

Indian Arbitration Yearly Roundup 2024

Authors: Vasanth Rajasekaran and Harshvardhan Korada

Over the years, Indian courts have consistently worked towards reducing judicial intervention in arbitration and fostering an arbitration-friendly environment. The year 2024 continued this trend, marked by significant rulings that further strengthened India's arbitration jurisprudence. This article offers a concise overview of ten of the most noteworthy arbitration judgments delivered in the year 2024.

1. *Avitel Post Studioz Limited v. HSBC PI Holdings (Mauritius) Limited*

Civil Appeal Nos. 3835 – 3836 of 2024

Date of Order: 04.03.2024

Citation: 2024 INSC 242

Objections pertaining to arbitrator's bias must be raised at the Courts situated within the jurisdiction limits of the seat of arbitration.

Challenges to the enforceability of foreign awards under Section 48 of the Arbitration Act are limited to violations of fundamental principles of justice and require a narrow interpretation of public policy.

Brief Facts

The instant case concerns the enforcement of a foreign arbitral award rendered by an arbitral tribunal constituted under the rules of the Singapore International Arbitration Centre ("**SIAC**"). Disputes arose from a Share Subscription Agreement ("**SSA**") dated 21.04.2011 and a Shareholders' Agreement ("**SHA**") dated 06.05.2011 between HSBC PI Holdings (Mauritius) Limited ("**HSBC**") and Avitel Post Studioz Limited ("**Avitel**" / "**Avitel India**"), an Indian company.

In terms of the agreements, HSBC invested 60 million USD in Avitel India, acquiring a 7.8% equity stake. This investment was allegedly made on the representation that the funds would be used to service a major Contract ("**BBC Contract**") with the British Broadcasting Corporation ("**BBC**").

After the investment, HSBC discovered that the purported BBC Contract did not exist and that Avitel India had siphoned off the funds to other entities. HSBC invoked arbitration seated at Singapore under the SIAC rules and sought damages for fraudulent misrepresentation. In 2014, the arbitral tribunal awarded HSBC a sum of 60 million USD as compensation for the fraudulent conduct.

Avitel India challenged the enforcement of the award before the Bombay High Court under Section 48 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") on the grounds that the award violated the public policy of India and that the presiding arbitrator, Mr. Christopher Lau SC, failed to disclose the circumstances giving rise to potential conflicts of interest. The High Court rejected these objections and allowed the enforcement. In this background, the appellants, including Avitel India, approached the Supreme Court of India.

Issues

The Supreme Court dealt with the following issues in the present case:

1. Could the enforcement of a foreign arbitral award be resisted on the grounds of bias under Section 48(2)(b) of the Arbitration Act?
2. Whether the alleged bias of the presiding arbitrator violated the Indian "*public policy*" or the "*most basic notions of morality and justice*"?
3. Whether objections concerning the arbitrator's bias must first be raised at the seat of arbitration?

Decision of the Supreme Court

The Supreme Court upheld the enforcement of the foreign award, dismissing the objections raised by Avitel India. The Supreme Court's reasoning is summarised as follows:

Public Policy and Bias:

The Supreme Court observed that while bias may fall within the ambit of the "*public policy of India*" under Section 48(2)(b) of the Arbitration Act, the threshold for resisting enforcement is exceptionally high in cases involving international commercial arbitration. Referring to its earlier decision in ***Renusagar Power Co. Ltd. v. General Electric Co.*** [1994 Supp (1) SCC 644], the Supreme Court reiterated that the public policy ground under Section 48 of the Arbitration Act must be narrowly construed and invoked only in cases of blatant violations of fundamental principles of justice or morality. The Apex Court held that Avitel India had failed to establish any such violation in the present case.

Avitel's Failure to Raise Timely Objections:

The Supreme Court emphasised that objections concerning bias or conflicts of interest must be raised promptly at the seat of arbitration. In this case, Avitel India had chosen not to challenge the arbitral award in Singapore, despite having the opportunity to do so within the prescribed limitation period under Singaporean law. The Supreme Court relied on its earlier decision in ***Vijay Karia v. Prysmian Cavi e Sistemi SRL*** [(2020) 11 SCC 1], wherein it was held that failure to raise appropriate objections before the supervisory Court at the seat of arbitration undermines the credibility of the challenge at the enforcement stage.

IBA Guidelines on Conflict of Interest:

Avitel India had alleged that the presiding arbitrator, Mr. Christopher Lau, SC, had failed to disclose his role as an independent director of Wing Tai Holdings, which was allegedly associated with HSBC. The Apex Court examined the IBA Guidelines on Conflict of Interest and noted that disclosure obligations must be assessed from the perspective of a "*reasonable third person*". It found that the arbitrator's role did not give rise to any reasonable apprehension of bias and that no disclosure was required under the IBA Guidelines. The Apex Court also observed that Avitel's claims of bias were speculative and lacked substantiation.

Pro-Enforcement Bias:

The Supreme Court stressed upon the pro-enforcement bias as enshrined in the New York Convention and incorporated into the Indian law under the provisions of the Arbitration Act. It noted that Indian Courts must adopt an internationalist approach to enforcement proceedings and avoid importing domestic standards of public policy in foreign arbitral proceedings. The Supreme Court also emphasised that the grounds for resisting enforcement of a foreign award under Section 48 are significantly narrower than those for challenging a domestic award under Section 34 of the Arbitration Act.

Conclusion

The Supreme Court dismissed Avitel's appeal and directed the award to be enforced. It emphasised that objections based on public policy and arbitrator's bias must be raised in a timely manner before the appropriate forum and that Indian courts must not act as appellate courts over foreign awards.

2. NHAI v. Hindustan Construction Company Ltd.

Civil Appeal No. 4702 of 2023

Date of Judgment: 07.05.2024

Citation: 2024 INSC 388

Judicial interference with arbitral awards is restricted to the grounds under Section 34 of the Arbitration Act. Courts would ordinarily defer to the arbitral tribunal's technical findings and contractual interpretation, avoiding an appellate role.

