OCTOBER 2024, VOL. I, ISSUE III

SAMVAAD

THE OFFICIAL NEWSLETTER OF CCADR FOR ARBITRATION LAW UPDATES

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.

The Court reaffirmed the principle of minimal judicial intervention in the arbitral process, upholding the restrictive appellate powers granted under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996: Supreme Court of India [*Punjab State Civil Supplies Corporation Limited and Anr. v. M/s Sanman Rice Mills & Ors,* 2024 INSC742]

Recently, the Supreme Court of India (the **"Court"**) reaffirmed that the court's intervention is not a means to re-evaluate arbitral awards based on merits or alternative interpretations but is permissible only in instances where fundamental legal principles or public policy have been violated.

The case originated from a dispute over shortfall quantities in a Rice Milling Agreement. The Arbitrator initially awarded Punjab State Civil Supplies Corporation Ltd. (**"Corporation"**) a sum due to the shortfall, which the Additional District Judge upheld under Section 34 of the Arbitration and Conciliation Act, 1996 (the **"Act"**). However, the High Court reversed this decision, invoking Section 37 to set aside the arbitral award, prompting the Corporation's appeal to the Court.

The Court emphasized that Section 34 of the Act provides the framework for setting aside an arbitral award through applications made in accordance with sub-Sections (2) and (3). The grounds for interference are strictly limited to instances where an award conflicts with public policy, including cases of fraud, corruption, or contravention of fundamental Indian law principles and morality.

The Court clarified that its review does not extend to assessing the merits or legality of the award, reinforcing that it should not reassess evidence or substitute its judgment for that of the arbitrator. Awards that may appear unreasonable or somewhat non-speaking are not grounds for judicial interference.

The Court reiterated that the courts should not interfere with an award merely because an alternative view on facts and interpretation of the contract exists. In view of these reasons, the impugned order was set aside reinforcing the doctrine of finality in arbitration.

The sum awarded by the arbitral tribunal must carry a post-award interest, irrespective of an underlying contract prohibiting the payment of interest: Supreme Court of India [*R.P. Garg v. The Chief General Manager, Telecom Department & Ors.,* 2024 INSC 743]

The Supreme Court (the **"Court"**) held that it is the first principle under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 ("the **Act**") that any sum directed to be paid by the arbitral award must carry a post-award interest which may be stipulated by the arbitrator or it shall be decided by statutory limits and the interest rate granted under the Award is to be given precedence over the statutorily prescribed limit.

The matter was referred to the arbitrator under Section 11 of the Act from a dispute arising from non-payment of bills by the respondent at the time of execution of the contract and the arbitrator upheld the claim of the appellant but dismissed his plea regarding interest, citing a specific clause in the contract prohibiting the same. A specific objection was raised by the appellant claiming payment of post-award interest before the executing court and the same was dismissed. The appellant further appealed to the District Judge who directed payment of post-award interest at the rate of 18% on the Award amount. Subsequently, an order by the Delhi High Court further revising the district court's order and upholding the appellant's right to post-award interest was called into appeal before the Court.

The Court while citing ***Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd. [*****(2023) 1 SCC 602]**, held that it is a clear position of law that granting post-award interest is not subject to the contract between the parties. The Court allowed the appeal while citing the erroneous stance of the High Court in relying on the wrong precedent and held that Section 31(7)(b) of the Act does not give the parties the right to **"contract out"** of interest applicable upon the post-award period.

An intervention in arbitration matters under Articles 226 and 227 is limited to exceptional and rare circumstances. Judicial Review can be made only post rendering of the final award: Delhi High Court [*Home & Soul Pvt. Ltd. v. TV Today Network Ltd.,* 2024 SCC OnLine Del 7252]

In the present case, the Delhi High Court (the **"Court"**) addressed a writ petition challenging an order from a sole arbitrator regarding the issue of limitation, disposing off an application filed by the applicant under Section 16 of the Arbitration and Conciliation Act, 1996 (the **"Act"**). The petitioner contested the arbitrator's decision to defer adjudication on the issue of limitation until the final resolution of the arbitration proceedings. They argued that this deferral contradicted the prior directive of the court which mandated the limitation question to be resolved as a preliminary matter before addressing substantive issues.

The petitioner contended that limitation is not merely procedural but a jurisdictional matter, asserting that if claims are barred by limitation, any subsequent arbitration would be void ab initio. They emphasized that the arbitrator's failure to rule on this critical issue at the outset could lead to procedural complications and unnecessary delays in the arbitration process.

