defendant, and not to the defendant who is resisting a claim.

Rights Under An Agreement Are Superseded By A Subsequent One?

Arbitrator To Decide: Delhi High Court

Case Title: PVR Limited versus Imperia Wishfield Private Limited

The Delhi High Court has ruled that the arbitration clause relates to the resolution of disputes between the parties and not the performance of the contract and thus, the arbitration agreement survives even if the contract comes to an end.

The single bench of Justice Mini Pushkarna held that the issue whether the rights of parties under an agreement are superseded by a subsequent agreement or not, is itself an arbitrable issue which can be examined by the arbitrator.

Amazon - Future Group Arbitration- Delhi High Court Dismisses Future's

Application Being Interlocutory

Case Title: Future Coupons Private Limited & Ors. versus AMAZON.COM NV Investment Holdings LLC & Anr.

The Delhi High Court has dismissed the petition filed by Future Coupons Pvt. Ltd., challenging the order passed by the Arbitral Tribunal allowing Amazon's application for amendment of Claims, seeking repudiatory damages for breach of Agreements executed with Future Coupons. The

Court ruled that the said order was interlocutory in nature, and thus, it is not amenable to challenge under Article 227 of the Constitution of India.

The single bench of Justice C. Hari Shankar reiterated that interlocutory arbitral orders are amenable to challenge under Article 227 of the Constitution only in cases where the order is assailed on the ground of want of good faith, or where the party is otherwise remediless.

Challenge Under Section 17 Of The SARFAESI Act Against Action Taken By Secured Creditor, Would Not Bar Arbitration Proceedings: Delhi High Court

Case Title: Hero Fincorp. Limited versus Techno Trexim (I) Pvt. Ltd. & Ors.

The Delhi High Court has reiterated that arbitration proceedings and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (SARFAESI Act) can go hand in hand.

The single bench of Justice V. Kameswar Rao held that even if a party intended to take action under Section 17 of the SARFAESI Act by filing a petition before the Debt Recovery Tribunal (DRT), to challenge the action taken by the secured creditor under Section 13 (4) of the SARFAESI, that would not bar the initiation of arbitration proceedings by the secured creditor.

Acceptance Of Goods Does Not Constitute Acceptance To Arbitration Clause, Unilaterally Included In Delivery Challan: Delhi High Court

Case Title: M/s Hetampuriah Tax Fab versus M/s Daksh Enterprises

The Delhi High Court has ruled that unilaterally including a clause in the Delivery Challan would not constitute an arbitration agreement between the parties merely because the opposite party had accepted the delivery of goods and had signed the Delivery Challan certifying the acceptance of goods.

The bench of Justices Vibhu Bakhru and Amit Mahajan held that in order to constitute an arbitration agreement, there must be a consensus between the parties. Therefore, the Court ruled that an arbitration agreement cannot come into existence by a party unilaterally issuing a Delivery Challan and the opposite party accepting delivery of the goods.

Non-Participation Of Defendant Is Good For Compliance Of Sec 12-A Of The Commercial Courts Act: Delhi High Court

Case Title: Kapil Goel versus Ram Dulare Yadav

The High Court of Delhi has held that the failure of the defendant to participate in the Pre-Institution Mediation suffice the requirement of Section 12-A of the Commercial Courts Act, 2015.

The bench of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad held that the consent of the plaintiff for instituting the pre-suit meditation would be irrelevant if the defendant refuses to participate to take part in the proceedings.

Extension Of Limitation For Section 34 Application, Is Not Contingent On Merits Of Section 33 Application: Delhi High Court

Case Title: Vidhur Bhardwaj versus Horizon Crest India Real Estate & Ors.

The Delhi High Court has ruled that the benefit of extension of limitation for filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act), by virtue of an application filed under Section 33, for correction and interpretation of award, would not apply solely to the parties making the request under Section 33.

The single bench of Justice Vibhu Bakhru held that the issue whether the limitation for filing a Section 34 application would run from the date of disposal of the application under Section 33 or from the date of receipt of the award, is not contingent upon the arbitral tribunal's decision on the application filed under Section 33.

Invalidity Of The Appointment Procedure Would Not Render The Entire Arbitration Clause Invalid: Delhi High Court

Case Title: Ram Kripal Singh Construction Pvt. Ltd. versus NTPC

The High Court of Delhi has held that merely because the procedure for the appointment of the arbitrator has become invalid due to 2015 amendment act, the same would not render the entire arbitration clause invalid.

The bench of Justice Anup Jairam Bhambhani held that there are several elements present in an arbitration clause such as procedure for appointment of arbitrator, law of arbitration, law of contract, seat and venue, etc., however, the core element remains the consent of the parties to refer the dispute to arbitration. Therefore, merely because one element has become invalid, it would not make the entire clause ineffective and that the invalid clause can be easily severed.

Section 12(5) Of A&C Act Applies To Proceedings Commenced Before Or After The 2015 Amendment: Delhi High Court

Case Title: Ram Kripal Singh Construction Pvt. Ltd. versus NTPC

The High Court of Delhi has held that Section 12(5) of the Arbitration and Conciliation Act, 1996 (A&C Act) that provides for grounds of ineligibility of arbitrator would apply regardless whether the notice of arbitration was given before or after the 2015 amendment came into force provided that the appointment was made on a date Section 12(5) was in force.

The bench of Justice Anup Jairam Bhambhani held that in view of Section 12, independence and impartiality of arbitrator is a continuing requirement and any ineligible person acting as the arbitrator cannot continue merely because the arbitral proceedings began before Section 12(5) came into force.

Doctrine Of Group Of Companies, Can't Implead Third Party To Arbitration: Delhi High Court

Case Title: Sandeep Singh versus Simran Sodhi & Ors

The Delhi High Court has ruled that the Doctrine of Group of Companies cannot be applied to implead a non-signatory third party to arbitration, in a dispute arising between partners relating to the partnership business. The Court held that partnership in its very nature cannot be equated with a company to invoke the Doctrine of Group of Companies.

The Single Bench of Justice V. Kameswar Rao held that if allegations raised against a party contain a criminal aspect of fraud, forgery or fabrication, which would result in penal consequences and criminal

sanctions, the same cannot be referred to arbitration. The Court added that the same would be adjudicated by a Court of law, since it may result in conviction which is in the realm of public law.

Period Of Limitation For The Appointment Of Substitute Arbitrator Begins On The Date Of His Recusal/Removal, Date Of Knowledge Is Irrelevant: Delhi High Court

Case Title: Tricolor Hotels Limited versus Dinesh Jain

The High Court of Delhi has held that the period of limitation for appointing a substitute arbitrator under Section 15(2) of the A&C Act commences on the date of recusal/removal of the arbitrator and the date on which the fact of his removal/recusal comes to the knowledge of a party is irrelevant for the purpose of limitation.

The bench of Justice Mini Pushkarna held that since Section 15 of the A&C Act does not contain any provision of limitation, therefore, the period of limitation would be 3 years as provided under Article 137 of the Limitation Act, 1963.

Arbitrator Gets Jurisdiction Only With Respect To 'Notified' Claims; Delay/Failure to Certify Claim as 'Notified', Does Not Operate As Waiver: Delhi High Court

Case Title: L&T Hydrocarbon Engineering Limited versus Indian Oil Corporation Limited

The Delhi High Court has ruled that an arbitrator gets the jurisdiction only with respect to the claims which are 'notified' by the specified authority, as

provided in the arbitration clause, and that if the claims are not notified, they will not form the subject matter of arbitration.

The Single Bench of Justice V. Kameswar Rao held that the procedure of forwarding a panel of names to the other contracting party, to choose its nominee arbitrator from amongst them, is no longer a valid procedure.

Circumstances Mentioned Under Schedule V Do Not Per Se Render The Arbitrator Ineligible: Delhi High Court

Case Title: Bharat Foundry and Engineering Works versus Intec Capital Limited

The High Court of Delhi has held that unlike Schedule VII, the circumstances mentioned under the Vth Schedule do not *per se* render an arbitrator ineligible to be appointed as arbitrator unless it is established that the arbitrator's neutrality was indeed compromised.

The bench of Justice Manoj Kumar Ohri held that merely because an Arbitrator has been appointed in more than two arbitral proceedings between the parties/their affiliates, the Award cannot be set aside, until a concrete foundation is laid down for doubting the independence and impartiality of the Arbitrator.

When Financial Institution Is A 'Borrower' It Can't Invoke Arbitration Under Section 11 Of SARFAESI Act: Delhi High Court

Case Title: Bell Finvest India Ltd. versus A U Small Finance Bank Limited

The High Court of Delhi has held that a borrower which also happens to be a financial institution cannot resort to arbitration provided under Section 11 of SARFAESI Act.

The bench of Justice Anup Jairam Bhambhani held that Section 11 of SARFAESI Act provides for remedy by way of arbitration only in cases of *inter se* dispute between the financial institution but does not cover a simple lender-borrower dispute, even if the borrower is a financial institution.

Use Of Word 'Mediation' In Arbitration Clause Is Immaterial, Clause Does Not Lose Its Character: Delhi High Court

Case Title: Consolidated Construction Consortium Limited versus SDMC

The Delhi High Court has held that nomenclature of an arbitration clause is immaterial when all the elements are present. The bench of Justice Prateek Jalan held that an arbitration clause would not lose its character merely because the word 'mediation' has been used as its nomenclature.

It held that, in construction of a contractual clause, the Court should be guided by the substance of the agreement between the parties rather than by the nomenclature employed. The Court expounded on the essential elements of an arbitration clause.

A Party Cannot Be Made To Nominate Its Arbitrator From A Narrow Panel Of 4 Arbitrators Consisting Of Retired Officers Of The Other Party: Delhi High Court

Case Title: Gangotri Enterprises Ltd. versus General Manager Northern Railways

The High Court of Delhi has held that a panel of arbitrator with only four names to choose from does not satisfy the concept of neutrality of

arbitrators. It held that a narrow panel comprising of retired employees of a party creates a reasonable apprehension of bias and partiality.

The bench of Justice Mini Pushkarna held that the contractor cannot be made to choose its nominee arbitrator from a panel of only four names and that too when the final choice of appointing its nominee arbitrator is vested on the Employer.

Arbitration Proceedings Against IRCTC; Delhi High Court Rejects Unilateral Appointment Of Arbitrator

Case Title: KMA Caterers versus Indian Railway Catering and Tourism Corporation (IRCTC)

The High Court of Delhi has held that the designation of Zonal Offices as the 'venue' of arbitration would not make it the 'seat' of arbitration when the meaningful dealings related to the contract happened at the Headquarters of a party.

The bench of Justice Mini Pushkarna held that venue would not become the seat when the tender documents, the process of award of tender, licence fees, signature and execution of the agreement and the jurisdiction of Court all happens to be on a place other than the venue.

Administrative Mechanism For Resolution Of Disputes' Is Not A Substitute For Arbitration: Delhi High Court

Case Title: Prasar Bharti versus National Brain Research Centre & Anr.

The Delhi High Court has ruled that the Administrative Mechanism for Resolution of Disputes (AMRD) is not a substitute for arbitration in cases where there is an arbitration agreement between the parties.

The Single Bench of Justice Anup Jairam Bhambhani observed that the party invoking the arbitration clause fell within the scope and ambit of the AMRD, under the Office Memorandum No. 334774/DoLA/AMRD/2019, dated 31.03.2020, issued by the Ministry of Law & Justice, Department of Legal Affairs. However, the Court held that the AMRD is only a mechanism for possible settlement of disputes between the governmental organizations and not a substitute for arbitration.

Arbitration Award - Jurisdiction To Allow Any Claim Can Be Challenged If Question Of Fact Is Not Involved: Delhi High Court

Case Title: M/s. Manraj Enterprises versus Union of India

The Delhi High Court has ruled that a claimant cannot support his claims on grounds that were not urged before the arbitral tribunal. However, the Court has held that if a question with respect to the jurisdiction of an arbitral tribunal to award any claim is raised, which does not involve deciding any question of fact, the party challenging the arbitral award is not prohibited from raising such grounds which were not raised before the arbitral tribunal.

The Bench of Justices Vibhu Bakhru and Amit Mahajan reiterated that a contractual clause, which bars payment of interest on Earnest Money Deposit, Security Deposit or on other amounts payable under the Contract, would also bar award of *pendente lite* interest by the arbitral tribunal.

Rewriting Commercial Contractual Terms Is Fatal To An Arbitral Award: Delhi High Court

Case Title: Calcom Cement India Ltd. versus Binod Kumar Bawri & Ors.

The Delhi High Court has ruled that where the parties agree to enter into a mutual consultation in the future, for making amendments to an original agreement, the same would only constitute an "agreement to agree", which is not enforceable in law.

The Single Bench of Justice C. Hari Shankar held that the finding of the arbitral tribunal that though the amendment contemplated by the "Amendment to the Share Holders Agreement" was not in fact carried out by the parties, however, the original Share Holders Agreement stood altered, extinguishing the liability of the party, was erroneous in law.

Arbitration Clause In The Initial Agreement Binding Even If Subsequent Settlement Doesn't Have It: Delhi High Court

Case Title: Omega Finvest LLP versus Direct News Private Limited

The Delhi High Court has ruled that an arbitration clause contained in a rent agreement would continue to be binding upon the parties, despite the fact that after the expiry of the agreement the parties had entered into a 'Terms of Settlement' and an 'Addendum to Settlement', which did not contain an arbitration clause.

The Single Bench of Justice V. Kameswar Rao observed that the relationship between the parties came into existence on the execution of the rent agreement. Further, it noted that the 'Terms of Settlement' and the 'Addendum to Settlement' executed between the parties did not contain a stipulation that the arbitration clause between them stood rescinded. The Court held that the arbitration clause was binding on the parties and thus, the dispute between the parties arising on the breach of the terms of settlement must be referred to arbitration.

Initiation Of Proceedings Under The SARFAESI Act Does Not Bar The

Arbitration Of Disputes: Delhi High Court

Case Title: Diamond Entertainment Technologies Pvt. Ltd. & Ors. versus Religare Finvest Limited

The Delhi High Court has ruled that the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) provides a remedy in addition to the adjudication under the Arbitration and Conciliation Act, 1996 (A&C Act) and hence, initiation of proceedings under the SARFAESI Act does not bar the arbitration of disputes.

The Single Bench of Justice Neena Bansal Krishna held that whether an arbitral award would operate as a res judicata, barring the second arbitration under the same agreement, must be decided by the Arbitrator since it involves mixed questions of fact and law.

Arbitral Tribunal Cannot Recall The Order Terminating The Arbitral

Proceedings: Delhi High Court

Case Title: Vag Educational Services versus Aakash Educational Services Ltd.

The High Court of Delhi has held that once the arbitral tribunal terminates the arbitration proceedings on account of the claimant withdrawing its claims, it cannot recall the order of termination.

The bench of Justice C. Hari Shankar held that once the arbitral proceedings are terminated, the arbitral tribunal becomes Functus Officio

and it cannot entertain an application recalling its earlier order by which it terminated the arbitral proceedings.

Notice Stating Right To Initiate Arbitration Not A Notice Under Section 21 of A&C Act: Delhi High Court

Case Title: Shriram Transport Finance Co. Ltd. versus Narender Singh

The Delhi High Court has ruled that a notice issued by a party, merely stating its right to initiate arbitral proceedings, which it would subsequently initiate if the payment was not made by the opposite party, is a unilateral communication which does not qualify as a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Division Bench of Justices Rajiv Shakhder and Tara Vistata Ganju reiterated that the A&C Act does not contemplate unilateral appointment of an arbitrator by one of the parties and that there must be a consensus between the parties for appointment of the arbitrator. The Court added that commencement of arbitral proceedings is incumbent on the receipt of such request or notice, as provided under Section 21 of the A&C Act.

Place Of Arbitration Would Not Become The 'Seat' When The Exclusive Jurisdiction Is Conferred On A Court At A Different Place: Delhi High Court

Case Title: Kush Raj Bhatia versus DLF Power and Services Limited

The High Court of Delhi held that place of arbitration would not become the seat of arbitration when the parties have conferred exclusive jurisdiction on a Court other than the seat Court.

The bench of Justice Neena Bansal Krishna held that conferring exclusive jurisdiction, over a Court different from the Court at the place of arbitration, would be a contrary indicia and the place of arbitration would merely be the venue, and only the Court at which exclusive jurisdiction is conferred shall have the jurisdiction to decide all applications arising out of the arbitration between the parties.

Period Of Limitation For Referring The Dispute To Arbitration

Commences Only After The Failure Of Pre-Arbitration Mechanism: Delhi High Court

Case Title: Welspun Enterprises Ltd. versus NCC Ltd.

The High Court of Delhi has held that the period of limitation for referring the dispute to arbitration would only commence after the internal dispute resolution mechanism fails.

The bench of Justices Vibhu Bakhru and Amit Mahajan held that if the agreement between the parties provides for a pre-arbitration dispute resolution mechanism, a party cannot be expected to invoke arbitration unless the said mechanism fails, therefore, the limitation period cannot start prior to that.

Whether A Claim Is A 'Notified Claim' Under The Contract, Falls Outside The Scope Of Arbitration: Delhi High Court

Case Title: M/s Janta Associates and Co. Ltd. versus Indian Oil Foundation & Anr.

The Delhi High Court has ruled that the dispute whether a claim raised by a party is a 'Notified Claim' under the Contract, which can be referred to

arbitration as per the arbitration clause, falls outside the scope of arbitration.

The Single Bench of Justice Vibhu Bakhru observed that as per the arbitration clause contained in the General Conditions of Contract (GCC), only disputes arising out of 'Notified Claims', as included in the Final Bill issued by the claimant, could be referred to arbitration. The Court held that the dispute whether the claims raised by the claimant were 'Notified Claims', falling within the scope of arbitration clause, could not be referred to arbitration.

Use Of The Word 'Can' In An Arbitration Clause Does Not Render It Ineffective, Intention To Be Looked Into: Delhi High Court

Case Title: Panasonic India Pvt. Ltd. versus Shah Aircon

The Delhi High Court has held that mere use of the word 'can' in an arbitration clause does not render it ineffective and the intention of the parties to go for arbitration is to be determined on a complete reading of the clause and relevant clauses.

The Bench of Justice Prateek Jalan reiterated that exclusive jurisdiction clause would override a venue clause, therefore, the court which has been conferred the exclusive jurisdiction will decide all arbitration applications arising out of the contract.

"Confirming Party" To A Contract, Who Is Not Signatory To The Arbitration Clause, Can Invoke Arbitration: Delhi High Court

Case Title: Ansal Properties & Infrastructure Ltd. & Anr. versus Dowager Maharanis Residential Accommodation Welfare & Amenities Trust & Anr.

The Delhi High Court has ruled that a confirming party to a Contract, who is not bound by the terms of the Contract and on whom no liability is affixed under the Contract, can be referred to arbitration even if he is not a signatory to the arbitration clause contained in the Contract.

The Single Bench of Justice Neena Bansal Krishna held that the fact that the party had signed the Agreement containing an arbitration clause, implied that it had consented to refer all the disputes under the Agreement to arbitration and that the party's implied consent to the arbitration clause could be inferred.

Delhi High Court Delineates Circumstances To Invoke "Group Of Companies" Doctrine

Case Title: Esha Kedia versus Milan R. Parekh & Ors.

The Delhi High Court has ruled that the plea that signatures to the MoU containing an arbitration clause were obtained by threat and coercion, cannot be considered while considering an application under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act) for appointment of the Arbitrator.

The Single Bench of Justice Neena Bansal Krishna held that each Company is a separate legal entity which has separate legal rights and liabilities and hence, an agreement entered into by one of the Companies in a group, cannot be binding on the other members of the same group. However, the Court added that in certain exceptional circumstances, by invoking the concept of "Group of Companies", an arbitration agreement can be binding on the non-signatory Companies or a third party.

Members Of Joint Venture Cannot Invoke Arbitration Clause In Their

Individual Capacity: Delhi High Court

Case Title: Consulting Engineers Group Limited versus National Highways Authority of India (NHAI)

The Delhi High Court has ruled that where an agreement is entered into by the parties by forming a consortium / Joint Venture, one of the members of the consortium cannot separately invoke the arbitration agreement in their individual capacity.

The Single Bench of Justice Mini Pushkarna reiterated that when there is an agreement with a consortium, it is never the intention of the parties that one of the members of the consortium can separately invoke the arbitration clause.

Limitation Period For Invoking Arbitration Cannot Be Extended By

Consent: Delhi High Court

Case Title: Extramarks Education India Private Limited versus Shri Ram School & Anr.

The Delhi High Court has ruled that a statement made by the opposite party in the reply to the notice invoking the arbitration clause, giving consent for appointment of an arbitrator, would not extend the limitation period for invoking arbitration, if the claims raised by the claimant are *ex-facie* time-barred.

The Single Bench of Justice Anup Jairam Bhambhani held that the limitation period for invoking a legal remedy cannot be extended even by consent. The Court ruled that a party may concede a claim at any time,

however, it cannot concede the availability of a legal remedy beyond the prescribed period of limitation.

Court Cannot Modify Arbitral Award By Awarding Interest Under Section 34 Of A&C Act: Delhi High Court

Case Title: Canara Bank versus The State Trading Corporation of India Ltd. & Anr.

The Delhi High Court has ruled that though the claimant is entitled to pre-arbitration interest on the amount of counter-guarantee released in its favour, the Court, in view of the limited scope of judicial review under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act), cannot award interest to the claimant since it would amount to modification of the award.

The Division Bench of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad observed that though the Supreme Court, in certain cases, has awarded interest to the relevant parties by modifying the arbitral awards, however, the same was undertaken by the Apex Court in exercise of its discretionary powers under Article 142 of the Constitution of India.