Brief Facts

The present matter arises from a contract ("**Contract**") awarded by the National Highways Authority of India ("**NHAI**") to Hindustan Construction Company Ltd. ("**HCC**") for a portion of the Allahabad Bypass Project ("**Project**"). The Project, awarded on 02.06.2004, involved the construction of a 40-km road stretch, excluding a bridge over a river. The total contract value was approximately ₹446.9 crores.

The Contract contained several provisions governing price adjustments and reimbursement for additional costs arising from changes in statutory levies. Disputes emerged amongst the parties during the execution of the Project, resulting in arbitration proceedings.

HCC raised three principal claims before the arbitral tribunal:

1. Claim 1: Reimbursement of additional expenditure incurred due to increases in royalty rates and associated sales tax on materials such as soil, sand, and aggregates.
2. Claim 2: Payment for embankment construction work involving the removal of the top 150 mm of soil, which HCC contended was distinct from clearing and grubbing activities under the contract.
3. Claim 3: Reimbursement of costs arising from an increase in forest transit fees.

On 30.03.2010, the arbitral tribunal rendered its award. A summary of the award granted in favour of HCC is as below:

1. Claim 1: ₹2.69 crore awarded for additional costs up to 31.12.2008 with interest. Further directions to reimburse HCC with additional costs post 31.12.2008 on account of an increase in royalty charges and associated sales tax.
2. Claim 2: By a 2:1 majority, ₹3.47 crore was awarded for embankment construction, along with price adjustments as per the contract and interest.
3. Claim 3: ₹3.77 crore was awarded for increased forest transit fees with interest.

Aggrieved by the award rendered by the arbitral tribunal, NHAI challenged the same under Section 34 of the Arbitration Act before the Delhi High Court. The Single Judge of the High Court upheld the award, so did the Division Bench on appeal under Section 37 of the Arbitration Act. Dissatisfied, NHAI approached the Supreme Court.

Issues

The Supreme Court dealt with the following issues in the present case:

1. Whether the reimbursement claims under Claim 1 for increases in royalty, sales tax, and forest transit fees were valid under the terms of the contract, particularly in light of Clauses 70.3 and 70.8 of the Contract?
2. Whether the costs related to the removal of the top 150mm of soil were payable as part of embankment construction or were subsumed within clearing and grubbing activities under the contract?

Arguments

Submissions by NHAI

On Claim 1: NHAI argued that an increase in royalty rates and sales tax on materials such as soil, sand, and crushed stone aggregates were already addressed under Clause 70.3 of the Contract. This clause provided for price adjustments using the Wholesale Price Index (WPI) as the sole metric, which NHAI contended should cover such cost variations. Therefore, NHAI asserted that there was no need for separate reimbursement under Clause 70.8 of the Contract.

NHAI pointed out that Clause 70.8 contains a non-obstante clause, meaning that costs already accounted for through the price adjustment formula in Clauses 70.3 could not be reimbursed separately. In this context, since the royalty and sales tax increases had been factored in by way WPI-based adjustments, NHAI maintained that Clause 70.8 was inapplicable, reinforcing its position that the adjustments under Clause 70.3 of the Contract were sufficient to cover these additional costs.

On Claim 2: NHAI argued that the removal of 150 mm of topsoil was part of clearing and grubbing activities specified in the contract. NHAI contended that the arbitral tribunal had misinterpreted the contractual provisions, leading to an erroneous award of amounts under Claim 2 for embankment construction.

Submissions by HCC

On Claim 1: HCC argued that Clause 70.8 explicitly allows for the reimbursement of additional costs arising from statutory changes, separate from market-driven price adjustments under Clause 70.3. Thus, HCC submitted that the arbitral tribunal's interpretation was consistent with the contract and supported by previous judicial precedents.

On Claim 2: With respect to Claim 2, HCC argued that the removal of 150 mm of topsoil was a distinct activity necessary for embankment construction and was not covered under clearing and grubbing. HCC highlighted that NHAI had initially paid for this work but later sought to deduct the amounts, leading to the disputes.

HCC also emphasised on the limited scope of judicial interference under Sections 34 and 37 of the Arbitration Act and argued that the arbitral tribunal's findings, supported by expert evidence, ought not to be disturbed.

Decision of the Supreme Court

The Supreme Court dismissed NHAI's appeal and upheld the arbitral award.

On Price Adjustments and Legislative Changes (Claim 1)

The Supreme Court endorsed the arbitral tribunal's views on the distinction between market-driven price fluctuations under Clause 70.3 and statutory changes addressed under Clause 70.8 of the Contract. It observed that increases in royalty rates, sales tax, and forest transit fees were legislative in nature and fell squarely within the ambit of Clause 70.8 of the Contract. In this regard, the Apex Court relied on its earlier decision in **NHAI v. ITD Cementation (India) Ltd.** [2008 (100) DRJ 431], which involved similar contractual provisions, and upheld the tribunal's interpretation as a "*possible view*" not open to interference.

On Scope of Embankment Construction (Claim 2)

The Supreme Court emphasised that interpreting contractual terms falls within the domain of the arbitral tribunal, especially in technical matters. It upheld the arbitral tribunal's majority finding that the removal of 150 mm of topsoil was integral to embankment construction and not merely a part of clearing and grubbing activities. The Apex Court found no perversity in the arbitral tribunal's reasoning and deferred to the majority view taken by the arbitrators.

On Limited Scope of Judicial Review

The Supreme Court reiterated that judicial interference under Sections 34 and 37 of the Arbitration Act is confined to cases involving patent illegality or conflicts with public policy. Errors of fact or plausible interpretations of contractual terms are not grounds for setting aside an award. It emphasised that Courts must respect the arbitral tribunal's autonomy and refrain from substituting their views on factual or technical matters. In this regard, the Supreme Court referred to the decisions in **Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.** [(2019) 7 SCC 236]; **NHAI v. ITD Cementation (India) Ltd.** [(2015) 14 SCC 21]; and **SAIL v. Gupta Brother Steel Tubes Ltd.** [(2009) 10 SCC 63].

Conclusion

The Supreme Court dismissed the appeals and affirmed the arbitral award and the judgments of the High Court under Sections 34 and 37 of the Arbitration Act. It held that the arbitral tribunal's findings on price adjustments and embankment construction were reasonable and consistent with the contractual terms. No costs were imposed on the parties.

