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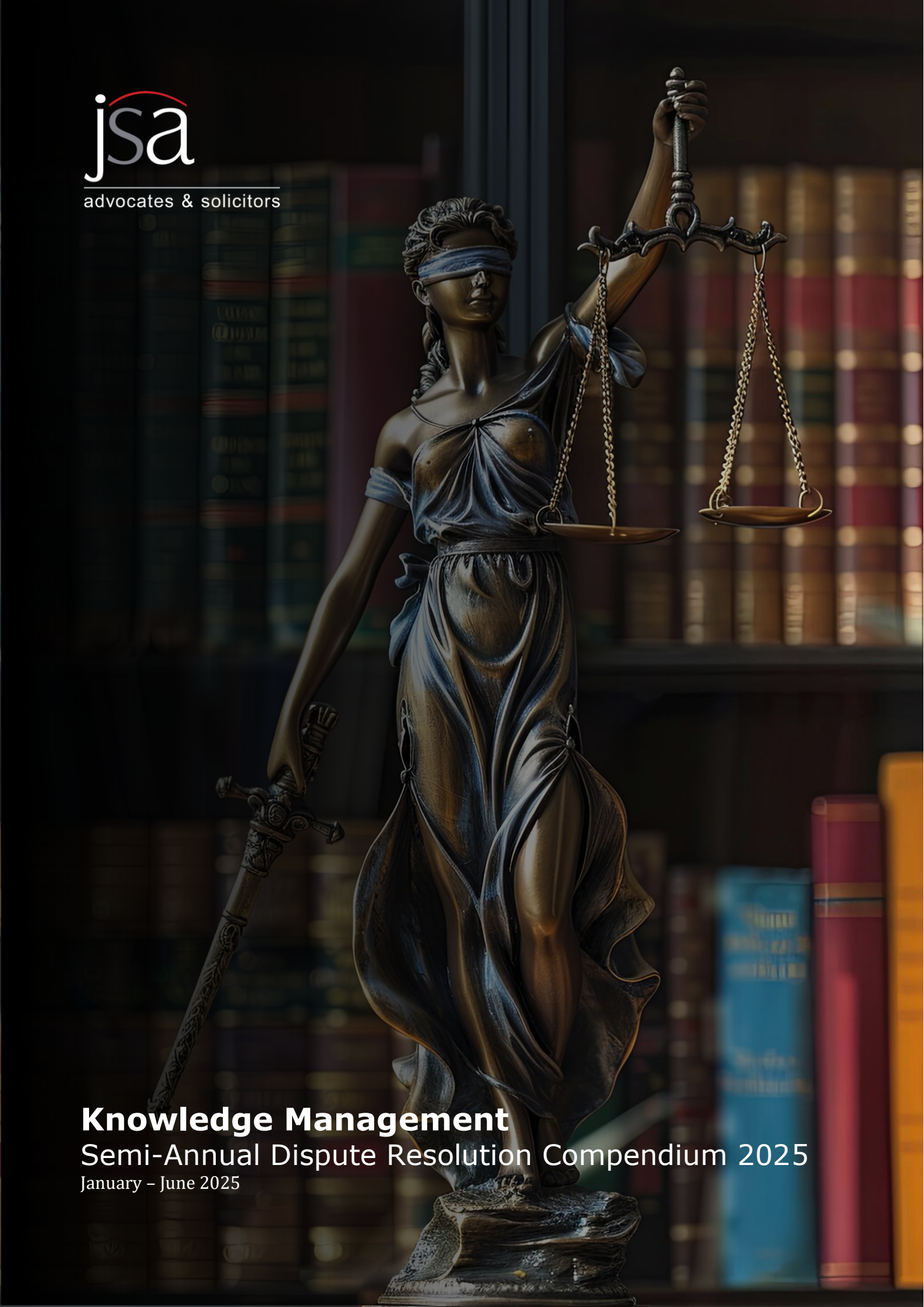


Knowledge Management

Semi-Annual Dispute Resolution Compendium 2025

January – June 2025

Semi-Annual Dispute Resolution Compendium 2025

This Compendium consolidates the key decisions passed by the Hon'ble Supreme Court of India ("**Supreme Court**") and different High Courts, during the calendar period from January 2025 till June 2025.

Supreme Court

Supreme Court grants extension of the arbitral tribunal's mandate post-expiry of such mandate and clarifies the expression 'sufficient cause' employed under Section 29(A) of the Arbitration and Conciliation Act, 1996

In the decision of ***M/s Ajay Protech Private Limited vs. General Manager and Anr.***[1] ("**Ajay Protech**"), the Supreme Court held that after *Rohan Builders (India) Private Limited vs. Berger Paints India Limited*,[2] ("**Rohan Builders**"), it is a settled legal position that an application to extend the mandate of the arbitral tribunal under Section 29A(4) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") can be filed after the expiry of such mandate. Further, the Supreme Court noted that the determination whether there is 'sufficient cause' to grant such extension under the provision should be done to facilitate the efficiency of the arbitration process.

The Supreme Court's decision goes a long way in providing clarity on relevant considerations for assessing whether there is 'sufficient cause' for the court to extend the mandate of the arbitral tribunal under Section 29A(4) of the Arbitration Act.

Brief facts

The dispute arose between the parties out of a works contract. A notice to initiate arbitration was issued and a sole arbitrator was appointed. The pleadings of the parties in the arbitral proceedings were completed on October 9, 2019, from which date the 12 (twelve) month period stipulated under Section 29A(1) of the Arbitration Act commences. As per Section 29A(3) of the Arbitration Act, this period, bound to expire on October 8, 2020, is extendable by another 6 (six) months. Consequently, by mutual agreement between the parties, the time period was extended and the 18 (eighteen) month period expired on April 9, 2021. Before expiry of this period, the COVID-19 pandemic occurred and the Supreme Court declared that the

[1] 2024 SCC OnLine SC 3381(decided on October 21, 2024)

[2] 2024 SCC OnLine SC 2494

period between March 15, 2020, and February 28, 2022 will be excluded from limitation period under Section 29A of the Arbitration Act.[3] The arbitral proceedings got adjourned due to the pandemic, and resumed in 2022, with hearings concluding on May 5, 2022. An application was filed by the Appellant under Section 29A(4) of the Arbitration Act for appropriate orders for extension of time for making the award on August 1, 2023. However, the High Court rejected the application noting that the 18 (eighteen) month period got over on April 9, 2021, and that there was an unexplained delay of over 2 (two) years in preferring the application as the mandate of the arbitral tribunal stood terminated on April 9, 2021.

Issue

The Supreme Court formulated 2 (two) issues:

1. whether an application for extension can be entertained if it is filed after the expiry of the arbitral tribunal's mandate? and
2. whether there was 'sufficient cause' to extend the mandate of the arbitral tribunal under Section 29A(4) of the Arbitration Act?

Analysis and findings

Issue 1: The Supreme Court in its decision in Rohan Builders, had placed emphasis on party autonomy and clarified that an application for extension of time can be filed even after the expiry of the period in sub-sections (1) and (3) of Section 29A of the Arbitration Act. Further, the language of Section 29A(4) of the Arbitration Act itself clarifies that the court can extend the time period '*either prior to or after the expiry of the period*'. Thus, this issue is no longer *res integra* and an application can be filed after the expiry of the tribunal's mandate.

Issue 2: The Supreme Court held that the facts of the case did warrant an extension. As per Section 29A(5) of the Arbitration Act, such an extension can only be done when 'sufficient cause' is shown and is at the discretion of the Supreme Court. To come to this determination, the Supreme Court took the following factors into consideration:

1. the COVID period which was to be excluded (i.e., from March 15, 2020, and February 28, 2022) had started even before the expiry of the initial 12 (twelve) month period. From the start of the 12 (twelve) month period, i.e. October 9, 2019, till March 15, 2020, only 5 (five) months lapsed. Thereafter, from February 28, 2022, the remaining of the 18 (eighteen) month period expired on March 31, 2023. The current application for extension was filed on August 1, 2023. Thus, there was a delay of 4 (four) months, and not over 2 (two) years as held by the High Court;
2. even in 2022, while the arbitral tribunal proceeded with online hearings, adjournments were sought on several occasions by the respondents as the panel from which the arbitrator was appointed had been changed;
3. the dispute involved technical and legal questions and had a bulky case record;
4. the delay was not attributable to the parties or the tribunal;
5. the hearing was completed and only the declaration of the award was pending; and
6. the parties had agreed on May 5, 2023, to seek an extension of time by filling an application before the court.

The Supreme Court emphasised on the efficiency of the arbitration proceedings, which it noted was essential for an effective dispute resolution remedy through arbitration. It further noted that 'sufficient cause' under Section 29A of the Arbitration Act should be interpreted in the context of facilitating effective dispute resolution. In the facts of the case, the Supreme Court held that there is sufficient cause to extend time and set aside the impugned judgment of the High Court.

Conclusion

In Rohan Builders, the Supreme Court had settled the position on whether extension of time in arbitration can be sought after the expiry of the arbitral tribunal's mandate, on which several High Courts had previously provided conflicting answers. It had also emphasised that courts should not mechanically allow such applications, and extension should only be granted if there is sufficient cause to deter parties from abusing the process of law or filing frivolous applications. The

[3] *In re: Cognizance for Extension of Limitation*, (2022) 3 SCC 117

judgement of the Supreme Court in Ajay Protech has reinforced this legal position.

The Supreme Court has further clarified the purport and meaning of the expression 'sufficient cause' in the context of Section 29(A) of the Arbitration Act. The Supreme Court clarified that though the statute emphasises on party autonomy, however, there is statutory recognition of the power of the court to step in wherever it is necessary to ensure that the process of resolution of the dispute is taken to its logical end. Efficiency in arbitration proceedings as well as the several factors which were considered by the Supreme Court, including whether the delay was attributable to the parties or the tribunal and whether the case involves a bulky record involving technical questions, will provide guidance to courts in determining whether there is sufficient cause to grant extension of time under Section 29A of the Arbitration Act.

Supreme Court clarifies applicability of the Limitation Act, 1963 to petitions challenging arbitral awards

The Supreme Court delivered a landmark judgment in ***My Preferred Transformation & Hospitality Private Limited and Anr. vs. M/s Faridabad Implements Private Limited***[4], addressing the issue of limitation for filing applications to set aside arbitral awards under Section 34 of the Arbitration Act. The Supreme Court examined the interplay between the Limitation Act, 1963 ("**Limitation Act**") and Section 34(3) of the Arbitration Act, with a particular focus on whether the additional 30 (thirty) day condonable period provided under Section 34(3) of the Arbitration Act can be extended if it expires during court vacations. This decision has significant implications for arbitration in India, clarifying the scope of judicial discretion in condoning delays under the Arbitration Act.

Brief facts

The dispute arose from lease agreements between the appellants (*My Preferred Transformation & Hospitality Private Limited*) and the respondent (*M/s Faridabad Implements Private Limited*). Following such dispute, the respondent invoked arbitration, resulting in an arbitral award dated February 4, 2022, in its favour.

Under Section 34(3) of the Arbitration Act, the appellants were required to challenge the arbitral award before the High Court within 3 (three) months (by May 14, 2022), with a possible condonable extension of 30 (thirty) days. However, pursuant to the Supreme Court's earlier COVID-19 orders, the limitation period was automatically extended to May 29, 2022. The additional 30 (thirty) day condonable period expired on June 28, 2022, i.e. during the High Court's summer vacation. The appellants filed their application on July 4, 2022, i.e. the first day after the High Court reopened. The High Court dismissed the challenge to the award being barred by limitation, which the Division Bench affirmed. In view thereof, the appellants then approached the Supreme Court.

