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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 YEAR IN REVIEW

THE OFFICIAL NEWSLETTER OF CCADR FOR ARBITRATION LAW UPDATES

GUEST EDITOR

This edition's Guest Editor is Mr. Shivinder K. Chopra, Advocate and Founder & Chief Advisor at Legalimus Consultus.
In this issue, he examines the Supreme Court's decision in Kamal Gupta v. L.R. Builders Pvt. Ltd., analysing the exclusion of non-signatories from arbitral proceedings and the reaffirmation of judicial restraint under Section 11(6) of the Arbitration and Conciliation Act, 1996.

GUEST POST

A NON-SIGNATORY TO AN ARBITRATION AGREEMENT CANNOT ATTEND ARBITRAL PROCEEDINGS & A COURT IS FUNCTUS OFFICIO AFTER APPOINTING AN ARBITRATOR UNDER SECTION 11(6) OF THE A&C ACT, 1996: SUPREME COURT OF INDIA

[Kamal Gupta & Anr. Vs. L.R. Builders Pvt. Ltd. & Anr.2025 INSC 975]

The Arbitration and Conciliation Act, 1996 ("**the Act**") was also enacted with the purpose of creating a meticulous and autonomous framework for Alternative Dispute Resolution in India outside of traditional court litigation, with minimal judicial intervention. The Supreme Court of India ("**the Court**") has, through a series of landmark judgments, consistently upheld this legislative intent. The recent decision of the Supreme Court in *Kamal Gupta & Anr. vs. L.R. Builders Pvt. Ltd. & Anr. Etc.* is a commanding reaffirmation of these foundational principles. The Judgment passed by the Apex Court significantly strengthens the pillars of party autonomy and confidentiality in Indian arbitration jurisprudence by addressing two critical issues: Firstly, the right of a non-signatory party to be present at the time of arbitral proceedings and secondly, the jurisdiction of a court in a disposed of proceedings after appointing an arbitrator under Section 11(6) of the Act to issue ancillary directions concerning the arbitration proceedings that have commenced pursuant to appointment of Arbitrator. This ruling sends a clear message about the sanctity of the arbitration proceedings as a private, consensual, and self-contained process restricted only to the parties to the Agreement.

The initial dispute had arisen from a settlement between the Appellants as regards certain family properties, which was ratified through a Memorandum of Understanding/Family Settlement Deed ('MoU/FSD'). However, the son of one of the Appellants i.e. one of the Respondent in the matter, was not a signatory to the Arbitration agreement. When disagreements arose between the signatories to the Arbitration agreement, one of the parties filed a petition before the Delhi High Court ("**High Court**") under Section 11(6) of the Act for appointment of a sole arbitrator. The non-signatory Respondent filed an application seeking to intervene in these proceedings, which was dismissed by the High Court, observing that the presence of a non-signatory was not essential for the adjudication of the dispute between the actual parties to the agreement. However, in a baffling turn of events, the Respondent filed fresh applications in the already disposed of Section 11(6) matter, seeking permission to remain present during the arbitral hearings. This time, the High Court, invoking its inherent powers, permitted the non-signatory to be present, either personally or through counsel during the course of arbitration the proceedings, effectively contradicting its earlier order. This decision prompted the original signatories to appeal to the Supreme Court, challenging the High Court's jurisdiction to entertain such an application in a matter already concluded, and to permit a third-party's intrusion into private arbitral proceedings.

By: Mr. Shivinder K Chopra (Founder & Chief Advisor at Legalimus Consultus)

Shivinder Chopra is an advocate with over 29 years of experience practicing before the Delhi High Court, Subordinate District Courts, and various specialized tribunals. His practice covers a broad range of legal fields, including Arbitration, Real Property, Commercial, and Service Law. He has represented both private clients and numerous government entities, notably serving as Standing Counsel for the Municipal Corporation of Delhi (MCD), Panel Counsel for the Union of India and the Delhi Development Authority (DDA).

The Court, in a clearly incisive analysis, systematically dismantled the High Court's reasoning and set aside its order as being without jurisdiction. The judgment was structured around the two central legal issues. On the first issue regarding the rights of a non-signatory, the Court highlighted the fundamental premise of arbitration, that it is a creature of contract. It referred to the definition of a 'party' under **Section 2(h)** of the Act, which explicitly means "a party to an arbitration agreement." This definition forms the foundation for party autonomy, limiting the scope of proceedings to those who have consented to arbitration. The Court then extended this principle by examining **Section 35** of the Act, which states that an arbitral award is binding only on the parties to the proceedings and persons claiming under them. Since an award would have no binding effect on the Respondent, who was a stranger to the MoU/FSD, the Court found no conceivable legal basis or right for him to be present, let alone participate, in the proceedings.

Furthermore, the Court heavily underscored the statutory mandate of confidentiality enshrined in **Section 42A** of the Act. This provision obligates the arbitrator, the arbitral institution, and the parties to maintain the confidentiality of all proceedings. The Court observed that allowing a non-party to be present would be in direct contravention of this legislative command. Confidentiality is not merely a procedural formality but is essential for promoting transparent communication and protecting sensitive commercial or personal information, which is often a key reason why parties choose arbitration over traditional public litigation. The Court powerfully stated that permitting a stranger to observe proceedings, when the arbitral award would not bind them, is a concept "unknown to law." This emphatic declaration closes the door on attempts by third parties to gain access to private arbitral hearings.

On the second issue of jurisdiction, the Court applied the doctrine of functus officio, a principle signifying that once an authority has fulfilled its designated function, its power over the matter is exhausted. The Court held that the role of the High Court under Section 11(6) is specific and limited to the appointment of an arbitrator where the parties have failed to do so. Once the High Court exercised this power and disposed of the petition, its mandate was complete, and it became functus officio. It, therefore, had no residual jurisdiction to entertain fresh applications in the same disposed of case. The Court condemned the High Court's reliance on its inherent powers under Section 151 of the Code of Civil Procedure, 1908, reinforcing the principle laid down in Section 5 of the Act. This section establishes the Act as a self-contained code and explicitly curtails judicial intervention except as expressly provided within the Act itself. By invoking inherent powers to grant a relief that the Act does not contemplate, the High Court had acted contrary to the legislative policy of minimizing judicial interference. The Court characterized the Respondent's attempt to reopen the concluded matter as a clear "abuse of the process of law," imposing heavy costs on the respondents to deter such practices.

