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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.

The scope of judicial intervention under Section 11 of the Arbitration and Conciliation Act, 1996, by the referral court's role is limited and is confined to determining the prima facie existence of an arbitration agreement: Supreme Court [*Goqii Technologies Private Limited v. Sokrati Technologies Private Limited,* MANU/SC/1186/2024]

The dispute arose from a Master Services Agreement ("**MSA**") executed between the Appellant and Respondent, where the Appellant alleged that an independent audit revealed significant overcharging and fraudulent practices in digital advertising campaigns managed by the Respondent. The Respondent served a demand notice on the appellant under Section 8 of the Insolvency and Bankruptcy Code, 2016 seeking Rs 6,25,67,060/- towards the outstanding invoices. The Appellant invoked arbitration under the MSA's dispute resolution clause after rejecting the Respondent's demand for payment of outstanding invoices.

The Bombay High Court dismissed the arbitration application, ruling that the appellant's reliance on the audit report was dishonest and that the disputes were non-existent, primarily to evade payment obligations. However, the Supreme Court (the "**Court**") held that the High Court exceeded its jurisdiction by delving into the merits of the dispute, which should have been left to the arbitral tribunal.

Relying on ***SBI General Insurance Co. Ltd. v. Krish Spinning*** **[2024 INSC 532]**, the Court emphasized that under Section 11 of the Arbitration and Conciliation Act, 1996, the referral court's role is limited to assessing the prima facie existence of an arbitration agreement. It observed that issues of ex-facie frivolity or dishonesty in claims also fall equally within the arbitral tribunal's domain, if not more than that of the court. The Court warned against judicial overreach that undermines the legislative intent of minimizing interference in arbitration proceedings. The appeal was allowed, and Mr. S.J. Vazifdar, former Chief Justice of the Punjab & Haryana High Court, was appointed as the sole arbitrator, reaffirming that the arbitrator can assess the merits of alleged disputes.

The termination of mandate under Section 29A(4) of the Arbitration and Conciliation Act, 1996 is only conditional on the non-filing of an extension application, and cannot be taken to mean that the mandate cannot be extended once it expires: Supreme Court [*M/S Ajay Protech Pvt. Ltd. v. General Manager and Anr.*, 2024 INS 889]

The dispute in the matter arose between the parties from a works contract where the parties went to arbitration for resolving the disputes. After the arbitration proceedings were concluded and there was an extension of time for giving the award, the covid-19 situation occurred and hence the appellant moved the High Court of Rajasthan (the "**Court**") for further extension of time for making the award. The present appeal was filed before the Supreme Court against the impugned order made by the Court where the Court rejected the application and held that there was unreasonable delay in filing the application and consequently, the mandate of the arbitral tribunal stood terminated.

The Supreme Court allowed the appeal finding sufficient cause for the Court to extend the period for making the Award. Placing reliance on a judgement in ***Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*** **[2024 SCC OnLine SC 2494]**, an application for extension can be filed either before or after the termination of the Tribunal's mandate upon expiry of the statutory and extendable period. The Supreme Court further opined that the decision to extend the time is an exercise of discretion by the court and must be done on sufficient cause being shown, and on such terms and conditions that the court deems fit. The Supreme Court revisited the core aims of the alternative dispute resolution process while stating that 'sufficient cause' should be interpreted in the context of facilitating effective dispute resolution.

Distinguishing "Venue" from "Seat" re arbitration agreements: Supreme Court [*Arif Azim Co. Ltd. v. Micromax Informatics FZE*, 2024 SCC OnLine SC 3212]

The petitioner, based in Afghanistan, entered into a Consumer Distributorship Agreement ("**the agreement**") with M/s Micromax Informatics FZE, Respondent No. 1, a UAE-based wholly owned subsidiary of M/s Micromax India, Respondent No. 2, on November 9, 2010 for the distribution of Respondent No.1's mobile handsets in Afghanistan. The agreement included an arbitration clause, Clause 26, stipulating that any disputes would be resolved through arbitration in Dubai, UAE, under UAE Arbitration and Conciliation Rules. The core issue arose when the Petitioner alleged that Respondent No. 2, being a separate entity, issued invoices for handsets contrary to the terms of their agreement, leading to confusion regarding payments and outstanding credit balances. The Petitioner sought arbitration due to unresolved payment disputes and the failure to adjust its credit balance against new invoices.

