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SAMVAAD

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ABOUT CCADR

The Chanakya Centre for Alternative Dispute Resolution (CCADR) was established at Chanakya National Law University, Patna, in the year 2021, with the objective to promote academic research on themes pertaining to the resolution of disputes. Alternative Dispute Resolution is a new and emerging interdisciplinary field that is concerned with, inter-alia, the following themes: (a) the study of the causative structural factors and the subjective motives of the actors giving rise to disputes; (b) the study of the formal and informal institutions dedicated to the resolution of disputes; and (c) the study of the laws and regulations to produce fair outcomes of disputes.

CASE BRIEFS

An application for an extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) of the Arbitration and Conciliation Act, 1996 is maintainable even after the expiry of the twelve-month or the extended six-month period: Supreme Court of India [*Rohan Builders (India) Private Limited v. Berger Paints India Limited*, 2024 SCC OnLine SC 2494]

Recently, the Supreme Court of India held that an application for an extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) of the Arbitration and Conciliation Act, 1996 (the "**Act**") is maintainable even after the expiry of the twelve-month or the extended six-month period, as the case may be. This ruling effectively settles the judicial conundrum of whether an application for an extension of time under Section 29A of the Act can be filed after the expiry of the time period for making of the arbitral award.

The major observations of the Supreme Court are as follows:

·That the reasoning of Calcutta High Court in ***Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Limited***, that an application for extension of time under Sections 29A (4) and 29A(5) of the Act can only be entertained if filed before the expiry of the mandate of the arbitral tribunal, is fallacious and unacceptable.

- That the expression "either prior to or after the expiry of the period so specified" in Section 29A (4) of the Act is unambiguous. It can be deduced by the language of the Act that the court can extend the time for filing of the application after the expiry of the period under sub-section (1), or the extended period in terms of sub-section (3). Thus, the Court has the power to extend the period for making an award at any time before or after the mandated period.
- That the second proviso to Section 29A (4), by specific mandate, allows the arbitration proceedings to continue during the pendency of the extension application under Section 29A (5) before the court.
- That the extension of time is to be granted by the court only for 'sufficient cause' and on such terms and conditions as may be imposed by the court.

For a non-signatory to be bound by an arbitration agreement, it must demonstrate positive, direct, and substantial involvement in the negotiation or performance of the agreement: Supreme Court of India [*Ajay Madhusudan Patel v. Jyotrindra S. Patel*, 2024 SCC OnLine SC 2597]

The Supreme Court of India addressed the issue of whether a non-signatory party, specifically the SRG Group, could be compelled to arbitration under a Family Arrangement Agreement (FAA) dated February 28, 2020, between the AMP Group and the JRS Group. The court held that for a non-signatory to be bound by an arbitration agreement, it must demonstrate positive, direct, and substantial involvement in the negotiation or performance of the agreement.

The Supreme Court appointed a sole arbitrator to resolve the dispute related to non-signatories, emphasizing that the fees and modalities would be determined in consultation with the parties involved. It was clarified that all rights and contentions of the parties remained open for adjudication by the arbitrator.

In its analysis, the court focused on Section 11(6) of the Arbitration and Conciliation Act, 1996, to determine if a prima facie case existed for referring non-signatories to arbitration. The court refrained from examining the factual circumstances due to its limited jurisdiction and referred those matters to the arbitral tribunal.

The court underscored that the intention of parties to be bound by an arbitration agreement could be inferred from their conduct during negotiations and performance. If a non-signatory's actions align with those of signatories, it may lead others to reasonably believe that the non-signatory is a veritable party to the contract. However, incidental involvement would not suffice; substantial engagement is required.

Additionally, the SRG Group contended that two conditions must be met for it to be compelled into arbitration: (1) it must have agreed to the underlying contract, and (2) it must have consented to be bound by the arbitration agreement. The Supreme Court acknowledged that this necessitates a detailed examination of evidence, which falls within the purview of the arbitral tribunal.

The ruling reinforces the judiciary's support for arbitration as a preferred method for resolving complex commercial disputes involving multiple parties, while also establishing clear criteria for binding non-signatories based on their conduct and intent.

Arbitration agreement can be invoked without naming an arbitrator if its validity is established: Rajasthan High Court [*Movie Time Cinemas Pvt. Ltd. v. Ms Chetak Cinema S.B. Arbitration*, 2024 SCC OnLine Raj 2781]

The Jodhpur bench of the Rajasthan High Court stated that arbitration can be initiated even if the name of the arbitrator is not specified at invocation, reinforcing the enforceability of the arbitration clause in an agreement and emphasizing the importance of minimizing judicial interference, promoting efficient dispute resolution in commercial matters.