The petitioner on the issue of maintainability stated that the bar on limitation is evident from the Respondent's own pleadings and relied on ***Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Limited*** **[2021 SCC OnLine SC 8]**, to support their claim that judicial oversight is necessary when an arbitrator deviates from the mandated procedural framework.

However, the Court finding the petition unconvincing, reiterated that as per the ruling of the court in ***C.S Construction Company Private Limited v. Excelling Geo and Engineering*** **[2024 SCC OnLine Del 5161]** and ***Hindustan Alloys Private Limited v. Maa Sheetla Ventures Limited*** **[W.P.(C) 10561/2024]**, an intervention in arbitration matters under Article 226 or 227 is generally limited to rare and exceptional circumstances. It noted that as per the ruling in ***Surender Kumar Singhal & Ors. v. Arun Kumar Bhalotia & Ors*** **[2021 SCC OnLine 3708]**, under Section 16 of the Act, an arbitral tribunal has the authority to determine its own jurisdiction, including matters of limitation.

It highlighted that if the tribunal accepts the plea of jurisdiction under the said provision, an appeal is permissible under Section 16 of the Act, while if rejects it or chooses to proceed without resolving a jurisdictional plea immediately, reserving it for later, such decisions are typically not subject to judicial review until after a final award is rendered. The Court admitted that permitting the petition, unless the act of the arbitrator is manifestly perverse or contrary to established legal principles, would encroach upon the domain of the arbitrator, who is mandated to adjudicate both upon factual and legal disputes in the arbitration proceedings and defeat the purpose of arbitration as a speedy and efficient dispute resolution mechanism.

The Court acknowledged the complexity surrounding the issue of limitation as a mixed question of law and fact. This often necessitates evidence from both parties during the stage of presentation of claims and counterclaims for a fair determination. It underscored that limitation isn't always a straightforward issue, and determining its applicability often involves factual inquiries that cannot be resolved solely through initial pleadings. Therefore, the writ petition was dismissed, affirming that any challenge regarding limitation would need to await the final arbitration award for proper adjudication.

Court under Section 9 of the Arbitration and Conciliation Act, 1996 can grant interim reliefs to preserve the subject matter of an ongoing suit from being disposed off till Arbitration Proceedings convene: Delhi High Court [*BCC Developers & Promoters Pvt. Ltd. v. Bhupender Singh and Anr.*, 2024 SCC OnLine Del 7245]

In this case, the Delhi High Court (the **"Court"**) addressed an appeal concerning an interim order related to an agreement to sale dated August 5, 2023. The appellant, BCC Developers, had entered into an agreement with the respondents for the sale of land valued at ₹8.21 crores. As per the terms of the agreement, an initial payment of ₹1.65 crores was made by the respondents, and the remaining amount was to be paid in 4 trenches. However, the respondents failed to remit subsequent payments as stipulated in the agreement. It prompted the appellant to notify them of the breach and terminate the contract on January 3, 2024. Consequently, the appellant forfeited ₹65 lakhs of the advance payment and returned ₹1 crore to the respondents.

The dispute escalated when the respondents filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking an injunction against appellants from transferring or alienating the disputed property. The learned Single Judge granted this relief on September 2, 2024, causing the present appeal against the decision.

The appellant contended that they had acted within their rights by terminating the agreement due to non-payment and subsequently entering into a new agreement for the property with another party. The appellants had sold 84% of the property during the pendency of the case, before the interim order was passed.

The Court observed that there was a prima facie overlap between properties involved in ongoing civil disputes which are subject matter of the suit pending before the Judicial Additional Collector, Behrod District, Alwar, Rajasthan and those subject to the agreement to sale in the present matter, justifying the interim restraint order. The Court emphasized that its role at this stage was to ensure that property rights were preserved until an arbitration proceeding is convened in accordance with the agreement, which could resolve any disputes regarding ownership and contractual obligations.

Therefore, the appeal was dismissed, affirming that the learned Single Judge had appropriately exercised discretion in granting interim relief based on evidence presented and relevant legal principles. The Court underscored that any further evaluation of facts would be reserved for arbitration proceedings, thereby preserving the status quo until a definitive resolution could be reached.