Issues

The Supreme Court addressed the following issues in the judgment:

1. do the provisions of the Limitation Act apply to proceedings under Section 34 of the Arbitration Act, and to what extent?
2. does Section 4 of the Limitation Act apply to Section 34(3) of the Arbitration Act as per an analysis of the statutory scheme as well as precedents of this Supreme Court on the issue? If Section 4 of the Limitation Act applies, does it apply only to the 3 (three) month limitation period or also the 30 (thirty) day condonable period? and
3. in light of the answer to Issue 2, will Section 10 of the General Clauses Act, 1897 ("**General Clauses Act**") apply to Section 34(3) of the Arbitration Act, and if so, in what manner?

Brief contentions of the parties

[4] Civil Appeal No. 336 of 2025 (Arising out of SLP (C) No. 9996 of 2024) (decided January 10, 2025)

The appellants contended that Section 4 of the Limitation Act, which allows filing on the next working day if the limitation period expires on a court holiday, should apply to the aforesaid 30 (thirty) days condonable period. Alternatively, they argued that Section 10 of the General Clauses Act, which similarly addresses the expiration of statutory periods on court holidays, should apply to the proceedings under Section 34(3) of the Arbitration Act. The respondent on the other hand, relied on *Union of India vs. Popular Construction Co.*[5] and *Assam Urban Water Supply and Sewerage Board vs. Subhash Projects*[6], to contend that the aforesaid provisions do not apply to the 30 (thirty) days condonable period under Section 34(3) of the Arbitration Act.

Findings and analysis

The Supreme Court analysed the provisions of Section 34(3) of the Arbitration Act alongside the Limitation Act and the General Clauses Act, focusing on the applicability of Sections 4 and 10 of the respective statutes, to arrive at the following findings:

7. **Applicability of Section 4 of the Limitation Act**: By relying on the language of Section 4 of the Limitation Act, which uses the words 'prescribed period', as well as upon the decisions of the Supreme Court in Assam Urban Water Supply (*supra*) and *Bhimashankar Sahakari Sakkare Karkhane Niyamita vs. Walchandnagar Industries Limited*[7], it was held that Section 4 of the Limitation Act applies only to the 'prescribed period' under Section 34(3) of the Arbitration Act i.e. the initial 3 (three) month limitation period. The additional 30 (thirty) day condonable period under the proviso to Section 34(3) of the Arbitration Act is not the 'prescribed period' but a discretionary period, and hence, Section 4 of the Limitation Act does not apply to it.

8. **Applicability of other provisions of the Limitation Act**: The Court also analysed the applicability of other provisions of the Limitation Act to the Arbitration Act, based on past judgments. Section 12 of the Limitation Act, permitting exclusion of time spent obtaining certified copies, was held to be applicable to proceedings under Section 34 of the Arbitration Act.[8] The Supreme Court clarified that such time can be excluded from the 3 (three) month limitation period under Section 34 of the Arbitration Act. It was also held that Section 14 of the Limitation Act, which excludes time spent in pursuing remedies before the wrong forum in good faith, also applies to Section 34 of the Arbitration Act.[9] Section 17 of the Limitation Act, which delays the start of limitation in cases of fraud or mistake, does not apply to Section 34 of the Arbitration Act. The Supreme Court held that the limitation under the Arbitration Act begins strictly on the date of receiving the arbitral award, cannot be extended by alleging fraud or mistake.[10]

9. **Express and implied exclusion of provisions**: The Court emphasised that the specific timelines for challenging arbitral awards under the Arbitration Act reflects the legislature's intention to ensure the finality of awards and restrict judicial interference. In this regard, the Supreme Court reaffirmed the decisions in Bhimashankar (*supra*) and Assam Urban Water Supply (*supra*) to hold that while the provisions of the Limitation Act generally apply to arbitrations *vide* Section 43(1) of the Arbitration Act, the stringent language of Section 34(3) 'but not thereafter' impliedly excludes application of Section 4 of the Limitation Act to the 30 (thirty) days condonable period under Section 34(3) of the Arbitration Act.

10. **Applicability of Section 10 of the General Clauses Act:** Section 10 of the General Clauses Act would not apply to the Arbitration Act as the proviso to Section 10 explicitly excludes the application of the same to acts or proceedings governed by the Limitation Act, including Section 34(3) proceedings under the Arbitration Act.

Concerns expressed with the current legal framework

The Supreme Court addressed the restrictive interpretation of limitation provisions under Section 34(3) of the Arbitration Act, which significantly curtails the ability of parties to challenge arbitral

[5] (2001) Supp. (3) S.C.R. 619
[6] Civil Appeal No. 2014 Of 2006
[7] (2023) 8 SCC 453
[8] *State of Himachal Pradesh vs. Himachal Techno Engineers*, (2010) 12 SCC 210
[9] *Coal India Limited vs. Ujjal Transport Agency*, (2011) 1 SCC 117; *Commissioner, Madhya Pradesh Housing Board vs. Mohanlal and Company*, (2016) 14 SCC 199
[10] *P. Radha Bai vs. P. Ashok Kumar*, (2019) 13 SCC 445

awards. It reaffirmed that Section 29(2) of the Limitation Act incorporates Sections 4 to 24 unless expressly excluded and noted that Section 34(3) of the Arbitration Act does not explicitly exclude Section 4 of the Limitation Act. However, the judicial precedent set by earlier decisions, such as Popular Construction Co. (*supra*) and Assam Urban Water Supply (*supra*), equated the 'prescribed period' to only the 3 (three) month limitation, thereby *impliedly* excluding the additional 30 (thirty) day condonable period from the ambit of Section 4 of the Limitation Act. This interpretation has created a rigid framework, leaving limited scope for equitable relief. The Supreme Court acknowledged the inconsistency between the legislative intent and the current legal position, suggesting that these precedents effectively deny remedies on procedural grounds. It urged legislative reform to address this imbalance and ensure a fairer application of limitation laws, balancing procedural rules with the need to preserve substantive rights.

With the above concerns, the Supreme Court, being bound by its earlier decisions, dismissed the appeal, affirming that the petition filed under Section 34 of the Arbitration Act was filed beyond the permissible limitation period.

Conclusion

The Supreme Court rightly expressed anguish at the restrictive interpretation adopted by previous judgments and the implied exclusion of Section 4 of the Limitation Act in the context of Section 34(3) of the Arbitration Act. It emphasised that the Limitation Act and its provisions should not be left to judicial interpretation alone but should be clear and objective enough to be understood and applied by litigants themselves. Legislative intervention is essential to address the ambiguities in the interplay between these statutes, ensuring that procedural rules do not disproportionately hinder substantive justice. Such clarity will foster greater confidence in arbitration as an effective and equitable dispute resolution mechanism.

Supreme Court holds that an arbitration agreement will be governed by Indian law where foreign location is not the seat but is only the venue of arbitration, and the substantive contract is governed by Indian law

The Supreme Court in ***Disortho S.A.S vs. Meril Life Sciences Private Limited***[11] has exercised jurisdiction under section 11 (6) of the Arbitration Act and appointed a sole arbitrator, wherein the dispute settlement clause in the contract, provided for disputes to be settled by arbitration in Bogota DC, Colombia, in accordance with the rules of the Arbitration and Conciliation Centre of the Chamber of Commerce of Bogota DC.

Brief facts

Disortho S.A.S ("**Disortho**"), a Colombian company, and Meril Life Sciences Private Limited ("**Meril**"), an Indian company, entered into an International Exclusive Distributor Agreement ("**Contract**") for distribution of medical products in Colombia.

The Contract specified that it would be governed and construed in accordance with the laws of India, and all matters arising in consequence of the Contract would be subject to the jurisdiction of the courts in Gujarat, India.

The dispute settlement clause in the Contract required disputes to be resolved through conciliation, failing which by arbitration to be conducted at Bogota DC, Colombia, in accordance with the Rules of the

[11] Arbitration Petition No.48 of 2023 (decided on March 18, 2025)

Arbitration and Conciliation of the Chamber of Commerce of Bogota DC.

When disputes arose between the parties, Disortho filed an arbitration petition under Section 11(6) of the Arbitration Act, before the Supreme Court seeking the appointment of an arbitrator. Meril opposed the petition on jurisdictional grounds contending that Indian courts do not have jurisdiction.

Decision of the Supreme Court

The Supreme Court considered judicial precedents which discussed various legal systems which come into play in such trans-border arbitrations, viz., the law governing the substantive contract; the law governing the arbitration agreement; the law governing the performance of the arbitration agreement and the law governing the procedural aspects of arbitration.

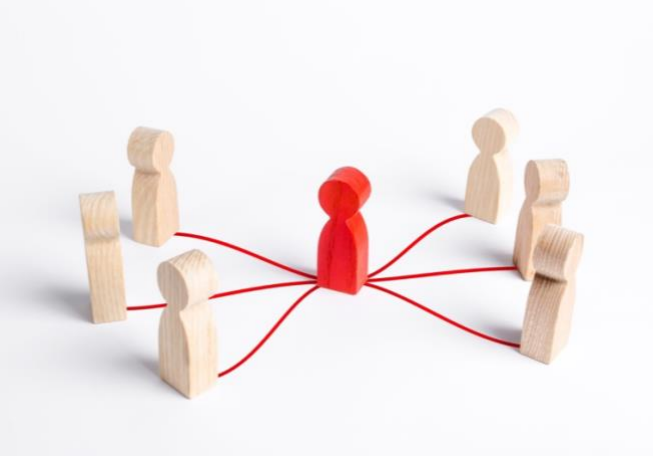
In determining the law that governs the arbitration agreement, the Supreme Court considered the principles laid down by the UK Supreme Court in *Enka Insaat Ve Sanayi AS and OOO Insurance Company Chubb*[12]. It held that, unless otherwise specified, the law governing the substantive contract will generally apply to the arbitration agreement, which is part of the substantive contract. Supreme Court further clarified that selecting a different seat of the arbitration alone does not override the inference that law governing the substantive contract was intended to apply to the arbitration agreement, except on aspects where courts in India have taken a different view.

Interpreting the clauses in the Contract, based on principles laid down in various earlier judgements, the Supreme Court concluded that the seat of arbitration has not been expressly designated by the parties and Bogota DC is only the venue for arbitration. The Supreme Court further held that since the Contract stipulated that it would be governed and construed in accordance with the laws of India, and that all matters arising in consequence of the Contract would be subject to the jurisdiction of the courts in Gujarat, India, it has jurisdiction over matters relating to the appointment of the arbitrator. The Supreme Court also held that the designation of Bogota DC as the venue for arbitration and choice of the Rules of the Arbitration and Conciliation of the Chamber of Commerce of Bogota DC will not take away the jurisdiction expressly conferred on the Indian courts.

Noting that the Contract does not expressly identify a separate law governing the arbitration agreement, the Supreme Court held that by implication, Indian law governs the arbitration agreement. The Supreme Court further held that use of the premises of the arbitration centre at Bogota DC for the arbitration proceedings, will not imply that Colombian law will govern the arbitration agreement. The Supreme Court also held that the applicability of Colombian law is limited to the arbitration proceedings and matters relating to the award.

Conclusion

The judgement is an addition to the earlier judgements of the Supreme Court, wherein it had discussed the complexity involved in interpretation, when different legal systems come into play in contracts involving parties from different jurisdictions. The judgement underscores the importance of carefully drafting arbitration clauses, especially in international contracts, to avoid jurisdictional ambiguities.



