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Semi-Annual Dispute Resolution Compendium 2024

July – December 2024

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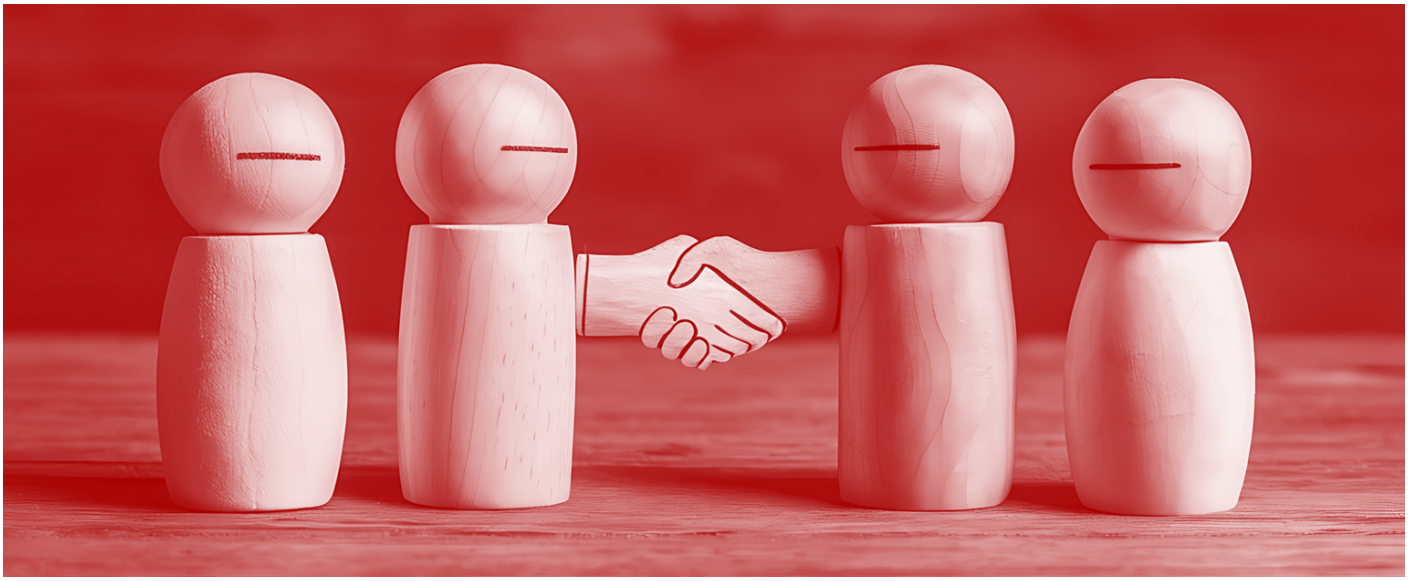


This Compendium consolidates the key decisions passed by the Hon'ble Supreme Court of India ("**Supreme Court**"), different High Courts and the National Company Law Tribunal ("**NCLT**"), which were circulated as JSA Prisms and Newsletters during the calendar period from July till December 2024.

To access the first Semi-Annual Disputes Compendium from January 2024 to June 2024, please *click here*.

Supreme Court

The Supreme Court resolves conflict on the issue of territorial jurisdiction for seeking extension of time in an arbitration

In ***Chief Engineer (NH) PWD (Roads) vs. BSC&C and C JV***,[1] the Supreme Court held that the power to extend time for making an arbitral award under Section 29A of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") vests in the 'court' defined under Section 2(1)(e) of the Arbitration Act, *i.e.*, the principal civil court of original jurisdiction (including a High Court, provided the High Court has ordinary original civil jurisdiction). In the wake of multiple conflicting decisions on the point rendered by courts across the country, the Supreme Court's decision provides much needed quietus and settles the question of territorial jurisdiction for seeking extension of time in an arbitration.

Brief facts

Due to the arbitral tribunal's failure to render the award within the prescribed time,[2] the respondent – a joint venture company had applied for an extension of time before the Ld. Commercial Court at Shillong, Meghalaya. The petitioner, on the other hand, contested the jurisdiction of the Commercial Court to entertain the application for extension of time under Section 29A of the Arbitration Act.

[1] Order dated May 13, 2024, in SLP (Civil) No. 10544/2024

[2] As per Section 29A of the Arbitration Act, in a domestic arbitration, the award is required to be passed within 12 (twelve) months from the date of completion of pleadings. This period is extendable by 6 (six) months by the parties' consent, and thereafter, by an order of the court. As per Section 23(4) of the Arbitration Act, pleadings are required to be completed within 6 (six) months from the date of constitution of the arbitral tribunal

By judgment and order dated February 16, 2024, the Commercial Court held that it had the requisite jurisdiction to extend the mandate of the arbitral tribunal. This decision was challenged by the petitioner through a revision petition before the Hon'ble High Court of Meghalaya at Shillong ("**Meghalaya HC**").[3]

By judgment and order dated April 22, 2024, the Meghalaya HC upheld the decision of the Commercial Court. The petitioner challenged the Meghalaya HC's decision through SLP (Civil) No. 10544/2024 before the Supreme Court.

Issue

The core issue considered by the Meghalaya HC, and the Supreme Court, was whether the expression 'court' used in Sections 29A(4), (5) and (6) of the Arbitration Act would mean the High Court or the principal civil court of original jurisdiction in a district. The question to be decided was whether an application for extension of time for making an arbitral award ought to be filed before the concerned commercial/district court or the High Court.

Findings and analysis

Before the Meghalaya HC, the petitioner contended that the expression 'court' used in Sections 29A(4), (5) and (6) of the Arbitration Act should be read as the "court which has the power to appoint an arbitrator under Section 11 of the Arbitration Act". Placing reliance on decisions of various High Courts,[4] the petitioner argued that Section 29A(6) of the Arbitration Act provides that a court while extending the time period for making an award may substitute any of the arbitrators; such a power of appointing a new/ substitute arbitrator vests with the High Court under Section 11 of the Arbitration Act; and therefore the powers under Section 29A ought to be exercised only by High Courts, to prevent anomalous situations where commercial/district courts may be called upon to substitute arbitrators originally appointed by High Courts.

On the other hand, the respondent contended that the language used in Section 2(1)(e) of the Arbitration Act was clear and unambiguous in providing that a High Court will exercise powers under Section 29A only if it possesses original civil jurisdiction. Citing decisions of various High Courts[5] conflicting with those cited by the petitioner, the respondent argued that had the legislature intended to provide the power of extension of time in arbitration to High Courts, they would have provided so in Section 29A, as they did for appointment of arbitrators in Section 11; and as commercial/district courts are empowered under Section 34 to set aside awards passed by arbitrators who may have been appointed by High Courts, there is no basis to the contention that such arbitrators cannot be substituted by commercial/district courts.

After hearing the parties, the Meghalaya HC held that:

1. a plain reading of Section 2(1)(e) of the Arbitration Act makes it clear that the 'court' is defined to mean the principal civil court of original jurisdiction in a district, including the High Court in exercise of its ordinary civil jurisdiction;
2. in cases where the arbitral tribunal was not appointed by the High Court under Section 11 of the Arbitration Act, the principal civil court of original jurisdiction would have the power to extend the mandate of the arbitral tribunal under Section 29A; and
3. in the given facts, since the Meghalaya HC neither appointed the arbitral tribunal nor possessed original civil jurisdiction, the Commercial Court correctly exercised jurisdiction to extend the mandate of the arbitral tribunal under Section 29A.

In challenge, the Supreme Court upheld the Meghalaya HC's decision and unequivocally held that:

1. the power to extend the time under Section 29A(4) of the Arbitration Act vests with the principal civil court of original jurisdiction (including a High Court, provided the High Court has ordinary original civil jurisdiction); and
2. the power of substituting arbitrators while extending the mandate of the arbitral tribunal is

[3] CRP No. 2/2024

[4] *Nilesh Ramanbhai Patel vs. Bhanubhai Ramanbhai Patel*, 2018 SCC OnLine Guj 5017; *KV Ramana Reddy vs. Rashtriya Ispat Nigam Limited*, 2023 SCC OnLine AP 398; *Amit Kumar Gupta vs. Dipak Prasad*, 2021 SCC OnLine Cal 2174; *Indian Farmers Fertilizers Cooperative vs. Manish Engineering Enterprises*, 2022 SCC OnLine All 150

[5] *A'Xykno Capital Services Private Limited vs. State of U.P.*, 2023/AHC -LKO/37194; *Aplus Projects and Technology vs. Oil India*, (2020) 1 Gau LR 99; *URC Construction vs. BEML Ltd.*, 2017 SCC OnLine Ker 20520

only a consequential power, which has to be exercised by the same court which has the power to extend the time under Section 29A(4) of the Arbitration Act.

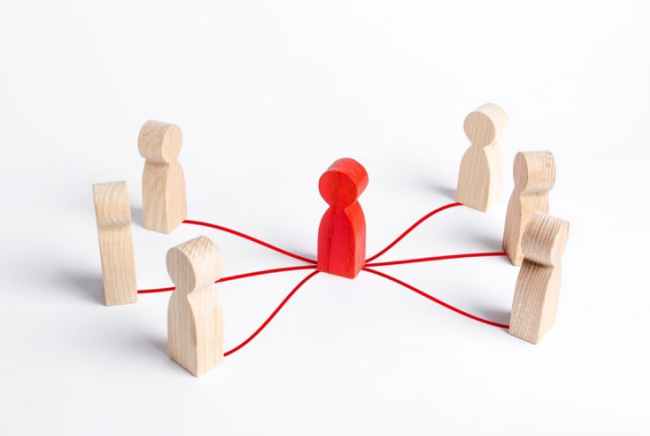
Conclusion

As is clear from the parties' arguments, High Courts across India have provided conflicting answers to the question of which court to approach for seeking extension of time in an arbitration. While some decisions hold that only High Courts would have the power to extend the mandate of an arbitral tribunal,[6] other decisions conclude that this power would be exercised by High Courts only if they have ordinary original civil jurisdiction.[7] In view of such conflicting decisions, the Hon'ble Allahabad High Court[8] and the Hon'ble Bombay High Court ("**Bombay HC**")[9] have, in fact, referred this question to larger benches for consideration as well.

The rationale provided in earlier decisions for holding that the power to extend time in arbitration ought to be exercised only by High Courts was the prevention of anomalous situations where subordinate courts may be required to substitute arbitrators originally appointed by High Courts. In the present case, the Meghalaya HC addressed that argument by drawing a distinction on facts, holding that such an anomaly cannot arise in cases where the arbitral tribunal was not appointed by the High Court under Section 11 of the Arbitration Act. Therefore, in such cases, the principal civil court of original jurisdiction would have the power to extend the mandate of the arbitral tribunal under Section 29A of the Arbitration Act. Even this distinction has been eliminated by the Supreme Court's ruling in *Chief Engineer (supra)*, which unequivocally settles that the power to extend the time for making an arbitral award vests with principal civil court of original jurisdiction (including a High Court, provided the High Court has ordinary original civil jurisdiction).

This decision provides a welcome quietus to the cacophony of decisions on the question of territorial jurisdiction under Section 29A of the Arbitration Act. It is clear that:

1. an application for extension of time can be filed before the concerned High Court only if it has ordinary original civil jurisdiction. In other words, subject to satisfaction of applicable pecuniary limits, only the High Courts at Delhi, Bombay, Calcutta, Madras and Himachal Pradesh can adjudicate an application for extension of time under Section 29A of the Arbitration Act; and
2. in states where High Courts do not have ordinary original civil jurisdiction, applications for extension of time must be filed before the principal civil court of original jurisdiction in the district where the seat of arbitration is located (*i.e.*, the commercial/district court).