3. *Dani Wooltex Corp. v. Sheil Properties Pvt. Ltd.*

Civil Appeal No. 6462 of 2024

Date of Judgment: 16.05.2024

Citation: 2024 INSC 433

Arbitral claims cannot be presumed abandoned solely due to inactivity; clear evidence of intent to abandon is required. Termination of arbitral proceedings under Section 32(2)(c) of the Arbitration Act mandates strict adherence to procedural safeguards.

Brief Facts

The dispute in this case arose from a Development Agreement executed between Dani Wooltex Corporation ("**Dani**") and Sheil Properties Pvt. Ltd. ("**Sheil**"), under which Sheil was permitted to develop certain land owned by Dani. Subsequently, Dani also entered into a Memorandum of Understanding ("**MOU**") with Marico Industries ("**Marico**") to sell another portion of its property. Sheil objected to this transaction, claiming it was governed by the terms of the earlier Development Agreement. This led to the filing of suits by Sheil and Marico against Dani, and a consensus was reached to refer the disputes to arbitration before a common arbitrator.

In the arbitral proceedings, Sheil filed its claim against Dani, and Marico also initiated its claim. The arbitration concerning Marico's claim concluded with an award in May 2017. However, Sheil did not actively pursue its claim in the arbitration for several years thereafter. Dani subsequently moved an application under Section 32(2)(c) of the Arbitration Act, seeking termination of Sheil's arbitral proceedings on the ground that Sheil had abandoned its claim. The arbitral tribunal accepted this contention and terminated the proceedings.

Sheil challenged this decision before the Bombay High Court under Section 14(2) of the Arbitration Act. The High Court set aside the arbitral tribunal's order, directing the arbitration to continue. Dani appealed this decision before the Supreme Court.

Issues

The Supreme Court dealt with the following issues in the present case:

1. Whether the arbitral proceedings concerning Sheil's claim had become "*unnecessary*" under Section 32(2)(c) of the Arbitration Act due to Sheil's alleged inaction?
2. Whether the arbitral tribunal was justified in inferring abandonment of the claim based on Sheil's conduct?
3. Whether the High Court had rightly interfered with the arbitral tribunal's order under Section 14(2) of the Arbitration Act?

Arguments

Submissions by Dani

On Abandonment: Dani argued that Sheil's non-participation in arbitration for over eight years amounted to abandonment of its claims. Dani emphasised that the arbitral tribunal had exercised its discretion to terminate the proceedings under Section 32(2)(c) of the Arbitration Act, which allows termination when further proceedings become "*unnecessary*".

Dani contended that the arbitral tribunal's decision was based on factual findings and could not be reviewed by the High Court under Section 14(2) of the Arbitration Act. Dani also submitted that Sheil's failure to pursue its claim after the passing of the arbitral award in Marico's arbitration demonstrated its lack of interest in continuing proceedings.

Submissions by Sheil

On Abandonment: Sheil contended that abandonment of a claim cannot be presumed merely due to inactivity. It argued that its inaction was due to the overlapping nature of Marico's and its own claims, and the expectation that its proceedings would resume only after Marico's arbitration was concluded.

Sheil further submitted that the arbitral tribunal had a duty to proactively schedule hearings and could not absolve itself of this responsibility by blaming Sheil for delays.

Decision of the Supreme Court

The Supreme Court upheld the decision of the Bombay High Court and directed the arbitration to continue, making the following observations:

On Abandonment of Claim

The Supreme Court emphasised that abandonment of a claim requires clear evidence, either express or implied. It clarified that mere inaction or absence from proceedings does not *per se* constitute abandonment. There must be "*clinching and convincing*" circumstances leading to an inevitable inference of abandonment. In the present case, the Apex Court found no such evidence to suggest that Sheil had expressly or impliedly abandoned its claim.

The Supreme Court criticised the arbitral tribunal for failing to fulfill its duty to proactively schedule hearings and ensure progress in the arbitration. It held that the arbitral tribunal could not justify terminating the proceedings merely because Sheil did not request a hearing date.

The Apex Court noted that Section 32(2)(c) of the Arbitration Act permits termination of arbitration only when continuation becomes "*unnecessary or impossible*". This standard is stringent and cannot be casually invoked. The Supreme Court highlighted that Sheil's conduct did not render the proceedings unnecessary or impossible. The Supreme Court further opined that in case any of the parties repeatedly failed to appear on the date fixed, the arbitral tribunal always had the option of taking recourse to Section 25 of the Arbitration Act.

Conclusion

The Supreme Court dismissed Dani's appeal and upheld the High Court's order. It ruled that Sheil's inaction did not amount to abandonment of its claims and that the arbitral tribunal had erred in terminating the proceedings under Section 32(2)(c) of the Arbitration Act. The Apex Court directed the parties to appoint a substitute arbitrator to continue the arbitration, as the original arbitrator had withdrawn from the matter.

4. *Arif Azim Co. Ltd. v. Micromax Informatics FZE*

Arbitration Petition No. 31 of 2023

Date of Judgment: 07.11.2024

Citation: 2024 INSC 850

The "seat" of arbitration determines the legal jurisdiction and curial law (procedural law) applicable to the arbitration. It is the foundation upon which the arbitration's legal framework is built.

The "venue" refers to the physical location where arbitration hearings or proceedings are conducted.

If an arbitration agreement designates a "venue" without explicitly stating the "seat," the venue is presumed to be the seat unless there are clear indicators to the contrary.

Brief Facts

This case arose from a Consumer Distributorship Agreement ("**Agreement**") executed in Kabul, Afghanistan, between Arif Azim Co. Ltd. ("**Arif**"), an Afghanistan-based distributor, and Micromax Informatics FZE ("**Micromax FZE**"), a UAE-based entity. The Agreement pertained to the distribution of consumer electronics in Afghanistan and included an arbitration clause specifying Dubai as the "*venue*" of arbitration, to be governed by UAE law and conducted under UAE Arbitration and Conciliation Rules. Additionally, Dubai Courts were granted "*non-exclusive jurisdiction*" over the subject-matter of the dispute.

