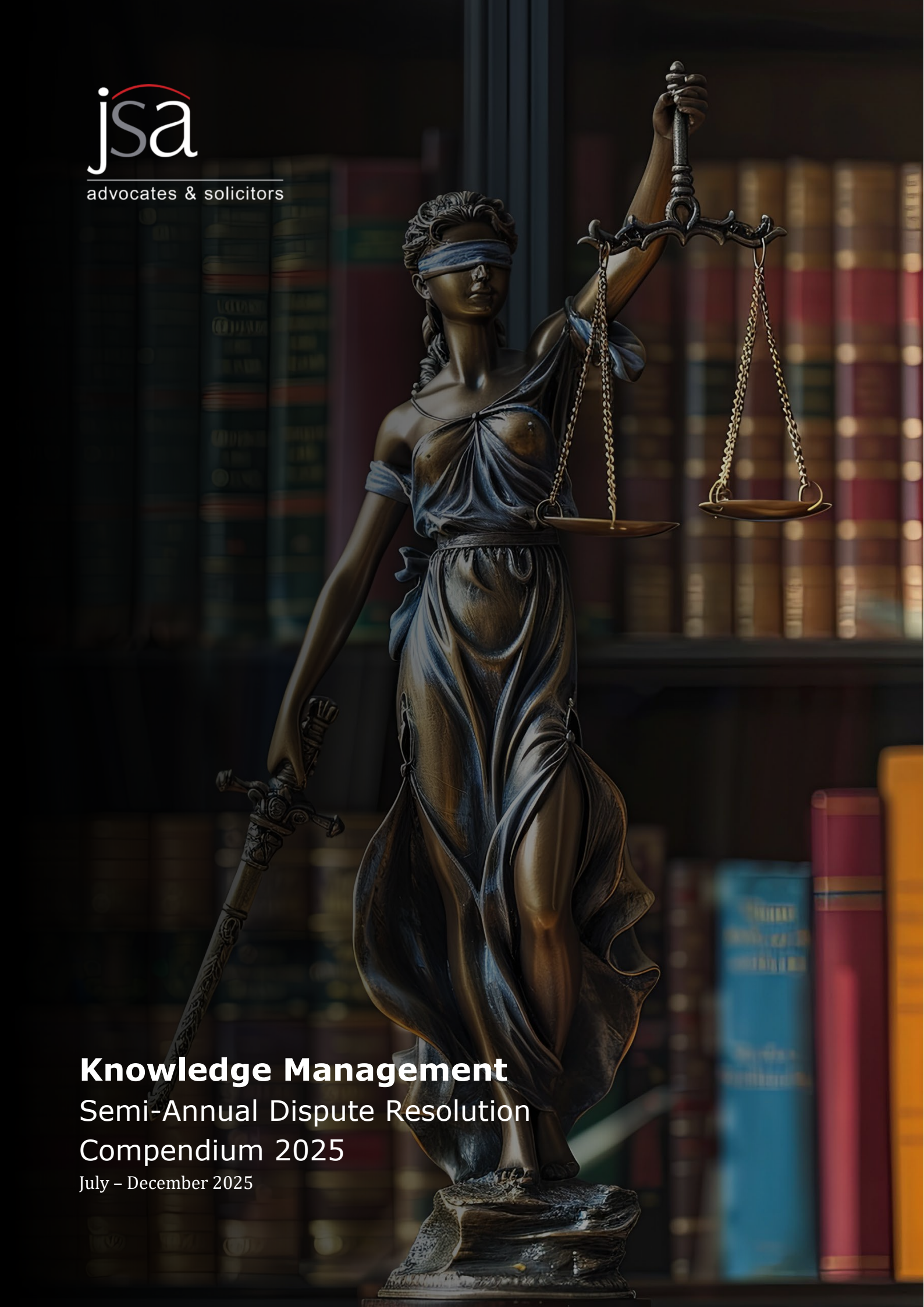

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Semi-Annual Dispute Resolution Compendium 2025

July – December 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 July 2025 till December 2025.

Supreme Court

Supreme Court held that High Courts may grant interim relief in arbitration proceedings under Article 227 of the Constitution of India, in exceptional circumstances

The Supreme Court, in the case of ***Jindal Steel and Power Limited and Anr. vs. Bansal Infra Projects Private Limited and Ors.***[1], disposed of an appeal challenging an interim order passed by the High Court of Orissa, Cuttack (**"Orissa HC**") dated August 20, 2024. The Orissa HC had directed the parties to maintain *status quo* with respect to the bank guarantee, pending final disposal of the Section 9 petition of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), before the Senior Civil Judge (Commercial Court) Cuttack ("**Commercial Court**"). The Supreme Court observed that if the interim measure was not granted and the appellants were permitted to invoke bank guarantee, the arbitration petition filed in the Commercial Court would likely become infructuous. Therefore, the interim measure to maintain the existing position regarding the bank guarantee was essential to protect the interests of the parties.

Brief facts

Jindal Steel and Power Limited ("**Appellant**") issued a work order dated January 24, 2022, to M/s. Bansal Infra Projects Private limited ("**Respondent No. 1**") for construction of 400 (four hundred) flats at Jindal Nagar, South Block (Sharmi's Vihar) for a total value of INR 43,99,46,924.13 (Indian Rupees forty-three crore ninety-nine lakh forty-six thousand nine hundred twenty-four and thirteen paise). For execution of this work, the Appellant gave an advance of INR 3,73,95,490 (Indian Rupees three crore seventy-three lakh ninety-five thousand four hundred and ninety) and to secure this, Respondent No. 1 furnished a bank

[1] W.P. (C) No. 11848 of 2024 (decided on May 7, 2025)

guarantee dated March 8, 2022 ("**March Bank Guarantee**").

Initially, it was agreed between the parties that the project will be completed by September 30, 2022. However, the same was not done and the parties mutually agreed to extend the project completion date multiple times. Thereafter, the Appellants terminated the work order citing poor performance, non-compliance with contractual obligations, delay in timelines and missed deadlines. Subsequently, the parties mutually agreed and executed an amended work order, and the project completion date was extended up to September 30, 2023, with the express condition that the retention money would be forfeited in case of any further delay in handover.

Due to several factors resulting in delay in completion of project, the Appellant, *vide* letter dated March 25, 2024, requested Respondent No. 1 to refund the debit balance of INR 4,12,54,904 (Indian Rupees four crore twelve lakh fifty-four thousand nine hundred and four) towards unadjusted advances and other deductions on or before April 30, 2024, failure to which the Appellant informed the Respondent No. 1 that it will encash the March Bank Guarantee. It was the categorical stand of Respondent No. 1 that the delay was a result of Appellant's own lapses.

In view of the above, Respondent No. 1 filed an arbitration petition under Section 9 ("**Arbitration Petition**")[2] of the Arbitration Act in the Commercial Court seeking an *ex-parte* interim measure to restrain the Appellant from encashing the March Bank Guarantee and not proceed with termination until constitution of the arbitral tribunal. The Commercial Court rejected the application to grant an *ex-parte* interim injunction *vide* order dated April 30, 2024, on the ground that the parties must be given an opportunity to be heard.

Subsequently, Respondent No. 1 approached the Orissa HC under Article 227 of the Constitution of India ("**Constitution**") for an interim measure *vide* writ petition[3]. As an interim measure during the proceedings in the Orissa HC, it directed the parties to maintain *status quo* with regards to encashment of March Bank Guarantee until next hearing ("**Interim Order**"). Finally, in its final order dated August 20, 2024, the Orissa HC directed that the interim order granted earlier to maintain *status quo* will remain in force until final disposal of the Arbitration Petition in the Commercial Court, subject to extension of the March Bank Guarantee.[4]

The Appellant challenged the Interim Order in the Supreme Court.[5]

Orissa HC's reasoning

1. The Orissa HC held that an *ad interim ex-parte* injunction granted in a Section 9 application under the Arbitration Act is not appealable.[6]
2. The Orissa HC analysed various judicial precedents and reiterated the limited circumstances under which courts may interfere with or restrain the invocation of a bank guarantee, *inter alia* in cases of fraud; grave or irretrievable injustice; special equities in favor of the party seeking an injunction; and where the invocation is not in accordance with the contractual terms, rendering it improper.[7]
3. The Orissa HC granted interim relief to maintain *status quo* of the March Bank Guarantee on the ground that special equity existed in favor of Respondent No. 1. This finding was based on the Appellant's attempt to invoke the March Bank Guarantee during the pendency of the writ proceedings; the Appellant's conduct being contrary to the terms of the March Bank Guarantee; and that the encashment of March Bank Guarantee would result in irretrievable injustice to Respondent No. 1.
4. The Orissa HC further observed that invocation of the March Bank Guarantee would render the Arbitration Petition infructuous. Accordingly, it directed the Commercial Court to ensure expeditious disposal of the arbitration proceedings and ordered Respondent No. 1 to extend the validity of the March Bank Guarantee until December 31, 2024.

[2] Arbitration Petition No. 14 of 2024
3 W.P. (C) No. 11848 of 2024
[4] [42] – [43], W.P. (C) No. 11848 of 2024
[5] Civil Appeal No. 6413 of 2025 (Arising Out of SLP (Civil) No. 21916 of 2024)
[6] [13], W.P. (C) No. 11848 of 2024
[7] [26], W.P. (C) No. 11848 of 2024

Issues

1. Whether the Orissa HC has the power to grant interim order to maintain *status quo* of an unconditional bank guarantee under Article 227 of the Constitution?
2. Whether an interlocutory order arising out of the Section 9 petition is appealable under Section 37(1)(b) of the Arbitration Act? If so, whether the writ jurisdiction under Article 227 of the Constitution can be invoked when there is an alternative remedy available?

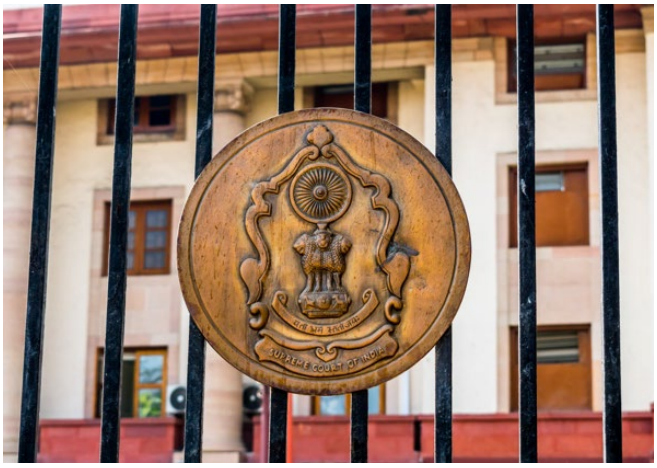
Findings and analysis

1. The Supreme Court reiterated the settled principle that the courts should not interfere with the invocation of bank guarantees, except in cases of fraud or where the encashment would result in irretrievable injustice.[8] However, while considering the Orissa HC's reasoning for granting the Interim Order, the Supreme Court noted that the Interim Order was passed solely to safeguard the interest of the parties.
2. The Supreme Court noted that the arguments in the Arbitration Petition had already been concluded, the arbitral tribunal was constituted, and a hearing was held. In view of this, the Supreme Court held that maintaining the *status quo* on the March Bank Guarantee was necessary to prevent the arbitration proceedings from being infructuous. Accordingly, the Supreme Court directed the Commercial Court to pass appropriate orders within a period of 8 (eight) weeks.
3. The Supreme Court further recorded the undertaking of Respondent No. 1 that the March Bank Guarantee would be extended until final disposal of the Arbitration Petition. In light of this undertaking, the Supreme Court held that no prejudice will be caused to the Appellant. Consequently, the appeal was dismissed.

Conclusion

While the Supreme Court did not expressly rule on the scope of the High Court's power to grant interim reliefs concerning bank guarantees under Article 227 of the Constitution, it upheld the Orissa HC's direction to maintain *status quo* on the March Bank Guarantee until final disposal of the Arbitration Petition.

This development raises concerns about the potential for prolonged litigation and legal uncertainty, particularly considering the absence of clear judicial guidelines delineating the scope of the High Court's jurisdiction to grant relief in Section 9 proceedings through its supervisory powers under Article 227 of the Constitution. Significantly, this appears to expand the ambit of Article 227 of the Constitution, enabling judicial intervention not only in arbitration proceedings but also in ancillary disputes between private parties, an extension that was not envisaged earlier. Such a precedent may open the floodgates to extensive litigation between private entities under Article 227 of the Constitution, thereby diluting the original constitutional intent behind the provision, which was confined to a limited supervisory role over subordinate courts and tribunals.



Supreme Court holds that the issue of non-arbitrability can be considered and decided by the arbitral tribunal

The Supreme Court, in the case of ***Office for Alternative Architecture vs. IRCON Infrastructure and Services Limited***[9] ("**Civil Appeal**"), re-affirmed that Section 11 of the Arbitration Act grants limited scope of interference to the court and confines the

[8] Hindustan Construction Co. Ltd. vs. State of Bihar, (1999) 8 SCC 436

[9] 2025 INSC 665 (decided on May 13, 2025)

examination, at the stage of appointment of arbitral tribunal, to the existence of an arbitration agreement. Further, the Supreme Court also held that the claims of a party cannot be bisected into arbitrable and non-arbitrable claims in an application under Section 11 of the Arbitration Act.

Brief facts

1. The Office for Alternative Architecture ("**Appellant**") filed an application under Section 11 of the Arbitration Act before the High Court of Delhi ("**Delhi HC**") for appointment of arbitral tribunal.
2. The Delhi HC allowed such application. However, while appointing the arbitral tribunal, the Delhi HC excluded certain claims as being non-arbitrable. The Delhi HC came to a finding that in terms of the agreement between the parties, i.e., the Appellant and IRCON Infrastructure and Services Limited ("**Respondent**"), certain claims would fall under 'excepted matters' and would thus be excluded from the scope of arbitration.
3. The Appellant, aggrieved by such bifurcation, filed the Civil Appeal before the Supreme Court.
4. The Appellant contended that in an application under Section 11 of the Arbitration Act, the court only has the power to examine whether the arbitration agreement exists or not. If it exists, the arbitral tribunal is to be appointed. Thereafter, the arbitral tribunal has the jurisdiction to decide whether the claims fall within 'excepted matters' category or not. It must thus be left open to the parties to raise such pleas before the arbitral tribunal.
5. The Respondent, *per contra*, argued that the Delhi HC was empowered to exclude non-arbitrable claims before referring a party to arbitration or appointing an arbitral tribunal.

Issue

Whether while exercising power under Section 11 of the Arbitration Act, the court must confine its consideration to the existence of an arbitration agreement between the parties. If so, whether it would be permissible, while exercising jurisdiction under Section 11 of the Arbitration Act, to hold that some of the claims raised are non-arbitrable or fall within 'excepted matters'

Findings and analysis

Re: Section 11(6A) of the Arbitration Act only envisages examination as to existence of an arbitration agreement

1. The Supreme Court relied on the statutory provisions, particularly Section 11(6A) of the Arbitration Act and observed that the provision makes it clear that while considering an application for appointment of arbitrator, the court must confine to the examination of the existence of an arbitration agreement and not transgress into other issues.
2. The Supreme Court also referred to a 7 (seven) judge bench decision in *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*[10], wherein it was clarified that the court exercising powers under Section 11 of the Arbitration Act must not dwell on other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.
3. In *SBI General Insurance Company Limited vs. Krish Spinning*[11] it was observed that the jurisdiction of a referral court under Section 11 of the Arbitration Act does not extend to weeding out *ex-facie* non-arbitrable and frivolous disputes.
4. Thus, the Supreme Court held that the Delhi HC fell in error by extending the scope of interference granted under Section 11 of the Arbitration Act and holding certain claims as non-arbitrable.

Re: Arbitral tribunal has jurisdiction to decide on the issue of non-arbitrability of claims

1. When an arbitration agreement for settlement of disputes was found to be present, the correct

[10] 2023 INSC 1066

[11] 2024 INSC 532

course for the Delhi HC was to refer the dispute to arbitration by appointing the arbitral tribunal and leave the issue of non-arbitrability open to be raised before the arbitral tribunal.

2. The Supreme Court held that the Delhi HC could not have bisected the claim of the Appellant in 2 (two) parts – arbitrable and non-arbitrable – as such decision falls within the scope and jurisdiction of the arbitral tribunal.

Conclusion

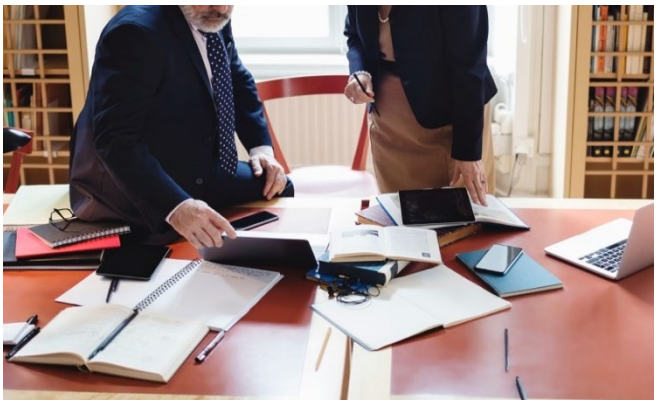
The Civil Appeal was allowed by the Supreme Court and the order of the Delhi HC to the extent it excluded certain claims from reference to arbitration was set aside. Thus, effectively, the Supreme Court referred all the claims/disputes raised by the Appellant to arbitration and granted leave to the parties to raise the plea of non-arbitrability of certain claims before the arbitral tribunal.

The judgment of the Supreme Court confirms that if the court is reasonably convinced that:

1. a valid arbitration agreement exists between the parties or the agreement provides for resolution of disputes by arbitration; and
2. a dispute has arisen between the parties;

then it must strictly follow the course of appointing the arbitral tribunal. The court must limit its observations to the prima-facie examination of the existence of an arbitration agreement and not undertake the exercise of in-depth review of the facts of the case.

The view also upholds and advances the doctrine of 'Kompetenz-Kompetenz', which means that the arbitral tribunal can rule on its own jurisdiction and decide whether a particular issue/claim is arbitrable either in terms of the agreement or in terms of legal and statutory bars. This ruling thus reinforces the limited judicial role at the pre-arbitral stage and strengthens party autonomy and institutional efficiency in arbitration proceedings.



Supreme Court granted relief to a lawyer from appearing before the police and places the broader issue before the Chief Justice of India

A 2 (two) judge bench of the Supreme Court, in the case of ***Ashwinkumar Govindbhai Prajapati vs. State of Gujarat and Anr.***[12], took cognisance of the growing trend of summoning of lawyers by police/investigating agencies for seeking privileged client information or legal advice delivered by them in course of their professional duties.

Brief facts

The Directorate of Enforcement ("**ED**") had recently issued summons to senior advocates Arvind Datar and Pratap Venugopal in relation to an opinion provided by them in their professional capacity and in the course of their professional duties. While the summons subsequently came to be withdrawn, a more important question, one of independence of legal professionals, began to gain prominence.

In another matter, on March 24, 2025, a Gujarat-based lawyer ("**Petitioner**") received a notice under section 179 of the *Bharatiya Nagarik Suraksha Sanhita* ("**BNSS**")[13] from the Ahmedabad Police seeking his appearance in relation to a criminal matter involving his client. The Petitioner did not appear before the police and approached the Hon'ble High Court of Gujarat ("**Gujarat HC**") to challenge the validity of such a notice on the ground that he was only acting in his professional capacity and was not connected to the

[12] Special Leave to Appeal (Crl.) No. 9334 of 2025 (decided on June 25, 2025)

[13] Earlier known as the Code of Criminal Procedure ("**CrPC**"), 1973.

matter beyond his role as a lawyer. However, his plea was dismissed.[14]

The Gujarat HC held that not only did the police have the power to investigate, but the summons issued to the Petitioner was in the capacity of a witness and hence there was no valid ground to challenge the notice. Consequently, the Petitioner approached the Supreme Court.

Issues

After hearing the submissions advanced by the counsel for the Petitioner, the following questions were raised by the Supreme Court:

1. when an individual has association with a case only as a lawyer advising the party, could the investigating agency/prosecuting agency/police directly summon the lawyer for questioning?
2. assuming that the investigating agency/prosecuting agency/police has a case that the role of the individual is not merely as a lawyer but something more, even then should they be directly permitted to summon or should judicial oversight be prescribed for those exceptional criteria of cases?

Findings and analysis

The Supreme Court took cognisance of the issue and highlighted the need to address such issues in a comprehensive manner. It was observed that the practice of summoning lawyers severely undermines the autonomy of the legal profession. While acknowledging that the legal profession lies at the heart of administration of justice, the Supreme Court observed that lawyers have certain rights and privileges by virtue of them being legal professionals and in view of the provisions under section 132 of the *Bharatiya Sakshya Adhiniyam, 2023*[15] ("**BSA**").

Section 132 of the BSA protects privileged communications and ensures that no advocate is made to disclose any confidential information communicated to/from a client in the course and for purposes of his professional duties. The Petitioner's argument that privileged communication between a lawyer and a client cannot be subject of a notice under section 179 of the BNSS was upheld. The Supreme Court further highlighted that issuing such notices severely hinders the administration of justice and comes in the way of lawyers' ability to fearlessly discharge their professional duties.

It was observed that prosecuting/investigating agencies summoning lawyers is completely untenable and accordingly Ahmedabad Police have been restrained from summoning the Petitioner till further orders.

However, owing to the growing prominence of the issue, the Supreme Court decided to place the subject matter before the Hon'ble Chief Justice of India and also issued notices to the Ld. Attorney General of India, Ld. Solicitor General of India, Chairman of the Bar Council of India, President/Executive Committee of the Supreme Court Bar Association, and the President/Executive Committee of the Supreme Court Advocates-on-Record Association seeking their assistance.