Effect of 'accord and satisfaction' or 'full and final settlement' on arbitration; unsuitability of 'eye of the needle' and '*ex-facie meritless*' tests in modern day arbitrations; and role of the referral courts

'Accord and satisfaction' or 'full and final settlement' of claims arising under a contract, do not by themselves, preclude future arbitration in respect of such settled

[6] *Nilesh Ramanbhai Patel vs. Bhanubhai Ramanbhai Patel*, 2018 SCC OnLine Guj 5017; *DDA vs. Tara Chand*, 2020 SCC OnLine Del 2501; *Lots Shipping Company vs. Cochin Port Trust*, 2020 SCC OnLine Ker 21443; *Amit Kumar Gupta vs. Dipak Prasad*, 2021 SCC OnLine Cal 2174; *Indian Farmers Fertilizers Cooperative vs. Manish Engineering Enterprises*, 2022 SCC OnLine All 150; *KV Ramana Reddy vs. Rashtriya Ispat Nigam Limited*, 2023 SCC OnLine AP 398

[7] *URC Construction vs. BEML Ltd.*, 2017 SCC OnLine Ker 20520; *Lucknow Agencies vs. UP Avas Vikas Parishad*, 2019 SCC OnLine All 4369; *Aplus Projects and Technology vs. Oil India*, (2020) 1 Gau LR 99; *Mormugao Port Trust vs. Ganesh Benzoplast*, Writ Petition No. 3/2020 (Bombay High Court); *A'Xykno Capital Services Private Limited vs. State of U.P.*, 2023/AHC -LKO/37194

[8] *Jaypee Infratech vs. Ehbh Services Private Limited*, 2024 SCC OnLine All 444

[9] *Sheela Chowgule vs. Vijay Chowgule*, 2024 SCC OnLine Bom 1069

claims, if the party alleges fraud, coercion or undue influence in the execution of the contract. Tests such as 'eye of the needle' and '*ex-facie* meritless', previously laid down by courts, do not conform with the principles of modern-day arbitration. Referral courts must not conduct an intricate evidentiary enquiry as to whether the claims are time barred and this determination should be reserved for the arbitrator.

In ***SBI General Insurance Ltd. vs. Krish Spinning***[10], the Supreme Court held that parties may refer a dispute to arbitration even after full and final settlement of the contract, if the party said to have executed the contract (a discharge voucher in the present case) alleges that the execution was on account of fraud, coercion or undue influence exercised by the other party.

Furthermore, in exercise of its powers under Section 11 of the Arbitration Act, the referral court will only look into the existence of the arbitration agreement and will refuse arbitration only where it was manifest that the claims were *ex- facie* time barred, or the claims are *ex-facie* frivolous and non-arbitrable. A referral court may reject arbitration only in exceptional cases where the plea of fraud or coercion appears to be *ex-facie* frivolous and devoid of merit.

The Supreme Court reiterated and clarified that at the stage of deciding an application under Section 11 of the Arbitration Act, the referral court must not conduct an intricate evidentiary enquiry into the question as to whether the claims are time barred and must leave that determination for the arbitrator.

Brief facts

1. Krish Spinning ("**Respondent**") obtained a standard fire and special perils insurance policy from SBI General Insurance Company ("**Appellant**") for a total insured sum of INR 7,20,00,000 (Indian Rupees seven crore twenty lakh), with the period of insurance from March 31, 2008, to March 30, 2019.
2. During the policy period, 2 (two) fire incidents occurred at the Respondent's factory; first incident on May 28, 2018, with the Respondent claiming a loss of INR 1,76,19,967 (Indian Rupees one crore seventy-six lakh nineteen thousand nine hundred and sixty-seven); and the second incident on November 17, 2018, with the Respondent claiming a loss of INR 6,32,25,967 (Indian Rupees six crore thirty-two lakh twenty-five thousand nine hundred and sixty-seven). The appeal before the Supreme Court pertained to the disputes arising out of settlement of claims with respect to the first incident. A surveyor was appointed to assess the loss due to the fire incident.
3. Subsequently, the Respondent signed an advance discharge voucher dated January 4, 2019, confirming receipt of INR 84,19,579 (Indian Rupees eighty-four lakh nineteen thousand five hundred and seventy-nine) from the Appellant as the full and final settlement towards its claim. The discharge voucher also stated, *inter alia*, that the Respondent was discharging the Appellant of the liability arising under its claim.
4. Disputes arose between the parties as the Respondent subsequently alleged that it had to sign the final discharge voucher as it was badly in need of money and sought balance claim settlement amounts from the Appellant.
5. As the parties were unable to arrive at any amicable resolution of the dispute and as no arbitrator was nominated by the Appellant in response to the notice invoking arbitration, the Respondent filed a petition for the appointment of arbitrator under Section 11(6) of the Arbitration Act, before the High Court of Gujarat ("**Gujarat HC**"). The Gujarat HC allowed the petition and appointed an arbitrator.
6. The Appellant filed a special leave petition before the Supreme Court challenging the Order of the Gujarat HC appointing an arbitrator ("**Impugned Order**").

Issues

1. Whether execution of a discharge voucher towards full and final settlement between the parties will operate as a bar to invoke arbitration?
2. What is the scope and standard of judicial scrutiny that an application under Section 11(6) of the Arbitration Act can be subjected to when a plea of '*accord and satisfaction*' is taken by the defendant?

[10] 2024 INSC 532 (Judgment dated July 18, 2024)

3. What is the effect of the decision of the Supreme Court in Interplay between arbitration agreements under the Arbitration Act and the Indian Stamp Act 1899 ("**Stamp Act**") on the scope of powers of the referral court under Section 11 of the Arbitration Act?

Findings and analysis

Whether execution of a discharge voucher towards full and final settlement between the parties will operate as a bar to invoke arbitration:

1. there is no rule of an absolute kind which precludes arbitration in cases where a full and final settlement has been arrived at. In *National Insurance Co. Ltd vs. M/S. Boghara Polyfab Pvt. Ltd.*[11], the discharge voucher was alleged to have been obtained on the ground of coercion and it was observed that a discharge voucher or a no-dues certificate extends only to those vouchers or certificates which are validly and voluntarily executed;
2. mere execution of a full and final settlement receipt or a discharge voucher would not by itself operate as a bar to arbitration when the validity of such a receipt or voucher is challenged by the claimant on the ground of fraud, coercion or undue influence. In other words, where the parties are not *ad idem* over accepting the execution of the no-claim certificate or the discharge voucher, such disputed discharge voucher may itself give rise to an arbitrable dispute; and
3. once the full and final settlement of the original contract itself becomes a matter of dispute and disagreement between the parties, then such a dispute can be categorised as one arising 'in relation to' or 'in connection with' or 'upon' the original contract. Such a dispute can be referred to arbitration under the arbitration clause contained in the original contract, notwithstanding the plea that there was a full and final settlement between the parties.

Scope and standard of judicial scrutiny that an application under Section 11(6) of the Arbitration Act can be subjected to when a plea of 'accord and satisfaction' is taken by the defendant:

1. relying on *Vidya Drolia and Ors. vs. Durga Trading Corporation*[12], it was held that in exceptional cases, where it was manifest that the claims were ex- facie time barred and deadwood, the Court could interfere and refuse reference to arbitration. In the context of 'accord and satisfaction', this view was adopted in *NTPC Ltd. vs. M/s SPML Infra Ltd.*[13], where the 'eye of the needle' test was elaborated, which permits a referral court to reject arbitration in such exceptional cases where the plea of fraud or coercion appears to be, *ex-facie* frivolous and devoid of merit;
2. in the present case however, the Supreme Court held that tests like the 'eye of the needle' and '*ex-facie meritless*', although try to minimise the extent of judicial interference, yet they require the referral court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be). These tests, as such are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal; and
3. thus, the position is that ordinarily, in exercise of its powers under Section 11 of the Arbitration Act, the court will only look into the existence of the arbitration agreement and would refuse arbitration only as a demurrer when the claims are *ex-facie* frivolous and non-arbitrable.

Interplay between arbitration agreements under the Arbitration Act and the Stamp Act on the scope of powers of the referral court under Section 11 of the Arbitration Act:

1. relying on its 7 (seven) judge bench decision in *Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*[14], the Supreme Court held that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else;
2. the Supreme Court further held that in view of its decision in *Interplay (supra)*, the observations made in *Vidya Drolia (supra)* that the jurisdiction of the referral court when dealing with the issue of 'accord and satisfaction' under Section 11 of the

[11] (2009) 1 SCC 267
[12] (2021) 2 SCC 1
[13] (2023) SCC Online SC 389
[14] 2023 INSC 1066 (Curative Petition)

Arbitration Act extends to weeding out *ex-facie* non-arbitrable and frivolous disputes, would no longer continue to apply;

3. the dispute pertaining to the 'accord and satisfaction' of claims is not one which attacks or questions the existence of the arbitration agreement in any way. The arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by 'accord and satisfaction'; and

4. the question of 'accord and satisfaction', being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be examined by the referral court, even for a *prima facie* determination, before the arbitral tribunal first had the opportunity of looking into it.

Supreme Court's clarification of the judgment in *M/s Arif Azim Co. Ltd. vs. M/s Aptech Ltd*[15]:

1. the Supreme Court confirmed the earlier position that while determining the issue of limitation under Section 11 of the Arbitration Act, the referral court must limit its enquiry to examining whether such application is within the limitation period as prescribed under Article 137 of the Limitation Act, 1963, *i.e.*, 3 (three) years from the date when the right to apply accrues in favour of the applicant. The limitation period for filing a petition under Section 11(6) of the Arbitration Act only commences once a valid notice invoking arbitration was sent by the applicant to the other party, and there was a failure or refusal on part of that other party in complying with the requirements mentioned in such notice; and

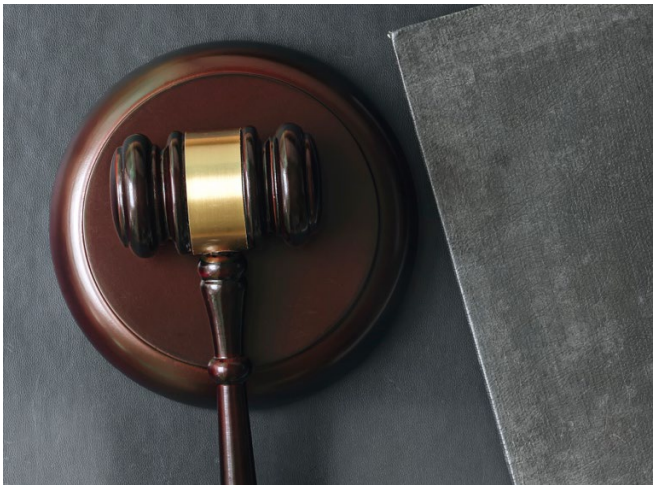
2. the Supreme Court has, however clarified that at the stage of deciding an application under Section 11 of the Arbitration Act, the referral court must not conduct an intricate evidentiary enquiry into the question as to whether the claims raised by the applicant are time barred and must leave that question for determination by the arbitrator.