The reference of a document or another contract does not mean its automatic incorporation therein and if, a party intended only to adopt specific portions or part(s) of referred documents, the same would be set out in such contract: Delhi High Court [*PEC Limited v. ADM Asia Pacific Trading Pte. Ltd.,* 2016 SCC OnLine Del 3953]

The dispute in the matter arose in the matter of calculation of laytime and demurrage pertaining to a contract between the parties. The Respondent had invoked arbitration due to failure to make payment as damages since the Appellant had not discharged cargo within the stipulated time. The arbitral award directed the Appellant to make such payment and the same was upheld in the impugned judgement which was under appeal before the Delhi high court (the **"Court"**).
The Appellant contended that since there was no Charter Party Agreement (the **"agreement"**) in existence, no demurrage rates were agreed and that since the clauses of the Contract refers to the agreement, all terms of the agreement also form part of the Contract. The arbitral tribunal rejected both of these contentions concluding that the Contract provided for a fixed pre-determined rate of demurrage and held that the respondent was entitled for the same.
The Court in its judgement upheld the arbitral award and cited ***MMTC Ltd. v. International Commodities Export Corporation of New York*** **[2012 SCC OnLine Del 2374]**, in concluding that where a pre estimate of damages is specified in a contract and the parties agreed that demurrages would be calculated at such rate, the same would be the agreed rate and no modification is required. The Court also reiterated the law pertaining to incorporation of a contract that the intention of the parties must be clear. The Court dismissed the appeal while recapitulating that judicial interference should be avoided unless absolutely necessary, ensuring the arbitrator's decision remains final and binding.

The Court upheld the Arbitral Tribunal's decision on interest inter alia principle of finality in arbitration, dismissing the petition for modification under Section 34 of the Arbitration and Conciliation Act, 1996: Delhi High Court [*M/s Star Shares & Stock Brokers Ltd v. Praveen Gupta and Anr,* 2023/DHC/001434]

Recently The Delhi High Court (the **"Court"**) held that the scope of judicial intervention under Section 34 of the Act is "narrow and limited." It does not sit as a Court of Appeal, if there is any other possible view based upon the documents/evidence available as taken by the Arbitrator, the Court should refrain from interfering in the findings of the Arbitral Tribunal."
The case originated from a dispute involving ***Ms. Star Shares and Stock Brokers Ltd. and Praveen Gupta*** **[2023/DHC/001434]** regarding the handling of investments and security deposits following the merger of M/s Gupta Associates with the petitioner company. Praveen Gupta alleged that the petitioner failed to deliver shares or pay sales leading him to file complaints with the National Stock Exchange. The Arbitral Tribunal partially upheld Gupta's claims and awarded Gupta ₹32,07,478 with 18% interest on his security deposit but dismissed other claims as time-barred. The petitioner challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (the **"Act"**), arguing lack of reasoning and excessive interest.
The Court found that the petitioner's grounds for challenging the award did not meet the stringent criteria for intervention under Section 34. The Court explained that the tribunal's reasoning was sufficiently clear and based on prior judicial findings.

The court referred to Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd. [AIRONLINE 2019 SC 1928] emphasizing that "if the reasoning in the order is improper, they reveal a flaw in the decision-making process," but minor inadequacies do not justify setting aside an award. The Arbitral Tribunal has awarded interest reasonably and after duly appreciating evidence before it. The same does not warrant any interference by this court under the limited jurisdiction under section 34 of the Act.

The Court dismissed it as being devoid of merits. The Court maintained that the arbitral tribunal's decisions on both the liability and interest rate were reasonable and in line with the limitations imposed on judicial intervention under the Act.

A party must exhaust statutory remedies before approaching the High Court under Articles 226 and 227 of the Constitution of India. If a statutory remedy, such as an appeal under Section 34 of the Arbitration and Conciliation Act, exists, it must be pursued first: Bombay High Court [*Duro Shox (P) Ltd. v. State of Maharashtra,* 2024 SCC OnLine Bom 3416]

The Bombay High Court held that a party must exhaust statutory remedies before approaching the High Court (the **"Court"**) under Articles 226 and 227 of the Constitution of India. If a statutory remedy, such as an appeal under Section 34 of the Arbitration and Conciliation Act, exists, it must be pursued first.

The Petitioners filed a writ petition challenging an order of the Micro and Small Enterprises Facilitation Council (**"MSEFC"**). The petitioner argued that the award was illegal and invalid. However, the petitioner bypassed the statutory appeal under Section 34 and directly sought relief from the Court.