Conclusion

By taking cognisance of this growing trend of summoning lawyers, the Supreme Court exercised its judicial oversight and taken a necessary step towards protecting the autonomy of the legal profession. Whilst conducting a free and fair investigation may be the right of any investigating agency, the same cannot be misused to hinder administration of justice, which would potentially render Section 132 of the BSA *otiose*.

Protecting privileged communication encourages lawyers to freely discharge their professional duties and thus remains a pivotal aspect of any justice delivery system. By involving relevant stakeholders and placing the matter before the Hon'ble Chief Justice of India, it appears that the Supreme Court aims to address the issue holistically while maintaining a balance between the rights of investigating agencies and the independence of the legal profession. A further update on this topic will be provided in due course.

[14] R/Special Criminal Application (Quashing) No. 5349 of 2025

[15] Earlier known as the Indian Evidence Act, 1872.

Supreme Court clarifies that enabling clauses do not constitute binding arbitration agreements

A 2 (two) judge bench of the Supreme Court, in the case of ***BGM and M-RPL-JMCT (JV) vs. Eastern Coalfields Limited***[16]***,*** held that a contract clause stating disputes 'may be' referred to arbitration, is not a binding arbitration agreement under Sections 7 and 11[17] of the Arbitration Act. The Supreme Court ruled that only clauses with clear and mandatory language explicitly requiring disputes to be resolved by arbitration are enforceable and that the enabling or optional language is insufficient to constitute an arbitration agreement.

Brief facts

1. The appellant entered into a contract with Eastern Coalfields Limited for transportation and handling of goods. The appellant sought appointment of an arbitrator under Section 11(6) of the Arbitration Act, relying on Clause 13 of the General Terms and Conditions ("**GTC**") appended to the e-tender notice.
2. Clause 13, titled 'Settlement of Disputes' provided a multi-tiered mechanism for resolving disputes. It stated that disputes should first be settled at the company level, and if differences persisted, they would be referred to a committee constituted by the owner. The clause further stated that in case of parties other than government agencies, "*the redressal of the dispute may be sought through Arbitration and Conciliation Act, 1996 as amended by Amendment Act of 2015*".
3. The Hon'ble Calcutta High Court ("**Calcutta HC**") dismissed the application under Section 11 of the Arbitration Act, holding that Clause 13 of the GTC did not constitute an arbitration agreement. The appellant challenged this decision before the Supreme Court.

Issues

The main issues for consideration before the Supreme Court were as follows:

1. whether the question of existence of an arbitration agreement should be left for the arbitral tribunal to decide under the doctrine of 'Kompetenz-Kompetenz'?
2. whether Clause 13 of the GTC constitutes an arbitration agreement as contemplated under Section 7 of the Arbitration Act?

Findings and analysis

Issue 1: Scope of referral court's power under Section 11 of the Arbitration Act

The Supreme Court examined the scope of judicial review under Section 11 of the Arbitration Act. Referring to the decision of the constitution bench in *Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*[18], the Supreme Court reiterated that the referral court's jurisdiction under Section 11 of the Arbitration Act is confined to the examination of the existence of an arbitration agreement.

The Supreme Court observed the following:

"*The purport of using the word "examination"* [*as used in Section 11(6A)*[19]*] connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. However, the expression "examination" does not connote or imply a laborious or contested inquiry*".

The Supreme Court clarified that where the arbitration agreement is found in an undisputed document, no trial or inquiry is required. In the present case, the appellant relied solely on Clause 13 of the GTC, which was undisputed. Therefore, the Supreme Court held that it was within the referral court's jurisdiction to

[16] 2025 SCC OnLine SC 1471 (decided on July 18, 2025)
[17] Section 7 defines what constitutes an 'arbitration agreement' and Section 11 discusses appointment of arbitrators.
[18] (2024) 6 SCC 1
[19] The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6) of the Arbitration Act, will, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement.

examine the clause and determine whether it constituted an arbitration agreement.

Issue 2: Whether Clause 13 of the GTC constitutes an arbitration agreement

The Supreme Court then turned to the main issue, whether Clause 13 of the GTC constituted an arbitration agreement.

The Supreme Court examined Clause 13 of the GTC mainly in light of its earlier decisions in *Jagdish Chander vs. Ramesh Chander*[20], and *Mahanadi Coalfields Limited vs. IVRCL AMR Joint Venture*[21].

Sr. No.	Case Name	Dispute resolution clause in that case	Supreme Court's finding
1.	*Jagdish Chander vs. Ramesh Chander*	*"If during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the partners, the same shall be mutually decided by the partners or shall be referred for arbitration if the parties so determine."*	The Supreme Court held that such language required further consent and did not reflect *consensus ad idem*.
2.	*Mahanadi Coalfields Limited vs. IVRCL AMR Joint Venture*	15. "*Settlement of Disputes/Arbitration…..* *15.2 In case of parties other than Govt. Agencies, the redressal of the disputes may be sought in the Court of Law."*	The Supreme Court held that Clause 15 though titled "Settlement of Disputes/Arbitration", the substantive part of it makes it abundantly clear that there is no arbitration agreement between the parties to refer either present or future dispute to arbitration.

Relying on the said decisions, the Supreme Court in the present case held that Clause 13 of the GTC did not constitute an arbitration agreement under Section 7 of the Arbitration Act.

The Supreme Court noted that the use of the word 'may be sought' implied that the clause was merely enabling and did not reflect a binding commitment to arbitrate. It observed:

"*Use of the words 'may be sought', imply that there is no subsisting agreement between parties that they, or any one of them, would have to seek settlement of dispute(s) through arbitration. It is just an enabling clause whereunder, if parties agree, they could resolve their dispute(s) through arbitration.*"

Conclusion

This judgment reinforces the principle that arbitration must be based on a clear and binding agreement. Clauses that merely permit arbitration as an option, without mandating it, do not satisfy the requirements under Section 7 of the Arbitration Act.

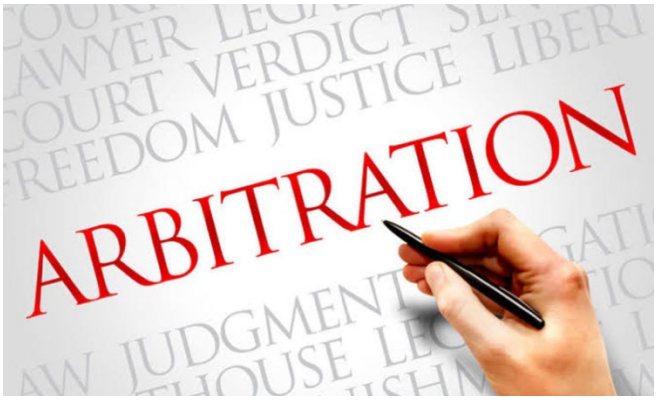
For contracting parties, the judgment underscores the importance of precise drafting in dispute resolution clauses. The use of permissive language can render the clause unenforceable as an arbitration agreement. Parties intending to resolve disputes through arbitration must ensure that the clause reflects a binding obligation to arbitrate.

[20] (2007) 5 SCC 719

[21] (2022) 20 SCC 636

The party seeking to rely on an arbitration agreement bears the burden to demonstrate, at least *prima facie*, the existence of a binding agreement to arbitrate.

By applying and reiterating the principles established in previous decisions, the Supreme Court reinforced commercial certainty and contractual discipline that arbitration must be a product of clear intent, recorded in writing, binding on both sides from the outset, and not left to future negotiation or discretion. Where parties do intend disputes to be resolved by arbitration, the clause must use mandatory language such as *'shall be referred to arbitration',* thereby, removing any room for doubt.



Supreme Court reiterates that statutory arbitrations under special enactments override contractual arbitration agreements

The Supreme Court, in ***Umri Pooph Pratappur (UPP) Tollways Private Limited vs. M.P. Road Development Corporation and Anr.***[22], *inter alia* reiterated that statutory arbitrations enacted under special statutes override private contractual arbitration provisions under the Arbitration Act.

Brief facts

The appellant and respondent no. 1 entered into a concession agreement for development of the Umari-Pooph-Pratappur Road on a build, operate and transfer (BOT) basis ("**Concession Agreement**").

Respondent no. 1 allegedly breached its contractual obligations and caused delays and disruptions, which resulted in escalated costs. Given the same, the appellant referred its claims to the independent engineer for amicable resolution and compensation as required under the Concession Agreement. However, most of the claims were rejected.

Since its claims were rejected, the appellant invoked Section 7 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 ("**1983 Act**") and initiated arbitration proceedings before the Madhya Pradesh Arbitration Tribunal ("**MPAT**"). As no progress was made beyond the issuance of notice for a significant period of time, the appellant invoked the contractual arbitration provision under the Concession Agreement and referred the dispute to the International Centre for Alternative Dispute Resolution ("**ICADR**"). Despite respondent no. 1's objection, the ICADR appointed arbitrators on June 2, 2022, and the arbitral tribunal issued a preliminary hearing notice dated June 7, 2022.

Respondent no. 1 filed a writ petition before the High Court of Madhya Pradesh ("**MP HC**") challenging the orders dated June 2, 2022, and June 7, 2022, passed by the ICADR and the arbitral tribunal. By its judgment dated September 9, 2024 ("**MP Judgment**"), the MP HC allowed the writ petition and quashed the orders passed by the ICADR and the arbitral tribunal. The appellant preferred a Special Leave Petition ("**SLP**") before the Supreme Court against the MP Judgment.

Issue

Whether the disputes under the Concession Agreement were to be referred to arbitration, in terms of the contractual provision under the Concession Agreement or before the MPAT under the 1983 Act?

Findings and analysis

The Supreme Court dismissed the challenge to the MP Judgment and *inter alia* observed as follows:

1. The 1983 Act provides a special statutory mechanism for adjudication of disputes arising out of works contracts involving the State Government or its instrumentalities. The Concession Agreement is executed with a corporation owned and run by the Government (i.e., Respondent no. 1), and it relates to the construction of a State highway situated within the State of Madhya Pradesh. The

[22] 2025 SCC OnLine SC 1569 (decided on July 30, 2025)

claims raised are quantified and arise from the said agreement. The Concession Agreement falls within the ambit of a 'works contract' defined under the 1983 Act and all of the appellant's claims are covered within the definition of the 'dispute' defined under the 1983 Act. Therefore, the appellant's claims fall within the purview of the 1983 Act.

2. Section 7 of the 1983 Act mandates reference of such disputes to the MPAT, irrespective of whether the agreement between the parties contains an arbitration clause. Sections 2 (3), (4) and (5) of the Arbitration Act demonstrate that reference to a special tribunal under a special enactment would survive irrespective of the existence of a mechanism under the Arbitration Act. Section 20 of the 1983 Act bars the jurisdiction of civil courts, affirming MPAT's exclusive jurisdiction over disputes arising out of a 'works contract' under the 1983 Act. There is no repugnancy between the 1983 Act and the Arbitration Act.

3. A full bench of the MP HC in *Viva Highways Limited vs. Madhya Pradesh Road Development Corporation*[23] (previously affirmed by the Supreme Court) held that where an agreement qualified as a 'works contract' and the dispute fell within the purview of the 1983 Act, the reference to MPAT would be mandatory. The 1983 Act would have an overriding effect over the Arbitration Act.[24]

Conclusion

This decision reinforces the overriding effect of special statutory arbitration regimes over the general law on arbitration as contained in the Arbitration Act. Significantly, the ruling serves as a cautionary reminder for parties, particularly in infrastructure and public works sectors, to be aware of the existence of statutory processes for dispute resolution in order to obviate any legal impediments at the time of invocation of a dispute.

Supreme Court bars non-signatories from arbitration hearings, reinforces the confidentiality mandate

In a recent ruling, the Supreme Court in the case of ***Kamal Gupta and Anr. vs. M/s LR Builders Private Limited and Anr.***[25], held that non-signatories to an arbitration agreement cannot be allowed to participate in arbitral proceedings. The Supreme Court reasoned that such participation would violate the confidentiality mandate under Section 42A[26] of the Arbitration Act. The Supreme Court further emphasised that once an arbitrator is appointed under Section 11(6) of the Arbitration Act, the referring court becomes *functus officio*. The court cannot issue any further ancillary directions, since the Arbitration Act is a self-contained code and Section 5 of the Arbitration Act expressly restricts judicial interference.

Brief facts

The dispute stemmed from an oral family settlement dated June 20, 2015 between Pawan Gupta and Kamal Gupta, which subsequently formalised through a Memorandum of Understanding/Family Settlement Deed ("**MoU**"/"**FSD**") on July 9, 2019. Rahul Gupta, son of Kamal Gupta, was not a signatory to this MoU/FSD.

Disputes arose, leading Pawan Gupta to file a petition under Section 11(6) and Section 9 of the Arbitration Act seeking the appointment of a sole arbitrator and certain interim measures on basis of the MoU/FSD. During these proceedings, Rahul Gupta filed an intervention application in both the petitions under Section 11(6) and Section 9 of the Arbitration Act filed by Pawan Gupta, opposing the maintainability of the petitions.

On March 22, 2024, the Delhi HC appointed a sole arbitrator, disposing the Section 11(6) petition and directed that the Section 9 petition be treated as one under Section 17 of the Arbitration Act for being decided by the sole arbitrator. The High Court dismissed the intervention applications filed by Rahul

[23] *M.P. Road Rural Road Development Authority vs. L.G. Chaudhary Engineers and Contractors* [2017 SCC OnLine MP 1448]
[24] *State of Chattisgarh vs. KMC Constructions Limited* [(2018) 10 SCC 826], *ARSS Damoh – Hirapur Tolls Private Limited vs. M.P. Road Development Corporation* [2018 SCC OnLine SC 3899], *Madhya Pradesh Rural Road Development Authority* vs. *Backbone Enterprises Limited* [(2018) 15 SCC 660]
[25] 2025 INSC 975 (decided on August 13, 2025)
[26] Section 42A of the Arbitration Act – Arbitral Institution and parties to the arbitration agreement shall maintain confidentiality of the arbitral proceedings.

Gupta as he was a not a signatory to the MoU/FSD. Despite this, Rahul Gupta and others again sought permission to observe the arbitral proceedings by filing another application. By an order dated August 7, 2024, the Single Judge passed an interim direction allowing Rahul Gupta and other non-signatories to be present during the arbitration proceedings, which was made absolute by an order dated November 12, 2024. Aggrieved by these directions, Pawan Gupta and Kamal Gupta approached the Supreme Court challenging the orders permitting presence of Rahul Gupta and others in the arbitral proceedings.

Issues

1. Whether it is permissible for a non-signatory to an agreement leading to arbitration proceedings to remain present in such arbitration proceedings?
2. After appointment of an arbitrator under Section 11(6) of the Arbitration Act, whether the court can retain the authority to issue any further ancillary directions concerning the arbitration proceedings that have commenced pursuant to appointment of the arbitrator?

Findings and analysis

On non-signatories observing arbitral proceedings

1. The Supreme Court noted that while appointing the sole arbitrator on March 22, 2024, the Delhi HC had already dismissed the intervention application. It observed that the intervenors' apprehensions regarding their properties were unfounded since they would not be bound by any arbitral award. It was further held that their participation was not necessary for adjudicating the disputes between Pawan Gupta and Kamal Gupta.
2. The Supreme Court clarified that non-signatories cannot be permitted to attend arbitral proceedings, since they do not fall under the definition of 'party' under Section 2(h) of the arbitration agreement and are not bound by the resultant arbitral award as the same is binding only on the parties and persons claiming under them as per Section 35 of the Arbitration Act. Their only remedy would arise under Section 36 of the Arbitration Act if an award were sought to be enforced against them. Allowing non-parties to observe the proceedings would contravene Section 42A of the Arbitration Act which mandates the arbitrator and the parties to the arbitration to maintain confidentiality of the arbitration proceedings. Accordingly, the Supreme Court held that the permission granted to Rahul Gupta and other non-signatories to attend arbitral hearings was without jurisdiction and beyond the framework of the Arbitration Act.

On the powers of the referral court after appointment under Section 11(6) of the Arbitration Act

1. The Supreme Court observed that Section 11(6) petition had been disposed of by order dated March 22, 2024, upon the appointment of the sole arbitrator, leaving no pending proceedings thereafter. However, Rahul Gupta filed fresh intervention applications in August 2024 in the said petition. The Supreme Court held that once the appointment was made, the referral court became *functus officio* and lacked jurisdiction to entertain further intervention.
2. The Supreme Court further ruled that such concerns, even if genuine, could not justify permitting a non-party to remain present in arbitral proceedings, as the Arbitration Act does not contemplate such participation. Referring to *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1892*[27], the Supreme Court reiterated that judicial intervention in arbitration is minimal and confined strictly to what is provided in Part I of the Arbitration Act. Since the Arbitration Act is a self-contained code, procedures not expressly included cannot be introduced. The Supreme Court stressed that even the spirit of Section 5 of the Arbitration Act prohibits courts from entertaining requests outside the scope of Part I of the Arbitration Act,

[27] 2023 INSC 1066

and the directions under challenge were in direct conflict with Section 42A of the Arbitration Act.

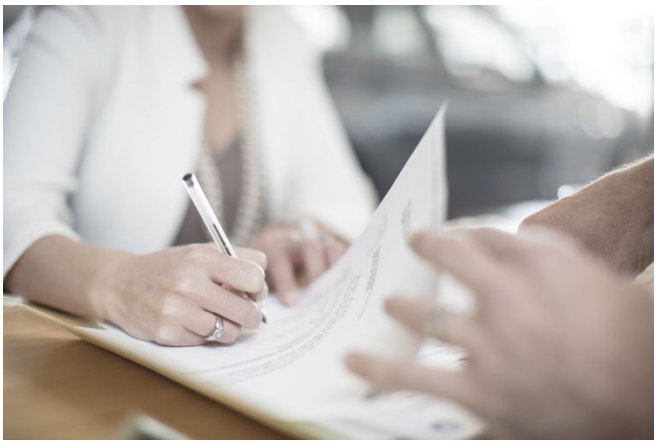
3. The Supreme Court concluded that once an arbitrator is appointed, no further action under Section 11(6) of the Arbitration Act is warranted, and intervention by non-signatories lies outside the statutory scheme. Even recourse to Section 151 of the Code of Civil Procedure, 1908 ("**CPC**") was unavailable.
4. Consequently, the appeals were allowed, and costs of INR 3,00,000 (Indian Rupees three lakh) were imposed on the respondents, payable to the Supreme Court Advocates-on-Record Association.

Conclusion

The Supreme Court, in this judgment, fortified 3 (three) central principles of India's arbitration jurisprudence. First, it reaffirmed the confidentiality obligation enshrined in Section 42A of the Arbitration Act, by holding that non-signatories cannot be permitted to observe arbitral proceedings. Second, it underscored the doctrine of minimal judicial intervention, clarifying that courts cannot enlarge their role beyond what is expressly envisaged in Part I of the Arbitration Act. Third, it reiterated the *functus officio* effect of Section 11(6) of the Arbitration Act, such that once the referral court appoints an arbitrator, its jurisdiction is exhausted, and no further supervisory or ancillary orders can be issued in the same proceedings.

The ruling has particular significance for disputes where non-signatories, such as family members or shareholders seek participation in arbitral proceedings. The Supreme Court drew a clear boundary. While such parties may pursue their substantive claims in other forums, they cannot secure a place within the arbitral process.

By rejecting miscellaneous intervention applications, the Supreme Court preserved the autonomy of the arbitral process, insulated it from extraneous participation, and reinforced the legislative objective of keeping arbitration in India both confidential and self-contained.



Supreme Court holds that mere non-signing by one party does not invalidate arbitration agreement

The Supreme Court, in ***Glencore International AG vs. M/s. Shree Ganesh Metals and Anr.***[28], set aside the order passed by the Delhi HC wherein the Delhi HC ruled that an arbitration agreement, not signed by both the parties, will not be enforceable. The Supreme Court held that mere non-signing of the arbitration agreement would not invalidate the arbitration agreement if the parties' conduct demonstrated acceptance and performance in accordance with the agreement.

Brief facts

Between 2011 and 2012, M/s. Shree Ganesh Metals ("**SGM**"), an Indian proprietorship, purchased zinc metals under 4 (four) contracts dated April 20, 2011, July 1, 2011, November 23, 2011, and January 11, 2012 from Glencore International AG ("**Glencore**"), a Swiss company. Each contract stipulated arbitration with the seat of arbitration being in London.

A fifth contract for the supply of 6,000 (six thousand) MT of zinc metal between March 2016 and February 2017 was negotiated between the parties via emails. In pursuance to the negotiations, Glencore drafted and signed the contract dated March 11, 2016 ("**Contract**") and forwarded it to SGM for its signatures. The Contract also contained an arbitration clause.

Although SGM did not sign the Contract, it performed its obligations by providing 2 (two) separate letters of

[28] Civil Appeal No. 11067 of 2025 (Special Leave Petition (C) No. 27985 of 2019) (decided on August 25, 2025)

credit under the Contract, in favour of Glencore. Further, Glencore also performed its obligations by supplying 2,000 (two thousand) MT of zinc metal to SGM under the Contract.

Subsequently, on account of non-payment by SGM, Glencore encashed the letters of credit issued by SGM. Upon SGM filing a civil suit before the Delhi HC regarding the encashment of letters of credit, Glencore approached the Delhi HC under Section 45 of the Arbitration Act, seeking referral of disputes to arbitration.

The Delhi HC, by its order dated November 2, 2017, held that the Contract was not signed by SGM and hence, remained inconclusive. The said view was upheld by the Division Bench in its judgment dated November 14, 2019. Aggrieved thereby, Glencore filed the appeal before the Supreme Court.

Issue

Is there a binding arbitration agreement between Glencore and SGM?

Findings and analysis

The Supreme Court, while disagreeing with Delhi HC, observed that the conduct of the parties *vis-à-vis* acceptance of delivery, issuance of letters of credit and repeated reference to the Contract during their communications, clearly demonstrated that the parties duly accepted and acted upon the Contract.