Conclusion

This is a significant judgment augmenting the modern arbitration regime in India and examines several important issues which repeatedly arise in present day arbitrations. The Supreme Court has removed yet another obstacle in the way of arbitrations by holding that 'accord and satisfaction' or 'full and final settlement' of claims arising under a contract, do not by themselves, preclude future arbitration in respect of such settled claims, if the party (to the contract) alleges fraud, coercion or undue influence in the execution of the contract. Essentially, by doing so, the Supreme Court has underlined the presumption of separability of an arbitration agreement, distinct from the underlying contract. Moreover, the baton to determine the validity of such 'accord and satisfaction' or 'full and final settlement', has been passed on from the referral court to the arbitral tribunal.

Additionally, by reading down the test of 'eye of the needle' and '*ex-facie* meritless', the Supreme Court has further restricted judicial interference of the referral court by limiting its powers only to a broad examination of the existence of the arbitration agreement, and refusal to refer disputes to arbitration only in exceptional cases where the claims are manifestly frivolous and non-arbitrable.

Lastly, on the issue of limitation, the Supreme Court by clarifying its earlier judgment in *M/s Arif Azim (supra)*, has further trimmed the powers of the referral court to avoid conducting an intricate evidentiary enquiry of whether the claims are time barred; the determination of which is reserved for the arbitrator.



[15] 2024 INSC 155

Supreme Court clarifies that an application seeking extension of arbitral tribunal's mandate under Section 29A of the Arbitration Act can be filed even after the expiry of the mandate

In ***Rohan Builders vs. Berger Paints***[16] ("**Rohan Builders Case**"), the Supreme Court has conclusively settled the long-standing issue concerning the time of filing an application for extension of time to render an arbitral award under Section 29A of the Arbitration Act. While deciding the issue in the affirmative, the Supreme Court ruled that such an application can be filed even after the expiry of the prescribed time period.

Background

Under Section 29A of the Arbitration Act, arbitral awards in domestic arbitrations must be delivered within 12 (twelve) months from the date of completion of pleadings[17]. This time period can be extended by another 6 (six) months by the consent of the parties. If the arbitral tribunal is unable to pass the award within this time period of 12 (twelve) months (or 18 (eighteen) months, where parties have consented to the 6 (six)month extension), the mandate of the arbitral tribunal terminates. Thereafter, the mandate can be further extended only by the court under Section 29A(4) of the Arbitration Act, on an application from either party to continue the arbitration process.

In the Rohan Builders Case, the Supreme Court held that under Section 29A(4) of the Arbitration Act, the power to extend the mandate of the arbitral tribunal can be exercised by courts even after the mandate has expired.

This judgement puts to rest the convergent views taken by the High Courts of Calcutta, Delhi, Patna, Bombay, Madras, Kerala and Jammu and Kashmir on this issue.

Brief facts

Rohan Builders (the "**Petitioner**") filed an application under Section 29(4) of the Arbitration Act seeking an extension of the arbitral tribunal's mandate before the Hon'ble High Court at Calcutta ("**Calcutta HC**") as the arbitral tribunal had failed to render the award in the prescribed time. Berger Paints (the "**Respondent**") contested the application arguing, *inter alia*, that the Petitioner ought to have sought an extension during the subsistence of the arbitral tribunal's mandate and that any application filed thereafter is not maintainable.

By a judgment dated September 6, 2023[18], the Calcutta HC agreed with the Respondent, holding that applications seeking extension of time under Section 29A(4) of the Arbitration Act cannot be filed after the prescribed time period (12 (twelve) months or 18 (eighteen) months from the date of completion of pleadings, as the case may be) had expired. The Calcutta HC provided the following reasons for its decision:

1. Section 29A of the Arbitration Act provides for 'termination' of the arbitral tribunal's mandate on the expiry of the prescribed period; and 'extension' of the mandate. Read together, this means that the mandate of the arbitral tribunal must be 'continuing' for it to be extended;
2. there is a conscious omission of the words 'renewal' or 'revival' in the provisions empowering courts to extend the mandate of an arbitral tribunal. Such words would have been used (instead of 'extension') if the legislature intended that an application under Section 29A(4) of the

[16] 2024 INSC 686

[17] As per Section 23(4) of the Arbitration Act, pleadings are required to be completed within 6 (six) months from the date of constitution of the arbitral tribunal

[18] *Rohan Builders vs. Berger Paints*, A.P. 328/2023

Arbitration Act could be made even after the expiry of the arbitral tribunal's mandate; and

3. allowing parties to approach courts for extension of time even after the expiry of the arbitral tribunal's mandate would render the time limits for making an award inconsequential; and encourage rogue litigants who could stall arbitrations by filing extension applications long after the expiry of the arbitral tribunal's mandate.

Aggrieved, the Petitioner challenged the Calcutta HC's judgement before the Supreme Court.

Issue

Whether an application for extension of time under Section 29A of the Arbitration Act can be filed even after the expiry of the prescribed period for making of the arbitral award?

Findings and analysis

The Supreme Court recognised the divergent views on the issue while the Calcutta HC and High Court of Patna had held that the power of extension under Section 29A(4) of the Arbitration Act cannot be invoked after the arbitral tribunal's mandate had ended. The High Courts at Delhi, Bombay and Madras had held that parties are entitled to seek an extension of time under Section 29A(4) of the Arbitration Act even after the end of the prescribed time for making an award.

The Supreme Court concurred with the latter view and held that an application for extension of time to make an arbitral award can be filed after the expiry of the prescribed time period. The Supreme Court reasoned that:

1. Section 29A(4) of the Arbitration Act provides that the mandate of the arbitral tribunal will stand terminated unless extended by the court 'either prior to or after the expiry of the period' prescribed for making an arbitral award. The plain language of the provision was unambiguous, and it clearly empowered courts to extend the time for making an award even after the expiry of the mandated period; and
2. courts should be wary of prescribing a limitation period where the legislature has refrained from doing so.[19] Since no limitation period was prescribed by Section 29A(4) of the Arbitration Act, requiring parties to file extension applications within a specific timeframe would amount to rewriting the statute.

The Supreme Court also dealt with the rationale provided by the Calcutta HC in the following manner:

1. the Supreme Court noted that the Calcutta HC's decision turned on the interpretation of the word 'terminate' used in Section 29A of the Arbitration Act. However, the Supreme Court clarified that the word 'terminate' is followed by the word 'unless'. As such, the termination of the arbitral tribunal's mandate is qualified by the succeeding part of the provision, which provides that the mandatory period for making an arbitral award may be extended by the court "either prior to or after the expiry of the period"; and
2. the Supreme Court appreciated the Calcutta HC's concern that if parties are allowed to approach the court for extension of time even after expiry of the prescribed time period, rogue litigants may misuse the provision to defeat the mandatory timelines for making an award. However, the Supreme Court highlighted that Section 29A provided for various safeguards against such rogue litigants: (a) the power to extend time is not to be exercised mechanically, but only for 'sufficient cause'; and (b) while extending the time for making an award, the court can impose terms and conditions and even substitute the arbitral tribunal's member(s).

Conclusion

As observed by the Supreme Court, High Courts across India have provided conflicting answers to the question of whether extension of time in an arbitration can be sought after the end of the arbitral tribunal's mandate. With the decision in the Rohan Builders Case, the Supreme Court has rightly ended the conflict by unequivocally declaring that parties are permitted to seek, and courts are empowered to grant extension of time even if it is sought after the end of the prescribed time period for making an award.

[19] *North Eastern Chemicals vs. Ashok Paper Mill*, 2023 SCC OnLine SC 1649; *Ajaib Singh vs. Sirhind Cooperative*, (1999) 6 SCC 82

Holding otherwise would have rendered portions of Section 29A(4) of the Arbitration Act meaningless, which expressly empower courts to grant extension of time 'either prior to or after the expiry of the period' prescribed for making an arbitral award. As such, the decision is in consonance with the well-settled principle *ut res magis valeat quam pereat*, which requires courts to lean in favour of interpretations that make statutory provisions *intra vires*.[20]

Earlier, in *Chief Engineer (NH) PWD (Roads) vs. BSC&C and C JV*[21], the Supreme Court had settled conflicting views regarding the territorial jurisdiction under Section 29A of the Arbitration Act for seeking extension of time. It held that the power to extend the time for making an arbitral award vests with principal civil court of original jurisdiction (including a High Court, provided the High Court has ordinary original civil jurisdiction). With the Rohan Builders Case, parties can also enjoy certainty with respect to the time periods governing extension applications under Section 29A of the Arbitration Act.

This judgement also addresses the recent trend of courts mechanically allowing extension applications under Section 29A of the Arbitration Act and reminds parties that such applications can only be allowed for sufficient cause.

The relevant date for determining the conversion rate of foreign award expressed in foreign currency is the date when the award becomes enforceable *i.e.*, when the objections against it are finally decided

In ***DLF Ltd. vs. Koncar Generators and Motors Ltd.***[22], the Supreme Court formulated the following twin principles:

1. firstly, following the principle in *Forasol vs. Oil and Natural Gas Commission*[23], the date when an arbitral award becomes enforceable will be the date for conversion. Under the Arbitration Act, this date is when the objections against the arbitral award are dismissed, and such award attains finality; and
2. secondly, in terms of the principle in *Renusagar Power Co. Ltd. vs. General Electric Co.*[24], when the award debtor deposits an amount before the court during the pendency of objections and the award holder is permitted to withdraw the same, even if against the requirement of security, this deposited amount must be converted as on the date of the deposit.

Brief facts

1. The appellants are Indian companies, and the respondent is a Croatian company. The parties executed a contract for the design, engineering, manufacturing, and supply of 2 (two) generators by the respondent. Certain disputes arose between the parties which were referred to International Chamber of Commerce for arbitration. An arbitral award dated May 12, 2004, was passed in favour of the respondent (claimant in the arbitration) and held that the appellants are jointly and severally liable to pay Euro 1,093,989, (Euro one million ninety-three thousand nine hundred and eighty-nine) plus interest ("**Arbitral Award**").
2. The respondent filed for execution of the Arbitral Award in 2004 ("**Execution Petition**"), while the appellants filed a petition under Section 34 of the Arbitration Act seeking to set aside the Arbitral

[20] *Johri Mal vs. Director of Consolidation of Holdings*, AIR 1967 SC 1568
[21] SLP (Civil) No. 10544/2024
[22] [2024] 8 S.C.R. 291:2024 INSC 593 (decided on August 8, 2024)
[23] 1984 Supp SCC 263
[24] 1994 Supp (1) SCC 644

Award. The Execution Petition under Section 34 of the Arbitration Act was dismissed on April 28, 2010.

3. Thereafter in 2010, the appellants filed objections in the Execution Petition under Section 48 of the Arbitration Act ("**Objections**") and additionally, filed an appeal under Section 37 of the Arbitration Act against order dismissing the Section 34 petition.

4. The Punjab and Haryana High Court dismissed the appeal (filed under Section 37 of the Arbitration Act) by its order dated October 15, 2010. In terms of the consensus arrived between parties and in accordance with the court directions, the appellants deposited INR 7,50,00,000 (Indian Rupees seven crore fifty lakh) with the executing court on October 22, 2010.

5. Subsequently, the Executing Court dismissed the Objections filed by the appellant by an order dated April 2, 2011. Against this dismissal, the appellants filed a Revision Petition ("**Revision Petition**"), which was admitted by the High Court by an order dated June 3, 2011. Additionally, the High Court stayed the operation of the Executing Court order dismissing the appellant's Objections (*i.e.*, stayed the order dated April 2, 2011). This was made subject to the appellants depositing with the Executing Court, a further amount of INR 50,00,000 (Indian Rupees fifty lakh), over and above, INR 7,50,00,000 (Indian Rupees seven crore fifty lakh) previously deposited by the appellants.