Based on this factual matrix the court decided upon the maintainability of the instant petition u/s 11 of the Arbitration and Conciliation Act, 1996 ("**the Act, 1996**"); the applicability of Part I of the Act, 1996 to the arbitration clause contained in the agreement and on the seat of the arbitration in terms of the agreement.

Based on these issues the court went on to look at the history of the law of arbitration in India. It analysed the Pre-BALCO Regime and the Post-BALCO Regime. It also determined the criteria or tests for determination of the Seat of Arbitration namely, the Closest Connection Test and the Shashoua Principle. The court further looked at the Doctrine of Forum Non Conveniens in order to decide on what the seat of the arbitration in the present case could be.

Pre-BALCO Regime

The court looked at the observations made in ***National Thermal Power Corporation v. Singer Company*** ('**NTPC**') [(1992) 3 SCC 551], with regards to the applicability of the Arbitration Act, 1940 ("**the Act, 1940**"). The court in the NTPC case, for the first time, laid down the Doctrine of Concurrent Jurisdiction in arbitration, albeit in a limited sense in as much as the exercise of concurrent jurisdiction by two different but competent courts was limited only to matters of procedure and conduct of arbitration, and that the exercise of jurisdiction by courts at the seat or situs of arbitration over the arbitration agreement and its ancillaries was still regarded to be an exclusive jurisdiction.

In support of the NTPC case, ***Sumitomo Heavy Industries Ltd. v. ONGC Ltd.,*** **[(1998) 1 SCC 305]** again looked at the applicability of the Act, 1940. The ruling clarified three key points:

1.Section 47 of the Arbitration Act, 1940 applies to all arbitrations and related proceedings governed by Indian law, provided the arbitration agreement is subject to Indian laws.

2.When parties specify both the law governing the arbitration agreement (lex arbitri) and the procedural law governing arbitration conduct (curial law), concurrent jurisdiction arises. Courts under the curial law oversee procedural aspects of arbitration, while courts under the lex arbitri address the agreement's performance, arbitrability, and the award's enforcement or setting aside. Once arbitration concludes, the jurisdiction under the curial law ends.

3.Courts administering the lex arbitri retain jurisdiction even after arbitration concludes. They apply the lex arbitri to assess arbitrability and the curial law to ensure procedural compliance, facilitating enforcement of the award.

The aforesaid Doctrine of Concurrent Jurisdiction in Arbitration was further expanded by this Court in ***Bhatia International v. Bulk Trading S.A.,*** **[(2002) 4 SCC 105]**, wherein this Court examined the scope of Section 2(2) viz-a-viz Section 2(1)(e) & (f) of the Act, 1996 and held that Part I of the said Act applies to both (i) domestic arbitrations

that take place in India, and (ii) international commercial arbitrations that take place outside India. It was emphasized that unless expressly excluded in the arbitration agreement, Indian courts retain concurrent jurisdiction (under Section 2(1)(e)) alongside courts in the seat of arbitration, as per the agreement.
Thus, the court clarified that even after the arbitration has concluded and the award has been passed, the courts in India will continue to have jurisdiction in terms of Section 2(e) of the said Act.