The primary issue for consideration was whether the Court could exercise its jurisdiction under Articles 226 and 227 to set aside an 'Award' passed under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (the **"MSMED Act"**) on the grounds of it being ex-facie illegal and not constituting a valid 'Award' in law. In its judgment, the court acknowledged that while Article 226 provides broad jurisdiction for Courts to issue writs for the enforcement of fundamental rights and other purposes, this jurisdiction is not absolute. The court emphasised that when a statutory remedy is available—such as an appeal under Section 34 to challenge an arbitration award—invoking writ jurisdiction should generally be avoided. This approach ensures that parties have a structured process to contest decisions made by authorities established under specific statutes like the MSMED Act.

The court further analysed the nature of the award issued by the MSEFC. The court noted that the MSEFC's award, if issued in accordance with proper procedures and adhering to the principles of natural justice, should not be easily overturned. The court referenced several judicial precedents, including ***Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited*** **[(2023) 6 SCC 401]** and ***Whirlpool Corporation vs. Registrar of Trade Marks*** **[(1998) 8 SCC 1]**, which have reinforced that judicial intervention through writs is reserved for exceptional circumstances where there is a complete lack of legal proceedings or where authorities act outside their jurisdiction.

Ultimately, the Court concluded that since the MSMED Act provides a specific mechanism for challenging awards through statutory appeal processes, it would be inappropriate to invoke Articles 226 or 227. The court ruled that the petitioner should pursue remedies available under the MSMED Act rather than seeking judicial review through writ jurisdiction.

A party who is not mentioned in the Development Agreement and who has not signed the contract, cannot be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996: Bombay High Court [*Avenues Seasons Properties LLP vs. Nissa Hoosain Nensey and Ors.*, MANU/MH/6665/2024]

The facts were that the Respondents who are owners of independent bungalows, had filed civil suits before the court, seeking relief against the Co-operative Housing Society's (the **"Society"**) resolution to evict the respondents for refusing to sign the Development Agreement (the **"Agreement"**) proposed by the Appellant/Developer. The Appellant filed an interim application under Section 8 of the Arbitration and Conciliation Act, 1996 (the **"Act"**) seeking the return of plaint to proper court and refer the entire dispute to arbitration in terms of the Agreement. The Single Judge Bench of the Court dismissed the Section 8 application in response to which the Appellant filed appeal under Section 37 of the Act.

The Appellant contended that all Society members, including the non-signatory respondents, were bound by the Agreement's arbitration clause due to their membership in the housing society whereas the Respondent contended that since they have not signed the Agreement, the Section 8 application is not maintainable.

The Court noted that the Respondents had neither signed the Agreement nor were their names mentioned in the Agreement. It further noted that Section 7(4)(a) of the Act mentions that the Development Agreement must be signed by the parties. The Court observed that it would have been a totally different case if any of the member or the Society who has signed the Agreement, would have filed the suits against the developer, and in such a suit the developer could have preferred an application under Section 8 of the Act, for referring the dispute to arbitration.

Referring to several precedents, the Court rules that it is either developer or the society, who has signed Agreement can invoke the arbitration agreement in case of dispute and a party who is not mentioned in the Agreement and who has not signed the contract, cannot be referred to arbitration.

High Court while allowing a Civil Misc. Appeal overturned the Commercial Court's order, which had set aside an arbitral award on grounds of alleged arbitrator bias and findings of perversity: Rajasthan High Court [*M/s Anik Industries Ltd. v. M/s Shree Rajasthan Sintex Ltd.*, 2024: RJ-JD:41566-DB]

The dispute arose from unpaid claims for coal supplies made by the Appellant to Respondent which, as per the Respondent, were not of appropriate quality and damaged Respondent's machinery. The Respondent also made counter claims for debit notes not accepted by the Appellant before the Arbitral Tribunal. The tribunal partly allowed the claim of the Appellant and dismissed the counterclaim of the Respondent.

In appeal under Section 34 of The Arbitration and Conciliation Act 1996 (the **"Act"**) before the Commercial Court, the Respondent raised additional ground of non-disclosure by one of the Arbitrators about his affiliation with one of the sister-concerns of the Appellant. The Commercial Court set aside the award inter alia, disqualification incurred by one of the Arbitrators on account of non-disclosure of his affiliation with the sister-concern of the Appellant. It was the Appellant's contention that prior to the Amendment of the Act in 2015 (the **"2015 Amendment Act"**), there was no existence of such specific circumstance, which would give rise to justifiable doubt as to the Arbitrator's independence and impartiality.