Would Subsequent Agreement Cover Past Transactions? Arbitrator To Decide: Delhi High Court

Case Title: OYO Hotels and Homes Pvt. Ltd. versus Agarwal Packers and Movers Ltd.

The High Court of Delhi has held that while exercising jurisdiction under Section 11 of the A&C Act, the High Court cannot examine an issue as to

whether the arbitration clause in a subsequent agreement would govern past transactions of similar nature as it requires detailed consideration of clauses and surrounding circumstances.

The Bench of Justice V. Kameswar Rao held that the limited scope of judicial scrutiny under Section 11 of the Act does not permit the High Court to examine issues that would require an interpretation of the contract, therefore, all such issues are to be referred to arbitrator.

Rejection Of Belated Application For Amendment Of Claim - Not An Interim Award: Delhi High Court

Case Title: Punita Bhardwaj versus Rashmi Juneja

The Delhi High Court has ruled that the order of the Arbitral Tribunal rejecting the application for amendment of statement of claims on the ground that it was filed at a belated stage, does not constitute an interim award and thus, it is not challengeable under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act).

While observing the distinction between the rejection of application for amendment of claims and counter claims on the ground of limitation vis-à-vis on the ground that the amendment was sought belatedly, the single bench of Justice Prateek Jalan held that Section 23 (3) of the A&C Act vests discretion in the arbitral tribunal to disallow a party to amend or supplement its pleadings on the ground that the application is filed belatedly.

Interlocutory Order Passed By The Arbitrator, Rejecting Application For Amendment Of Claims; Not Challengeable Under Article 227: Delhi High Court

Case Title: VRS Natarajan versus OYO Hotels and Homes Pvt. Ltd.

The Delhi High Court has reiterated that all interlocutory orders passed by the Arbitral Tribunal are not amenable to challenge under Articles 226 and 227 of the Constitution of India.

The Single Bench of Justice C. Hari Shankar held that there is no statutory or other legal bar under the Arbitration and Conciliation Act, 1996 (A&C Act), including under the proviso to Section 34 (2A) of the A&C Act, against raising the interlocutory order passed by the Arbitrator rejecting the application for amendment of Statement of Claims, as a ground for challenging the final award. Thus, the Court ruled that the said interlocutory order was not challengeable under Article 227.

Non-Payment/Insufficiency Of Stamp Duty Cannot Render The Arbitration Agreement Invalid: Delhi High Court

Case Title: Drooshba Fabricators versus Indue Private Limited

The High Court of Delhi has held that non-payment or insufficiency of stamp duty on the underlying agreement cannot render the arbitration clause invalid.

The Bench of Justice Anup Jairam Bhambhani held that the court while exercising jurisdiction under Section 11 of the A&C should impound the unstamped/inadequately stamped agreement and direct the parties to cure the defect before the arbitrator could adjudicate upon such an agreement.

Award Passed By A Unilaterally Appointed Arbitrator Is Non-Est, It Cannot Be A Bar To The Maintainability Of Petition Under Section 11 Of The A&C

Act: Delhi High Court Reiterates

Case Title: Geeta Poddar versus Satya Developers Pvt. Ltd.

The High Court of Delhi has held that an award passed by a unilaterally appointed arbitrator is non-est, therefore, it cannot be a bar to the maintainability of a petition under Section 11 of the A&C Act.

The bench of Justice Sanjeev Narula held that passing of an award would not give sanctity to the non-est proceedings and the mere fact that the petitioner did not challenge the unilateral appointment under Section 14 of the Act cannot deprive it of the right to approach the court for appointment of independent arbitrator.

Refusal Of The Defendant To Amicably Settle The Dispute Satisfies The Requirement Of Pre-Litigation Mediation Under Commercial Courts Act: Delhi High Court

Case Title: BOLT Technology OU versus Ujoy Technology Pvt. Ltd.

The High Court of Delhi has held that when the plaintiff makes an offer to the defendant to amicably settle the dispute and the defendant refuses the offer then in that circumstance, the requirement of pre-litigation meditation stands satisfied.

The Bench of Justice Prathiba M. Singh while reiterating that pre-litigation mediation as provided under Section 12-A of the CCA is a mandatory provision, held that the conduct of the defendant in refusing to amicably settle the dispute violates the spirit of Section 12A of CCA, therefore, he cannot turn around and object on the ground of non-compliance with the requirement.

MOU Between Private Parties Cannot Be Specifically Enforced; Party Not Entitled To Interim Relief Under Section 9 Of A&C Act: Delhi High Court

Case Title: Royal Orchids versus Kulbir Singh Kohli & Anr.

The Delhi High Court has ruled that a MOU which is in the nature of a commercial transaction between two private parties is by its very nature determinable and hence, the said MOU can be terminated even in the absence of any termination clause contained in it.

The Single Bench of Justice Mini Pushkarna held that since the MOU was not capable of specific performance due to the statutory bar contained in Section 14 (d) of the Specific Relief Act, 1963, the party was not entitled to any interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act).

Delhi High Court Sets Aside Arbitral Award Requiring ISRO's Commercial Arm 'Antrix' To Pay Over 560 Million USD To Devas Multimedia

Case Title: Antrix Corporation Ltd. versus Devas Multimedia Private Limited

Citation: 2022 LiveLaw (Del) 812

The Delhi High Court has set aside a 2015 arbitral award directing Antrix Corporation Limited, commercial and marketing arm of ISRO, to pay US\$ 562.2 million to Devas Multimedia Private Limited over wrongful repudiation of contract.

Justice Sanjeev Sachdeva held that the arbitral award dated September 14, 2015 suffered from patent illegalities and fraud and was also in conflict with the Public Policy of India.

Unilateral Constitution Of A Narrow Panel Of Arbitrators Violates

Impartiality: Delhi High Court

Case Title: Overnite Express Ltd versus DMRC

Citation: 2022 LiveLaw (Del) 801

The High Court of Delhi has held that the power conferred on one party to unilaterally choose names from a panel of arbitrators and forwarding it to the other party to select its arbitrator from those names is violative of the principle of impartiality in arbitration.

The Bench of Justice Neena Bansal Krishna held that such a unilateral exercise of power creates space for suspicion regardless of the merit of the selected arbitrators who happen to be retired District Judges.

Supersession Of The Arbitration Clause Must Not Be Inferred Lightly:

Delhi High Court

Case Title: Shristi Infrastructure Development Corporation Ltd. versus Ircon International Limited

Citation: 2022 LiveLaw (Del) 778

The Delhi High Court has ruled that in view of the principle of 'when in doubt, do refer', as enunciated by the Supreme Court, if there is an arbitration agreement between the parties, which is sought to be negated by a party by citing other provisions of a contract, which requires interpretation of the contract, the Court must lean towards referring the matter to arbitration.

The Single Bench of Justice Anup Jairam Bhambhani held that an arbitration agreement embedded in a contract is always considered a

separate and severable clause, and that the supersession of the arbitration clause must not be inferred lightly.

Account Statements And IT Returns Relied On By Arbitral Tribunal, Have Evidentiary Value: Delhi High Court

Case Title: M/s Scholastic India Pvt. Ltd. & Anr. versus Kanta Batra

Citation: 2022 LiveLaw (Del) 763

The Delhi High Court has ruled that the arbitral award cannot be set aside on the ground that the material relied upon by the Arbitral Tribunal does not measure up to the standards under the Indian Evidence Act, 1872.

The Bench, consisting of Justices Vibhu Bakhru and Amit Mahajan, held that an award passed by the Arbitral Tribunal, by relying upon the Bank Account statements and the Income Tax Return furnished by the Claimant, cannot be said to be an unreasoned award or an award based on no evidence.

Remedy Under RERA Act Is Not A Bar For Initiation Of Arbitration: Delhi High Court

Case Title: Priyanka Taksh Sood & Ors. versus Sunworld Residency Pvt. Ltd. & Anr.

Citation: 2022 LiveLaw (Del) 752

The Delhi High Court has ruled that the dispute involving refund of payment under the 'Flat Buyer Agreement' from a real estate developer is arbitrable and is not barred by the existence of a concurrent remedy under the Real Estate (Regulation and Development) Act, 2016 (RERA Act).

The Single Bench of Justice Sanjeev Narula held that the remedies available under the RERA Act are in addition to, and not in supersession of, the remedies available under the Arbitration and Conciliation Act, 1996 (A&C Act), and that the application of concurrent remedies under the A&C Act is not barred under the RERA Act.

Arbitral Tribunal Has The Power To Vacate/Modify Its Earlier Order: Delhi High Court

Case Title: Airport Authority of India (Kolkata Airport) versus TDI International Ltd.

Citation: 2022 LiveLaw (Del) 750

The High Court of Delhi has held that the arbitral tribunal would be guided by the principles of Order 39 Rule 1 & 2 of CPC while considering the issue of vacation/modification of an interim order.

The Bench of Justice Sanjeev Narula held that the tribunal does not have the power of substantive review of its order, however, it does have the power to vacate or modify the conditions of the interim order.

Arbitration Clause In The Annexure To The Agreement Would Be Binding On The Parties: Delhi High Court

Case Title: Piyush Kumar Dutt versus Vishal Mega Mart Pvt. Ltd.

Citation: 2022 LiveLaw (Del) 749

The High Court of Delhi has held that an arbitration clause contained in the annexure to the main agreement would be binding on the parties to that agreement.

The Bench of Justice Neena Bansal Krishna held that in view of Section 11(6-A) the justiciability of claims and the defences can only be determined through adjudication by the arbitrator.

Agreement Containing Arbitration Clause Not Signed By A Party; Parties Can Still Be Referred To Arbitration: Delhi High Court

Case Title: Buildmyinfra Private Limited versus Gyan Prakash Mishra

Citation: 2022 LiveLaw (Del) 734

The Delhi High Court has ruled that even if the Agreement containing an Arbitration Clause has not been signed by a party to the dispute, the parties can still be referred to Arbitration.

The Single Bench of Justice Prateek Jalan held that it is not necessary for the written document to be signed by all the parties, as long as the existence of an arbitration agreement can be culled out from the exchange of letters or other means of communication between the parties.

If The Imposition Of LD Was Contingent On Extension Of Time, Recovery Of LD Is Not Time Barred: Delhi High Court

Case Title: Shyama Power India Ltd. versus Haryana Vidyut Prasaran Nigam Ltd.

Citation: 2022 LiveLaw (Del) 733

The High Court of Delhi has held that the arbitrator cannot reject the claim of a party for refund of Liquidated Damages (LD) as barred by time if it was inextricably linked to the issue of Extension of Time (EOT) on which the decision of the competent authority was pending.

The Bench of Justice Vibhu Bakhru held that the period of limitation for the purpose of refund of LD would only begin from the date of the decision on the issue of EOT if the imposition of LD was contingent upon the EOT.

Order Of Facilitation Council, After Termination Of Conciliation Under MSMED Act, Not Executable: Delhi High Court

Case Title: M/s. Unicon Engineers versus M/s. Jindal Steel and Power Ltd.

Citation: 2022 LiveLaw (Del) 722

The Delhi High Court has ruled that an order passed by the Facilitation Council under Section 18 of the Micro, Small & Medium Enterprises Development Act, 2006 (MSMED Act) after the termination of conciliation proceedings, without taking the dispute up for arbitration or referring it to an institution or centre for arbitration, is a nullity and does not constitute an arbitral award. Therefore, the Court ruled that it cannot be enforced under Section 36 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Single Bench of Justice Prateek Jalan reiterated that the proceedings for conciliation and arbitration cannot be clubbed.

The Arbitrator Cannot Alter The Express Terms Of The Agreement Between The Parties By Applying The Business Efficacy Test: Delhi High Court

Case Title: Food Corporation of India versus Adani Agri Logistics Ltd.

Citation: 2022 LiveLaw (Del) 718

The High Court of Delhi has held that the arbitrator cannot alter the express terms of the agreement by applying the business efficacy test

when there is no ambiguity as to the intention of the parties.

The Bench of Justice Vibhu Bakhru held that the Penta Test as propounded by the Supreme Court in *Nabha Power Ltd versus Punjab State Power Corp. Ltd.* is only for the purpose of determining the intention when the terms of the agreement are not express or are silent on an aspect, and thus, it would have no application when there is no ambiguity as to the contract between the parties.

Just Because Interlocutory Order Of Arbitral Tribunal Is Not Challengeable Under Section 34 Of A&C Act, Remedy Is Not Writ Under Article 226 And 227: Delhi High Court

Case Title: Easy Trip Planners Ltd. versus One97 Communications Ltd.

Citation: 2022 LiveLaw (Del) 717

The Delhi High Court has ruled that merely because an interlocutory order passed by the Arbitral Tribunal is not amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act), the remedy under Article 226 and Article 227 of the Constitution of India would not be available against the said order.

The Single Bench of Justice C. Hari Shankar held that a party can approach the Court against an interim order passed in the arbitral proceedings only if the order is appealable under Section 37 of the A&C Act.

When The Main Relief Is Rejected By The Arbitral Tribunal, Which Included Interim Relief, The Interim Relief Granted In Isolation Is Incorrect: Delhi High Court

Case Title: Orchid Infrastructure Developers (P) Ltd. versus Five Star Constructions Pvt. Ltd.

Citation: 2022 LiveLaw (Del) 712

The Delhi High Court has ruled that when the main relief claimed by the claimant has been rejected by the Arbitral Tribunal, the Arbitral Tribunal cannot award an interim or ancillary amount, which is included under the same claim, in favour of the claimant.

The Single Bench of Justice Sanjeev Narula held that when the main relief is rejected by the Arbitral Tribunal, axiomatically, the interim relief ought to be rejected as well.

Sections 15 And 16 Of The MSMED Act Are Mandatory Provisions, Arbitrator Must Assign Reasons For Not Awarding Compound Interest: Delhi High Court

Case Title: Bharat Heavy Electrical Ltd. versus Bhatia Engineering Company

Citation: 2022 LiveLaw (Del) 711

The High Court of Delhi has affirmed the order of the lower Court by which it had set aside an arbitral award for not awarding interest in terms of Sections 15 and 16 which are mandatory provisions of the MSMED Act.

The Bench of Justice Vibhu Bakhru and Justice Amit Mahajan held that once the arbitrator has held that MSMED Act applies to the dispute between the parties, it must assign reasons for not awarding interest in terms of Sections 15 and 16 of the Act.

Prima Facie Case Alone Does Not Entitle A Party To Relief Under Section 17 Of The A&C Act: Delhi High Court

Case Title: Splendor Buildwell Pvt. Ltd. & Anr. versus Rajesh Kumar Pasricha

Citation: 2022 LiveLaw (Del) 659

The Delhi High Court has ruled that a prima facie case alone does not entitle a party to relief under Section 17 of the Arbitration and Conciliation Act, 1996 (A&C Act) for interim measures.

The Single Bench of Justice Sanjeev Narula observed that there were highly disputed questions of fact involved in the dispute relating to the interpretation of the agreement between the parties. Holding that the possible extent of the claim likely to be awarded to the claimant vide the arbitral award cannot be a foregone conclusion, the Court set aside the order passed by the Arbitral Tribunal directing the counter-claimant to secure a certain amount in an application filed under Section 17 of the A&C Act by the claimant for interim measures

Even If The Principal Agreement Is Non-Existent, The Arbitration Clause Would Still Apply: Delhi High Court

Case Title: National Research Development Corporation and Anr. versus Mak Controls and Systems Private Limited

Citation: 2022 LiveLaw (Del) 647

The Delhi High Court has ruled that even if the principal agreement is non-existent, the arbitration clause contained therein would still apply.

The Single Bench of Justice V. Kameswar Rao observed that since the issue of limitation and arbitrability was not conclusive against the party, the issue was amenable to the jurisdiction of the Arbitral Tribunal.

Arbitration Clause Contained In A Tax Invoice Is Binding: Delhi High Court

Case Title: Swastik Pipe Ltd. versus Dimple Verma

Citation: 2022 LiveLaw (Del) 648

The Delhi High Court has ruled that an arbitration clause contained in a tax invoice is binding between the parties.

Noting that the opposite party had earlier received similar tax invoices, against which it had made payments, the Single Bench of Justice V. Kameswar Rao ruled that the party could not disown the clear stipulation contained in the tax invoice with regard to any dispute being referred to arbitration.

Subrogation Deed Does Not Terminate The Right Of The Assured To

Initiate Arbitration Against The Wrongdoer: Delhi High Court

Case Title: Fresenius Medical Care Dialysis Service India Pvt. Ltd. versus Kerry Indev Logistics Pvt. Ltd.

Citation: 2022 LiveLaw (Del) 637

The Delhi High Court has held that arbitration can be invoked by the insured even after entering into a subrogation-cum-assignment agreement with an insurance company.

The Single Bench of Justice Sanjeev Sachdeva held that subrogation does not put an end to the right of the assured to initiate legal proceedings

against the wrongdoer, it merely allows the insurer to step into the shoes of the insured to recover the damages.

Section 8 Application Should Be Filed Within Time Available For Filing

Written Statement: Delhi High Court

Case Title: M/S. SPML Infra Ltd. versus M/S. Trisquare Switchgears Pvt. Ltd.

Citation: 2022 LiveLaw (Del) 634

The Delhi High Court has ruled that if a party fails to file an application under Section 8(1) of the Arbitration and Conciliation Act, 1996 (A&C Act) for referring the parties to arbitration within the time available for filing the first statement on the substance of the dispute, which would include a written statement in the context of a suit, the party would forfeit its right to apply under Section 8(1) of the A&C Act.

The Division Bench of Justices Vibhu Bakhru and Amit Mahajan held that the amendment to Section 8 of the A&C Act by the 2015 Arbitration and Conciliation (Amendment) Act cannot be considered in isolation, in view of the fact that the Parliament has also enacted the Commercial Courts Act, 2015, which came into force on the same date as the Arbitration and Conciliation (Amendment) Act, 2015.

Objection Regarding 'Excepted Matter' Would Be An After-Thought If It

Was Not Raised Before The Arbitrator: Delhi High Court

Case Title: DSIIDC versus H.R. Builders

Citation: 2022 LiveLaw (Del) 614

The High Court of Delhi has held that the objection regarding the excepted matter would be an after-thought if the same was not raised before the arbitral tribunal.

The Division Bench of Justice Mukta Gupta and Justice Neena Bansal Krishna relied on the judgment of the Supreme Court in *J.G. Engineers versus UOI (2011)* to hold that only the question of determination of the quantum of compensation for delay is an excepted matter and the issue if the compensation is payable is an arbitrable matter.

Challenge Without Impugned Award, Vakalatnama, And The Attested Statement Of Truth, Non-Est In Law: Delhi High Court

Case Title: Ircon International versus Reacon Engineers (India) Pvt. Ltd.

Citation: 2022 LiveLaw (Del) 607

The High Court of Delhi has held that a challenge petition filed without impugned award, vakalatnama, and verification is non-est in law.

The Single Bench of Justice Vibhu Bakhru was dealing with a case where the petitioner had initially filed a challenge petition under Section 34 of the A&C Act without the impugned award, vakalatnama, and the statement of truth.

The Arbitrator Cannot Award A Lumpsum Amount As Against Specified Claims Without Adjudicating The Claims: Delhi High Court

Case Title: Kanti Bijlee Utpadan Nigam Ltd. versus Paltech Cooling Towers & Equipments Ltd.

Citation: 2022 LiveLaw (Del) 692

The High Court of Delhi has held that an award wherein a lumpsum amount is awarded against the specified claims without adjudication of the claims is unsustainable.

The Bench of Justice Vibhu Bakhru held that an arbitral tribunal cannot award a lumpsum amount against specified claims of a party merely to meet the ends of justice.

Non-Applicability Of Section 9 Of The A&C Act Can't Be Presumed If Parties Opted For Foreign-Seated Institutional Arbitration: Delhi High Court

Case Title: Shanghai Electric Group Co. Ltd. versus Reliance Infrastructure Ltd.

Citation: 2022 LiveLaw (Del) 683

The High Court of Delhi has held that merely because the parties have chosen a foreign-seated institutional arbitration under the UNCITRAL Law, they cannot be presumed to have entered into an agreement to exclude the applicability of Section 9 of the A&C Act as provided under the proviso to Section 2(2) of the A&C Act.

The Bench of Justice Sanjiv Narula held that the words "an agreement to the contrary" appearing under Section 2(2) cannot be presumed or interpreted on the mere assertion of a party but the same must be clearly borne out of the agreement between the parties.

Application Under Section 9 Of The A&C Act For Pre-Award Relief Can Be Filed In A Court Where The Assets Of The Respondent Are Located: Delhi High Court

***Case Title: Shanghai Electric Group Co. Ltd. versus Reliance
Infrastructure Ltd.***

Citation: 2022 LiveLaw (Del) 682

The High Court of Delhi has held that an application under Section 9 of the A&C Act for pre-award relief can also be filed before the Court where the assets of the respondent are located.

The Bench of Justice Sanjeev Narula held that the Court for the purpose of Section 9 application in a foreign seated arbitration would be as provided under Section 47 of the A&C Act.

CPC Contemplates Execution Of A Foreign Decree And Not An Order:

Delhi High Court

***Case Title: Shanghai Electric Group Co. Ltd. versus Reliance
Infrastructure Ltd.***

Citation: 2022 LiveLaw (Del) 681

The High Court of Delhi has held that remedy before the foreign arbitral tribunal would not be inefficacious when the bulk of the assets of a party are located in India as the interim order in a foreign-seated arbitration is not enforceable under the A&C Act.

The Bench of Justice Sanjeev Narula also held that an interim award passed in arbitration with seat in India is enforceable under Section 17(2) of the Act, however, there is no provision in the Act for the enforcement of an interim order passed in a foreign seated arbitration, therefore, any meaningful interim relief related to assets located in India can only be granted by Indian Courts.