6. The Revision Petition was dismissed by the Punjab and Haryana High Court on July 1, 2014, on which date the Arbitral Award attained finality as this order was not challenged any further.

7. Thereafter, on August 24, 2016, the Execution Court permitted the respondent to withdraw the entire amount of INR 8,00,00,000 (Indian Rupees eight crore) deposited by the appellants. Pursuant to this, the respondent received INR 11,60,12,100 (Indian Rupees eleven crore sixty lakh twelve thousand and one hundred) (*i.e.*, principal sum along with interest) on October 10, 2016, upon furnishing a bank guarantee of an Indian Bank for the release of the deposit.

8. The Execution Petition was allowed by the Executing Court by order dated February 3, 2017, wherein it was held that the relevant date to convert the Arbitral Award amount expressed in Euro to Indian rupees is July 1, 2014, *i.e.*, the date on which all the Objections against the Arbitral Award were finally decided, as it is only on such date that the award is deemed to be a decree.

9. The appellants filed a revision petition against the order dated February 3, 2017, which revision petition was dismissed by the High Court by order dated February 26, 2018. In this revision petition, the appellant contended that the exchange rate as on the date of the Arbitral Award should be applied (instead of the date of July 1, 2014).

10. It is against this order dated February 26, 2018 (dismissing its revision petition) that the Appellants filed a special leave petition before the Supreme Court ("**Impugned Order**").

Issues

The Supreme Court adjudicated on the following issues:

1. what is the correct and appropriate date to determine the foreign exchange rate for converting the award amount expressed in foreign currency to Indian rupees? and

2. what would be the date of such conversion, when the award debtor deposits some amount before the court during the pendency of proceedings challenging the award?

Findings and analysis

1. Following are the 3 (three) key findings of the judgement:

   a) the relevant date for determining the conversion rate of foreign award expressed in foreign currency is the date when the award becomes enforceable;

   b) when the award debtor deposits an amount before the court during the pendency of objections and the award holder is permitted to withdraw the same, even if against the requirement of security, this deposited amount must be converted as on the date of the deposit; and

   c) after the conversion of the deposited amount, the same must be adjusted against the

remaining amount of principal and interest pending under the arbitral award. This remaining amount must be converted on the date when the arbitral award becomes enforceable, *i.e.*, when the objections against it are finally decided.

2. In arriving at the above conclusions, the Supreme Court formulated twin principles while applying the law laid down in *Forasol* (*supra*) and *Renusagar* (*supra*):

   a) **Principle 1**: The date when an arbitral award becomes enforceable will be the date for conversion (*i.e.*, when the objections against the arbitral award are dismissed, and such award attains finality).

      i) Applying the principle in Forasol (*supra*), the Supreme Court held that the statutory scheme under the Arbitration Act does not require a judgment or decree to be passed for a foreign award to be enforceable. Rather, the enforceability of a foreign award is automatic and deemed under Section 49 of the Arbitration Act, after the objections against such an award under Section 48 of the Arbitration Act are finally decided and disposed of. At this point, the award is enforceable as a decree of a court (Section 49 of the Arbitration Act). Therefore, the date on which the objections are finally decided and dismissed would be the proper date for determining the exchange rate to convert an amount expressed in foreign currency.

      ii) In the present case, such date was July 1, 2014, *i.e.*, when the High Court dismissed the Revision Petition against the Executing Court order dismissing the appellants' Objections. No further appeal was preferred from this order and hence, it attained finality.

   b) **Principle 2**: If the award amount or part of it is deposited in court pending objections, enabling withdrawal by the decree holder, the date of deposit will be the relevant date for conversion.

      i) the Supreme Court drew a distinction between the 2 (two) deposits made by the appellants in the present case. As regards the first deposit of INR 7,50,00,000 (Indian Rupees seven crore fifty lakh), the Supreme Court held that such deposit stands converted as on the date of deposit *i.e.*, October 22, 2010;

      ii) the Supreme Court reasoned that through a deposit, the award debtor parts with the money on that date and provides the benefit of that amount to the award holder. Provided that the award holder is permitted to withdraw this amount, it can convert, utilise, and benefit from the same at that point in time. Considering that the deposited amount inures to the benefit of the award holder, it would be inequitable and unjust to hold that the amount does not stand converted on the date of its deposit;

      iii) as regards the second deposit of INR 50,00,000 (Indian Rupees fifty lakh) pursuant to the High Court order dated June 3, 2011, the Supreme Court held that the same stands on a different footing from the first deposit. This order did not permit the Respondent to withdraw this amount till the completion of the proceedings. Hence, the amount cannot be converted as on the date of deposit as the Respondent could not have benefitted from the same. This amount could be withdrawn only in 2016, pursuant to the Executing Court's order dated August 24, 2016. The Respondent withdrew the entire deposit of INR 8,00,00,000 (Indian Rupees eight crore), along with the interest that accrued on this amount, on October 10, 2016;

      iv) thus, the first deposit of INR 7,50,00,000 (Indian Rupees seven crore fifty lakh) must be converted as on the date of deposit being October 22, 2010. The second deposit of INR 50,00,000 (Indian Rupees fifty lakh) as well as the remaining amount due under the award must be converted when the Objections proceedings attained finality on July 1, 2014; and

      v) after the conversion of the deposited amount, the same must be adjusted against the remaining amount of principal and interest pending under the arbitral award.

> This remaining amount must be converted on the date when the arbitral award becomes enforceable, *i.e.*, when the objections against it are finally decided.
>
> Therefore, in the present case, the exchange rate on July 1, 2014, must be used for converting the entire arbitral award and interest.

Conclusion

By conclusively establishing the law on currency conversion of arbitral awards, the Supreme Court has provided the much-needed clarity on the relevant date for converting foreign currency amounts to Indian Rupees.

The Supreme Court has further settled the law covering a situation where the award debtor deposits the award amount in part during the pendency of execution proceedings/challenge to the award. Where the award holder is permitted to withdraw such amount, even if against the requirement of security, this deposited amount must be converted as on the date of the deposit.

This judgement provides an impetus to the enforcement of foreign arbitral awards by making it clear that the appropriate date to determine the foreign exchange rate for converting the award amount expressed in foreign currency to Indian Rupees, is the date on which such award attains finality.

[25] Civil Appeal Nos. 9486-9487 of 2019
[26] 2021 SCC OnLine SC 271

Constitution Bench of the Supreme Court holds that unilateral curation of arbitral tribunals is invalid

On November 8, 2024, a 5 (five) judge bench of the Supreme Court, consisting of Justice Dr. D.Y. Chandrachud, Justice Hrishikesh Roy, Justice P.S. Narasimha, Justice J.B. Pardiwala and Justice Manoj Misra, delivered their judgment in the matter of ***Central Organisation for Railway Electrification vs. M/s ECI-SPIC-SMO-MCML (JV) A Joint Venture Company***[25], holding, *inter alia*, appointment of arbitrators from a unilaterally curated panel, as bad in law. However, this judgment is applicable prospectively, as far as the appointments of 3 (three) member arbitral tribunals are concerned.

Brief facts

This judgment arose out of reference after a 3 (three) judges' bench in *Union of India vs. Tantia Constructions Limited*[26] ("**Tantia**") *prima facie* disagreed with the judgment of another 3 (three) judges bench[27] ("**CORE 3J**"), and hence, requested Hon'ble Chief Justice to constitute a larger bench.

In CORE 3J, the arbitration clause provided for an arbitral tribunal as a panel of 3 (three) retired railway officers. The Railways were to suggest 4 (four) names to the contractor, out of which the contractor could choose 2 (two), after which the general manager would appoint at least 1 (one) out of those 2 (two) as the contractor's nominee on the arbitral tribunal and appoint the remaining arbitrators unilaterally. The Supreme Court observed that the Railways' right to form the arbitral tribunal was 'counterbalanced' by the contractor's power to choose 2 (two) out of the 4 (four) names suggested by the Railways, one of which will be appointed to the arbitral tribunal and hence upheld the arbitration clause.

In Tantia, the Supreme Court disagreed with the above conclusion on the ground that the appointments could not be valid when the appointing authority itself was incapacitated of referring the matter to arbitration. While the Supreme Court in Tantia does not say so in as many words, it appears that such perceived incapacitation would arise due to the principle against unilateral appointment of arbitrators enunciated in

[27] *Central Organisation for Railway Electrification vs. M/s ECI-SPIC-SMO-MCML (JV) A Joint Venture Company,* (2020) 14 SCC 712

judgments such as *TRF Ltd vs. Energo Engineering Projects Ltd.*[28] ("**TRF**") and *Perkins Eastman Architects DPC vs. HSCC (India) Ltd.*[29] ("**Perkins**"). The said principle says that when a person is ineligible to appoint an arbitrator or be an arbitrator, such as a person having an interest in the dispute, cannot nominate another person as an arbitrator.

Issues

1. Whether an appointment process which allows a party who has an interest in the dispute to unilaterally appoint a sole arbitrator, or curate a panel of arbitrators and mandate that the other party select their arbitrator from the panel is valid in law?
2. Whether the principle of equal treatment of parties applies at the stage of the appointment of arbitrators?
3. Whether an appointment process in a public-private contract which allows a government entity to unilaterally appoint a sole arbitrator or majority of the arbitrators of the arbitral tribunal is violative of Article 14 of the Constitution of India ("**Constitution**")?

Findings and analysis

The Supreme Court answered the issues as follows:

For Issue (1), the Supreme Court with a 3:2 majority held:

1. in case of sole arbitrators, Supreme Court agreed with TRF and Perkins, to hold that the unilateral appointment hinders equal participation of parties; and
2. in case of curating a panel of 3 (three) arbitrators, the Supreme Court held that mandating the other party to select an arbitrator from a unilaterally pre-decided list also violates equal treatment of parties. However, observing that this position of law will disturb innumerable commercial bargains, the Supreme Court prospectively overruled earlier judgments[30] which held in favour of unilateral curation of arbitral tribunals. Hence, the present judgment is only prospectively applicable to the appointments of 3 (three) member arbitral tribunals.

Before concluding on this issue, the Supreme Court did acknowledge an exception in the form of an 'express waiver' under Section 12(5) of Arbitration Act, after the disputes have arisen. Such express waiver at the time of executing the agreement would not fall under the above exception.

Justice Roy dissented to observe that unilateral appointment of arbitrators is permissible, since there is a distinction between 'ineligible' and 'unilateral' appointments, wherein only the former is invalid as per the Seventh Schedule to Arbitration Act. Justice Narsimha also dissented to hold that instead of *a priori* declaration that arbitration agreements with unilateral appointments are invalid, a court can examine the issue of impartiality and independence of an arbitral tribunal while deciding an application under Section 11 or 14 or 34 of Arbitration Act, in light of the principle of party autonomy.

For Issue (2), the Supreme Court with a 4:1 majority, held that the principle of equal treatment of parties applies at all stages of the arbitration, including the stage of appointment of arbitrators.

Justice Narsimha dissented to hold that the said principle applies during the conduct of arbitral proceedings and not at the stage of appointment.

For Issue (3), the Supreme Court, with a 3:2 majority, held that unilateral clauses in public-private contracts are violative of Article 14 of Constitution, for being arbitrary. The Supreme Court reasoned that an arbitral tribunal as a quasi-judicial body was subject to inherent principles of equality and fairness.

