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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. Rahul Kumar Sharma, Advocate at Sarvada Legal.

Mr. Rahul Kumar Sharma analyses the shift towards electronic service of arbitral notices, offering a comparative study of Indian and Hong Kong jurisprudence. He highlights how efficiency-driven deemed receipt in India contrasts with Hong Kong's emphasis on fairness and proper notice, advocating a balanced hybrid approach to safeguard due process in digital arbitration.

GUEST POST

The Digital Service Paradigm: A Comparative Jurisprudential Analysis of Electronic Notice in Arbitration in India and Hong Kong

Introduction

The concept of service of process is not merely a bureaucratic procedural requirement, but it is the foundational bedrock upon which the edifice of natural justice rests. In the adversarial legal systems inherited by both India and Hong Kong, the maxim *audi alteram partem* 'let the other side be heard' is inviolable. However, the practical application of this maxim relies on a simple premise: for a party to be heard, they must first be notified. Historically, legal systems have demanded a high threshold of certainty regarding this notification. The physical act served two critical purposes: (i) it ensured actual knowledge, (ii) it created an incontrovertible record of the court's jurisdiction being established over the person.

In the contemporary commercial landscape, the legal insistence on physical service creates a "functional dissonance". Consequently, jurisprudence in major arbitration hubs is undergoing a pragmatic turn. Courts are increasingly prioritising the functional purpose of notice over the formal ritual of delivery. This shift, however, is not without its perils. The risk of "due process paranoia" increases. The central question is whether a blue tick on WhatsApp carries the same evidentiary weight as a bailiff's affidavit.

The Indian Legislative

Unlike the Code of Civil Procedure, 1908 **("CPC")**, which governs litigation and historically required strict adherence to physical service modes, the Arbitration and Conciliation Act, 1996 (the **"Act"**) was drafted with the UNCITRAL Model Law in mind, embracing a more modern approach. Section 3 of the Act is the cornerstone of service in Indian arbitration. It creates a legal fiction of 'deemed receipt'. Specifically, Subsection (1)(b) states that if a party cannot be found after reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered letter or by *"any other means which provides a record of the sending"*.

The phrase *"any other means which provides a record of the sending"* is the statutory hook for electronic service. It significantly shifts the burden of proof. The claimant need not prove that the respondent *read* the email; they must only prove that the email was *sent* to the correct address and that the system recorded this sending. The validity of electronic service is further bolstered by the Information Technology Act, 2000 (**"IT Act"**). Section 4 of the IT Act provides that where any law requires information to be in writing, this requirement is satisfied if the information is available in an electronic form that is accessible for subsequent reference. Crucially, Section 13 establishes that receipt occurs when the electronic record enters a computer resource designated by the addressee.

By: Rahul Kumar Sharma

Rahul Kumar Sharma is a disputes lawyer at Sarvada Legal, with extensive experience in arbitration, tax, and general commercial disputes. He has advised and represented clients before leading institutional arbitral tribunals such as SIAC, ICC, HKIAC, and DIAC, as well as ad-hoc tribunals. His practice spans tax and classification disputes, data protection, environmental law, BIS regulations, company law issues including oppression and mismanagement, and other regulatory frameworks. Rahul is actively involved in drafting and vetting complex contracts, including FIDIC-based, infrastructure, construction, supply-chain, and privacy-related agreements. He regularly writes on arbitration, tax, and contract law, and is a member of CIArb.

When Section 3 of the Act is read in conjunction with Sections 4 and 13 of the IT Act, a robust legal basis emerges: an email or WhatsApp message constitutes a '*written communication*', and the server log or *'blue tick*' constitutes the record of sending required to trigger a deemed receipt.

In M/S Lease Plan India Private Limited v. M/S Rudraksh Pharma Distributor & Ors [ARB.P. 1273/2023], the dispute originated from a Lease Agreement dated March 21, 2018, regarding the lease of vehicles. The Petitioner invoked arbitration via a legal notice; however, attempts to serve the Section 11 petition for the appointment of an arbitrator via registered post and speed post were unsuccessful. The tracking report returned with the remark 'no such person is available at the address'. Faced with the inability to effect physical service, and with the Respondent failing to appear, the Petitioner sought to rely on service effected via Email and WhatsApp.