On the second issue of jurisdiction, the Court applied the doctrine of *functus officio*, a principle signifying that once an authority has fulfilled its designated function, its power over the matter is exhausted. The Court held that the role of the High Court under Section 11(6) is specific and limited to the appointment of an arbitrator where the parties have failed to do so. Once the High Court exercised this power and disposed of the petition, its mandate was complete, and it became *functus officio.* It, therefore, had no residual jurisdiction to entertain fresh applications in the same disposed of case. The Court condemned the High Court's reliance on its inherent powers under Section 151 of the Code of Civil Procedure, 1908, reinforcing the principle laid down in **Section 5** of the Act. This section establishes the Act as a self-contained code and explicitly curtails judicial intervention except as expressly provided within the Act itself. By invoking inherent powers to grant a relief that the Act does not contemplate, the High Court had acted contrary to the legislative policy of minimizing judicial interference. The Court characterized the Respondent's attempt to reopen the concluded matter as a clear "abuse of the process of law," imposing heavy costs on the respondents to deter such practices.

In conclusion, the judgment in *Kamal Gupta* is an excellent demonstration of judicial restraint and protection of the core principles of arbitration. It provides invaluable clarity, establishing a bright-line rule that non-signatories have no right to attend arbitral proceedings and that a court's authority under Section 11(6) is extinguished upon the appointment of an arbitrator. This decision is crucial for the Indian arbitration ecosystem as it safeguards the integrity, efficiency, and confidentiality of the process from external disruptions. By preventing the misuse of court procedures and curbing judicial overreach, the Supreme Court has reinforced the vision of the Act and reinforced India's credentials as a pro-arbitration jurisdiction. The ruling ensures that arbitration remains a truly private and autonomous forum, reserved exclusively for the parties who have chosen it for the resolution of their disputes.

EDITOR BLOG

THE ROLE OF THE PRINCIPAL PURPOSE TEST IN SHAPING TAX ARBITRATION OUTCOMES POST MULTILATERAL INSTRUMENT

Ankita Kumari & Arpita Chaudhary (Senior Associate Editors)

Introduction

Base Erosion and Profit Shifting ("**BEPS**") is aggressive tax planning by multinational enterprises. The OECD/G20 BEPS Project developed a 15-point Action Plan to address these challenges which led to the creation of the Multilateral Instrument ("**MLI**"). This allows jurisdictions to swiftly amend thousands of bilateral tax treaties to implement BEPS measures. Action 6 of BEPS introduced the Principal Purpose Test ("**PPT**") as a minimum standard to prevent treaty abuse. The PPT denies treaty benefits on these grounds i) if it is reasonable to conclude that obtaining such a benefit was "one of the principal purposes" ii) unless granting it aligns with the object and purpose of the treaty.

The introduction of the PPT is set to significantly influence tax arbitration outcomes especially in jurisdictions like India post-MLI. This creates a crucial distinction from domestic General Anti-Avoidance Rules ("**GAAR**"). The PPT is a treaty-level provision with a broader scope, applying even if a tax benefit is one of several purposes. In contrast, GAAR operates under domestic law and is narrower, typically applying only if the tax benefit is the "main purpose". In India, the two rules operate independently, creating a dual-layered anti-avoidance framework.

India formally brought its covered tax agreements under the purview of the BEPS minimum standards from October 1, 2019. The Central Board of Direct Taxes ("CBDT") issued *Circular No. 01/2025* in order to address taxpayer concerns and provide administrative guidance. *Firstly,* it established that the PPT would be applied prospectively. *Secondly*, it introduced a significant "grandfathering" clause exempting investments made before April 1, 2017. *Thirdly,* the CBDT mandated that tax authorities conduct an objective assessment.

The PPT in Tax Arbitration and Dispute Resolution

Part *VI* of the MLI introduces mandatory binding arbitration for Mutual Agreement Procedure ("**MAP**") cases that remain unresolved after a specified period. This provision creates a more definitive pathway. Consequently, its substantive scope, interpretative boundaries and practical application will be defined authoritatively.

A key challenge in the arbitral process will be the evidentiary standards required to invoke the PPT. In *Sky High Leasing v. ACIT* [(2025) 177 Taxmann.com 579, ITAT Mumbai] where an Indian tribunal ruled that the PPT could not be applied without a specific notification under Section 90(1) of the Income Tax Act, underscoring the procedural prerequisites for its application.

It also redefines the role of Tax Residency Certificates ("**TRC**") and economic substance in arbitration. While a TRC was previously considered strong evidence of treaty eligibility, arbitrators are now likely to demand substantive proof of economic substance to counter allegations of treaty shopping.

Jurisdictional Comparisons and Treaty Override Concerns

The global application of the PPT creates significant challenges for arbitral tribunals tasked with resolving tax disputes under the MLI. Arbitrators must navigate a patchwork of interpretations as the evidentiary standards for invoking the PPT vary dramatically across jurisdictions. This inconsistency directly impacts the predictability and consistency of tax arbitration outcomes. For instance, the precedent set in Canada's *Alta Energy Luxembourg* [(2021) 3 SCR 590] suggests that arbitral tribunals may require tax authorities to provide explicit, compelling evidence that a transaction's primary motive was to contravene the specific "*object and purpose*" of a tax treaty. An arbitrator hearing a similar case would likely place a high evidentiary burden on the state, refusing to deny treaty benefits based on mere suspicion of tax avoidance.

A critical issue for arbitrators is the conflict between a treaty-level rule and domestic anti-avoidance provisions like India's GAAR. The PPT employs a broad 'one of the principal purposes' standard, while GAAR uses a narrower 'main purpose' test. An arbitral tribunal will have to decide which standard prevails, especially when they produce different outcomes. This tension is particularly acute in cases involving investments made before 2017, which are "grandfathered" under India's GAAR but may not be exempt from the PPT, depending on specific treaty negotiations.