The Supreme Court reiterated the legal proposition that an arbitration agreement can be inferred even from exchange of letters, including communication through electronic means. The mere fact that the Contract was not signed, would not obviate from this principle. Section 7(3) of the Arbitration Act reiterates that the only pre-requisite is that the agreement should be in writing. However, this does not mean that in all cases that the arbitration agreement needs to be signed.

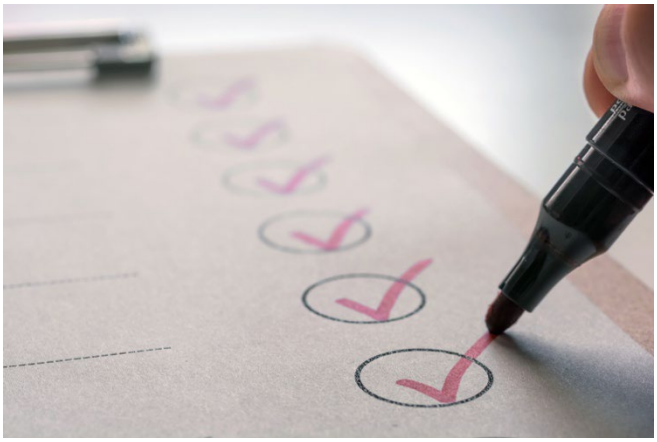
Even otherwise, the Supreme Court, while referring to the jurisdiction under Section 45 of the Arbitration Act, observed that in view of the doctrine of 'Kompetenz-Kompetenz', only the *prima facie* proof of existence of an arbitration agreement needs to be adduced before the referral court.

In addition, the Supreme Court reiterated that a commercial document having an arbitration clause must be interpreted in such a manner as to give effect to the agreement rather than to invalidate it.

Therefore, in view of the unequivocal demonstration that SGM had accepted and acted upon the Contract, the Supreme Court held the arbitration agreement to be binding on the parties.

Conclusion

The judgment upholds the principle of party autonomy in its true sense, disallowing parties to bypass a consensual arbitration agreement on a mere technicality. The terms of the commercial agreement have been given effect through the conduct of the parties, rather than being invalidated on account of its mere non-signing. The judgment also reiterates the principle of limited scrutiny permitted under Section 45 of the Arbitration Act.



Supreme Court lays down a 4 pronged test to be followed by High Courts for determining the authenticity of a plea for quashing under Section 482 of the CrPC

A Division Bench of the Supreme Court, in the case of ***Pradeep Kumar Kesarwani vs. The State of Uttar Pradesh and Anr.***[29], allowed an appeal arising out of an order of the Allahabad High Court ("**Allahabad HC**"). The Allahabad HC had dismissed the appellant's petition seeking quashing of the summoning order

[29] 2025 SCC OnLine SC 1947 (decided on September 2, 2025)

dated August 25, 2015. The Supreme Court while quashing the impugned order, discussed the manifest duty of a High Court to carefully examine cases where an accused seeks quashing of a First Information Report ("**FIR**") on the ground of vexatious litigation. The Supreme Court while rebuking the apparent judicial error, laid down a 4 (four) pronged test which must be followed by a High Court. It must determine the authenticity of a plea for quashing an order, while exercising its inherent powers under Section 482 of the CrPC.

Brief facts

On August 11, 2014, respondent no. 2 had lodged a private complaint before the Court of Additional Chief Judicial Magistrate, Allahabad ("**Ld. Magistrate**"), for offences punishable under Sections 323, 504, 376, 452, 377 and 120B of the Indian Penal Code, 1860 ("**IPC**") and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ("**Atrocities Act**"). However, at the time of filing the complaint, the same was labelled as an application under Section 156 (3) of the CrPC.

Having said that, the Ld. Magistrate, instead of ordering police investigation under Section 156(3) of the CrPC, as prayed for by the complainant, took cognisance of the complaint and postponed the issuance of process for a magisterial inquiry under Section 202 of the CrPC. On completion of the magistral inquiry, the Ld. Magistrate issued process for the offence punishable under Section 376 of the IPC.

The appellant in the above case, being aggrieved by the summoning order passed by the Ld. Magistrate, challenged the same before the Allahabad HC under Section 482 of the CrPC, which came to be rejected, leading the appellant to file an appeal before the Supreme Court.

Findings and analysis

The Supreme Court, while acknowledging the error committed by the Ld. Magistrate, observed that the Allahabad HC too erred in rejecting the petition. It further held that, given the multiplicity of offences alleged, the complainant's assertions did not inspire confidence. Moreover, the Supreme Court also observed that there was an inordinate delay of over 4 (four) years in filing the complaint. Even the parents of the appellant were arrayed as accused, which it found to be wholly unwarranted. Since the appellant had submitted that the complaint filed by respondent no. 2 was vexatious, the Supreme Court reiterated the principles laid down in *Mohammad Wajid vs. State of U.P.*[30]. The Supreme Court emphasised Allahabad HC's duty to consider the surrounding circumstances when dealing with a petition for quashing an FIR or complaint on the ground of vexatious litigation. Such proceedings can tarnish a person's reputation.

Accordingly, the Supreme Court laid down a 4 (four) step test to be adopted by a High Court while determining the veracity of a prayer for quashing an FIR or a complaint. In such cases, the accused often produce documents and material in support of their plea for quashing. The 4 (four) step approach laid down by the Supreme Court is as under:

1. whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
2. whether the material relied upon by the accused is of such nature as would reject and overrule the factual assertions in the complaint thereby justifying dismissal of the accusations as false?
3. whether the material relied upon by the accused, is not refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
4. whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

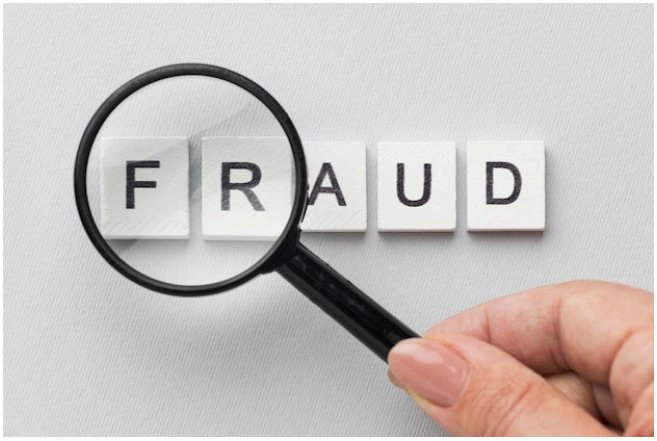
The Supreme Court emphasised that extra care and circumspection is warranted in cases that are manifestly vexatious or have been filed with an ulterior motive for wreaking vengeance upon an accused. It was also observed that the High Court when dealing with such matters has to read in between the lines and ought to thoroughly check the veracity of the allegations raised by an accused.

[30] 2023 SCC OnLine SC 951

Conclusion

The Supreme Court in this decision crystallised a 4 (four) step test to guide the High Courts while considering quashing petitions under Section 482 of the CrPC. The Supreme Court established a principled framework to determine if continuing proceedings would constitute an abuse of process, by requiring the material relied upon by the accused to be of impeccable quality and incapable of being justifiably refuted.

Moreover, such a thorough test would also ensure that complaints containing substantiated and legitimate allegations are not quashed and that only frivolous prosecutions are prevented. By laying down a 4 (four) pronged test, the Supreme Court preserved the balance between protecting the rights of the accused and upholding the interests of justice.



Supreme Court upholds National Company Law Tribunal's authority to decide on allegations of fraud and coercion in oppression and mismanagement petitions

The Supreme Court, in the case of ***Mrs. Shailja Krishna vs. Satori Global Limited and Ors.***[31]**,** reaffirmed the jurisdiction of the Hon'ble National Company Law Tribunal ("**NCLT**") to adjudicate complex issues of fraud, manipulation and coercion in allegations of oppression and mismanagement filed under Sections 397 and 398 of the Companies Act, 1956 ("**CA 1956**"). This judgment of the Supreme Court clarifies the powers of the NCLT to address the validity of controversial instruments/documents pivotal to the claim of oppression and mismanagement, including gift deeds and share transfers alleged to be vitiated by fraud.

Brief facts

Satori Global Limited ("**Company**"), which was originally incorporated as Sargam Exim Private Limited was incorporated in 2016 by Mrs. Shailja Krishna ("**Appellant**") and her husband, Mr. Ved Krishna. Since its incorporation, the Company's shareholding structure became highly concentrated, as the Appellant gradually increased her holding to approximately 98% of the total paid-up share capital. The Appellant also served as an executive director.

The Appellant and her husband separated in 2009-2010, leading to certain differences and the alleged transfer of the Appellant's controlling shareholding to her mother-in-law through a gift deed dated December 17, 2010. The Appellant contended that the execution of the gift deed was under coercion and duress, and she was not physically present during the execution. The Appellant also asserted that her effective removal from the Company's management was due to fraudulent board meetings and improper share transfers. These actions were supported by manipulated documents and violated several provisions of the Articles of Association ("**AoA**") of the Company.

The NCLT being satisfied by the documentary evidence and credibility of her allegations, ruled in favour of the Appellant. The NCLT invalidated the impugned board resolutions and the contested share transfers and found the purported gift deed vitiated by fraud and contrary to the Company's AoA. Consequentially, the Appellant was reinstated as both director and majority shareholder.

However, this was then overturned by the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") *vide* its order dated June 2, 2023. ("**Impugned Order**"). The NCLAT set aside the order of the NCLT and stated that the NCLT lacked jurisdiction to adjudicate upon issues of fraud. The NCLAT directed the Appellant to seek her remedy before a civil court under Sections 31 and 34 of the Specific Relief Act, 1963. Being aggrieved

[31] Civil Appeal Nos.6377-6378 of 2023 (decided on September 2, 2025)

by the Impugned Order, the Appellant approached the Supreme Court.

Issues

1. Whether the company petition, decided in favour of the Appellant by the NCLT was maintainable under Sections 397 and 398 of CA 1956?
2. Assuming maintainability, whether the NCLT had jurisdiction to decide on the validity of the gift deed?

Findings and analysis

The Supreme Court held that the company petition filed under Sections 397 and 398 of CA 1956 was maintainable, particularly in light of Section 399 of the CA 1956, which sets out certain eligibility thresholds for members to file complaints alleging oppression and mismanagement. The Supreme Court noted that the NCLT found the Appellant's petition to be maintainable in view of the circumstances under which the Appellant was allegedly divested of her shareholding. The Supreme Court also held that, having examined the pleadings, materials and evidence relating to membership and shareholding, the petition before the NCLT was rightly entertained, especially since fraud and coercion allegations would negate any purported divestment of rights.

On the question of jurisdiction, the Supreme Court affirmed that the NCLT possesses wide powers to adjudicate upon complaints of oppression and mismanagement, including the power to examine the validity of central instruments such as a gift deed tainted by fraud or coercion.

The Supreme Court held that the NCLT had powers to scrutinise both, the gift deed and the board meetings purportedly effectuating the Appellant's removal. The analysis showed that the transfer of shares *vide* the gift deed was questionable as it violated the express provisions of the AoA by gifting shares to a class of person not permitted (the mother-in-law) and also had signs of manipulation.

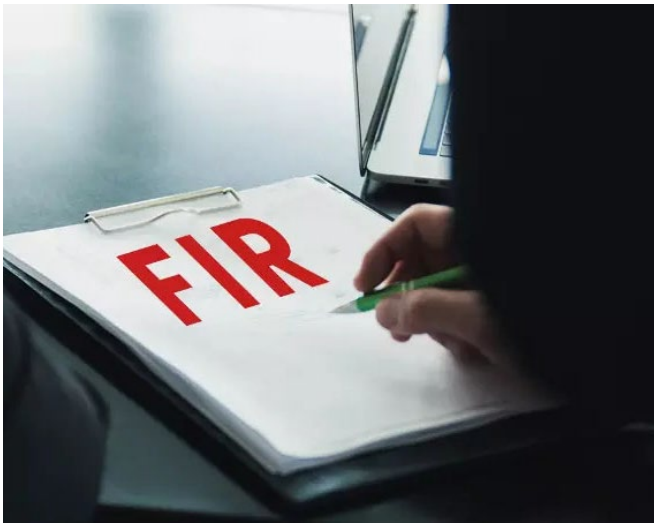
The Supreme Court also noted that the evidence pointed to the Appellant being the victim of a series of co-ordinated acts amounting to oppression and mismanagement. The board meetings removing her from management, the invalid gift deed and manipulation of share transfer forms and the exclusion from company affairs constituted a breach of probity and fairness. The impact of these acts demonstrated a lack of transparency and due process, revoking her rights and majority status in a manner that the Supreme Court deemed wrongful. Accordingly, the Supreme Court set aside the Impugned Order, restored the NCLT's order and reaffirmed the jurisdiction of the NCLT to hold wide authority.

Conclusion

The Supreme Court reaffirmed that the NCLT has wide jurisdiction to adjudicate all matters of oppression and mismanagement, including those involving allegations of fraud and coercion. The Supreme Court reiterated that fraud vitiates all transactions and therefore any instrument or action, such as share transfers or board resolutions, tainted by fraud, manipulation, or *mala fide* can be declared void by the NCLT.

The NCLT acts as a court of equity and focuses on remedying corporate wrongs rather than being limited by procedural technicalities or constraints cast by a civil court.

The NCLT's remedial powers ensure shareholder protection and prevents abuse of power by those in control of the affairs of the company. The NCLT is empowered to set aside and correct any company actions that are unfair and wrongful or contrary to the AoA or law, whenever such acts affect the rights of members.



Supreme Court clarifies limits of writ jurisdiction in quashing FIRs and charge sheets

The Supreme Court, in the case of ***Pradnya Pranjal Kulkarni vs. State of Maharashtra and Anr.***[32]**,** delivered a significant ruling clarifying the contours of writ jurisdiction under Article 226 of the Constitution *vis-à-vis* the quashing of FIRs and charge sheets. The judgment draws a clear line between the stage of investigation and the stage at which cognisance of an offence is taken by a competent court. While recognising the High Court's wide powers under Article 226 of the Constitution to intervene in appropriate cases, the Supreme Court held that once a judicial order of cognisance intervenes, the remedy of quashing cannot be pursued under Article 226 of the Constitution. Instead, the appropriate remedy lies under Section 528 of the BNSS (previously, Section 482 of the CrPC), which empowers courts to quash not merely the FIR or the charge sheet, but also the order of cognisance itself.

Brief facts

The case arose from a writ petition filed before the Bombay High Court ("**Bombay HC**") seeking quashing of an FIR bearing CR No. 648 of 2024, registered on September 12, 2024, at M.I.D.C. Police Station, Solapur ("**Writ Petition**"). The FIR alleged offences under Sections 420, 406, and 409 read with Section 34 of the IPC. While the Writ Petition was pending, the investigation was completed, and a charge sheet was filed before the Trial Court on May 14, 2025. A Division Bench of the Bombay HC, *vide* its order dated July 1, 2025, disposed of the Writ Petition as infructuous, reasoning that once a charge sheet had been filed, a petition under Article 226 of the Constitution could not be entertained for quashing the FIR. In doing so, it relied on the judgment of the Supreme Court in *Neeta Singh and Ors. vs. State of Uttar Pradesh and Ors.* ("**Neeta Singh**")[33].

Aggrieved, the petitioner approached the Supreme Court, contending that the Bombay HC had misapplied the ratio of Neeta Singh and failed to consider the distinct factual matrix of the present case.

Issue

The central question before the Supreme Court was whether the Bombay HC was correct in holding that the filing of a charge sheet renders a writ petition for quashing an FIR infructuous, or whether the Bombay HC retained the jurisdiction to entertain such a petition under Article 226 of the Constitution or by moulding relief under Section 528 of the BNSS.

Findings and analysis

The Supreme Court first emphasised the well-established principle, that the writ jurisdiction under Article 226 of the Constitution is of a discretionary and extraordinary nature. It is not intended to supplant statutory remedies, but to provide relief where grave injustice or abuse of process is apparent. However, the Supreme Court clarified that the availability of statutory remedies cannot be ignored in criminal matters, particularly once the process of cognisance by a competent court is initiated.

In this context, the Supreme Court carefully distinguished the facts of the present case from those in Neeta Singh. It observed that the Bombay HC had misread and misapplied the Neetu Singh judgment, overlooking the factual dissimilarities. While Neeta Singh judgment dealt with a situation where the statutory remedy had already been exhausted and the stage of cognisance had long intervened, the present case involved a writ petition already filed and pending at the stage when the charge sheet was submitted. The Supreme Court held that the Bombay HC had erroneously treated the petition as infructuous, thereby unjustly depriving the petitioner of a remedy.

Most importantly, the Supreme Court underlined the scheme of Section 528 of the BNSS, which specifically empowers courts to quash not only an FIR or charge sheet but also the order taking cognisance, provided that the order is specifically assailed with appropriate pleadings and sufficient factual grounds. The Supreme Court further explained that once a charge sheet is filed and cognisance is taken, Article 226 of the Constitution cannot be invoked to nullify the judicial act of taking cognisance. At that stage, litigants must resort to Section 528 of the BNSS. The present petition was filed both under Article 226 of the Constitution read with Section 528 of the BNSS. Therefore, the Bombay HC had jurisdiction to mould the relief sought by treating the

[32] SLP (Crl.) No. 13424/2025 (decided on September 3, 2025)

[33] SLP (Crl.) No. 13578/2024 (decided on October 15, 2024)

Writ Petition as one invoking Section 528 of the BNSS, rather than dismissing it summarily.

The Supreme Court further emphasised that the filing of a charge sheet and the taking of cognisance represent a legal watershed. Before cognisance, writ jurisdiction remains available to quash FIRs or charge sheets in appropriate cases. After cognisance, the statutory route under Section 528 of the BNSS must be pursued.

Conclusion

This ruling serves as a crucial clarification on the interplay between constitutional and statutory remedies in criminal procedure. It strikes a careful balance between safeguarding individual liberty against vexatious prosecutions and ensuring that the statutory scheme under the BNSS is not circumvented. Different High Courts follow their own set of procedural requirements when it comes to petitions under Article 226 of the Constitution or Section 528 of the BNSS, often leading to uneven experiences for litigants. This judgment should also be an occasion to recognise the need for uniformity and reform across jurisdictions.

Supreme Court reinforces the prohibition on second SLP following unconditional withdrawal: A decision grounded in public policy against repetitive litigation

A Division Bench of the Supreme Court, in the case of ***Satheesh V.K. vs. The Federal Bank Limited***[34], dismissed 2 (two) civil appeals filed by a borrower challenging the maintainability of a second round of litigation before the Supreme Court after having unconditionally withdrawn an earlier SLP. The Supreme Court, while reiterating the principle of finality in litigation, held that such repeated attempts to challenge the same order are impermissible and contrary to public policy.

Brief facts

The appellant, Satheesh V.K., had availed financial assistance from the Federal Bank Limited ("**Bank**"), a secured creditor by mortgaging properties in Kozhikode. Upon default, the Bank classified the loan as a Non-Performing Asset ("**NPA**") and initiated recovery proceedings under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Aggrieved by the action of the Bank, the appellant filed a writ petition under article 226 of the Constitution before the Kerala High Court ("**Kerala HC**"), which was disposed of on October 1, 2024. The Kerala HC directed the appellant to pay INR 2,00,00,000 (Indian Rupees two crore) upfront and the balance in 12 (twelve) monthly instalments. The appellant was also permitted to approach the Bank for a one-time settlement after making the initial payment.

The appellant challenged Kerala HC order by way of an SLP before the Supreme Court, which was withdrawn on November 28, 2024 without seeking liberty to re-approach the Supreme Court. Subsequently, the appellant filed a review petition before the Kerala HC, which was dismissed. The appellant then filed 2 (two) civil appeals before the Supreme Court challenging both the original High Court order dated October 1, 2024 and the dismissal of the review petition. The Bank objected to the maintainability of the appeals.

[34] 2025 SCC OnLine SC 2046 (decided on September 23, 2025)

Findings and analysis

The Supreme Court upheld the preliminary objection raised by the Bank regarding the maintainability of the appeals and held as follows:

1. a litigant who withdraws an SLP without seeking liberty to file a fresh one cannot at a later stage challenge the same order again;
2. the underlying principle of Order XXIII Rule 1 of the CPC, which bars re-litigation after withdrawal without liberty, applies equally to SLPs under Article 136 of the Constitution;
3. the Supreme Court relied on its earlier decision in *Upadhyay and Co. vs. State of Uttar Pradesh*[35], which held that unconditional withdrawal of an SLP precludes a second challenge to the same order; and
4. the Supreme Court also distinguished the present case from *S. Narahari vs. S.R. Kumar*[36], where liberty to file a review was granted, and from *Khoday Distilleries Limited*[37] and *Kunhayammed vs. State of Kerala*[38], which dealt with the doctrine of merger and maintainability of review petitions post-SLP dismissal.

The Supreme Court emphasised that allowing such repetitive litigation would violate the maxim '*interest reipublicae ut sit finis litium',* which means it is in the public interest that there be an end to litigation.

Conclusion

The Supreme Court's decision reinforces the principle that litigants cannot take multiple bites at the cherry by re-approaching the Supreme Court after unconditionally withdrawing an SLP. The judgment upholds judicial discipline, discourages forum shopping, and preserves the sanctity of final orders. It serves as a cautionary precedent for litigants seeking to circumvent procedural finality through technical maneuvers.

Supreme Court re-affirms that principles of natural justice and public policy of India must be upheld despite the limited scope of judicial interference in challenge to an arbitral award

The Supreme Court, in ***SEPCO Electric Power Construction Corporation vs. GMR Kamalanga Energy Limited***[39], re-affirmed that under Sections 34 and 37 of the Arbitration Act, the scope of interference with an arbitral award is narrow. However, the principles of natural justice and the public policy of India are paramount and cannot be ignored or sidelined. The Supreme Court also interpreted Section 28(3) of the Arbitration Act and held that an arbitral tribunal, being a creature of a contract itself, cannot travel beyond its mandate to rewrite the terms of the contract.