Disputes arose when Arif alleged non-payment of credit balances owed by Micromax FZE. Arif invoked arbitration under Section 11(6) of the Arbitration Act, seeking the appointment of an arbitrator in India.

Issues

The Supreme Court dealt with the following issues in the present case:

1. Whether the application under Section 11(6) of the Arbitration Act was maintainable given that the arbitration was governed by laws of UAE?
2. Whether Part I of the Arbitration Act applied to the arbitration, considering the international nature of the underlying Agreement?
3. Whether the designation of Dubai as the "*venue*" in the Agreement also implied its status as the juridical "*seat*" of arbitration, thereby conferring exclusive jurisdiction on Courts situated in Dubai?

Arguments

Submissions by Arif

Arif argued that the Agreement did not unequivocally confer exclusive jurisdiction to Dubai Courts, particularly in light of the "*non-exclusive jurisdiction*" clause. Arif further contended that Indian Courts had concurrent jurisdiction since certain transactions under the Agreement had occurred in India. Arif also submitted that the ambiguity in the agreement regarding "*seat*" and "*venue*" necessitated the application of the "*closest connection test*" which favoured India as the juridical seat. It was also submitted that the parties' conduct, including transactions routed through Micromax India strengthened the connection to India.

Submissions by Micromax FZE

Micromax FZE contended that the Agreement explicitly referred to UAE laws and UAE Arbitration Rules, with Dubai as the designated venue, which implied that Dubai, in reality, was the seat of arbitration. It further argued that Indian Courts lacked jurisdiction under Part I of the Arbitration Act because the arbitration was seated outside India, and the Agreement expressly excluded the applicability of Indian laws. Micromax FZE relied on the *Shashoua* principle (that emerged from the decision in ***Roger Shashoua v. Sharma* [2009] EWHC 957 (Comm)**), which presumes that the venue is also the seat unless there is an explicit indication to the contrary.

Decision of the Supreme Court

The Supreme Court dismissed Arif's petition under Section 11(6) of the Arbitration Act, holding that the Indian Courts lacked jurisdiction. The key observations of the Apex Court are as below:

On Maintainability and Part I of the Arbitration Act

The Supreme Court reiterated that Part I of the Arbitration Act, unless otherwise expressly included by the parties, applies only to arbitrations seated in India. The Agreement in this case explicitly opted for UAE Arbitration Rules and laws of UAE, thereby excluding the applicability of Part I.

The Apex Court noted that the Agreement's reference to the "*non-exclusive jurisdiction*" of Dubai Courts did not dilute their primary jurisdiction as the supervisory authority, given Dubai's designation as the seat.

Distinction between Seat and Venue

The Supreme Court referred to the "*closest connection test*" and the *Shashoua* principle, which states that when a venue is designated without specifying the seat, the venue is presumed to be the seat unless clear indicators suggest otherwise.

In this case, the Supreme Court concluded that Dubai was the seat, as the governing law was UAE law, the arbitration was subject to UAE Arbitration Rules, and Dubai Courts were granted non-exclusive jurisdiction.

Party Autonomy

The Apex Court emphasised on the principle of party autonomy in arbitration – the fountainhead of arbitration law jurisprudence, under which parties have the freedom to choose the governing law, procedural rules, and seat of arbitration. The Apex Court stressed that this autonomy must be respected to avoid unwarranted judicial interference. It also highlighted that Indian Courts should avoid assuming jurisdiction in matters where parties have clearly opted for a foreign seat and governing law.

Conclusion

The Supreme Court clarified that the inclusion of a non-exclusive jurisdiction clause does not vest Indian Courts with jurisdiction in international arbitrations unless the seat is expressly designated in India. The transactions involving Micromax India were deemed irrelevant to the determination of the seat, as Micromax India was not a signatory to the arbitration agreement.

The Supreme Court held that Dubai was the seat of arbitration, thereby conferring exclusive jurisdiction on Dubai Courts to supervise the arbitration. Therefore, the petition under Section 11(6) of the Arbitration Act was dismissed as Indian Courts lacked jurisdiction to appoint an arbitrator.

5. *Kirloskar Pneumatic Company Ltd. v. Kataria Sales Corporation*

Commercial Arbitration Petition No. 16 of 2023

Date of Judgment: 21.03.2024

Citation: 2024: BHC-AS: 14828

A fresh notice invoking arbitration under Section 21 of the Arbitration Act is unnecessary once arbitration has been validly invoked.

Unilateral appointment of a sole arbitrator violates principles of impartiality.

Brief Facts

The present dispute arose from a Dealership Agreement ("**Agreement**") dated 19.06.2013 between Kirloskar Pneumatic Company Ltd. ("**Kirloskar**") and Kataria Sales Corporation ("**Kataria**"). Kirloskar, engaged in the manufacture and sale of air and gas compressors and related accessories, entered into the Agreement with Kataria for dealership operations. Disputes emerged when Kataria failed to pay the outstanding amounts under two purchase orders:

1. An invoice for ₹14,86,932 raised on 27.03.2015 for which no payment was made.
2. An invoice for ₹6,18,879 under which only part payments were received.

Following protracted correspondence between the parties, Kirloskar invoked arbitration on 30.10.2018 and unilaterally appointed the sole arbitrator. On 23.11.2020, the arbitrator rendered an award directing Kataria to pay ₹29,90,524 with interest computed at 18% per annum and costs amounting to ₹4,42,500.

Kataria challenged the award under Section 34 of the Arbitration Act, before the District Judge, Pune, who set aside the award on 07.01.2023. The District Court held that the unilateral appointment of the arbitrator by Kirloskar was in violation of the principles laid

down in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.*** [(2020) 20 SCC 760] and ***TRF Ltd. v. Energo Engineering Projects Ltd.*** [(2017) 8 SCC 377], rendering the appointment invalid.

Kirloskar subsequently approached the Bombay High Court under Section 11(6) of the Arbitration Act, seeking the appointment of an independent arbitrator to resolve the dispute.