The petitioner, Movie Time Cinemas Pvt. Ltd., filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator pursuant to Clause 12.10 of the Lease Deed dated 11.01.2023. The dispute arose after the respondent, Ms. Chetak Cinema, allegedly attempted to create third-party rights over the 5th and 6th floors of Chetak Mall, Udaipur, despite handing over possession on 01.05.2023. Following a legal notice dated 02.06.2023, the petitioner invoked the arbitration clause to resolve the matter.

The respondent objected, arguing that the arbitration was not properly invoked because the legal notice did not name an arbitrator as required under Section 21 of the 1996 Act. The respondent relied on the ***BSNL v. Nortel Networks*** judgment, claiming that mere references to dispute are insufficient to invoke arbitration.

The court, referring to the Supreme Court's ruling in ***Cox & Kings Ltd. v. SAP India Pvt. Ltd.***, emphasized that its role under Section 11(6) is limited to determining whether an arbitration agreement exists and whether arbitration was properly invoked. Both parties acknowledged the existence of the arbitration agreement, satisfying the court's prima facie requirement for referral to arbitration.

Accordingly, Hon'ble Prakash Chandra Tatia J. (Retd.) was appointed as the Sole Arbitrator to adjudicate the dispute. The court reiterated the principle of minimal judicial intervention in arbitration, in line with Section 5 of the Act, and allowed the petition. All pending applications were disposed of, and arbitration costs were directed to be governed by the 4th Schedule of the Act.

The court having curial jurisdiction over the arbitral proceedings, which can exercise supervisory jurisdiction over the arbitral proceedings, is only the court which has territorial jurisdiction over the seat of arbitration, where such seat is contractually fixed: Delhi High Court [*M/S Grand Motors Sales And Services Pvt Ltd v. M/S Ve Commercial Vehicles Ltd,* 2024 SCC OnLine Del 6436]

The Delhi High Court ("**Delhi HC**") held that the court having curial jurisdiction over the arbitral proceedings, which can exercise supervisory jurisdiction over the arbitral proceedings, is only the court that has territorial jurisdiction over the seat of arbitration, where such seat is contractually fixed.

The present case involved a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an arbitral award. The dispute arose from a Dealership Agreement which contained a dispute resolution clause designating Delhi as the seat of arbitration while granting exclusive jurisdiction to the courts of Indore for matters arising under the agreement. The primary issue before the court was whether the Delhi HC or the High Court of Madhya Pradesh ("**MP HC**") had supervisory jurisdiction over the arbitral proceedings.

The respondent argued that since the MP HC had appointed the arbitrator under Section 11, and the Supreme Court dismissed a challenge to this appointment, the MP HC should retain jurisdiction and consequently the Delhi HC will have no jurisdiction to deal with the maintainability of the arbitral award. The petitioner, on the other hand, argued that Delhi was contractually fixed as the seat of arbitration, granting curial jurisdiction to courts in Delhi.

The Court while relying on the Apex Court's ruling in ***BGS SGS Soma JV v NHPC Ltd***, considered the ruling of MP HC to be erroneous in nature. The Court opined that the fixation of the seat of arbitration at Delhi necessarily clothes curial and supervisory jurisdiction over the arbitration only on courts at Delhi. The exclusive jurisdiction clause, which generally applies, cannot override or supersede the clause fixing the seat of arbitration. Further, the Court held that the dismissal of the SLP by the Supreme Court did not amount to a validation of the jurisdiction of MP HC as it was a dismissal in limine with no expression of opinion on merits. Thus, the Delhi HC had the necessary territorial jurisdiction to entertain the petition.

The benefit of reckoning the terminus ad quem of limitation, for filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 from the date on which Section 33 application is disposed of by the tribunal, as envisaged in Section 34 (3), is not made statutorily dependent on the party who has filed the Section 34 application: Delhi High Court [*Prime Interglobe Private Limited v. Super Milk Products Private Limited*, 2024 SCC OnLine Del 6365]

Recently, the Delhi High Court (the "**Court**") held that the benefit of reckoning the terminus ad quem of limitation, for filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (the "**Act**") from the date on which Section 33 application is disposed of by the tribunal, as envisaged in Section 34 (3), is not made statutorily dependent on the party who has filed the Section 34 application.