Furthermore, arbitrators will inevitably confront arguments of treaty override. For example, a tribunal may need to determine if the PPT's mandate for economic substance can invalidate the protections offered by established administrative guidance, such as varied acceptance of a Tax Residency Certificate as sufficient proof of eligibility. In such a scenario, the tribunal's decision would set a crucial precedent on whether the MLI retroactively tightens the requirements for treaty benefits, potentially undermining the legal certainty that investors rely upon. These complex arbitrations will define the practical boundaries of the PPT, shaping the future of international tax dispute resolution.

Conclusion

The introduction of the PPT through the MLI marks a pivotal shift in international tax disputes, moving the focus from legal form to genuine economic substance. While the PPT's standard can appear subjective, the MLI's provision for mandatory binding arbitration offers a crucial forum to resolve inconsistencies across jurisdictions and reconcile conflicts with domestic General Anti-Avoidance Rules (GAAR). For this new framework to succeed arbitral tribunals must uphold the high evidentiary bar established by courts which requires tax authorities to prove that an arrangement lacks commercial rationale not just that it confers a tax benefit. As experts warn, the test will only be effective if it is applied uniformly. Therefore, the reliability of arbitration hinges on the development of practical tools like safe harbour rules and advance rulings. These instruments are essential to help arbitrators distinguish legitimate business activity from treaty shopping, ultimately providing investors with the clarity and certainty they need to operate globally.

BLOG OF THE MONTH

Interim Urgency Meets Institutional Order: The Legal Evolution of SIAC EA Enforcement in India

This article has been authored by Mr. Abdul Haseeb, a 4th-year B.A., LL.B. (Hons.) student at Dr. Ram Manohar Lohiya National Law University, Lucknow.

Singapore International Arbitration Centre **("SIAC")** was the first major Asian arbitral institution to include an emergency-arbitration **("EA")** mechanism, as it was adopted in 2010. Under the Paragraph 1 of Schedule 1 to the SIAC Rules (current 6th Edition, 2016), a party may apply to the SIAC Court for the appointment of an EA as soon as arbitration has commenced (by notice of arbitration). If the SIAC President accepts the application, an EA is appointed within one business day. The EA must set an expedited timetable (typically deciding the application within two days of appointment) and is empowered "to make orders in respect of any interim relief that an arbitrator would ordinarily be capable of granting". In practice the EA can grant freezing orders, injunctions or other urgent measures on essentially the same substantive basis as a full tribunal. Unless the parties agree otherwise, the EA cannot later sit on the final tribunal, and its powers lapse when that tribunal is constituted. Thereafter the constitutionally-appointed tribunal may confirm, modify or vacate the EA's order in the final award.

SIAC's 2025 Rules via Paragraph 25 of Schedule 1 (effective Jan. 2025) introduced a novel **Protective Preliminary Order ("PPO")** procedure. A claimant may request an EA and an *ex parte* PPO simultaneously, without notifying the respondent. If the SIAC Court so orders, the EA must rule on the PPO within 24 hours. The order is then transmitted to the respondent and the claimant must provide the case papers within 12 hours of transmission or the PPO automatically expires three days later. Afterwards the EA proceeds on notice, but the limited PPO (valid for 14 days) safeguards the claimant's interests until all parties are heard. This ex parte preliminary stage – contemplated by UNCITRAL Model Law Arts. 17B–17D and adopted in jurisdictions like Hong Kong – is intended to prevent frustration of urgent relief. In sum, SIAC's EA mechanism affords parties a rapid, arbitration-governed route to interim relief, including new *ex parte* orders under the PPO regime.

Emergency Arbitrator Awards Under Current Indian Law

Under the Arbitration and Conciliation Act, 1996, Indian courts have always had the power to grant interim relief under **Section 9**, subject to safeguards (e.g. if ordered pre-tribunal, proceedings must commence within 90 days, and once a tribunal is in place courts defer to **Section 17(1)** orders). The Act itself made no express reference to emergency-arbitration awards, however. A landmark Supreme Court ruling in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2021)* (hereinafter **"Amazon"**) finally clarified that, in an India-seated arbitration under institutional rules, an EA's interim order is to be treated as an interim order of "the arbitral tribunal" and is enforceable under Section 17. The Court held that Section 17(1) – which empowers a tribunal to grant interim measures – must be read contextually to include EA awards when parties have contractually consented to such an institution-based procedure. Accordingly, an emergency arbitrator's award (technically an "interim order") was deemed binding and enforceable by an Indian court under **Section 17(2),** just like any tribunal-issued interim order.

This pronouncement resolved prior uncertainty: neither Section 9 nor Section 17 expressly mentioned EAs, and Indian law had not previously recognised EA decisions by statute. In effect, the Court read an EA into the definition of 'arbitral tribunal' by party autonomy – echoing prior Law Commission recommendations – and held that parties cannot ignore an EA award that they agreed to be binding. The ruling also made clear that, under the unamended Act, a court order enforcing an EA award is not separately appealable (since Section 37 only contemplates appeals from the grant or refusal of interim relief). In practice, a party seeking to enforce an EA order post-*Amazon* would petition the appropriate court (typically the High Court at the arbitral seat) under Section 17(2) of the Act. Prior to *Amazon*, Indian courts (e.g. in *HSBC PI Holdings v. Avitel*) had occasionally factored in existing EA orders when granting analogous relief, but without clear statutory basis. The *Amazon* decision now provides a concrete basis: so long as the arbitral seat is in India, SIAC EA awards (including PPO orders) can be enforced by recourse to Section 17 of the Act as interim measures of the (actual or deemed) tribunal.

