
Arbitral Proceedings Invalidated Due to Unilateral Appointment During CIRP Moratorium: Delhi High Court

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Introduction

In ***Ballarpur Industries Ltd. v. SG Enterprises*** [2025:DHC:4232], the Delhi High Court addressed two key legal issues: (i) whether the mandate of a unilaterally appointed sole arbitrator may be terminated under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"); and (ii) whether arbitration claims persist if they are not included in an approved resolution plan under the Insolvency and Bankruptcy Code, 2016 ("**IBC**").

Brief Facts

The parties entered into a Distribution Agreement on 1 July 2009, relating to the supply and sale of stationery products. The agreement contained an arbitration clause requiring the parties to attempt to resolve disputes amicably first. If they failed to reach a resolution, a single arbitrator was to be appointed by mutual agreement. If no agreement was reached on the arbitrator, the Managing Director of the respondent company was authorised to make the appointment.

Disputes later arose over payment obligations. The petitioner argued that certain amounts remained unpaid, while the respondent claimed that excess payments had been made. The respondent filed a civil suit in the Court at Alipore. The petitioner, under its previous management, submitted an application under Sections 5 and 8 of the Arbitration Act, requesting an arbitration reference.

While these proceedings were ongoing, the petitioner was admitted into a Corporate Insolvency Resolution Process by order of the National Company Law Tribunal on 17 January 2020. A moratorium under Section 14 of the IBC was put into effect.

The civil court subsequently referred the matter to arbitration, allowing the parties to appoint an arbitrator. The respondent sent a letter suggesting the name of an arbitrator, but the petitioner did not respond. Rather than seeking appointment through the court under Section 11 of the Arbitration Act, the respondent proceeded to appoint a sole arbitrator unilaterally.

The arbitrator entered reference on 15 July 2022 and subsequently forfeited the petitioner's right to file a statement of defence. This took place while the moratorium under the IBC was still in force. Following approval of a resolution plan and a change in management, the petitioner requested a copy of the arbitral record and raised an objection to the arbitrator's appointment. Despite the objection, the arbitrator continued with the proceedings.

The petitioner filed a petition in the Delhi High Court under Section 14(1)(a) of the Arbitration Act, requesting the termination of the arbitrator's mandate. They also contended that the claims involved in arbitration were invalid, as they had neither

been submitted nor admitted under the approved resolution plan during the insolvency proceedings.

Issues and Submissions

The main issue before the Court was whether the arbitrator's mandate could be terminated under Section 14(1)(a) of the Arbitration Act, given that the appointment was made unilaterally by the respondent without mutual agreement or reference under Section 11(6). Additionally, a related question was the impact of the moratorium under the IBC on the validity of arbitral proceedings initiated and conducted during the CIRP period.

The petitioner argued that the arbitration clause only allowed for the appointment of an arbitrator through mutual agreement, and if that failed, by the Managing Director of the respondent. Such a clause, it was contended, was contrary to established law, which forbids any party interested in the dispute's outcome from appointing an arbitrator. Citing authoritative precedents, including *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* [(2020) 20 SCC 760] and *Central Organisation for Railway Electrification v. ECI-SPIC SMO-MCML (JV)* [2024 SCC OnLine 3219], it was submitted that unilateral appointments breach the principles of party autonomy and impartiality, and make the arbitrator *de jure* ineligible.

Furthermore, it was argued that the arbitrator had commenced reference during the period of the IBC moratorium. Consequently, the arbitral proceedings were considered non-existent from the outset, and any orders issued, including the forfeiture of the petitioner's right to file a defence, lacked legal validity. Reliance was placed on the decision of the Supreme Court in *Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.* [(2018) 16 SCC 94], which reaffirmed the complete prohibition on arbitral proceedings during the moratorium period.

It was further argued that the respondent's claims, which arose before the initiation of CIRP and were not submitted during the resolution process, were extinguished upon the approval of the resolution plan. The petitioner referred to clauses within the plan and the statutory framework under the IBC to contend that no arbitral proceedings could now be maintained regarding claims not admitted during insolvency.

The respondent admitted that the arbitrator's appointment was not legally sustainable. However, it was argued that the issue of extinguishment of claims should be reserved for determination in appropriate proceedings, should the matter proceed to arbitration again.

Findings of the Court

The High Court accepted the petitioner's main argument that the arbitrator's appointment was invalid. The arbitration clause envisioned appointment by mutual agreement, and if that failed, by the Managing Director of the respondent. The High Court ruled that any authority connected to one of the parties, especially one with a financial interest in the outcome, could not act as an appointing authority without breaching the requirement of neutrality. Citing the decisions in *Perkins Eastman*

(*supra*) and *Central Organisation for Railway Electrification (supra)*, the High Court noted that party autonomy and arbitrator independence are essential to the arbitral process. Consequently, the appointment was deemed invalid and the arbitrator's mandate was terminated under Section 14(1)(a) of the Arbitration Act.

The High Court declined to make a substitute appointment, noting that the question of whether the respondent's claims had survived the insolvency process was a contentious one. The petitioner had argued that the claims were extinguished by operation of the approved resolution plan under the IBC, since they were neither submitted during the CIRP nor admitted by the Resolution Professional. The High Court acknowledged the legal consequence of claim extinguishment under the IBC but refrained from making a definitive pronouncement on this issue, leaving it open for determination in any subsequent arbitral or judicial proceedings.

With respect to the arbitral proceedings conducted during the moratorium period, the High Court noted that such actions are in violation of Section 14 of the IBC. The arbitrator had proceeded despite an express bar on continuation or initiation of legal proceedings during the pendency of CIRP. The High Court recorded this as further support for the petitioner's case, reinforcing the view that the arbitral proceedings were legally untenable.

In conclusion, the Court set aside the appointment, terminated the arbitrator's mandate, and disposed of the matter while expressly stating that no opinion had been expressed on the merits of the underlying claims.

Comment

The decision in *Ballarpur Industries Ltd. v. SG Enterprises* reinforces two key principles within Indian arbitration law. Firstly, it confirms that any contractual mechanism enabling one party, or a person closely connected to that party, to appoint a sole arbitrator is unlawful. Secondly, the judgment highlights the legal conflict between arbitral proceedings and the insolvency framework under the IBC. Although the High Court chose not to make a definitive ruling on whether the respondent's claims were extinguished, it acknowledged the petitioner's reliance on the legal finality of an approved resolution plan. Under the IBC, once a resolution plan receives approval and becomes binding on all parties involved, any claims that were not submitted or recognised during the process are automatically extinguished by law.

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