The impugned award was initially issued on 11.03.2023, subsequent to which the Respondent filed an application under Section 33(4) of the Act seeking additional award on one undecided claim. The additional award was issued on 24.04.2023, to which the petitioner filed an application under Section 33(1) of the Act, seeking a correction in the additional award. The said application was dismissed by the Arbitrator on 24.05.2023. The petitioner challenged the award before the Court under a Section 34 petition, along with an application seeking condonation of delay.

The petitioner contended that in view of Section 34(3) of the Act, the limitation period would be reckoned from 24.05.2023, i.e. when the Petitioner's application under Section 33(1) of the Act was rejected. On the other hand, the respondent submitted that the limitation period for filing a petition under Section 34 shall commence from the date of disposal of the application under Section 33 by the arbitral tribunal, and this reckoning of limitation would be applicable solely to the party that has invoked the provisions of Section 33.

The Court observed that the second and latter part of Section 34(3) does not specify who must have made the request and therefore, it applies irrespective of whether the request is made by the claimant(s), or the respondent(s), before the Arbitral Tribunal. Accordingly, it was held that irrespective of the sub-section of Section 33 under which the application was moved before the arbitral tribunal, a Section 34 petition, by either party, can be filed within three months of which the Section 33 application is disposed of. The Court further noted that even if the delay, is reckoned from 24.04.2023, it falls within the total limitation period of 3 months and 30 days from the date of receipt of the arbitral award. In view of these reasons, the condonation application was allowed.

The Court can invoke its discretionary powers under Order XVI Rule 10 of the Code of Civil Procedure, 1908 only after the disobedience/failure of the summoned persons is brought to the Court's notice by the arbitral tribunal under section 27(5) of the Arbitration and Conciliation Act, 1996: Telangana High Court [*V Sreenivas Reddy v. Bl Rathnamma*, MANU/SCOR/113514/2024]

The Division Bench of Telangana High Court (the "**Court**") held that the Court can invoke its discretionary powers under Order XVI Rule 10 of the Code of Civil Procedure, 1908 (the "**CPC**") only after the disobedience/failure of the summoned persons is brought to the Court's notice by the arbitral tribunal under section 27(5) of the Arbitration and Conciliation Act, 1996 (the "**Act**").

The Civil Revision Petition ("**CRP**") in the instant case arose from an order passed by the Additional Civil Judge, Hyderabad (the "**Trial Court**") in a petition by the petitioner filed under Section 27 of the Act seeking the Trial court's assistance in summoning two witnesses, as directed by the Arbitral tribunal. But despite service of summons, the witnesses failed to appear, and the Trial Court closed the case. The petitioner contended that the Trial court had a duty to ensure the witnesses' attendance and claimed that the Trial court should have taken coercive steps under Order XVI Rule 10 of CPC to enforce their attendance. The respondent raised questions of maintainability and alleged that the petitioner acted negligently in failing to secure an extension of the arbitration timeline set by the Supreme Court.

While dismissing the Petitioner's contentions, and consequently the CRP, the Court laid emphasis on Section 27 of the Act which gives the Arbitral Tribunal, not the parties, the exclusive right to make a representation to the court for enforcing witness attendance. The Court noted that the petitioner's conduct, including repeated adjournments and lack of diligence, shows that the petitioner has sought to take benefit of the enabling provision of section 27 of the 1996 Act in order to disable the arbitration and circumvent the timeline fixed by the Supreme Court.

A non-signatory party can be included in arbitration proceedings if it is part of an interconnected agreement entered into to achieve a common commercial goal: Delhi High Court [*RBCL Piletech Infra v. Bholasingh Jaiprakash Construction Limited & Ors.,* Arbitration Appeal No. 1108/2023]

The Delhi High Court stated that a non-signatory party can be included in arbitration proceedings if it is part of an interconnected agreement entered into to achieve a common commercial goal.

The dispute arose in the context of a Work Order dated 4 April 2022 executed between the petitioners and Respondent 1. The petitioners filed the petition under Section 11(6) seeking reference to the disputes in arbitration due to the inability of the parties to arrive at a consensus regarding arbitration.

The court observed that Respondent 3 (BHEL) could not be excused from arbitration as Clause 21 of the agreement made the petitioner's payments dependent on BHEL's acceptance of work and the release of funds to BJCL. Furthermore, Clause 28 allowed BHEL to withhold payments if issues were attributable to the petitioner. This established BHEL's role in the payment chain and justified its inclusion in arbitration despite not being a signatory to the agreement between the petitioner and BJCL. However, NTPC (Respondent 2) was not included as there was no direct contractual responsibility between NTPC and the petitioner, apart from certain logistical provisions, like water supply and gate passes.

The Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning*** had held that a Section 11(6) court only needs to concern itself with the existence of an arbitration agreement and whether the Section 11(6) petition is filed within the prescribed time. Since these conditions were met, the court found the petition justified and referred the case to arbitration.

The court appointed an arbitrator and disposed of the petition while clarifying that all parties could contest their inclusion before the arbitral tribunal.

The limitation period for challenging an arbitral award begins when the party actually receives the award, not from the date of the award itself: Allahabad High Court [*Madan Pal Singh & Ors. v. Ms Ambika Installments Limited and Anr.,* Arbitration Appeal No. 8/2023]

The Allahabad High Court ruled that the limitation period for challenging an arbitral award begins when the party actually receives the award, not from the date of the award itself.

The appeal was filed under Section 37 of the Arbitration and Conciliation Act, 1996, challenging the order of the Commercial Court, Meerut, dated 14.11.2022, which dismissed the appellants' application under Section 34 of the Act for being time-barred.

The arbitral award was passed on 09.04.2014, but the appellants claimed they only learned of it during an execution proceeding file inspection. They filed their application on 26.08.2015, citing non-receipt of the award despite attempts to obtain it from the arbitrator. The Commercial Court dismissed the application, holding that the delay of 1 year, four months, and 16 days could not be condoned under Section 34(3), which allows condonation of delay up to 30 days.

The appellants argued that the award was never received by them, as evidenced by a postal record showing the delivery attempt failed, contrary to the Commercial Court's assumption that the award had been delivered. The respondents contended that under Section 114 of the Evidence Act and Section 27 of the General Clauses Act, service could be presumed, as the postal endorsement indicated multiple delivery attempts.

The court, referring to the Supreme Court ruling in ***Union of India v. Tecco Trichy Engineers*** and ***State of Maharashtra v. ARK Builders***, held that the limitation period for filing a Section 34 application begins from the date the party actually receives the arbitral award. As the award was never delivered to the appellants, the application could not be deemed time-barred.

The appeal was allowed, and the order of the Commercial Court was set aside. The case was remanded back to the Commercial Court, Meerut, for further proceedings, treating the application as within limitation.

Arbitration prima facie is invalid ab initio if one of the parties has appointed an arbitrator itself, without approaching the Court under Section 11 of the Arbitration and Conciliation Act, 1996: Delhi High Court [*M/S PGL Estatecon Pvt. Ltd V. M/S Jyoti Enterprises,* O.M.P. (COMM) 99/2023]

The Court held that arbitration prima facie is invalid ab initio if one of the parties has appointed an arbitrator itself, without approaching the Court under Section 11 of the Arbitration and Conciliation Act, 1996 (the "**Act**").

The petitioner in this case challenged the validity of an arbitration award passed by an arbitrator appointed unilaterally by the respondent. The petitioner argued that the arbitrator was appointed without the petitioner's consent, in violation of Section 11 of the Act. The respondent had issued a notice invoking arbitration under Section 21 of the Act but the court opined that the notice was more in the nature of a demand notice rather than a formal arbitration notice. Furthermore, the arbitrator appointed was the respondent's counsel, which raised serious concerns about impartiality and independence.

The Court observed that even if the arbitration clause is unilateral, if the actual appointment of the arbitrator was not unilateral but with consensus ad idem, the arbitration would still be saved. However, given the procedural irregularities and lack of consent in the present case, the Court prima facie found the arbitration to be invalid. The Court agreed to the petitioner's claim that the respondent did not approach the Court under Section 11 of the Act, which was a necessary procedural step. Hence, the Court stayed the execution of the impugned award and granted time for the respondent to file a reply, reiterating that no extensions would be granted for filing replies or rejoinders.

India Launches Maritime Dispute Resolution Centre to Enhance Global Standing

The Indian Maritime Sector has taken a significant step forward and inaugurated the Indian International Maritime Dispute Resolution Centre (**"IIMDRC"**) in Mumbai, as part of its efforts to establish itself as a key player in global maritime arbitration. The launch took place during the 20th Maritime State Development Council (**"MSDC"**) meeting on September 13, 2024. It was facilitated by a Memorandum of Understanding between the Ministry of Ports, Shipping and Waterways (**"MoPSW"**) and the India International Arbitration Centre (**"IIAC"**).

The IIMDRC aims to provide a specialized platform for resolving maritime disputes through arbitration and mediation, addressing the complexities of multi-jurisdictional maritime transactions. The initiative is in alignment with the government's "Resolve in India" campaign, encouraging Indian maritime companies to utilize domestic arbitration services rather than relying on foreign centres. The establishment of IIMDRC is also part of a broader strategy under the Sagarmala initiative, which seeks to enhance India's logistics performance through various projects aimed at port expansion and shipbuilding capabilities.