Supreme Court holds that non-service of an arbitration notice under Section 21 of the Arbitration Act does not limit the arbitral tribunal's jurisdiction to implead a person as a party to the arbitration proceedings

The Supreme Court in ***Adavya Projects Private Limited vs. M/s. Vishal Structurals Private Limited and Ors.***[13] has *inter alia* clarified that issuing a notice

[12] (2020) UK SC 38. This judgement followed the principles of Sulamerica Cia Nacional De Seguros S.A. and others Vs Enesa Engenharia S.A and Others (2012) EWCA Civ 638.

[13] 2025 SCC OnLine SC 806 (decided on April 17, 2025)

under Section 21[14] of the Arbitration Act is mandatory as it fixes the date of commencement of arbitration, determines limitation, and is a pre-requisite for a petition seeking appointment of an arbitrator[15]. However, mere non-service of the arbitration notice upon a person does not deprive the jurisdiction of the arbitral tribunal under Section 16 of the Arbitration Act[16] to determine whether they are a party to the arbitration agreement and to implead them.

Brief facts

Adavya Projects Private Limited ("**APPL**") and Vishal Structurals Private Limited ("**VSPL**") executed a limited liability partnership agreement ("**LLP Agreement**") to form a limited liability partnership namely Vishal Capricorn Energy Services LLP ("**Vishal LLP**") to carry out oil and gas sector projects. The LLP Agreement envisaged that the director of VSPL, Mr. Kishore Krishnamoorthy ("**Kishore**"), would be the chief executive officer of Vishal LLP. Clause 40 of the LLP Agreement provided for dispute resolution through arbitration.

In 2013, APPL and VSPL executed a supplementary agreement and a memorandum of understanding for undertaking a project through Vishal LLP ("**Project**").

In 2018, disputes arose when APPL sought information from VSPL to audit the accounts of Vishal LLP in relation to the Project. APPL issued demand notices calling VSPL to pay monies towards reconciliation of the accounts of Vishal LLP.

Eventually, APPL invoked the arbitration clause of the LLP Agreement by issuing a notice of arbitration to VSPL. APPL then filed an application under Section 11 of the Arbitration Act before the Delhi High Court ("**Delhi HC**") seeking appointment of an arbitrator to adjudicate the disputes between the parties. VSPL was named as the only respondent in the petition. The Delhi HC appointed an arbitrator to adjudicate the disputes between APPL and VSPL arising out of the LLP Agreement.

APPL filed its statement of claim before the arbitrator and named VSPL, Vishal LLP and Kishore as parties to the arbitration. Vishal LLP and Kishore filed an application under Section 16 of the Arbitration Act challenging the jurisdiction of the arbitral tribunal contending that the arbitration agreement contained in Clause 40 of the LLP Agreement does not bind Vishal LLP, which is a creature of the LLP Agreement, and Kishore, as he was not a party to the LLP Agreement in his individual capacity.

The arbitral tribunal allowed the Section 16 application ("**Section 16 Order**") and held that arbitration proceedings against Vishal LLP and Kishore were not maintainable since the notice of arbitration under Section 21 of the Arbitration Act was not served upon Vishal LLP and Kishore; and the Delhi HC did not refer Vishal LLP and Kishore to arbitration while allowing APPL's Section 11 application. The arbitral tribunal also rejected APPL's prayer in its application under Section 23(3) of the Arbitration Act[17] seeking to bring on record a detailed memo of parties which named Vishal LLP and Kishore as parties and also seeking to amend its prayer in its statement of claim to include Vishal LLP and Kishore.

APPL filed an appeal under Section 37(2)(a) of the Arbitration Act assailing the Section 16 Order before the Delhi HC.

By an order dated July 8, 2024, the Delhi HC dismissed this appeal and upheld the Section 16 Order ("**Impugned Order**").

Being aggrieved by the Impugned Order, APPL filed the present proceedings before the Supreme Court.

Issues

1. Whether service of a notice under Section 21 of the Arbitration Act and joinder in a Section 11 application are pre-requisites to implead a person/entity as a party to the arbitration proceedings?
2. What is the relevant inquiry that the arbitral tribunal must undertake when determining its own jurisdiction under Section 16 of the Arbitration Act?

[14] Section 21 of the Arbitration Act provides that arbitral proceedings commence on the date a party (respondent) receives a claimant's request seeking reference of a dispute to arbitration. The request for reference is commonly known as notice of arbitration.
[15] Section 11 of the Arbitration Act.
[16] Section 16 of the Arbitration Act provides that the arbitral tribunal may rule upon its own jurisdiction.
[17] Section 23(3) of the Arbitration Act provides that if the arbitral tribunal considers it appropriate, it may allow any party to supplement or amend their claim, during the course of the arbitral proceedings.

Findings and analysis

The Supreme Court allowed the appeal and *inter alia* held the following:

1. a notice invoking arbitration under Section 21 of the Arbitration Act is mandatory for determining the limitation period and for filing a Section 11 application. Mere failure to issue an arbitration notice or implead certain persons who are parties to an arbitration agreement in a Section 11 application, would not denude the arbitral tribunal's jurisdiction to implead them as parties during the arbitral proceedings;
2. the decision of the Delhi HC in *Alupro Building Systems Private Limited vs. Ozone Overseas Private Limited*[18] is overruled to the extent that it provides that non-service of a notice on a party nullifies the jurisdiction of the arbitral tribunal; and
3. in an application under Section 16 of the Arbitration Act, the arbitral tribunal must determine whether a non-signatory is a party to an arbitration agreement in line with the provisions of Section 7[19] of the Arbitration Act. For this exercise, the arbitral tribunal has to consider the ratio in the Constitution Bench judgment in *Cox and Kings Limited vs. SAP India Private Limited.*[20], wherein it was held that non-signatories can be impleaded to an arbitration if their conduct shows that they are veritable parties to the arbitration agreement.

In the facts of the present case, Vishal LLP and Kishore, despite being non-signatories had, through their conduct, consented to perform contractual obligations under the LLP Agreement and thus, the Supreme Court found them to be parties to the arbitral proceeding.

Conclusion

By the present decision, the Supreme Court has held that the arbitral tribunal is the master of its own jurisdiction under Section 16 of the Arbitration Act and its jurisdiction to implead parties to an arbitration proceeding is based solely on determining whether such person/persons is/are a party to the arbitration agreement. Even the issuance of the mandatory arbitration notice under Section 21 of the Arbitration Act is not a prerequisite for the arbitral tribunal to exercise its jurisdiction to determine the parties to an arbitral proceeding. This decision shows the continuous effort of the judiciary in reposing faith in arbitral tribunals and recognising arbitration as an effective means of dispute resolution.

Supreme Court clarifies scope of modification of arbitral awards under the Arbitration Act

A 5 (five) judge Constitution Bench of the Supreme Court in ***Gayatri Balasamy vs. M/s. ISG Novasoft Technologies Limited***[21] held that the courts possess a limited power to modify arbitral awards under Sections 34 and 37 of the Arbitration Act. The Supreme Court further clarified that this power is not absolute and may only be exercised in specific circumstances, such as when the arbitral award is severable, to correct clerical or computational errors, or to modify post-award interest. However, the Supreme Court stated that such power is always subject to the express statutory framework and legislative intent and cautioned that it may not be exercised to rewrite the award or to conduct a merits-based evaluation.

Brief facts

In this case, the Supreme Court referred a pivotal legal question to a 5 (five) judge Constitution Bench *viz.* whether courts possess the authority to modify arbitral awards under Sections 34 and 37 of the Arbitration Act. The brief facts leading to the lead reference are as follows:

[18] 2017 SCC OnLine Del 7228
[19] Section 7 of the Arbitration Act specifies what constitutes an arbitration agreement.
[20] (2024) 4 SCC 1
[21] Special Leave Petition (Civil) Nos. 15336 of 2021 (decided on April 30, 2025)

1. Gayatri Balasamy ("**Appellant**") joined ISG Novasoft Technologies Limited ("**Respondent**") as Vice President (M&A Integration Strategy) in April 2006. Just a few months into her tenure, she resigned in July 2006, alleging sexual harassment by the Respondent's Chief Executive Officer, Krishna Srinivasan ("**CEO**"). The Appellant's resignation was not accepted, and over the following year, the Respondent issued 3 (three) termination letters to the Appellant.
2. In response, the Appellant filed criminal complaints against the CEO and another company executive. The Respondent countered with criminal complaints of defamation and extortion against the Appellant. The dispute escalated and was eventually referred by the Supreme Court to arbitration.
3. The arbitral tribunal awarded the Appellant INR 2,00,00,000 (Indian Rupees two crore) as compensation, but the Respondent challenged the arbitral award before the Hon'ble Madras High Court ("**Madras HC**"). It was the case of the Appellant before the Madras HC that several of the Appellant's claims were not considered.
4. In 2014, a single-judge bench of the Madras HC modified the arbitral award under Section 34 of the Arbitration Act and granted an additional compensation of INR 1,60,00,000 (Indian Rupees one crore sixty lakh).
5. However, in 2019, the Division Bench of the Madras HC acting under Section 37 of the Arbitration Act reduced this additional amount and modified it to INR 50,000 (Indian Rupees fifty thousand), finding the earlier increase excessive.
6. Dissatisfied by the judgment of the Division Bench of the Madras HC, the Appellant appealed the same before the Supreme Court *via* a special leave petition. The Supreme Court recognised that the Appellant's case raised a significant legal issue and was referred to a larger bench due to conflicting judicial opinions by the Supreme Court in the past. Accordingly, the appeal was referred to a 5 (five) judge bench to clarify the legal position on the court's power to modify arbitral awards under Sections 34 and 37 of the Arbitration Act.

Key issue

Are Indian courts jurisdictionally empowered to modify an arbitral award under Sections 34 and 37 of the Arbitration Act? If so, to what extent?

Analysis and findings

By a majority of 4:1, the Supreme Court held that courts have a limited power to modify awards under Sections 34 and 37 of the Arbitration Act. The decision was centred around the following issues:

severability of arbitral awards;

hardship of parties;

correction of clerical or typographical errors;

variation of interest; and

exercise of powers under Article 142 of the Constitution of India ("Constitution") for modification of awards.

The findings rendered by the majority judgment and the minority judgment regarding each of these issues are summarised below:

Issue	**Majority view** "The limited power under Section 34 allows the court to vary or modify the award"	**Minority view** "…what is sought to be done is virtual mutilation of the fabric and not just the ironing out of the creases"
Severability [concurrence]	Authority to sever the invalid portion of the award from the valid portion is inherent in the jurisdiction to set aside an award. Modification and setting aside have different consequences – one is alteration, the other is annulment.	The consistent view has been that if claims falling foul of Section 34 of the Arbitration Act are not inseparably intertwined with the good portion of the award, the award can be severed. The power to set aside will include the power to partially set aside.
Hardship of parties [dissent]	Denying courts the power to modify awards would impose significant hardship, escalate costs and lead to unnecessary delays. This would defeat the objective of arbitration as parties would be compelled to undergo extra rounds of arbitration, in addition to the stages of challenge under Sections 34 and 37 of the Arbitration Act and special leave petition.	Recommencement of proceedings being expressly contemplated in the statute, the same cannot be brushed aside on the grounds of hardship of parties. When parties agree to arbitrate, they consciously agree with open eyes to step out of the normal judicial process and submit to being governed by the Arbitration Act.
Errors [concurrence]	Courts under Section 34 of the Arbitration Act possess the authority to rectify computational, clerical or typographical errors "as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation". Court must have no uncertainty or doubt in this regard – if the error is not apparent on the face of the record, the court cannot modify.	Courts under Section 34 of the Arbitration Act can invoke the power to correct computational errors, clerical or typographical errors or any other errors of similar nature "without modifying, altering or adding to the original award" – hence, a limited exception to M Hakeem's judgement[22] is made.
Interest [dissent]	For pendente lite interest, court may set aside the award of interest or remand the matter to the arbitrators. For post-award interest, courts will retain the power to modify the interest rate. Courts may increase or decrease the post-award interest, but only where there are compelling and well-founded reasons to do so.	Court under Section 34 of the Arbitration Act cannot modify the interest. The correct course would be to remit the matter to the arbitrator to make course correction. If the matter comes to court again and the grounds for setting aside are still present, there would be no choice but to set aside the award.