Justice Roy dissented to observe that public law principles should not be imported into arbitration, since the obligations of fair treatment should be grounded in Arbitration Act. Justice Narsimha dissented to observe that it is not necessary to apply public law principles of Constitution, as the duty to constitute an independent and impartial tribunal can be sufficiently sourced from the Arbitration Act and the Indian Contract Act, 1872 ("**Contract Act**").

[28] (2017) 8 SCC 377
[29] (2020) 20 SCC 760
[30] *Voestalpine Schienen GmbH vs. Delhi Metro Rail Corporation Ltd.*, [2017] 1 SCR 798; *Central Organisation for Railway Electrification vs. M/s ECI-SPIC-SMO-MCML (JV) A Joint Venture Company*, (2020) 14 SCC 712

Conclusion

In light of the ruling by the majority led by Justice Chandrachud, it is clear that the principle of equality of parties applies even at the stage of appointment of arbitrators. According to the majority, unilateral appointments are bad in law not only because they breach the principles of equality under the Arbitration Act but also because they are violative of the Constitution (public-private contracts). This judgment reaffirms the position laid down by the Supreme court in TRF and Perkins. It also holds that in the case of appointment of a 3 (three) member panel, mandating 1 (one) party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties and a party cannot be mandated to select from a unilaterally curated panel. This law relating to unilaterally curated panels, however, became applicable from November 8, 2024.

This judgment is landmark since it clarifies the position of law applicable on unilateral curation of arbitral tribunals with 3 (three) members. The Supreme Court also accommodated the principle of party autonomy and allowed for obtaining an express waiver after the disputes have arisen, from the other party in case it is asked to choose from a unilaterally curated list of arbitrators.

Supreme Court upholds the restrictive scope of its appellate jurisdiction under Section 125 of the Electricity Act, 2003

The Supreme Court rendered its final Judgment in ***Bangalore Electricity Supply Company Limited and Ors. vs. Hirehalli Solar Power Project LLP and Ors. & Batch***[31] ("**Judgment**"), wherein it has, *inter alia*:

1. reiterated that the scope of its jurisdiction under Section 125 of the Electricity Act, 2003 ("**Electricity Act**") is restricted only to deciding 'substantial questions of law';
2. reiterated that force majeure provisions in contracts are governed by Section 32 of the Contract Act[32] and not Section 56 of the Contract Act[33]; and
3. directed that Late Payment Surcharge ("**LPS**") is explicitly rooted in the Power Purchase Agreements ("**PPAs**"), and hence, is in furtherance of the intention of the parties. Therefore, direction for payment of LPS need not be separately pleaded.

In doing so, the Supreme Court dismissed the civil appeals[34] and upheld an order passed by the Appellate Tribunal for Electricity ("**APTEL**") grating extension of the Scheduled Commissioning Date ("**SCD**") of the Solar Power Project ("**Project**"). Consequently, the tariff payable to Solar Power Developers ("**SPDs**") was restored to INR 8.40 (Indian Rupees eight Paise forty) per unit.

Brief facts

1. On August 26, 2014, the State of Karnataka introduced a policy to identify and promote solar energy projects of land-owning farmers. In terms of the policy, solar power plants would generate and sell power to state electricity distribution companies at a tariff determined by the Karnataka Electricity Regulatory Commission ("**KERC**").
2. Pursuant to a Letter of Award, on August 29, 2015, the Bangalore Electricity Supply Company Limited ("**BESCOM**') entered into a PPA with one of the SPDs ("**BESCOM PPA**"). Similar PPAs were executed between other SPDs and electricity distribution companies. In terms of the BESCOM PPA, the Project ought to have been commissioned within 18 (eighteen) months from the 'effective date', hence, the SCD of the Project was February 28, 2017.
3. Pursuant to the execution of the PPAs, SPDs raised concerns regarding delays in the execution of the

[31] 2024 INSC 631
[32] *Section 32, Indian Contract Act, 1872: Enforcement of contracts contingent on an event happening*
[33] *Section 56, Indian Contract Act, 1872: Agreement to do Impossible Act*
[34] C.A. Nos. 7595, 7608 and 6386 of 2021

Project, on account of delay in approvals for conversion of land for industrial purposes, delay in getting evacuation approvals, grid connectivity and demonetisation. Petitions[35] were filed by SPDs before KERC seeking an extension of 6 (six) months for the commercial operation of the Project while invoking the *force majeure* clause in terms of the PPAs. During the pendency of proceedings before KERC, the Project was commissioned, within the extended period of 24 (twenty-four) months.

4. KERC, *vide* Order dated September 18, 2018 ("**KERC's Order**"), *inter alia*, rejected the various causes of delay put forth by SPDs in the petitions**,** imposed liquidated damages and reduced the tariff payable in terms of the PPAs.

5. Aggrieved by KERC's Order, SPDs appealed before APTEL, which, while overruling KERC's Order, *inter alia*, held the delay in execution of the Project was not attributable to SPDs as the time taken by government authorities to provide approvals was not within their control and they had taken all the measures that they could; SPDs are entitled to the benefit of the *force majeure* provisions and an extension of time, as has also been previously approved by KERC; SPDs were able to commission the Project within the extended period of 24 (twenty-four) months; APTEL directed SPDs to pay the difference per unit tariff along with LPS in terms of the PPAs; and set aside imposition of liquidated damages (Impugned Order).

Issue

Civil appeals were filed before the Supreme Court raising the question of whether extension of SCD was occasioned in terms of the *force majeure* provisions of the PPAs and consequently, whether the reduction in tariff was justified?

Findings and analysis

1. Section 125 of the Electricity Act provides for an appeal to be filed before the Supreme Court on any one or more of the grounds specified in Section 100 of the Civil Procedure Code, 1908[36] ("**CPC**"). The Supreme Court held that Section 100 of CPC restricts High Courts' jurisdiction in second appeals to cases that involve a 'substantial question of law'. The Supreme Court in *SEBI vs. MEGA Corporation Limited*[37] has analysed the term 'question of law' to hold that the said term is 'open textured' and must be interpreted by looking at the words in light of their context. The Electricity Act envisages the establishment of State Electricity Regulatory Commission ("**SERC**") as specialised bodies that discharge advisory, regulatory and adjudicatory functions and APTEL to hear appeals against orders of SERCs.

2. In respect of whether the delay in commissioning the project is covered by the *force majeure* provisions of the PPAs, the Supreme Court held as follows:

   a) there have been no 'substantial questions of law' raised before the Supreme Court;

   b) the Supreme Court, has, in several orders dismissed appeals arising out of similar facts;

   c) the delay in commissioning the project falls within the purview of *force majeure* provisions stipulated in Article 8 of the PPAs;

   d) SPDs are entitled to benefit under *force majeure* provisions as they are unable to secure necessary approvals, licenses etc. (provided that there is no negligence or intentional act or omission);

   e) the dispute before KERC and APTEL revolves around questions of fact. APTEL has rightly reappreciated evidence to find that the delay in the project was not attributable to SPDs but to government bodies and relevant authorities. SPDs have acted diligently and with care and caution to secure approvals, hence their claims cannot be rejected;

   f) APTEL has correctly noted that a large number of SPDs have raised similar issues, and the government has responded to the same by requiring electricity distribution companies to set up committees to look into these cases. The large number of cases that raise similar grounds and the government's response show that the delay was not faced by the SPDs alone,

[35] O.P. Nos. 70, 71, 72, 73 and 96 of 2017
[36] *Section 100, CPC – Second Appeal*
[37] (2022) SCC OnLine SC 361

and hence cannot be entirely attributed to them;

g) the extension provided was warranted and the commissioning of the project was within the extended period. Therefore, there is no occasion for reduction in tariff or for imposition of liquidated damages; and

h) since the levy of LPS on the tariff amount is explicitly rooted in the PPA, it need not be separately pleaded.

Conclusion

The Judgment reiterates that the scope of Supreme Court's jurisdiction under Section 125 of the Electricity Act is restricted only to deciding 'substantial questions of law' and *force majeure* provisions in contracts are governed by Section 32 of the Contract Act and not Section 56 of the Contract Act. In such instances, courts ought to interpret *force majeure* events as contractually agreed amongst the parties. Further, if payment of LPS is explicitly rooted in PPAs, it need not be separately pleaded. Delays in commissioning projects which are beyond the reasonably foreseeable control of parties fall under the purview of *force majeure* events.

The Judgment recognises the importance of freedom accorded to the sectoral regulator, to subserve the regulatory regime as envisaged in terms of the Electricity Act. It is also in tandem with Supreme Court's judgment in *BSES Rajdhani Power Ltd. vs. Delhi Electricity Regulatory Commission*[38], which laid down tests to determine whether a case involves a 'substantial question of law'. The findings and observations of the Judgment bolster and justify that a court sitting in second appellate jurisdiction is to frame a 'substantial question of law' and ought not to interfere in questions of fact.

Further, this Judgment recognises the supremacy of the contractual agreements between parties while interpreting contingency and penal provisions, thus bolstering the sanctity of such long-term contracts.

Supreme Court holds that judicial role encompasses the duty to direct the executive branch to review the working of the statutes and audit the statutory impact

The Supreme Court[39] in ***Yash Developers vs. Harihar Krupa Co-operative Housing Society Limited***[40], while examining the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("**Maharashtra Slum Areas Act**") *vis-à-vis* scope of judicial review against an order passed by the Apex Grievance Redressal Committee ("**AGRC**") under Section 13 of the Maharashtra Slum Areas Act, *inter alia* held that:

1. assessment of the working of the statute to realise if its purpose and objective is achieved or not is the implied duty of the executive branch;
2. judicial role encompasses the duty to direct the executive branch to review the working of the statutes and audit the statutory impact; and
3. judicial review is ineffective until and unless duty is identified with accountability.

Brief facts

1. In 2003, Yash Developers ("**Appellant**") was appointed as a developer by Harihar Krupa Co-Operative Housing Society Limited ("**Respondent No. 1**") to develop a slum rehabilitation building ("**Project**") under the Development Agreement dated August 20, 2003 ("**Development Agreement**"). However, owing to the inordinate delay of more than 16 (sixteen) years (*i.e.*, from 2003 to 2019) in commencing the construction of the Project, the Development Agreement in favour

[38] (2023) 4 SCC 788
[39] P.S. Narasimha and Aravind Kumar, JJ
[40] 2024 SCC OnLine SC 1840. Civil Appeal No. 8127 of 2024 and connected matter

of the Appellant was terminated by the order dated August 4, 2021, passed by AGRC ("**Order**").

2. Aggrieved by AGRC's Order, the Appellant challenged the said Order in a writ petition[41] filed before the Ld. Bombay HC. On October 14, 2022, Bombay HC dismissed the Appellant's writ petition on facts as well as on law, while observing the limited scope of judicial review under Article 226 of the Constitution against the decision of the statutory authority such as AGRC.
3. Thereafter, the Appellant challenged the judgment of Bombay HC before the Supreme Court.

Issues

1. The following issues fell for consideration before the Supreme Court:
   a) the scope of judicial review against an order under Section 13 of the Maharashtra Slum Areas Act; and
   b) accountability of officers exercising power coupled with duty under Section 13 of the Maharashtra Slum Areas Act.
2. Apart from the aforesaid issues, the Supreme Court also dealt with:
   a) the submissions of the parties on the facts of the case since Appellant had argued the case only on the facts; and
   c) issue of performance audit of statute.