Issues

The Bombay High Court dealt with the following issues in the present case:

1. Whether the unilateral appointment of the sole arbitrator by Kirloskar was valid under the Arbitration Act and applicable precedents?
2. Whether a fresh notice under Section 21 of the Arbitration Act was required to reinvoke arbitration after the award passed by the unilaterally appointed arbitrator was set aside?
3. Whether the High Court had jurisdiction under Section 11(6) of the Arbitration Act to appoint a new arbitrator without the issuance of a fresh invocation notice?

Arguments

Submissions by Kirloskar

Kirloskar argued that the arbitration clause in the Agreement remained valid, and the appointment of a new arbitrator did not necessitate the issuance of a fresh notice under Section 21 of the Arbitration Act. It contended that the dispute had already been "triggered" by the initial notice dated 30.10.2018, which marked the commencement of arbitral proceedings as per Section 21 of the Arbitration Act. Kirloskar submitted that the setting aside of the arbitral award on procedural grounds did not alter the nature of the dispute, and hence, no fresh invocation was required.

Submissions by Kataria

Kataria contended that the unilateral appointment of the arbitrator by Kirloskar violated the principles of natural justice and Section 12 of the Arbitration Act, as upheld in ***Perkins Eastman (supra)*** and ***TRF Ltd. (supra)***. Kataria argued that the proceedings initiated by Kirloskar under Section 11(6) were premature, as no fresh notice invoking arbitration had been issued after the arbitral award was set aside. Relying on ***BSNL v. Nortel Networks (India) Pvt. Ltd.*** [(2021) 5 SCC 738], Kataria submitted that arbitral proceedings must commence with a valid invocation notice, and the absence of such notice rendered Kirloskar's application under Section 11(6) untenable.

Findings of the High Court

The Bombay High Court ruled in favour of Kirloskar, rejecting Kataria's objections. The High Court affirmed that the unilateral appointment of the arbitrator by Kirloskar violated the principles established in ***Perkins Eastman (supra)*** and ***TRF Ltd. (supra)***, which prohibit a party interested in the dispute from unilaterally appointing an arbitrator. Consequently, the earlier arbitral award was rightly set aside.

The Bombay High Court clarified that once arbitration is validly invoked, a subsequent request for the appointment of an independent arbitrator under Section 11(6) of the Arbitration Act does not necessitate a fresh invocation notice, particularly when the underlying dispute remains unchanged. The High Court held that the original notice issued by Kirloskar on 30.10.2018 continued to govern the dispute, even after the arbitral award was set aside. It emphasised that requiring a fresh invocation notice would unnecessarily delay the resolution of the dispute.

The High Court reiterated that the primary objective of arbitration is to provide an expeditious and fair resolution of disputes. It cautioned against procedural technicalities being used to frustrate this objective and held that Kirloskar's application under Section 11(6) was maintainable despite the procedural irregularities in the earlier arbitration.

Conclusion

Recognising the procedural lapses in the earlier proceedings, the High Court appointed the sole arbitrator. The arbitrator was directed to issue a disclosure under Section 12 of the Arbitration Act to ensure independence and impartiality.

6. Rohan Builders (India) Private Limited v. Berger Paints India Limited

Civil Appeal No. 10620 of 2024

Date of Judgment: 12.09.2024

Citation: 2024 INSC 686

Applications for extending the mandate of the arbitral tribunal under Section 29A sub-Sections (4) and (5) of the Arbitration Act are maintainable post-expiry provide sufficient cause for seeking extension is demonstrated.

Brief Facts

The dispute in this case centred around the interpretation of Section 29A of the Arbitration Act, particularly whether an application for the extension of time to render an arbitral award can be filed after the expiry of the mandate of the arbitral tribunal. Rohan Builders (India) Private Limited ("**Rohan Builders**") and Berger Paints India Limited ("**Berger Paints**") entered into an agreement in 2017 for the construction of a paint manufacturing facility. The agreement contained an arbitration clause mandating the resolution of disputes through arbitration in accordance with the Arbitration Act. Disputes arose regarding delayed payments and alleged breach of contract, prompting Rohan Builders to initiate arbitration in January 2020.

As per Section 29A(1) of the Arbitration Act, the arbitral tribunal was required to render its award within 12 months from the date of completion of pleadings, with the option of a 6-month extension by mutual consent of the parties under Section 29A(3). In this case, the initial timeline expired in April 2022. However, no application for an extension was filed in Court until October 2023, six months after the expiry of the extended timeline. The Calcutta High Court, in a prior ruling, had held that applications for extension must be filed before the expiry of the arbitral mandate. Rohan Builders appealed against this decision before the Supreme Court.

Issues

1. Whether an application for extending the arbitral tribunal's mandate under Section 29A(4) of the Arbitration Act is maintainable after the expiry of the prescribed timeline?
2. Whether the term "*terminate*" implies the absolute cessation of the arbitral tribunal's mandate or allows for revival upon court intervention?
3. What principles should guide the Courts when adjudicating on applications under Section 29A(5) of the Arbitration Act?

Arguments

Submissions by Rohan Builders

Rohan Builders argued that the use of the phrase "*prior to or after the expiry of the period*" in Section 29A(4) of the Arbitration Act expressly allows the filing of applications post the expiry of the arbitral tribunal mandate. It was contended that the word "*terminate*" in the provision does not preclude Courts from reviving the mandate of the tribunal if sufficient cause is shown.

The appellant emphasised that Section 29A was introduced to ensure efficiency in arbitration but not at the cost of defeating the very purpose of dispute resolution process. A rigid interpretation of the word "*terminate*" would cause unnecessary delays and result in fresh proceedings, which would defeat the purpose of arbitration.

Submissions by Berger Paint

Berger Paints contended that once the mandate of the tribunal has terminated, it cannot be revived, as doing so would undermine the sanctity of the statutory timelines set out in Section 29A of the Arbitration Act. An extension of the mandate of the arbitral tribunal must be sought within the stipulated period. Berger Paints argued that the word "*terminate*" in Section 29A(4) of the Arbitration Act reflects the legislative intent to bring finality to the tribunal's mandate upon expiry of the prescribed timeline. Allowing post-expiry applications would render the statutory time limit redundant.