The Rejection Of An Application Under Section 34 Of The A&C Act Cannot Be Construed To Mean That The Court Has Concurred With The View Of The Arbitral Tribunal: Delhi High Court

Case Title: Glitter Overseas and Ors. versus MMTC Ltd.

Citation: 2022 LiveLaw (Del) 664

The High Court of Delhi has held that merely because the challenge to an arbitral award is dismissed by the Court exercising powers under Section 34 of the A&C Act would not mean that the court has concurred with the view of the arbitral tribunal.

Power Under Section 9 Of The A&C Act Cannot Be Exercised For Directing Specific Performance Of The Contract: Reiterates Delhi High Court

The Delhi High Court has reiterated that power under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act) cannot be exercised for directing specific performance of the contract itself.

The Division Bench of Justices Jyoti Singh and Anoop Kumar Mendiratta held that a direction to the opposite party to extend the contract for a further period would amount to granting specific relief of the contract, which is beyond the scope of the powers of the Court under Section 9 of the A&C Act. The Court ruled that power under Section 9 can only be exercised for preservation of the subject matter of the dispute till the decision of the Arbitral Tribunal.

If MoU Arises Out Of An Agreement Containing Arbitration Clause, Reference Of MoU Is Valid: Delhi High Court

***Case Title: Juki India Private Limited versus M/s Capital Apparels
Technology Private Limited***

Citation: 2022 LiveLaw (Del) 536

The Delhi High Court has ruled that where an MoU has been signed by the parties for settlement of dues arising under an agreement, arbitration can be sought for violation of the terms of the MoU, even if the MoU does not contain an Arbitration Clause.

The Single Bench of Justice Anup Jairam Bhambhani held that since the MoU was a part of the dispute covered by the Arbitration Clause contained in the agreement, the dispute between the parties could be referred to arbitration.

**Once The Ledger Duly Reflects The Amount As Outstanding And Payable,
The Period Of Limitation Would Run From The Said Date: Delhi High Court**

***Case Title: National Seeds Corporation Ltd. versus National Agro Seeds
Corporation***

Citation: 2022 LiveLaw (Del) 532

The High Court of Delhi has held that acknowledgment of an amount as due and payable under the ledger/statement of accounts, constitutes a fresh cause of action and extends the period of limitation.

The Division Bench of Justice Rajiv Shakdher and Justice Jasmeet Singh held that the period of limitation for an amount that is shown as outstanding in the book of accounts would get extended from the date of such acknowledgement in terms of Section 18 of the Limitation Act.

Embargo Under Section 12(5) Of The A&C Act Would Not Apply To A

Distant Relative Of The Parties: Delhi High Court

Case Title: Himanshu Shekar versus Prabhat Shekhar

Citation: 2022 LiveLaw (Del) 526

The High Court of Delhi has held that the embargo under Section 12(5) of the A&C Act would not apply to a distant relative of the parties.

The Single Bench of Justice Vibhu Bakhru held that in terms of Explanation 1 and Entry 9 to the Seventh Schedule r/w Section 12(5), only spouse, sibling, child, parent or life partner of a party would be ineligible to be appointed as an arbitrator.

Multiple Arbitrations With Regard To Existing Claims On Same Contract

Are To Be Avoided: Delhi High Court

Case Title: Panipat Jalandhar National Highway 1 Tollway Pvt. Ltd. versus NHAI

Citation: 2022 LiveLaw (Del) 521

The High Court of Delhi has held that multiple arbitrations with regard to existing claims on same contract are to be avoided.

The Single Bench of Justice Suresh Kumar Kait held that permitting the parties to have multiple arbitrations for the adjudication of the existing disputes related to the same contract would entail multiple observations.

Party Can Raise Additional Grounds Based On The Award Passed After

The Case Is Remitted To Tribunal Under Section 34(4) Of A&C Act: Delhi High Court

Case Title: UEM India Pvt. Ltd. versus ONGC Ltd.

The Delhi High Court has ruled that an order passed by the Arbitral Tribunal, after the matter is remanded back to it by the Court under Section 34(4) of the Arbitration and Conciliation Act, 1996, is not a fresh arbitral award that can be challenged by filing a separate petition under Section 34(1).

The Single Bench of Justice Vibhu Bakhru held that a party cannot be precluded from raising additional grounds, which had arisen as a result of the subsequent order passed by Arbitral Tribunal after the matter was remitted to it by the Court, to challenge the arbitral award.

Order Passed By The Arbitrator Allowing Meetings As Per Convenience Of Parties, Would Not Change The Seat Of Arbitration: Delhi High Court

Case Title: M/s Sat Kartar Tour N Travels versus ONGC Ltd.

Citation: 2022 LiveLaw (Del) 550

The Delhi High Court has ruled that an order passed by the Arbitrator holding that the arbitral proceedings shall be conducted at any other place, would not change the seat of Arbitration as provided in the Arbitration Clause.

The Single Bench of Justice V. Kameswar Rao held that the Arbitrator cannot decide anything contrary to what has been decided by the parties.

A Party Cannot Dispute The Jurisdiction On Account Of Non-Existence Of The Arbitration Agreement After Submitting To The Jurisdiction Of The Arbitrator: Delhi High Court

Case Title: Amrish Gupta versus Gurchait Singh Chima

The High Court of Delhi held that a party cannot dispute the jurisdiction on account of non-existence of the arbitration agreement after submitting to the jurisdiction of the arbitrator.

The Single Bench of Justice Vibhu Bakhru held that generally, the arbitration clause contained in the main agreement would also fall when the validity of the main agreement is challenged and the dispute would be non-arbitrable.

Plaintiff Is Not Entitled To Return Of Court Fees When The Parties Are Referred To Arbitration Under Section 8 Of The A&C Act: Delhi High Court

Case Title: A-One Realtors Pvt. Ltd. versus Energy Efficiency Services Ltd.

Citation: 2022 LiveLaw (Del) 502

The High Court of Delhi has held that the plaintiff is not entitled to return of Court Fees when the parties are referred to arbitration under Section 8 of the A&C Act.

The Single Bench of Justice Amit Bansal held that the benefit of Section 16 of the Court Fees Act would only be available to the plaintiff when the parties are referred to arbitration for settlement in terms of Section 89 of the CPC and not under Section 8 of the A&C Act.

Waiver Under Section 12(5) Of A&C Act Has To Be By An Express Agreement In Writing: Delhi High Court

Case Title: AK Builders versus Delhi State Industrial Infrastructure Development Corporation Ltd

Citation: 2022 LiveLaw (Del) 490

The Delhi High Court has ruled that any right under Section 12(5) of the Arbitration and Conciliation Act, 1996 (A&C Act), that deals with the ineligibility of certain persons to be appointed as an arbitrator, can be waived of only by an express Agreement in writing entered into after the disputes had arisen between the parties.

The Single Bench of Justice Vibhu Bakhru dismissed the contention that since the petitioner had participated in the arbitral proceedings it was precluded from raising any objections towards the appointment of the Arbitrator. The Court reiterated that a person who is ineligible to act as an arbitrator would also be ineligible to appoint an arbitrator.

The Provisions For The Quantum Of Damages Under Land Acquisition Act, 2013 Would Apply To Arbitrations Under The Resettlement Of Displaced Persons (Land Acquisition) Act, 1948: Delhi High Court

Case Title: Rajinder Kumar Agarwal versus Union of India

The High Court of Delhi has held that the provisions for the quantum of damages under Land Acquisition Act, 2013 (LARR Act) would apply to arbitrations under the Resettlement of Displaced Persons (Land Acquisition) Act, 1948.

The Single Bench of Justice Navin Chawla has held that the provisions of the LARR Act being beneficial in nature would also apply to all the pending arbitrations under the Resettlement of Displaced Persons (Land Acquisition) Act.

Arbitral Award Passed In Disregard To Judicial Decisions Conflicts With The Public Policy : Delhi High Court

Case Title: Sanjay Roy versus Sandeep Soni & Ors.

The Delhi High Court has held that an arbitral award that is not in consonance with the judicial decisions and principles laid down by the courts of India would be in violation of the fundamental policy of Indian law and thus in conflict with the public policy of India under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Bench, consisting of Justices Mukta Gupta and Neena Bansal Krishna, upheld the order of the Single Judge setting aside the arbitral award under Section 34 on the ground that the Arbitrator had failed to apply the basic fundamental law as contained in the Limitation Act, 1963 and the Transfer of Property Act, 1882.

Arbitrator Cannot Rewrite Terms Of The Agreement Merely Because It Flouts Business Common Sense: Delhi High Court

Case Title: Union of India, Ministry of Railways, Railway Board & Anr. versus M/s Jindal Rail Infrastructure Limited

The High Court of Delhi held that the arbitrator cannot re-write the terms of the agreement between the parties merely because they flout business common sense.

The Single Bench of Justice Vibhu Bakhru has held that an award wherein the arbitrator re-works a bargain between the parties merely because it is commercially difficult for one party to perform the same would be against the fundamental policy of Indian Law and would be vitiated by patent illegality.

The Arbitrator Cannot Allow Forfeiture Of A Substantial Amount Of Consideration Without Proof Of Actual Loss Solely On The Ground That It Was Earnest Money: Delhi High Court

Case Title: Rajesh Gupta versus Ram Avtar

Citation: 2022 LiveLaw (Del) 482

The High Court of Delhi has held that the arbitrator cannot allow forfeiture of a substantial amount of consideration without the proof of actual loss solely on the ground that it was referred to as Earnest Money under the contract.

The Single Bench of Justice Vibhu Bakhru partly set aside an award on the ground that the arbitrator wrongly allowed the forfeiture of Earnest Money which formed a substantial portion of the total consideration without the respondent proving actual loss suffered by it.

Rejected Claims By Resolution Professional In Insolvency Proceedings, To Be Decided By The Arbitrator: Delhi High Court

Case Title: Bharat Petroresources Limited versus JSW Ispat Special Products Limited

Citation: 2022 LiveLaw (Del) 469

The High Court of Delhi held that the claims rejected by Resolution Professional in the insolvency proceedings on the ground that they arose after the Insolvency Commencement Date (ICD), are to be decided by the arbitrator.

The Single Bench of Justice Vibhu Bakhru held that extinguishment of claims that arose after the Insolvency Commencement Date (ICD) is a

contentious issue that is to be decided by the arbitrator when the parties have an arbitration agreement.

Deferment Charges On Liquidated Damages, No Liability To Pay When Liquidated Damages Itself Not Payable : Delhi High Court

Case Title: Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) versus Cobra Instalaciones Y Services S.A. and Shyam Indus Power Solution Pvt. Ltd. JV

Citation: 2022 LiveLaw (Del) 454

The High Court of Delhi has held that there would be no question of recovery of deferment charges on the liquidated damages when the liquidated damages are themselves not payable.

The Single Bench of Justice Vibhu Bakhru has held that deferment charges cannot be treated as separate charges payable irrespective of whether the liquidated damages are payable or not. The Court held that these would only be payable when the liquidated damages are held to be payable

Challenge By NHAI On Fee Fixation By Arbitral Tribunal, Delhi High Court Holds That Tribunal Can Fix Its Fees

Case Title: National Highway Authority of India versus MEP Chennai Bypass Toll Road Pvt. Ltd. & Anr.

Citation: 2022 LiveLaw (Del) 453

The Delhi High Court has ruled that the Arbitral Tribunal is permitted to fix its fee, if its appointment is made by way of an ad hoc agreement between the parties.

The Single Bench of Justice Sanjeev Narula held that where the Arbitral Tribunal has accepted its appointment outside the mandate of the International Centre for Alternative Dispute Resolution (ICADR), it is entitled to determine its fee and is not bound by ICADR Rules. The Court upheld the order of the Arbitral Tribunal fixing the arbitral fee separately for the claims and the counter-claims.

Mere Pendency Of An Insolvency Petition Is Not A Bar To The Appointment Of The Arbitrator: Delhi High Court

Case Title: Millennium Education Foundation versus Educomp Infrastructure and School Management Limited

Citation: 2022 LiveLaw (Del) 449

The High Court of Delhi has held that the mere pendency of an insolvency petition under Section 9 of the IBC is not a bar to the appointment of an arbitrator.

The Single Bench of Justice Sanjeev Sachdeva has held that merely because an insolvency petition is pending, it cannot be an embargo on the power of the Court to decide arbitration applications. The Court added that it is only when the insolvency petition is admitted and the moratorium is declared that the proceedings under the Arbitration Act would be non-maintainable.

Right To First Refusal Cannot Be Exercised After Making A Counter-Offer To The Seller: Delhi High Court

Case Title: Gujarat Gas Ltd. versus Vedanta Ltd and Ors.

Citation: 2022 LiveLaw (Del) 444

The High Court of Delhi has held that a party cannot demand its 'Right to First Refusal' after making a counter-offer to the seller.

The Single Bench of Justice Anup Jairam Bhambhani has held that when the party that has been given the right to first refusal (RoFR) makes a counter-offer, the seller becomes entitled to sell the subject goods to the third parties.

Liquidated Damages Can't Be Imposed When The Engineer-In-Charge Holds That The Cause Of Delay Is Explained: Delhi High Court

Case Title: GAIL (India) Ltd. versus Trivendi Engineering & Industries Ltd.

Citation: 2022 LiveLaw (Del) 443

The High Court of Delhi has held that liquidated damages can't be imposed when the Engineer-in-Charge holds that the cause of delay is explained.

The Single Bench of Justice Vibhu Bakhru held that when the Engineer-in-Charge was entrusted with the task of examining the causes of delay, and it had analysed and accepted the justification provided by the contractor and recommended several extensions without the imposition of liquidated damages, it was not open for the employer to levy liquidated damages when the delay was not attributable to the contractor and so was determined by the Engineer-in-Charge.

Supplementary Agreement Rescinding Arbitration Clause; Whether Agreement Contrary To Law, To Be Decided By Arbitrator: Delhi High Court

Case Title: Kiran Infra Engineers Limited versus Northern Railway

Citation: 2022 LiveLaw (Del) 439

The Delhi High Court has held that whether a supplementary agreement between the parties, rescinding the arbitration clause contained in the principal contract, is contrary to law or not in view of taking away the right of a party to invoke arbitration, is required to be decided by the arbitrator himself.

The Single Bench of Justice Sanjeev Sachdeva ruled that the disputes raised by the party contending that the supplementary agreement was hit by Section 17 and Section 23 of the Indian Contract Act, 1872, since it was signed by the party under duress and undue influence, are disputes which the Arbitral Tribunal is competent to rule upon.

Mere Filing Of Written Statement Qua An Independent Transaction Would Not Amount To Waiver Of Right To Invoke Arbitration: Delhi High Court

Case Title: Extramarks Education India Private Limited versus MES Central School

Citation: 2022 LiveLaw (Del) 438

The High Court of Delhi has held that a party cannot be deemed to have waived its right to invoke arbitration merely because it has filed a written statement in respect of disputes that are not covered under the agreement.

The Single Bench of Justice Sanjeev Sachdeva held that a suit in respect of a dispute that is not governed by the arbitration agreement is not an impediment to the invocation of the arbitration.

Section 65-B Of Indian Evidence Act Does Not Apply To Arbitral

Proceedings: Delhi High Court

Case Title: Millennium School versus Pawan Dawar

Citation: 2022 LiveLaw (Del) 436

The High Court of Delhi has held that Section 65-B of the Indian Evidence Act, 1872 does not apply to arbitral proceedings.

The Single Bench of Justice Vibhu Bakhru held that although the principles of the Evidence Act usually apply, sensu stricto, the specific provisions of the Act do not apply.

Order Terminating Arbitral Proceedings Without Issuing Show Cause

Notice Is Unsustainable And Perverse: Delhi High Court

Case Title: Union of India versus Delhi State Consumer Co Operative Federation Ltd.

Citation: 2022 LiveLaw (Del) 435

The Delhi High Court has ruled that abrupt issuance of orders by the Arbitral Tribunal terminating the arbitral proceedings under Section 25 (a) of the Arbitration and Conciliation Act, 1996 (A&C Act), without holding any hearing and without issuing any show cause notice, is unsustainable and suffers from perversity of approach.

The Single Bench of Justice Prateek Jalan held that to ensure that an Arbitral Tribunal performs the duty entrusted to it is a core aspect of the supervisory function of the High Court, and thus where the Arbitral Tribunal has failed to decide the review applications filed by the claimant

seeking recall of the order terminating the arbitral proceedings, the Court can invoke Article 227 of the Constitution of India.

Arbitrator Terminating The Arbitral Proceedings Under Section 25(A) Of The A&C Act, Challenge Maintainable Under Article 227 Of The Constitution Of India: Delhi High Court

Case Title: Union of India versus Indian Agro Marketing Co Operative Ltd.

Citation: 2022 LiveLaw (Del) 423

The Delhi High Court has ruled that since no alternate remedy is available to the claimant to challenge the order of the arbitrator terminating the arbitral proceedings under Section 25(a) of the Arbitration and Conciliation Act, 1996 (A&C Act), hence, a petition under Article 227 of the Constitution of India against the said order of the arbitrator is ex facie maintainable.

The Single Bench of Justice C. Hari Shankar reiterated that the Arbitral Tribunal has the power to recall the order passed by it under Section 25(a) of the A&C Act terminating the arbitral proceedings.

Inordinate And Unexplained Delay In Rendering Arbitral Award Is Against Public Policy Of India: Delhi High Court

Case Title: Director General Central Reserve Police Force versus Fibroplast Marine Pvt. Ltd.

The Delhi High Court has ruled that inordinate and unexplained delay in rendering the arbitral award is in conflict with the public policy of India and is amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Single Bench of Justice Vibhu Bakhru held that award of damages arbitrarily and without any basis also falls foul of the public policy of India.

S.11 Arbitration & Conciliation Act | Not Necessary To Go Into Merits Of Claim/ Counter-Claim For Appointment Of Arbitrator: Delhi High Court

Case Title: OYO Hotels and Homes Pvt. Ltd. versus Parveen Juneja & Ors.

Citation: 2022 LiveLaw (Del) 389

The Delhi High Court has observed that in a petition under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of arbitrator, High Court is not to go into the merits of the claim or the counter-claim, if any, of the parties.

Justice Sanjeev Sachdeva observed that the High Court has to examine as to whether there is an arbitration agreement between the parties and there are any disputes unless ex-facie it is apparent from the record that the disputes are a mere deadwood.

The Arbitral Tribunal Cannot Reduce The Liquidated Damages On 'Guess Work': Delhi High Court

Case Title: Haryana Vidyut Prasaran Nigam Ltd. versus M/s Cobra Instalaciones Y. Services S.A. & M/s Shyam Indus Power Solution Pvt. Ltd. (JV)

The High Court of Delhi has held that the arbitral tribunal cannot reduce the liquidated damages on 'guesswork' if it finds that it is a genuine pre-estimate of damages and it is not possible to quantify the damages.

The Single Bench of Justice Bakhru held that once the arbitrator finds that the employer has suffered substantial losses due to the fault of the

contractor and the contract provides for liquidated damages which were a genuine pre-estimate of the loss as the quantification of the claim is not possible, then the arbitrator cannot reduce the amount of the damages on guesswork.

Exclusive Jurisdiction Clause Overrides The Seat Clause In An Arbitration

Agreement: Delhi High Court

Case Title: Hunch Circle Pvt. Ltd. versus Futuretimes Technology India Pvt. Ltd.

Citation: 2022 LiveLaw (Del) 379

The High Court of Delhi has given primacy to an exclusive jurisdiction clause over the seat clause in an arbitration agreement. The Court held that when a clause confers exclusive jurisdiction on a court other than the seat court, then only the court on which exclusive jurisdiction is conferred shall decide all the applications arising out of the arbitration agreement.

The Single Bench of Justice Hari Shankar held that despite the fixation of the seat of arbitration if the agreement also provides that the court at some other place has been conferred with the jurisdiction to deal with all the matters arising out of the arbitration agreement, then in such a situation the seat clause must surrender to the exclusive jurisdiction clause.

Insufficiency Of The Stamp Duty On The Arbitration Agreement Is A

Jurisdictional Issue Under Section 16 Of The A&C Act: Delhi High Court

Case Title: Religare Finvest Ltd versus Asian Satellite Broadcast Pvt. Ltd.

Citation: 2022 LiveLaw (Del) 368

The High Court of Delhi has held that the sufficiency of the stamp duty on the arbitration agreement is a jurisdictional issue under Section 16 of the A&C Act.

The Single Bench of Justice Sanjeev Narula has held that an objection as to the deficiency in the stamp duty shall be decided as a preliminary issue since the inadequately stamped arbitration agreement can neither be taken in evidence nor can be acted upon, therefore, the tribunal should direct the parties to first get the agreement sufficiently stamped before adjudicating rights and obligations under the agreement.

Arbitral Tribunal Cannot Award Interest On Interest: Delhi High Court

Case Title: Delhi Development Authority versus Watcon Water Specialists Pvt. Ltd. and Anr.

Citation: 2022 LiveLaw (Del) 347

The High Court of Delhi has observed that the arbitral tribunal cannot award interest on the amount of interest already granted in the award. The Court held that *pendente lite* interest on the amount of awarded interest amounts to awarding of interest on interest.

The Single Bench of Justice Bakhru has held that when the arbitrator has awarded interest on a substantive claim, allowing interest on the awarded interest is not permissible under the law.