Brief facts

1. The appellant, SEPCO Electric Power Construction Corporation ("**SEPCO**"), entered into an agreement for Civil Works and Engineering, Erection, Testing and Commissioning ("**CWEETC Agreement**") with GMR Kamalanga Energy Limited ("**GMRKE**"), as an engineering, procurement and construction contractor. The CWEETC Agreement was executed for construction of 3 (three) coal-fired thermal power plants of 350 (three hundred and fifty) MW each, at Kamalanga, Odisha.

[35] (1999) 1 SCC 81
[36] (2023) 7 SCC 740
[37] (2019) 4 SCC 376
[38] (2000) 6 SCC 359
[39] *2025 SCC OnLine SC 2088 / 2025 INSC 1171* (decided on September 26, 2025)

2. As disputes arose between the parties under the CWEETC Agreement, which also contained an arbitration clause, SEPCO issued a notice of arbitration against GMRKE leading to constitution of a 3 (three) member arbitral tribunal. The parties submitted their claims and counterclaims before the arbitral tribunal.
3. Upon adjudication of the disputes, an arbitral award dated September 7, 2020, was passed where certain claims of both parties were allowed, to the net effect of GMRKE becoming liable to pay approximately INR 995,00,00,000 (Indian Rupees nine hundred and ninety-five crore) to SEPCO ("**Award**").
4. Assailing the Award, GMRKE moved an application before the Orissa HC under Section 34 of the Arbitration Act on the ground of unfair treatment of parties. The Single Judge rejected the arguments of GMRKE and upheld the Award ("**Section 34 Judgment**").
5. Thereafter, GMRKE moved the Division Bench of the Orissa HC under Section 37 of the Arbitration Act, in appeal against the decision of the Single Judge. The Division Bench allowed the appeal and set aside the Award on finding, *inter alia,* that:
    a) the arbitral tribunal based its analysis and findings on mistaken facts as it ignored the 'No Waiver' and 'No Oral Modification' clauses, as contemplated in the CWEETC Agreement;
    b) the Single Judge wrongly affirmed the Award despite admitting that the decision of the arbitral tribunal on the issue of waiver of contractual notices was based on scant or no evidence; and
    c) the Award was passed in disregard of binding precedents.
6. The judgment passed by the Division Bench ("**Impugned Judgment**") was challenged by way of a SLP before the Supreme Court by SEPCO.

Issues

The Supreme Court dealt with the below issues:

1. whether the Award was correct in determining oral waiver and/or equity estoppel as against the terms of the contract?
2. whether discriminatory treatment of parties by the arbitral tribunal amounts to violation of Section 18 of the Arbitration Act and denial of natural justice, thus mandating setting aside of the Award?
3. what is the extent and scope of judicial review exercisable under Sections 34 and 37 of the Arbitration Act?

Findings and analysis

While affirming the Impugned Judgment and upholding the decision of the Division Bench to set aside the Award and the Section 34 Judgment, the Supreme Court made the following observations:

Re: The scope and authority of the arbitral tribunal is bound by the terms of the agreement (Section 28(3) of the Arbitration Act)

The arbitral tribunal upheld the assumed waiver of the mandate of contractual notice - despite explicit provisions of the CWEETC Agreement to the contrary - and thus varied the milestone conditions provided under the CWEETC Agreement. The Supreme Court observed that such act on the part of the arbitral tribunal amounted to modification of the terms of the contract.

Section 28(3) of the Arbitration Act casts an explicit duty on a tribunal to resolve disputes in accordance with the terms of the contract and trade usages applicable to the transaction. An arbitrator lacks the power to deviate from the terms of the contract while making an award.

Existence and powers of an arbitrator arise out of the agreement between the parties. The terms of the agreement serve as the fundamental basis for the procedure to be adopted by the arbitral tribunal.

Deviation from Section 28(3) of the Arbitration Act is a valid ground for challenging an arbitral award, as it is the primary duty of arbitrators to enforce promises parties have made, and to uphold contract sanctity.

The Division Bench rightly exercised judicial oversight on erroneous and untenable interpretation of terms of the CWEETC Agreement in the Award.

Re: Principles of natural justice *vis-à-vis* equal treatment of parties.

The arbitral tribunal had unfairly construed the waiver clauses in favour of SEPCO and then went on to apply a different interpretation of the same waiver clauses to the counterclaims of GMRKE.

GMRKE was also not given an opportunity to lead evidence on the issue of waiver (which was decided against it).

When a party is unable to analyse, comment or argue on a contention raised by the other party, it is a breach of natural justice and thereby, also a violation of the most fundamental notions of justice. Arbitral decisions must adhere to the principles of natural justice.

On the issue of discriminatory treatment of parties, the Supreme Court analysed Section 34 of the Arbitration Act. The grounds available to a party to challenge an India-seated international commercial arbitration specifically includes the ground – 'unable to present the case' – under Section 34(2)(a)(iii) of the Arbitration Act.

In consonance with the above, the Supreme Court held that unequal treatment of parties would fall within the ambit of 'lack of full opportunity' under Section 18 of the Arbitration Act which contemplates that the parties must be treated with equality and each party will be given a full opportunity to present his case.

The Division Bench, thus, correctly held that it cannot turn a blind eye to a glaring example of unequal treatment.

Re: Scope of Sections 34 and 37 of the Arbitration Act

Section 34 of the Arbitration Act provides for limited judicial intervention on the grounds envisaged therein.

Under Section 34 of the Arbitration Act, no independent evaluation is permitted on the merits of an award and a court under Section 37 of the Arbitration Act can only determine whether the court under Section 34 of the Arbitration Act has travelled beyond the parameters of the scope therein.

Relying on *Project Director, National Highways Authority of India vs. M. Hakeem*[40], it was held that courts would ideally reevaluate the substantive arguments on the merits of an award only when the limited grounds laid down under Section 34 of the Arbitration Act are triggered or fulfilled. This interference would be mandated when the perversity so identified in the award goes to the root of the matter.

Section 37 of the Arbitration Act is akin to a second appeal under the CPC. As such, a court exercising the mandate of Section 37 of the Arbitration Act ought to employ caution and reluctance to alter the concurrent findings of a Section 34 court. However, where the findings in an award are such as would shock the conscience of the court and the grounds for setting aside the award get triggered, then the award would have to be tested beyond the 'limited' scope of judicial interference under Section 37 of the Arbitration Act.

Conclusion

1. The Supreme Court reaffirmed that an arbitral tribunal, being a creature of a contract, cannot travel beyond its mandate and rewrite the terms of such contract.
2. In the present case, the arbitral tribunal acted in violation of principles of natural justice by discriminating between the parties. In this background, the Supreme Court concluded that discriminatory treatment is not compatible with the basic notions of justice.
3. The Supreme Court also re-affirmed the following established principles in matters of challenge to an arbitral award:
    a) the scope under Section 37 of the Arbitration Act is inherently limited or narrower than Section 34 of the Arbitration Act. Thus, the question of re-interpreting the contract with an alternative view does not arise. However, at the Section 37 stage, interference with a decision given by a Section 34 court is justified when the Section 34 court failed to appreciate the gross violations of the basic principles of adjudication of a dispute;

[40] (2021) 9 SCC 1

b) while the latent violations of basic principles may not mandate interference, but direct omissions of the mandate of Sections 18 and 28(3) of the Arbitration Act are clearly patent and *prima facie* violations; and

c) courts cannot be made a mere spectator to an attack on the fundamental policy of Indian law and the same allows for reappreciation of the arbitral award by a Section 37 court.

4. On application of the above principles, it was concluded that despite the limited scope of interference, the Division Bench was obliged to interfere with the arbitral award.

5. The judgment reinforces several critical and significant principles, including the following:

a) while courts must respect party autonomy and finality in arbitration, they cannot ignore fundamental violations of natural justice and public policy. Arbitral proceedings must operate within the framework of fundamental legal principles, contractual boundaries and natural justice; and

b) equal treatment of the parties in arbitral proceedings is vital, and each party must be given full opportunity to present its case.

Supreme Court of India reiterates that the arbitral awards cannot be revisited through indirect procedural routes

The Supreme Court, in the case of ***MMTC Limited vs. Anglo American Metallurgical Coal Private Limited***[41]**,** dismissed the objections filed under Section 47 of the CPC at the stage of enforcement of an arbitral award**.** The objection was filed to nullify the arbitral award on the ground of allegations of fraud and breach of fiduciary duty by a corporation's own officials, allegedly rendering the award inexecutable.

The Supreme Court dismissed the objections on the ground of lack of *prima facie* case and emphasised on the limited scope of objections available for a plea of nullity under Section 47 of the CPC. The Supreme Court's ruling reinforces the principle that arbitral award's finality cannot be disturbed through collateral challenges and underscores the long standing principle of limited judicial intervention and finality of awards.

Brief facts

1. M/s. MMTC Limited ("**Appellant**") and M/s. Anglo-American Metallurgical Coal Private. Limited ("**Respondent**") executed a Long-Term Agreement ("**LTA**") dated March 7, 2007 for the purchase of coal. On September 24, 2012, Respondent invoked the arbitration clause under the LTA for damages on account of un-lifted quantity of coal contracted by the Appellant. The arbitral award dated May 12, 2014 ("**LTA Award**") was determined in favour of the Respondent, with a direction to the Appellant to pay USD 78,720,000 (US Dollars seventy-eight million seven hundred and twenty thousand) plus interest and costs for damages.

2. The LTA Award was challenged under Section 34 of the Arbitration Act before the Single Judge of the Delhi HC but the same was dismissed. Subsequently, the order passed by the Single Judge of the Delhi HC was challenged before the Division Bench of the Delhi HC under Section 37 of the Arbitration Act and the same was allowed on March 2, 2020, setting aside the order of the Single Judge and consequently, the LTA Award. This order of the Division Bench of the Delhi HC was challenged in the Supreme Court and on December 17, 2020, the Supreme Court restored the Award and set aside the Division Bench's order. Following a review and clarification, the LTA award attained finality.

[41] Civil Appeal No. 13321 of 2025 @ Special Leave Petition (Civil) No. 14832 of 2025 (decided on November 3, 2025)

3. Thereafter, the Respondent filed the execution petition seeking enforcement of the LTA Award. During the proceedings in the execution petition, the Appellant filed objections under Section 47 of the CPC before a Single Judge of the Delhi HC[42] alleging that its own senior officials had colluded with the Respondent to artificially inflate the contract price of the coal. It argued that the alleged fraud and breach of fiduciary duty was only discovered and investigated later and as such, could not have been brought into record during the earlier proceedings. Additionally, the Appellant referred to the ongoing investigations being conducted by Central Bureau of Investigation ("**CBI**") as a ground to halt enforcement.
4. Further to the above, the Appellant also file a civil suit praying that the Award is void and unenforceable, on the contention that an award induced by fraud cannot be arbitrated. This suit was dismissed as being not maintainable and a Regular First Appeal[43] was filed and pending.
5. The Delhi HC dismissed these objections, holding that the scope of Section 47 of the CPC is limited to jurisdictional defects and cannot be invoked to reopen settled arbitral findings. The Delhi HC further observed that entertaining objections under Section 47 of the CPC during the enforcement proceedings would expose the LTA Award to a second round of litigation, thus frustrating the legislative intent of finality and efficiency under the Arbitration Act. Hence, the Appellant filed the present appeal.

Issues

1. Whether MMTC's objections under Section 47 of the CPC, alleging fraud and breach of fiduciary duty by its own officials, rendered the LTA Award inexecutable?
2. Whether post-award allegations of fraud justify judicial intervention at the stage of execution, in the absence of such contentions at arbitral or appellate stages?

Findings and analysis

1. The Supreme Court reaffirmed the findings of the Delhi HC that objections to enforcement under Section 47 of the CPC are confined to jurisdictional infirmities and decrees that are absolute nullities, errors of fact or law do not suffice. While observing that the objections in the present case is not on the ground of any inherent lack of jurisdiction, the Supreme Court underscored that objections at the execution stage form a 'very narrow compass', upholding the intent of the Arbitration Act to restrict judicial intervention post-finality. However, in light of the facts of the present matter, the Supreme Cout was not convinced to dismiss the objections only on maintainability and hence, analysed merits.
2. The Supreme Court briefly discussed the legal parameters involving breach of fiduciary duty including the test of a 'Reasonably Competent Director', 'Range of Reasonableness' and the 'Business Judgment Rule' and reviewed the facts of the case. The Supreme Court cautioned against the dangers of hindsight bias when reviewing corporate decision-making and held that courts must defer to board actions taken within a reasonable range of options. Additionally, it held that adjudication authorities must assess whether the challenged conduct was so irrational or reckless that no reasonable company director (in similar circumstances) could have adopted it. Only decisions palpably outside this spectrum may attract judicial censure.
3. Applying the 'Business Judgment Rule', the Supreme Court observed that based on the materials furnished, the directors of the Appellant acted in a manner that a reasonable personnel/director of any company would. It further observed that the FIR filed in this regard, which triggered the investigations by CBI was only a legal process set in motion. It does not in itself prove the allegations of fraud or render the LTA Award inexecutable. Hence, the Supreme Court held that the Appellant failed to establish a *prima facie* case. The judgment robustly upholds the principle of finality in arbitral awards, warning against collateral challenges via new proceedings

[42] OMP (ENF.) (COMM.) No. 19 of 2018

[43] RFA (OS) (Comm) No. 28 of 2025

or criminal complaints after the award and appellate judgments have attained closure. The Supreme Court noted that the pendency of criminal investigations, like those initiated by CBI and pending FIRs, does not and should not impede award enforcement.

Conclusion

The Supreme Court clarified that the scope and applicability of Section 47 of the CPC is limited and should be exercised sparingly at the stage of enforcement of an arbitral award. Additionally, it settled the law on the objections under Section 47 of the CPC, which is to be exercised only when the decree suffers from fundamental jurisdictional defects or a legal nullity. It cannot be used to challenge the errors of fact or law, or revisit issues already adjudicated during the original proceedings and subsequent appeals. This verdict reaffirmed the principle of finality in arbitral proceedings and reinforced India's pro-enforcement stance, ensuring that collateral litigation cannot be used to derail settled arbitral outcomes.

Supreme Court reaffirms party autonomy and the 'Legitimate Interest' test in commercial arbitrations

The Supreme Court, in the matter of ***BPL Limited vs. Morgan Securities and Credits Private Limited***[44], delivered a landmark judgment reinforcing the sanctity of commercial contracts and the doctrine of party autonomy. The Supreme Court held that in transactions between sophisticated commercial entities, a high rate of interest (36% p.a. with monthly rests) triggered by a default cannot be characterised as unconscionable or penal, provided it serves a legitimate business interest of the lender.

Brief facts

BPL Limited ("**Appellant**") and its subsidiary entered into a bill discounting facility with Morgan Securities and Credits Private Limited ("**Respondent**"). The facility was governed by sanction letters issued in 2002 and 2003, which stipulated a concessional interest rate of 22.5% p.a., contingent upon timely repayment. Crucially, the agreement provided that in the event of default, the concession would be withdrawn, and a 'normal' rate of 36% p.a. with monthly rests would be applicable from the date of the default.

Following a default exceeding INR 25,00,00,000 (Indian Rupees twenty-five crore), the Respondent initiated arbitral proceedings. The arbitral tribunal awarded the claims with interest at the agreed rate of 36% p.a. with monthly rests up to the date of the award. This award was subsequently upheld by the Delhi HC. The Appellant challenged the rate before the Supreme Court, contending that the interest was 'penal', 'expropriatory', and 'opposed to public policy'.

Issues

The Supreme Court identified and adjudicated upon the following core legal questions arising for its consideration:

1. whether a high rate of interest (36% p.a. with monthly rests) stipulated in a commercial contract between sophisticated parties is hit by the rule against 'penalties' under Section 74 of the Indian Contract Act, 1872?
2. whether the arbitral tribunal's power to award interest under Section 31(7)(a) of the Arbitration Act is restricted by the express agreement of the parties, thereby making such agreement the 'bedrock' of the award?
3. whether an arbitral award can be set aside as being 'opposed to the public policy of India' on the sole ground that the rate of interest awarded is allegedly high or unconscionable?

[44] 2024 INSC 1380 (decided on December 4, 2025)

4. whether the 'Legitimate Interest' test—evaluating if a detriment is out of all proportion to the innocent party's interest—is applicable to determine the validity of deterrent contractual clauses in the Indian legal context?

Key precedents analysed

The Supreme Court conducted a rigorous analysis of these judicial authorities, structuring its findings to resolve the core issues of penalty, statutory discretion, and public policy:

Addressing the limits of tribunal discretion and award structure (Issue 2)

1. ***Delhi Airport Metro Express Private Limited vs. DMRC***[45]: The Supreme Court relied on this to establish the 'supremacy of the agreement' under Section 31(7)(a) of the Arbitration Act. It held that when parties have agreed on interest, the arbitral tribunal 'cease(s) to have any discretion' and must be guided by the agreement. This served as a decisive bar against substituting the agreed rate with a 'reasonable' alternative.
2. ***Hyder Consulting (UK) Limited vs. Governor, State of Odisha***[46]: Utilised to justify the compounding of interest, the Supreme Court affirmed that the word 'sum' awarded simply means 'a particular amount of money' which may include interest. Once merged, the components 'lost their separate identities', rendering the challenge against 'interest on interest' legally unsustainable.

Evaluating the rule against penalties and *in terrorem* clauses (Issues 1 and 4)

1. ***Banke Behari vs. Sundar Lal***[47]: The Supreme Court revived this full bench ruling to distinguish between a penalty and an 'alternative arrangement'. It held that a higher rate for default is strictly enforceable because 'no sum is named as the amount to be paid in case of such breach'; rather, the terms on which the debtor holds the money simply become 'less favourable'.
2. ***K.P. Subbarama Sastri vs. K.S. Raghavan***[48]: Applied to determine that the 36% rate was not a move to drive the promisor *in terrorem* (in fear) but was a reflection of the 'economic risk inherent in unsecured bill discounting', evaluated against the 'background of the transaction'.
3. ***Fateh Chand vs. Balkishan Dass***[49]: The Supreme Court distinguished this legacy ruling to update the standard for damages under Section 74 of the Indian Contract Act, 1872. It held that modern commercial realities require protecting a lender's 'legitimate business interest', specifically the ability to redeploy capital rather than merely compensating for a proven, granular loss.

Applying the modern 'Legitimate Interest' standard (Issue 4)

1. ***Cavendish Square Holding BV***[50]*:* The judgment serves as the pivotal analytical framework for the Supreme Court's determination of whether deterrent interest clauses are opposed to the public policy of India. By observing that the 'Legitimate Interest' test is embraced across diverse foreign jurisdictions, including Australia (*Andrews vs. ANZ Banking Group Limited*), New Zealand (*127 Hobson Street Limited vs. HKPL Limited*), Malaysia (*Cubic Electronics Sdn Bhd vs. Mars Telecommunications Sdn Bhd*), and Germany. The Supreme Court established that the modern global trend in commercial law has moved away from a purely compensatory view of damages.
2. This comparative analysis allowed the Supreme Court to adjudicate that the rule against penalties is not a '*quasi*-statutory code' but a substantive principle that must adapt to the 'uncertain and fluctuating' nature of public policy in a globalised commercial landscape.

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[45] (2024) 6 SCC 357
[46] (2015) 2 SCC 189
[47] ILR (1893) 15 All (FB)
[48] (1987) 2 SCC 424
[49] 1963 SCC OnLine SC 49
[50] *Cavendish Square Holdings BV vs. Makdessi*, [2013] 1 All ER (Comm) 787

3. Consequently, when addressing whether 'penal interest on penal interest' is opposed to public policy, the Supreme Court utilised the *Cavendish*[51] lens to conclude that such stipulations are valid if they serve a 'legitimate business interest' that is not purely punitive. The Supreme Court held that in high-risk financial transactions like bill discounting, the lender's interest lies in the 'cycle of redeployment of capital and maintaining liquidity'. By adopting the *Cavendish*[52] standard, the Supreme Court determined that as long as the detriment imposed is not 'out of all proportion' to the protection of this 'Legitimate Interest', the clause does not shock the conscience of the Court or violate public policy. This shift reinforces that party autonomy remains the 'bedrock of the arbitral process', ensuring that sophisticated entities are held to their bargains even when the secondary obligations are deterrent in nature.
4. ***Dunlop Pneumatic Tyre (UK)***[53]: Adjudged as no longer an absolute '*quasi*-statutory code'. The Supreme Court held that the traditional *Dunlop*[54] tests for penalties are 'helpful considerations' for simple contracts but are 'insufficient for complex financial instruments'.

Scrutinising public policy and commercial estoppel (Issue 3)

1. ***Indian Bank vs. Blue Jaggers Estates Limited***[55]: Affirmed that borrowers who have enjoyed facilities for years cannot later claim the terms are 'unconscionable, expropriatory and contrary to law'. The Supreme Court applied this to estop the Appellant from resiling from its bargain, noting that the Appellant was not a 'vulnerable party' and the award did not shock the conscience of the Supreme Court.
2. ***Central Bank of India vs. Ravindra***[56]: The Supreme Court distinguished this case, holding that its observations on penal interest apply only to 'non-corporate borrowers' and Section 34 of the CPC. It clarified that *Ravindra* cannot be treated as an authority for Section 31(7) arbitrations where party autonomy is the absolute 'bedrock'.

Findings and analysis

The Supreme Court held that the powers of an arbitral tribunal are inherently circumscribed by the arbitration agreement and the underlying contract. It observed that the express use of "*Unless otherwise agreed by the Parties..*". as the opening words of Section 31(7)(a) of the Arbitration Act, is a clear instance of 'Party Autonomy' which forms the "bedrock of the arbitral process". Consequently, the arbitral tribunal is 'denuded of its discretion' to award interest at any other rate once the parties have reached a consensus.