[22] *Project Director, National Highways No. 45 E and 220 National Highways Authority of India Vs. M. Hakeem and Anr.*, (2021) 9 SCC 1

Issue	**Majority view** "The limited power under Section 34 allows the court to vary or modify the award"	**Minority view** "…what is sought to be done is virtual mutilation of the fabric and not just the ironing out of the creases"
Article 142 of the Constitution [dissent]	This power should not be exercised where the effect would be to rewrite or modify the award on merits. However, the power can be exercised where required and necessary to bring the dispute to an end.	This power cannot be used to supplant substantive law, as express statutory provisions cannot be ignored and what cannot be achieved directly cannot be achieved indirectly. The power cannot be exercised as it will derogate from the core aspects of the Arbitration Act and breach a pre-eminent prohibition in the Arbitration Act.

Conclusion

1. The majority view of the Supreme Court affirms that Indian courts possess a limited power to modify arbitral awards under Sections 34 and 37 of the Arbitration Act. This power is not absolute but is confined to specific circumstances, such as when the arbitral award is severable, to correct clerical or computational errors, or to adjust post-award interest rates that are unreasonable or conflict with statutory or contractual benchmarks. The Supreme Court made it clear that such modifications do not entail a review on merits, thereby preserving the sanctity and finality of arbitral awards, except in cases where statutory grounds for intervention exist.
2. The majority emphasised that the statutory framework under Section 34 of the Arbitration Act restricts judicial intervention to procedural irregularities, jurisdictional errors, and public policy violations, and does not permit a wholesale merits review of the arbitral tribunal's findings. The Supreme Court distinguished between setting aside and modification, stating that while setting aside annuls the award, modification is a narrower power exercised only to correct apparent and severable errors. This approach seeks to strike a balance between upholding arbitral autonomy and ensuring that manifest errors do not go unaddressed.
3. Importantly, the Supreme Court clarified that remand to the arbitral tribunal under Section 34(4) of the Arbitration Act is discretionary and should be reserved for curable defects, such as gaps in reasoning. Direct modification by the court is permissible only for non-substantive corrections, such as computational slips, to avoid unnecessary delays and procedural complications. The Supreme Court also recognised the uniform application of Section 34 of the Arbitration Act across all arbitrations, refusing to carve out exceptions for statutory arbitrations unless expressly provided by legislation.
4. Further, the majority view of the Supreme Court held that under Article 142 of the Constitution, the Supreme Court is empowered to 'do complete justice' in any case. However, the minority view noted that this extraordinary power must be exercised sparingly and in harmony with the statutory scheme of the Arbitration Act. Article 142 of the Constitution cannot be invoked to override explicit legislative intent or to rewrite arbitral awards on merits, thus ensuring that the principle of party autonomy and the limited role of courts in arbitration are respected. The Supreme Court's nuanced approach preserves the integrity of the arbitral process while allowing to correct clear and severable errors, reinforcing both judicial restraint and 'complete justice'.

Supreme Court clarifies that compromise decrees asserting pre-existing rights are not subject to registration or payment of stamp duty

In the case of ***Mukesh vs. The State of Madhya Pradesh and Anr.***[23], the Supreme Court adjudicated on the issue of whether compromise decrees that assert pre-existing rights necessitate registration under the Registration Act, 1908 ("**Registration Act**") and are subject to stamp duty under the Indian Stamp Act of 1899 ("**Stamp Act**"). The Supreme Court analysed Section 17(2)(vi) of the Registration Act and held that any decree or order of a court (except the decree or order expressed to be made on compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings) would not require compulsory registration. The Supreme Court further enlisted 3 (three) conditions which are required to be satisfied to fall under the exception of Section 17(2)(vi) of the Registration Act. The Supreme Court further held that stamp duty is not chargeable on an order/decree of the court as the same does not fall within the documents mentioned in Schedule I or I-A read with Section 3 of the Stamp Act.

Brief facts

1. The appellant had filed a Civil Suit[24] ("**Suit**") before the First Civil Judge, Class-2, Badnawar, for declaration and permanent injunction against Abhay Kumar (**Respondent No. 2**), who is the adjacent landowner of the appellant, who attempted to sell the subject land to third parties, thereby dispossessing the appellant from the subject land.
2. Pending the Suit, both parties entered a compromise, based on which, the Suit came to be decreed in favour of the appellant and a consent decree was passed on November 30, 2013 ("**Compromise Decree**").
3. Pursuant to the Compromise Decree, the appellant applied for mutation of the subject land before the Tehsildar concerned, who in turn referred the case to the Collector of Stamps, District Dhar (M.P). Upon perusal of the records, the Collector of Stamps initiated proceedings under Section 33 of the Stamp Act and consequently directed the appellant to pay a sum of INR 6,67,500 (Indian Rupees six lakh sixty-seven thousand and five hundred) towards stamp duty, by order dated August 23, 2016 ("**Collector's Order**").
4. Challenging the Collector's Order, the appellant preferred a revision, which was dismissed by the Board of Revenue, Gwalior, Madhya Pradesh, *vide* order dated February 12, 2019 ("**Board's Order**"). Aggrieved by the Board's Order, the appellant preferred Miscellaneous Petition[25] to quash the Collector's Order and Board's Order before the High Court of Madhya Pradesh, Bench at Indore ("**Madhya Pradesh HC**"). However, the Madhya Pradesh HC dismissed the said Miscellaneous Petition *vide* its order dated December 6, 2019 ("**High Court Order**"). The High Court Order upheld the Collector's Order determining stamp duty at INR 6,67,500 (Indian Rupees six lakh sixty-seven thousand and five hundred) payable by the appellant *qua* the subject land, acquired by him by way of Compromise Decree, as affirmed by the Board's Order.
5. Therefore, being aggrieved by the High Court Order and the orders of lower authorities, the appellant filed an appeal before the Supreme Court.

Issues

1. Whether the Compromise Decree obtained by the appellant required registration under Section 17 of the Registration Act?
2. Whether the Compromise Decree is chargeable with stamp duty under the Stamp Act?

Findings and analysis

Issue 1: Registration is not required if the conditions enumerated in section 17(2)(vi) of the Registration Act are satisfied.

1. The Supreme Court held that Section 17(2)(vi) of the Registration Act carves out the distinction between the property which forms subject-matter of the suit and the property that was not the

[23] 2024 INSC 1026 (decided on December 20, 2024)
[24] Civil suit No. 47-A/2013
[25] Miscellaneous Petition No. 3317 of 2019

subject-matter of the suit, but for which a compromise has been arrived at. If a compromise decree involves immovable property other than the property for which a decree is prayed for, such a property would not be exempt and would require registration. To avail the exemption from the mandate of compulsory registration of documents conveying immovable property, the compromise decree arrived must be only in respect of the property that is the subject-matter of the suit.

2. The Supreme Court further held that to fall under the exception of Section 17(2)(vi) of the Registration Act, the following conditions must be satisfied:
   a) there must be a compromise decree as per the terms of the compromise without any collusion;
   b) the compromise decree must pertain to the subject property in the suit; and
   c) there must be a pre-existing right over the subject property, and the compromise decree should not create a right afresh.
3. The Supreme Court held that, in the instance case, in terms of the compromise entered into between the parties, the Suit was decreed in favour of the appellant. Hence, through the said Compromise Decree, the appellant did not obtain any new right, but he has asserted his pre-existing right/title/interest over the subject land. Thus, the appellant has satisfied the conditions enumerated in section 17(2)(vi) of the Registration Act. Hence, the subject land acquired by the appellant by way of Compromise Decree requires no registration.

Issue 2: Stamp Duty is not chargeable as the Compromise Decree will not operate as conveyance since no right is transferred.

1. In respect of the issue relating to payment of stamp duty for mutation of the subject land, the Supreme Court referred to Section 3 of the Stamp Act and noted that stamp duty is not chargeable on an order/decree of the court as the same does not fall within the documents mentioned in Schedule 22 I or I-A read with Section 3 of the Stamp Act. The Supreme Court (in the facts of the present case) held that the consent decree will not operate as conveyance, as no right is transferred and the same does not require any payment of stamp duty. Since the appellant has only asserted a pre-existing right and no new right was created through the consent decree, the document pertaining to mutation of the subject land is not liable to stamp duty.
2. The Supreme Court held that, in the instant case, the stamp duty imposed on the Compromise Decree was erroneous by both the Madhya Pradesh HC and the subordinate authorities. Consequently, the High Court Order was set aside, and the mutation of the revenue records in favour of the appellant was directed without the requirement of stamp duty.

Conclusion

This judgment establishes a critical precedent regarding the applicability of the Registration Act and the Stamp Act to consent decrees that do not establish any new rights in a property. The Supreme Court has conclusively determined that a compromise decree does not require registration if it satisfies the 3 (three) specified conditions. Furthermore, the Supreme Court clarified that when a document asserts a pre-existing right without creating any new rights through the consent decree, such a document is exempt from stamp duty. This judgment addresses potential ambiguities in transactions executed by compromise decrees and reinforces the principles surrounding registration and stamp duty compliance, offering clarity and guidance on such legal issues.

Supreme Court observes that it must specify whether a judgment is passed as a decision *inter se* parties or binding precedent

The Supreme Court[26] in ***NBCC (India) Limited vs. State of West Bengal and Ors.***,[27] referred the issue of whether a Micro, Small and Medium Enterprises ("**MSME**") can refer a dispute to the Micro and Small Enterprises Facilitation Council ("**Facilitation Council**") under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSME Act**") regarding execution of a contract which was entered when the said MSME was not registered as an MSME under Section of the MSME Act to a bench consisting of 3 (three) judges of the Supreme Court.

The Supreme Court observed that the question of law under consideration in the present matter was not formulated, discussed and decided in any other judgment of the Supreme Court, including the 2 (two) substantive judgments under the MSME Act, i.e. *Silpi Industries vs. Kerala State Road Transport Corporation*[28], ("**Silpi Industries Judgments**") and *Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited*[29], ("**Mahakali Foods Judgment**"). The Supreme Court further observed that:

1. the Supreme Court performs twin functions of decision making and precedent-making. Every judgment or order passed by the Supreme Court in disposing of appeals is not intended to be a binding precedent under Article 141 of the Constitution. However, as every judgment or order of the Supreme Court is considered as a binding precedent by the High Courts and the Subordinate Courts, it is necessary for the Supreme Court to state whether a particular decision is to resolve the dispute *inter se* parties and provide finality or whether the judgment is intended to be a binding precedent under Article 141 of Constitution; and
2. Section 18 of MSME Act is not restrictive and is a remedy for the resolution of disputes, and as such, it is kept open-ended to enable 'any party' to refer the dispute to seek redressal.