Right Of A Party To File Counter Claims Exists Independently Of Any Liberty Granted To It By The Arbitral Tribunal: Delhi High Court

***Case Title: National Highways Authority of India versus M/S Abhijeet
Angul Sambalpur Toll Road Limited***

Citation: 2022 LiveLaw (Del) 351

The Delhi High Court has ruled that any matter on which the Arbitral Tribunal has the jurisdiction to pass a final award can also be the subject of an interim award made by it, and the same can be challenged before the Court under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Single Bench of Justice C. Hari Shankar held that the right of a party to file counter claims before the Arbitral Tribunal exists independently of any liberty granted to it by the Arbitral Tribunal.

S.14 of Arbitration Act Does Not Confer Power On Court To Expunge Any Part Of Arbitral Tribunal's Order: Delhi High Court

***Case Title: Bhavanishankar H Sharma versus SRS Private Investment
Powai Limited***

Citation: 2022 LiveLaw (Del) 359

The Delhi High Court has observed that a petition filed under sec. 14 of the Arbitration and Conciliation Act, 1996 does not confer any power on the Court to expunge any part of the order of the Arbitral Tribunal.

Justice Sanjeev Sachdeva was dealing with a plea filed under sec. 14(2) read with sec. 15 of the Arbitration and Conciliation Act seeking termination of the mandate of the Arbitral Tribunal and also for expunging the adverse and prejudicial remarks contained in the order of the Arbitral Tribunal.

Whether A Party Is Entitled To Relief In Arbitral Proceedings In Absence Of Third Party, To Be Decided By The Arbitrator: Delhi High Court

Case Title: Vistrat Real Estates Private Limited versus Asian Hotels North Ltd

The Delhi High Court has ruled that once a valid arbitration agreement exists between the parties, the issue whether a party is entitled to any relief in the arbitral proceedings in the absence of a third party, who is not a party to an agreement, is covered by the Doctrine of Competence-Competence and must be decided by the Arbitrator.

The Single Bench of Justice Mukta Gupta held that whether a party who is not a signatory to an arbitration agreement is required to be impleaded in the arbitral proceedings or not is to be determined by the Arbitrator.

1994 Arbitration Reference, 2021 Award, Becomes Rule Of The Court Under Arbitration Act, 1940 In 2022

Case Title: Mahavir Prasad Gupta versus Union of India & Anr.

Citation: 2022 LiveLaw (Del) 280

One of the long pending Arbitration proceedings have come to a logical conclusion by making the arbitral award 'the rule of the Court' under the old Arbitration Act, 1940.

The Delhi High Court had made the arbitration reference way back in 1994, but the arbitral proceedings took an inordinately long time to complete with the constitution of the Arbitral Tribunal being changed a number of times and finally the award was passed in the year 2021. And finally, the

Single Bench of Justice Vibhu Bakhru has made the arbitral award the rule of the Court as per the requirement of Arbitration Act, 1940.

Petition Under Article 227, Against The Interim Orders Of Arbitral Tribunal, Based On Violation Of Legal Provisions Can't Be Allowed: Delhi High Court

Case Title: Virtual Perception Opc Pvt Ltd versus Panasonic India Pvt Ltd

Citation: 2022 LiveLaw (Del) 291

The Delhi High Court has ruled that a petition under Article 227 of the Constitution cannot be allowed against an order passed by the Arbitral Tribunal rejecting a plea raised under Section 16(3) of the Arbitration and Conciliation Act, 1996 that the Tribunal had exceeded its jurisdiction, on the ground that the Tribunal had violated the applicable legal provisions.

The Single Bench of Justice Prateek Jalan held that such an expansive reading would open the doors of the Court under Article 227 against virtually any procedural order of the Arbitral Tribunal, adding that Article 227 cannot be used to correct every order of an Arbitral Tribunal, even if it is found to be erroneous.

Section 10 Of CPC Does Not Lay An Embargo In Proceeding With Arbitration During Pendency Of Insolvency Proceedings: Delhi High Court

Case Title: Tata Capital Financial Services Limited versus Naveen Kachru Proprieter of M/S South Delhi Motorcycle & Ors.

Citation: 2022 LiveLaw (Del) 293

The Delhi High Court has ruled that Section 10 of the Code of Civil Procedure, 1908 does not lay an embargo in proceeding with arbitral

proceedings during the pendency of insolvency proceedings under the Provincial Insolvency Act, 1920.

The Single Bench of Justice Sanjeev Sachdeva held that the issues involved in the insolvency proceedings and the issue involved in the arbitral proceedings were completely different and therefore the embargo of Section 10 of CPC does not apply.

**Filing A Complaint With An Unrelated Government Office Does Not
Constitute A Notice Under Section 21 Of The A&C Act, 1996: Delhi High
Court**

Case Title: Glocaledge Consultants Pvt Ltd versus Rec Power Distribution Company Limited

Citation: 2022 LiveLaw (Del) 285

The Delhi High Court has ruled that merely filing a complaint with an unrelated government office expressing one's grievance does not constitute a notice under Section 21 of the Arbitration and Conciliation Act, 1996.

The Single Bench of Justice Vibhu Bakhru held that though it is a trite law that all contentious disputes are to be addressed by the Arbitration Tribunal, however in cases where there was no doubt that the claims raised were barred by limitation, the Court would decline to appoint an arbitrator.

**Rules Of Arbitral Institution Do Not Determine The Place Of Arbitration:
Delhi High Court**

Case Title: Ecogreen Energy Gwalior Pvt. Ltd. v. Commissioner of Municipal Corporation, Gwalior

Citation: 2022 LiveLaw (Del) 297

The Single Bench of Justice Vibhu Bakhru of the Delhi High Court has held that the rules of arbitral institution would not determine the place of the arbitration and only the Courts at the place of arbitration proceedings will have the jurisdiction to entertain an application for the appointment of an arbitrator.

The Court further held that rules of arbitral institutions are only procedural and comes into play after the commencement of the arbitration.

Trademark Disputes That Purely Arise Out Of Contractual Rights And Obligations Are Arbitrable: Delhi HC

Case Title: Vijay Kumar Munjal V. Pawan Kumar Munjal, Arb. P. 975/2021

Citation: 2022 LiveLaw (Del) 278

The High Court of Delhi has observed that all the disputes that arise out of the Trade Marks Agreement are not outside the scope of arbitration. The Single Bench of Justice Vibhu Bakhru clarified that disputes that purely deal with the interpretation of the terms of a trademark agreement and are not related to the grant or registration of the trademarks can be decided in arbitration.

The Court further clarified that unless it is a dispute relating to registration of trademarks, there is no legal requirement of raising the same before the Registrar of Trade Marks or the IP Division of the High Court and the

disputes that purely arise out of contractual rights and obligations under a Trade Mark agreement can be adjudicated in arbitration.

No Distinction Between Decree Or Awards Where Amounts Are In Foreign Currencies For Purposes Of Enforcement Of Arbitral Award: Delhi High Court

Case Title: Karam Chand Thapar & Bros. (Coal Sales Ltd.) versus MMTC Ltd.

The Delhi High Court has observed that for the purposes of enforcement of arbitral award, no distinction can be made between decree or awards where amounts are decreed or awarded in foreign currencies on the basis of the nationality of the disputing parties.

Challenge Against Arbitrator Appointment, Can't Be Under Section 14 Of The A&C Act: Delhi High Court

Case Title: SACHEEROME Advanced Technologies (SAT) versus NEC Technologies Pvt. Ltd. (NECI)

The Delhi High Court has ruled that Section 14 of the Arbitration and Conciliation Act, 1996 does not provide a separate remedy to the parties to challenge the appointment of an arbitrator, notwithstanding the provisions under Section 13 of the Act.

The Single Bench of Justice Vibhu Bakhru held that a party can challenge the appointment of an arbitrator only according to the procedure set out in Section 13 of the Arbitration and Conciliation Act and that a petition under Section 14(1) could not be filed to challenge the appointment of an Arbitral Tribunal on the grounds mentioned under Section 12(3) of the Act, i.e., on

the ground of justifiable doubts as to the independence or impartiality of the Arbitrator.

No Claim Certificate (NCC) Must Be Examined In The Context Of Relevant Documents And The Covering Letter Under Which It Is Issued: Delhi High Court

Case Title: IRCON International Limited versus GPT-Rahee JV

The High Court of Delhi has observed that a No Claim Certificate (NCC) shall be examined along with the covering letter in which it is sent and that mere issuance of the NCC by the Claimant shall not ipso facto entail the extinguishment of all the claims.

The Single Bench of Justice Vibhu Bakhru further held that while adjudicating an application under S. 34 of the Arbitration & Conciliation Act, the Court must be mindful of the fact the Indian Evidence Act, 1872 and strict rules of evidence are not applicable in arbitration and the tribunal enjoys considerable discretion to take a view on the quality and sufficiency of the evidence.

Performance Security Cannot Be Retained After Acknowledgement Of Due Performance : Delhi High Court

Case Title: Bharat Sanchar Nigam Limited versus Teracom Limited

The Delhi High Court has ruled that there is no principle in law whereby a party could be permitted to retain the Performance Security after it had acknowledged due performance of a contract.

The Single Bench of Justice Vibhu Bakhru upheld the award of an Arbitral Tribunal directing BSNL to refund the amount recovered by it from

invocation of Performance Bank Guarantee, since no claim regarding failure to perform obligations under the Contract was made by it.

As Is Where Is' In A License Agreement Does Not Absolve The Contracting Parties To Make A Minimal Disclosure: Delhi High Court

Case Title: India Tourism Development Corporation Ltd (ITDC) versus Bougainvillea Multiplex & Entertainment Centre Pvt Ltd (BMEL)

Citation: 2022 LiveLaw (Del) 272

The Delhi High Court has upheld the award of an Arbitral Tribunal that stipulating the condition of 'as is where is basis' in a License Agreement does not absolve the contracting parties to make a disclosure about the licensed premises, which is otherwise not evident on visual inspection.

The Single Bench of Justice Vibhu Bakhru ruled that the Indian Evidence Act, 1872 does not apply to the proceedings before the Arbitral Tribunal and that the Court was not required to reappreciate every material or piece of evidence that was placed before the Arbitral Tribunal.

Arbitral Fee Under Fourth Schedule Based On Aggregate Value Of Claim & Counter-Claim : Delhi High Court

Case Title: Jivanlal Joitaram Patel versus National Highways Authority Of India

The Delhi High Court has observed that the term "sum in dispute" provided in the 4th Schedule to the Arbitration and Conciliation Act, 1996 has to be interpreted so as to include the aggregate value of the claims as well as counter claims.

Mere Use Of Word 'Arbitration' In Agreement Clause Heading Would Not Infer Existence Of Agreement Between Parties To Resolve Disputes Through Arbitration: Delhi HC

Case Title: Foomill (P) Ltd. versus Affle (India) Ltd.

The Delhi High Court has observed that the mere use of word 'Arbitration' in the heading in the Clause of Agreement would not lead to the inference that there exists an agreement between such parties seeking resolution of disputes through arbitration.

Time Spent In Mediation Would Be Excluded For The Purpose Of Calculating The Period Of Limitation For Invoking Arbitration: Delhi HC

Case Title: Alstom Systems India Pvt. Ltd. versus Zillion Infracorps Pvt. Ltd.

Citation: 2022 LiveLaw (Del) 311

The High Court of Delhi has observed that when the agreement between the parties provides for mandatory mediation, the time spent in the mediation process shall be excluded from the period of limitation.

The Single Bench of Justice C. Hari Shankar held that the notice invoking arbitration as well as the substantive claims of a party would not become time-barred if the parties were undergoing the mediation process contemplated in the arbitration clause and the time consumed in an unfruitful mediation process shall be excluded for the purpose of calculating the limitation period.

The Dispute Between The Parties Which Arises Subsequently Can Be Proceeded In A Separate Arbitration: High Court of Delhi

Case Title: Orissa Concrete and Allied Industries Ltd. versus Union of India

Citation: 2022 LiveLaw (Del) 312

The High Court of Delhi has observed that a subsequent dispute arising from the same transaction can be referred to a separate arbitration and the arbitration agreement cannot be said to be a one-time measure that cannot be invoked after an award is made in the earlier reference.

The Single Bench of Justice Mukta Gupta observed that the word "all disputes" in an arbitration agreement means all the existing disputes at the time of invocation of arbitration and the disputes that arise subsequently can be decided in a separate arbitration. There is no legal impediment that proscribes the invocation of the arbitration agreement if there is a pending arbitration or an award is made in an earlier arbitration.

Sufficiency Of Stamp Duty On Agreement And Nature Of Contract Cannot Be Adjudicated By Court Under Section 11 Of A&C Act: Delhi High Court

Case Title: Parsvnath Developers Ltd versus Future Retail Limited

Citation: 2022 LiveLaw (Del) 323

The Delhi High Court has ruled that the Court cannot adjudicate on the issue whether the claims made by the petitioner are barred by limitation while dealing with a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for referring the parties to arbitration.

The Single Bench of Justice Vibhu Bakhru held that the dispute as to whether the contract containing the arbitration clause is sufficiently

stamped or not, and the nature of the contract, are contentious issues which cannot be decided by the Court in a petition filed under Section 11.

Petition Under Section 9 Of The A&C Act Is Not Maintainable Against The Order By Arbitral Tribunal On Arbitration Fees: Delhi High Court

Case Title: Cement Corporation of India versus Promac Engineering Industries Limited

Citation: 2022 LiveLaw (Del) 329

The Delhi High Court has ruled that a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act) for interim measures of protection, is not maintainable before the Court against the procedural orders passed by the Arbitral Tribunal.

The Bench, consisting of Justices Mukta Gupta and Neena Bansal Krishna, held that the procedural orders passed by the Arbitral Tribunal fixing the arbitration fees does not fall within the ambit of Section 9 of the A&C Act, and rejected the contention that the petition was maintainable under the residuary clause of Section 9(1)(ii)(e) of the A&C Act.

Failure To Issue Notice For Additional Payment Does Not Preclude The Contractor From Later Claiming It In Arbitration: Delhi High Court

Case Title: National Highways Authority of India versus Continental Engineering Corporation (CEC)

The High Court of Delhi has observed that the failure of the contractor to issue notice under the contract does not deprive him of his right to claim additional payment before the arbitral tribunal.

The Single Bench of Justice Bakhru also observed that such a stipulation in the contract is not a mandatory provision but only directory in nature and must be examined with reference to the other clauses and the contemporary records

Claims Raised Before The Arbitral Tribunal Cannot Be Rejected Even If Not Mentioned In The Notice Issued Under Section 21 Of The A&C Act: Delhi High Court

Case Title: Ministry of Youth Affairs & Sports versus Agility Logistic Pvt Ltd

Citation: 2022 LiveLaw (Del) 307

The Delhi High Court has ruled that it is not necessary that a notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 should quantify the amounts that are claimed by the claimant before the Arbitral Tribunal.

The Single Bench of Justice Vibhu Bakhru held that a notice under Section 21 is required to set out the disputes between the parties, and upheld the view of the Arbitral Tribunal that the claims raised by the claimant before the Arbitral Tribunal cannot be rejected only on the ground that they were not mentioned in the notice issued under Section 21.

Gujarat High Court:

Findings On Limitation, During Section 16 Proceedings, Can't Be Challenged Under Sec. 34 Of A&C Act: Gujarat High Court

Case Title: M/s Karan Paper Mills versus M/s Shah Paper Pack Industries

The Gujarat High Court has ruled that the findings of the Arbitrator relating to the issue of limitation, arrived at while dealing with an application filed under Section 16 of the Arbitration and Conciliation Act, 1996 (A&C Act), challenging the jurisdiction of the Arbitrator on the ground that the claims raised by the claimant were barred by limitation, do not constitute an 'interim award'.

The bench of Justices Sonia Gokani and Nisha M. Thakore held that the Arbitrator's findings on limitation, while dealing with the Section 16 application, cannot be held as giving finality to the issue of limitation so as to permit its challenge under Section 34 of the A&C Act.

Section 19 Of MSMED Act Applies To All Kinds Of Challenges: Gujarat High Court

Case Title: Spunpipe & Construction Company versus State of Gujarat

The High Court of Gujarat has held that Section 19 of the MSMED Act, which provides for deposit of 75% of the awarded amount as a pre-condition to challenging any order, award or decree passed in favour of the supplier, applies to all challenge applications regardless of whether the decree, award, order was passed by MSME Council, independent arbitration or the Court.

The bench of Justice Umesh A. Trivedi has held that if Section 19 of the Act is made applicable only to the award passed by the Council, then the use of the word 'decree' under Section 19 would be rendered nugatory as the Council cannot pass a decree; further, it would also frustrate the object of the Section that is to secure the interest of the small-scale industries i.e., supplier.

Application For Appointment Of Arbitrator Can't Be Rejected Due To

Vague Notice Invoking Arbitration: Gujarat High Court

Case Title: Hemlata Jain versus Padmavati Analkumar Mishra

The Gujarat High Court has ruled that the contention that the notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 (A&C Act), invoking the arbitration clause, is vague or bereft of material particulars, cannot be a ground to reject the application under Section 11(6) of the A&C Act, seeking appointment of an arbitrator.

The Single Bench of Chief Justice Aravind Kumar held that the provisions of Section 21 of the A&C Act do not even remotely suggest that the nature of dispute has to be enumerated or explained in the notice invoking the arbitration clause.

A Party Can Withdraw Its Consent For Reference To Arbitration Under

Section 89 Of The CPC Any Time Before The Court Acts Upon Such

Consent: Gujarat High Court

Case Title: Krishna Calibration Services versus Jasmin Bharat Patel

The Gujarat High Court has held that a party can withdraw its consent for reference to arbitration under Section 89 of CPC any time before the court has acted upon such a reference.

Dispute Referred To Arbitration Under MSME Act; Court Can Extend The

Mandate Of Arbitrator Under Section 29A Of A&C Act: Gujarat High Court

Case Title: M/s Magirsha Industries versus M/s Gujarat State Fertilizer and Chemicals Limited

The Gujarat High Court has ruled that even in cases where the dispute has been referred to arbitration under the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act), the Court is empowered under Section 29A of the Arbitration and Conciliation Act, 1996 (A&C Act) to extend the mandate of the Arbitral Tribunal.

A Party Cannot Circumvent The Dispute Resolution Process After Agreeing On The Same: Gujarat High Court

Case Title: Lite Bite Foods Pvt. Ltd. versus Airports Authority of India

The Gujarat High Court has held that a party cannot circumvent the dispute resolution process after agreeing on the same.

The Single Bench of Justice Ashutosh J. Shastri held that a party is bound to follow the mechanism provided under the arbitration clause that requires it to first raise the dispute before the Dispute Resolution Committee (DRC) and pre-deposit the amount in dispute, if no challenge is made by the party to the validity of the terms of the clause.

Claim Petition Without Verification, Writ Not Maintainable Against An Order Of Dismissal Of Claim: Gujarat High Court

Case Title: Pahal Engineers versus The Gujarat Water Supply and Sewerage Board

The High Court of Gujarat has held that a writ petition would not be maintainable against an order of the arbitral tribunal whereby it has rejected the claim of a party on the ground that its pleadings were without verification and affidavit to that effect.

The Single Bench of Justice Vaibhavi D. Nanavati held that once the arbitrator rejects the claims of a party that essentially means a final closure of its claims and the order of the arbitrator can be challenged under Section 34 of the Arbitration and Conciliation Act, 1996.

Proceedings Under Section 9 Of A&C Act Cannot Be Used For Enforcement Of The Conditions Of A Contract: Gujarat High Court

Case Title: Kanhai Foods Ltd versus A and HP Bakes

The Gujarat High Court has ruled that issues involving enforcement of the conditions of a Franchise Agreement cannot be the subject matter of an application for interim measures under Section 9 of the Arbitration and Conciliation Act, 1996.

The Bench, consisting of Justices N.V. Anjaria and Samir J. Dave, held that conditions of a contract can be enforced only when the rights of the parties are finally adjudged and crystallised by the Arbitrator.

A Party Is Not Entitled To Invoke The Arbitration Clause After Signing The Discharge Voucher Without Any Protest Or Demur: Gujarat High Court

Case Title: Balkrishna Spintex Private Limited versus The New India Assurance Company Limited

The Gujarat High Court has ruled that a party is not entitled to invoke the arbitration clause after it had signed the discharge voucher without any protest or demur, since no arbitrable dispute could be said to subsist.

The Single Bench of Chief Justice Aravind Kumar held that an application for referring the dispute to arbitration could not be entertained merely on

the ground that the party had, within 15 days from the receipt of an amount, contended that the said amount was received by it under duress.

Court Can't Decide Disputed Questions Of Facts U/S 11(6) Arbitration Act, Question Of Arbitrability Can Be Examined By Arbitral Tribunal: Gujarat High Court

Case Title: Lords Inn Hotels and Developers Ltd. versus Raysons Residency Pvt. Ltd.

The High Court cannot decide disputed questions of facts in a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of arbitrator, the Gujarat High Court has held.

The Bench comprising Chief Justice Aravind Kumar observed, "All these issues including arbitrability can be examined by the Arbitral Tribunal itself."

Party Failing To Raise The Issue Of Jurisdiction At Section 11 Notice Stage Or During The Arbitral Proceedings, Ground Not Available Under Section 34: Gujarat High Court

Case Title: Leepee Enterprise versus Mehul Industries

The Gujarat High Court has ruled that the issue of jurisdiction of the Arbitrator ought to be raised at the first available opportunity, i.e., when the notice under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act) is served for appointment of Arbitrator.

The Single Bench of Justice A.G. Uraizee rejected the contention that the issue of jurisdiction being a legal issue can be raised at any stage.