The High Court (the **"Court"**) noted that in the present case, the arbitral proceedings had commenced before the 2015 Amendment Act i.e. under the Old Act where non-disclosure per se is not a ground to incur disqualification or ground of annulment. It was also noted that the concept of affiliation with the affiliate company was specifically introduced in the 2015 Amendment Act and there was no such concept earlier.

The Court also distinguished between **"actual bias"** and **"apparent bias"**, stating that apparent bias was not recognized by the Supreme Court under the Old Act and therefore even though non-disclosure of information was required under Section 12 of the Old Act, in the present case such a non-disclosure is not a material fact or circumstance, which would invalidate the appointment of the Arbitrator. Accordingly, the Court's division bench set aside the decision of the Commercial Court.

An arbitration clause in a partnership deed compels parties to resolve disputes through arbitration. A partnership does not automatically dissolve upon a partner's death; it continues under the terms of the partnership deed. Legal heirs, though not original partners, are bound by the arbitration clause and can invoke it: Gauhati High Court [*Rampat Lal Verma v. Rahul Verma,* 2024 SCC OnLine Gau 1637]

The Gauhati High Court (the **"Court"**) held that an arbitration clause in a partnership deed compels parties to resolve disputes through arbitration. A partnership does not automatically dissolve upon a partner's death; it continues under the terms of the partnership deed. Legal heirs, though not original partners, are bound by the arbitration clause and can invoke it.

The case before the Court involves an appeal challenging the dismissal of a petition for arbitration related to a partnership dispute concerning M/s Verma Market. The trial court ruled against referring the matter to arbitration, asserting that the partnership automatically dissolved upon the death of Sampat Lal Verma, one of its last remaining partners. The court based its decision on the claim that the arbitration clause in the partnership deed did not bind the legal heirs of the deceased partner.

In response, the appellant challenged this decision in the Court, arguing that the trial court erred in law and fact. The appellant contended that an existing arbitration clause in Clause No. 15 of the partnership deed mandated that disputes be resolved through arbitration, regardless of the partnership's status after the partners' deaths. The appellant emphasised that a partnership does not automatically dissolve upon a partner's death if specified otherwise in the partnership deed and asserted that this clause binds legal heirs and they can invoke it despite them not being original partners.

The appellant's appeal sought to have the Court set aside the trial court's order and refer the dispute to arbitration, highlighting that the trial court failed to consider critical legal principles regarding arbitration agreements and jurisdiction.

In its analysis, the Court emphasised that a partnership does not automatically dissolve upon the death of a partner if the terms of the partnership deed provide otherwise. Citing Section 42 of the Indian Partnership Act, 1932, the court noted that dissolution is subject to contractual agreements between partners. The court highlighted that Clause No. 15 of the partnership deed explicitly mandated arbitration for disputes, thereby reinforcing that this clause binds legal heirs. The Court concluded that since an arbitration agreement existed, it was for an arbitral tribunal to determine its applicability to the disputes raised by the parties.

Ultimately, the Court overturned the trial court's decision, ruling that it had committed a significant error by failing to recognise the binding nature of the arbitration clause on all parties involved, including legal heirs. The court ordered that the dispute be referred to arbitration, affirming that legal heirs retain rights under such clauses even after a partner's death.

SAMVAAD

OCTOBER, 2024

CONTRIBUTORS

Rishika Sharma
Shambhavi
Ruthwika Reddy
Yash Singh
Shubham Sharma
Shrey Bhatnagar
Bhola Shankar
Ayush Bijalwan
Suryansh Beohar
Shivam Madhur
Ankita Kumari
Priyanshu Lucky
Tanya
Siddhi Rupa
Arpita Chaudhary
Amrit Raj Barnwal
Raunak Uday

CONTACT DETAILS

RISHIKA SHARMA (CONVENOR)
+91 9470435520

PRIYANSHI JAIN (EVENT CONVENOR)
+91 6261744918

YASH SINGH (CO-CONVENOR)
+91 6388608840

AYUSH BIJALWAN (EVENT CO-CONVENOR)
+91 8433188578