Further, the Supreme Court observed that a contractual provision for an enhanced rate of interest (36% p.a.) upon default is not a penalty if it protects a 'legitimate business interest' that extends beyond mere pecuniary compensation. In this case, the interest rate served to protect the Respondent's cycle of capital redeployment and liquidity. The Supreme Court held that the law will not interfere with a remedy unless its adverse impact on the defaulter 'significantly exceeds the legitimate interest' of the innocent party.

Following on the above, the Supreme Court drew a clear distinction between a traditional loan and a bill discounting facility. The latter is a high-risk, short-term funding mechanism where the lender's ability to redeploy principal and interest is critical. Consequently, the compensatory requirement of compounding in the case of default is a commercially justifiable safeguard against the disruption of the lender's business cycle.

It held that the principle of unconscionability is inapplicable to voluntary commercial agreements between entities of equal bargaining strength. The Appellant, being a sophisticated corporate entity, having wilfully entered into the agreement and enjoyed the benefit of the funds for decades, is estopped from assailing the interest clause as penal. Corporate borrowers are presumed to be the 'best judges of what is legitimate' at the time of contracting.

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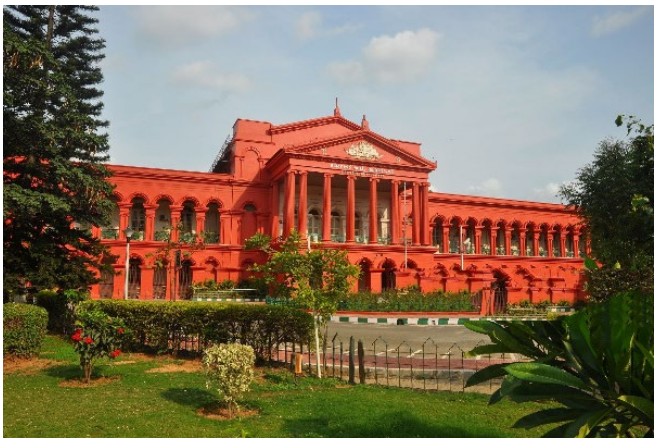
[51] *id.*
[52] *id.*
[53] [1915] AC 79
[54] *id.*
[55] (2010) 8 SCC 129
[56] 2001 SCC OnLine SC 1266

Conclusion

This judgment clarifies that courts and tribunals must respect the interest rates agreed upon by commercial parties. The Supreme Court distinguished legacy statutory restrictions, most notably the *Central Bank of India vs. Ravindra*[57] precedent, by clarifying that such limitations apply to Section 34 of the CPC and are intended to protect non-corporate, vulnerable borrowers. In contrast, for commercial arbitrations under the Arbitration Act, the non-derogable principle of party autonomy prevails over generic statutory caps. The 'Legitimate Interest' test is now the recognised standard in India to determine if a clause is penal, ensuring that 'Party Autonomy' remains the fundamental principle of the arbitral process.



High Courts

An arbitral tribunal's jurisdiction cannot be ousted on the ground that assets forming the subject matter of arbitration find reference in a provisional attachment order issued by ED

The Delhi HC, in ***Lata Yadav vs. Shivakriti Agro Private Limited and Ors.***[58]**,** held that the jurisdiction of an arbitral tribunal cannot be ousted simply because some part of the subject matter of arbitration proceedings is being investigated in parallel for fraud by the ED under the Prevention of Money Laundering Act, 2002 ("**PMLA**"). This finding is based on a settled law that allegations of fraud simpliciter do not make a dispute non-arbitrable.

Brief facts

Respondent no. 3 had made available some of its facilities on a job work to respondent no. 1. Respondent no. 3 was admitted into corporate insolvency resolution proceedings. Respondent no. 4, a Limited Liability Partnership ("**LLP**") participated in respondent no. 3's insolvency proceedings and filed a resolution plan, which was approved. As per the resolution plan, respondent no. 4 LLP along with its partners, the Petitioner and respondent no. 2, were to discharge certain obligations. Accordingly, respondent no. 4 LLP approached respondent no. 1 to seek financial assistance and a facility agreement dated September 30, 2019, was executed ("**Facility Agreement**").

Respondent no. 1 initiated arbitration proceedings under the Facility Agreement on account of the fact that respondent no. 4 had breached its obligations under the Facility Agreement by attempting to create a charge on certain assets. During the arbitration proceedings, the representatives of respondent no. 1 and respondent no. 2 were arrested by ED; and a provisional attachment order was passed in respect of the same assets which also formed the subject matter of the arbitration proceedings ("**PAO**"). Accordingly, the Petitioner and respondent no. 4 filed an application under Section 16 (3) read with Section 32 (2) (c) of the Arbitration Act seeking termination of the arbitration proceedings on the ground that the disputes were non-arbitrable ("**Application**"). The Application was dismissed by the impugned order.

The Petitioner filed a writ petition under Section 227 of the Constitution before the Delhi HC challenging the impugned order and *inter alia* submitted that Section 5 of the Arbitration Act does bar the writ jurisdiction and the writ petition under Article 227 of the Constitution is maintainable against interlocutory orders of an arbitral tribunal; by the PAO, ED alleged that the monies advanced under the Facility Agreement were proceeds of crime and provisionally attached the assets under the Facility Agreement; in the event that the allegations under the PAO are found to be correct, the Facility Agreement would be rendered void and unenforceable; the allegations of fraud are serious in nature and criminal offences of a public nature cannot be referred to arbitration; and under Section 41 of the

[57] *supra.*

[58] 2025 SCC OnLine Del 4334 (decided on May 19, 2025)

PMLA, no civil court or other authority has the jurisdiction to entertain proceedings in respect of any action to be taken by the designated authority under the PMLA.

Respondent no. 1 *inter alia* contended that: the writ petition is not maintainable under Article 227 of the Constitution for failing to pass the twin test of disclosing an exceptional circumstance and the perversity of the complaint (which must be conspicuous); the arbitral tribunal is not prevented from examining whether a valid Facility Agreement existed between the parties as well as the issue of fraud; arbitration proceedings and the PMLA proceedings operate under different statutory domains and one cannot have the effect of ousting the jurisdiction of the other; and a mere allegation of fraudulent execution of a contract does not preclude the reference of underlying contractual disputes to arbitral proceedings between private parties.

Issue

Whether the jurisdiction of an arbitral tribunal can be ousted on the ground that the assets forming the subject matter of arbitration proceedings find reference in a provisional attachment order issued by ED?

Findings and analysis

The Delhi HC dismissed the writ petition and *inter alia* held as follows:

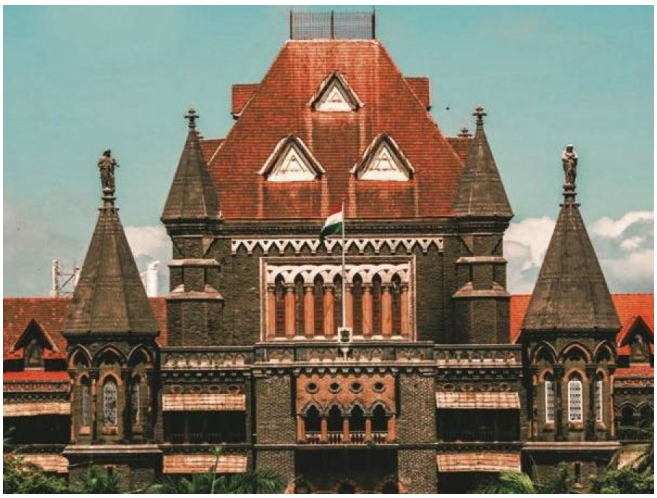
1. the scope of interference while exercising jurisdiction under Article 227 of the Constitution is circumspect and limited to only exceptional circumstances where perversity is conspicuous on the face of it. There was no ground to warrant the interference of the impugned order;
2. while serious allegations of fraud are not arbitrable, allegations of fraud simpliciter do not make a dispute non-arbitrable[59]. Further, a mere allegation of fraud does not *ipso facto* mean that the disputes between the parties are non-arbitrable unless the court comes to a conclusion that the arbitration agreement is void[60];
3. the jurisdiction of the arbitral tribunal cannot be precluded simply because some part of the subject matter of arbitration proceedings finds reference in the PAO and the matter is being investigated in parallel by ED under the PMLA. Thus, merely alleging fraud does not render the disputes between the parties as non-arbitrable;
4. a transaction can give rise to both civil and criminal proceedings, which may proceed simultaneously. The effect of mere registration or progression of any parallel criminal proceedings does not bar the continuation of arbitral proceedings;
5. in the present case, the proceedings before the arbitral tribunal operate in a different sphere than those before the authorities under the PMLA. While some assets forming part of the arbitration proceedings have been provisionally attached, in case the findings recorded by the arbitral tribunal overlap with those in the criminal proceedings, the proceedings under the PMLA will take precedence since the arbitral tribunal is confined to determine issues which would not fall foul of Section 41 of the PMLA.
6. In view of the above, the Delhi HC held that since the arbitration proceedings are at an advanced stage, the arbitration proceedings cannot be pre-emptively terminated.

Conclusion

By this judgment, the Delhi HC affirmed that the jurisdiction of an arbitral tribunal is not ousted simply because some part of the subject matter of the arbitration proceedings is being investigated in parallel for fraud by ED under the PMLA. Further, this judgment clarifies that in case of an overlap between the finding of an arbitral tribunal and proceedings under the PMLA, the proceedings under the PMLA will take precedence. This judgment bolsters the settled principle that merely alleging fraud does not translate to the disputes between the parties being non-arbitrable.

[59] *Ayyasamy vs. A. Paramasivam* (2016) 10 SCC 386

[60] *Avantha Holdings Limited vs. CG Power and Industrial Solutions Limited* (2021) 4 HCC (Del) 267



Bombay HC appoints an arbitrator after the Micro and Small Enterprises Facilitation Council fails to initiate conciliation

The Bombay HC, in the case of ***M B Sugars and Pharmaceuticals Private Limited vs. Micro Small Enterprises Facilitation Council and Anr.***[61], held that where a Micro and Small Enterprises Facilitation Council ("**MSEFC**") under the Micro, Small and Medium Enterprises ("**MSME**") Development Act, 2006 ("**MSME Act**") fails to initiate the mandatory conciliation proceedings or appoint an arbitrator, the court is empowered to step in and appoint an arbitrator on an application made by a party under the Arbitration Act.

Brief facts

M B Sugars and Pharmaceuticals Private Limited ("**Petitioner**"), an enterprise registered under the MSME Act, supplied goods to respondent no. 2, in accordance with a purchase order dated June 8, 2018, issued by the latter. Despite raising invoices, no payments were received by the Petitioner and the cheques received from respondent no. 2 were dishonoured.

On April 24, 2023, the Petitioner made a reference of the aforesaid dispute to MSEFC, Nashik, in accordance with Section 18[62] of the MSME Act. The MSEFC, Nashik, however, failed to initiate conciliation proceedings or appoint an arbitrator in discharge of its statutory obligations. In view thereof, the Petitioner filed an application under Section 11[63] of the Arbitration Act before the Bombay HC, seeking the appointment of an arbitrator, on the ground that the designated arbitral institution had failed to act in accordance with law.

Issue

Whether a court is empowered to appoint an arbitrator under Section 11 of the Arbitration Act in the event of a failure by the MSEFC to discharge its obligations under Section 18 of the MSME Act?

Findings and analysis

The Bombay HC answered the above question in the affirmative and *inter alia* held as follows:

1. Section 18 of the MSME Act statutorily creates an arbitration agreement between an enterprise covered by the MSME Act, i.e., an MSME, and its contractual counterparty. It further provides that all provisions of the Arbitration Act will apply to such an arbitration agreement, as if they were entered into in accordance with Section 7 of the Arbitration Act. Accordingly, in the present case, an arbitration agreement statutorily exists between the Petitioner and respondent no. 2, and all provisions of the Arbitration Act are applicable thereto.
2. Section 7 of the Arbitration Act provides for the creation of an arbitration agreement. Section 18 of the MSME Act requires an institution, i.e., MSEFC, to appoint an arbitrator to adjudicate the disputes referred to it. In the event of MSEFC's failure to

[61] MANU/MH/3512/2025 (decided on June 18, 2025)

[62] Section 18 of the MSME Act provides for an MSME to make a reference to MSEFC with regard to any amount due to MSME. Upon receipt of such reference, MSEFC is firstly required to initiate conciliation between the parties and in the event the conciliation is unsuccessful, MSEFC is then required to initiate arbitration proceedings between the parties.

[63] Section 11 of the Arbitration Act contains provisions in relation to the appointment of an arbitrator. It *inter alia* provides for appointment of an arbitrator by the High Court, upon an application by a party to a dispute, in the event a party fails to act as required under the appointment procedure agreed upon between the parties, or the parties or 2 (two) appointed arbitrators fail to reach an agreement expected of them under the said appointment procedure; and a person or an institution fails to perform any function entrusted to him under the said appointment procedure.

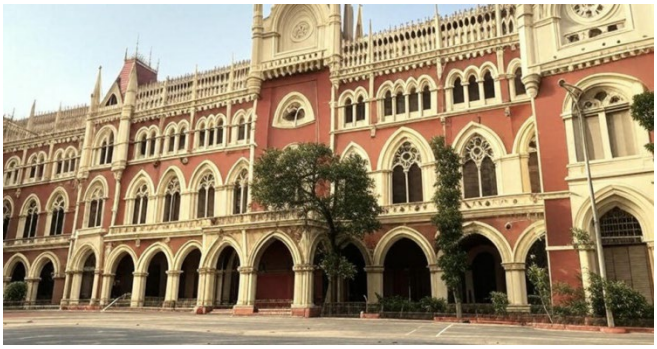
discharge this statutory function, the matter falls within the scope of Section 11 of the Arbitration Act. A combined reading of these provisions makes it evident that the court is vested with the jurisdiction to appoint an arbitrator when the MSEFC fails to act in accordance with its statutory mandate.

3. In the present case, MSEFC, Nashik failed to act in accordance with its statutory obligations by neither initiating the mandatory conciliation proceedings nor appointing an arbitrator for a period of over 2 (two) years. This inaction amounts to a failure to perform its statutory duty under Section 18 of the MSME Act. Consequently, the Petitioner is entitled to invoke the jurisdiction of the Bombay HC under Section 11(6) of the Arbitration Act. In view of the MSEFC's continued inaction, a clear case has been made out for the Bombay HC to directly appoint an arbitrator to adjudicate the disputes between the parties.

4. The above position is bolstered by the decisions in *Microvision Technologies Private Limited vs. Union of India*[64] and *Vallabh Corporation vs. SMS India Private Limited*[65], wherein it was held that where MSEFC fails to initiate conciliation or refer a dispute to arbitration under the MSME Act, the Court is empowered under Section 11(6)(c) of the Arbitration Act to appoint an arbitrator.

Conclusion

The Bombay HC examined the interplay between Section 7 and Section 11 of the Arbitration Act and Section 18 of the MSME Act to provide clear guidance on the procedural framework to be followed when MSEFC fails to discharge its statutory obligations, namely, initiating conciliation and taking steps for appointment of an arbitrator. The Bombay HC expressly clarified that such failure empowers a party to invoke the jurisdiction of a court under Section 11 of the Arbitration Act for appointment of an arbitrator. This judgment is a welcome development for MSMEs. It reinforces the principle that statutory dispute resolution mechanisms must function with efficacy and accountability, ensuring MSMEs are not left without recourse due to procedural defaults if any, by statutory authorities.



Calcutta HC affirms primacy of arbitration clause in purchase order over jurisdiction clause in tax invoice

The Calcutta HC in the case of ***Super Smelters Limited vs. Universal Cables Limited***[66]**,** referred the parties to arbitration basis an arbitration clause contained in the purchase order. The Calcutta HC held that a purchase order is the main contract or the principal agreement between the parties. The Calcutta HC also reiterated that conduct and correspondence can establish a binding arbitration agreement under the provisions of the Arbitration Act.

Brief facts

1. The Super Smelters Limited ("**SSL**") floated a tender inviting quotations for design, manufacture, supply, testing and commissioning of capacitor panels for its plant. The Universal Cables Limited ("**UCL**") submitted its commercial offer, which was accepted by SSL. Accordingly, SSL issued a purchase order dated September 6, 2019 in favour of UCL ("**Purchase Order**") which was accepted by UCL without any demurer or dispute. The dispute resolution mechanism in the Purchase Order provided for resolution of any disputes between the parties through arbitration.

2. On January 13, 2021, UCL issued a tax invoice upon SSL ("**Tax Invoice**"). The Tax Invoice did not contain an arbitration clause and stated that the courts in Satna will have exclusive jurisdiction in case of any disputes between the parties.

[64] 2023 SCC OnLine Bom 1848
[65] 2025 SCC OnLine Del 1795
[66] AP-Com. No. 470 of 2024 (decided on June 30, 2025)

3. In terms of the Purchase Order, UCL submitted its drawings which were approved by SSL. Thereafter, the payments as per the milestones set out in the Purchase Order were also made by SSL to UCL.
4. As the capacitor panels received by SSL from UCL on January 23, 2021, began malfunctioning during trial runs at SSL's plant, SSL raised a grievance. To resolve the same, several meetings were held between the parties from December 2, 2021, to September 16, 2022.
5. SSL contended that during the meetings, it was agreed that UCL would resolve the issues with the capacitor panels and that the same would be made functional to their optimum level. However, UCL failed to discharge its obligations and cure the issues with the capacitor panels. SSL contended that as per the terms of the Purchase Order, UCL was required to replace 100% of the defective capacitor panels within 3 (three) years of commissioning.
6. UCL contended that there were issues with the electrical systems of SSL's plant due to which the capacitor panels were malfunctioning and accordingly, refused to replace the capacitor panels.
7. Owing to the above, on December 14, 2023, SSL terminated the Purchase Order and called upon UCL to refund of the entire consideration paid under the Purchase Order being INR 1,97,06,000 (Indian Rupees one crore ninety-seven lakh six thousand) along with interest at the rate of 24% per annum from January 23, 2021, till the date of actual payment. UCL responded to the termination notice refuting the allegations made by SSL.
8. Thereafter, disputes arose between the parties and on January 12, 2024, SSL invoked the arbitration clause in the Purchase Order. UCL responded to the invocation notice contending that the arbitration clause contained in the Purchase Order was subsumed by the jurisdiction clause contained in the subsequently issued the Tax Invoice which referred to courts in Satna to have exclusive jurisdiction.
9. In view of UCL's failure to mutually appoint an arbitration, SSL filed an application under Section 11 of the Arbitration Act seeking appointment of an arbitrator in terms of the arbitration clause contained in the Purchase Order.

Issue

Whether the parties could be referred to arbitration basis the arbitration clause contained in the Purchase Order, despite the existence of a conflicting jurisdiction clause contained in a subsequent tax invoice?

Findings and analysis

Whilst allowing the application under Section 11 of the Arbitration Act, the Calcutta HC held as follows:

1. the Purchase Order, exchanged by SSL and acted upon by UCL, was the principal contract between the parties and contained a valid arbitration agreement. The Purchase Order set out all the commercial and general terms (including Clause 6 (arbitration clause)) and UCL acknowledged it by requesting advance payments and raising proforma invoices accordingly;
2. under Section 7 of the Arbitration Act, an arbitration agreement can be concluded by electronic communication, and here the parties' conduct (email exchanges, invoice requests, drawing approvals and a goods receipt note) demonstrated a '*consensus ad idem*' on the terms of the Purchase Order. In short, UCL's unchallenged performance under the Purchase Order, without any written objection to its terms, established that the Purchase Order (with its arbitration clause) governed the transaction;
3. by contrast, the Tax Invoice issued later was treated as an ancillary document. The Calcutta HC noted that the invoice merely described the goods and payment terms and did not contain any arbitration clause. Critically, the invoice's unilateral jurisdiction clause could not override the Purchase Order's arbitration clause. The Purchase Order expressly subjected all disputes to arbitration with its seat in Calcutta, and in any event the cause of action arose at Jamuria (Burdwan) within Calcutta HC's jurisdiction. Thus, the Calcutta HC held that the civil courts at Satna were not competent to hear the dispute;
4. applying the *prima facie* standard under Section 11 of the Arbitration Act, the Calcutta HC noted that

the Purchase Order's arbitration clause clearly covered the disputes and that no valid agreement had replaced it. The Calcutta HC explicitly observed that any contention of novation or jurisdictional objection was a matter for the arbitrator, not for the court at the Section 11 stage. In its *prima facie* view, all of the terms of the Purchase Order (including arbitration) "*will prevail over and supersede*" the terms of the subsequent tax invoice; and

5. accordingly, the Calcutta HC held that the Purchase Order is the main contract and an all-encompassing agreement. As the Tax Invoice did not expressly state that it 'supersedes' the Purchase Order, the issue of novation or amendment was left open to be decided by the arbitrator.

Conclusion

The judgment underscores that a comprehensive purchase order exchanged and acted upon by both parties can constitute a binding arbitration agreement, in accordance with the terms of the Arbitration Act. By upholding the arbitration agreement contained in the Purchase Order, the Calcutta HC made clear that mere inclusion of a later jurisdiction clause by a supplier in his tax invoice cannot defeat an earlier, agreed upon arbitration agreement.

By way of the judgment, the Calcutta HC clarified that merely issuing an invoice with a different jurisdiction or arbitration clause will not automatically change the dispute resolution mechanism unless the said terms of the contract are re-opened or altered by mutual consent by the parties. In a nutshell, an agreed arbitration clause in the principal agreement will govern the parties unless expressly superseded.

The judgment also underscores the limited enquiry to be conducted by a court under Section 11 of the Arbitration Act, i.e. confining itself only to the existence of the arbitration agreement rather than an inquiry on the merits of the dispute. This approach reaffirms that under Section 11 of the Arbitration Act, the courts will enforce a clear arbitration clause in the underlying contract. Any dispute about whether a later document amended the arbitration agreement may be decided by the arbitrator.