Can Third Parties To An Arbitration Agreement Be Impleaded As Parties In Proceedings U/S 9 Arbitration Act?: Gujarat High Court Answers

Case Title: Vijay Arvind Jariwala versus Umang Jatin Gandhi

"In the proceedings of section 11, a person who is not a party to the agreement, has no association in eye of law. On the same footing, a third party cannot be a party in the proceedings under section 9 of the Act for interim measures wherein by very nature of the proceedings, third party cannot be said to have a legal participatory right", the Division Bench of the Gujarat High Court, comprising Justice NV Anjaria and Justice Samir Dave, has observed.

Interim Relief Under Section 9 Of The A&C Act Cannot Be Granted Against A Third-Party Unless Claiming Under A Party To The Arbitration Agreement: Gujarat High Court

Case Title: Vijay Arvind Jariwala versus Umang Jatin Gandhi

Citation: 2022 LiveLaw (Guj) 153

The High Court of Gujarat has held that a third party cannot be impleaded as a party to an application for interim reliefs under Section 9 of the A&C Act unless it is a party who is claiming under a party to the arbitration agreement.

The Division Bench of Justice N.V. Anjaria and Justice Samir J. Dave has held that the remedy under the Arbitration Act is between the parties to the arbitration agreement, therefore, the third party has no concern with the proceedings of Section 9 nor the said provision recognizes the inclusion of

the third party, who may be independently claiming the rights against the parties to the arbitration and vice versa.

Second Section 9 Application, Relief Can't Be Granted As It Would Amount To Main Relief In Arbitration: Gujarat High Court

Case Title: Time Cinemas and Entertainment Pvt Ltd versus Venus Infrastructure and Developers Pvt Ltd

The Gujarat High Court has ruled that once an application under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act) seeking interim measures has been disposed of, a subsequent similar application seeking similar reliefs, which were already dealt with in the earlier proceedings, is not maintainable.

The Bench, consisting of Justices N.V. Anjaria and Samir J. Dave, held that principal relief cannot be granted at the interim stage, and granting interim directions which are in the nature of main relief is not permissible in law.

Dispute Involving Interpretation Of Policy Guidelines Can Also Be Referred To Arbitrator: Gujarat High Court

Case Title: M/S Bharmal Indane Service versus Indian Oil Corporation Limited

The Gujarat High Court has ruled that petition for referring the matter to arbitration cannot be disallowed on the ground that the dispute involves interpretation of policy guidelines.

The Single Bench of Chief Justice Aravind Kumar held that whether there is an arbitrable dispute or not and whether the Arbitral Tribunal has jurisdiction to decide the dispute is an issue which can be decided by the

arbitrator himself under Section 16 of the Arbitration and Conciliation Act, 1996.

There Cannot Be A Deemed Waiver Of Section 12(5) Of The A&C Act By Issuing A Letter To The Opposite Party: Gujarat High Court

Case Title: M/S M N Trapasia versus Divisional Railway Manager (WA)

The Gujarat High Court has ruled that unless the embargo placed under Section 12(5) of the Arbitration and Conciliation Act, 1996 is waived by the parties, the provisions of Section 12(5) would continue to be attracted.

The Single Bench of Chief Justice Aravind Kumar held that there cannot be a deemed waiver of Section 12(5) by merely issuing a letter or communication calling upon the opposite party to waive the embargo.

Gauhati High Court:

Additional Work Without Consent Of The Employer; Arbitrator Can't Award Damages: Gauhati High Court

Case Title: The Sports Authority of Assam versus Larsen and Turbo

The Gauhati High Court has held that the arbitrator cannot invoke Section 70 of the Indian Contract Act to award damages on quantum meruit for the additional work carried out without the prior consent of the employer when the agreement did not contemplate any additional work.

The bench of Justice Kalyan Rai Surana held that when the agreement, containing the arbitration clause, did not contemplate any additional work and the contractor carries out the additional work without the prior consent of the employer then any dispute qua the additional work would

fall outside the ambit of arbitration clause any award delivered thereupon would be against the fundamental policy of Indian Law.

Dismissal On Locus Standi Without Opportunity To Bring On Record Documents; Violation Of Section 18 Of The A&C Act: Gauhati High Court

Case Title: S.R. Engineering Construction versus The Commander Works Engineer

Citation: 2022 LiveLaw (Gau) 56

The Gauhati High Court has held that dismissal of the claim on the ground of locus standi without the opportunity to bring necessary documents on merit and hearing the claims on merit is violation of Section 18 of the A&C Act that provides for equal treatment for parties.

The Bench of Justice Devashis Baruah was hearing an appeal against the order of the lower court passed under Section 34 of the A&C Act whereby the Court rejected the challenge petition of the appellant.

Himachal Pradesh High Court:

Petition Under Section 11 Of The A&C Act Would Be Non-Maintainable After Filing Of An Application Under Section 13 Of The Act: Himachal Pradesh High Court

Case Title: State of H.P. versus BMD Pvt. Ltd.

The Himachal Pradesh High Court has held that a party cannot file a petition under Section 11 of the A&C Act after it has already submitted to the jurisdiction of the arbitrator by way of filing a petition under Section 11 of the A&C Act.

The Single Bench of Justice Sandeep Sharma held once the petitioner has failed to respond/object to the arbitration notice wherein the name of the arbitrator was mentioned within 30 days, there would be deemed consent on its behalf and it cannot object to the appointment of the named arbitrator at a later stage.

Writ Not Maintainable Against An Order Of The Arbitrator Dismissing An Application For Interrogatories: Himachal Pradesh High Court

Case Title: M/s V. Kare Biotech and Ors. versus Hemant Aggarwal and Anr.

The Himachal Pradesh High Court has held that a writ petition would be non-maintainable against an order of the arbitrator dismissing the application for interrogatories.

The Single Bench of Justice Satyen Vaidya held that the arbitration act is a complete code in itself which prohibits judicial interference except where so provided under the Act.

Pre-Arbitration Reference To Adjudicator Is Only Directory, Not A Bar To The Appointment Of The Arbitrator: Himachal Pradesh High Court

Case Title: Backend Bangalore Pvt. Ltd. versus Chief-Engineer-Cum-Project Director, HPRIDC

Citation: 2022 LiveLaw (HP) 14

The High Court of Himachal Pradesh has held that pre-arbitration reference to the adjudicator in terms of arbitration clause is only directory and cannot be held to be a bar to the appointment of an arbitrator by the Court.

The Single Bench of Chief Justice Mohammed Rafiq held that the respondent could not object to the maintainability of the petition, merely on the ground that the pre-condition of reference to adjudicator was not met if it also did not make efforts to settle the dispute but proceeded to terminate the agreement.

Jammu & Kashmir and Ladakh High Court:

Non-Filing Of Application U/S 8 Arbitration Act Before Civil Court Does Not Debar Party From Seeking Appointment Of Arbitrator: J&K&L High Court

Case Title: Anita Mehta versus Gulkand Hues Private Ltd. & Anr.

The Jammu and Kashmir and Ladakh High Court on Tuesday reiterated that non-filing of an application under Section 8 of the Arbitration and Conciliation Act would not mean that the petitioner has surrendered to the jurisdiction of the court and left the right to get the disputes resolved through arbitration so as to debar the petitioner for seeking appointment of an arbitrator through the intervention of the Court.

A Single Bench of Chief Justice Pankaj Mithal was hearing a plea filed by the petitioner under Section 11(6) of the Act seeking the appointment of an arbitrator to adjudicate the matters of controversy between the parties.

Presence Of An Arbitration Clause Does Not Always Oust Court's Jurisdiction Under Article 226: J&K&L High Court

Case Title: M/s. Amira Engineers versus Telecommunications Consultants India & Ors.

Citation: 2022 LiveLaw (JKL) 145

The Jammu and Kashmir and Ladakh High Court recently ruled that writs under Article 226 are maintainable for asserting contractual rights against the State or its instrumentalities and the presence of Arbitration clause does not oust the jurisdiction under Article 226 in all cases though it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.

Application Under O.7 R. 11 Is Not The Submission Of The First Statement On The Substance Of Dispute, Application Under Section 8 Of A&C Act Can Still Be Filed: J&K&L High Court

Case Title: Anita Mehta versus Gulkand Hues Pvt. Ltd.

The Jammu and Kashmir and Ladakh High Court has held that an application for rejection of a plaint cannot be considered to be the first statement on the substance of the dispute as it is merely an incidental procedural proceeding.

The Bench of Chief Justice Pankaj Mithal held that mere filing of an application for rejection of plaint would not debar a party from subsequently filing an application under Section 8 of the A&C Act as the party cannot be presumed to have given up on its right to arbitration. Similarly, it cannot preclude the party from filing an application for appointment of arbitrator.

[Arbitration & Conciliation Act] Proceedings U/S 9 Interim In Nature, Not Meant For Enforcement Of Conditions Of Contract: JKL High Court

Case Title: M/s Doon Caterers versus UOI & Ors.

The Jammu and Kashmir and Ladakh High Court has ruled that final relief cannot be granted under Section 9 of the Arbitration and Conciliation Act, 1996 as proceedings under the said provision are of interim measure and are not meant for enforcement of the conditions of the contract, which can be done only when the rights of the parties are finally adjudged or crystallized by the Arbitral Tribunal.

Jharkhand High Court:

Fresh Notice Under Section 21 Not Required To Be Issued For

Appointment Of Substitute Arbitrator: Jharkhand High Court

Case Title: M/s. Central Coalfields Limited versus Eastern India Powertech Ltd.

The Jharkhand High Court has ruled that a party is not required to make a fresh request for appointment of substitute arbitrator by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (A&C Act), if notice under Section 21 was issued for appointment of the arbitrator sought to be substituted.

The bench of Justice Sujit Narayan Prasad held that once an application under Section 11(6) is filed by the party before the High Court, seeking appointment of arbitrator, the jurisdiction of the parties to appoint the arbitrator as per the arbitration clause is seized.

Therefore, once the mandate of the arbitrator appointed by the High Court under Section 11(6) terminates, for appointment of a substitute arbitrator, the party is not required to again make a request by issuing a notice under Section 21. The applicant can directly file an application before the High

Court under Section 11(6), seeking appointment of the substitute arbitrator.

Exclusive Jurisdiction Is Good For Civil Suits, Can't Supersede The Seat Of Arbitration: Jharkhand High Court

Case Title: M/s R.K. Mineral Development Pvt. Ltd. versus Hindalco Industries Ltd.

Citation: 2022 LiveLaw (Jha) 80

The Jharkhand High Court has held that merely because exclusive jurisdiction has been conferred on a different court, the same cannot amount to contrary indicia and the venue of arbitration would still be the seat of arbitration.

The Bench of Justice Sujit Narayan Prasad held that exclusive jurisdiction clause cannot supersede the designation of venue/seat of arbitration.

Application Under Section 11 Of The A&C Act Is Maintainable Despite The Pendency Of Reference Before The MSME Council: Jharkhand High Court

Case Title: Case Title: National Collateral Management Services Ltd versus Kunk Bihari Food Processing Pvt. Ltd.

The High Court of Jharkhand has held that merely because a reference on the same issue is pending before the MSME Council under Section 18 of the MSME Act, the same is not a bar to the application under Section 11 of the A&C Act for the appointment of the arbitrator.

The Bench of Justice Sujit Narayan Prasad has held that the High Court while exercising powers under Section 11 of the Act is only required to see

if there is an arbitration clause between the parties and an objection regarding the pendency of a reference before the MSME Council on the same matter is not to be looked into at that stage.

Similar Matters Pending Before The Facilitation Council Under The MSME Act; Parties Can Be Referred To Arbitration: Jharkhand High Court

Case Title: M/s National Collateral Management Services Limited versus M/s Maa Diwri Rice Mill Pvt. Ltd.

The Jharkhand High Court has ruled that merely because one of the parties has approached the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) for adjudication of a similar dispute, the application for appointment of arbitrator cannot be held to be not maintainable.

The Single Bench of Justice Sujit Narayan Prasad held that in view of the arbitration agreement between the parties, even if similar matters were pending before the Facilitation Council under the MSME Act, the same cannot be a ground for holding the application for appointment of arbitrator as not maintainable.

Application For Appointment Of Arbitrator Filed After Many Years: Jharkhand High Court Dismisses The Application

Case Title: Jharia Petrol Supply versus Indian Oil Corporation Limited

The Jharkhand High Court has ruled that if the application for appointment of Arbitrator under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996 (A&C Act) is itself not maintainable on the ground of inordinate delay

in filing it, the issue of limitation cannot be referred to the Arbitrator for adjudication.

The Single Bench of Justice Sujit Narayan Prasad held that, in view of the decision of the Supreme Court in the case of *Bharat Sanchar Nigam Limited and Another versus Nortel Networks India Private Limited (2021)*, the issue of limitation is required to be answered at the threshold itself, i.e., at the stage where the application filed under Section 11(6)(c) of the A&C Act is considered by the Court.

Registrar Of The Jharkhand Cooperative Society, Who Also Is The Ex-Officio Director Of The Respondent, Jharkhand High Court Says Appointment As Arbitrator Not Barred As Parties Had Agreed Earlier

Case Title: National Club Cooperative Society Ltd versus The Managing Director, Jharkhand State Adivasi Cooperative Marketing Federation Ltd

Citation: 2022 LiveLaw (Jha) 57

The Jharkhand High Court has ruled that just because registration was granted to a party by a State Cooperative Society, presumption against the independence and impartiality of the Registrar of the said State Cooperative Society to act as an Arbitrator cannot arise.

The Single Bench of Justice Sujit Narayan Prasad held that by merely raising apprehension regarding the independence and impartiality of the person specified to act as an Arbitrator in the arbitration clause, a party cannot file an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (A&C Act) for appointment of an Arbitrator.

Second Application For Appointment Of Arbitrator Is Maintainable, Even Though No Liberty Has Been Granted By Court While Setting Aside The Award: Jharkhand High Court

Case Title: M/s Modern Construction Company versus State of Jharkhand

The Jharkhand High Court has ruled that after an arbitral award has been set aside and quashed by the Court under Section 37 of the Arbitration and Conciliation Act, 1996 (A&C Act), an application under Section 11(6)(c) of the A&C Act for appointment of an arbitrator afresh is maintainable, even though no liberty has been granted by the Court while passing the order under Section 37.

The Single Bench of Justice Sujit Narayan Prasad held that if the second application filed by a party for appointment of an arbitrator afresh is held to be not maintainable then the dispute which is the subject matter of the contract between the parties, would remain undecided.

Karnataka High Court:

Arbitration Clause, Effect Of Novation; Can't Be Decided Under Section 11 Of A&C Act: Karnataka High Court

Case Title: Jaganmayi Builders and Developers Private Limited & Ors. versus Sumanth Reddy & Ors.

The Karnataka High Court has ruled that the issue whether an agreement containing an arbitration clause stood novated with the execution of a second agreement and thus, the arbitration agreement between the parties was not subsisting, cannot be decided at the stage of reference to

arbitration under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act), since it involves a detailed enquiry which must be decided by the Arbitrator himself under Section 16 of the A&C Act.

The Single Bench of Justice B. M. Shyam Prasad reiterated that where novation of the contract containing an arbitration clause is alleged, it is unsafe to conclude about the existence of an arbitration agreement at the stage of reference on a prima facie review of facts.

Existence Of Arbitration Agreement Can Be Presumed If No Denial Is Made In The Reply: Karnataka High Court

Case Title: S.R. Ravi versus Karnataka State Tourism Development Corporation

The Karnataka High Court has held that the words "statements of claim and defence" under Section 7(4)(c) of the A&C Act are to be given wider interpretation and reply to a notice of arbitration falls within the section.

The Bench of Justice S.R. Krishna Kumar held in terms of Section 7(4)(c) an arbitration agreement is said to exist if the petitioner has asserted its existence in its notice of arbitration and the respondent has not denied its existence in its reply to the notice.

Mentioning Referral Of The Matter To Arbitral Institution Is Sufficient; Party Not Required To Name Arbitrator: Karnataka High Court

Case Title: M/s Geosmin Studio Sustainable Solutions LLP versus M/s Ethnus Consultancy Services Pvt. Ltd.

The Karnataka High Court has ruled that a notice issued by a party, stating that the matter would be referred to the Council of Architecture, is

sufficient for the purpose of invocation of the Arbitration Clause, since the Council of Architecture is an arbitral institution within the meaning of Section 11 of the Arbitration and Conciliation Act, 1996.

The Single Bench of Justice Suraj Govindaraj held that it is sufficient if there is a mention made to refer the matter to the institution for arbitration and that there is no specific requirement that a party should name an arbitrator.

Arbitration Clause Can Be Invoked Against Disputes Under Another Agreement, If Both Agreements Form One Composite Transaction: Karnataka High Court

Case Title: M/s Bestpay Solutions Private Limited versus M/s Razorpay Software Private Limited

The Karnataka High Court has ruled that a party can invoke the Arbitration Clause contained in an agreement with respect to the disputes arising with a third party under another agreement, if both the agreements refer to each other and form one composite transaction.

The Single Bench of Justice Suraj Govindaraj held that where one of the necessary parties was not issued a legal notice, the said legal notice would be defective and not in consonance with Section 21 of the Arbitration and Conciliation Act, 1996.

Constitution Of Arbitral Tribunal Does Not Restrict Application For Interim Relief If "Entertained" By The Court : Karnataka High Court Reiterates The Law

Case Title: Godolphine India Private Limited versus UM Projects LLP

The Karnataka High Court has ruled that the restriction contained under Section 9(3) of the Arbitration and Conciliation Act, 1996 would not apply once an application under Section 9(1) for interim measures has been "entertained" by the Court before the appointment of the arbitrator.

Once The Right To Refer The Dispute To Arbitration Is Waived By A Party, It Cannot Be Reclaimed: Karnataka High Court

Case Title: Y Harish and Anr. versus Y Satish and Ors

The Karnataka High Court has ruled that if a party has disputed the arbitrability of a dispute raised by the opposite party, in its reply to the notice invoking the arbitration clause, it is deemed to have waived its right to seek the reference of the dispute to arbitration.

The Single Bench of Justice Sachin Shankar Magadum held that the right of the party to refer the dispute to arbitration cannot be kept in the sleeve and be used at will.

Section 8 Of A&C Act Can't Be Invoked Based On A Non-Binding Arbitration Agreement: Karnataka High Court

Case Title: Masters Management Consultants (India) Private Ltd. versus Nitesh Estates Limited

The Karnataka High Court has ruled that since the agreement between the parties provided for a 'non-binding' arbitration, there was absolutely no intention of the parties to enter into an arbitration agreement and that the said agreement could not be termed as an arbitration agreement.

The Single Bench of Justice Sachin Shankar Magadum held that since under the relevant clause in the agreement, the parties were at a liberty to

initiate litigation before the Civil Court, therefore, the said clause clearly detracted from an arbitration agreement and hence, the recovery suit instituted by the petitioner before the lower Court was very much maintainable, and the lower court could not invoke Section 8 of the Arbitration and Conciliation Act, 1996 (A&C Act).

Stamp Duty On Arbitral Award To Be Paid As Per The Rate Applicable When The Award Was Signed: Karnataka High Court

Case Title: Shriram City Union Finance Ltd. versus Mr. Donald Dayanand Donald

The Karnataka High Court has ruled that the date for the purpose of quantifying the stamp duty payable on an arbitral award under the Karnataka Stamp Act, 1957 is the date on which the award was signed.

The Single Bench of Justice S. Vishwajith Shetty held that since the amendment to Article 11(b) of the Schedule to the Karnataka Stamp Act was already in force on the date of passing of the award, the proper stamp duty required to be paid on the arbitral award was 0.75% of the value of the arbitral award.

High Courts Without Original Civil Jurisdiction Require Commercial Division For International Arbitration: Karnataka High Court

Case Title: ITI Limited versus Alphion Corporation & Anr.

Citation: 2022 LiveLaw (Kar) 183

The Karnataka High Court has ruled that even with respect to a High Court that does not exercise an Ordinary Original Civil Jurisdiction, a Commercial Division is required to be established for the purpose of considering

applications and appeals arising out of an International Commercial Arbitration. The Court added that the said Commercial Division must comprise of a Single Judge.

The Bench, consisting of Chief Justice Ritu Raj Awasthi and Justice Suraj Govindaraj, held that though Section 4 of the Commercial Courts Act, 2015 provides for the establishment of a Commercial Division in the High Court that exercises an Ordinary Original Civil Jurisdiction, it does not bar the establishment of a Commercial Division in a High Court that does not exercise the said jurisdiction.

Landlord-Tenant Disputes Governed By Transfer Of Property Act Are Arbitrable In Nature: Reiterates Karnataka High Court

Case Title: Gokaldas Images Private Limited versus Aries Agro-Vet Associates (Pvt) Limited & Anr.

The Karnataka High Court has reiterated that the landlord-tenant disputes governed by the Transfer of Property Act, 1882 are arbitrable in nature.

The Single Bench of Justice E.S. Indiresh observed that the Supreme Court in the case of *Vidya Drolia versus Durga Trading Corporation (2020)* had overruled its decision in *Himangi Enterprises versus Amaljit Singh Ahulvalia (2017)*. The Court thus held that the landlord-tenant disputes between the parties under the lease deed, which was governed by the Transfer of Property Act, could be referred to arbitration.

Petition Under S. 11(6) Of The A&C Act Would Be Premature When The Precondition Of Conciliation Is Not Fulfilled: Karnataka High Court

Case Title: Sobha Ltd. versus Nava Vishwa Shashi Vijaya and Ors.

The High Court of Karnataka has held that the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 would be premature when the parties have not complied with the precondition of conciliation.

The Bench of Chief Justice Ritu Raj Awasthi dismissed the arbitration petition for the appointment of an arbitrator on the ground that the petitioner had directly approached the Court without taking recourse to the precondition of conciliation.