Findings and analysis

1. While upholding the decision of AGRC and the Bombay HC, the Supreme Court dismissed the Appellant's civil appeal *inter alia* observed and held as under:
   a) the submissions of Appellant regarding 16 (sixteen) years delay in the project, the Supreme Court opined that:
   b) delay from 2003 to 2011, delay of 8 (eight) years in resolving disputes with a competing builder cannot be a justification under any circumstance;
   c) delay from 2011 to 2014, it was for Appellant as a developer to make all the necessary arrangements for environmental clearances while other sanctions and permissions are pending;
   d) delay from 2014 to 2019, non-cooperation of some of the members cannot be a ground for delaying the project; and
   e) delay from 2015 to 2017, findings of the AGRC and Bombay HC are very clear wherein it was correctly held that the delay caused due to the sanction of the draft development plan for the construction of the road cannot be a justification for delaying the project.
2. Case after case, the Bombay HC has been ruling that, in respect of the Maharashtra Slum Areas Act, the developer is duty-bound to complete the project within the stipulated time; and the Slum Rehabilitation Authority has not merely the power but a broader duty to ensure that the developer completes the project within time. However, the said rulings have not had the desired impact, much less compliance. The reason is that neither the developer nor the authority is asked to face the consequences of their derelictions. Until and unless the duty is identified with accountability, judicial review is ineffective.
3. The Maharashtra Slum Areas Act came into being in 1971 with the intent to materialise the constitutional assurance of dignity of the individual by providing basic housing, so integral to human life. However, for over 5 (five) decades, the Bombay HC has been exercising judicial review jurisdiction, disposing of writ petitions raising claims or challenges to the exercise of powers or dereliction of duties by authorities under the Maharashtra Slum Areas Act. Such propensity and the proclivity of the statute to generate litigation are worrisome. There seems to be a problem with the statutory framework.
4. While reviewing and assessing the implementation of a statute is an integral part of 'Rule of Law', assessment of the working of the statute to realise if its purpose and objective is achieved or not is the implied duty of the executive government. The purpose of such review by courts is to ensure that a law is working out in practice as it was intended.

[41] Writ petition (L) No. 18022 of 2021

If not, to understand the reason and address it quickly. It is in this perspective and in recognition of this obligation of the executive government that the constitutional courts have directed governments to carry performance/assessment audit of statutes or has suggested amendments to the provisions of a particular enactment so as to remove perceived infirmities in its working.

5. One of the functions of the judiciary is to facilitate access to justice and ensure the effective functioning of constitutional bodies. In this role, the judiciary does not review executive and legislative actions, but only nudges and provides impetus to systemic reforms. The facilitative role is not just inspired from the institutional role that the judiciary perceives for itself but is also a directive of many of the fundamental rights in Part III of the Constitution and the cherished preambular vision of justice-social, economic and political.

Conclusion

1. Regarding the duty of judiciary and executive branch in respect of working of the statute, the Supreme Court held as under:
   a) assessment of the working of the statute to realise if its purpose and objective is achieved or not is the implied duty of the executive branch;
   b) judicial role encompasses the duty to direct the executive branch to review the working of the statutes and audit the statutory impact; and
   c) judicial review is ineffective until and unless duty is identified with accountability.
2. The judgment of the Supreme Court underscores the constitutional court's duty that while exercising judicial review, the court's ought to:
   a) strike a delicate balance, by ensuring that justice is accessible and that the executive branch remains accountable for the effective implementation of laws. This will ensure that executive actions are in accordance with the law of the land and the legislative intent; and
   b) intervene when necessary and to direct the executive to reassess and review the working of the statutes and audit the statutory impact, and act as a facilitator of *'access to justice'*, one of the roles of the judiciary, especially the constitutional courts.

High Courts

Delay in filing a suit does not preclude a plaintiff from seeking urgent interim relief without exhausting the requirement of pre-suit mediation under the Commercial Courts Act, 2015

In ***Chemco Plast vs. Chemco Plastic Industries Pvt. Ltd.*** [42] ("**Plaintiff-Respondent**"), the Bombay HC *inter alia* held that in deciding whether a plaintiff has sought urgent interim relief only to bypass the bar of compulsory pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015 ("**Commercial Courts Act**"), delay in seeking interim relief is not a factor.

Brief facts

The Plaintiff-Respondent had filed a Commercial IP Suit seeking an injunction restraining M/s Chemco Plast ("**Defendant-Applicant**") from infringing its registered trademark and passing off its goods as those of the Plaintiff-Respondent ("**Suit**"). Along with the Suit, the Plaintiff-Respondent also filed an interim application seeking urgent interim relief. The Defendant-Applicant filed an interim application under Order VII Rule 11 of the CPC seeking rejection of the plaint on the ground that the Plaintiff had failed to comply with the mandatory provision of pre-suit

[42] Interim Application (L) No. 10014 of 2024. Chemco Plastic Industries Private Limited was represented by JSA

mediation under Section 12A of the Commercial Courts Act ("**Interim Application**").

In support of its Interim Application, the Defendant-Applicant *inter alia* submitted that the Supreme Court in *Patil Automation Private Limited and Ors. vs. Rakheja Engineers Private Limited*[43] and *Yamini Manohar vs. TKD Keerthi*[44] ("**Yamini Manohar**") has held that where urgent interim relief in a commercial suit is not contemplated, Section 12A of the Commercial Courts Act which mandates pre-institution mediation is required to be complied with; plaint did not contemplate urgent interim relief; and delay in approaching the court is relevant to assess whether a plaintiff has contemplated urgent interim relief. The Defendant-Applicant argued that in the present case, the Suit did not contemplate any urgent interim relief as the same was filed 8 (eight) years after the Plaintiff-Respondent became aware of the cause of action.

The Plaintiff-Respondent *inter alia* submitted that the question of whether urgent interim relief is contemplated has to be ascertained on the basis of the pleadings in the plaint; alleged delay in approaching the court is of no relevance as that would require the court to go into the merits, which could not be done at this stage; as held in *Bolt Technology OU vs. Ujoy Technology Pvt. Ltd. and Ors.*[45], in cases concerning Intellectual Property Rights ("**IPR**"), apart from the rights of the plaintiff, the rights of consumers/the public are relevant; and the Supreme Court in Yamini Manohar laid down that the limited exercise to be undertaken by Commercial Courts in deciding whether a suit can be entertained without exhausting the remedy of pre-institution mediation under Section 12A of the Commercial Courts Act is whether the plaint, documents, and facts of the case indicate a need for urgent interim relief. It was argued on behalf of the Plaintiff-Respondent that in the present case, the plaint did in fact contemplate urgent interim relief.

Issue

Whether the plaint ought to be rejected as being barred for failure to comply with Section 12A of the Commercial Courts Act?

Findings and analysis

The Bombay HC dismissed the Interim Application and *inter alia* observed as follows:

1. while considering whether a plaint deserves to be rejected for non-compliance with Section 12A of the Commercial Courts Act, the court necessarily undertakes a limited exercise to appreciate the plaint, documents, and facts to assess whether the plaint 'contemplates' urgent interim relief;
2. the Plaintiff-Respondent has detailed the manner in which the Defendant-Applicant has refuted the rights of the Plaintiff-Respondent despite registered trademarks in favour of the Plaintiff-Respondent. In this context, the Plaintiff-Respondent has contemplated urgent interim relief while filing the Suit and the same cannot be rejected as being barred by Section 12A of the Commercial Courts Act;
3. the question of delay and the related question of acquiescence on the part of the Plaintiff-Respondent are matters concerning the merits for the grant or refusal of interim relief. The court is not expected to enter into the merits of the matter at this stage; and
4. in cases pertaining to IPR infringement, the cause of action arises on each occasion that the impugned mark is used by the defendant.

Conclusion

This is the first judgment from the Bombay HC on the interplay between seeking urgent interim relief in IPR matters and the requirement for pre-suit mediation under Section 12A of the Commercial Courts Act.

[43] (2022) 10 SCC 1
[44] 2023 SCC OnLine SC 1382
[45] CS (Comm) No. 582 of 2022

Bombay HC affirms the applicability of Section 5 of the Limitation Act, 1963 vis-à-vis the Maharashtra Stamp Act, 1958 to condone delay in stamp duty refund applications

A 2 (two) judge bench of the Bombay HC in ***Nanji Dana Patel vs. State of Maharashtra, Through Government Pleader and Ors.***[46] has upheld the applicability of section 5[47] of the Limitation Act, 1963 ("**Limitation Act"**) to the Maharashtra Stamp Act, 1958 ("**Maharashtra Stamp Act**") for the purpose of condoning delay in filing of refund application. The Bombay HC noted that there is nothing in the Maharashtra Stamp Act that excludes the applicability of the Limitation Act. Accordingly, the delay in filing the application for a refund was condoned, and the matter was remanded to the Inspector General of Registrar and Controller of Stamps ("**Controller**") to be considered *de novo* on merits, with a specific deadline of October 31, 2024.

Brief facts

Nanji Patel ("**Petitioner**") had entered into a development agreement dated March 3, 2014, with a counter-party, and a stamp duty of INR 78,65,000 (Indian Rupees seventy-eight lakh sixty-five thousand) was paid under the provisions of the Maharashtra Stamp Act.

Subsequently, in 2015, the parties decided to cancel the development agreement and convey the property to the Petitioner for valuable consideration. A cancellation deed and a conveyance deed both dated June 24, 2015, were executed, and an additional stamp duty of INR 1,00,00,000 (Indian Rupees one crore) was paid on the conveyance deed.

On February 15, 2018, the Petitioner filed an application for refund of INR 78,65,000 (Indian Rupees seventy-eight lakh sixty-five thousand) stamp duty paid on the now-cancelled development agreement. However, the Controller rejected the refund application on the grounds that it was filed beyond the 6 (six) month period mandated under Section 48(1) of the Maharashtra Stamp Act.

Aggrieved by the above rejection, the Petitioner filed a writ petition before the Bombay HC.

Issues

1. Whether Section 5 of the Limitation Act is applicable to the Maharashtra Stamp Act?
2. If 'sufficient cause' exists, can delay in filing a refund application be condoned?

Findings and analysis

The Bombay HC, upon consideration of the submissions adduced by the parties and the relevant provisions of the Limitation Act and the Maharashtra Stamp Act, opined that –

1. while Section 48 of the Maharashtra Stamp Act provides for a 6 (six) month limitation for filing refund applications, there is no specific exclusion of the Limitation Act, especially Section 5 of the Limitation Act. This allows for the condonation of delay in filing such applications when 'sufficient cause' is demonstrated;
2. in the present case, the Bombay HC accepted the Petitioner's argument that the delay was caused by being 'ill-advised', which constitutes 'sufficient cause' under Section 5 of the Limitation Act;
3. to support its decision, reliance was placed on the judgement of *Mohd. Abaad Ali vs. Directorate of Revenue Prosecution Intelligence*[48], which held that, unless a statute (general or special) expressly excludes the applicability of Section 5 of the Limitation Act, can be invoked to condone delays;
4. furthermore, the Bombay HC also extensively relied on the principles laid down in *Bano Saiyed vs. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps*[49], which directs the State to not ordinarily rely on technicalities when dealing with a citizen. It was the Bombay HC's view that if the State is satisfied that the case of a citizen is a just one, even though the legal defence may be open to it, it must act as an honest person;

[46] 2024 SCC OnLine Bom 2817
[47] Section 5 of the Limitation Act, 1963 permits the condonation of delay in preferring an appeal or making an application in certain cases where the court is satisfied that the delay was due to '*sufficient cause*'
[48] (2024) 7 SCC 91
[49] 2024 SCC OnLine SC 979

5. moreover, the Bombay HC highlighted that a fiscal *lis* is not an adversarial proceeding, and the State must act as an honest party, especially where excess payments have been made. In this case, the retention of INR 78,65,000 (Indian Rupees seventy-eight lakh sixty-five thousand) by the State was deemed contrary to Articles 265 and 300A of the Constitution, which prohibit the retention of taxes without legal authority; and
6. accordingly, applying the above-stated principles to the present matter, the Bombay HC treated the writ petition as an application under Section 5 of the Limitation Act and permitted condonation of delay in filing the refund application.