Brief facts

1. Dispute arose between M/s Saket Infra Developers Private Limited ("**Saket Infra**"/"**Enterprise**") and National Buildings Construction Corporation ("**NBCC**") in respect payments to be made by NBCC to Saket Infra for 4 (four) contracts entered between for construction projects at different locations in West Bengal. These contracts were entered before November 19, 2016, when Saket Infra filed a memorandum as a small enterprise under Section 8 of the MSME Act.[30]
2. On March 28, 2019, Saket Infra made a reference to West Bengal Facilitation Council for recovery of dues from NBCC. Pursuant to failure of the conciliation proceedings initiated by Facilitation Council under Section 18(2) of the MSME Act, the dispute was referred to arbitration under Section 18(3) of the MSME Act on January 19, 2021. However, NBCC challenged the jurisdiction Facilitation Council under Section 18 of MSME Act on the ground that Saket Infra was not registered under Section 8 of the MSME Act at the time of executing the 4 (four) contracts and, therefore, dispute falls outside the scope of the MSME Act.
3. Consequently:
    a) NBCC filed Writ Petition before Hon'ble High Court of Calcutta ("**Calcutta HC**") raising the jurisdictional question of the Facilitation Council entertaining reference under Section 18 of the MSME Act;
    b) the Ld. Single Judge Calcutta HC dismissed NBCC's petition holding that "the question of jurisdiction can be raised before the arbitral tribunal, which shall decide the same before entering into other questions";
    c) the Ld. Division Bench affirmed the Ld. Single Judge's decision holding that all objections, including those relating to maintainability, can be raised and contested before the arbitrator; and
    d) NBCC challenged the Division Bench judgment before the Supreme Court.

[26] HMJ P.S. Narasimha and HMJ Pankaj Mithal
[27] 2025 SCC OnLine SC 73 (C.A. No. 3705 of 2024) (decided on January 10, 2025)
[28] (2021) 18 SCC 790
[29] (2023) 6 SCC 401
[30] Section 8 - Memorandum of MSME

Submissions of the parties

1. NBCC, while relying upon Supreme Court's earlier judgments in Silpi Industries Judgments and Mahakali Foods Judgment, challenged the jurisdiction of Facilitation Council in entertaining the reference under Section 18 of MSME Act on the ground that Saket Infra registered itself after the contracts were executed. Saket Infra cannot avail the remedies under Section 18 of the MSME Act for supplies made prior to filing of Memorandum, since:
    a) Section 18 of the MSME Act provides that "any party to a dispute" may make a reference to the Facilitation Council. The said 'dispute' must be "with regard to any amount due under Section 17";
    b) Section 17 of the MSME Act provides that, "for any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon under Section 16";
    c) Section 16 imposes the liability of the buyer to pay interest to the 'supplier' on the amounts payable to it under Section 15 for the supply of goods and rendering of any services; and
    d) the expression 'supplier' mentioned in Sections 15, 16 and 17 of the MSME Act is defined in Section 2(n), as "a micro or small enterprise which has filed a memorandum with the authority referred to in sub-section (1) of Section 8 and includes…". Thus, a 'supplier' can only be an enterprise that has filed a memorandum under Section 8 of the MSME Act;
2. Saket Infra contended that the question of maintainability can be raised before the arbitral tribunal as directed by the Single Judge and Division Bench of the Calcutta HC.

Issue

The issue that fell for consideration before the Supreme Court was whether an MSME not registered under Section 8 of the MSME Act before the execution of contract can make a reference to the Facilitation Council under Section 18 of MSME Act for dispute resolution?

Analysis and observations

The Supreme Court after analysis of the statutory provisions of MSME Act was pleased to hold that the Facilitation Council can entertain a reference under Section 18 of the MSME Act also if the Enterprise was initially not registered under Section 8 of the MSME Act at the time of entering into the contract. In this regard, Supreme Court *inter alia* observed that:

1. Section 18 of MSME Act does not use the expression supplier, instead employs the phrase, *"any party to a dispute, may"*;
2. definition of the expression 'supplier' in Section 2(n) is not confined to a micro or a small enterprise which has filed a memorandum under Section 8 (1) but also includes companies or other entities engaged in selling goods or rendering services by an enterprise; and
3. Section 8 of MSME Act grants a discretion to a micro or a small enterprise in filing a memorandum with the authority.

Conclusion

This judgment further highlights the importance of reading and applying the decisions of the Supreme Court considering the issues which were decided in the facts of the respective cases. The Supreme Court again clarifies that the Supreme Court while adjudicating rights of the parties and resolving the disputes between them embodies a declaration of law which operates as a binding principle for future cases, where facts are substantially same. However, the Supreme Court might not lay down principle of law in every dispute raised before it and there might be judgments wherein the Supreme Court may simply resolve a dispute between *inter se* the parties. Therefore, not every judgment of the Supreme Court is to be read as a binding precedent under Article 141 of the Constitution.

Forfeiture of earnest money, if 'reasonable', does not amount to imposing a penalty and therefore does not fall under Section 74 of the Indian Contract Act, 1872

The Supreme Court in ***Godrej Projects Development Limited vs. Anil Karlekar and Ors.***[31], has held that forfeiture of a reasonable amount of earnest money is permissible and does not constitute a penalty under Section 74 of the Indian Contract Act, 1872 ("**Contract Act**"), provided it is not excessive.

Brief facts

1. The Respondents *viz.* Anil Karlekar and others ("**Complainants/Respondents**") booked an apartment with Godrej Projects Development Limited ("**Appellant/Developer**") in its project styled as 'Godrej Summit' ("**Project**") by paying an application money of INR 10,00,000 (Indian Rupees ten lakh).
2. The Appellant allotted an apartment to the Complainants in the Project. Pursuantly, an Apartment Buyer Agreement ("**Agreement**") was executed between the parties.
3. Subsequently, the Appellant completed the construction of the Project and offered possession to the Complainants. However, the Complainants sought cancellation of the allotment and demanded a full refund of INR 51,12,310 (Indian Rupees fifty one lakh twelve thousand three hundred and ten).
4. Thereafter, the Complainants filed a Consumer Complaint ("**Complaint**") against the Appellant before the National Consumer Disputes Redressal Commission ("**NCDRC**"), seeking a full refund along with 18% interest per annum.
5. The NCDRC, *vide* order dated October 25, 2022, disposed of the Complaint and held that the Appellant could deduct only 10% of the Basic Sale Price ("**BSP**") as cancellation charges. In effect, the NCDRC directed the Appellant to refund the remaining amount along with 6% simple interest per annum, within a specified period. Aggrieved by the NCDRC's decision, the Appellant filed an appeal before the Supreme Court.

Issue

Whether forfeiture of a reasonable amount of earnest money deposit constitutes a penalty under Section 74 of the Contract Act?

Findings and analysis

While partly allowing the appeal, the Supreme Court held as follows:

1. forfeiture of earnest money is permissible, provided it is reasonable and not excessive or arbitrary. In such circumstances, it will not amount to a 'penalty' under Section 74 of the Contract Act;
2. while relying on its judgment in *Maula Bux vs. Union of India*[32], the Supreme Court reiterated that if the forfeiture of earnest money under a contract is reasonable, then it does not fall within Section 74 of the Contract Act, inasmuch as, such a forfeiture *does not amount to imposing a penalty*;
3. it further observed that if under the terms of the contract, the party in breach undertook to pay a sum of money or to forfeit a sum of money which he had already paid, such an undertaking is in the nature of a penalty and would attract the provisions of Section 74 of the Contract Act; and
4. it also analysed and relied upon the decision rendered by the NCDRC in *DLF Limited vs. Bhagwanti Narula*[33] and *Ramesh Malhotra and Anr. vs. Emaar Mgf Land Limited and Anr.*[34],wherein it was held that 10% of the BSP is a reasonable amount which is liable to be forfeited as earnest money. Additionally, the Supreme Court also relied on other decisions passed by it in *Ireo Grace Realtech Private Limited vs. Abhishek Khanna and Ors.*[35], *Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. vs. DLF Southern Homes Private Limited and Ors*[36], *Pioneer Urban Land and Infrastructure Limited vs. Govindan Raghavan*[37], and held that the forfeiture of the 20% of the BSP as earnest money by the Appellant was excessive,

[31] Civil Appeal No. 3334 of 2023 (decided on February 3, 2025)
[32] (1969) 2 SCC 554
[33] 2015 SCC OnLine NCDRC 1613
[34] 2020 SCC OnLine NCDRC 789
[35] (2021) 3 SCC 241
[36]. (2020) 16 SCC 512
[37] (2019) 5 SCC 725

one-sided and unconscionable and therefore, not enforceable in law.

Conclusion

The Supreme Court has reaffirmed that the forfeiture of earnest money is permissible, provided it is reasonable and proportionate. It upheld the validity of forfeiture of earnest money observing that such clauses should not be one-sided or excessively punitive and that such an amount must be just and fair not qualifying as a penalty under Section 74 of the Contract Act. Any forfeiture that is excessive, punitive, or one-sided amounts to a penalty.

While earnest money serves as security for contractual performance, its forfeiture should not be excessive to the extent that it qualifies as a penalty. If a forfeiture is deemed unreasonable or oppressive, the court has the authority to intervene and reduce the amount, ensuring that contractual terms remain equitable and enforceable.

Supreme Court upholds the constitutional validity of the pecuniary jurisdiction of consumer commissions established under the Consumer Protection Act, 2019 basis the value of goods or services paid as consideration

The Supreme Court in ***Rutu Mihir Panchal and Ors. vs. Union of India and Ors.***[38] has held that the determination of the pecuniary jurisdiction of the District, State, and National Consumer Commissions ("**Consumer Commissions**") based on the consideration paid for the purchase of goods and services under Sections 34 (1), 47 (1)(a)(i) and 58 (1)(a)(i) of the Consumer Protection Act, 2019 ("**2019 Act**") ("**Provisions**") is constitutional and not violative of Article 14 of the Constitution.

Brief facts

This judgement deals with questions of law arising out of: Writ Petition under Article 32 of the Constitution ("**Writ Petition**")[39]; and Civil Appeal[40] challenging an order passed by the NCDRC ("**Civil Appeal**"). The facts of each case are as follows:

Writ Petition

The husband of Rutu Mihir Panchal ("**Petitioner**") purchased a Ford Endeavour ("**Vehicle**") from an authorised dealer of Ford India Private Limited for INR 31,19,000 (Indian Rupees thirty-one lakh nineteen thousand). On November 20, 2018, the Vehicle caught fire, leading to the death of the Petitioner's husband. The Petitioner filed a consumer complaint before the District Consumer Disputes Redressal Commission ("**DCDRC**"), Vadodara seeking compensation of INR 51,49,00,000 (Indian Rupees fifty-one crore forty-nine lakh) along with interest. Pending the disposal of the complaint, the Petitioner filed the Writ Petition seeking that the Provisions be declared unconstitutional. This was on the basis that the Petitioner was compelled to approach the DCDRC, Vadodara because of the statutory regime under the 2019 Act, i.e., the pecuniary jurisdiction being determined according to the value of the goods or services paid as consideration. It was alleged that the Petitioner could have directly approached the NCDRC under the repealed Consumer Protection Act, 1986 ("**1986 Act**") where the pecuniary jurisdiction was based on the compensation claimed.