Arbitral Award Cannot Be Modified By Executing Court On The Basis Of Just A Memo: Karnataka High Court

Case Title: M/s Abhiram Infra Projects Private Limited versus The Commissioner, Karnataka Slum Development Board

Citation: 2022 LiveLaw (Kar) 198

The Karnataka High Court has ruled that in the absence of an application filed under Section 33 of the Arbitration and Conciliation Act, 1996 (A&C Act) for correction of typographical errors in the arbitral award, the Court cannot pass an order modifying and correcting the arbitral award on the basis of a Memo filed before it by a party.

The Single Bench of Justice E.S. Indiresch held that after the lapse of 30 days from the passing of the arbitral award, no application for rectification of typographical mistakes under Section 33 of the A&C Act can be entertained.

Order Terminating The Arbitration Not Challenged; Can't File Section 8 Application Later: Karnataka High Court

Case Title: BEML Ltd. versus Prakash Parcel Services Ltd.

The High Court of Karnataka has held that a subsequent Section 8 application would be non-maintainable when the order of the arbitrator accepting objection to its jurisdiction was not challenged.

The Division Bench of Justice Alok Aradhe and Justice J.M. Khazi held that once the order of the arbitrator terminating the arbitral proceedings has attained finality, it would not be open for a party who did not lay any challenge to the order to contend that the dispute once again be referred to arbitration.

No Stamp Duty Leviable On Award Of Compensation Passed By An Arbitrator Under Section 3G(5) Of The National Highways Act: Karnataka High Court

Case Title: Shalini and Anr. versus National Highways Authority of India and Ors.

The Karnataka High Court has ruled that an award of compensation passed by an Arbitrator under Section 3G(5) of the National Highways Act, 1956 does not attract stamp duty.

The Single Bench of Justice Suraj Govindaraj held that an award of compensation passed by the Land Acquisition Officer under the Land Acquisition Act or under any other similarly situated enactment, including the National Highways Act (NHA), is not amenable to payment of any stamp duty. The Court added that merely because the said award of compensation is passed by an Arbitrator under Section 3G(5) of NHA, the same would not attract stamp duty.

Execution Of Foreign Arbitral Award, Singapore Being Reciprocating Country , Enforceable: Karnataka High Court

Case Title: CTI Future Corporation versus Ducgiang Chemical and Detergent Powder Joint Stock Company

The Karnataka High Court has ruled that an international commercial arbitral award rendered between parties that have no connection with India can be enforced by a Court in India if the property against which the award is sought to be enforced lies within the territorial jurisdiction of the Court.

The Bench, consisting of Chief Justice Ritu Raj Awasthi and Justice Suraj Govindaraj, held that India being a signatory to the New York Convention was required to enable execution of a foreign arbitral award rendered in a reciprocating country, if the property against which the arbitral award was sought to be enforced was situated within the jurisdiction of India.

Arbitration Involving Third Parties And Leading To Other Proceedings - Not Arbitrable: Karnataka High Court

Case Title: South India Biblical Seminary versus Indraprastha Shelters Pvt Ltd & Anr.

The Karnataka High Court has ruled that reference of a dispute to arbitration cannot be allowed if it would lead to splitting up of the cause of action and cause determination on matters which were not contemplated for arbitration.

The Single Bench of Justice B. M. Shyam Prasad held that there cannot be a complete adjudication of the claimant's rights unless the third parties were also heard, therefore, the matter was demonstrably non-arbitrable.

Kerala High Court:

Arbitration Barred In Respect Of Matters Within Exclusive Jurisdiction Of

TDSAT Under TRAI Act: Kerala High Court

Case Title: A. Salim versus M/s Asianet Satellite Communication Ltd.

The Kerala High Court has held that arbitration under the Arbitration and Conciliation Act, 1996 is barred in respect of matters which are within the exclusive jurisdiction of Telecom Disputes Settlement and Appellate Tribunal (TDSAT) under the Telecom Regulatory Authority of India Act, 1997 (TRAI Act).

Dissenting Views Of Minority Members Does Not Constitute An Arbitral

Award: Kerala High Court

Case Title: Lloyed Insulations (India) Ltd versus Foremexx Space Frames

The Kerala High Court has ruled that the Arbitral Tribunal can pass only one arbitral award and not multiple awards.

The Bench, consisting of Justice P.B. Suresh Kumar and C.S. Sudha, ruled that the dissenting views of the minority member(s) of an Arbitral Tribunal does not constitute an Arbitral Award, and the dissenting views cannot be made the basis of a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the arbitral award or proceedings under Section 36 for its enforcement.

Res Judicata Not Applicable To Subsequent Arbitral Proceedings If First

Award Was Set Aside Due To Incompetence Of Tribunal: Kerala High

Court

Case Title: M/s Bativaala and Karani versus K.I. Johnny & Anr.

Citation: 2022 LiveLaw (Ker) 187

The Kerala High Court has held that there is no legal impediment for arbitrating parties to initiate fresh proceedings if the district court sets aside an award on any issue not yet concluded in that award. This implies that the principles of res judicata will have only a limited application in such proceedings under the Arbitration and Conciliation Act.

A Division Bench of Justice P.B. Suresh Kumar and Justice C.S Sudha observed that even if the earlier award was one set aside not on any ground affecting the competency of the Tribunal, the subsequent arbitral proceedings are not hit by the principles of res judicata.

Intention Of Parties As To Seat Of Arbitration Can Be Determined From Their Conduct: Kerala High Court

Case Title: M.A. Hakkim versus M/s Patanjali Agro India Pvt. Ltd.

Citation: 2022 LiveLaw (Ker) 616

The Kerala High Court recently reiterated that the intention of the parties to an agreement, as to the seat of arbitration, can be determined from their conduct.

Justice N. Nagaresh was dealing with a case where the Sale Contract between the parties prescribed Haridwar as the seat of arbitration but the subsequent High Sea Sale Agreement prescribed Kollam as the seat.

Materials Before Court Insufficient To Decide Fraud In Relation To Existence Of Arbitration Agreement, Arbitrator To Decide Issue: Kerala HC

Case Title: M/s. SVS Marketing Sanitary Pvt. Ltd. versus M/s. Bathtouch Metals Pvt. Ltd.

Citation: 2022 LiveLaw (Ker) 493

The Kerala High Court on Thursday reiterated that where a plea of fraud is raised in a dispute, the civil aspect of fraud is arbitrable, unless the very arbitration agreement is found to have been vitiated by fraud.

As to the forum to decide upon the arbitrability of the agreement, Justice Satish Ninan reiterated that the Courts would be bound to refer the parties for adjudication unless it was evident that there was no valid arbitration agreement, nor an arbitrable dispute.

Substitution Of Arbitrator On Ground Of Bias Will Not Come Within The Scope Of Substitution Under Section 29A (6) Of A&C Act: Kerala High Court

Case Title: Flemingo Duty Free Shop Private Ltd. versus Airports Authority of India

The Kerala High Court has ruled that allegation of bias cannot be raised as a ground to seek substitution of Arbitrator under Section 29A of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Single Bench of Justice Sathish Ninan held that there is a stark difference between the substitution of an Arbitrator under Section 15(2) and the substitution of the Arbitrator under Section 29A (6) and hence, the request for substitution of an Arbitrator on the ground of bias will not come within the scope of substitution under Section 29A (6) of the A&C Act.

Madhya Pradesh High Court:

Section 5 Of The Limitation Act Applies To Arbitration Reference Under National Highways Act, 1956: High Court of Madhya Pradesh

Case Title: Ghanshyam Gupta v. State of Madhya Pradesh and Ors.

The High Court of Madhya Pradesh has held that Section 5 of the Limitation Act would be applicable to reference to arbitration under the National Highways Act, 1956.

The Division Bench of Chief Justice Ravi Malimath and Justice Purushiandra Kumar Kaurav reiterated that since no limitation is provided under Section 3G (5) of the National Highways Act, the provisions of Article 137 of the Schedule to the Limitation Act would apply to such proceedings.

After Participating In The Arbitral Proceedings Without Any Protest, Can't Object To Jurisdiction Later : MP High Court

Case Title: State of Madhya Pradesh versus Nathuram Yadav

The Madhya Pradesh High Court has held that a party which has participated in the arbitration proceedings without any protest or challenge as to the jurisdiction of the tribunal cannot for the first time challenge the jurisdiction of the tribunal under Section 37 of the A&C Act.

The bench of Justice S.A. Dharmadhikari held that an issue as to the non-jurisdiction of the private arbitrator when the Madhyasthan Adhikaran Adhiniyam, 1983 Act provides for statutory arbitration for 'works contract', cannot be raised for the first time in an appeal and that it has to be taken at the earliest possible opportunity.

Section 34 Of The A&C Act Application Pending For 13 Years, MP HC

Directs District Courts To Decide All Petitions Within 1 Year

Case Title: Dharamdas Tirthdas Constructions Pvt. Ltd. versus Union of India

The Madhya Pradesh High Court has expressed strong displeasure for keeping a petition under Section 34 of A&C Act pending for 13 years.

The bench of Justice Subodh Abhaynkar remarked that delay in deciding arbitration applications mocks at and frustrates the very object for which the Act was promulgated. The Court directed all the district Court to decide all the petitions under Section 34 of the Act as expeditiously as possible in accordance with Section 34(6) that provides for a maximum of one year period to dispose of the application.

S.34 Arbitration Act Application Can't Be Rejected By Merely Citing Insufficient Grounds, Court Must Assign Reasons: MP High Court

Case Title: The State Of Madhya Pradesh versus M/s. SMEC International Pvt. Ltd.

The Madhya Pradesh High Court recently reprimanded a Commercial Court for rejecting a petition filed under section 34 of Arbitration and Conciliation Act, 1996 without assigning proper reasons for such dismissal.

The matter was being heard by Justice Sujoy Paul & Justice Prakash Chandra Gupta: "Whether grounds so taken in the application filed under Section 34 do fulfill those conditions or not should have been considered by assigning justifiable reasons by the Court below. Para-16 of impugned

order, in our opinion is too cryptic, too bald, too shallow and too sketchy. It is not expected from a judicial forum to reject the application without assigning any 'reason' and directly reach to a 'conclusion'."

Award Passed By An Arbitrator Who Doesn't Have Qualification As Per Agreement Is Non-Est: Madhya Pradesh High Court

Case Title: Chokhi Dhani versus JS Construction

The Madhya Pradesh High Court has held that if the agreement between the parties provides for certain qualifications of an arbitrator, then the appointment must be made in accordance with those qualifications only.

The Bench of Justice Subodh Abhyankar further held that an application filed under Order 7 Rule 11 of CPC challenging the jurisdiction of the arbitrator is to be treated as the application under Section 16 of the A&C Act as the nomenclature of an application is inconsequential but what is averred and the prayer/relief sought therein is relevant.

Notice Of Proceeding Under Section 11 Of The A&C Act Is A Mandatory Requirement: Madhya Pradesh High Court

Case Title: State of Madhya Pradesh versus Nidhi Industries

Citation: 2022 LiveLaw (MP) 193

The Madhya Pradesh High Court has held that it is mandatory for a High Court to issue notice of application under Section 11 of the A&C Act and non-compliance of which would vitiate the entire proceeding for appointment of arbitrator.

Invocation Of Section 9 Of The A&C Act; Need To Wait Termination Of Conciliation Proceedings Under MSME Act: Madhya Pradesh High Court

Case Title: M/S Ujas Associates versus M/S KJS Cement (India) Ltd.

The Madhya Pradesh High Court has ruled that the provisions of the Arbitration and Conciliation Act, 1996 (A&C Act), including Section 9, would come into operation only after the termination of the conciliation proceedings under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act), in the absence of an arbitration agreement between the parties.

The Bench, consisting of Justices Sheel Nagu and Maninder S. Bhatti, held that the powers under Section 9 of the A&C Act cannot be invoked by the competent Court prior to the termination of the conciliation proceedings under the MSMED Act

A Party Cannot Directly Seek The Appointment Of The Arbitrator If The Agreement Provides For Pre-Arbitration Reference To A Competent Authority: Madhya Pradesh High Court

Case Title: Dharmadas Tirthdas Construction Pvt. Ltd. versus Government of India and Ors.

The High Court of Madhya Pradesh has held that the court cannot appoint the arbitrator when the petitioner has not complied with the condition precedent of referring the dispute to the Superintending Engineer.

The Single Bench of Justice Vivek Rusia has held the pre-arbitral steps to be mandatory, the non-compliance of which will result in the rejection of the application for the appointment of the arbitrator.

Arbitration Award Can't Be Challenged In Different Jurisdiction Stating That There Was No Arbitration Agreement: Madhya Pradesh High Court

Case Title: Parenteral Drugs (India) Limited versus Gati Kintetsu Express Pvt Ltd

The Madhya Pradesh High Court has ruled that even if a party disputes the existence of an arbitration agreement, an application under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act) to set aside an arbitral award cannot be filed in a Court not having jurisdiction under the arbitration agreement, solely on the ground that cause of action arose within its jurisdiction.

The Single Bench of Justice Subodh Abhyankar held that the contention that since there was no arbitration agreement between the parties, therefore, the arbitral award could also be challenged wherever the cause of action arose between the parties, would defeat the provisions of Section 16 and Section 34 of the A&C Act and lead to a chaotic situation.

'Requisition Of Record From Arbitral Tribunal Not Akin To Remanding Matter': Madhya Pradesh High Court

Case Title: Anil Kumar Tripathi versus Doorsanchar Nigam Ltd. (BSNL)

The High Court of Madhya Pradesh, Gwalior Bench has held that a court can direct requisition of record from an arbitral tribunal and that the same would not be akin to remanding the matter to the tribunal, but to ascertain the exact nature of the dispute through record of the case.

Justice Anand Pathak dealt with a writ petition moved by the Petitioner who was aggrieved by the order of the commercial court, whereby it directed the requisition of the original record of the arbitrator before considering the application u/s 34 of the Arbitration and Conciliation Act, 1996.

Void Ab Initio Appointment Of Arbitrator, The Court Has Jurisdiction Under Section 11 Of A&C Act To Appoint A New Arbitrator: Madhya Pradesh High Court

Case Title: M/s Om Sai RK Constructions Pvt. Ltd. versus M/s Foresight Infractech Pvt. Ltd.

The High Court of Madhya Pradesh has ruled that once the appointment of arbitrator is void ab initio and the arbitrator is ineligible by virtue of Section 12 (5) of the Arbitration and Conciliation Act, 1996 (A&C Act), then the procedure prescribed under Sections 12, 13 and 14 of the A&C Act for challenging the appointment of an arbitrator are not applicable.

The Single Bench of Justice Anand Pathak held that if the arbitrator is appointment unilaterally by the opposite party, the ineligible appointment deserves to be set aside and the arbitrator can be removed at the stage of passing of the award.

Madras High Court:

Arbitration Survives Even If Arbitration Under MSMED Act Declared Non-Maintainable: Madras High Court

Case Title: M/s. Deetech Projects Pvt. Ltd. versus M/s. Batliboi Environmental Engineering Ltd.

The Madras High Court has ruled that once a dispute is referred to the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act), if the Facilitation Council adjudicates the dispute on merits, such decision would operate as *res*

judicata and would bar the institution of arbitral proceedings in respect of the same dispute.

However, the Court held that if the Facilitation Council declines to exercise jurisdiction on the ground that the petition was not maintainable before it, the arbitration clause contained in the agreement between the parties would survive.

The single bench of Justice Senthilkumar Ramamoorthy observed that by way of a legal fiction contained under Section 18(3) of the MSMED Act, an arbitration agreement in terms of the A&C Act is statutorily imported once the dispute is taken up for arbitration under the MSMED Act. The Court ruled that the said legal fiction does not have the effect of novating the agreement between the parties by deleting the arbitration clause contained in the said agreement.

Section 31 Of The Credit Information Companies (Regulation) Act, 2005

Does Not Bar Constitution Of An Arbitral Tribunal: Madras High Court

Case Title: Kirankumar Moolchand Jain versus TransUnion CIBIL Ltd.

The Madras High Court has ruled that the bar contained under Section 31 of the Credit Information Companies (Regulation) Act, 2005 (CIC Act) will not apply to proceedings for constitution of an arbitral tribunal, to resolve the disputes in the manner prescribed under the CIC Act.

The Single bench of Justice Senthilkumar Ramamoorthy held that the object and purpose of Section 31 of the CIC Act is to preclude the parties from seeking redressal of grievances in any manner other than that prescribed under the CIC Act. It added that since Section 18 of the CIC Act

provides for dispute resolution through arbitration, the provisions of Section 31 would not bar the constitution of an arbitral tribunal.

Arbitral Tribunal Can Award Interest On Security Deposit If The Clause Prohibiting Such Interest Was Not Specifically Pleaded: Madras High Court

Case Title: The Union of India versus R.K. Constructions

The Madras High Court has held that the arbitral tribunal can award interest despite there being a contractual prohibition if no pleading as to the prohibition was made by the aggrieved party.

The bench of Justice Senthilkumar Ramamoorthy held that a party cannot rely on a Clause under GCC for challenging the arbitral award for awarding interest contrary to the said clause if it had not taken such an objection before the arbitral tribunal during the arbitral proceeding.

Limitation Qua Counter-Claim Stops On The Date Of Notice Of Arbitration: Madras High Court

Case Title: Chennai Water Desalination Ltd. versus Chennai Metropolitan Water Supply and Sewerage Board

The High Court of Madras has held that the limitation period qua Counter-Claims would be arrested on the date on which the respondent issues the notice of arbitration and the date of filing of counter-claims would be irrelevant.

The bench of Justice M. Sundar further held that limitation is a facet of 'public policy' and an error in limitation clearly leaves an award hit by Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1 thereat.

Arbitral Award Directing Specific Performance Of Contract, Cannot Be Set Aside On Ground Of Inequitable Nature Of Contract: Madras High Court

Case Title: M/s. Macro Marvel Projects Ltd. versus J. Vengatesh & Ors.

The Madras High Court has ruled that an arbitral award directing specific performance of a contract, cannot be set aside on the ground that the nature of agreement between the parties was not capable of specific enforcement. The Court added that the said issue related to the construction of an agreement, which cannot be made a ground for interference of the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Division Bench of Justices Paresh Upadhyay and D. Bharatha Chakravarthy held that an arbitral award cannot be interfered on the ground that it directed specific performance of a contract which was inequitable in nature and which gave an unfair advantage to a party.

Clause Giving Only Supervisory Powers To Third Party With Respect To Disputes; Not An Arbitration Agreement: Madras High Court

Case Title: Innovators Facade Systems Ltd. versus Larsen & Toubro Limited

The Madras High Court has ruled that where the parties have agreed to give only supervisory powers to a third party with respect to the disputes arising between them, and a clause which does not disclose the intention of the parties to give any adjudicatory powers to the third party, does not qualify as an 'arbitration agreement', as defined under Section 2(1)(b) read with Section 7 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Single Bench of Justice M. Sundar held that the adjudicatory process is an essential feature of arbitration, in contra-distinction to mediation, and hence, when there is nothing to demonstrate that the contracting parties intended to put an adjudicatory mechanism in place, an arbitration agreement cannot be said to exist.

Parties Can Deviate From Terms Of Jurisdiction Under The Arbitration Clause Only Once: Madras High Court

Case Title: Andal Dorairaj & Ors. versus M/s. Rithwik Infor Park Pvt. Ltd. & Ors.

The Madras High Court has ruled that the parties have got the liberty to deviate from the terms with respect to the jurisdiction, as contained in the Arbitration Clause; however, the number of such deviations is limited to only one.

The Single Bench of Justice R.N. Manjula held that waiver of the jurisdiction clause contained in the arbitration agreement can be presumed from the conduct of the parties. The Court added that if the parties have waived the earlier agreement on jurisdiction and have substituted a new jurisdiction by conduct, then, in view of Section 42 of the Arbitration and Conciliation Act, 1996 (A&C Act), the parties cannot make any further diversions with respect to the jurisdiction.

Order Under Section 16 Of A&C Act Which Results In Conclusion Of Arbitral Proceedings- Can Be Challenged Under Section 34: Madras High Court

Case Title: M/s. Sunwin Papers versus M/s. Sivadarshini Papers Pvt. Ltd.

Citation: 2022 LiveLaw (Mad) 383

The Madras High Court has ruled that if an order passed by the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996 (A&C Act), of ruling on its own jurisdiction, has the effect of concluding the arbitral proceedings, the same would be challengeable under Section 34 of the A&C Act.

The Single Bench of Justice M. Sundar held that since registration under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) is not compulsory, the order passed by the Arbitral Tribunal accepting the plea of lack of jurisdiction due to the non-registration of the claimant under the MSMED Act, is patently illegal and in conflict with the public policy of India.

Section 8 Of A&C Act Falls Outside The Scope Of Section 42: Madras High Court Reiterates

Case Title: K. Samad & Anr. versus Reliance Capital Limited

The Madras High Court has reiterated that Section 8 of the Arbitration and Conciliation Act, 1996 (A&C Act) is an exception to Section 42 of the A&C Act. The Court added that if Section 8 is also brought within the ambit of Section 42, it would defeat the sublime philosophy underlining arbitration i.e., party autonomy.

The Single Bench of Justice M. Sundar ruled that a party has no choice of jurisdiction while filing a Section 8 application, and that it is a Hobson's choice for it since it is constrained to file an application under Section 8 in the Civil Court where the civil suit has been filed by the opposite party.

Arbitrator Appointed Under MSCS Act; Fixation Of Fees Is Subject To A&C

Act: Madras High Court

Case Title: Air Corporation Employees Co-operative Credit Society Ltd. versus Registrar of Co-operative Societies

Citation: 2022 LiveLaw (Mad) 369

The Madras High Court has ruled that the power of the Central Registrar to appoint an arbitrator and fix the fees of arbitration under the Multi State Co-operative Societies Act, 2002 (MSCS Act), is subject to the provisions of the Arbitration and Conciliation Act, 1996 (A&C Act).