Findings of the Supreme Court

The Supreme Court overturned the Calcutta High Court's decision and ruled in favor of Rohan Builders. The Apex Court held that the word "*terminate*" in Section 29A(4) of the Arbitration Act must be understood in the context of the entire provision. It does not imply the absolute cessation of the arbitral tribunal's mandate but is conditional upon the absence of a Court-ordered extension. The expression "*unless the Court has, either prior to or after the expiry of the period so specified, extended the period*" clarifies that the arbitral tribunal's mandate can be revived by a Court order even after its termination.

The Apex Court underlined that applications for extension of the arbitral tribunal's mandate must be decided based on the principle of "*sufficient cause*". It cautioned against granting extensions mechanically and directed Courts to examine whether the delay was justified. The Supreme Court also highlighted that unreasonable delays attributable to the arbitral tribunal or a party could result in cost penalties.

In view of the above, the Supreme Court held that an application for extension of time under Section 29A(4) of the Arbitration Act is maintainable even after the expiry of the prescribed timeline for rendering the award. It directed the Calcutta High Court to consider Rohan Builders' extension application on merits and ensure expeditious disposal of the arbitration.

7. Cox & Kings Ltd. v. SAP India Pvt. Ltd.

Arbitration Petition No. 38 of 2020

Date of Judgment: 09.09.2024

Citation: 2024 INSC 670

Non-signatories can be bound by arbitration under the group of companies doctrine if their role in the agreement is integral.

Substantive challenges, including issues relating to joinder must be resolved by arbitral tribunals under the competence-competence principle.

Brief Facts

The dispute between Cox & Kings Ltd. ("**Cox & Kings**") and SAP India Pvt. Ltd. ("**SAP India**") arose from a series of interconnected agreements related to the implementation of a software. Amongst these agreements was a General Terms and Conditions Agreement ("**GTC Agreement**"), a license agreement, and other supporting agreements executed in and around 2015.

Cox & Kings alleged that SAP India misrepresented the capabilities and readiness of its software, resulting in delays, cost overruns, and significant business losses. After failed attempts at amicable resolution, Cox & Kings invoked arbitration against SAP India and its German parent company, SAP SE. SAP India had previously initiated arbitration, resulting in an arbitral tribunal constituted under the same agreement. Cox & Kings, dissatisfied with this process, sought the appointment of another arbitrator under Section 11(6) of the Arbitration Act.

The key contention was whether SAP SE, a non-signatory to the agreement, could be compelled to arbitrate under the *group of companies* doctrine. SAP India resisted the application, arguing that the existing arbitration proceedings should suffice, and that SAP SE could not be joined in the absence of an express agreement to arbitrate.

Issues

1. Whether the requirements of Section 11 of the Arbitration Act, particularly the *prima facie* existence of an arbitration agreement are satisfied in the present case?
2. Whether SAP SE, a non-signatory, could be impleaded in the arbitration proceedings under the *group of companies* doctrine?
3. What is the extent of judicial inquiry permissible under Section 11, particularly regarding complex issues such as non-signatory involvement?

Arguments

Submissions by Cox & Kings

Cox & Kings argued that the interconnected agreements formed a composite transaction, making SAP SE an integral part of the arbitration framework. It relied on the *group of companies* doctrine, citing SAP SE's active involvement in the project, including its assurances to address implementation challenges. The petitioner contended that the principles of arbitration law required minimal judicial intervention at the referral stage. It urged the Supreme Court to leave the substantive determination of SAP SE's role to the arbitral tribunal under the *competence-competence* principle.

Submissions by SAP India

SAP India argued that Cox & Kings' claims against SAP SE were baseless, as SAP SE was not a signatory to any of the agreements. It contended that mere involvement in technical discussions did not amount to consent to arbitration. SAP India also highlighted the ongoing arbitration proceedings initiated under the same agreement and argued that parallel proceedings would lead to conflicting decisions.

Findings of the Supreme Court

On Prima Facie Existence of an Arbitration Agreement

The Supreme Court reiterated that at the referral stage under Section 11 of the Arbitration Act, the Court's role is limited to assessing whether an arbitration agreement exists between the parties. It emphasised that the Courts need not delve into the merits of the dispute or adjudicate on substantive issues, as these are the domain of the arbitral tribunal.

In the present case, the Supreme Court opined that the arbitration clause in the GTC Agreement was clear, and the petitioner had established the *prima facie* existence of a valid arbitration agreement. Furthermore, the petitioner demonstrated that its claims arose out of the interconnected transactions governed by the agreements in question.

Joinder of Non-Signatory (SAP SE)

A key issue was whether SAP SE, a German entity and the parent company of SAP India, could be compelled to arbitrate despite not being a signatory to the agreements. The Supreme Court noted that SAP SE was deeply involved in the execution of the project and had provided assurances to Cox & Kings regarding implementation related challenges. Evidence such as emails and meetings demonstrated that SAP SE played a critical role in monitoring the project.

Referring to the *group of companies* doctrine, the Apex Court explained that this doctrine permits a non-signatory to be bound by an arbitration agreement if:

- (i) There is a tight group structure with a single economic reality.
- (ii) The non-signatory was directly involved in the negotiation or execution of the agreements.
- (iii) There is evidence of implied or explicit consent by the non-signatory to be bound by the arbitration agreement.

The Supreme Court, however, refrained from conclusively deciding whether SAP SE could be bound by the arbitration agreement, holding that such determinations involve a detailed inquiry into facts, documents, and the intentions of the parties. It left this issue to the arbitral tribunal, invoking the *competence-competence* principle under Section 16 of the Arbitration Act.

On the Risk of Parallel Proceedings

SAP India argued that the ongoing arbitration under the same agreement should suffice and that a fresh arbitration proceeding would lead to conflicting decisions. The Supreme Court rejected this contention, holding that the petitioner's claims against SAP India and SAP SE justified the initiation of fresh arbitral proceedings. It noted that the arbitral tribunal could consolidate claims or coordinate with the earlier tribunal to mitigate the risk of inconsistent awards. Importantly, the Supreme Court affirmed that allowing the present petition ensured that the petitioner's grievances were adjudicated comprehensively, preventing undue prejudice.