Civil Appeal

The husband of Gurjeet Kaur Saini ("**Appellant"**) passed away due to COVID-19. When the Appellant's claim based on an insurance policy offered by Lions International Club was denied, she filed a consumer complaint before the NCDRC seeking compensation of INR 14,94,00,000 (Indian Rupees fourteen crore ninety-four lakh). The NCDRC rejected the Appellant's complaint on the ground that the consideration for the

[38] 2025 SCC OnLine SC 974 (decided on April 29, 2025)
[39] Writ Petition (Civil) No. 282 of 2021
[40] Civil Appeal No. 5670 of 2025 arising out of SLP (C) No. 1738 of 2022

insurance policy did not exceed INR 10,00,00,000 (Indian Rupees ten crore) and thus, the NCDRC did not have pecuniary jurisdiction to entertain the complaint.

Before the Supreme Court, the Petitioner/Appellant contended that the 2019 Act replaced the pecuniary jurisdiction of the Consumer Commissions from the value of compensation claimed under the 1986 Act to the value of consideration paid, which is unconstitutional; the present statutory regime gives rise to an anomalous situation wherein a consumer claiming a large compensation for a lower consideration would be relegated to the district or state commissions whereas a consumer seeking a lower compensation may be entitled to approach the NCDRC even in the event of a higher consideration paid; the new criterion for determining pecuniary jurisdiction is discriminatory since consumers that claim identical compensation but have paid different considerations are treated differently; given that the definition of a 'consumer' under the 2019 Act does not discriminate on the basis of consideration paid, the restriction of access to judicial remedies on the basis of consideration paid is illegal and arbitrary; and there is no rational for introducing a new criterion for determining the pecuniary jurisdiction of the Consumer Commissions.

The respondents *inter alia* contended that the pecuniary classifications created on the basis of value of goods and services paid as consideration has a rational nexus with the object sought to be achieved, i.e., timely settlement of consumer disputes; and the Provisions are not manifestly arbitrary and were introduced to prevent exaggerated claims.

Issue

Whether empowering the Consumer Commissions to exercise jurisdiction based on the value of the goods or services paid as consideration is violative of Article 14 of the Constitution?

Findings and analysis

The Supreme Court held that the Provisions of the 2019 Act are constitutional for the following reasons:

1. the Parliament has the legislative competence and power to prescribe limits of pecuniary jurisdiction of courts and tribunals, including the district, state, and national commission;
2. the test for determining whether a provision of law is violative of Article 14 of the Constitution is founded on 2 (two) principles[41]: (a) the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others; and (b) the differentia must have a rational relation to the object sought to be achieved by the statute has been satisfied; and
3. the classification of pecuniary jurisdiction based on value of goods and services on the basis of the amount paid as consideration is valid and has a direct rational nexus to the object of creating a hierarchical structure of judicial remedies.

Apart from upholding the validity of the Provisions, the Supreme Court directed the Central Consumer Protection Council and the Central Consumer Protection Authority to take such measures as may be necessary for survey and review and advise the government about necessary measures for the effective and efficient working of the 2019 Act.

Conclusion

The classifications set forth in the Provisions (which have been further revised by the Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021) prescribe a reasonable and rationale determination of the pecuniary jurisdiction of consumer courts. These Provisions prevent consumers from approaching Consumer Commissions solely on the basis of self-assessed claims for damages.

[41] *State of West Bengal vs. Anwar Ali Sarkar* (1952) 1 SCC 1

High Courts

A Division Bench of the Delhi HC in an appeal under Section 37 of the Arbitration Act sets aside a Section 34 order as well as the arbitral award

A Division Bench of the Delhi HC in the matter of the ***Union of India (through the Ministry of Petroleum & Natural Gas) vs. Reliance India Limited and Ors.***[42], allowed an appeal under Section 37 of the Arbitration Act ("**Appeal**") and set aside an arbitral award dated July 24, 2018 ("**Award**"); and an order dated May 9, 2023, passed by a Single Judge of the Delhi HC under Section 34 of the Arbitration Act ("**S.34 Order**").

The Appeal was filed by the Union of India against the Award and S.34 Order, both of which were passed in favour of Reliance Industries Limited ("**RIL**"). These proceedings arose from an arbitration invoked by RIL against the Union of India under a Production Sharing Contract ("**PSC**") *inter alia* for exploration of natural gas in the Krishna-Godavari Basin.

Brief facts

The Union of India entered into a PSC with a consortium of *inter alia* RIL and Niko Limited (**"Niko"**) regarding Block Kg-DWN-98/3 ("**Reliance Block**") situated in Krishna-Godavari Basin. The Union of India also entered into another PSC with Cairn Energy India Limited ("**CEIL**") and Oil and Natural Gas Corporation Limited ("**ONGC**") regarding Block KG-DWN-98/2 and Block KG-OS-IG ("**ONGC Blocks**"). ONCG acquired the rights from CEIL in respect of Block KG-DWN-98/2. The ONGC Blocks adjoined the Reliance Block.

These proceedings have their genesis in a dispute between ONGC and RIL regarding the migration of gas from the ONGC Blocks to the RIL Block and a report prepared by DeGolyer and MacNaughton ("**D&M**") for Niko, which was not forwarded to the Union of India ("**D&M Report**"). The D&M Report had concluded that there was an indication of reservoir connectivity and gas migration across the ONCG Blocks and the RIL Block.

In 2015, ONGC filed a writ petition before the Delhi HC against RIL and the Union of India alleging that due to migration of gas, RIL had been unjustly enriched. During the pendency of the writ petition, ONGC and RIL agreed to the appointment of D&M to undertake a third-party study on the allegations of migration of gas. The Union of India constituted a single member committee to consider this report and based on the findings of the single member committee, the Union of India issued a demand notice of USD 1.5 billion (US Dollars one billion five hundred million) (plus interest) to RIL for unjust enrichment for benefitting from the migration of gas.

RIL invoked arbitration under the PSC seeking *inter alia* a declaration that it had the right to produce all hydrocarbons from wells in its contract area, which would include hydrocarbons that could have migrated to its wells from an adjacent block. By a majority of 2:1, the arbitral tribunal allowed RIL's claim and *inter alia* held that RIL was permitted and required to extract all available gas within its contract area for the benefit of the Union of India, even if, such gas migrated from beyond the contract area; RIL was not unjustly enriched; and RIL was *inter alia* required to disclose the D&M Report and other important information regarding connectivity of the reservoirs, however, the non-disclosure was not a material breach of the PSC.

The Union of India filed a petition under Section 34 of the Arbitration Act before a Single Judge of the Delhi HC challenging the Award on *inter alia* the following grounds: the Award suffered from patent illegality since despite holding that RIL had suppressed the D&M Report, the same was held not to be a material breach of the PSC; and the Award erred in holding that RIL could not be made accountable for selling gas beyond its contract area in the teeth of the Public Trust Doctrine ("**PTD**") as the same fell within the public policy of India.

By the said order, the challenge came to be rejected on the basis of the following findings, the arbitration was an international commercial arbitration and the ground of patent illegality was not available to interfere with the Award; and there was no dispossession of title/ownership of the gas from the Union of India and the PTD was not contravened.

The Union of India preferred the Appeal against the said order under Section 37 of the Arbitration Act.

[42] 2025 SCC OnLine Del 841 (February 14, 2025)

Issues

1. Whether the arbitration proceeding *inter se* the Union of India and RIL was an international commercial arbitration?
2. Whether the Single Judge erred in not examining the Award under Section 34 (2A) of the Arbitration Act on account of patent illegality, leaving the appeal court under Section 37 of the Arbitration Act to decide the issue?

Findings and analysis

The Division Bench of the Delhi HC allowed the Appeal on the following grounds:

1. the Single Judge erred in holding that the arbitration was an international commercial arbitration, since the Award had come to the conclusion that RIL, an Indian entity was the sole claimant, and that Niko was not a formal party to the arbitration. In this regard, the Delhi HC relied upon the decisions of the Supreme Court in *L&T-SCOMI vs. MMRDA*[43] and *Perkins Eastman Architects DPC vs. HSCC (India) Limited*[44], which held that the lead claimant's nationality determined the nature of the arbitration and when the lead member in an arbitration was an Indian entity, the arbitration must be treated as a domestic arbitration;
2. the scope of Section 37 of the Arbitration Act is akin to that of Section 34 of the Arbitration Act. RIL's non-disclosure of the D&M Report was a material breach of the PSC and the Award's findings were patently illegal;
3. RIL had no right to extract the migrated gas without explicit approval of the Union of India as held by the Supreme Court in *Reliance Natural Resources Limited vs. Reliance Industries Limited*[45];
4. RIL had unjustly benefitted from the non-disclosure of the D&M Report and extraction of the migrated gas from the ONGC Block, thus causing losses to the public exchequer especially given that the commodity at hand was a vital resource held by the Union of India as a trustee in public interest; and
5. the Award was based on conjectures and surmises. The view taken in the Award was not a possible view and was in violation of the fundamental law of India and patently erroneous.

Conclusion

This decision is a rare instance in which a court acting under Section 37 of the Arbitration Act has set aside both an arbitral award as well as the order passed under Section 34 of the Arbitration Act on that award by applying the principles of patent illegality under Section 34 of the Arbitration Act. This judgment reaffirms the principle that the provisions of Section 34 of the Arbitration Act apply equally to proceedings under Section 37 of the Arbitration Act.

A Limited Liability Partnership is bound by the arbitration clause in a Limited Liability Partnership Agreement despite not being a signatory to it

A Single Judge of the Bombay High Court ("**Bombay HC**") has in ***Kartik Radia vs. M/s. BDO India LLP and Anr.***[46] held that disputes between the partners of a Limited Liability Partnership ("**LLP**") and the LLP are covered by the arbitration clause contained in the LLP Agreement ("**LLP Agreement**") to which the LLP itself is not a signatory.

Brief facts

Kartik Radia ("**Applicant**"), a former partner of BDO India LLP ("**Respondent No. 1**") was expelled from Respondent No. 1 by Mr. Milind Kothari ("**Respondent No. 2**" and together with Respondent No. 1 referred to as "**Respondents**"), the managing partner of Respondent No. 1. The Applicant's grievance was

[43] (2019) 2 SCC 271
[44] (2020) 20 SCC 760
[45] (2010) 7 SCC 1
[46] Commercial Arbitration Application No. 31 of 2022 (March 4, 2025)

regarding his treatment, and misconduct by the Respondents in effecting the expulsion. The Applicant issued an arbitration invocation notice nominating an arbitrator. The Respondents refused to appoint their nominee arbitrator. Given the same, the Applicant filed an application under Section 11 of Arbitration Act seeking appointment of an arbitrator ("**Application**").

The Applicant *inter alia* contended that disputes between an LLP and its partners are covered by the arbitration agreement contained in the LLP Agreement even when the LLP is not a signatory to the LLP Agreement. Further: (a) Section 26 of the LLP Act, 2008 ("**LLP Act**") provides that every partner is an agent of the LLP; and (b) Section 27 of the LLP Act provides that the LLP is liable for the acts of its partners.

Respondent No. 1 *inter alia* contended that the Applicant seeks to initiate arbitration proceedings against the LLP, which is not a party to the arbitration agreement; the arbitration clause only covers disputes between the partners. The jurisdiction of the arbitral tribunal cannot be extended to cover disputes between a partner and the LLP; the present dispute is not arbitrable given that the dispute is between the Applicant and Respondent No. 1, who is not a signatory to the arbitration agreement; and every LLP has 2 (two) options i.e., having an agreement only amongst the partners and having an agreement between the LLP and its partners. The exclusion of the Respondent No. 1 from the LLP Agreement is a conscious choice of leaving the LLP out of the mix of rights and duties, thereby suggesting exclusion from arbitration.