Section 9A of the Draft Arbitration Amendment, 2024

The proposed Arbitration & Conciliation (Amendment) Bill, 2024 formally codifies emergency arbitrators into the Act via a new **Section 9A.** As drafted, Section 9A(1) authorises 'arbitral institutions' (i.e. institutional rules like SIAC's) to provide for the appointment of an emergency arbitrator for interim measures under Section 9, prior to the constitution of the tribunal. The EA's proceedings *shall be conducted in the manner specified by the Council* (the Arbitration Council of India), and Section 9A(3) stipulates that any order passed by the EA *shall be enforced in the same manner as if it is an order of an arbitral tribunal under Section 17(2)*. In addition, Section 9A(4) provides that the final tribunal may confirm, modify or vacate the EA's order (in whole or part) when it issues its award.

Key elements of Section 9A include:

- **Institutional only**: Only an arbitral institution can appoint an EA for interim relief under Section 9A(1), meaning EA procedures will not automatically apply in purely ad hoc arbitrations. Parties must have opted into an institutional regime (like SIAC) to invoke an EA.
- **Enforcement via Section 17(2):** By design, EA orders will be treated as tribunal orders for enforcement (mirroring the Supreme Court's approach).
- **Tribunal review:** The final tribunal retains the power to reconsider any EA order under Section 9A(4) once constituted.
- **Procedure deferred:** The Act gives no detailed procedure; instead the Indian Council of Arbitration **("ICA")** must prescribe the EA rules. Critics note this leaves the regime incomplete until model regulations are adopted.

The Draft Bill thus aims to 'bridge' the gap recognized in *Amazon*, but it raises several concerns. Notably, the Section 2(2) proviso (which identifies which Part I provisions apply to foreign-seated arbitrations) includes **only** Section 9A(2) (the Council-procedure clause) but not Section 9A(3) (enforcement). This suggests that EA appointments may be governed by the ACI rules even for foreign seat arbitrations, but enforcement of such EAs may *not* be covered by Section 9A (and Section 17) when the seat is outside India. In other words, the Bill as drafted seems to provide for EAs in foreign arbitrations but does not expressly extend enforcement rights to India when the seat is abroad. Other issues include the absence of a default EA procedure (since the Council must still frame rules), and the limitation to institutional cases (contrasting with Section 9's court remedy, which any party may seek). In sum, Section 9A would formally recognise EA orders and enforcement in *India-seated arbitrations*, but leaves open whether and how EAs in non-India seats can be enforced domestically.

Implications for Enforcing SIAC EA Orders in India

Once Section 9A is enacted, the legal pathway for enforcing SIAC EA orders in India becomes clearer. For **India-seated SIAC arbitrations**, EA orders will be treated exactly like tribunal-issued interim orders under Section 17. Practically, a party would apply to the designated Court (e.g. the High Court at the seat) under Section 17(2) to make the EA order a court order. As the Supreme Court indicated in *Amazon*, the Act deems arbitration to have commenced on service of the notice, so Section 17 is available immediately. Thus, enforcement of a SIAC EA's freezing or injunctive order can proceed in the usual manner: the court will enforce it as if the (future) tribunal had issued it. Section 9A(3) would make this explicit.

Procedurally, enforcement remains in India's courts even though the EA is part of an arbitration under foreign institutional rules. The seat being in India (e.g. parties may expressly choose New Delhi) ensures that Part I fully applies. By contrast, if a SIAC arbitration were seated outside India, Section 2 of the Act would generally exclude Part I, and the Draft Bill's 9A appears not to change that except for internal EA procedures. In practice, this means an EA order from a Singapore or a London-seated SIAC case could not, at least directly, be enforced as an Indian court order under the Act. Indian courts might still recognize such foreign EA orders as persuasive evidence of need for relief, but formal enforcement would require seat-appropriate mechanisms, e.g. enforcement of the eventual final award under Part II.

Section 9A also interacts with Section 9 (court relief). The introduction of EA enforcement does not repeal or limit Section 9; parties can still seek interim measures from Indian courts before or during arbitration. In some cases, a claimant might use both: for example, an EA order could be sought *ex parte* (under SIAC PPO) to block urgent action, while a Section 9 application could run in parallel. Once the tribunal is in place, Section 9(3) bars further court applications unless tribunal relief is ineffective. The EA mechanism, supported by Section 9A, reinforces the tribunal's primacy: it encourages parties to resolve interim disputes through the agreed institutional framework rather than burden courts. Finally, under Section 9A the EA's order remains 'provisional' and may be overturned by the tribunal later, so parties enforcing it must still proceed to arbitration (the EA's role is to fill the interim gap).

Comparative Perspectives

Several jurisdictions have anticipated or enacted rules similar to India's proposed regime. **Singapore**, for example, amended its Arbitration Act in 2012 by expanding the definition of 'arbitral tribunal' to include an emergency arbitrator. This means EA orders, under SIAC or other Singaporean institutional rules, are expressly binding and enforceable as if made by a tribunal. Hong Kong took a parallel step by adding a new Part 3A to its Ordinance, allowing recognition and enforcement of 'any emergency relief' granted under relevant rules. In the **UK**, the Arbitration Act 2025 similarly introduces a standalone regime: Sections 41A–42 explicitly support the enforcement of EA orders in arbitrations (when parties have agreed to EA procedures). These reforms align with UNCITRAL's Model Law innovations and the view that party autonomy should encompass emergency relief. In contrast, under current Indian law (pre-9A) EA enforcement was addressed only by judicial interpretation ("Amazon"), whereas under Section 9A it would be statutorily endorsed (at least for India-seated cases).

Therefore, the Draft Bill's Section 9A brings India into line with a global trend: institutional EA decisions, including SIAC PPOs, will have statutory force in India. If enacted carefully, Section 9A would give Indian parties the confidence that a SIAC EA order can be enforced in the same way as an interim order by any Indian tribunal. Concerns remain about the scope (especially for foreign seats) and procedural details. Nonetheless, by codifying *Amazon v Future* and introducing no-appeal EA orders, the Bill aims to make India's arbitration regime more responsive to urgent interim needs, while echoing reforms in Singapore and the UK.