Interplay Between Non-Signatories and Arbitration Agreements

The Supreme Court acknowledged the complexity of determining whether SAP SE, as a non-signatory, could be compelled to arbitrate. It referred to its earlier decision in **Cox & Kings Ltd. v. SAP India Pvt.** [2023 INSC 1051], which held that non-signatories could be impleaded in arbitration if their involvement in the transaction was integral to the agreement's performance.

Conclusion

In light of the above findings, the Supreme Court allowed Cox & Kings' petition under Section 11(6) and appointed a sole arbitrator. All substantive and jurisdictional issues, including the joinder of SAP SE were left for determination by the arbitral tribunal.

8. *Ajay Madhusudan Patel v. Jyotrindra S. Patel*

Arbitration Petition No. 19 of 2024

Date of Judgment: 20.09.2024

Citation: 2024 INSC 710

The conduct of a non-signatory party and its relationship with the signatories can demonstrate an intention to be bound by the arbitration agreement.

Brief Facts

The dispute revolved around a Family Arrangement Agreement ("**FAA**") dated 28.02.2020 and its Amendment Agreement ("**Amendment**") dated 15.05.2020, executed between the AMP Group (Petitioners) and the JRS Group (Respondents). The FAA outlined the terms of separation of jointly owned businesses and properties. The SRG Group, though not a signatory to the FAA, was mentioned in clauses pertaining to key transactions, including the purchase of shares and exits from two companies namely Millenium Estates Pvt. Ltd. and Deegee Software Pvt. Ltd.

Disputes arose when the AMP Group alleged non-compliance with the FAA by the JRS Group and sought to implead the SRG Group in the arbitration process. The SRG Group resisted, claiming that as a non-signatory, they could not be bound by the arbitration clause in the FAA. The AMP Group approached the Supreme Court under Section 11(6) of the Arbitration Act, seeking the appointment of a sole arbitrator to resolve the disputes, including the involvement of the SRG Group.

Issues

1. Whether the SRG Group, a non-signatory to the FAA, could be compelled to arbitrate under the *group of companies* doctrine?
2. To what extent the referral Court can determine complex factual issues, including the inclusion of non-signatories, at the appointment stage?
3. Whether the FAA and related documents established a *prima facie* existence of an arbitration agreement binding the SRG Group?

Arguments

Submissions by AMP Group

The AMP Group argued that the SRG Group actively participated in negotiations leading to the FAA and was integral to its implementation. They highlighted email correspondences, meetings, and the FAA's clauses that required the SRG Group's actions for key transactions. It was contended that the *group of companies* doctrine applies as the SRG Group derived significant benefits from the FAA, making them a veritable party. They submitted that the arbitration agreement in the FAA encompassed disputes involving all connected parties, including the SRG Group, given the composite nature of the transactions.

Submissions by JRS Group

The JRS Group supported arbitration between themselves and the AMP Group but opposed the inclusion of the SRG Group, arguing that the FAA explicitly defined its parties as the AMP and JRS Groups. They contended that the SRG Group's obligations were limited and could not be extended to the arbitration clause without explicit consent.

Submissions by SRG Group

The SRG Group denied any involvement in or consent to the FAA. They asserted that no contractual or legal relationship existed between them and the AMP Group that could justify their inclusion in arbitration. Relying on established precedents, they argued that bringing non-signatories within the ambit of arbitration is an exception, not a rule, and that the conditions for applying the *group of companies* doctrine were not met in this case.

Findings of the Supreme Court

Role of the Referral Court Under Section 11(6)

The Supreme Court reaffirmed that at the referral stage, the Court's jurisdiction is confined to determining the *prima facie* existence of an arbitration agreement, per Section 11(6A) of

the Arbitration Act. Complex issues like the inclusion of non-signatories are to be left to the arbitral tribunal under the *competence-competence* principle. The arbitral tribunal is best placed to examine the factual and legal nuances governing the involvement of non-signatories.

Application of the Group of Companies Doctrine

The Supreme Court held that the doctrine could apply if there was strong evidence of a tight group structure, shared economic interests, and the non-signatory's direct involvement in the negotiation or performance of the agreement. In this case, the SRG Group's involvement in the negotiations and references to them in the FAA indicated a *prima facie* case for their inclusion. The arbitral tribunal was directed to examine whether these factors satisfied the doctrine.

The Supreme Court found that the FAA contained a valid arbitration agreement covering disputes arising from the transactions contemplated within its scope. While the SRG Group was not a signatory, their alleged participation in the transactions, as per the Apex Court, made it appropriate to refer the question of their inclusion to the arbitral tribunal.

The Apex Court emphasised that compelling a party to participate in the arbitration at this stage does not preclude them from contesting the arbitral tribunal's jurisdiction. This approach minimises judicial interference and upholds the autonomy of the arbitral process.

Conclusion

The Supreme Court appointed a sole arbitrator to adjudicate disputes between the AMP, JRS, and SRG Groups. It directed the arbitrator to determine, as a preliminary issue, whether the SRG Group could be bound by the FAA's arbitration clause under the *group of companies* doctrine.

9. OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd.

Civil Appeal Nos. 3981 – 3982 of 2024

Date of Judgement: 20.09.2024

Citation: 2024 INSC 711

A mere violation of law does not render an arbitral award invalid; it must violate the fundamental policy of Indian law to be set aside.

Brief Facts

This case arose out of disputes between OPG Power Generation Pvt. Ltd. ("**OPG**") and Enexio Power Cooling Solutions India Pvt. Ltd. ("**Enexio**") over contracts related to the design, supply, erection, and commissioning of an air-cooled condenser (ACC) unit for a 160 MW coal-based thermal power plant in Tamil Nadu. The contracts contained arbitration clauses under the International Chamber of Commerce (ICC) rules.

OPG and its holding company, Gita Power and Infrastructure Pvt. Ltd. ("**Gita Power**"), jointly issued purchase orders in 2013, but disputes arose regarding unpaid dues, delay-related liquidated damages, customs duties, and the cost of repair and replacement of certain components. Enexio claimed outstanding payments, while OPG raised

counterclaims, leading to arbitration under ICC rules. The arbitral tribunal ruled in favour of Enexio, awarding it unpaid dues with interest while rejecting OPG's counterclaims. OPG and Gita Power challenged the arbitral award before the High Court, arguing that the claims were time-barred and the tribunal adopted inconsistent standards for claims and counterclaims. The Single Judge set aside the arbitral award, but the Division Bench restored it, leading to the present appeal.