Holding that there is no provision under the MSCS Act where an exemption has been provided with respect to Section 38 of the A&C Act, which requires the parties to equally bear the advance costs to be deposited before the Arbitral Tribunal, the Single Bench of Justice C. Saravanan set aside the order of the State Registrar directing the petitioner to pay the fees and expenses to the Arbitrator.

Limitation Is An Aspect Of Public Policy For The Purpose Section 34 Of

Arbitration Act: Madras High Court

Case Title: M/s. Chennai Water Desalination Ltd. versus Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB)

Citation: 2022 Livelaw (Mad) 346

The Madras High Court has ruled that limitation is a facet of public policy, and hence, an arbitral award which is incorrect qua limitation is hit by Section 34(2)(b)(ii), read with Clause (ii) of Explanation 1 to Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Single Bench of Justice M. Sundar held that, in view of the principle laid down by the Supreme Court in *Voltas Limited versus Rolta India Limited* (2014), if the counter claimant before an Arbitral Tribunal has invoked the arbitration clause, then, the date of such invocation would be the relevant date to decide the limitation period for raising the counter claim.

Enforcement Of A Foreign Arbitral Award Can Be Filed In More Than One High Court: Madras High Court

Case Title: NCC Infrastructure Holdings Ltd and Anr. versus TAQA India Power Ventures Pvt. Ltd.

Citation: 2022 LiveLaw (Mad) 232

The High Court of Madras has held that more than one High Court can exercise jurisdiction for the recognition and enforcement of a part of the arbitral award if the claims are decided for and against the parties thereto.

The Single Bench of Justice Senthilkumar Ramamoorthy held that the Court for the purpose of the enforcement of a foreign award would be the one within whose jurisdiction either the award debtor carries his business or its assets are located within its jurisdiction.

Arbitral Award Not Providing Statutory Compensation On Land Acquired Under NHA Is Perverse: Madras High Court

Case Title: The Project Director (LA), NHAI versus T. Palanisamy and Ors.

Citation: 2022 LiveLaw (Mad) 196

The Madras High Court has held that an arbitral award that does not provide for payment of mandatory statutory compensation with respect to

the land acquired under the National Highways Act, 1956 is perverse.

The Single Bench of Justice P.T. Asha held that an Arbitrator exercising jurisdiction under the National Highways Act has to be more vigilant in ensuring that the arbitral award is fair and that the land owner is compensated adequately as per his legal entitlement.

Provisions Of The MSMED Act Overrides The Arbitration Agreement

Between The Parties: Madras High Court

Case Title: Madurai Kamraj University versus The Chairman, Micro & Small Enterprises Facilitation Council and Anr.

The High Court of Madras has observed that S. 18 of the MSMED Act will override the arbitration clause between the parties. The Court observed that since S. 24 of the MSMED Act is a non-obstante clause, it gives overriding effect to the provisions of S. 15 -23 of the Act.

The Bench of Justice Pushpa Sathyanarayan and Justice P. Velmurgan observed that once a reference is filed before the MSME Council under S. 18 of the Act, the provisions of the arbitration clause must yield to the provisions contained under S. 18 of the Act.

Writ Petition Is Not Maintainable To Enforce The Arbitral Award: Madras

High Court

Case Title: D. Nagarathinammal versus The Project Director, National Highways Authority of India and Anr.

The High Court of Madras observed that a writ petition cannot be filed to enforce an arbitral award when an alternative remedy is available under S.

36 of the A&C Act.

The Single Bench of Justice G.K. Ilanthiraiyan observed that the A&C Act is a complete code in itself and envisages minimum judicial intervention.

Manifest Intention To Arbitrate Is A Sine Qua Non For Filing An

Application Under S.9 Before The Commencement Of The Arbitration:

Madras High Court

Case Title: M/s Cholamandalam Investment and Finance Company Ltd. versus Harkhabhai Amarshibhai Vaghadiya

The High Court of Madras has held that manifest intention to arbitrate is a sine qua non for filing an application under S. 9 before the commencement of the arbitration and no interim relief can be granted if the intention to arbitrate is missing.

The Single Bench of Justice M. Sundar held that manifest intention to arbitrate is a jurisdictional fact that must precede the application under S. 9 of the Act. It also held that the Court would only appoint the receiver when the applicant is successful in demonstrating that the property is in imminent danger of waste.

Arbitral Award Not Hit By Adequacy Facet If Reasons Given Are Not

Laconic: Madras High Court

Case Title: The Chief Engineer / Metropolitan Transport Project (Railways), Southern Railway and Anr. versus M/s. Progressive-Aliens

Citation: 2022 LiveLaw (Mad) 189

The Madras High Court has ruled that an arbitral award cannot be set aside on the ground of non-adequacy of reasons as long as the reasons

given are not laconic.

The Single Bench of Justice M. Sundar ruled that being 'tersely eloquent' is not alien to judgment writing.

Section 34 Proceedings Are Summary In Nature; Does Not Permit Additional Evidence To Be Filed Unless Absolutely Necessary: Madras High Court

Case Title: M/s. Color Home Developers Pvt. Ltd. versus M/s. Color Castle Owners Society

The High Court of Madras has held that the challenge proceedings under Section 34 of the A&C Act are summary in nature, therefore, the same shall be decided based on the record that was available with the arbitral tribunal and no additional document shall be permitted to be brought in at that stage unless absolutely warranted.

The Single Bench of Justice M. Sundar further held that the court would not allow any additional document under a Section 34 petition if there was nothing that prevented the petitioner from furnishing the same document before the arbitrator.

Arbitration Clause Survives The Termination Of The Underlying Agreement: Madras High Court Reiterates Legal Position

Case Title: Rajasthani Marbles and Anr. versus Na. K. Kumar

Citation: 2022 LiveLaw (Mad) 177

The High Court of Madras has held that the arbitration clause contained in a partnership deed survives the termination of the deed. The Court held

that the clause is an independent agreement and outlives the main contract in which it is incorporated.

The Single Bench of Justice M. Sundar reiterated that all the issues related to the arbitrability of the claims shall be decided by the arbitral tribunal unless it is a clear case of deadwood. The Court ruled that Section 11 of A&C Act does not permit elaborate pleadings on the claims.

Arbitral Award Rendered Mechanically, Awarding Lower Value For Land Acquired Under NHA: Madras High Court Remits Matter Back To Arbitrator

Case Title: Union of India versus J. Auuamar and Ors.

Citation: 2022 LiveLaw (Mad) 221

The Madras High Court has ruled that an arbitral award rendered by the District Collector awarding a lower value to the land owners with respect to the land acquired under the National Highways Act, 1956 without following the mandate of Section 3G (7) of the National Highways Act, is rendered mechanically.

The Bench, consisting of Justices R. Subramanian and N. Sathish Kumar, remitted the matter back to the Arbitrator for fixing the value of the land acquired under the National Highways Act afresh in terms of Section 3G (7) of the National Highways Act.

Meghalaya High Court:

If The Issue Of Limitation Calls For An Enquiry, The Court Should Yield To The Authority Of The Arbitral Tribunal: Meghalaya High Court

Case Title: M/s Maya Construction versus Union of India & Ors.

The Meghalaya High Court has ruled that in a case where the issue of whether the claim raised by a party is barred by limitation or not calls for an inquiry, the Chief Justice or his designate should allow the objection to be decided by the arbitral tribunal in accordance with law.

The Single Bench of Chief Justice Sanjib Banerjee held that though in an open and shut case where it is apparent that the claim can no longer be pursued, or where the request for setting up an arbitral tribunal is hopelessly barred by limitation, the Court may dismiss the petition for reference to arbitration; however, when an arguable case is made out and the issue of limitation calls for an enquiry, the Court should yield to the authority of the arbitral tribunal.

Court Exercising Powers Under Section 9 Of The A&C Act Cannot Add Conditions To An Unconditional Bank Guarantee: Meghalaya High Court

Case Title: North Eastern Electric Power Corporation Ltd. (NEEPCO) versus Patel-Unity JV

The Meghalaya High Court has held that a court exercising powers under Section 9 of the A&C Act cannot add conditions to an unconditional bank guarantee.

The Division Bench of Chief Justice Sanjib Banerjee and Justice W. Diengdoh held that mere plea of fraud would not be a ground for the court to stay invocation of an unconditional bank guarantee unless a strong prima facie case is made out on such a ground.

Justifiable Doubts Regarding The Independence Of Empanelled Arbitrators Would Always Exist: Meghalaya High Court

Case Title: Jaguar Overseas Limited versus Union of India & Anr.

Citation: 2022 LiveLaw (Meg) 20

The High Court of Meghalaya has held that if a contractor/ tenderer does not accept the names of the possible arbitrators that are listed on the panel prepared by the tenderer, the panel cannot be enforced since there would always be justifiable doubts regarding the independence or impartiality of the empanelled arbitrators.

The Single Bench of Chief Justice Sanjib Banerjee held that even if a person is named as an arbitrator in the arbitration agreement entered into before the occurrence of the dispute, and whose appointment would otherwise fall foul of the Seventh Schedule, a party is not barred from objecting to the agreed arbitrator taking up reference.

Arbitral Tribunal Framing An Issue Which Was Already Decided During Interim Award, Writ Maintainable: Meghalaya High Court

Case Title: The Chief Engineer (PWD) (National Highways) Government of Meghalaya, Shillong versus M/s. BSC – C&C JV

The High Court of Meghalaya has held that a writ petition is maintainable against an order of the arbitral tribunal framing issue in respect of a claim that has finally been decided in the interim award.

The Single Bench of Justice H.S. Thangkhiew has held that an arbitrator would be acting without jurisdiction if it frames an issue qua a claim that has already been decided in the interim award.

Orissa High Court:

Close Relative Of Arbitrator Must Be 'Controlling The Company' To Make Him Ineligible: Orissa High Court

Case Title: Abhay Trading Pvt Ltd., Mumbai versus National Aluminum Company Ltd., NALCO, Bhubaneswar

The Orissa High Court has clarified that to make an arbitrator ineligible under Clause 9 of the Seventh Schedule read with Section 12(5) of the Arbitration and Conciliation Act, 1996, the arbitrator must have a close family relationship with a party and in case of companies, he must have a close relation with the person(s) in the management who should be "controlling the company".

LoA Not Issued, But Bid Documents Establish Contractual Relationship - Arbitration Clause Can Be Invoked : Orissa High Court

Case Title: M/s. Jhar Mining Infra Private Limited versus CMD, managing Coalfields Ltd. & Ors.

The Orissa High Court has ruled that where a tenderer/bidder is declared as a 'Preferred Bidder', the arbitration clause incorporated in the tender document can be invoked by the bidder, even if no tender is awarded to it and no formal contract is concluded between the parties.

The Court held that the arbitration clause contained in the tender document, which provided for referring the disputes which arose prior to the execution of the contract to arbitration, is an arbitration agreement in terms of Section 7 of the Arbitration and Conciliation Act, 1996 (A&C Act).

Writ Not Maintainable Against Admission Of Petition Under Section 34 Of A&C Act Without Pre-Deposit: Orissa High Court

Case Title: M/s. Chemflo Industries Pvt. Ltd. versus M/s. KMC

Construction Ltd. and Anr.

The Orissa High Court has ruled that the Court cannot entertain a writ petition against an order passed by the lower court admitting the application under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act) to set aside the arbitral award, despite the fact that the award debtor had failed to deposit 75% of the awarded amount, as mandated by Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act).

The Single Bench of Justice Arindam Sinha held that rejection of the demurrer application, filed by the petitioner for violation of the provisions of Section 19 of the MSMED Act, can be taken as a ground of appeal under Section 37 of the A&C Act against the order passed in a Section 34 application. Hence, the Court ruled that it cannot be considered by the Court as a rarest of the rare case so as to exercise judicial review.

Arbitrator Can Award Interest On Interest Under The A&C Act: Orrisa High Court

Case Title: Mahanadi Coalfields Ltd. versus B.S. Agarwal, Engineers and Contractors

The Orissa High Court has held that the arbitrator can award separate interest on claims which are in nature of interest for delayed payment.

The Bench of Justice Arindam Sinha held that bar under Section 3 of the Interest Act, 1978 does not apply to interest under the A&C Act. It held that under Section 31(7)(a) of the A&C Act there is no bar on the grant of interest on interest.

Section 5 Limitation Act Application Not Required If Application Under

Section 34 Of A&C Act Is Within Statutory Period: Orissa High Court

Case Title: Faridabad Gurgaon Minerals versus Orissa Mining Corporation Ltd.

The Orissa High Court has ruled that there is no requirement under Section 34(3) of the Arbitration and Conciliation Act, 1996 (A&C Act) to file a separate application for condonation of delay in filing an application to set aside an arbitral award under Section 34 of the A&C Act, since the prescribed and the extended periods are both provided under Section 34 of the A&C Act.

The Single Bench of Justice Arindam Sinha held that the Supreme Court in the case of State of Bihar versus Bihar Rajya Bhumi Vikas Bank Samiti (2018) has declared the law and has interpreted the provisions of Section 34 (5) of the A&C Act, which requires a party to issue a prior notice to the opposite party before filing an application to set aside an arbitral award, as being directory in nature and not mandatory.

Mere Reply To The Notice Of Arbitration Would Not Save The Limitation

Period For Filing Counter-Claims: Orissa High Court

Case Title: Birla Institute of Management versus Fiberfill Interiors & Constructions

The Orissa High Court has held that a mere reply to the notice of arbitration would not save the period of limitation for filing the counter-claim(s).

The Court held that the date on which the counterclaim is filed before the arbitrator would be the relevant date for determining the date of stopping of the period of limitation unless the respondent had issued a separate notice of arbitration raising the counter-claims, then the limitation would be computed as on the date of that notice.

Arbitral Award Cannot Be Set Aside On The Ground That It Is Based On Insufficient Material: Orissa High Court

Case Title: GMR Kamalanga Energy Ltd. versus SEPCO Electric Power Construction Corporation

Citation: 2022 LiveLaw (Ori) 106

The Orissa High Court has reiterated that an arbitral award cannot be set aside on the ground of breach of fundamental principles of justice, if the findings of the Arbitral Tribunal do not shock the conscience of the Court.

The Single Bench of Justice K.R. Mohapatra held that even if the material available before the Arbitral Tribunal is not sufficient to come to the conclusion arrived at by the Tribunal, the award cannot be set aside on this ground alone.

Invocation Of Arbitration Clause In Tender Document Is Possible Only If Purchase Order Is Placed: Orissa High Court

Case Title: Emcure Pharmaceuticals Ltd versus The Managing Director, Odisha State Medical Corporation and Others

The Orissa High Court has ruled that till a purchase order is issued by the tenderer pursuant to the acceptance of an offer to supply, no completed

'contract' arises between the parties and thus the arbitration clause contained in the tender document is not attracted.

The Single Bench of Chief Justice Dr. S. Muralidhar reiterated that the arbitration clause contained in the tender document was not an arbitration agreement in praesenti, but a provision that was to come into existence in the future, if a purchase order was placed.

An Unreasoned Arbitration Award Is Against The Public Policy: Orissa High Court

Case Title: Jayaram Panda versus Project Director, M/s. National Highway Authority of India and others

The High Court of Orissa has held that an unreasoned arbitral award would be against the public policy.

The Single Bench of Justice Arindam Sinha set aside the award as the arbitrator failed to give any reasons for reaching the conclusion in the award. The Court held that an award bereft of reasons, goes against the mandate of the Act and therefore is against the public policy.

Refusal To Delete Name Of A Party From The Arbitral Proceedings Is Not The Rarest Of Rare Case To Invoke Writ Jurisdiction: Orissa High Court

Case Title: State of Odisha versus M/s. Nayagarh Sugar Complex Ltd.

The High Court of Orissa has held that a writ petition is not maintainable against an order of the arbitral tribunal refusing to delete the name of a party from the arbitration.

The Single Bench of Justice Arindam Sinha has held that to invoke the writ jurisdiction in an arbitration matter, the aggrieved party has to show that it

is a 'rare of the rarest cases' and the interference of the Court is required. The Court ruled that the order of the tribunal wherein it has refused to delete the name of a party does not fall with the rubric of rare of the rarest cases.

On Procedural Aspects The Arbitration Act Must Yield To The Provisions Of The Commercial Courts Act: Orissa High Court

Case Title: M.G. Mohanty and Anr. versus State of Odisha and others

The High Court of Orissa has observed that the Court for the purpose of deciding all the applications arising out of the arbitration agreement between the parties would be the Commercial Court as defined under the Commercial Courts Act which need not necessarily be the Principal Civil Court as provided under the Arbitration Act.

The Court observed that the jurisdiction of the Commercial Court can be conferred on a judicial officer subordinate to the rank of a District Judge, i.e., the Principal Civil Judge notwithstanding anything contained in S. 2(1) (e) of the Arbitration Act.

Writ Petition Is Maintainable Against The Award Of The MSME Council Which Failed To Give A Hearing On Limitation: Orissa High Court

Case Title: M/s Bajaj Electricals Ltd. versus Micro Small and Enterprises Facilitation and Anr.

The High Court of Orissa has observed that a writ petition is maintainable against an award rendered by the MSME Council under S. 18 of the MSMED Act wherein the petitioner was not given a hearing on a material issue regarding the limitation of the substantive claims.

The Single Bench of Justice Arindam Sinha has observed that in cases where an award is passed without hearing a party, the availability of an alternative remedy to challenge the award under S. 19 of the MSMED Act r/w S. 34 of the Arbitration Act shall not be a ground to dismiss the writ petition as compelling the petitioner to challenge the award would require him to comply with the requirement of deposit of 75% of the amount awarded.

Patna High Court:

Order Passed By High Court, Recording Consent Of Parties To Appoint A Specified Arbitrator, Is Not An Order 'Appointing An Arbitrator': Patna High Court

Case Title: The Bihar State Text Book Publishing Corporation Ltd. versus M/s Patna Offset Press

The Patna High Court has ruled that the order passed by the High Court in a writ petition, recording the consent of the parties to appoint a specified Arbitrator while referring them to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (A&C Act), cannot be said to be an order appointing an Arbitrator.

The Single Bench of Chief Justice Sanjay Karol held that once the party has filed an application under Section 14 of the A&C Act, to decide on the termination of the mandate of the arbitrator, the only remedy available to the party was to assail the order passed on the said application and thus, the petition under Section 11(6) of the A&C Act seeking appointment of an arbitrator would be barred by res judicata.

When Liability Is Admitted, Arbitration Clause Is Not A Bar To Entertain

Writ Petition: Patna High Court

Case Title: Fulena Construction Pvt. Ltd. versus The State of Bihar

Citation: 2022 LiveLaw (Pat) 21

The High Court of Patna has held that arbitration clause is not a bar to the maintainability of a writ petition when the liability to pay is not disputed by the respondent.

The Division Bench of Justice Chakradhari Sharan Singh and Justice Madhresh Prasad held that once the liability to pay is admitted by the respondent, there remains no dispute that can be referred to arbitration, therefore, the arbitration clause would no longer be a bar to the writ petition.

Punjab and Haryana High Court:

A Statement Made At The Stage Of Interim Injunction Is Not A First

Statement For Section 8 Of The A&C Act: P&H High Court

Case Title: Chat Aroma v. Hamir Real Estate Pvt. Ltd.

The High Court of Punjab and Haryana has held that a statement made at the stage of interim injunction is not a first statement for Section 8 of the A&C Act.

The Single Bench of Justice Rajbir Sherawat held that any statement made at the stage of and for the purpose of opposition to the application under Order 39 Rules 1 & 2 or to prevent any interim order being passed by the court, could not be taken as a statement on the subject matter of the dispute.

Subsequent Consulting Agreements Prescribing Arbitration Do Not Bind

Parties When MoU Forming Basis Of Claim Doesn't Contain Arbitration

Clause: P&H High Court

Case Title: M/s Soben Contract and Commercial Ltd. versus M/s Qonquests Technical Solutions Pvt. Ltd. and Ors.

The Punjab and Haryana High Court recently held that where the claim of a party to an agreement is based upon a Memorandum of Understanding (MoU) which does not contain an arbitration clause, the Court is not required to refer the matter merely because the subsequent Consulting Agreements executed by the parties contemplate arbitration.

The bench comprising Justice Augustine George Masih and Justice Sandeep Moudgil in this case noted that there is no clause for arbitration under the MoU and the clause, if any, is in the Consulting Agreements which would not be applicable here since plaintiff's claim is based exclusively on the MoU.

Execution Of Arbitral Award Is To Be Filed In The Seat Court And Not At

The Place Of Land Acquired: Punjab and Haryana High Court

Case Title: NHAI versus Yashpreet Singh

The Punjab and Haryana High Court has held that execution of an arbitral award passed under the National Highways Act, 1956 is to be filed at the Seat Court and not where the acquired land is situated.

The bench of Justice Raj Mohan Singh held that once the seat of arbitral proceeding is fixed then only the court within whose jurisdiction the seat is

situated would have the jurisdiction to decide all the applications arising out of the arbitration.

Section 11 Application Barred By Limitation; Parties Cannot Be Referred To Arbitration: Punjab and Haryana High Court

Case Title: M/s Garg Construction Company versus State of Haryana and Ors.

The Punjab and Haryana High Court has reiterated that if the application for appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act) is hopelessly time-barred, no arbitrator can be appointed by the High Court.

The Single Bench of Chief Justice Ravi Shanker Jha held that in view of Article 137 of the Limitation Act, 1963, the application filed by the applicant before the High Court was barred by limitation, since it was filed well beyond three years.