DOMESTIC CASES

The court at the designated seat of arbitration holds exclusive supervisory jurisdiction regardless of where the cause of action arose: Delhi High Court *[SNS Engineering Pvt. Ltd. vs. M/S Hariom Projects Pvt. Ltd. and Anr., 2025: DHC: 7868]*

The Petitioner filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the '**Act**') seeking the appointment of an arbitrator to adjudicate disputes arising from a work order dated 21.10.2021. The Respondents challenged the territorial jurisdiction of the Delhi High Court (the '**Cour**t') contended that the arbitration must be governed by the specific terms of the contract, which designated a different forum for legal proceedings. The Petitioner argued that the court has jurisdiction because the entire cause of action accrued in New Delhi relying on Section 20 of the Code of Civil Procedure (the '**CPC**'). However, the Respondents pointed to Clause 14 of the Acceptance Letter, which stated that all matters would be "subject to the jurisdiction of the court in Ahmedabad only".

The Court held that when parties mutually agree to vest exclusive jurisdiction in a particular court, that location is deemed the 'seat' of arbitration, even if the word "seat" is not explicitly used in the clause. Relying on *Indus Mobile Distribution Pvt. Ltd. v. Data Wind innovations Pvt. Ltd.*, [(2017) 7 SCC 678]., the Court emphasized that in arbitration law, the designation of a seat overrides the geographical location of the cause of action. The Court clarified that the concept of "cause of action" under the CPC is irrelevant once a seat is determined, as the chosen seat provides a neutral venue with exclusive supervisory control. Consequently, the Court dismissed the petition for lack of territorial jurisdiction, ruling that only the courts in Ahmedabad are competent to appoint an arbitrator.

Writ Petition Against Arbitral Tribunal's Jurisdictional Ruling is Not Maintainable Except in Patent Lack of Jurisdiction: Bombay High Court *[Shivranjan Towers Sahakari Griha Rachana Sanstha Maryadit vs. Bhujbal Constructions & Ors., 2025: BHC-AS:37175]*

The Petitioner obtained a deemed conveyance for land under MOFA from the Competent Authority after the promoter failed to convey title. The Respondent initiated arbitration, claiming the society was entitled to less land. The sole arbitrator dismissed the Petitioner's application under Section 16 of the Arbitration and Conciliation Act 1996 (the '**Act'**), challenging jurisdiction. This was challenged by the Petitioner before the Bombay High Court (the '**Court**') under Article 226 of the Constitution, contending that the arbitrator's order was passed without jurisdiction as no arbitration agreement existed with the society. The Respondent argued that the society's rights flowed from the individual Agreements for Sale containing an arbitration clause and that a writ was not maintainable at this stage.

The Court dismissed the writ petition by relying on *Deep Industries Ltd. v. ONGC [(2020) 15 SCC 706*] and *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [[2021] SCC OnLine SC 8]* that a writ petition against an order under Section 16 of the Act is maintainable only in exceptional circumstances of "*patent lack of inherent jurisdiction*" or where a party is left remedy-less. It was observed that the Petitioner, though a non-signatory, derived its rights from the underlying agreements for Sale and could not disclaim the arbitration clause while enforcing those rights.

Financial distress alone is insufficient grounds to grant pre-arbitral interim relief for securing unadjudicated claims under Section 9: Delhi High Court *[Rescom Mineral Trading FZE vs. Rashtriya Ispat Nigam Limited, 2025: DHC: 7467]*

The Petitioner supplied hard coking coal to Respondent Rashtriya under a long-term purchase agreement. The Respondent withheld approximately USD 17.1 million, citing quality issues and high ash content. The Petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (the '**Act'**) before the Delhi High Court (the '**Court**') seeking to secure USD 16.5 million through a cash deposit or bank guarantee. The Petitioner argued that the Respondent's annual reports showed massive losses, making interim security necessary. The Respondent countered that the debt was not admitted but was subject to a bona fide dispute regarding price rebates for quality breaches. They further argued that, per the principles of Order XXXVIII Rule 5 of the Code of Civil Procedure (the **'CPC**'), the Petitioner failed to prove any intent to dissipate assets to obstruct the execution of a future award.

The Court dismissed the petition, ruling that the power to grant interim relief under Section 9 of the Act is guided by the principles of Order XXXVIII Rule 5 of the CPC, requiring proof of an active attempt to alienate assets. The Court held that the Petitioner's claims were premature and required adjudication regarding coal quality and rebate calculations. Crucially, the Court clarified that the mere financial distress of a party is not a valid ground to secure an unadjudicated claim. The Court denied the relief, granting liberty to approach the Arbitral Tribunal under Section 17 of the Act once constituted.

Arbitral awards can be interfered with where the arbitral tribunal rewrites contractual terms, infers waiver or estoppel contrary to express "No Waiver/No Oral Modification" clauses, or exceeds its jurisdiction: Supreme Court *[SEPCO Electric Power Construction Corpn. v. GMR Kamalanga Energy Ltd., 2025 SCC OnLine SC 2088]*

In the present case, Petitioner entered into multiple EPC agreements with Respondent for the construction of thermal power units in Odisha. Disputes arose relating to project delays and liquidated damages. SEPCO invoked arbitration, and the arbitral tribunal passed an award largely in its favour, holding that GMR had waived contractual notice requirements and was estopped from insisting upon them, despite the presence of express "No Waiver" and "No Oral Modification" clauses in the agreements. GMR challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 (the **'Act**') but the Single Judge of the Orissa High Court (the '**HC**') dismissed the challenge. Thereafter, GMR appealed under Section 37, and the Division Bench of the HC set aside both the Section 34 judgment and the arbitral award, holding that the tribunal had exceeded its jurisdiction. The petitioner then approached the Supreme Court (the **'Court**') under Article 136 of the Constitution.