Issues

1. Whether Gita Power, as a holding company, could be held jointly and severally liable for obligations under the purchase orders issued by OPG?
2. Whether Enexio's claims and OPG's counterclaims were within the limitation period prescribed under the Limitation Act, 1963?
3. Whether the arbitral award was in conflict with the public policy of India or vitiated by patent illegality?
4. Whether the arbitral tribunal applied inconsistent standards to assess limitation for Enexio's claims and OPG's counterclaims?

Findings of the Supreme Court

On Joint Liability of Gita Power and OPG

The Supreme Court upheld the arbitral tribunal's findings that Gita Power and OPG functioned as a single economic entity for the purposes of the underlying contracts. Gita Power was actively involved in the issuance of purchase orders. Based on the *group of companies* doctrine, the Apex Court concluded that Gita Power could not escape liability for contractual obligations merely because OPG issued purchase orders with identical terms at a later stage. Both entities were held jointly and severally liable for the amounts awarded to Enexio.

Limitation Period and Extension by Acknowledgement

The Supreme Court agreed with the arbitral tribunal's assessment that Enexio's claims for unpaid dues were within limitation. It noted that meaningful negotiations between the parties, as evidenced by minutes of the meeting dated 19.04.2018, extended the limitation period under Section 18 of the Limitation Act, 1963. Enexio's arbitration request dated 02.05.2019 was therefore timely.

Conversely, OPG's counterclaims related to repair and replacement costs were deemed time barred. The Apex Court observed that no acknowledgment(s) were produced on record which extended the limitation period for claims of OPG.

Public Policy and Patent Illegality

The Supreme Court rejected OPG's argument that the arbitral award was against the public policy of India. It clarified that a mere infraction of domestic laws does not suffice to vitiate an award unless it contravenes the fundamental policy of Indian law or shocks the conscience of the court. Similarly, the Apex Court held that the arbitral tribunal's reasoning,

though arguably insufficient at certain points, did not constitute patent illegality. The arbitral tribunal's conclusions were supported by evidence and represented a possible view of the matter.

Conclusion

In view of the above, the Supreme Court dismissed the appeals and upheld the Division Bench's decision to restore the arbitral award in favour of Enexio.

10. Central Warehousing Corporation v. Sidhartha Tiles & Sanitary Pvt. Ltd.

Date of Judgment: 21.10.2024

Citation: 2024 INSC 805

An eviction order under the Public Premises Act does not bar arbitration of contractual disputes arising during the lease period.

Brief Facts

This appeal arose out of disputes between the Central Warehousing Corporation ("**CWC**"), a statutory entity under the Warehousing Corporations Act, 1962, and Sidhartha Tiles & Sanitary Pvt. Ltd. ("**Sidhartha Tiles**"), concerning a lease agreement ("**Agreement**") dated 26.09.2012 for warehousing space. Under the Agreement, CWC leased storage space of 1295sq.m. to Sidhartha Tiles for three years, with an option for renewal by mutual consent.

During the lease period, CWC unilaterally revised the storage charges twice, first on 01.11.2012 and later on 01.04.2015. Sidhartha Tiles disputed the increased rates and sought a renewal of the agreement upon its expiry on 11.09.2015. After the expiry, CWC initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("**Public Premises Act**") to recover outstanding dues and repossess the premises. Although Sidhartha Tiles vacated the premises by 13.11.2015, disputes over the payment of dues and the legality of revised charges persisted.

Sidhartha Tiles invoked arbitration under Section 11(6) of the Arbitration Act, citing the arbitration clause in the Agreement. The High Court referred the matter to arbitration, prompting CWC to appeal against the High Court's order, contending that the Public Premises Act overrides the Arbitration Act.

Issues

1. Whether the Public Premises Act overrides the Arbitration Act in resolving disputes related to public premises?
2. Whether the disputes raised by Sidhartha Tiles fell within the scope of the arbitration agreement and were appropriately referred to arbitration?
3. Whether the arbitration clause remained enforceable despite the invocation of the Public Premises Act?

Findings of the Supreme Court

Applicability of the Public Premises Act vs. Arbitration Act

The Supreme Court held that the Public Premises Act, which governs the eviction of unauthorised occupants, operates in a separate domain and does not bar arbitration of disputes arising from a valid arbitration agreement. It noted that the disputes raised by Sidhartha Tiles related to the period during the subsistence of the Agreement (2012–2015), specifically concerning the revision of storage charges and the right to renewal. These issues were distinct from the scope of the Public Premises Act, which addresses unauthorised occupation post-lease expiry. The Apex Court clarified that there was no conflict between the two statutes, as the arbitration clause governed disputes arising out of the lease agreement.

Scope of Referral Under Section 11 of the Arbitration Act

The Supreme Court reaffirmed that the scope of inquiry under Section 11 of the Arbitration Act is limited to a *prima facie* determination of the existence of a valid arbitration agreement. Citing its recent decision in ***SBI General Insurance Co. Ltd. v. Krish Spinning*** [2024 SCC OnLine SC 1754], the Apex Court emphasised that deeper questions of validity and scope should be left to the arbitral tribunal. The Supreme Court observed that the arbitration clause in the Agreement was broadly worded to include "*all disputes and differences arising out of or concerning this agreement*". This included disputes over the revision of charges and the right to renewal, as they were rooted in the terms of the Agreement.

Conclusion

The Supreme Court dismissed the appeal and upheld the High Court's decision to refer the disputes to arbitration. It clarified that the Public Premises Act does not override the Arbitration Act in matters concerning contractual disputes governed by an arbitration agreement.

Contact

For any query, help or assistance, please reach out at info@trinitychambers.in or visit us at www.trinitychambers.in.

Authors

	
Vasanth Rajasekaran Founder & Head vasanth@trinitychambers.in	Harshvardhan Korada Counsel harshvardhan@trinitychambers.in