The Bombay HC quashed the order of the Controller rejecting the refund application and remanded the matter for *de novo* consideration on merits, after condoning the delay. The Controller was directed to pass a reasoned order on or before October 31, 2024, and provide the Petitioner with notice for a personal hearing at least 5 (five) working days in advance.

Conclusion

This judgment establishes a significant precedent for allowing delayed applications for stamp duty refunds under the Maharashtra Stamp Act by invoking Section 5 of the Limitation Act. The Bombay HC reaffirmed that, unless expressly excluded, Section 5 can be applied to condone delays, provided 'sufficient cause' is demonstrated.

However, a gap remains regarding which authority has the power to condone such delays under the Maharashtra Stamp Act, as the Maharashtra Stamp Act itself does not provide for this. As a result, individuals seeking refunds may still need to approach the High Court under Article 226 of the Constitution for delay condonation, placing an undue burden on both citizens and the judiciary. Legislative reform may be required to address this procedural gap.

Pre-litigation mediation under Section 12A of the Commercial Courts Act is mandatory to file a counterclaim in a commercial suit

The single bench of the Hon'ble High Court of Delhi ("**Delhi HC**") in ***Aditya Birla Fashion and Retail Limited vs. Saroj Tandon***[50] held that pre-litigation mediation under Section 12A of the Commercial Courts Act is a mandatory requirement, even in respect of counterclaims in a commercial dispute.

Brief facts

Saroj Tandon ("**Respondent**") owned a shop which was leased to Aditya Birla Fashion and Retail Limited ("**Petitioner**"). Owing to the COVID-19 pandemic, the Aditya Birla Fashion and Retail Limited ("**Petitioner**") was constrained to close its business operation from the leased shop and issued a notice terminating the lease while demanding a refund of its security deposit. The Respondent failed to refund the security deposit. Accordingly, the Petitioner considered filing a suit against the Respondent seeking recovery of the security deposit.

Prior to instituting a suit, the Petitioner filed an application in terms of Section 12A of the Commercial Courts Act for pre-institution mediation and settlement. Despite due service of the notice of summons, the Respondent failed to appear and the process of mediation was declared a non-starter. Consequently, a commercial suit was filed by the Petitioner.

After the institution of the suit, the Respondent filed its written statement and counter claims for recovering rentals from the Petitioner. Considering that the Respondent's counter claims involved a commercial dispute, a commercial suit was registered. No urgent relief was contemplated in respect of the Respondent's counter claims.

Given that the Respondent had failed to invoke pre-institution mediation prior to lodging its counter claims, the Petitioner filed an application for rejection of the counter claims under Order VII Rule 11 of the CPC. However, the Petitioner's application was rejected by the Ld. Trial Court on the ground that the process for pre-institution mediation under Section 12A of the Commercial Courts Act was not mandatory

[50] 2024 SCC OnLine Del 6099

for counterclaims. In these circumstances, the Petitioner filed a petition under Article 227 of the Constitution.

Issue

Whether recourse to pre-institution mediation under Section 12A of the Commercial Courts Act is obligatory for filing counterclaims in commercial disputes when no urgent relief is contemplated?

Findings and analysis

The single bench of the Delhi HC dismissed the petition and *inter alia* observed as follows:

1. the Commercial Courts Act and CPC do not contain any provision providing different treatment for counterclaims. A counterclaim is a suit in its individual and distinct capacity. Once counterclaims are lodged, it must be treated as a regular suit for all practical and procedural purposes. Like any other commercial suit, the counterclaims in a commercial dispute must go through all stipulated rigours scrupulously as may be prescribed for any general commercial suit;
2. as per Rule 2(g) of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 ("**Rules**"), an opposite party means a party against whom relief is sought in a commercial dispute. The scheme of the Rules is not to oust the requirement of pre-institution mediation and settlement for any party. Consequently, an opposite party in respect of a counterclaim has a legal right to participate in mediation prior to the institution of counterclaims;
3. the process of pre-institution mediation is mandatory for every suit including a commercial suit and no distinction can be drawn when it comes to a counter claim involving a commercial dispute which does not contemplate any urgent relief;
4. the objective behind the pre-institution mediation is a benevolent one and it does not frustrate speed trial at all. To the contrary, it aims and visualises a situation where there may not be institution of any fresh case, once the matter is settled through such pre-institution mediation. Thus, attempting to settle disputes through mediation cannot be labelled a futile exercise;
5. merely because the defendant in a suit did not participate in settling the matter does not *ipso facto* mean that such defendant is not bound by the mandate of law. It would be incorrect for the defendant to presume that the plaintiff may also not participate in such process. The state of mind of any such party cannot be decoded mechanically;
6. the fact that the same parties had already participated or had opportunity to participate in the pre-institution mediation would not render Section 12A of the Commercial Courts Act a nugatory in the context of any such counterclaim, not contemplating any urgent relief; and
7. in *Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd.*[51], the Supreme Court has held:
    a) that recourse to Section 12A of the Commercial Courts Act is mandatory in nature and non-compliance thereof would entail rejection of the plaint under Order VII Rule 11 of CPC; and
    b) the cut-off date for rejection of plaints filed in non-compliance of Section 12A of the Commercial Courts Act is August 20, 2022. Any such plaint filed in violation of Section 12A of the Commercial Courts Act after the jurisdictional High Court has declared Section 12A of the Commercial Courts Act to be mandatory would disentitle the plaintiff from seeking any relief.

In the facts of the above case and the observations made, given that the counterclaim was filed on February 21, 2022 (before the cut-off date of August 20, 2022), the Delhi HC allowed the Respondent's counterclaim. However, the Delhi HC held that Section 12A of the Commercial Courts Act is not only mandatorily applicable to suits but also to counterclaims.

Conclusion

Pursuant to this judgement, a defendant in a suit under the Commercial Courts Act who seeks to raise a counterclaim is mandatorily required to initiate pre-litigation mediation under Section 12A of the Commercial Courts Act when it raises a counterclaim.

[51] 2022 SCC OnLine SC 1028

The judgement clarifies that a defendant raising a counterclaim in a commercial suit is required to exhaust the remedy of pre-institution mediation so long as no urgent relief is contemplated. This decision promotes a comprehensive and holistic pro-mediation approach prior to initiating long drawn court proceedings.

The Madras High Court clarifies the law on presentation, stamping and registration requirements of a sale certificate issued by the authorised officer under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

The Madras High Court ("**Madras HC**") in ***M/s. Sri Balaji Fibre vs. The Inspector General of Registration and Ors.***[52], has held that, no stamp duty in terms of the Stamp Act or registration fee, as per the Registration Act, 1908 ("**Registration Act**"), is payable when a sale certificate issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") is forwarded by the authorised officer to the registering authorities, for filing as required under the Registration Act; and the requirement of payment of stamp duty and registration fee would arise only when the person in whose favour the sale certificate is issued, voluntarily presents the sale certificate for registration or when the sale certificate is used to establish right/title over the property, in any proceedings. This judgement of the Madras HC is significant since it consolidates and clarifies the law on the presentation, stamping and registration requirements of a sale certificate issued by an authorised officer under the SARFAESI Act.

Brief facts

The petitioners were the purchasers of properties sold in public auction conducted by various authorised officers of the secured creditors under the SARFAESI Act and sale certificates were issued in their favour. When copies of the sale certificates were forwarded to the jurisdictional registering authorities by the authorised officers, the registering authorities demanded payment of stamp duty and registration fee, as applicable for conveyance, as a precondition for filing the sale certificate as required under Section 89(4) of the Registration Act. In another set of cases, when the sale certificates were presented for registration by the persons in whose favour they were issued, the registering authorities treated the transaction as undervalued and demanded stamp duty and registration fee on the market value of the underlying properties and/or referred the sale certificate under Section 47A of the Stamp Act for ascertaining market value of the property and consequential orders were passed for payment of deficit stamp duty. The registration department's stand was that the sale certificate issued under SARFAESI Act is a sale *inter vivos*, hence it is an instrument required to be stamped as conveyance and is compulsorily registrable as the authorised officer is neither a civil nor revenue officer as per Section 17(2)(xii) of the Registration Act. Writ petitions were filed before the Madras HC challenging the actions of the registration department.

Findings and analysis

The Madras HC dealt with various judicial precedents on the subject matters and held as under:

1. **Authorised officer as civil or revenue officer**: The Madras HC relied on the judgment of the Supreme Court in *Shanti Devi L. Singh vs. Tax Recovery officer*[53] and held that the term 'revenue officer' used under Section 89 of the Registration

[52] Judgement dated July 23, 2024, in W.P. Nos. 415, 3696, 23276 & 22555 of 2023 and W.M.P.Nos.3791, 22815, 22816 and 22817 of 2023; and W.P. Nos. 859, 6807, 6808, 6810, 9728, 9886, 10285, 10454, 11503, 12097, 12742, 12788, 15704, 16520, 16911, 17613, 18044 and 17205 of 2024

[53] (1990) 3 SCC 605

Act must be liberally construed to include persons effecting compulsory sale for recovery of dues in terms of a statute. The Madras HC, considering the nature of powers exercised by an authorised officer under the SARFAESI Act, held that the authorised officer will be a revenue officer under Section 89 of the Registration Act.

2. **Sale certificate is not compulsorily registrable**: The Madras HC clarified that since the authorised officer is a revenue officer under the Registration Act, in terms of Section 17(2) of the Registration Act, the sale certificate does not require registration, when it is forwarded by the authorised officer, in terms of Section 89(4) of the Registration Act. Considering that the Transfer of Property Act, 1882 applies only to transfer by act of parties[54] and that a sale under the SARFAESI Act is an involuntary transfer by operation of law, Madras HC clarified that the provisions of the Transfer of Property Act, 1882 requiring mandatory registration for transfers involving value above INR 100 (Indian Rupees one hundred), does not apply to the sale certificate issued under the SARFAESI Act.
3. **Sale certificate is not an instrument of conveyance**: The Madras HC clarified that the transfer and vesting of title to the immovable property in favour of the auction purchaser takes place when the sale is confirmed by the authorised officer. A sale certificate issued by the authorised officer merely records and evidences the sale.[55] Therefore, the sale certificate is not an instrument of conveyance.
4. **Stamping of sale certificates**: The Madras HC held that the sale certificates will have to be compulsorily stamped in terms of Article 18 of Schedule 1 to the Stamp Act and not as per Article 23 dealing with conveyances. In case the sale certificates are not stamped, the same will not be admissible in evidence as per Section 35 of the Stamp Act; any authority or court before whom a sale certificate is submitted for any purpose, can impound it and refer it for assessment of duty; and the person relying on the certificate will have to pay the stamp duty and penalty, as applicable.
5. **Sale price mentioned in the sale certificate alone to be considered**: The Madras HC clarified that the sale price mentioned in the sale certificate alone will have to be considered for the purpose of calculating the stamp duty; and the registration department cannot treat the transaction as undervalued and exercise powers under Section 47A of the Stamp Act.
6. **Recording of sale certificate forwarded by the authorised officer**: The Madras HC relied on judgments of the Supreme Court[56] and held that, upon receipt of the copy of the sale certificate forwarded by the authorised officer in terms of Section 89(4) of the Registration Act, the jurisdictional sub-registrars are required to record the details in Book I as per the Registration Act, subject to receipt of filing fees; and for this purpose, they cannot insist on payment of stamp duty or registration fee as payable on conveyances or sale certificates.