Post-BALCO Regime

The correctness of the decision in Bhatia International (supra) came under cloud, and the same was ultimately referred to a larger bench, which then culminated into the landmark decision of a 5-Judge Constitution Bench of this Court in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*** (**'BALCO'**), **[(2012) 9 SCC 552]**. This Court in BALCO (supra) after a thorough examination of the scheme of the Act, 1996 held that the conclusions reached by this Court in Bhatia International (supra) are neither supported by the text nor the context of the provisions of Section 1(2) and the proviso thereto or Section 2(2) of the said Act. It held that the applicability of Part I of the Act, 1996 is limited only to arbitrations that take place in India.
The ruling clarified the territorial application of the Arbitration and Conciliation Act, 1996: Under Sections 1(2) and 2(2), Part I of the Act applies exclusively to arbitrations with their seat in India, reinforcing the seat-centric nature of the law. The Court dismissed the argument that the Act is subject-matter centric rather than seat centric. It held that for arbitrations seated outside India, only courts in the seat jurisdiction have supervisory authority under Section 2(1)(e).
This Court in ***Union of India v. Reliance Industries Ltd.***, **[(2015) 10 SCC 213]** clarified the true import and effect of the decision in BALCO. It held that a conjoint reading of BALCO and Bhatia International establishes that if the seat of arbitration is outside India or the arbitration agreement is governed by non-Indian law, Part I is excluded by necessary implication, and the doctrine of concurrent jurisdiction does not apply, regardless of the agreement's date relative to BALCO.

<u>Criterion or Test for Determination of Seat of Arbitration</u>

The Closest Connection Test

It determines the governing law of an arbitration agreement when not explicitly stated or when ambiguities arise. Typically, the law governing the substantive contract extends to the arbitration agreement and determines the juridical seat as held by the court in NTPC.
Further, in ***Enercon (India) Ltd. v. Enercon GMBH***, **[(2014) 5 SCC 1]** this Court, held that where the parties have expressly agreed that the law governing the contract, the law governing the arbitration agreement and the law of arbitration/curial law would be Indian laws, then the seat or place of arbitration would be India.
In the absence of an express choice, courts infer the parties' intent by analyzing the contract's language and relevant factors such as commercial convenience and business logic. Selecting a place of arbitration or a court jurisdiction does not automatically make it the seat unless supported by significant connecting factors. The governing law is identified as the one most closely connected to the arbitration agreement, particularly if it governs the substantive contract or procedural aspects. This test ensures coherence by aligning the seat of arbitration with the law most relevant to the agreement and the dispute resolution process.

The Shashoua Principle - 'Venue' to be construed as 'Seat'

The courts in ***Roger Shashoua (1) v. Sharma*** **[(2009) EWHC 957 (Comm)]** and subsequent cases have consistently

held that the designation of a venue for arbitration, coupled with no contrary indicia and adherence to supranational rules, typically indicates the venue as the juridical seat of arbitration. In ***Roger Shashoua (2) v. Mukesh Sharma*** **[(2017) 14 SCC 722]** and BALCO, the Supreme Court of India affirmed this principle, clarifying that such designations imply the seat of arbitration unless explicitly stated otherwise.

In ***BGS SGS SOMA JV v. NHPC LTD.*** [(2020) 4 SCC 234], the Court refined this principle by introducing a three-condition test to determine when a "venue" constitutes the "seat" of arbitration: (i) the arbitration agreement must specify only one place; (ii) the arbitral proceedings must be fixed to that location without scope for change; and (iii) there must be no significant indicia to contradict the intent of designating it as the seat.

Applying these principles, the Court concluded that Dubai, UAE, was the juridical seat of arbitration under the Distributorship Agreement due to the express choice of UAE Arbitration and Conciliation rules as the curial law. Consequently, as per BALCO and Reliance Industries, where the seat is outside India or governed by foreign law, Indian courts lack jurisdiction under Part I of the Arbitration Act, 1996. Thus, the present Section 11 petition could not be entertained in India.

Doctrine of Forum Non Conveniens – An inconvenient forum

This doctrine allows a court with jurisdiction to decline to hear a case if there is a more appropriate forum available to the parties. This principle is often invoked in cross-border matters where multiple jurisdictions may have concurrent authority. In ***Spiliada Maritime Corp v. Cansulex Ltd.***, **[(1987) A.C. 460]**, the House of Lords while considering a non-exclusive jurisdiction clause laid down the test for applying this doctrine involves determining whether another forum, with competent jurisdiction, is more suitable for resolving the dispute. If such a forum exists, the court may either decline jurisdiction or stay the proceedings in favor of the more appropriate forum, with the goal of serving the interests of justice and convenience for all parties involved.