Delhi HC grants anti-arbitration injunction against a foreign seated international commercial arbitration

The Delhi HC in the case of ***Engineering Projects (India) Limited vs. MSA Global LLC (OMAN)***[67], granted an anti-arbitration injunction restraining MSA Global LLC (Oman) ("**MSA**") from proceeding with a Singapore-seated arbitration under the aegis of the International Chamber of Commerce ("**ICC**"). The injunction was granted due to a party nominated arbitrator's failure to disclose a potential conflict of interest. The Delhi HC, while taking note of the prevailing non-interventionist approach pertaining to arbitration, held that the same would not preclude courts from acting as safeguards when the arbitration proceedings are *"blatantly vexatious, unconscionable, oppressive, and violative of the public policy of India"*.

Brief facts

1. Engineering Projects (India) Limited ("**EPIL**") was awarded a contract for design, supply, installation, integration and commissioning of the border security system at Oman-Yemen border. EPIL entered into a Sub-Contract Agreement ("**SC Agreement**") with MSA for certain works to be carried out at specific sections of the Oman-Yemen border. The SC Agreement contained an arbitration clause referring disputes to arbitration under the aegis of ICC, while conferring exclusive jurisdiction upon the courts at New Delhi. The SC Agreement provided that the place of arbitration would be 'mutually discussed and agreed'.

[67] CS(OS) 243/2025 (decided on July 25, 2025)

2. Disputes arose between the parties and MSA invoked the arbitration clause to commence arbitration proceedings, appointing Mr. Andre Yeap SC ("**Mr. Yeap**") as their nominee arbitrator. Mr. Yeap submitted his statement of acceptance and independence to the ICC stating that he had 'nothing to disclose'. Accordingly, an arbitral tribunal comprising Mr. Jonathan Acton Davis KC, Hon'ble Retd. Justice Mr. A.K. Sikri and Mr. Yeap was constituted. The parties agreed to Singapore as the seat of arbitration.

3. During the course of arbitration, a previously undisclosed fact of Mr. Yeap's appointment as an arbitrator in a previous arbitration by the Managing Director of MSA came to light. Owing to non-disclosure of this fact, EPIL filed an application under the ICC Rules of Arbitration, 2021 ("**ICC Rules**") challenging Mr. Yeap's impartiality and neutrality. While ICC acknowledged the non-disclosure to be 'regrettable', it went on to reject EPIL's application. Aggrieved, EPIL preferred an application before the High Court of Singapore challenging Mr. Yeap's participation in the arbitral proceedings.

4. Parallelly, EPIL filed a civil suit before the Delhi HC seeking a declaration and injunction against the continuation of arbitration before the arbitral tribunal on the ground that the proceedings are vexatious and oppressive ("**Suit**"). EPIL also filed an application under Order 39 Rule 1 and 2 of the CPC seeking temporary injunction on the arbitral proceedings during the pendency of the Suit. Considering the Suit, EPIL moved an application to withdraw its application filed before the Singapore High Court. However, the Singapore High Court did not permit such withdrawal.

Issue

The Delhi HC was called on to decide whether it had the power, in a civil suit, to intervene in respect of a foreign seated arbitration and, if so, whether such intervention was factually justified.

Findings and analysis

1. **On maintainability of civil suits and anti-arbitration injunctions**: The Delhi HC reaffirmed that civil courts have jurisdiction over all civil matters under Section 9 of the CPC, unless expressly barred. It clarified that courts may intervene when denial of relief would lead to grave injustice or oppression. The Delhi HC referred to Indian[68] and English[69] jurisprudence to hold that anti-arbitration injunctions can be granted in cases of vexatious or oppressive conduct, though such powers must be used sparingly.

2. **On test for 'Vexatious and Oppressive Proceedings'**: The Delhi HC interpreted vexatious and oppressive proceedings as unduly harsh or unfair proceedings intended to harass a party. The Delhi HC further underscored the fact that as per Article 11 of the ICC Rules, impartiality of an arbitrator (or the risk of it) ought to be interpreted from the perspective of the parties, thus making full disclosure of material information imperative. Accordingly, it was held that Mr. Yeap's failure to disclose conflict of interest undermined the arbitrator's independence, making the proceedings unfair. Such non-disclosure justified EPIL's claim of being subjected to oppressive and unfair proceedings.

3. **On MSA's conduct as evidence of vexatiousness**: The Delhi HC also placed reliance on MSA's actions including enforcing a partial award rendered by the arbitral tribunal and opposing EPIL's request to withdraw its challenge before the Singapore High Court. This attempt to entangle EPIL in unnecessary jurisdictional and procedural hardship demonstrated MSA's *mala fides*.

4. **On grant of interim relief**: The Delhi HC, having found the arbitration proceedings to be vexatious and oppressive, held that the triple-test for injunctive relief i.e., the *prima facie* case, the balance of convenience, and irreparable harm, was satisfied. It observed that compelling EPIL to participate in oppressive proceedings would significantly prejudice its ability to defend its case

[68] *Union of India vs. Dabhol Power Company*, 2004 SCC OnLine Del 1298; *Himachal Sorang Power Private Limited vs. NCC Infrastructure Holdings Limited*, 2019 SCC OnLine Del 7575

[69] *J. Jarvis and Sons Limited vs. Blue Circle Dartford Estates Limited*, [2007] A.P.P.L.R. 05/14; *Minister of Finance (Inc) and Malaysian Development Berhad vs. International Petroleum Investment Coy*, 2019] EWCA Civ 2080

in a fair and impartial forum. This harm clearly outweighed any inconvenience caused to MSA by the grant of an anti-arbitration injunction. Accordingly, the application for temporary injunction was allowed, and the arbitral proceedings were stayed till the pendency of the Suit.

Conclusion

The judgment of the Delhi HC, where it intervened in a foreign seated arbitration, being conducted under the aegis of an arbitral institution, leads to various questions regarding the power of Indian courts and the exercise thereof.

While it can be argued that the Delhi HC drew a nuanced distinction between the sanctity of an arbitration agreement and its own power to injunct vexatious arbitral proceedings, the fact that a parallel challenge on the same issue as pending before the Singapore courts raises questions and concerns regarding forum shopping, comity of courts and recognition of institutional arbitration by Indian courts. This is more so when courts in India would have always had the option of intervening at the stage of enforcement of the award.

Bombay HC directs constitution of a high-level committee to probe into statutory abuse by Maharashtra Housing and Area Development Authority in redevelopment matters

In a batch of writ petitions, a Division Bench of the Bombay HC in ***Javed Abdul Rahim vs. Maharashtra Housing Development Authority***[70], was called upon to examine the legality of several notices issued under Section 79A of the Maharashtra Housing and Area Development Act, 1976 ("**MHADA Act**") by Executive Engineers of Maharashtra Housing and Area Development Authority ("**MHADA**"). The Bombay HC took a stern view of the actions of MHADA, emphasising that the notices were issued without satisfying mandatory legal pre-requisites, such as formal declaration of danger under the Mumbai Municipal Corporation Act, 1949 ("**MMC Act**") or the MHADA Act. The Bombay HC found that issuing such notices based merely on visual inspections, without structural audits or declarations by a competent authority, constituted grave administrative overreach and abuse of statutory powers. Consequently, the Bombay HC directed that all such notices will be kept in abeyance pending examination by a high-level committee constituted pursuant to the directions of the Bombay HC.

Brief facts

MHADA had issued several notices under Section 79A of the MHADA Act for redevelopment of cessed buildings allegedly deemed dangerous by the executive engineers of MHADA. Before the Bombay HC, the petitioners contended that these notices were issued without proper legal authority, bypassing mandatory structural audits and statutory procedures.

Findings and analysis

1. **Jurisdictional overreach**: The Bombay HC meticulously analysed the statutory framework under the MHADA Act and held that Section 79A of the MHADA Act can only be invoked if a building is declared dangerous by:
   a) the Municipal Corporation under Section 354 of the MMC Act; or
   b) a Competent Authority appointed under Section 65 of the MHADA Act.
   c) In the present case, the Executive Engineers had issued notices without either of these legal

[70] Writ Petition (L) No. 34771 of 2024 (decided on July 28, 2025)

prerequisites being fulfilled. The Bombay HC found this to be a clear case of jurisdictional overreach, rendering the notices *ultra vires* and legally untenable.

2. **Visual inspection not sufficient**: The Bombay HC further noted that the impugned notices were issued based solely on visual inspections conducted by MHADA officials, without any structural audits or formal declarations of danger. This practice was deemed a blatant misuse of power, lacking scientific basis and violating the procedural safeguards embedded in the statute.
3. **Improper use of Standard Operating Procedure ("SOP")**: To justify the issuance of these notices, MHADA's Vice-Chairman had issued a SOP in December 2024. The Bombay HC held this SOP to be unauthorised, contrary to the MHADA Act, and legally invalid. It attempted to retroactively legitimise actions that were already in breach of statutory provisions prescribed under the MHADA Act, thereby undermining the rule of law.
4. **Potential redevelopment scam**: The Bombay HC observed a disturbing pattern in the issuance of notices, many being targeted at properties in prime Mumbai locations, suggesting a possible redevelopment scam. The scale and uniformity of the notices indicated that vested interests may have exploited the statutory machinery for commercial gain, bypassing legal checks and balances.
5. **Violation of constitutional rights**: The misuse of statutory powers by MHADA officials led to serious violations of constitutional rights, including Article 300A (Right to Property), Article 14 (Equality before Law) and Article 21 (Right to Life and Personal Liberty).

The Bombay HC emphasised that such actions erode public trust in governance and judicial processes and must be addressed with urgency and accountability.

Bombay HC directions

In response to the gravity of the situation, the Bombay HC *inter alia* issued a series of remedial directions,:

1. a High-Level Committee ("**Committee**") to be constituted, comprising Justice J.P. Devadhar (Retd.) and Shri Vilas D. Dongre (Retd. Principal District Judge), to review all the 935 (nine hundred and thirty-five) notices, the conduct/role of the MHADA officials during issuance of the notices and the proper basis, intention and authority behind the issuance of SOP by the MHADA Vice Chairman;
2. MHADA submitted that the 46 (forty-six) notices issued after the *Vimalnath Shelters*[71] judgment (delivered on April 3, 2025) would be withdrawn by MHADA;
3. the remaining 889 (eight hundred and eighty-nine) notices issued prior to the *Vimalnath Shelters* judgment (delivered on April 3, 2025) were ordered to be kept in abeyance and no further action will be taken under them, unless the parties have consented in the redevelopment and the redevelopment progressed;
4. however, all the 935 (nine hundred and thirty-five) notices will form the subject matter of consideration of the Committee. The Committee will hear all the stakeholders in relation to the said notice and examine the issues underscored by the Bombay HC and submit its report within 6 (six) months from the date of the order;
5. MHADA was instructed to provide full cooperation and access to records to the Committee; and
6. MHADA's request to stay the operation of the Bombay HC's order was categorically rejected. The Bombay HC underscored the seriousness of the violations, the scale of illegality, and the potential systemic abuse of power. It reiterated the need to uphold the rule of law and protect citizens from arbitrary administrative actions.

[71] *Vimalnath Shelters Private Limited vs. State of Maharashtra, through Ministry of Housing Mantralaya*, 2025 SCC OnLine Bom 1109

Conclusion

The judgment delivered by the Bombay HC affirms that statutory powers vested under Section 79-A of the MHADA Act must be exercised strictly in accordance with the law, with due observance of procedural requirements and proper authorisation. The Bombay HC's intervention highlights the risks posed by the arbitrary issuance of notices based solely on visual inspections, emphasising the critical need for comprehensive structural audits and procedural safeguards. These measures are essential to prevent the misuse of authority, protect against exploitation, and guard against manipulations driven by vested interests.

Bombay HC rules that arbitral proceedings need not pause for stamp duty adjudication

The Bombay HC, in the case of ***Sachin Corporation and Anr. vs. Kusuma Bhandary Construction Private Limited and Ors.***[72], clarified that an ongoing arbitration proceeding need not stall due to stamp duty objections. The Bombay HC further held that an arbitral tribunal is empowered to determine and collect deficient stamp duty and applicable penalty on an insufficiently stamped document. It can admit documents into evidence and continue with the arbitration proceeding without waiting for the stamp authorities to adjudicate the duty. The judgment, however, carved out an important exception for instruments covered by Section 32A[73] of the Maharashtra Stamp Act, 1958 ("**Mah Stamp Act**"). For such instruments, whose stamp duty depends on the market value of the immovable property, if the arbitral tribunal has reason to believe that the market value is accurately stated, it is incumbent upon the tribunal to refer such instrument to the District Collector for proper valuation and assessment of duty.

Brief facts

1. Arbitration proceedings were commenced by and between Sachin Corporation and Yadushrestra T. Shetty ("**Petitioners**") and Kusuma Bhandary Construction Private Limited ("**Kusuma**").
2. In the course of the arbitration proceeding between the Petitioners and Kusuma, certain instruments were sought to be relied upon in evidence. Those instruments appeared to be insufficiently stamped as required under the Mah Stamp Act.
3. To facilitate the use of these documents in the arbitral proceedings, the Petitioners filed a petition in the Bombay HC under Section 27 of the Arbitration Act, which allows courts to assist in taking evidence.
4. The petition was filed against Kusuma, the Collector of Stamps (Andheri) ("**Collector**"), and the State of Maharashtra, and sought a direction to the Collector to expeditiously assess the appropriate stamp duty and any penalty on the documents. The Petitioners argued that such a direction would enable the documents to be duly stamped and introduced in evidence before the arbitral tribunal without causing undue delay in the proceedings.

Issue

Whether an arbitral tribunal must send an inadequately stamped instrument to the Collector for adjudication and await the Collector's decision or whether the arbitral tribunal can itself calculate the deficit duty and penalty payable, collect the amount, and then proceed with the arbitration?

[72] Commercial Arbitration Petition (L) No. 22660 of 2025 (decided on July 30, 2025)

[73] Section 32A of the Mah Stamp Act pertains to determination of the true market value of immovable property; allows referral to Collector for valuation assessment.

Findings and analysis

Whilst disposing of the Section 27 petition, the Bombay HC examined the scheme of the Mah Stamp Act in depth and made the following key findings:

1. **Arbitral tribunal's authority to impound and assess stamp duty**: An arbitral tribunal falls within the category of persons having by law or consent of parties' authority to receive evidence as per the Mah Stamp Act. Accordingly, the arbitral tribunal has a legal duty to scrutinise any instrument produced before it and determine whether it is duly stamped. If the instrument is not properly stamped (either unstamped or under-stamped), the arbitral tribunal has the power to assess the stamp duty deficiency on the instrument so that the shortfall can be remedied. Thus, an arbitral tribunal can adjudicate on the amount of stamp duty payable.
2. **Procedure for instruments not covered by Section 32A**: For instruments that do not fall under Section 32A of the Mah Stamp Act, the arbitral tribunal is empowered to calculate the deficient stamp duty amount and the statutory penalty due, collect these amounts from the responsible party, and then admit the instrument into evidence. The Bombay HC held that the arbitrator could forward the stamp duty directly after collecting it and that the arbitration need not be interrupted while this stamping process is undertaken. Once the tribunal has ensured that the proper duty and penalty are paid, the hearing can continue without waiting for any further certification from the stamp authorities.
3. **Procedure for instruments covered by Section 32A**: For instruments falling under Section 32A of the Mah Stamp Act, essentially documents whose stamp duty is assessed based on the market value of an immovable property or similar valuation, the tribunal cannot independently determine the stamp duty. The Bombay HC held that in such cases, the arbitral tribunal should follow the statutory procedure of reference to the Collector instead of attempting to assess the duty itself. Thus, the arbitral tribunal allow the concerned District Collector to evaluate the instrument's market value and stamp duty, as required by the Mah Stamp Act, before the document can be admitted in evidence. This is the sole exception to the tribunal's general ability to handle stamp duty issues on its own.
4. **Payment of stamp duty and penalty under Section 34**: The Bombay HC reiterated that no insufficiently stamped instrument may be admitted as evidence unless the stamp deficiency is cured in accordance with the Mah Stamp Act. Under Section 34 of the Mah Stamp Act, an instrument that is chargeable with stamp duty cannot be admitted in evidence by any authority (including an arbitral tribunal) unless it is duly stamped. However, Section 34 contains a proviso (Clause (a)) which allows admission of such an instrument under 2 (two) circumstances namely, the unpaid stamp duty required to make up the deficiency is paid; and a penalty is paid at the rate of 2% per month on the deficient portion of the duty from the date of the instrument's execution (subject to a statutory cap of 4 (four) times the deficit). The Bombay HC held that the arbitral tribunal could facilitate the payment of the duty and penalty and then proceed to admit a copy of the document as evidence without awaiting a formal assessment by the concerned District Collector.
5. **Effect of curing the stamp defect**: Once the deficit stamp duty and penalty have been paid and the instrument is admitted into evidence, the Mah Stamp Act provides a degree of finality to prevent further challenges on the same issue. The Bombay HC stated that if an instrument is admitted in evidence (after proper stamp duty and penalty are paid), that admission cannot be questioned later in the same proceeding on the ground that the instrument was not duly stamped. The only exception to this rule is found in Section 58 of the Mah Stamp Act which permits a higher court to review the stamp duty decision. Bombay HC clarified that for purposes of stamp duty review, the court hearing a Section 34 petition can be viewed as equivalent to the appellate court under Section 58 of the Mah Stamp Act. The Section 34 court could then require any additional duty and penalty to be paid if it finds a deficiency.

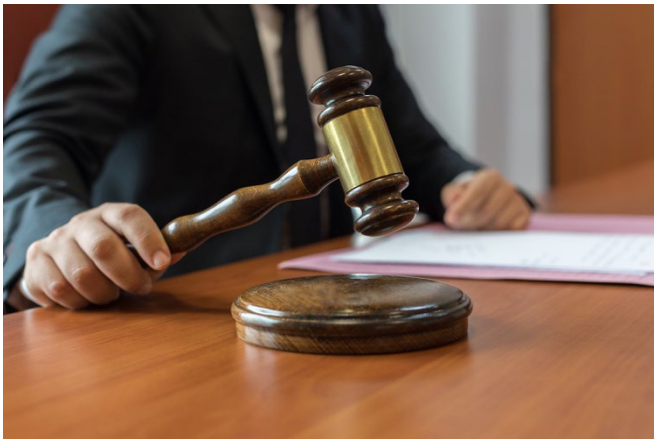
Conclusion

The judgment provides a clear and pragmatic framework to handle stamp duty issues in arbitration

without derailing the proceedings. It reaffirms that arbitral tribunals, being authorised to receive evidence, can themselves address stamp duty deficiencies on documents by impounding the documents, facilitating payment of the required duty and penalty, and then admitting the documents into evidence.

This ensures that, in most cases, an arbitration need not be put on hold awaiting the outcome of stamp duty adjudication by government authorities. Only in exceptional situations, namely, where the document in question falls under Section 32A of the Mah Stamp Act and requires a true market valuation of property, must the arbitral tribunal halt and refer the matter to the Collector for determination of stamp duty.

By drawing this distinction, Bombay HC's ruling streamlines arbitral practice. It prevents unnecessary interruptions in arbitral timelines due to stamp duty technicalities, while still preserving the role of the Collector for those instruments that statutorily demand a formal valuation. This decision thus bolsters the efficiency of arbitration proceedings and reflects a pro-arbitration approach, ensuring that procedural stamp duty requirements are met without frustrating the speedy resolution of dispute.



Delhi HC dismissed a commercial suit for non-compliance with mandatory pre-institution mediation, upholding the court's role in scrutinising the element of 'urgency'

The Delhi HC, in the case of ***Exclusive Capital Limited vs. Clover Media Private Limited and Ors.***[74], dismissed a commercial suit filed by Exclusive Capital Limited ("**ECL**"). The suit was dismissed since ECL had approached the court without complying with the mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 ("**CC Act**") on the ground of urgent interim relief. The Delhi HC held that granting such an exemption mechanically and merely at the request of the plaintiff would nullify the objective of making the pre-institution mediation mandatory. The objective of this requirement is to promote the 'ease of doing business' in India by providing a mechanism for speedy dispute resolution.

Brief facts

1. ECL, a non-banking financial company, pursuant to an Inter-Corporate Deposit Agreement dated December 14, 2022 ("**ICD Agreement**"), received a sum of INR 60,00,00,000 (Indian Rupees sixty crore) from Clover Media Private Limited ("**CMPL**") (defendant no. 1), towards the acquisition of a corporate loan owed by Asian Hotels (North) Limited ("**AHNL**") (defendant no. 4) to IndusInd Bank. Consequently, ECL entered into an assignment deed dated December 28, 2022 with IndusInd Bank, whereby the loan account of AHNL was assigned in favour of ECL, creating a charge over AHNL's assets.
2. As per the plaint, Mr. Harvinder Singh (defendant no. 3), on behalf of ECL, and CMPL executed a forged and fabricated ICD Agreement. Consequently, in February 2024, CMPL unlawfully assigned the AHNL loan to VSJ Investments Limited (defendant no. 2), by way of an assignment deed dated February 1, 2024.
3. Upon discovery of the aforesaid collusive conduct of the defendants, ECL lodged a complaint with the Economic Offences Wing on February 29, 2024, alleging forgery.
4. Subsequently, ECL filed a commercial suit in January 2025 seeking declaratory and injunctive reliefs, along with an application under Section 12A of the CC Act seeking exemption from pre-institution mediation.

[74] CS (COMM) 399/2025 (decided on August 4, 2025)

Issue

The Delhi HC was called upon to determine the scope and applicability of the mandatory requirement under Section 12A of the CC Act and whether the exemption under Section 12A of the CC Act was to be viewed only from the standpoint of the plaintiff, without judicial scrutiny?