First, the email addresses and mobile numbers used for service were not arbitrarily found online, but were mentioned in the Agreement itself; the parties had effectively designated them as valid channels for communication. Second, the Petitioner filed a specific 'Affidavit of Service' affirming that the petition was served via Email and WhatsApp. The court accepted the electronic service as 'duly effected'. The court observed that since service had been duly effected by email and WhatsApp, it was not necessary to await the appearance of the respondents any further.
This judgment does not exist in a vacuum; it rests on the foundation of earlier rulings that have grappled with the evidentiary weight of instant messaging. The decision of the Bombay High Court in SBI Cards & Payment Services Pvt. Ltd. v. Rohidas Jadhav [2018 SCC OnLine Bom 1262]. Justice G.S. Patel held that the icon indicators clearly show that not only was the message delivered, but that it was also opened. Two blue ticks indicate actual knowledge, satisfying a high evidentiary threshold.

The Hong Kong Paradigm

Hong Kong, as a Model Law jurisdiction, governs arbitration through the Arbitration Ordinance (Cap. 609). The relevant provision for contesting service is Section 86(1)(c), which provides that enforcement of an arbitral award may be refused if the party against whom it is invoked proves that he was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case. The key term here is 'proper notice'. Unlike the 'deemed receipt' of Section 3 of the Act, 'proper notice' in Hong Kong jurisprudence is a concept heavily laden with principles of fairness and natural justice.

The decision in CCC v. AAC [2025] HKCFI 2987 offers a sophisticated counter-narrative to the Indian efficiency-driven approach, highlighting the friction between automated Online Dispute Resolution ("ODR") platforms and the court's supervisory role. The case involved a Money Lenders Ordinance dispute where the Applicant and Respondent entered into a loan agreement. The Supplemental Loan Agreements contained a dispute resolution clause giving the Lender the option to arbitrate under the HKAS Online Arbitration Rules. The Notice of Arbitration was sent via SMS on October 16, 2024; the arbitrator was appointed on October 23, and the Final Award was rendered on November 4, in a total duration of just 19 days.

The core of the challenge was the Respondent's assertion that he did not receive the initial SMS on October 16, which contained the login credentials to access the Notice of Arbitration. He admitted receiving later SMS messages but claimed he ignored them as 'spam'. This scenario represents the difficulties of digital service: a single missed electronic signal leading to a default award in under three weeks. Deputy High Court Judge Sir William Blair upheld the award, but his reasoning reflects a deep judicial unease. Technically, the court accepted the SMS service because the parties had agreed to the HKAS Rules, which expressly permit electronic service, and the HKAS software developer provided evidence that the SMS was 'delivered'. The court used a logical inference: since the Respondent admitted receiving the later SMS messages sent to the same number by the same sender, it was 'safe to assume' he received the first one.

However, Judge Blair noted unsatisfactory aspects of the case and cited Gary Born's commentary that tribunals should ensure at every step that the defaulting party receives notice. He suggested that, in online arbitrations, good practice suggests that the arbitrator should check whether the notice of arbitration has actually been received and understood as such by the non-participating respondent. This implies that merely relying on a sent status in a server log might not be enough in future cases to survive a fairness challenge, especially if there is no other evidence, like subsequent conduct, to infer actual knowledge.

Conclusion

A *'Hybrid'* notification strategy emerges as the most reliable approach, balancing modern digital tools with traditional safeguards. It should create a balance between modern digital communication and traditional postal methods. The idea is to ensure that arbitral notices are not only efficient but also legally defensible. Email should serve as the primary mode of communication, with delivery and read receipts enabled to establish proof of service. This should be followed by a WhatsApp or SMS message that explicitly references the contract number, thereby reinforcing authenticity and preventing disputes over fraudulent or misdirected notices. The arbitration clause itself must be drafted with precision, explicitly recognising email and WhatsApp/SMS service as valid and sufficient. This eliminates ambiguity and ensures that parties cannot later challenge the legitimacy of the digital service. By embedding the contract number in every communication, the notice gains evidentiary weight, making it harder for the recipient to deny receipt or question its validity.