Reliance was also placed upon ***Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*** **[(2003) 4 SCC 341]** wherein it was held that the burden of proof lies with the party asserting that the current forum is inconvenient. This party must demonstrate that the forum is either oppressive or vexatious, making it unsuitable for resolving the dispute. The court will evaluate these claims in light of factors such as convenience, fairness, and the interests of justice and ordinarily no anti-suit injunction suit will be granted in cases where parties have agreed under a non-exclusive jurisdiction clause to approach a neutral foreign forum.

Position of Law – Operative portion

1.Part I of the Arbitration and Conciliation Act, 1996, applies only where the arbitration takes place in India, i.e., where the seat is in India or the law governing the arbitration agreement is Indian law.

2.For arbitration agreements executed after 06.09.2012, where the seat is outside India, Part I of the Act will not apply, and the jurisdiction of Indian courts will be excluded. Even for agreements executed before 06.09.2012, Part I may not apply if explicitly excluded by the parties through the designation of a seat outside India or the choice of non-Indian law governing the agreement.

3.Once the seat is determined, it becomes an exclusive jurisdiction clause, and the jurisdiction of Indian courts will be excluded in favor of the courts at the seat. The doctrine of concurrent jurisdiction has been overruled by the courts.

4.The "Closest Connection Test" for determining the seat of arbitration is no longer viable following the Shashoua Principle. The seat should not be determined through abstract application of choice of law rules based on the underlying contract.

5.Courts must respect the parties' choices in the arbitration agreement, and it is their duty to construe the agreement in alignment with those intentions. A place designated as the venue of arbitration will be regarded as the seat if the arbitral proceedings are anchored to that location, with no significant contrary indicia. Where the curial law or supranational rules are specified, this serves as a strong indication that the designated place is the seat.
6.The Closest Connection Test may still apply where there is no express or implied designation of the place of arbitration.
7.Where multiple places are designated as the seat of arbitration, the Doctrine of Forum Non Conveniens may be used to determine the most appropriate forum based on the interests of the parties and the nature of the dispute.
Hence, the petition to allow the Section 11 application stood dismissed.

The Court while dismissing petitions under Section 34 of the Arbitration and Conciliation Act, 1996, reiterated that procedural orders passed by arbitral tribunals, such as those concerning impleadment, do not constitute interim awards unless they conclusively decide the substantive rights of parties: Delhi High Court [*Coslight Infra Company Pvt. Ltd. v. Concept Engineers & Ors.*, O.M.P. (COMM) 335/2023]

The dispute arose from a Service Contract Agreement dated September 25, 2019, between Petitioner Company Pvt. Ltd. ("**Petitioner**") and Concept Engineers ("**Respondent No. 1**"). Petitioner alleged that Rajesh Srivastava, a Director in COSLIGHT, entered into the agreement without the Board's authorization, transferring ₹5,77,44,000/- to Respondent No. 1 and outsourcing 120 field service staff. Additionally, Rajesh Srivastava allegedly executed a forged agreement with M/s CTECH India Private Limited ("**CTECH**"), diverting funds for personal benefit. Upon discovery, Petitioner revoked his authority and terminated the agreement on September 30, 2019.
Petitioner sought to implead Rajesh Srivastava, its former director, as a respondent in arbitration proceedings, alleging unauthorized execution of a service contract leading to financial loss. The arbitral tribunal rejected the application, holding that such impleadment could not be decided without evidence and was unnecessary at the procedural stage. The question before the Delhi High Court (the "**Court**") was whether an order rejecting an application for impleadment of a party can be termed as an interim award or not?
The Court observed that an order refusing impleadment does not settle substantive disputes and, thus, does not qualify as an arbitral award under Section 31(6) of the Act Arbitration and Conciliation Act, 1996 (the "**Act**"). It relied on ***Shyam Telecom Ltd. v. Icomm Ltd.*** **[2010 SCC OnLine Del 1234]** and ***Rhiti Sports Management Pvt. Ltd. v. Power Play Sports & Events Ltd.*** **[2018 SCC OnLine Del 8678]**, which distinguished procedural orders from interim awards and held that an order rejecting an application made for impleadment of a party is only a procedural order.
The Court emphasized that a specific issue regarding the necessity of impleading Rajesh Srivastava had already been framed for adjudication by the tribunal. Accordingly, the Section 34 of the Act, petitions were dismissed and the Court declined to interfere with the tribunal's procedural discretion, holding that the dismissal of the impleadment application did not constitute an interim award subject to challenge under Section 34 of the Act. It reaffirmed that arbitral proceedings must respect procedural integrity and that challenges to procedural orders should not impede arbitration progress.

