

IN BRIEF – DISPUTE RESOLUTION



ARBITRATION

I. Interference with award in Sections 34 and 37 – Patent Illegality - Apparent on the face of award[1]

Arbitral award is not an ordinary adjudicatory order to be lightly interfered with under Sections 34 or 37. The expression ‘patent illegality’ has been expounded as not a mere illegality, but illegality apparent on the face of the award, and not one which is culled out by re-appreciation of evidence. Restraint is required to be shown while examining the validity of arbitral award, else interference after reassessing the factual aspects would open the confines and carry the propensity of converting proceedings into regular appeal/revision.

Applicability 2015 Amendment – Whether Prospective - Section 11 – Issuance of Notice of Arbitration[2]

Observations in BCCI vs Kochi Cricket Pvt Ltd[1] re prospective application of Amendment Act, 2015 be construed with respect to proceedings under Section 34 and 36, commenced on or after the Amendment Act.

II. Delhi High Court - Proceedings before the Competition Commission of India (CCI) would not be invalidated because of any defect in the constitution of the CCI or because of any vacancy.

Alliance of Digital India Foundation Vs. Competition Commission of India and Ors. - 2023/DHC/002720

As held in Union of India vs Parmar Constructions Company[1] when notice invoking arbitration is issued prior to Amendment Act, 2015 and the application under Section 11(6) is filed post amendment, date of issuance of the notice invoking arbitration shall be considered as commencement of the arbitration proceedings and parties shall be governed by the pre-amendment Act, 2015.

Section 11 – Pre-referral – Scrutiny – Arbitrability[5]

Standard of scrutiny to examine arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts and must confine to a primary first review. Even if there is the slightest doubt, the rule is to refer the dispute to arbitration. Limited scrutiny, through the ‘eye of the needle’ is necessary and compelling. This is intertwined with the duty of the referral Court to protect parties from being forced to arbitrate when the matter is demonstrably non-arbitrable, and Court is not expected to act mechanically in referring disputes to arbitration.

Setting aside of award – Modification of award – Grant of further relief[6]

View taken by the arbitrator on construction of contract and in the facts, cannot be characterized as being perverse when undoubtedly view is plausible. Court cannot, after setting aside the award, proceed to grant further relief by modifying the award. It must be left open to the parties to work out their remedies wherein Court justifiably interferes with the award.

[1] Reliance Infrastructure Ltd. vs State of Goa [Civil Appeal No. 3615 of 2023; dated May 10, 2023]

[2] Shree Vishnu Constructions vs The Engineer in Chief Military Engineering Service [Civil Appeal No. 3461 of 2023; dated May 9, 2023]

[3] (2018) 6 SCC 287

[4] (2019) 15 SCC 682

[5] NTPC vs SPML Infra Ltd [Civil Appeal No. 4778 of 2022; dated April 10, 2023]

[6] Indian Oil Corporation vs Sathyannarayana Service Station [Civil Appeal No. 3533 of 2023; dated May 9, 2023]

Section 34 – Application setting aside award – Filing in ‘prescribed period’ – Limitation – Discretion⁷

Benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within ‘prescribed period of limitation’ and shall not be available in respect of period extendable by Court in exercise of its discretion.

Arbitration Agreement – Unstamped – Exigible Stamp Duty – Enforceability – Interference – Section 11^[8]

Constitution Bench of Supreme Court in a 3:2 majority held that an instrument which is exigible to stamp duty, containing an arbitration clause which is not stamped, cannot be said to be a contract which is enforceable in law. Section 11 does not merely envisage the literal existence of an arbitration agreement, but rather an enforceable contract. An arbitration agreement which attracts stamp duty and is not stamped or insufficiently stamped, cannot be acted upon, unless following formalities of impounding and payment of requisite duty are complete.

INSOLVENCY AND BANKRUPTCY CODE, 2016

Modified resolution plan to have CoC approval before being placed before NCLT^[9]

Modified resolution plan, even if carrying minor modification/revision if not finally approved by CoC, its presentation to the Adjudicating Authority amounts to a material irregularity and this defect cannot be cured. There is no and there cannot be any concept of post facto approval of any resolution plan by CoC which had not been placed before it prior to the filing before the Adjudicating Authority.

Rearrangement in the hierarchy on disbursement of payment on liquidation of a company impermissible – Section 53 – Section 327(7) of Companies Act 2013 – not violative of Article 21^[10]

The workmen’s dues for the period of twenty-four months preceding the liquidation commencement date shall rank equally between the workmen’s dues to the said extent and the dues to the secured creditor. The workmen as a separate class also have a stake and benefit from the revival of the company. Section 53 of Code begins with a non-obstante clause, is complete and comprehensive which ensures collection of assets and then provides the manner in which the creditors are to be paid. The waterfall mechanism is based on a structured mathematical formula, and the hierarchy under section 236 of Companies Act 2013, is created in terms of payment of debts in order of priority with several qualifications. Section 327(7) of Companies Act 2013, held not arbitrary and not violative of Article 21 of the Constitution of India.