A crucial element of this framework is the *'Duty to Update Clause'*. This clause places a continuing obligation on each party to promptly inform the other of any changes to their designated email address, WhatsApp number, or physical address. It prevents deliberate evasion and ensures that service cannot be invalidated due to outdated contact details. The explicit recognition of digital service in the arbitration clause, coupled with the Duty to Update Clause, ensures that notices remain enforceable even as communication details evolve. This approach balances efficiency and compliance, aligning modern practices with traditional safeguards.

EDITOR BLOG

THE EVOLUTION OF ARBITRABILITY: DISMANTLING THE "SIGNATURE ON BLANK PAPERS" PLEA

Amartya Patil & Priyanshu Lucky (Senior Associate Editors)

The procedural efficiency of India's Alternative Dispute Resolution ('ADR') framework has long been haunted by a persistent delaying tactic, the blank paper plea. This strategic allegation, where it is posited that a party's signature was obtained on an empty document subsequently converted into an unauthorised contract, has historically served as a tool for obstruction. By categorising such disputes as serious fraud reserved for the exclusive jurisdiction of civil courts, litigants were able to stall arbitration for years. This tactic relied on the traditional discomfort of the judiciary in allowing private tribunals to adjudicate matters involving criminal overtones or complex deceit. However, a definitive judicial pivot toward a pro-arbitration regime has recently culminated in a shift that prioritises the tribunal's discretion over visceral allegations of fraud. This evolution represents not just a change in judicial temperament, but a fundamental re-reading of the statutory mandate to minimise interference in commercial disputes.

The jurisprudential journey to this modern standard reflects the growing maturity of the Arbitration and Conciliation Act, 1996 (the '**Act**'). Central to this evolution is the rigorous application of Section 8 of the Act, which mandates that a judicial authority refer parties to arbitration unless it finds that prima facie no valid agreement exists. The history of this section is a chronicle of the shifting balance of power between the court and the arbitral tribunal.

In the early era of exclusion, spearheaded by *N. Radhakrishnan vs. Maestro Engineers [2010]*, the Supreme Court fostered a restrictive environment by shielding serious fraud from private tribunals. The court then believed that complex allegations of malpractice and falsification of accounts required the rigorous evidentiary standards of a public trial. This created a significant loophole, as any party wishing to avoid their contractual obligations to arbitration could simply allege fraud to oust the arbitrator's jurisdiction.

This exception was systematically dismantled following the 2015 Amendment to Section 8, which sought to minimise judicial intervention. The legislature replaced the wider discretionary powers of the court with a narrower, mandatory referral process. The procedural pivot in *Avitel Post Studioz Ltd. vs. HSBC PI Holdings (Mauritius) Ltd. [2021] and Vidya Drolia vs. Durga Trading Corp. [2021]* further clarified this by establishing a four-fold test for non-arbitrability. These rulings established that fraud is almost always arbitrable unless it targets the arbitration clause itself or carries significant public domain implications, such as bribery of state officials or large-scale financial scams affecting the public at large. This evolution reached its contemporary peak in the 2025 Bombay High Court ruling of *Om Swayambhu Siddhivinayak vs. Harischandra Dinkar Gaikwad*, which applied these principles to the specific "blank paper" plea, classifying it as an action in personam that does not oust an arbitrator's jurisdiction.

At its core, the blank paper plea represents a sophisticated attempt to bypass the Doctrine of Separability codified in Section 16 of the Act. The argument proposes a logical paradox that if the main contract is a fabrication, because the paper was signed blank, the embedded arbitration clause must be equally non-existent. However, the Om Swayambhu ruling clarifies that under Section 8, the court's role is not to adjudicate the merits of the fraud claim but to perform a summary check. If a signed document containing a clause exists, the court is statutorily obliged to refer the parties to arbitration, leaving the complex evidentiary inquiry into the state of the paper, whether it was signed blank or with full knowledge, to the arbitrator.

Justice Somasekhar Sundaresan's reasoning in *Om Swayambhu* highlights several vital nuances. First, the court addressed the issue of supplemental agreements. Often, a primary contract contains an arbitration clause, but a subsequent document does not. Parties often claim that disputes arising from the latter must be tried in court. The Bombay High Court rejected this, noting that a supplemental agreement is often an adjectival element of the principal contract. If it records the discharge of consideration under the original agreement, it remains under the expansive umbrella of the original dispute resolution clause. To hold otherwise would allow parties to fragment a single commercial relationship into multiple litigations, defeating the very purpose of ADR.