Findings and analysis

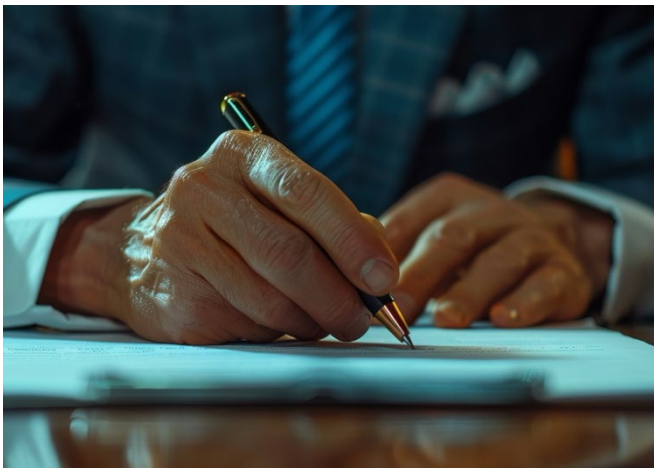
1. **On interpretation of Section 12A of the CC Act**: Relying on a well-recognised principle of statutory interpretation, which is judicially affirmed by the Supreme Court[75], the Delhi HC held that the negative language used in Section 12A of the CC Act *vis-à-vis* 'which does not contemplate any urgent interim relief' and "*shall not be instituted*" signifies the mandatory nature of the provision. The said interpretation reinforces the legislature's objective behind incorporating the said provision, i.e. to improve the 'ease of doing business' in India by providing a mechanism for speedy dispute resolution.
2. **On interpretation of the phrase 'contemplate any urgent interim relief'**: The Delhi HC held that the mere assertion of 'urgent interim relief' in the plaint cannot be a valid ground to seek exemption from the mandatory pre-institution mediation. It emphasised that such an existence of urgency demands an elevated level of scrutiny by the court and must be proved beyond plain assertions.
3. **On determining factors**: The Delhi HC held that to determine whether a suit 'contemplates any urgent interim relief', the following factors (not exhaustive) play a crucial role:
    a) the failure to grant such exemption would render the plaintiff's application for injunction or the suit itself infructuous;
    b) the failure to grant such exemption would create an irreversible or unalterable situation, disabling the court from restoring *status quo ante* at the stage of adjudication of such application;
    c) the origin and timeline of the cause of action;
    d) the timing and manner of the plaintiff's approach to the court; and
    e) adherence to the pre-institution mediation mechanism would operate to the detriment of the plaintiff.
4. **On ECL's approach to the court**: The Delhi HC considered that ECL had been aware of the allegedly forged documents since February 2024, i.e., for over a year before institution of the suit. Further, the suit was filed in January 2025 and was allowed to remain in defects for 3 (three) months. The said defects were removed only in April 2025. Such inaction was attributable solely to ECL and undermined any plea of urgency.
5. **On facts of the case**: The Delhi HC noted that the apprehended course of action had already culminated. The order to reverse such action cannot be taken by way of an urgent relief as it would have the effect of disturbing a settled state of affairs without adjudication. The reliefs sought in the exemption application were inseparably linked to the core issues raised in the suit *vis-à-vis* allegations of forgery, lack of authority and fabrication, which necessarily required a detailed examination of facts and evidence. Further, the plaintiff had failed to plead any immediate or irreversible action that threatened to alter its legal status. The mere existence of an interim relief could not be contemplated to be an urgent interim relief. Therefore, the element of urgency was not justified and appeared to be missing. Accordingly, the application for exemption and, consequently, the suit were rejected.

Conclusion

The judgment is a welcome reiteration of the principles of statutory interpretation, upholding the objective of the legislature to boost the Indian economy by providing a speedy framework for resolution of commercial disputes. By reiterating the mandatory nature of the pre-institution mediation and on the

[75] *M. Pentiah and Ors. vs. Muddala Veeramallappa and Ors.*, AIR 1961 SC 1107; *Patil Automation vs. Rakheja Engineers,* (2022) 10 SCC 1

court's role in deciding the existence of urgency to claim exemption, the Delhi HC circumvented an easy escape on the part of parties from adhering to the provisions of Section 12A of the CC Act.



Scope of scrutiny under Section 11 (6) *vis-à-vis* Section 16 of the Arbitration Act regarding non-signatories to the arbitration agreement

The Delhi HC, in the case of ***Neosky India Limited and Anr. vs. Mr. Nagendran Kandasamy and Ors.***[76], allowed a petition under Section 11(6)[77] of the Arbitration Act referring certain non-signatories to the agreement to arbitration. The Delhi HC held that the question as to whether the non-signatories were veritable parties to the arbitration agreement could not be conclusively determined at the preliminary stage of inquiry under Section 11(6) of the Arbitration Act and must be left to the arbitrator.

Brief facts

1. Neosky India Limited (Petitioner No. 1), was an investor in Throttle Aerospace Systems Private Limited ("**TAS**") (Petitioner No. 2) (collectively "**Petitioners**"). Respondent Nos. 1 to 5 (collectively "**Respondents**") were employees of TAS.
2. On May 25, 2022, the Petitioners entered into a Share Subscription and Shareholders Agreement ("**SSHA**"), Non-Compete Agreement ("**NCA**") and employment agreements with the Respondents. The SSHA and NCA contained separate arbitration clauses for adjudication of disputes among the parties.
3. The NCA prohibited the Respondents from engaging in any competing business for a period of 3 (three) years. It further restricted them from soliciting any employees, clients, contractors or similar parties for up to 1 (one) year following the non-compete period.
4. Respondent nos. 1 to 3 resigned from TAS on July 3, 2023. On October 6, 2023, they incorporated Zulu Defence Systems Private Limited ("**Respondent No. 6**").
5. Upon becoming aware of the incorporation of Respondent No. 6, the Petitioners filed a petition[78] before the Delhi HC under Section 9 of the Arbitration Act, alleging that Respondent No. 6 was operating a competing drone venture. By way of an order dated May 31, 2024 ("**Interim Order**"), the respondent nos. 1 to 4 were restricted from competing with or disclosing information related to the Petitioners.
6. In compliance with the Interim Order, respondent nos. 1 and 3 resigned from Respondent No. 6 on July 3, 2024 and divested their shareholding in the company. Thereafter, respondent nos. 7 and 8 were appointed as directors to ensure the continuity of Respondent No. 6's operations.
7. Subsequently, the Petitioners issued a notice invoking arbitration dated July 18, 2024 under clause 16.2 of SSHA and clause 9(c) of NCA. Since the Respondents failed to appoint an arbitrator, the Petitioners filed an application under Section 11 of the Arbitration Act.

Issue

Whether the non-signatory parties should be referred to arbitration?

[76] Arb. P. No. 1860 of 2024 and OMP (I)(COMM.) 183/2024 (decided on August 11, 2025)
[77] Section 11(6) empowers the Supreme Court and the High Court to appoint an arbitrator in international and domestic arbitrations respectively, where the parties are unable to or refuse to appoint an arbitrator.
[78] OMP(I)(COMM.) 183/2024

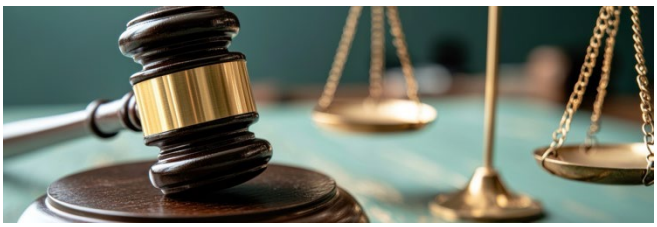
Findings and analysis

1. The Delhi HC held that the scope of inquiry under Section 11 of the Arbitration Act is 'narrowly circumscribed', wherein the court is required only to ascertain the existence of a valid arbitration agreement and to reject a reference only where such an agreement is either non-existent or where the subject matter of dispute is non-arbitrable in law. The object behind such limited scrutiny is to uphold the principle of party autonomy.
2. Since the Respondents had not challenged the existence of a valid arbitration agreement but only contested the validity of the non-compete clause in the NCA, this was a dispute on merits, which could only be looked into by the arbitral tribunal. The Delhi HC held that the arbitration clause is autonomous and survives independently of the underlying agreement. This principle flows directly from Section 16(1)[79] of the Arbitration Act. Therefore, the disputes were referred to arbitration *qua* the Respondents.
3. Respondent nos. 6 to 8 objected to their impleadment in arbitration proceedings on the ground that they were non-signatories to the arbitration agreement. Relying upon the law laid down by the Supreme Court[80] and by the Delhi HC[81], it was held that the determination, as to whether respondent nos. 6 to 8 were veritable parties and amenable to the arbitration proceedings, required appreciation of evidence and, therefore, was best left to the arbitrator.
4. While referring the disputes to arbitration *qua* respondent nos. 6 to 8, the Delhi HC took note of the inclusive nature of Section 16 of the Arbitration Act, which covers all preliminary issues touching upon the jurisdiction of the arbitral tribunal.
5. With respect to the issue of vacation of the Interim Order passed in Section 9 petition, the Delhi HC held that the scope of enquiry under Section 9 of the Arbitration Act is confined to a *prima facie* assessment of the disputes and preservation of the subject matter of arbitration. To take such *prima facie* view, the Delhi HC considered that a non-compete clause which is intended to be made applicable post termination of the employment, is violative of Article 19(1)(g) of the Constitution and Section 27 of the Indian Contract Act, 1872. Further, the term of NCA stood expired on May 25, 2025. Therefore, since the contractual right stood expired by efflux of time, there was no obligation to be preserved through the interim relief. The Interim Order was, therefore, vacated.
6. The Delhi HC, therefore, referred the parties to arbitration and the Section 9 petition was directed to be treated as an application under Section 17 of the Arbitration Act.

Conclusion

The judgments relied upon by the Delhi HC have indicated that "*the referral court will be required to prima facie rule on … whether the non-signatory is a veritable party to the arbitration agreement*". The intention, therefore, to refer the said question to the arbitrator only where a *prima facie* view is not possible can be inferred from the relied upon judgments. However, the Delhi HC held that it should be left to the arbitrator to decide if a non-signatory is bound by the arbitration agreement.

The question, therefore, arises as to whether a *prima facie* view is incapable of being formed in a case where one non-signatory (Respondent No. 6) was non-existent at the time of execution of the arbitration agreement, and 2 (two) other non-signatories (respondent nos. 7 and 8) were only subsequently employed by Respondent No. 6. This could be argued as a dilution of the principle that the basis for binding a non-signatory to an arbitration agreement is implied or tacit consent.



[79] Section 16(1) is about the independence of the arbitration clause *vis-à-vis* the underlying agreement.
[80] *Cox and Kings Ltd. vs. SAP India Private Limited,* (2024) 4 SCC 1; *Adavya Projects Private Limited vs. Vishal Structurals Private Limited,* 2025 SCC OnLine SC 806
[81] *KKH Finvest Private Limited vs. Jonas Haggard*, 2024 SCC OnLine Del 7254

Foreign award enforcement: Delhi HC clarifies that executing courts cannot directly attach property outside their territorial jurisdiction

The Delhi HC, in ***Daiichi Sankyo Company Limited vs. Malvinder Mohan Singh and Ors.***[82]*, inter alia* held that an executing court is barred from attaching property situated outside its territorial jurisdiction. It must, instead, issue a precept under Section 46 of the CPC to the court within whose territorial jurisdiction the property is situated, for attachment of the property.

Brief facts

A foreign arbitral award was rendered by the ICC at Singapore in favour of Daiichi Sankyo Company Limited ("**Decree Holder**") against Malvinder Mohan Singh and others ("**Judgment Debtors**"). The Decree Holder sought attachment of property in Gurugram, Haryana ("**Property**") through execution proceedings before the Delhi HC.

To this end, the Delhi HC attached the Property and issued precepts to Civil Judge, Gurugram ("**Civil Judge**") for attachment and its sale in 2021. On December 15, 2023, the validity of the precepts was extended by the Delhi HC and on January 11, 2024, the Civil Judge attached the Property again and issued a warrant of sale ("**Impugned Orders**"). An objection application was filed before the Delhi HC by M/s. One Qube Realtors Private Limited ("**Applicant**") under Order 21 Rules 58 and 59 of the CPC challenging the Impugned Orders, claiming prior ownership of the Property.

The Applicant *inter alia* contended that the Delhi HC lacked territorial jurisdiction to execute the award decree and issue precepts to the Civil Judge; and the Applicant is a *bona fide* purchaser unconnected to the Judgment Debtors.

The Decree Holder *inter alia* contended that the Delhi HC possessed territorial jurisdiction as concurrent execution is permissible when properties are situated in different jurisdictions; Delhi HC was *in-seisin* of the execution proceedings and empowered to issue precepts outside its territorial jurisdiction as the Supreme Court, *vide* its judgment[83], had placed assets in multiple jurisdictions before it for disposal; and the transfer of the Property to the Applicant was designed to evade execution of the award decree.

Issue

Whether the provisions of the CPC empower a court to execute an award decree against immovable property situated outside its territorial jurisdiction?

Findings and analysis

The Delhi HC dismissed the objection application and *inter alia* held as follows:

1. Section 39(4) of the CPC expressly bars a court from executing a decree in respect of any property that is situated outside the local limits of its jurisdiction. Such decree must be sent for execution to another court of competent jurisdiction;
2. in the event that immovable property outside a court's territorial jurisdiction is required to be attached during execution proceedings, Section 46 of the CPC empowers an executing court to issue a precept to the competent court, i.e., the court within whose territorial jurisdiction the immovable property is situated, to attach the property specified in the precept. Pursuant to a precept being issued, the court of competent jurisdiction can proceed with the execution proceedings in relation to immovable property within its territorial jurisdiction;
3. Section 46 of the CPC also provides for a decree-holder to thereafter apply to the court to which a precept is sent, for sale of the immovable property. Therefore, the decree-holder is also required to file separate execution proceedings before the competent court having territorial jurisdiction, seeking sale of the attached property through the agency of that court. Such execution can run simultaneously with proceedings before the original executing court.

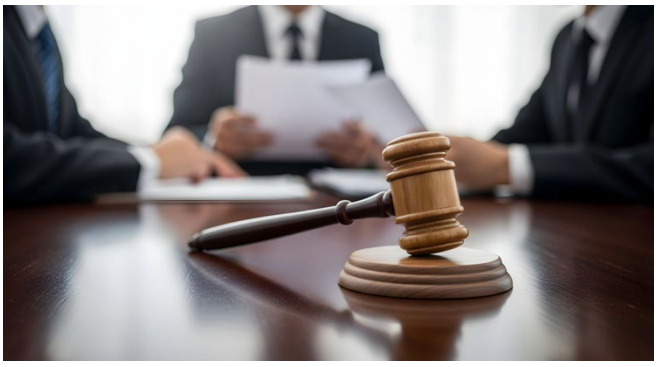
[82] EX. APPL.(OS) 181/2024 in O.M.P. (EFA)(COMM.) 6/2016 (decided on August 20, 2025)

[83] *Daiichi Sankyo Company Limited vs. Oscar Investments Limited and Ors.*, (2023) 7 SCC 641

4. any objections to such attachment or sale must be adjudicated upon by the court which attached the property, i.e., the court of competent territorial jurisdiction; and
5. accordingly, in the present case, a precept was issued to the Civil Judge to attach the Property, and the Decree Holder was given liberty to approach the court of competent territorial jurisdiction for further action.

Conclusion

This judgment underscores the strict territorial discipline embedded in the CPC for execution proceedings. The Delhi HC clarified that a court executing a foreign award is mandated to follow the prescribed procedure under the CPC while dealing with attachment and sale of properties situated outside its territorial limits. From a commercial perspective, the ruling is significant for foreign investors and award-holders, as it clarifies how arbitral awards can be effectively enforced against assets spread across multiple jurisdictions in India. The decision is a reminder that enforcement strategy must be jurisdiction-sensitive, and procedural shortcuts run the risk of delays in execution and may jeopardise recovery.



Bombay HC affirms citizen's rights by ruling that stamp duty refund cannot be denied on hyper technical grounds

In a consolidated ruling on 2 (two) writ petitions, the Bombay HC, in ***Qwik Supply Chain Private Limited vs. Chief Controlling Revenue Authority***[84], examined the legality of orders passed by the Chief Controlling Revenue Authority ("**CCRA**") rejecting the petitioners' refund applications filed under Section 47(c)(5) of the Mah Stamp Act. These applications sought refunds of stamp duty paid on unregistered and undated deeds of transfer related to 2 (two) proposed property transactions that ultimately failed to materialise. The Bombay HC held that where transactions fail at inception and insistence on a formal deed of cancellation by the revenue authority amounts to a hyper-technicality, especially when the petitioners have supported their claims with affidavits and indemnity bonds.

Brief facts

The petitioners, originally known as New Empire Millennium Investments and Trading Private Limited, entered into 2 (two) proposed deeds of transfer in October 2010 involving flats and leasehold rights in Ashok Nagar Co-operative Housing Society Limited, Mumbai. The agreed considerations to be paid were INR 3,50,00,000 (Indian Rupees three crore fifty lakh) and INR 8,50,00,000 (Indian Rupees eight crore fifty lakh) respectively. In connection with these transactions, the petitioners made stamp duty payments of INR 17,50,000 (Indian Rupees seventeen lakh fifty thousand) and INR 42,50,000 (Indian Rupees forty-two lakh fifty thousand) respectively. Although both deeds were duly signed, they were undated and remained unregistered due to disputes between the parties. Consequently, neither the consideration was paid, nor was the possession handed over.

Subsequently, on April 13, 2011, the petitioner filed applications for refund under Section 47(c)(5) of the Mah Stamp Act, which were rejected by CCRA, *vide* order dated March 7, 2015, for failure to produce a duly executed deed of cancellation. Aggrieved by this, the petitioners appealed to the Appellate Authority under Section 53(1A) of the Mah Stamp Act, but the appeals were dismissed on maintainability grounds *vide* order dated February 8, 2018. Consequently, the petitioners filed writ petitions challenging the orders dated March 7, 2015, and February 8, 2018 ("**Impugned Orders**") before the Bombay HC.

[84] 2025 SCC OnLine Bom 3074 (decided on September 3, 2025)

Issue

Whether, in the absence of a formal deed of cancellation, the petitioner is entitled to a refund of stamp duty due to the failure of the transaction?

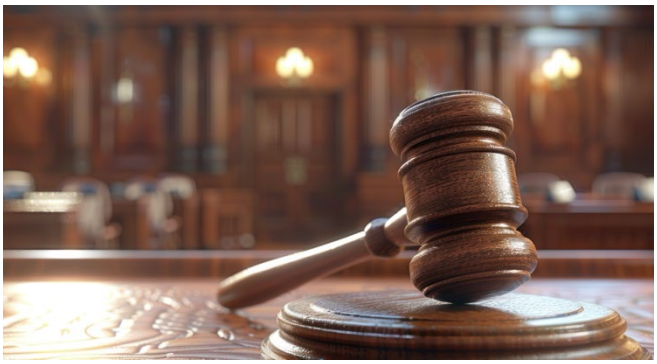
Findings and analysis

1. **Failure of transaction**: The Bombay HC observed that the proposed property transactions never fructified and, therefore, there was no 'transfer of property' as defined under Section 5 of the Transfer of Property Act, 1882. The fact that the deeds remained undated, unregistered, and unacted upon, coupled with the absence of payment of consideration and possession transfer, clearly established that the transactions failed at inception.
2. **Sufficiency of documentary evidence**: The Bombay HC observed that, in support of their refund claims, the petitioners had submitted 3 (three) affidavits from company directors along with an affidavit-cum-indemnity bond specifically explaining their inability to produce a formal deed of cancellation due to the non-cooperation of the vendors. The Bombay HC held that these documentary evidence sufficiently safeguarded the interests of the revenue and served the very purpose of a formal cancellation deed.
3. **Rejection of hyper-technical approach**: The Bombay HC criticised CCRA's insistence on a formal deed of cancellation as hyper-technical, mere formality that amounted to an arbitrary exercise of power, defeating the substantive rights of petitioners and undermining the intent of refund provisions.
4. **Reliance on authoritative precedents**: The Bombay HC relied on Supreme Court and Bombay HC decisions (notably *Bano Saiyed Parwaz vs. Chief Controlling Revenue Authority*[85] *and Kaluram Sitaram vs. Dominion of India*[86]) emphasising that the State must act fairly and not rely rigidly on procedural technicalities when dealing with citizens. Further, the statutory right to refund survives despite procedural bars like limitation periods.
5. **Violation of impartial adjudication in appeal**: The Bombay HC observed a violation of the principle of impartial adjudication '*nemo judex in causa sua'*, as the appeals were decided by the same authority that had issued the original rejection orders. This procedural defect rendered the appellate orders unsustainable and warranted judicial intervention.

Conclusion

The Bombay HC held that the petitioners' case clearly falls within the ambit of Section 47(c)(5) of the Mah Stamp Act, which is intended to prevent the unjust enrichment of the State where a stamped instrument fails to result in actual conveyance. Faced with undisputed facts and comprehensive evidence, the Bombay HC exercised its writ jurisdiction under Articles 226 and 227 of the Constitution to grant relief without remanding the matter, thereby ensuring expeditious justice. In view of the foregoing, the Bombay HC quashed and set aside the Impugned Orders, affirming the petitioners' right to a refund of the stamp duty, along with simple interest at 4% per annum from the date of the refund application, to be paid within 4 (four) weeks from the judgment.

This landmark ruling emphasises that the State must act fairly and cannot rely on hyper-technicalities to withhold rightful refunds. It also recognises that under Section 47(c)(5) of the Mah Stamp Act, affidavits cum indemnity bonds can serve as adequate substitutes for a formal deed of cancellation where vendors refuse cooperation.