An arbitral tribunal's award of liquidated damages must be based on either proof of actual loss or a finding that the amount represents a genuine pre-estimate of damages: Delhi High Court [*Indian Oil Corporation Ltd. v. M/S Fiberfill Engineers*, FAO (OS)(COMM) 114/2019]

Indian Oil Corporation Ltd. ("**Petitioner**") entered into an agreement with M/S Fiberfill Engineers ("**Respondent**") for designing, supplying, installation, testing and commissioning of high mast signage systems of various heights and types at various IOCL retail outlets in Tamil Nadu and Pondicherry. The contract permitted the Appellant to deduct payments as "*price adjustments*" for delays in completion under Clause 9 of the Special Instructions to Tenderers (**SIT**) and Clause 4.4.0.0 of the General Conditions of Contract (**GCC**). The Appellant withheld a sum of ₹22,08,528/-, citing delays on the part of the respondent while the Respondent argued that the delays were beyond its control, including delays on the part of the Appellant, comprising of late call-up orders and appointment of a third-party inspection Agency amongst other things.

The arbitral tribunal had upheld Appellant's deductions of ₹22,08,528/- from the Respondent's bills under relevant clauses in the **GCC** and **SIT** permitting price adjustment for delay. Upon appeal, the Single Judge set aside the award, holding the deductions invalid due to the absence of evidence of actual loss suffered by the Appellant, and awarded the amount with interest.

The Division Bench concurred that the award was vitiated by patent illegality as Petitioner had neither pleaded nor proved actual loss. The Delhi High Court (the "**Court**") emphasized that deductions under the guise of liquidated damages require proof unless the contract establishes the amount as a genuine pre-estimate of damages, as outlined in ***Kailash Nath Associates v. Delhi Development Authority*** **[2015 4 SCC 136]** and ***Mahanagar Telephone Nigam Ltd. v. Finolex Cables Limited*** **[2017 SCC OnLine Del 10497]** wherein it was held that liquidated damages under Section 74 of the Contract Act require proof of actual loss unless the stipulated damages represent a reasonable pre-estimate. Subsequently, the court held that the tribunal's failure to evaluate whether the deductions reflected a genuine pre-estimate of damages rendered the award legally unsustainable.

However, the Court set aside the Single Judge's decision to award the claim and interest, holding that such adjudication exceeded the scope of Section 34 of the Arbitration and Conciliation Act, 1996, which is limited to examining the grounds for setting aside an award. The Court said that the parties are at liberty to initiate the proceedings in order to re-agitate the same in arbitration.

A party giving a "consent" to the Ld. Arbitrator and merely raising "no objection" to the direction of Ld. Arbitral Tribunal are two different things and "no objection" cannot be read as "consent": Delhi High Court [*SPML Infra Limited v. Power Grid Corporation of India Limited O.M.P.* (MISC.)(COMM.) 286/2023]

The petition before the High Court of Delhi (the "**Court**") sought the substitution of the existing arbitral tribunal and the appointment of fresh arbitrators, citing apprehension of bias and unilateral enhancement of fees. The dispute arose between the parties relating to the Rural Electrification Works in Bihar where an arbitral tribunal comprising three arbitrators was constituted and the fees was fixed as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996 (the "**Act**").