Section 140(5) Companies Act - proceedings maintainable even after resignation of auditors^[11]

Powers of the NCLT in first part of Section 140(5) of the Companies Act, 2013 is quasi-judicial in nature and the Tribunal would have the powers of a civil court to examine the role of auditors and adjudicate on their fraudulent conduct and abdication of their function. The application/proceedings under section 140(5) of the Companies Act, 2013 are maintainable even after the resignation of the concerned auditors and the NCLT is empowered to adjudicate such an application after holding enquiry in accordance with law.

SPECIFIC RELIEF ACT

Specific performance – Section 16 – Ready and willingness to perform^[12]

The 2018 amendment has been held to have substantive principles in Katta Sujatha Reddy vs Siddamsetty Infra Projects^[2], thus prospective. Prior to 2018 amendment plaintiff was entitled for a specific performance if he averred and proved his readiness and willingness to perform obligations. Explanation to clause (c) further clarified that in a contract involving payment of money, plaintiff need not actually deposit the money to the defendant, and that he must aver that he has performed, or is ready and willing to perform the contract. Compliance of readiness and willingness has to be in spirit and substance, and not in letter and form.

[7] Bhimashankar Sahakari Sakkare Karkhane Niyamita vs Walchandnagar Industries Ltd. [Civil Appeal No. 6810 of 2022; dated April 10, 2023]

[8] N. N. Global Merchandise Pvt Ltd vs Indo Unique Flame Ltd. [Civil Appeal Nos. 3802 – 3803 of 2020; dated April 25, 2023]

[9] M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder & Anr. [Civil Appeal Nos. 1682-1683 of 2022, dated May 03, 2023]

[10] Moser Baer Karamchari Union Thr. President Mahesh Chand Sharma Vs. Union of India and Ors. [Writ Petition (C) No. 421 of 2019, dated May 20, 2023]

[11] Union of India Vs. Deloitte Haskins and Sells LLP & Anr. [Criminal Appeal Nos. 2305-2307 of 2022, dated May 03, 2023]

[12] Gaddipati Divija vs Pathuri Samrajyam [Civil Appeal Nos. 4206-4207 of 2011; decided on April 18, 2023]

CONSUMER PROTECTION ACT

Consumer Protection – Real Estate disputes – Compensation – Award Compound Interest[14]

State and National Commission had relied on Dr. Manjeet Kaur Monga vs K L Suneja[15] while passing orders in awarding compensation in terms of compound interest. Monga's judgment awarded compound interest at 15% in the realm of MRTP Act. Court held that judgment in Monga is an authority only regarding ratio decidendi and cannot be read in support of the principle of compensation and/or punitive damages in the Consumer Protection Act 1986. Court had in Ireo Grace Realtech Pvt Ltd vs Abhishek Khanna[16] declined compensation by way of compound interest. In determination of compensation, Consumer Forums must examine time value for money, analysis of facts and material surrounding factors, uncertainties of market. Shortcut in awarding compound interest is not envisaged by the 1986 Act.

ENVIRONMENT(PROTECTION) ACT,1986

Modifications on implementation of directions prescribing uniform 1km Eco-Sensitive Zones around forests, sanctuaries[17]

Further clarifying its earlier judgment, the Supreme Court held that if in a particular case, the ESZ is more than 1 Km, still, if the concerned area where mining is proposed falls within the ESZ, the mining activity will not be permitted, even if it falls in an area which is beyond 1 km from the boundary of the Protected Area. The prohibition of 1 km from the boundary of Protected Area is only with regard to the cases where the boundary of ESZ is less than 1 km from the boundary of the sanctuary. Only in such cases, the ban on mining will travel beyond the ESZ area and cover an area upto a distance of 1 km.

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PREVENTION OF FOOD ADULTERATION ACT,1954

Protection of vendor from criminal liability – Section 14 & 19 of the Prevention of Food Adulteration Act, 1954[18]

The Supreme Court while allowing the appeal preferred by accused in a complaint filed under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 held that a vendor shall not be prosecuted for an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased the article of food from any manufacturer, distributor or dealer with a written warranty in prescribed form. The word 'Vendor' though not defined in the Act, means the person who had sold the article of food which is alleged to be adulterated.

[14] Suneja Towers Pvt Ltd vs Anita Merchant [Civil Appeal Nos. 2892 – 2894 of 2023; dated April 18, 2023]

[15] (2018) 14 SCC 679

[16] (2021) 3 SCC 241

[17] Re: T.N. Godavarman Thirumulpad Vs. Union of India & Ors.[1] [IA No. 3949 of 2016 and Writ Petition (C) No. 202 of 1995, dated April 28, 2023]

[18] Shri Mahavir Agency and Another Vs. The State of West Bengal and Another [Criminal Appeal No. 982 of 2023 dated April 17, 2023]