[85] Civil Appeal No. 6533 of 2024 (Arising out of SLP (C) No. 4111 of 2020)

[86] AIR 1954 SC 223

Bombay HC holds that statutory arbitration overrides a contractual arbitration clause in the absence of an exclusive jurisdiction clause

The Bombay HC, in the case of ***GEA Westfalia Separator India Private Limited vs. SVS Aqua Technologies LLP***[87], presents a significant legal discourse on arbitration jurisdiction, specifically examining the applicability of the contractual arbitration clause *vis-à-vis* arbitration conducted under the MSME Act. The Bombay HC held that in the absence of an exclusive jurisdiction clause in a contract, the statutory arbitration under the MSME Act takes precedence. It clarified that petitions under Section 34[88] of the Arbitration Act challenging the arbitral awards passed by MSEFC, Pune must be filed before courts having territorial jurisdiction under the MSME Act.

Brief facts

GEA Westfalia Separator India Private Limited ("**Petitioner**") and SVS Aqua Technologies LLP ("**Respondent**") executed a manufacturing and supply agreement. The arbitration clause in the said agreement, *inter alia* envisaged for disputes to be "*referred to and finally resolved by arbitration in Mumbai*" ("**Arbitration Clause**"). There was no exclusive or non-exclusive jurisdiction clause.

Disputes arose between the Petitioner and Respondent culminating into awards being passed by the MSEFC, Pune under the MSME Act in favour of the Respondent and against the Petitioner ("**Impugned Awards**"). Being aggrieved, the Petitioner challenged the Impugned Awards under Section 34 of the Arbitration Act before the Bombay HC.

In the proceedings, the Respondent raised a preliminary objection on the territorial jurisdiction of the Bombay HC to entertain the petitions under Section 34 of the Arbitration Act and *inter alia* contended that, since the arbitration was conducted by the MSEFC in Pune, as a matter of statutory territorial jurisdiction, the courts in Pune would have the jurisdiction under Section 34 of the Arbitration Act; and Section 18 of the MSME Act overrides the provisions of the Arbitration Act and therefore, the arbitration agreement between the Petitioner and Respondent is irrelevant for all purposes.

The Petitioner, on the other hand, relied upon the contractually agreed arbitration clause and *inter alia* contended that the arbitration clause envisaged the seat of arbitration as Mumbai. Consequently, the Bombay HC had the exclusive jurisdiction for the purpose of Section 34 Petitions; and the arbitration conducted by the MSEFC, Pune merely indicated that Pune was the convenient venue for the proceedings.

Issue

Whether in the absence of an exclusive jurisdiction clause, an arbitration clause can confer jurisdiction to a court for setting aside an award passed in a statutory arbitration?

Findings and analysis

The Bombay HC dismissed the petitions under Section 34 of the Arbitration Act and *inter alia* held as follows:

1. the Impugned Awards did not arise from the Arbitration Clause reduced into writing by the parties. It was passed pursuant to the proceedings initiated under Section 18[89] of the MSME Act, which provision statutorily creates an independent arbitration agreement between parties. The Arbitration Clause was not acted upon in any manner, and the arbitration was conducted at MSEFC, Pune, as per the statutory arbitration agreement created by the MSME Act;
2. there is no exclusive/non-exclusive jurisdiction clause designating any particular court to have jurisdiction in the manufacturing and supply agreement. Given that the Respondent, as the supplier was based in Pune, and as per the provisions of the MSME Act, the arbitration proceedings were conducted before MSEFC, Pune. In these circumstances, the statutory requirement

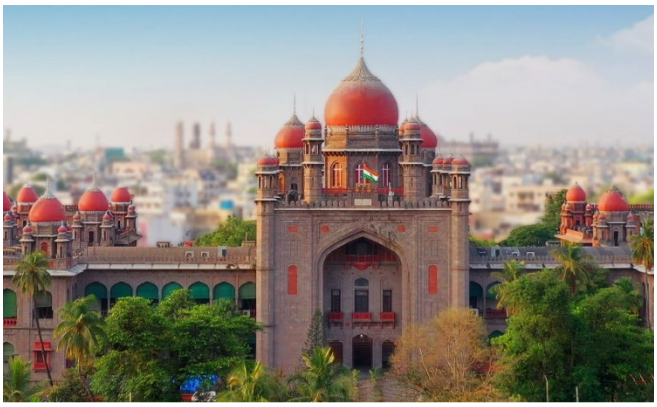
[87] Arbitration Petition (L) No. 7358 of 2025 (decided on September 10, 2025)
[88] Section 34 of the Arbitration Act sets out the grounds for challenging an arbitral award.
[89] Section 18 of the MSMED Act sets out the mechanism for referring disputes pertaining to the outstanding sums to MSEFC.

is a strong indication of Pune being the seat of the arbitration;

3. on a holistic reading of Section 34 read with Section 2(1)(e)(i) of the Arbitration Act, the petitions under Section 34 of the Arbitration Act must be filed before the principal courts of civil jurisdiction that would possess jurisdiction to deal with the dispute if the same had been in the form of a suit. In the present case, given that none of the parties are located in Mumbai and no activity in pursuance of the agreement was carried out in Mumbai, the courts in Mumbai would not have the jurisdiction to deal with any disputes between the parties; and
4. in the absence of an exclusive jurisdiction clause in the agreement, there is no connecting factor conferring jurisdiction to the Bombay HC. Considering that the contractual arbitration clause was supplanted with the statutory arbitration provisions under the MSME Act, the relevant court in Pune would have the jurisdiction within the meaning of Section 34 read with Section 2(1)(e)(i) of the Arbitration Act.

Conclusion

The ruling clarifies that in the absence of an exclusive jurisdiction clause, the provisions of statutory arbitration under the MSME Act will prevail in determining the jurisdiction of courts in arbitral proceedings. This decision underscores the importance for parties to exercise diligence in drafting jurisdiction and dispute resolution clauses specifically while entering into contracts with MSMEs.



Telangana High Court clarifies uniform applicability of the amendment to the CC Act across India without the requirement of a separate State notification to its effect

The High Court of Telangana ("**Telangana HC**"), in the case of ***M/s. Janset Labs Private Limited vs. Agilent Technologies Private Limited***[90]***,*** held that the amended 'specified value' threshold of INR 3,00,000 (Indian Rupees three lakh) under Section 2(1)(i) of the CC Act (as amended under the Commercial Courts (Amendment) Act, 2018, ("**CC Amendment Act**")) applies uniformly across India, including Telangana, without requiring a separate State Government notification. The Telangana HC clarified that 'specified value' under Section 2(1)(i) of the CC Act (which determines whether a dispute is commercial) is distinct from 'pecuniary jurisdiction' under Section 3(1A) of the CC Act (which defines the monetary limits of courts within a State) and held that the requirement of a notification under Section 3(1A) of the CC Act cannot be imported into Section 2(1)(i) of the CC Act.

Brief facts

1. Agilent Technologies India Private Limited ("**Respondent**") filed a commercial suit ("**Commercial Suit**") in the Commercial Court, Ranga Reddy District at L.B. Nagar ("**RR Commercial Court**") against M/s. Janset Labs Private Limited ("**Petitioner**"). The Commercial Suit was filed for recovery of a total amount of INR 1,03,58,961 (Indian Rupees one crore three lakh fifty-eight thousand nine hundred and sixty-one), consisting of the principal amount of INR 44,53,396 (Indian Rupees forty-four lakh fifty-three thousand three hundred and ninety-six) along with interest at 18% per annum and damages.
2. The Petitioner filed an interim application ("**Rejection of Plaint**") in the Commercial Suit under Order VII Rule 11(d) of the CPC to dismiss the Commercial Suit on the ground that the suit does not meet the 'specified value' provided under Section 2(1)(i) of the CC Act i.e. INR 1,00,00,000

[90] Civil Revision Petition No. 1932 of 2025 (decided on September 22, 2025)

(Indian Rupees one crore). It further stated that the amendment under Section 2(1)(i) of the CC Amendment Act reducing the threshold of the 'specified value' to INR 3,00,000 (Indian Rupees three lakh) is not applicable in Telangana due to the lack of State notification to its effect. Additionally, the Petitioner contended that segregation of damages is not permissible for computing of the 'specified value'.

3. The RR Commercial Court dismissed the Rejection of Plaint on the ground that the plaint discloses cause of action for filing of the Commercial Suit ("**Impugned Order**").

4. Aggrieved by the Impugned Order, the Petitioner filed the instant Civil Revision Petition ("**CRP**") before the Telangana HC arguing that the 'specified value' of the Commercial Suit is below INR 1,00,00,000 (Indian Rupees one crore). As such, it does not satisfy the threshold provided under Section 2(1)(i) of the CC Act and must be dismissed. Additionally, it was contended by the Petitioner that the reduced 'specified value' of INR 3,00,000 (Indian Rupees three lakh) provided under Section 2(1)(i) of the CC Amendment Act is not applicable in the State of Telangana in the absence of a State notification.

Issues

1. Whether the amended specified value of INR 3,00,000 (Indian Rupees three lakh) under Section 2(1)(i) of the CC Amendment Act applies to Telangana without a separate State Government notification?

2. Whether 'specified value' under Section 2(1)(i) of the CC Act is distinct from the 'pecuniary jurisdiction' prescribed under Section 3(1A) of the CC Act?

3. Whether the plaint was liable to be rejected under Order VII Rule 11(d) of the CPC for want of jurisdiction?

Findings and analysis

1. The Telangana HC observed that the 'specified value' under Section 2(1)(i) as determined by Section 12 of the CC Act is not less than INR 3,00,000 (Indian Rupees three lakh) pursuant to the CC Amendment Act. The Petitioner's contention that a separate notification is required by State Government for its application in Telangana was dismissed since the statute confers power only on the Central Government to notify a higher threshold. Therefore, the reduction of the minimum specified value from INR 1,00,00,000 (Indian Rupees one crore) to INR 3,00,000 (Indian Rupees three lakh) as per the amendment applies uniformly to all States and Union Territories without the need for separate State notification.

2. The Telangana HC further went on to analyse the distinction between 'specified value' and 'pecuniary jurisdiction' and opined that Section 2(1)(i) of the CC Act refers to the valuation of the commercial dispute to determine whether the dispute qualifies as a commercial dispute at all. It observed that a dispute falls within the jurisdiction of the commercial court if there is an existence of dispute as per Section 2(1)(c) of the CC Act; and the commercial dispute is within the 'specified value' under Section 2(1)(i) read with Section 12 of the CC Act. In contrast, Section 3(1A) of the CC Act fixes the competence-parameters of the court for receiving a commercial suit, meaning whether or not that particular court has the jurisdiction to determine the dispute.

3. The Telangana HC noted that the requirement of notification by the State Government in Section 3(1A) of the CC Act cannot be read into or imported under Section 2(1)(i) of the CC Act. Thus, Telangana does not require any separate notification and the amended threshold of INR 3,00,000 (Indian Rupees three lakh) is applied with effect from May 3, 2018.

4. Given the above, the Petitioner's contention on segregation of prayers is irrelevant since the dispute falls under the 'specified value' of INR 3,00,000 (Indian Rupees three lakh) or more. Accordingly, the CRP was dismissed.

Conclusion

The Telangana HC reaffirmed that the CC Amendment Act operates uniformly across India, including Telangana, without the need for a separate State notification. By clarifying the distinction between 'specified value' and 'pecuniary jurisdiction', the

Telangana HC provided crucial interpretative clarity and reinforced the uniform national applicability of the amended INR 3,00,000 (Indian Rupees three lakh) threshold for commercial disputes.

Delhi HC held that an agreement for mere provision of services does not *ipso facto* qualify as a commercial dispute under the CC Act

The Delhi HC, in the matter of ***Chand Mehra and Anr. vs. British Airways PLC***[91]***,*** held that for a dispute to qualify as a 'commercial dispute' within the meaning of the CC Act, the transaction must inherently involve an element of commerce, trade, business, or finance.

Brief facts

Mr. Chand Mehra and another ("**Appellants**") purchased 2 (two) business class tickets from British Airways PLC ("**Respondent**") for a total of INR 5,09,918 (Indian Rupees five lakh nine thousand nine hundred and eighteen). In May 2023, due to a family emergency, the Appellants were constrained to cancel their travel plans and requested the Respondent to issue a refund for the purchase price of the flight tickets. The Respondent informed the Appellants that it would refund an amount of INR 2,04,876 (Indian Rupees two lakh four thousand eight hundred and seventy-six) while an amount of INR 3,05,042 (Indian Rupees three lakh five thousand and forty-two) would be deducted towards cancellation charges. Instead of processing the refund, the Respondent converted the refund amount into a future travel voucher, which could be used at a later date.

The Appellants issued a legal notice on October 9, 2023, demanding a full refund with interest at 18% per annum. As the Respondent failed to provide the refund, the Appellants approached the South-East District Legal Services Authority for pre-institution mediation, which failed since the Respondent did not provide any response. Consequently, the Appellants sought interest as the same rate, along with punitive damages of INR 10,19,836 (Indian Rupees ten lakh nineteen thousand eight hundred and thirty-six) alleging that the Respondent engaged in unethical conduct for unjust enrichment.

The Respondent contested the suit before the District Court and filed a consolidated application seeking either return of the plaint under Order VII Rule 10 or rejection of the plaint under Order VII Rule 11 of the CPC *inter alia* contending that the matter was not a 'commercial dispute' under Section 2 (1) (c) of the CC Act. The District Court allowed the application under Order VII Rule 10 of the CPC and held that the plaint did not disclose a 'commercial dispute' within the meaning of Section 2 (1) (c) of the CC Act and returned the plaint with liberty to file the same before a court of competent jurisdiction ("**Impugned Order**").

The Appellants preferred an appeal before the Delhi HC against the Impugned Order ("**Appeal**").

Issue

Whether the plaint filed by the Appellants fell with the purview of a 'commercial dispute' under Section 2 (1) (c) of the CC Act?

Findings and analysis

The Delhi HC dismissed the Appeal and *inter alia* held as follows:

1. it is undisputed that the purchase of the air tickets resulted in the creation of a contract. However, the mere creation of a contract would not result in a commercial transaction between the parties. The transaction in the present case was *sans* any element of business, trade, or commerce and could not be termed as an ordinary transaction of

[91] 2025:DHC:8427:DB (decided on September 23, 2025)

merchants or bankers or financiers or traders or of export or import of mercantile or services;

2. even though the contract between the parties was for provision of services, the same could only be a 'commercial dispute' within the meaning of Section 2 (1) (c) of the CC Act if it involved some or the other kind of trade or business or financing. To constitute a commercial dispute arising out of an agreement for services, the agreement or transaction would necessarily have to contain an element of commerce or trade or business, which was absent in the present case; and
3. In *Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and Anr.*[92] the Supreme Court had held that the CC Act was enacted for the specific purpose of creating a judicial forum to provide speedy disposal of high value commercial disputes. Thus, the crucial aspect for instituting a suit under the CC Act would be commercial or business or trading activity and any suit of a high valuation minus these elements could not be instituted under the CC Act.

Conclusion

This decision reinforces the specific and narrow scope of commercial disputes under the CC Act. The mere fact that a transaction falls within the broad description of matters under Section 2 (1) (c) of the CC Act would not by itself constitute a commercial dispute. The element of commerce is an inherent feature which cannot be done away with. These clarifications may result in a plethora of non-commercial disputes being removed from the jurisdiction of commercial courts, thus easing the burden on commercial courts in the country.

Madras High Court holds that cryptocurrency is within the purview of 'property' and is capable of being held in trust

The Madras High Court ("**Madras HC**"), in its recent judgment in ***Rhutikumari vs. Zanmai Labs Private Limited and Ors.***[93], held that 'cryptocurrency' is a virtual digital asset governed under Section 2(47A) of the Income Tax Act, 1961, and is within the purview of 'property' capable of being held in trust, enjoyed and possessed in beneficial form.

Brief facts

Zanmai Labs Private Limited ("**1st Respondent**") is a wholly-owned subsidiary of Zettai Pte Limited ("**Zettai**"), a company based out of Singapore. The 1st Respondent founded a cryptocurrency exchange platform called 'WazirX' ("**Platform**"), which allowed for:

1. trading pairs involving INR on the one hand and supported cryptocurrency on the other hand; and
2. Indian resident users to add to their INR balance by depositing Indian Rupees from their registered bank account to the 1st Respondent's bank account using regulated channels.

The Indian users can redeem their INR balance by placing a withdrawal request to the 1st Respondent, upon which request, the INR balance is transferred to the Indian resident users' registered bank account through regulated channels. Under (2) above, the 1st Respondent merely acts as the user's duly appointed agent, to whom the payment is due, and does not operate a payment system.

In and around 2019, group entities by the name and style of 'Binance' acquired the Platform and licensed the same to the 1st Respondent to act as a distributor within the territory of India for a compensation. However, in 2023, Binance ceased providing services to the Platform, resulting in a dispute between Zettai and Binance. Owing to Binance withdrawing infrastructure support to the Platform, Zettai stepped into the shoes of Binance and held custody of the cryptocurrency related assets associated with the

[92] (2020) 15 SCC 585

[93] 2025:MHC:2437 (decided on October 25, 2025)

Platform to safeguard the interest of the Platform users whereas the 1st Respondent handled the INR wallets.

Rhutikumari ("**Petitioner**") invested INR 1,98,516 (Indian Rupees one lakh ninety-eight thousand five hundred and sixteen) or 3,532.30 (three thousand five hundred and thirty-two point three zero) XRP coins in the Platform. In other words, the Indian currency that was invested by the Petitioner, after conversion into XRP coins, was stored in the wallet maintained by the 1st Respondent, in its custody.

In July 2024, the Platform suffered a major cyberattack leading to the loss of Ethereum and Ethereum based tokens to the tune of USD 234,000,000 (US Dollars two hundred and thirty-four million). Following this, the 1st Respondent immediately froze the accounts of all users, including the Petitioner, and prevented trading or liquidation of their cryptocurrencies. Following the cyberattack, Zettai devised a solution for the benefit of the Platform's users through a scheme of arrangement under the Singapore Companies Act, 1967. The provisions of the said legislation would provide a mechanism for a fair and orderly manner of distribution of the cryptocurrency tokens pursuant to the scheme under the supervision of the Singapore Courts. Singapore Courts, on October 13, 2025, rendered a finalised scheme of arrangement wherein all users of the Platform, including the Petitioner herein, would be paid on pro-rata basis, owing to insufficient cryptocurrency tokens to satisfy unsecured claims of the users.

Meanwhile, the users of the Platform are governed by a WazirX user agreement which contains an arbitration clause governed by the arbitration rules of the Singapore International Arbitration Centre. The Petitioner being aggrieved approached Madras HC by filing a petition under Section 9 of the Arbitration Act seeking pre-arbitration injunctive relief as against the 1st Respondent from interfering with the Petitioner's access/use of her account held with the Platform and subjecting it to any re-distribution/reallocation/reapportionment.

Issues

The twin questions that were considered by the Madras HC for adjudication in the present case was:

1. whether the petition under Section 9 of the Arbitration Act was maintainable before the Madras HC; and
2. whether the Petitioner's cryptocurrencies can be adjusted against a completely different cryptocurrency held in a separate wallet that was subject to losses due to the cyber-attack.

Findings and analysis

In relation to the first issue, relying on the judgment of the Supreme Court in *PASL Wind Solutions (P) Limited vs. GE Power Conversion India (P) Limited*[94] and the proviso to Section 2(2) of the Arbitration Act, the Madras HC held that the Petitioner operated the Platform through her phone from her ordinary place of residence being India. Accordingly, the Petitioner was restrained from trading and liquidating her crypto currency holdings in the Platform, giving raise to cause of action, rendering the petition maintainable.

In relation to the second issue, the Madras HC at the outset took benefit of how multiple jurisdictions have considered the nature of cryptocurrencies, with El Salvador embracing bitcoin as legal tender, China imposing an outright ban, United Kingdom, Singapore and New Zealand classifying cryptocurrency as property, and the US lacking a unified framework of its regulation, i.e., classifying it as both commodity and security by different federal agencies. Further, the Madras HC delves into what the nature of 'cryptocurrency' is and whether cryptocurrency can *stricto sensu* be considered a 'property'. The Madras HC, taking the benefit of the decision in *Ahmed G.H. Ariff vs. CWT*[95] which dealt with the definition of property as under the repealed Article 19(1)(f) of the Constitution and *Jilubhai Nanbhai Khachar vs. State of Gujarat*[96] which dealt with the definition of property as under Article 300A of the Constitution, concluded that 'cryptocurrency' is a property capable of being held in trust despite not being a 'currency' or a tangible property. It further held that the cryptocurrency is

[94] 2021 (7) SCC 1
[95] 1969 (2) SCC 471
[96] 1995 Supp (1) SCC 596

treated as a virtual digital asset governed by Section 2(47A) of the Income Tax Act, 1961 and not a speculative transaction. In other words, the investment made by a user upon conversion into cryptocurrency is capable of being stored, traded and sold. Further, the Madras HC relied upon the observations of the Bombay HC in *Zanmai Labs Private Limited vs. Bitcipher Labs LLP*[97] on a similar plea that held that the cryptocurrencies being virtual digital assets held electronically are held in trust with a fiduciary duty owed to the owners of such asset. If the assets are held in the custody of a person under the agreement, it is for the person in whose custody those assets are to be held accountable for the custody of the assets. It would not be open for that person to state that the assets were handed over by him to yet another person, who has no privity to the agreement, without the consent of the person whose assets were handed over to him in custody.

Conclusion

This judgment rendered by the Madras HC is a landmark ruling in the crypto landscape as it recognises crypto currency as 'property' under law. The judgment has granted investors enforceable rights and protections including the right to own, trade and transfer the virtual digital asset like any other asset. The judgment has not only clarified that exchange platforms hold the investor assets in trust with a fiduciary duty owed to the investors but has further affirmed Indian courts' jurisdiction over disputes involving investor's assets located in India even where foreign-based platforms have been involved.

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[97] Commercial Arbitration Petition (L) No. 11646 of 2025 dated October 7, 2025

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