The Court dismissed the appeal and upheld the HC's decision, reiterating that the scope of judicial interference under Sections 34 and 37 is narrow, with appellate scrutiny under Section 37 being even more circumscribed. The Court clarified that waiver under Section 63 of the Indian Contract Act, 1872 requires a clear and intentional relinquishment of a known right, and estoppel cannot be inferred merely from conduct or correspondence when contracts expressly prohibit waiver or oral modification. It further held that arbitral tribunals are bound by the terms and cannot rewrite or modify contractual provisions on equitable considerations, as doing so amounts to a jurisdictional error and violates Section 28(3) of the Act. Consequently, the setting aside of the arbitral award was affirmed, reinforcing the principle that party autonomy and contractual discipline are central to arbitration jurisprudence.

Mere fact that a contract containing an arbitration clause was not signed by one party does not invalidate the agreement when the parties conduct clearly shows their acceptance: Supreme Court *[Glencore International AG vs. M/s. Shree Ganesh Metals and another, 2025 INSC 1036]*

The petitioner and the respondent entered into four contracts to purchase zinc metal from the appellant. The parties entered into a fifth contract for 6,000 metric tons via emails, incorporating prior terms with minor modifications. However, the respondent has not signed the contract but accepted 2,000 tons, paid via 8 invoices referencing the contract, and issued Standby Letters of Credit explicitly citing the contract. Consequently, a dispute arose between the parties due to failure to make payment by the respondent. Respondent instituted a civil suit in the Delhi high court, then the appellant invoked Section 45 of the Arbitration and Conciliation Act, 1996 (the '**Act**') seeking referral to arbitration. The single judge and the division bench of the Delhi high court rejected the I.A. and concluded that no contract came into existence as it was only signed by the appellant. The appellant filed an appeal in the apex court (the '**Court**').

The apex court observed that the contract was duly accepted and acted upon by the respondent. An arbitration agreement can be inferred from an exchange of letters, including communication through electronic means, which provide a record of the agreement. The Court held that an arbitration agreement can be inferred from an exchange of communications and the parties' conduct, and that signature is not a formal requirement where there is a written record and clear consensus ad idem. Relying on '*Govind Rubber Limited vs. Louis Dreyfus Commodities Asia Private Limited' [(2015) 13 SCC 477]*, the court observed that a commercial contract having an arbitration clause has to be interpreted in such a way which gives effect to the agreement.

Section 9 gives courts wide powers to grant interim measures in exceptional cases only: Delhi High Court *[M/s ND Info Systems Pvt. Ltd vs. Rehabilitation Council of India, 2025 DHC 8721]*

The respondent engaged with the petitioner to conduct the All India Online Aptitude Test ('**AIOAT**') and related online process for the admission to diploma and certificate courses for the person with disabilities. They entered into a service agreement in 2022 and it was extended on the same terms and conditions for the 2025-26 session. Dispute arose with unilateral circular bypassing the role of the petitioner, thereby, the petitioner filed a petition under section 9 of the Arbitration and Conciliation Act, 1996 (the '**Act**') seeking an interim stay on the RCI's circular.

The Delhi high court (the '**Court**') observed and reaffirmed by relying on *'Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.' [(2007) 7 SCC 125]* & *'NHAI v. HK Toll Road (P) Ltd.' [2025 SCC OnLine Del 2376*], that section 9 gives wide powers to the court to grant interim relief, mandatory injunctions, however, the exercise of such discretion is conditioned upon clear, compelling, and exceptional circumstances, guided by the principles of balance of convenience and the requirement of what is "just and convenient." The court found that the petitioner had undertaken all agreed steps as per their agreement except the publication of results which RCI withheld without any explanation. The court observed that nearly 48,000 specially-abled candidates will face the risk of academic loss if the circular is stayed. It will disrupt the admission process as thousands had already been allotted seats under the counselling schedule. The petitioner losses and reputational damage are quantifiable and compensable in monetary terms and it may pursue remedies through arbitration.

Every disputed fact/claim made by a party and rebutted by the opposing party is an issue in itself which needs to be framed for adjudication: Delhi High Court *[Indraprastha Power Generation Co. Ltd. vs. E.M. Services(I) Pvt. Ltd., 2025 DHC 6836]*

The petitioner engaged in a contract with the respondent for the supply of replacement of critical spares. Later on, a dispute arose between the parties because of a delay of 33 days, causing alleged losses of over Rs.11.88 crore to the petitioner. The respondent initiated the arbitration proceedings for claiming its dues and the petitioner counterclaimed for damages caused due to delay. The Sole Arbitrator conducted the proceedings but refused to frame any issues regarding the petitioner's counter-claim as no specific prayer had been made. Consequently, an award was made in favor of the respondent which was later challenged by the petitioner before the Delhi High Court (the '**Court**') under section 34 of the Arbitration and Conciliation Act, 1996 (the '**Act**').

The court reiterated that if an award needs to be set aside, it must fall under the grounds mentioned under section 34 of the Act. The court also held that once the reasons for a counter claim have been made in the reply, it does not matter if there is no specific prayer in the prayer clause. Relying on *Union of India v. Tata Teleservices (Maharashtra) Ltd., [(2007) 7 SCC 517]*, observed that the learned Sole Arbitrator ought to have given an opportunity to the petitioner to rectify any defects before rejecting to frame an issue. The court recorded the above reasoning and held that the arbitral award is in conflict with the fundamental policy of Indian law as the petitioner was deprived of the adjudication of its claim and set aside the award.

Non-signatories to an arbitration agreement cannot be allowed to participate in arbitral proceedings as it violates the confidentiality mandate: Supreme Court *[Kamal Gupta vs. L.R. Builders (P) Ltd., 2025 SCC OnLine SC 1691]*

An oral family settlement deed was entered by Pawan Gupta and Kamal Gupta, which was reduced to a MoU/Family Settlement Deed, to which Rahul Gupta, son of Kamal Gupta did not sign the MoU. Disputes arose, leading Pawan Gupta to file a petition under Section 11(6) and Section 9 of the Arbitration and Conciliation Act (the '**Act**') for the appointment of a sole arbitrator and interim measures under the MoU. Rahul filed an intervention application, which was dismissed by the Delhi High Court (the '**HC**'). Despite this, Rahul Gupta again sought permission to observe the arbitral proceedings by filing fresh interim applications. The single judge passed an interim direction allowing Rahul Gupta and other non-signatories to be present during the arbitration proceedings, which was made absolute by an order dated November 12, 2024. Aggrieved by these directions, Pawan Gupta and Kamal Gupta approached the Supreme Court (the '**Court**') challenging the orders.