Even In The Absence Of An Arbitration Agreement, The Matter Can Be Referred To Arbitration Under Section 18 Of The MSMED Act: Punjab And Haryana High Court

Case Title: M/s SGM Packaging Industries versus M/s Goyal Plywood LLP

The Punjab and Haryana High Court has ruled that even in the absence of an arbitration agreement between the parties, the matter can be referred to arbitration under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act).

The Single Bench of Justice Lisa Gill reiterated that the MSMED Act being a Special Act shall prevail over the Arbitration and Conciliation Act, 1996 (A&C Act).

Rajasthan High Court:

Death Of One Of The Arbitrators - But Decided To Pass Award Prior To

Death - Not Contrary To Section 10 Of A&C Act: Rajasthan High Court

Case Title: M/s Shree Ram Junawa Industries versus M/s Rounak Steels

The Rajasthan High Court has ruled that if an Arbitral Tribunal had principally decided to pass the award on a day when all the members of the Arbitral Tribunal were present, merely because the detailed award was passed on the day when one of the members of the Arbitral Tribunal was not alive, and was thus signed by only two members, it cannot be said that the award was contrary to Section 10 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Single Bench of Justice Vijay Bishnoi held that the principles of res judicata also apply between two stages of the same litigation.

Challenge Against Appointment Of Arbitrator Can Be Entertained Only

After Passing Of The Award: Rajasthan High Court Reiterates

Case Title: Surya Wires Private Limited versus Rajasthan Skills and Livelihoods Development Corporation

The Rajasthan High Court has reiterated that any challenge against an arbitrator on the grounds contained in the Fifth Schedule of the Arbitration and Conciliation Act, 1996 (A&C Act), which give rise to justifiable doubts

regarding his independence or impartiality, can be gone into by the Court only after the Arbitral Tribunal has given an award.

The Single Bench of Justice Pankaj Bhandari ruled that where the arbitration clause provided for referring the disputes to the Empowered Committee of Ministry of Rural Development, the Empowered Committee cannot be said to be an interested party, ineligible to be constituted as an Arbitral Tribunal under Section 12(5) of the A&C Act, since it was not a party to the agreement between the Rajasthan Skills and Livelihoods Development Corporation and the applicant.

When Termination Of Arbitral Proceedings For Non-Appearance Of Parties, Remain Unchallenged, Application Filed Again For Appointment Of Arbitrator Not Maintainable: Rajasthan High Court

Case Title: Vimlesh Bansal versus Ashok Kumar

The Rajasthan High Court has held that a second arbitration application would be non-maintainable when the order of the arbitrator terminating arbitral proceedings under Section 32(2)(c) was not challenged under Section 14(2) of the A&C Act.

The Single Bench of Justice Pankaj Bhandari held that the legal maxim '*Vigilantibus Non-Dormientibus Jura Subveniunt*' which means that 'the law assists only those who are vigilant and not those who sleep over their rights' would squarely apply to a situation where the petitioner slept over its right to challenge the order of termination but filed a second application for appointment of arbitrator.

Award Cannot Be Remitted To The Arbitral Tribunal Under Section 34 (4) Of The A&C Act, If No Reasons and Findings Are Recorded: Rajasthan

High Court

Case Title: Eptisa Servicios De Ingenieria SL versus Ajmer Smart City Limited

The Rajasthan High Court has ruled that an arbitral award cannot be remitted back to the Arbitral Tribunal under Section 34 (4) of the Arbitration and Conciliation Act, 1996 (A&C Act) if there are no findings recorded in the arbitral award on the contentious issues.

The Single Bench of Justice Ashok Kumar Gaur reiterated that discretionary powers under Section 34 (4) of the A&C Act cannot be exercised under the guise of additional reasons or for filling up the gaps in the reasoning. The Court held that in the absence of any findings on the contentious issues in the award, no amount of reasons can cure the defect in the award.

Proceedings Under The A&C Act And SARFAESI Act Can Be Resorted To Simultaneously: Rajasthan High Court Reiterates The Legal Position

Case Title: Om Prakash Kumawa versus Hero Housing Finance Ltd.

The High Court of Rajasthan has held that proceedings under the A&C Act and SARFAESI Act can be resorted to simultaneously.

The Single Bench of Justice Mahendra Kumar Goyal has held that the existence of an arbitration clause and filing of an application under Section 9 of the A&C Act is not a bar to the institution of proceedings under the SARFAESI Act.

Condonation Of Delay | S.5 Limitation Act Not Applicable To Proceedings U/S 34 Arbitration & Conciliation Act: Rajasthan High Court

Case Title: State of Rajasthan & Anr. versus M/s. Godhara Construction Company

Citation: 2022 LiveLaw (Raj) 162

The Rajasthan High Court has observed that the provision of Section 5 of the Indian Limitation Act does not apply to the proceedings contained under Section 34 of the Arbitration and Conciliation Act, 1996.

The Single Bench of Justice Anoop Kumar Dhand observed that the proviso to Section 34(3) of the Act of 1996 empowers the court, if it is satisfied that the applicant was prevented by sufficient cause from making application within the said period of three months, to further extend the period and filing of the application for setting aside the arbitral award by 30 days but not thereafter.

Telangana High Court:

Application For Attachment Can Be Filed Before A Court Even If The Property Is Outside Its Jurisdiction: Telangana High Court

Case Title: M/s Rashmi Metaliks Limited versus M/s Techno Unique Infratech Pvt. Ltd.

The Telangana High Court has reiterated that an Execution Petition for enforcement of an arbitral award can be filed in any court at any place in the country. However, the High Court added that the said court must have the jurisdiction to execute the award, which would depend on the award debtor and its location.

The Bench, consisting of Chief Justice Satish Chandra Sharma and Justice Abhinand Kumar Shavili, held that even if the properties sought to

be attached are outside the territorial jurisdiction of a Commercial Court, a petition under Order 21 Rule 46 of the Code of Civil Procedure, 1908 for attachment of the property can be filed.

Request For Oral Hearing Cannot Be Denied by The Arbitral Tribunal On The Ground That The Claims Involved Are Modest: Telangana High Court

Case Title: ITC Limited- International Business versus Wide Ocean Shipping Service Ltd.

The Telangana High Court has ruled that where the Arbitral Tribunal has passed a foreign arbitral award after denying the request of a party for oral hearing, the said arbitral award is contrary to the fundamental policy of Indian law as it is in conflict with the basic notions of justice and hence, it cannot be enforced in India.

The Bench, consisting of Justices P. Naveen Rao and Sambasivarao Naidu, held that a person has a right of fair hearing and that a request for oral hearing cannot be refused by the Arbitral Tribunal merely on the ground that the claims involved are modest.

Existence Of Contingent Contract U/S 31 Of Contract Act Is A Dispute To Be Referred To Arbitration: Telangana High Court

Case Title: D. Ravinder Reddy versus Smt. C. Geethanjali

Recently, the Telangana High Court observed that existence of a "Contingent Contract" cannot be decided in the limited jurisdiction of Courts under Section 11 of Arbitration Act.

Justice K. Lakshman, placing reliance on Supreme Court decision in Vidya Drolia v. Durga Trading Corporation (2021) observed that the scope of

interference by the Courts under Section 11 of Arbitration Act is extremely limited.

Impossible For The Party To Fulfil Its Obligations Under The Contract; Parties Cannot Be Referred To Arbitration: Telangana High Court

Case Title: Veeraboina Yadaiah versus Ramakanth Dande

The Telangana High Court has ruled that since it was impossible for a party to fulfil its obligations under an agreement, in view of the doctrine of frustration, the parties cannot be referred to arbitration, despite the presence of an arbitration clause.

The Single Bench of Chief Justice Ujjal Bhuyan observed that though the lease deed between the parties contained an arbitration clause, however, judicial notice could be taken of the fact that the pandemic had broken out in the relevant period under consideration, and hence, it was impossible for the tenant to have paid the rent during the said period. Thus, the Court ruled that it was not a fit case where the parties should be referred to arbitration.

Substitution Of Arbitrator Based On Allegation Of Collusion Can't Be Done Under Section 11 of A&C Act: Telangana High Court

Case Title: M/s Sawera Township India Private Limited versus Faisal Bin Tirif

The Telangana High Court has ruled that in an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act), the Court cannot, on the ground of collusion, refuse to appoint the arbitrator as specified in the arbitration clause and appoint a substitute arbitrator.

The Single Bench of Justice K. Lakshman held that the allegations regarding any collusion between the specified arbitrator and the opposite party cannot be decided in an application filed under Section 11 of the A&C Act. The Court added that a party cannot seek appointment of a substitute arbitrator on mere allegations of collusion.

Application For Enforcement Of Arbitral Award Would Lie Only Before The Court Where Application Under Section 9 And/ Or Section 34 Has Been Filed: Reiterates Telangana High Court

Case Title: M/s. India Media Services Private Limited versus M/s. SBPL Infrastructure Limited

The Telangana High Court has reiterated that in view of Section 42 of the Arbitration and Conciliation Act, 1996 (A&C Act), only the Court where an application under Section 9 and/or Section 34 has been filed would have the jurisdiction to entertain an application for enforcement of the arbitral award.

The Bench, consisting of Justices P. Naveen Rao and Sambasivarao Naidu, held that Section 42 of the A&C Act opens with a non-obstante clause and, therefore, even though an arbitral award is treated as a 'decree in fiction' by a Civil Court, Section 42 of the A&C Act would cover within its ambit all provisions dealing with execution of an award.

If 'Value of Commercial Dispute' Is More Than Rs. One Crore, Section 9 Application Under A&C Act Would Lie Only Before The Commercial Court: Telangana High Court

Case Title: Telangana State Tourism Development Corporation Limited versus M/s. A.A. Avocations Pvt. Ltd.

The Telangana High Court has ruled that if a dispute constitutes a 'commercial dispute' under Section 2 (1) (c) (vii) of the Commercial Courts Act, 2015, and the dispute is the subject matter of a domestic arbitration whose 'Specified Value' is more than Rs. One Crore, then an application under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act) would lie only before the Commercial Court and not before the Civil Court.

The Bench, consisting of Justices P. Naveen Rao and Sambasivarao Naidu, held that to treat an immovable property as 'used' for commercial purposes, so as to fall within the ambit of Section 2 (1) (c) (vii) of the Commercial Courts Act, it is not necessary that the present lessee should commence commercial operations in the said property.

No Claim Certificate By Employee To Employer Under Compulsion Or Not, Issue Is Arbitrable: Telangana High Court

Case Title: M/s BPR Infrastructure Limited versus M/s. RITES Ltd. and Anr.

The Telangana High Court has ruled that the issue whether a no claim certificate furnished by a party to its employer was under compulsion or duress, or whether the said no claim certificate is valid, which would discharge the contract and debar the party from raising further claims, is an arbitrable dispute.

The Single Bench of Justice Ujjal Bhuyan held that in view of the decision of the Supreme Court in the case of *Bharat Sanchar Nigam Limited versus M/s. Nortel Networks India Pvt. Limited (2021)*, the Court is only required to examine whether an arbitration agreement exists between the parties.

Place Of Residence Of The Arbitrator Would Not Be The Seat Of

Arbitration: Telangana High Court

Case Title: M/s. S. Square Infra versus Garneni Chalapathi Rao

The High Court of Telangana has held that the place of residence of the arbitrator would not determine the seat of arbitration.

The Single Bench of Justice P. Sree Sudha held that merely because an arbitrator residing in Hyderabad has been appointed, it would not mean that only the Courts at Hyderabad would have the jurisdiction to decide all the matters arising out of arbitration agreement.

Parties Cannot Be Said To Be Negotiating When The Respondent Did Not

Reply ; Period Of Limitation Cannot Be Extended On That Basis:

Telangana High Court

Case Title: Terra Infra Development Ltd. versus NCC Ltd.

Citation: 2022 LiveLaw (Tel) 53

The Telangana High Court has held that the parties cannot be said to be negotiating when the respondent did not reply to the letters of the applicant and the period of limitation for invoking arbitration would not be extended in such a scenario.

The Single Bench of Justice K. Lakshman held that the period of limitation would begin to run when the liability to pay is disputed by a party and mere writing of letters and correspondences will not extend the limitation period.

Having Regard To The Object Of The A&C Act, The Delay Of 435 Days In

Filing An Appeal Is Too Long To Exercise Discretion: Telangana High

Court

Case Title: Naveen P Malvay versus Samskruthi Shelters

Citation: 2022 LiveLaw (Tel) 52

The Telangana High Court has held that having regard to the object of the A&C Act, the delay of 435 days in filing an appeal is too long to exercise discretion.

The Division Bench of Justice P. Naveen Rao dismissed an appeal that was filed after a long delay of 435 days on the ground that no sufficient reason was assigned for delay in filing the appeal. The Court held that when the delay is long, a heavy burden is placed on the applicant to give cogent reasons to satisfy the court for condonation of delay.

Parties Cannot Be Referred To Arbitration In Absence Of Privity Of

Contract: Telangana High Court

Case Title: Gagiri Hari Krishna versus M/s Jasper Industries Pvt Ltd

The Telangana High Court has ruled that in the absence of a privity of contract parties cannot be referred to arbitration.

The Single Bench of Justice Ujjal Bhuyan held that the word 'party' under the Arbitration and Conciliation Act, 1996 (A&C Act) has been given a definite meaning with respect to an arbitration agreement. The Court added that only the disputes between the signatories to an arbitration agreement can be referred to arbitration and a third party cannot be roped into arbitration in the absence of privity of contract.

Execution Proceedings Not Maintainable Against Decision Of Court In A

Petition Filed Under Section 34 Of The A&C Act: Telangana High Court

Case Title: Mrs. Ragya Bee (deceased) and Others versus M/s. P.S.R.

Constructions

The Telangana High Court has held that a Civil Court does not have the power to modify an arbitral award in an application filed under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act) to set aside an arbitral award.

The Bench, consisting of Justice P. Naveen Rao and Dr. Justice G. Radha Rani, ruled that execution proceedings are not maintainable with respect to the decision of a Civil Court in a petition filed under Section 34 of the A&C Act.

Invocation Of Writ Jurisdiction Against An Order Of Arbitral Tribunal Is Not Normally Permissible: Telangana High Court

Case Title: Union of India, Rep. by Ministry of Railways versus Krishnapatnam Railway Company Limited

The Telangana High Court has ruled that a writ petition under Article 226 of the Constitution of India cannot lie against an order passed by an Arbitral Tribunal in an application filed under Section 16 of the Arbitration and Conciliation Act, 1996 (A&C Act), challenging the jurisdiction of the Arbitral Tribunal, if the challenges raised by the party go into the merits of the claim raised by the claimant before the Arbitral Tribunal and not to the jurisdiction of the Arbitral Tribunal.

The Bench, consisting of Chief Justice Satish Chandra Sharma and Justice A. Rajasheker Reddy, held that a party cannot seek the High Court

under Article 226 of the Constitution to traverse into the merits of the claims raised by the claimant in the arbitral proceedings.

Arbitral Award A Nullity If Passed Beyond Prescribed Period: Telangana High Court

Case Title: Roop Singh Bhatti and others versus M/s. Shriram City Union Finance Limited

The Telangana High Court has held that the provisions of Section 29A of the Arbitration and Conciliation Act, 1996 (A&C Act) are cast in mandatory terms and the mandate of the arbitrator terminates under Section 29A(4) after the expiry of the prescribed period, making the arbitrator functus-officio and the award passed by him a nullity.

The Bench, consisting of Justice P. Naveen Rao and Dr. Justice G. Radha Rani, ruled that substitution of Section 29A(1) of the A&C Act by the Amendment Act of 2019, amending the time limit for making an award, does not operate retrospectively, and merely because the word substitution is used the amended provision does not relate back to the date of the original provision.

Section 47 Of CPC Is Not Attracted In Proceedings For Execution Of An Arbitral Award: Telangana High Court

Case Title: M/s. M.S.R. Enterprises versus M/s. Pooja Enterprises

Citation: 2022 LiveLaw (Tel) 40

The Telangana High Court has ruled that in proceedings for execution of an arbitral award the whole gamut of CPC is not attracted, and a Court while dealing with an application under Section 36 of the Arbitration and

Conciliation Act, 1996 (A&C Act) for enforcement of an award is not bound by the provisions of Section 47 of the Code of Civil Procedure, 1908 (CPC) and is not required to decide on the validity of the award before seeking its enforcement.

The Bench, consisting of Justice P. Naveen Rao and Dr. Justice G. Radha Rani, held that application of Section 47 of CPC would leave Section 34 of the A&C Act redundant and it will be inconsistent with the scheme of the A&C Act.

Arbitral Award Must Be In Accordance With The Terms Of The Contract:

Reiterates Telangana High Court

Case Title: C. Srimannarayana versus Hindustan Petroleum Corporation Limited, SECBAD and Another

The Telangana High Court has reiterated that an arbitral award must be in accordance with the terms of the contract.

The Bench, consisting of Justice P. Naveen Rao and Dr. Justice G. Radha Rani, quashed an arbitral award on the ground that the clauses of the contract were not properly construed by the Arbitrator and that it was a non-speaking order which was rendered without discussing the contentions raised by the claimant.

Tripura High Court:

Execution Of Arbitration Awards; Section 47 Of CPC Not Applicable:

Tripura High Court

Case Title: State of Tripura versus Ashes Deb

The High Court of Tripura has held that Section 47 of CPC which provides for certain questions to be determined by the executing Court, does not apply to execution of an arbitration award under the A&C Act.

The bench of Justice S.G. Chattopadhyay held that the executing court, exercising power under Section 36 of the Act, cannot entertain any objections against the award. The party can only challenge the award in terms of Section 34 of the A&C and no objection can be raised under Section 36 of the Act, the Court ruled.

Uttarakhand High Court:

Arbitration Clause In An Unregistered But Compulsorily Registrable Document Can Be Enforced: Uttarakhand High Court Reiterates

Case Title: Yukti Construction Pvt. Ltd versus Mrs. Asha and Ors.

The Uttarakhand High Court recently observed that an arbitration agreement does not require registration under the Registration Act.

Relying on the Supreme Court's findings in *SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited*, (2011) 14 SCC 66, a bench comprising of Chief Justice Vipin Sanghi reiterated that having regard to the proviso to Section 49 of Registration Act read with Section 16(1)(a) of the Act, an arbitration agreement in an unregistered but compulsorily registrable document can be acted upon and enforced for the purpose of dispute resolution by arbitration.

Court Cannot Partly Set Aside Award In Absence Of Manifest And Patent Error, And Without A Finding As To Its Severability: Uttarakhand High Court

Case Title: M/s Ravindra Kumar Gupta and Sons versus Union of India & Ors.

The Uttarakhand High Court has ruled that in the absence of a manifest and patent error in the arbitral award, the Court under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act) cannot interfere with the award, by partly upholding it and by disallowing the rest of the claims of the claimant.

The Division Bench of Justices Sanjaya Kumar Mishra and Ramesh Chandra Khulbe observed that the lower court had not given any finding as to whether the claims set aside by it were vitiated by patent illegality and whether they formed a severable part of the award or not.

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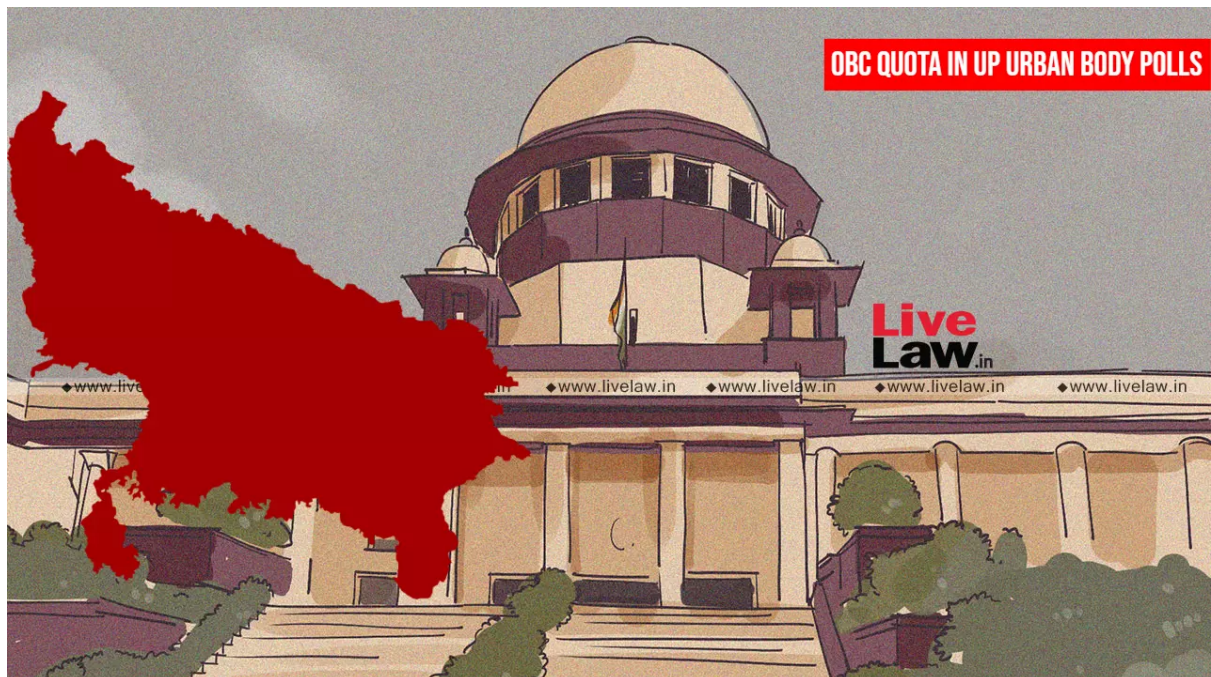
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