Based on the above, the Madras HC passed suitable orders in each of the writ petitions directing the registration department to refund excess duties paid by the purchaser; register the sale certificates presented by the parties on payment of requisite stamp duty and registration fee; reduced the penalty levied; quashed the proceedings initiated to ascertain the market value of the properties; and directed the registration department to release the impounded documents.

Conclusion

The judgement consolidates and clarifies the position of law on stamping and registration requirements for a sale certificate issued by the authorised officer under the SARFAESI Act. There were conflicting judgements of the Madras HC on these issues including scope of the term 'revenue officer' under the Registration Act, powers of the registration department to ascertain the market value of the property covered under the sale certificate, levy of transfer duty on a sale certificate, etc. This judgement resolves such conflicting views and consolidates the position of law on the subject. There have been instances where the registration department has taken a stand that the exemption

[54] Relied on *Bharat Petroleum Corporation vs. P. Kesavan and Anr*. [(2004) 9 SCC 77]
[55] Relied on B. *Arvind Kumar vs. Govt of India* [(2007) 5 SCC 745]; and K. *Chidambara Manickam vs. Shakeena* [(2007) 6 MLJ 488]
[56] *Esjaypee Impex Private Limited vs. Assistant General Manager and Authorised Officer, Canara Bank* [2021 (11) SCC 537]; *Inspector General of Registration and Anr vs. Madhurambal* [2022 SCC OnLine SC 2079]

available under the Registration Act applies only to the sale certificates issued by nationalised banks. This judgement has clarified that the exemption is applicable to sale certificates issued by an authorised officer under the SARFAESI Act, irrespective of whether the secured creditor is a nationalised bank or not. This judgement will assist auction purchasers who purchase properties under the SARFAESI Act.

Madras HC mandates proportionality in freezing of bank accounts by investigating authorities

The Madras HC, in the matter of ***Mohammed Saifullah vs. Reserve Bank of India and Ors.***[57] has delivered a significant ruling on the freezing of bank accounts in cases of ongoing investigations, particularly concerning cybercrimes. The judgment addresses the need to balance investigative needs with the rights of account holders. It also provides clear directions on conducting such actions in a manner that prevents unnecessary hardship to account holders.

Brief facts

1. Mohammed Saifullah ("**Petitioner**") filed a writ of *mandamus* before the Madras HC after HDFC Bank froze his account based on the instructions from the Cyber Crime Bureau, Telangana. This action was taken as part of an investigation into cryptocurrency-related activities.
2. While only INR 2,48,835 (Indian Rupees two lakh forty-eight thousand eight hundred and thirty-five) of the account's balance was suspected to be involved in the crime, the bank froze his account which had a balance of INR 9,69,580 (Indian Rupees nine lakh sixty-nine thousand five hundred and eighty).
3. The Petitioner argued that neither the investigating agency nor the bank had informed him of the reasons for the freezing of the account or how long it would last, causing undue hardship in his financial affairs.

Issues

1. Whether the blanket freezing order is justified in cases where the suspected amount is lower than the total account balance?
2. Should the account holder be notified of the reasons for freezing their bank account?

Findings and analysis

The Madras HC, while acknowledging the statutory powers granted to investigation agencies to freeze accounts under Section 102 of the Code of Criminal Procedure, 1973 (Section 106 of the Bhartiya Nagarik Suraksha Sanhita, 2023)[58], emphasised that these powers must be exercised responsibly. Below is the summary of the Madras HC's findings:

1. account holders must be notified promptly of the reasons for freezing their accounts, and a timeline should be provided for the freeze. The failure to do so violates basic principles of natural justice;
2. freezing the entire account balance when only INR 2,48,835 (Indian Rupees two lakh forty-eight thousand eight hundred and thirty-five) was suspected to be linked to the crime was unjustified. It held that investigative agencies should freeze or mark a lien only the amount related to the investigation/alleged crime and not the entire account, unless circumstances warrant it; and
3. indiscriminate freezing of accounts could severely affect individuals' right to livelihood and business, violating Article 19(1)(g) of the Constitution, which guarantees the right to carry on business. The Madras HC stressed that actions by investigating authorities should not infringe upon these fundamental rights without proper justification.

[57] W.P.No.25631 of 2024

[58] Power of police officer to seize certain property

The Madras HC concluded by directing HDFC Bank to immediately de-freeze the Petitioner's account, allowing him to utilise the remaining funds. However, the bank was instructed to retain a lien on INR2,50,000 (Indian Rupees two lakh fifty thousand), slightly higher than the amount under suspicion, until the investigation was concluded. The Petitioner was also directed to ensure that this amount remain in his account.

Conclusion

This judgment is a significant step toward protecting the rights of individuals and businesses affected by arbitrary account freezes by investigating agencies. By setting guidelines, the Madras HC has reinforced the importance of proportionality and transparency in freezing orders during investigations. Authorities must ensure that such freeze is limited to the amount under investigation; and they must promptly inform account holders of the reasons and duration of the freeze.

Additionally, the judgment places a responsibility on law enforcement agencies to conduct thorough investigations, particularly in cases where no specific amount of fraud has been quantified by the complainant. The police will need to carefully evaluate such situations to ensure that the accused is not unjustly enriched whilst also preventing severe prejudice to the complainant. This careful balancing act is essential to avoid unnecessary hardship on the account holders while ensuring that victims of fraud are adequately protected. This ruling will help mitigate the financial and operational challenges caused by unnecessarily broad freezing orders, ensuring a fairer process for account holders while allowing investigations to proceed effectively.

It is important to note that these guidelines are limited to the jurisdiction of the Madras HC and, by extension, the state of Tamil Nadu. Similar guidelines will need to be issued by other High Courts or the Supreme Court to provide uniform protection across the country. Nonetheless, this judgment will carry considerable weight and may be cited as persuasive precedent in other courts dealing with similar issues.

NCLT

NCLT refuses to recall order sanctioning scheme of arrangement stating that Section 230(12) cannot be invoked in a case of demerger

In the decision of ***Shri Shreans Daga vs. IBM India Pvt. Ltd.***,[59] the NCLT, Bengaluru refused to recall an order by which it had sanctioned a scheme of arrangement ("**Sanction Order**") between IBM India Private Limited ("**Demerged Company**") and Kyndryl Solutions Private Limited ("**Resulting Company**"). The NCLT held that the application for recall was liable to be dismissed at the threshold, as it had been filed under Section 230(12)[60] of the Companies Act, 2013 ("**2013 Act**"), which applies only in cases of takeovers and not in cases of demergers. On merits, the NCLT held that the applicants failed to prove their status as creditors of the Demerged Company entitling them to raise objections to the scheme of arrangement.

Brief facts

The applicants were individuals who had executed a Share Purchase Agreement ("**SPA**") with the Demerged Company on October 26, 2016, for sale of their stake in another company. They claimed to be creditors of the Demerged Company to the extent of the consideration to be paid to them under the SPA. The applicants argued that the proceedings leading up to the Sanction Order stood vitiated since their names had not been disclosed in the list of creditors filed before the NCLT; and statutory notice under Section 230(3) of the 2013 Act had not been issued to them. Accordingly, they filed an application under Section 230(12) of the 2013 Act read with Rule 11 of the NCLT Rules, 2016 ("**NCLT Rules**") praying that the Sanction Order be recalled.

[59] Order dated April 19, 2024, in IA(CA) No. 12/2022 in CP(CAA) No. 17/2021 before the NCLT Bengaluru Bench

[60] As per this provision, an aggrieved party may apply to the NCLT in the event of any grievances with respect to takeover offers of companies other than listed companies

Pertinently, the applicants also disclosed that arbitral proceedings for seeking payment under the SPA were also pending, with the Resultant Company substituted for the Demerged Company in pursuance of the Sanction Order.

The respondents argued that the application for recall of the Sanction Order deserves to be dismissed as the applicants could not claim to be creditors of the Demerged Company since the amount claimed by them was uncrystallised and subject matter of dispute in the pending arbitration; and the application had been filed under Section 230(12) of the 2013 Act, which only applied in cases of takeovers and not in cases of demergers.

Issue

The issue before the NCLT was whether Section 230(12) of the 2013 Act could be invoked for recalling the Sanction Order and if so, whether such an order of recall was warranted in the present case.

Findings and analysis

The NCLT found merit in the contentions of the respondents and held that:

1. the application was liable to be dismissed *in limine* as it prayed for recalling the approval of a scheme of demerger under Section 230(12) of the 2013 Act, which only concerned takeovers. Thus, the application was not maintainable; and
2. the applicants cannot be regarded as creditors of the Demerged Company because they have not been reflected as such in the financial statements of the Demerged Company; the pending arbitration has not concluded; and the applicants' claim has not crystallised.

For these reasons, the NCLT dismissed the application and refused to recall the Sanction Order.

Conclusion

While refusing to recall the Sanction Order, the NCLT reasoned that the application for recall was not maintainable; and the applicants failed to prove their status as creditors of the Demerged Company. The second reason appears to be sound given that the amounts claimed to be owed to the applicants were pending adjudication and crystallisation in arbitration.

However, so far as the first reason is concerned, the NCLT may have overlooked that the applicants had invoked not only Section 230(12) of the 2013 Act but also Rule 11 of the NCLT Rules. While it is true that the power to recall an order by which a scheme of arrangement was sanctioned is not available under Sections 230 – 232 of the 2013 Act, the inherent powers of the NCLT under Rule 11 of the NCLT Rules may be, and have been, exercised for this purpose.

For instance, the NCLT benches at Chandigarh,[61] Jaipur[62] and Mumbai[63] have in the past exercised powers under Rule 11 of the NCLT Rules for recalling final orders by which schemes of arrangement had been sanctioned by them. Such orders of recall have also been passed by various High Courts under the erstwhile Companies Act, 1956 ("**1956 Act**")[64]. In fact, the Delhi HC expressly clarified that company courts in exercise of their inherent powers can recall orders sanctioning schemes of arrangement in peculiar facts.[65] Since the provisions pertaining to schemes of arrangement under the 1956 Act and the 2013 Act are in *pari materia*, these decisions rendered under the 1956 Act still hold precedential value for proceedings under the 2013 Act. As such, the point of maintainability deserved a deeper analysis.

[61] *Reckitt Benckiser (India) Private Limited*, order dated March 5, 2021, in CA No. 156/2020 in CP(CAA) No. 7/CHD/HRY/2019

[62] *Hem Multi Commodities Pvt. Ltd.*, order dated December 5, 2019, in IA No. 299/JPR/2019 in CP (CAA) No. 75/230-232/JPR/2018

[63] *HDFC Property Ventures Limited*, order dated July 28, 2023 in IA(CA) No. 92/2023 in CP(CAA) No. 219/MB/2022

[64] *Vodafone Essar South Ltd.*, ILR (2013) III Delhi 1979; *Capital 18 Fincap Pvt. Ltd.*, 2015 SCC OnLine Del 10707; *Castron Technologies Limited v. Castron Mining Limited*, 2013 SCC OnLine Cal 12914

[65] *Vodafone Essar South Ltd.*, ILR (2013) III Delhi 1979

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