The Court reasoned that Section 35 binds only parties and persons claiming under them to the arbitration agreement. A non-signatory is a stranger to arbitration, since they do not fall under the definition of "party" under Section 2(h) of the Act. Allowing such presence would be "charting a course unknown to law" and breach Section 42A, which mandates the arbitrator and the parties to maintain confidentiality of the arbitration proceedings. By entertaining interim applications after appointment, the HC acted without jurisdiction, making it functus officio. The Court reiterated that judicial intervention is limited to situations expressly provided in Part I of the Act, and Section 151 of CPC cannot be invoked to expand that scope. Consequently, the appeals were allowed, and the Court reinstated the original order appointing the sole arbitrator, declared the subsequent intervention orders void, and imposed costs of ₹3,00,000 on the respondents.

An execution court cannot defer execution proceedings solely because an appeal is pending, unless there is an interim order operating against the award: Supreme Court **[***Chakardhari Sureka vs. Prem Lata Sureka through SPA & Ors., Civil Appeal No. 11840/2025 @SLP (C) No. 20480 of 2025]*

The appellant sought execution of an arbitral award. The respondent's objections under Section 34 of the Arbitration and Conciliation Act, 1996 (the '**Act**') had been rejected, but an appeal under Section 37 was pending. The High Court of Delhi (the '**HC**'), by an order, adjourned the execution proceedings on the ground that an appeal was pending. The appellant challenged this adjournment before the Supreme Court (the '**Court**'). The parties are in mutual acknowledgement that there is no interim order operating against the award. They were in issue as regards the executability of the award.

The Court concluded that the question of the award's executability can be gone into by the HC in accordance with the law. Importantly, the Court held that it would not be proper for the HC to defer consideration of the execution application and the objections thereto only because an appeal is pending under Section 37 when there is no interim order operating against the award against which objection under Section 34 of the Act stands rejected. The appeal was disposed of with the direction that, subject to any interim order in the pending Section 37 appeal, the HC shall proceed with the execution in accordance with law. The Court also affirmed that any objections regarding the executability of the award must be heard and decided after giving both parties an opportunity of hearing.

Court cannot rewrite or enlarge an arbitral award by introducing compound or additional post-award interest at the execution stage: Supreme Court *[HLV Ltd. vs. PBSAMP Projects (P) Ltd., 2025 SCC OnLine SC 2062]*

The dispute arose from a Memorandum of Understanding (the '**MoU**') dated 09 April 2014 for the sale of land. Upon termination of the MoU, the dispute was referred to arbitration. The arbitral tribunal directed the appellant to refund ₹15.5 crores with simple interest at 21% per annum. During execution, the respondent, however, claimed additional compound interest, arguing that the pre-award interest should be capitalised into the "sum" under Section 31(7)(a) of Arbitration and Conciliation Act, 1996 (the '**Act**') on which post-award interest at 18% under Section 31(7)(b) was payable. The Principal Special Court, Hyderabad, rejected this claim, holding the payment was in full satisfaction. The High Court, in revision, set aside this order and remanded the matter for fresh consideration. The appellant appealed to the Supreme Court (the '**Court**').

The Court held that the arbitral tribunal in its award dated 08.09.2019 has faithfully complied with the MoU agreed between the parties. Thus, the arbitral tribunal exercised its discretion within the overall framework of Section 31(7) of the Act aligning with the legislative intent of the award, rather than the statutory default. Importantly, the court held that the discretion of the arbitral tribunal to award interest under Section 31(7)(a) of the Act is subservient to the agreement between the parties. Relying on *Morgan Securities and Credits Pvt. Ltd. vs. Videocon Industries Ltd.* [(2023) 1 SCC 602] and *Delhi Airport Metro Express Pvt. Ltd. vs. Delhi Metro Rail Corporation.* [(2022) 9 SCC 286], established that when the award specifies the method of paying future interest, post-award interest has no application. Here, the award explicitly provided interest until repayment, guided by the parties' agreement.

Arbitral tribunals have the discretion to extend timelines for filing pleadings in the interest of justice: Delhi High Court *[Aneja Constructions (India) Ltd. vs. Doosan Power Systems India Pvt. Ltd. & Anr., 2025 SCC OnLine Del 572]*

In the present case, the claimant challenged an order of the Arbitral Tribunal (the '**Tribunal**') refusing to close the respondent's right to file its Statement of Defence (the '**SoD**') and Counter-Claim. The arbitration was conducted under the Rules of Domestic Commercial Arbitration of the Indian Council of Arbitration (the '**Rules**'), 2024. While the respondent was initially granted a 30-day period, followed by another 30 days, the SoD was ultimately filed beyond this period. The claimant contended that Rule 18(a) of the Rules capped the maximum extension at thirty days and that the tribunal lacked jurisdiction to condone any delay beyond this. Aggrieved by the tribunal's refusal to strike the belated pleadings from record, the claimant invoked the supervisory jurisdiction of the Delhi High Court (the '**Court**') under Article 227 of the Constitution of India.

The Court dismissed the petition, holding that interference in arbitration must be exercised only in exceptional circumstances involving perversity or bad faith. The Court observed that procedural timelines under the ICA Rules are directory and not statutory in nature, and that arbitral tribunals retain the discretion to extend time for filing pleadings where sufficient cause is shown. Relying on settled principles that procedure is the handmaiden of justice, the Court held that arbitral tribunals cannot be rendered powerless by rigid procedural interpretations. Finding no perversity or jurisdictional error in the tribunal's order, the Court refused to interfere and upheld the tribunal's discretion to condone delay in the interest of complete justice.