Respondent No. 2 *inter alia* contended that the arbitration invocation notice was addressed to Respondent No. 2 and contained allegations and grievances that were personal in nature; and Applicant made reference to the injury of his image and to his defamation at the hands of the Respondents, and defamation is not arbitrable.

Issue

Whether disputes between partners of an LLP and the LLP would be covered by the arbitration agreement contained in the LLP Agreement to which the LLP is not a signatory?

Findings and analysis

The Bombay HC disposed of the Application and *inter alia* held as follows:

1. an LLP is not a third party to an LLP Agreement in the manner that the concept of 'third parties" is conventionally understood. The LLP Agreement is the charter document that gives agency to the partners to operate the LLP. An LLP is duty-bound to act in accordance with the LLP Agreement. To argue that there is no privity to the very document governing the body corporate is not a sustainable argument;

2. in the present case, the subject matter of arbitration would *inter alia* include any construction or application of the LLP Agreement, matters relating to the business and affairs of Respondent No. 1 and the rights, duties or liabilities of its partners. This would necessarily entail Respondent No. 1 being a necessary party to the dispute;

3. whether a non-signatory has accorded implicit consent to the arbitration agreement is a matter to be inferred through the acts, conduct, and circumstances including relationship between the contracting parties, the commonality of the subject matter and the involvement of such party in the performance of the contract containing the arbitration clause. The operation of the LLP during its existence is the common commercial objective of the parties to the LLP Agreement. Therefore, there is no merit in the argument that despite the LLP being the subject matter of the LLP Agreement, the LLP itself is extraneous to it;

4. the contention that the LLP is an alien to the LLP Agreement is untenable from the scheme of the LLP Act *inter alia* since Section 2(1)(o) of the LLP Act, which defines 'limited liability partnership agreement' makes it clear that the subject matter of an LLP Agreement is the determination of mutual rights and duties of the partners, and their rights and duties in relation to the LLP; in terms of Section 2(1)(q) of the LLP Act which defines 'partner', the entry and exit of a partner from an LLP is governed by the LLP Agreement; and Section 23(4) of the LLP Act provides that if there is no agreement on any matter, then the mutual rights and duties of the partners and the LLP would be governed by the First Schedule of the LLP Act,

which provides that disputes arising therefrom would necessarily be referred to arbitration. This would necessarily render the LLP a necessary party to the arbitration proceedings relating to its operation and governance, despite not being a signatory to the LLP Agreement;

5. the scope of a Section 11 of the Arbitration Act is to examine the existence of an arbitration agreement, which the Respondents have submitted does not exist. The LLP Agreement contains an arbitration clause. The dispute relating to the expulsion of a partner being the subject matter of merits, whether Respondent No. 1 is a necessary party is for the arbitral tribunal to decide and cannot be rejected at this stage;
6. the arbitration invocation notice was issued to Respondent No. 2 in his capacity as the managing partner of Respondent No. 1. Therefore, to read it as a personal dispute of the Applicant with Respondent No. 2 in his individual capacity is a misconceived contention. Further, under Section 26 of the LLP Act, every partner is an agent of the LLP, and under Section 27(2), the LLP is liable for the acts of its partners; and
7. in the present case, the question whether a part of the claim and the approach to be taken in respect of alleged injury of the Applicant's image squarely falls within the domain of the arbitral tribunal, which has the power to rule on its own jurisdiction under Section 16 of the Arbitration Act.

In view of the above, the Application was disposed and a nominee arbitrator on behalf of the Respondents was appointed by the court.

Conclusion

By this significant judgement, the Bombay HC has held that an LLP cannot avoid arbitration proceedings on the basis that the LLP itself is not a signatory to the LLP Agreement. A non-signatory LLP to the LLP Agreement may be impleaded in arbitration proceedings *inter alia* on the ground that an LLP is not a third party to the LLP Agreement and there is privity between a partner of the LLP and the LLP under the document that governs it, i.e., the LLP Agreement to which the LLP is albeit not a signatory.

Jurisdiction of the Real Estate Regulatory Authority will not be ousted inspite of an arbitration clause in an agreement for sale

The Bombay HC, while deciding a second appeal in the case of ***M/s. Rashmi Realty Builders Private Limited vs. Mr. Rahul Rajendrakumar Pagariya and Ors.***,[47] *inter alia* held that the jurisdiction of the Real Estate Regulatory Authority established under section 20 of the Real Estate (Regulation and Development) Act, 2016 ("**RERA**") will not be ousted notwithstanding an arbitration clause in the agreement entered into between the promoter and the allottees.

Brief facts

1. The Appellant ("**Promoter**") and the Respondents ("**Allottees**") executed a memorandum of understanding recording that the Promoter had agreed to allot a residential unit/ flat to the Allottees for consideration and in case of any dispute the same be referred to a sole arbitrator to be appointed by the Promoter and the award passed will be binding on both parties.
2. Subsequently, disputes arose as despite having made substantial payment, the Promoter failed to finish the construction work within the stipulated time.
3. The Allottees filed a complaint for refund alongwith compensation before the Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") under Section 31(1) r/w Section 18 of RERA. MahaRERA ruled that since the parties are yet to enter into a registered agreement for sale, the provisions of Section 18 of RERA are not applicable and dismissed the complaint.
4. The order of MahaRERA was challenged by the Respondents before the Maharashtra Real Estate Appellate Tribunal ("**Tribunal**"). The Tribunal

[47] 2024: BHC-AS:50612 (decided on September 5, 2024)

allowed the appeal and set aside the order passed by MahaRERA and directed the Appellant to refund the amount along with interest from the date of payment till realisation at the rate of highest marginal cost of lending rate of State Bank of India plus 2%. This order of the Tribunal came to be challenged by way of a second appeal before the Bombay HC.

Issue

Whether the jurisdiction of Real Estate Regulatory Authority established under Section 20 of RERA is ousted, if the agreement between the promoter and the allottee contains arbitration clause?

Findings and analysis

1. All disputes relating to rights in *personam* are considered to be amenable to arbitration and all disputes relating to right in *rem* are required to be adjudicated by courts and public tribunals, being unsuited for arbitration.
2. The doctrine of election to select arbitration as a dispute resolution mechanism is available only if the law accepts existence of arbitration as an alternate remedy. There should not be any inconsistency or repugnancy between the provisions of the mandatory law and arbitration as an alternative.
3. A dispute covered by RERA cannot be termed as a right in *personam* as a decision will affect the rights of other allottees as well as the rights of association of allottees (*erga omnes* effect). Upon examining the provisions of RERA, it is clear that special rights are created and for enforcement of the same special forums are established for ensuring enforcement and execution of these rights. Moreover, RERA being a special statute, the disputes under RERA would override the general statute being the Arbitration Act.

Conclusion

A dispute covered under RERA is non-arbitrable in nature and the jurisdiction of RERA is not ousted even if an agreement between the parties contains an arbitration clause.

High Courts do not have the power to condone the delay in filing an appeal beyond the period stipulated under Section 42 of the Prevention of Money Laundering Act, 2002

A Division Bench of the Bombay HC has, in ***The Assistant Director, Directorate of Enforcement vs. The Branch Manager, The Goa State Co-op Bank Limited,***[48] held that the proviso to Section 42 of the Prevention of Money Laundering Act, 2002 ("**PMLA**") expressly excludes the applicability of Section 5 of the Limitation Act such that a High Court cannot condone the delay in filing an appeal beyond the stipulated period of 120 (one hundred and twenty) days under Section 42 of the PMLA.

Brief facts

The Assistant Director, Directorate of Enforcement, Surat ("**Appellant**") filed a complaint under Section 5(5) of the PMLA before the Adjudicating Authority ("**AA**") in respect of a provisional attachment order dated July 17, 2017 ("**PAO**") passed under Section 5(1) of the PMLA attaching the property of the Goa State Co-op Bank Limited ("**Respondent**"). By its order dated December 28, 2018, the AA confirmed the PAO under Section 8 of the PMLA ("**AA Order**"). Being aggrieved by the AA Order, the Respondent preferred an appeal before the Appellate Tribunal under Section 26 of the PMLA. By an order dated July 4, 2018, the Appellant Tribunal allowed the appeal and set aside the PAO as well as the AA Order ("**AT Order**").

[48] 2025 SCC OnLine Bom 77 (decided on January 14, 2025)

Thereafter, the Appellant challenged the AT Order under Section 42 of the PMLA before the Gujarat High Court ("**Gujarat HC**") and filed an application seeking condonation of delay of 5 (five) days in filing the appeal. While the delay was condoned by the Gujarat HC, it was realised that by virtue of the explanation (ii) of Section 42 of PMLA, the appeal would lie before the Bombay HC. Accordingly, the appeal filed before the Gujarat HC was withdrawn, and a first appeal was filed by the Appellant before the Bombay HC after a delay of 132 (one hundred and thirty-two) days from the date of withdrawal. In these circumstances, the Appellant filed the present interim application seeking condonation of delay of 132 (one hundred and thirty-two) days ("**Interim Application**").

Before the Bombay HC, the Appellant *inter alia* contended that the High Court would have the power to condone the delay even beyond the period of 120 (one hundred and twenty) days prescribed under the PMLA since the provisions of Section 42 of the PMLA do not preclude or expressly exclude the application of Section 5 of the Limitation Act; and as per Section 29 (2) of the Limitation Act, where any special or local law *inter alia* prescribes a period of limitation different from the period prescribed by the Schedule of the Limitation Act, the provisions contained in Sections 4 to 24 of the Limitation Act will apply only when the same are not expressly excluded by such special or local law; In *Faizal Hasamali Mirza alias Kasib vs. State of Maharashtra and Anr*[49] (**"Faizal Mirza"**), the Bombay HC considered the provisions of Section 21 of the National Investigation Agency Act, 2008 ("**NIA Act**") which are similar to the provisions of Section 42 of the PMLA and held that the court has the power to condone the delay beyond the period stipulated therein.

Issue

Whether the High Court has the power to condone the delay in filing an appeal beyond the period prescribed under section 42 of the PMLA?

Findings and analysis

The Bombay HC dismissed the Appellant's Interim Application and *inter alia* held as follows:

1. under Section 42 of the PMLA, an appeal is required to be filed within a period of 60 (sixty) days (initial period). However, pursuant to the proviso to Section 42 of the PMLA, the High Court may, upon sufficient cause being shown, condone the delay for a further period not exceeding 60 (sixty) days (extended period). To hold that the High Court can entertain an appeal even beyond the extended period stipulated in the proviso to Section 42 would render the words "not exceeding sixty days" otiose;
2. Section 42 of the PMLA need not expressly exclude Section 5 of the Limitation Act to render it inapplicable to Section 42 of the PMLA. It would suffice if the language of the statue clearly indicates that Section 5 of the Limitation Act has been excluded. The words "within a further period not exceeding sixty days" used in the proviso to Section 42 of the PMLA expressly excludes the applicability of Section 5 of the Limitation Act to an appeal filed thereunder; and
3. in Faizal Mirza, the court came to the finding that it has the power to condone the delay beyond the stipulated period since an appeal filed by an accused under Section 21 of the NIA Act would be a part of the right to life and liberty as enshrined in Article 21 of the Constitution. Accordingly, the word 'shall' in Section 21(5) is required to be read as 'may' and is directory in nature. Thus, the language of Section 21 of the NIA Act and Section 42 of the PMLA are materially different.