The Petitioner submitted that the primary grounds for alleging bias against the Tribunal is that the Learned Presiding Arbitrator had previously adjudicated disputes between the same parties relating to similar disputes and has passed orders against the present petitioner. Further, there was an exorbitant and unilateral enhancement of fees outside the ambit of the Fourth Schedule of the Act without any reasons. The Respondent contended that the petitioner did not show any disagreement towards the order initially.

The Court while referring to a catena of judgements and majorly the judgement in ***ONGC v. Afcons Gunanusa JV*** **[2022 SCC OnLine SC 1122]** held that party autonomy is the "*brooding and guiding spirit*" of arbitration and hence the unilateral enhancement of fee is not permissible in the eyes of law. The Court further relied on ***Chennai Metro Rail Ltd. Administrative Building v. M/S Transtonnelstroy Afcons (JV) and Anr.*** **[SLP (C) No.8553/2022]** to upheld that in the context of reasonable apprehension of bias by courts and quasi-judicial authorities, the issue shall be raised at the earliest opportunity before the same forum. Thus, the issue of bias was held to be raised first before the same tribunal.

The Court clarified that parties are not inadvertently bound by decisions or directions they did not explicitly agree to. The Court set aside the unilateral enhancement of fees and extended the mandate of the tribunal till 30.03.2025. The Court also directed the tribunal to continue with the fees decided in the preliminary hearing.

Arbitration cannot be invoked under an insurance policy's arbitration clause when liability is denied by the insurer under Section 37 of the Arbitration and Conciliation Act, 1996 and improper composition of the arbitral tribunal renders the award invalid: Madhya Pradesh High Court [*United India Insurance Co. Ltd. And Others v. Ratlam Syenthetic Rope Manufacturing Company through Smt. Rekha And Others* A.A. No. 8 of 2018]

The respondents, holding a fire insurance policy issued by the appellants, sought compensation for losses allegedly caused by a fire. The insurer repudiated the claim, asserting the fire was deliberate. The respondents filed a civil suit for ₹24,12,500/- in damages. During the pendency of the suit, their financier, Punjab National Bank (**PNB**), was added as a party and invoked the arbitration clause in the policy. Despite objections from the insurer, the trial court referred the dispute to arbitration. The tribunal, constituted with three arbitrators, issued an award granting the respondents' claim.

The insurer challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 (the "**Act**") arguing that the arbitration clause applied only to disputes over quantum when liability was admitted, which was not the case here. They also contended that the tribunal's continuation with two arbitrators after one withdrew violated Section 10 of the Act, requiring an odd number of arbitrators. Both contentions were rejected by the trial court, prompting the appeal.

The Court held that the arbitration clause in the insurance policy could not be invoked since the insurer denied liability, a precondition for arbitration under the clause. It further noted that continuing arbitration with two arbitrators was procedurally flawed, rendering the award invalid. Moreover, PNB, as a non-signatory to the insurance policy, had no standing to invoke arbitration.

The Court allowed the appeal, set aside the arbitral award, and directed the dispute to be resolved through civil litigation while emphasizing the need for strict adherence to the terms of arbitration clauses and procedural requirements under the Act.

Filing an application under Section 8 of Arbitration and Conciliation Act, 1996 before the Statement on Substance of Dispute doesn't presume submission before the civil court and waive the right to invoke Arbitration Clause: *Karnataka High Court [R. Nataraj v. R. Punitha* MISCELLANEOUS FIRST APPEAL NO.6586 OF 2024 (AA)]

In this case, the Karnataka High Court (the "**Court**") addressed a dispute arising from a partnership agreement and the applicability of arbitration provisions under the Arbitration and Conciliation Act, 1996 (the "**Act**"). The dispute between the parties involves the validity of a *"deed of arrangement and confirmation"* dated 29.12.2021. The Respondents had initiated a suit to declare a "deed of arrangement and confirmation" null and void, claiming it lacked the requisite majority approval from partners of the firm. In response, the Appellant contended that the dispute falls under an arbitration agreement, as specified in the partnership deed, and has therefore challenged the dismissal of his application for arbitration under Section 8 of the Act, by the trial court. The trial court had dismissed Appellant's application on procedural grounds, holding that filing of a written statement prior to invoking arbitration, suggested his submission to the jurisdiction of the civil court, thus waiving his right to arbitration.