Courts should not grant interim relief that effectively restrains statutory corporate governance powers or amounts to final relief: Delhi High Court *[Drharors Aesthetics (P) Ltd. vs. Debulal Banerjee, 2025 SCC OnLine Del 5379]*

In the present case, Petitioner entered into an Employment and Shareholders' Agreements with the respondent. Disputes arose, following which the appellant company issued short-notice communications convening Board Meetings and an Extraordinary General Meeting to consider the respondent's removal from Directorship. Alleging violation of Sections 169 and 173(3) of the Companies Act, 2013 denial of a reasonable opportunity of hearing, the respondent approached the Commercial Court under Section 9 of the Arbitration and Conciliation Act, 1996 (the '**Act**'). The District Judge granted interim relief restraining the company from acting upon the agenda. Aggrieved by this order, the appellant preferred appeals under Section 37 of the Act before the Delhi High Court (the '**Court**').

The Court allowed the appeals and set aside the interim injunction, holding that the Commercial Court had exceeded its jurisdiction in granting relief which effectively paralysed the company's internal governance. The Court held that Section 9 is intended to preserve the subject matter of arbitration and cannot be used to grant final or determinative relief, particularly where statutory powers are involved. It was observed that while Section 169 mandates a reasonable opportunity of being heard prior to removal of a Director, Section 173(3) expressly permits Board Meetings to be convened at shorter notice for urgent business. The Court further held that disputes regarding alleged procedural irregularities and such issues must be addressed either in the meeting itself or through remedies provided under company law or arbitration. Consequently, the interim restraint was lifted, reaffirming that judicial intervention must not obstruct lawful corporate decision-making.

INTERNATIONAL CASES

Introduction of a specialised arbitral framework for restructuring and insolvency disputes in international arbitration: *[SIAC Press Release, 26 August 2025]*

Recently, the Singapore International Arbitration Centre (SIAC) announced the launch of two significant initiatives: the SIAC Restructuring and Insolvency Arbitration Protocol (SIAC RIA Protocol) and the Institute of Ethics in International Arbitration (IEIA). The SIAC RIA Protocol, effective from 26 August 2025, is the first institution-specific arbitral framework designed exclusively for restructuring and insolvency-related disputes. The Protocol applies through party agreement and modifies the SIAC Rules 2025 to suit the urgency and complexity inherent in insolvency proceedings. It was formulated after extensive consultation with domestic and international judges, insolvency professionals, arbitration practitioners, and following a public consultation process conducted between December 2024 and January 2025.

The SIAC RIA Protocol establishes truncated timelines, a default appointment of a sole arbitrator, early case management focusing on joinder, jurisdictional challenges, mediation, and coordination with courts or insolvency authorities. It also provides for Singapore as the default seat and governing law, subject to party autonomy. Complementing this framework, SIAC introduced a Specialist Panel of Arbitrators for Restructuring and Insolvency Disputes, a detailed Guidance Note for parties and tribunals, and model arbitration clauses. Alongside procedural reform, SIAC also announced the establishment of the Institute of Ethics in International Arbitration to promote fairness, integrity, and ethical best practices through research, training, and policy development.

Ratification of NYC & BIT arbitration constitutes explicit waiver of state immunity: Supreme Court of Canada *[Republic of India vs. CCDM Holdings, LLC, SCC Case No. 41660]*

The dispute arose from the 2011 annulment of a satellite spectrum lease agreement between Devas Multimedia and Antrix Corporation. Following the cancellation, the Respondent was found liable by a PCA tribunal for breaching Fair & Equitable Treatment obligations under the India-Mauritius Bilateral Investment Treaty ('**BIT**'). The tribunal awarded the Applicants approximately $111 million. While the Respondent contested enforcement citing a domestic liquidation order based on fraud, the Applicants sought to seize Indian state assets in Canada and the United States to satisfy the debt.

The Supreme Court of Canada (the '**Court**') dismissed the Respondent's leave to appeal, affirming it had waived jurisdictional immunity under Section 4(2)(a) of the State Immunity Act. The Court held that India's ratification of the New York Convention ('**NYC**') and its participation in BIT arbitration without reserving immunity evidenced an "unequivocal agreement" to foreign court jurisdiction. Consequently, the Court reinstated a $37.5 million seizure of funds held by the IATA for the Airports Authority of India, designating it an "alter ego" of the state. The ruling clarifies that treaty obligations and active participation in international arbitration serve as a binding waiver of sovereign immunity in Canadian courts. The decision reinforces the finality of arbitral awards against sovereign states, limiting the use of domestic fraud claims to obstruct international enforcement proceedings.

Chile and WOM Resolve 5G Dispute Through Procedural Party Autonomy Embodied in ICSID Consent Award: International Centre for Settlement of Investment Disputes *[NC Telecom AS, NC Telecom II AS, WOM Mobile S.A., and WOM S.A. vs. Republic of Chile, ICSID Case No. ARB/24/30]*

The dispute arose when the Claimant won a public tender for 5G network deployment but failed to meet deployment schedules due to alleged obstacles, including permit delays, pandemic-related supply issues, access to state lands, and electricity problems. Respondent imposed sanctions and sought to collect performance guarantees totalling around USD 50 million for non-compliance as of October 2023, prompting WOM to initiate ICSID arbitration under the Norway-Chile BIT claiming unfair treatment and arbitrary rejection of extension requests.

A conciliation agreement resolving the ICSID case (ARB/24/30) and national proceedings, under which Claimant will pay 950,000 UF as compensation for delays, plus collect 352,900 UF in guarantees, and a one-time USD 500,000 for ICSID legal costs and committed to a revised schedule including completing 100% mandatory locations by March 5, 2026, 90% of remaining technical aspects by September 30, 2026 and 10% by December 31, 2026, with new guarantees enforceable by concession revocation and spectrum loss for non-compliance. The company must withdraw its ICSID claim and Chilean court actions upon execution. The agreement establishes the appropriate sanctions for non-compliance with the commitments made to the State and to the public, ensuring full implementation of the 5G project, especially for underserved communities, while protecting state interests with compensation exceeding guarantee bonds.

SAMVAAD

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