Conclusion

This judgment holds that High Courts do not have the power to condone the delay in filing an appeal beyond the stipulated period of 120 (one hundred and twenty) days prescribed under Section 42 of the PMLA. This judgment also clarifies that the extension provision prescribed in Section 5 of the Limitation Act (including for any appeals) would not apply to appeals under Section 42 of the PMLA since the language of Section 42 of the PMLA itself clearly reflects the legislature's intent to restrict any extension of the limitation period. Consequently, parties seeking to challenge an order under Section 42 of the PMLA must mandatorily comply within the statutory period envisaged therein.

[49] 2023 SCC OnLine Bom 1936

Takedown or overreach: A legal analysis of X Corp's challenge to government mandated digital censorship

The Hon'ble High Court of Karnataka ("**Karnataka HC**") in ***X Corp. vs. Union of India***[50] raises a regulatory challenge within the domain of intermediary liability and content governance. The writ petition filed before the Karnataka HC raises foundational issues around statutory interpretation, executive accountability, and digital free speech under the Information Technology Act, 2000 ("**IT Act**").

The case squarely contests the Union Government's alleged misuse of Section 79(3)(b) of the IT Act to compel content removal[51], a provision originally crafted to define the limits of intermediary protection, not to confer direct takedown authority.

Brief facts

X Corp (formerly Twitter Inc.), registered as a "significant social media intermediary" under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IT Rules**"), operates a major platform enabling global communication.

The dispute arises from multiple takedown directions issued by the Union Government through the 'Sahyog' portal, a centralised interface for law enforcement engagement with intermediaries. According to X Corp, these directions were issued under Section 79(3)(b) of the IT Act, which deals with loss of safe harbour if intermediaries fail to act upon unlawful content once notified.

The petition argues that such actions violate the Supreme Court ruling in *Shreya Singhal vs. Union of India*[52], which held that content removal must comply with Section 69A. The petitioner also asserts that informal government communications, lacking statutory underpinning, cannot displace due process under Indian law.

Key issues

1. **Misuse of Section 79(3)(b) of the IT Act**: X Corp asserts that Section 79(3)(b) of the IT Act is being wrongfully invoked as a source of takedown power, bypassing Section 69A of the IT Act. Section 79(3)(b) of the IT Act merely disqualifies intermediaries from safe harbour if they fail to expeditiously remove content *after* receiving 'actual knowledge' through a lawful order. It does not, by itself, confer power on the executive to issue such orders.
2. **Unlawful operationalisation of the 'Sahyog' portal':** The petition challenges the legal sanctity of the 'Sahyog' portal, alleging that it creates an informal enforcement apparatus that bypasses transparency, recordability, and appeal rights. It is argued that such informality is contrary to the rule of law, and inconsistent with Article 14 and Article 19(1)(a) of the Constitution.
3. **Coercive threats and safe harbour protections:** X Corp claims that it has been threatened with withdrawal of safe harbour protections and punitive action unless it complies with requests that lack legal basis. Such coercive tactics contend undermine the principle of non-arbitrariness and chill lawful expression.

[50] W.P. No. 7405 of 2025 (decided on March 28, 2025)

[51] Section 79(3)(b) of the IT Act:

"….(b)upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource, controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner…"

[52] (2015) 5 SCC 1

Reliefs sought

The petition seeks, among other things:

1. a declaration that content takedown directions can only be lawfully issued under Section 69A of the IT Act;
2. a direction restraining the Respondents from issuing coercive communications under Section 79(3)(b) of the IT Act in substitution for statutory processes; and
3. an order of interim protection against coercive action for non-compliance with requests made *via* the 'Sahyog' portal.

Status

The Karnataka HC had admitted the petition on March 17, 2025, and issued notice to the Union Government. While interim relief was declined, X Corp has been granted liberty to approach the court in case of any future adverse action. The matter is listed for final arguments

The Union of India has since filed a counter affidavit contesting maintainability, asserting that 'Sahyog' portal is a coordination tool rather than a censorship mechanism, and that X Corp is evading legitimate regulatory obligations.

Conclusion

This litigation is of considerable consequence for the Indian information technology and digital platform ecosystem, as a ruling in this case could restore the centrality of Section 69A of the IT Act as the exclusive mechanism for content blocking and clarify that Section 79(3)(b) of the IT Act cannot be misused as a parallel route to compel censorship. Further, this litigation challenges the opacity of digital governance via portals like 'Sahyog'. Judicial scrutiny may lead to new norms ensuring traceability, accountability, and post-facto judicial review of executive directives.

In *Wikimedia Foundation Inc. vs. ANI Media Private Limited*[53], the Supreme Court underscored a critical limitation on takedown of online content. The Supreme Court observed that unless content is *prima facie* contemptuous of court proceedings, it cannot be removed merely because a judge finds it uncomfortable or inaccurate. This observation by the Supreme Court reinforces the core principle that judicial and executive orders affecting online content must be legally tenable, procedurally fair, and constitutionally sound. The reasoning in *Wikimedia Foundation Inc* (*ibid*). powerfully supports X Corp's argument that takedown orders, whether issued by courts or executive authorities, must be rooted in clear statutory procedures and judicially reviewable reasons.

X Corp vs. Union of India may well become a landmark case in India's digital constitutionalism. It confronts critical questions about the outer limits of executive power, the role of procedural safeguards, and the resilience of free expression in the age of algorithmic governance. It also builds upon the spirit of the Shreya Singhal (*ibid*), reiterating that convenience cannot override constitutionalism.

Delhi HC holds that truthful and scientifically backed content shared in good faith by social media influencers is not defamation or disparagement

A Single Judge of the Delhi HC in ***San Nutrition Private Limited vs. Arpit Mangal and Ors.***[54], while rejecting grant of an interim injunction, has held that influencers are not liable for defamation or disparagement when the information shared by them is true, not misleading and without malicious intent.

Brief facts

Arpit Mangal ("**Defendant No. 1**"), a social media influencer, published videos on the YouTube platform

[53] SLP(C) No. 7748/2025

[54] 2025 SCC OnLine Del 2701 (decided on April 28, 2025)

inter alia reviewing DC Doctor's Choice Iso Pro ("**Product**") marketed by San Nutrition Private Limited ("**Plaintiff**"). Defendant No. 1's videos on the Product were based on independent laboratory reports ("**Lab Reports**") and comparison with other competitor products in the market. Relying solely upon Defendant No. 1's videos, Kabir Grover ("**Defendant No. 2**") and Manish Keswani ("**Defendant No. 3**") posted similar videos on YouTube. Avijit Roy ("**Defendant No. 4**") also published videos on the Product after self-testing it with a kit developed by a competitor brand and used Plaintiff's mark in the thumbnail of the videos.

Being aggrieved by these videos published by Defendant Nos. 1 to 4 ("**Impugned Videos**") which showed the Plaintiff and the Product in negative light, the Plaintiff filed a suit along with an interim injunction application. While Defendant No. 1 appeared and opposed the interim injunction application, Defendant Nos. 2 to 4 did not appear before the Delhi HC.

In the interim injunction application, the Plaintiff *inter alia* contended that the Impugned Videos contained false, malicious and misleading statements about the Plaintiff and the Product with an attempt to defame and disparage; the damage caused to the Plaintiff was visible from the negative comments/reviews on the Impugned Videos, e-commerce websites along with the decline in the sales of the Product; and the Impugned Videos contain the name/pictures/videos of the Product and also shows the Plaintiff's mark which amounts to unauthorised and wrongful use of Plaintiff's trademark and copyright.

Defendant No. 1 *inter alia* contended that the statements made in his videos were fair comments issued in public interest, based on scientific evidence, and were protected under the right to exercise freedom of speech and expression under Article 19(1)(a) of the Constitution; and based on truth substantiated by verifiable Lab Reports accredited under applicable laws. Defendant No. 1 also contended that the use of Plaintiff's marks in his videos was covered under fair use and does not violate the Plaintiff's intellectual property rights.

Issue

Whether the Impugned Videos were defamatory, disparaging and infringed upon the Plaintiff's trademarks?

Findings and analysis

The Delhi HC rejected the Plaintiff's interim application and *inter alia* observed as follows:

1. in cases of defamation, the defence of truth or justification has been recognised as a complete defence and the onus of proving the truth of the statement is on the defendant.[55] The defence of truth cannot be defeated solely on account of malice;[56]
2. the defence of fair comment applies if the defendant establishes that: he believed the statements to be correct based on the facts available to him; and there was no malice behind the statements. The onus of proving malice in such cases lies on the plaintiff;[57]
3. commercial speech is protected under Article 19(1)(a) of the Constitution. However, if such speech is deceptive, unfair, misleading or untruthful, it would be restricted under Article 19(2) of the Constitution.[58] Further, commercial speech would amount to disparagement if the 3 (three) fold test of falsehood, malicious intent and special damage is established by the plaintiff;[59] and
4. as upheld by the Supreme Court, the threshold for grant of interim injunctions in cases of defamation and disparagement is based on the Bonnard principle.[60] As per the Bonnard principle, interim injunctions in cases of defamation and disparagement should not be granted unless the defence set up by the defendant is eventually bound to fail in trial; and
5. for any case on infringement under Section 29A of the Trade Marks Act, 1999, a defendant would have to use the plaintiff's registered trademark in the course of his trade or commercially exploit the same.[61]

[55] *Pankaj Oswal vs. Vikas Pahwa*, 2024 SCC OnLine Del 1193
[56] 2006 SCC OnLine Del 14
[57] *Tata Sons vs. Greenpeace,* 2011 SCC OnLine Del 466
[58] *Tata Press vs. Mahanagar Telephone Nigam Limited*, (1995) 5 SCC 139,
[59] *Dabur India vs. Colortek Meghalaya*, 2009 SCC OnLine Del 3940
[60] *Bloomberg Television vs. Zee Entertainment,* (2025) 1 Supreme Court Cases 741; *Bonnard vs. Perryman*, [1891] 95 All ER 965.
[61] *Tata Sons vs. Greenpeace,* 2011 SCC OnLine Del 466

Based on the above principles and in the facts of the case, the Delhi HC *prima facie* held that the Plaintiff had failed to discharge its burden of proof in establishing that the statements made in the Impugned Videos were palpably false, misleading, malicious and/or were bound to fail at the stage of trial. Further, the Delhi HC also ruled that the Plaintiff had failed to establish a case for infringement of its intellectual property rights. Accordingly, the Delhi HC held that Defendant Nos. 1 to 4 were entitled to protection of free speech under the Constitution.

Conclusion

This decision highlights the need to strike a careful balance between protecting the right to freedom of speech and expression of social media influencers and preserving the reputation of businesses in an increasingly digital landscape. It underscores the importance of fostering a harmonious coexistence between individual expression and corporate honesty in the era of social media. Notably, the ruling gains further significance as it deals with circumstances for grant of an interim injunction, a form of immediate relief that businesses often seek when facing potential defamation or brand disparagement.

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The authors of this Compendium are:

Dheeraj Nair
Partner

Farid Karachiwala
Partner

Ananya Kumar
Partner

Anupam Varma
Partner

Dhirendra Negi
Partner

Divyam Agarwal
Partner

Farhad Sorabjee
Partner

Poonam Verma Sengupta
Partner

Sidharth Sethi
Partner

Varghese Thomas
Partner

Vinod Kumar
Partner

Fatema Kachwalla
Partner

Nikhil Sharma
Partner

Padmaja Kaul
Partner

Pratik Pawar
Partner

Shanaya Cyrus Irani
Partner

Shreya Sircar
Partner

18 Practices and
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