The Chairperson of IIAC, Hemant Gupta J. (Retd.), emphasized on the centre's role in strengthening India's dispute resolution framework within the maritime sector. Additionally, during the MSDC meeting, plans were discussed for a mega shipbuilding park to consolidate shipbuilding resources across states, to further reinforce India's position in the global shipbuilding industry.

GIFT City to Establish International Arbitration Centre to Combat Financial Crime

The Gujarat International Finance Tec-City (**"GIFT"**) is set to launch an International Arbitration Centre, in response to the growing demand from stakeholders in the region. This initiative, announced following a memorandum of understanding signed on August 7 between the National Forensic Science University (**"NFSU"**) and GIFT City, aims to enhance India's capabilities in international arbitration, fraud investigation, and cyber security. As part of the initiative, NFSU will also establish a Centre of Excellence focused on corporate forensics within GIFT City. This centre will address critical areas such as cyber forensics, forensic accounting and financial crimes investigation, which are increasingly vital as GIFT City anticipates an influx of up to 200 companies.

The new centre is modelled after Singapore's arbitration framework and will be led by a former Supreme Court judge. Indian companies currently resort to the Singapore International Arbitration Centre for dispute resolution. The Dean of the NFSU School of Law, Dr. Purvi Pokhariyal stated that the goal is to redirect this arbitration traffic from Singapore back to India. Professor SO Junare, Campus Director at NFSU, highlighted the necessity for forensic accountants to investigate financial crimes effectively, emphasizing that traditional chartered accountants lack the specialized skills required for such tasks.

The arbitration centre is modelled to facilitate seamless dispute resolution across various sectors using advanced technology. With rapidly progressing plans, GIFT City officials are working on amending regulations to support the establishment of this centre by the end of the year. This development will position India as a competitive hub for international arbitration and financial crime resolution.

Supreme Court Launches Online Mediation Training Portal to Enhance Dispute Resolution

In a progressive move to promote mediation as a primary method of dispute resolution, the Supreme Court of India has launched an Online Mediation Training Web-Portal. The initiative was unveiled by Chief Justice D.Y. Chandrachud and Justice Sanjiv Khanna, who is also the Executive Chairman of the National Legal Services Authority (**"NALSA"**).

Developed collaboratively by NALSA and the Mediation and Conciliation Project Committee (**"MCPC"**) over a span of five months, this unique platform aims to provide comprehensive mediation training to legal professionals across the nation. Chief Justice Chandrachud emphasized that mediation should become the default approach for dispute resolution. The training will equip lawyers, judges, and law students with essential skills to foster a collaborative legal culture.

Justice Khanna elaborated on the program's development, noting extensive consultations with both national and international mediation experts. The training will initially focus on judicial officers and experienced lawyers, with plans for further inclusions based on participant feedback and best practices in mediation.

According to NALSA's statement, this initiative signifies a commitment to modernizing legal education by providing high-quality, expert-curated content accessible remotely. It aims to expand mediation training throughout India, addressing the country's increasingly litigious environment by promoting alternative dispute resolution mechanisms. The online program seeks to encourage amicable dispute settlements and position mediation as the first-choice resolution method.

PCA Office in India to Boost International Arbitration: Surya Kant, J.

The establishment of a Permanent Court of Arbitration (**"PCA"**) office in New Delhi is poised to enhance India's standing as a preferred destination for international arbitration, according to Justice Surya Kant of the Supreme Court. This initiative was announced on May 13, by the Central government and PCA, aiming to facilitate the resolution of international disputes involving states and private parties, leveraging PCA's expertise.

Kant J. described the PCA's presence in India as a "paradigm shift" that will attract more international parties to choose India as their arbitration seat. He noted that this development not only bolsters India's reputation in the global arbitration landscape but also makes arbitration services more accessible to domestic businesses and individuals, eliminating significant logistical and cost barriers. Speaking at the valedictory ceremony of the 'Conference on International Arbitration and the Rule of Law,' he highlighted the historical roots of arbitration in India and its growing popularity as a dispute resolution mechanism. He emphasized that with the PCA's local office, Indian stakeholders can directly access its resources and training programs, which will further strengthen India's domestic arbitration framework.

Justice Kant also pointed out India's commitment to international arbitration, being one of the first signatories to the New York Convention and among a select few Asian nations to sign the Geneva Convention. He concluded by stressing the importance of collaboration between international and domestic arbitration bodies to ensure efficient, cost-effective, and accessible dispute resolution services in India.

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