The Appellant contended that this interpretation was erroneous and cited ***Pricewaterhouse Coopers Service v. Mr. Mohan Kumar Thakur*** **[2020 SCC OnLine Kar 3434]**, ***Rashtriya Ispat Nigam Limited and Another v. Verma Transport Company*** **[2006 SCC OnLine SC 816]** and ***P. Anand Gajapathi Raju and Others v. P.V.G. Raju (Dead) and Others*** **[2000 SCC OnLine SC 601]**, in which it was observed that the filing of the written statement and application for reference under Section 8 of the Act simultaneously cannot and should not lead to an inference that the Defendant had submitted to the jurisdiction of the Civil Court and had waived its right to seek for reference to arbitration. The Appellant, therefore, argued that the simultaneous filing of his written statement and the application for arbitration should not be construed as a waiver of his right to seek arbitration.

The Court emphasized that the term *"not later than"* in Section 8 allows for an application for arbitration to be filed alongside a written statement without forfeiting the right to arbitration. The Court referenced the judgment of ***P. Anand Gajapathi Raju and Others v. P.V.G. Raju (Dead) and Others*** **[2000 4 SCC 539]** that clarified this interpretation and concluded that the trial court had erred in its technical dismissal of the application without addressing its merits. Consequently, the Court set aside the trial court's order, allowing the appeal and remanded the matter for fresh consideration on its merits within one month.

The Executing Court can direct Award-Debtor to deposit decretal amount in the court, holding its disbursement until the petition U/S 34 of Arbitration and Conciliation Act is disposed of: Punjab & Haryana High Court [*Apollo International Limited v. Man Structurals Private Limited* CR-5996-2024]

In this case the High Court of Punjab and Haryana addressed a revision petition filed under Article 227 of the Constitution of India, challenging an order from the Commercial Court, Gurugram. The dispute between the parties arose from a Memorandum of Understanding executed on April 11, 2019 between them. The petitioner submitted a tender for an award of a contract and a Letter of Intent dated 22.02.2020 was awarded in favour of the parties which was later cancelled without execution. The dispute was then referred for arbitration, where the award dated October 10, 2023, was passed in favour of the respondent. Thereafter, the petitioner filed a petition under Section 34 of the

Arbitration and Conciliation Act, 1996 (the "**Act**") along with an application under Section 36 (3) ibid., for stay of the enforcement of the arbitral award, whereas, the respondent filed an execution petition before the Delhi High Court.

The petitioner contested the order dated September 6, 2024, which required them to deposit a decretal amount of ₹14,44,70,000/- with the Registrar General of the Delhi High Court pending the final decision over their objections raised under Section 34 of the Act.

Further, it was argued by the petitioner that the arbitral award was flawed as it awarded damages for loss of profit without sufficient evidence, thus contending that it was contrary to public policy and likely to be set aside. The petitioner sought relief from the requirement to deposit the entire amount, proposing instead to furnish a bank guarantee or insurance bond. The respondent opposed this request, emphasizing that the arbitral award has to be executed in a manner similar to a money decree and therefore the Commercial Court's decision was appropriate.

The High Court noted that the purpose of arbitration is to facilitate swift dispute resolution. It emphasized that staying the award passed by the arbitrator or granting the liberty to the petitioner of not depositing the amount would undermine this objective. The court emphasised that the amount has to be retained by the Executing Court and is not to be released to the respondent till a final decision is passed over the objections filed under section 34, affirming that the deposit was necessary to safeguard both parties' interests during the ongoing proceedings. It also took note of the varying stance taken by the petitioner before the Delhi High Court and the Punjab & Haryana High Court, where it had sought an extension of time to comply with the directions of the court, holding that it cannot be permitted to take a different stand before the courts, as the same would amount to approbation and reprobation.

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