Second, the Court deepened the analysis of Section 31 of the Specific Relief Act, 1963 under which litigants frequently argue that only a civil court can cancel a fraudulent instrument. The High Court reaffirmed that such relief is strictly an action in personam. Because the adjudicatory effect is limited to the parties of the instrument and does not constitute a judgment in rem, an arbitrator possesses the same authority as a civil court to grant such declaratory relief. This is a crucial distinction as it prevents the Civil Court from being swayed by the alleged gravity or criminality of the fraud.

Furthermore, the statutory mandate of Section 8, as amended in 2015, uses the word shall. This makes the referral mandatory unless the court finds that prima facie no valid arbitration agreement exists. In cases of blank paper pleas, the signature itself is usually admitted. What is disputed is the content above it. Since the signature provides the prima facie evidence of intent to be bound, the court cannot delve into the merits of the fraud without exceeding its jurisdiction. The arbitrator, empowered by the Kompetenz-Kompetenz principle under Section 16 of the Act, is the only authority equipped to determine if the document was truly a fabrication. By moving this inquiry to the tribunal, the judiciary ensures that Section 8 remains a mandatory gateway rather than a discretionary hurdle used for delay.

The transition from the restrictive era of *Radhakrishnan* to the pragmatism of *Om Swayambhu* signifies a vital strengthening of India's legal architecture. By re-characterising the "signature on blank papers" plea as a factual defence rather than a jurisdictional bar, the judiciary has neutralised a primary source of bad-faith litigation. This shift respects the statutory intent of the 2015 Amendments and reinforces the autonomy of the arbitral process.

BLOG OF THE MONTH

Admiralty Jurisdiction in Salvage Arbitration: Can Maritime Salvage Claims Be Fully Arbitrable in India?

This article has been authored by Vedansh Raj is an student at Rajiv Gandhi National University of Law, Punjab (RGNUL)

The maritime legal system in India recognises admiralty law as an important arm in the proper management of claims that may be rolled out of navigation and shipping. Of all the most complicated matters that fall under admiralty jurisdiction, salvage services, or those in an attempt to save a ship, cargo, or people's lives, are quite the most complicated ones. This paper finds itself within the interplay of India's Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("**The Admiralty Act**") and the Arbitration and Conciliation Act, 1996 ("**The Arbitration Act**") to question the arbitrability of claims for maritime salvage. This article seeks to evaluate to what extent some of such claims can be effectively dealt with through arbitration taking into consideration legal provisions, judicial decisions and public policy considerations.

Admiralty Jurisdiction and Maritime Salvage

The Admiralty Act consolidates India's maritime claim laws. It gives High Courts in coastal states the power to consider and decide cases under Section 3 and has in rem jurisdiction for maritime claims including salvage. Section 4(1)(i) of the Admiralty Act provides for salvage claims where the matter is considered urgent while allowing vessel arrest to secure claims strengthen the concept of salvor's lien thus establishing the uniqueness of salvage issues.

In contrast to typical private business disputes of a commercial nature, salvage claims under maritime law always implicitly involve public policy. They accompany environmental protection, navigation safety, and third-party rights, so they differ from strictly contractual ones. The permissibility of arbitration is well known for its effectiveness and freedom of the parties, but when it comes to salvage issues, there are still contentions on its applicability.

Arbitration and Salvage: Legal Context in India

Section 6 of the Arbitration Act is a complete legal framework for passing on disputes through commercial and speedy arbitration. Section 7 of the Arbitration Act establishes and protects arbitration agreements under which it becomes possible for parties to refer disputes for arbitration, including maritime disputes. However, the Act bars or limits arbitrability in cases based upon public policy or statutory jurisdiction such as criminal matters or matrimonial lawsuits as propounded in **Booz Allen & Hamilton Private Ltd v. SBI Home Finance Ltd.**

The nature of salvage claims poses the question of whether such an issue should be of exclusive statutory jurisdiction or matters capable of being referred to private arbitration. The Admiralty Act does not exclude contracts of arbitration in salvage claims. However, the strong undertone of judicial intervention points to legislative intent to keep such matters under the court's jurisdiction.

Judicial Perspectives on Arbitrability of Maritime Claims

The Indian courts have emphasised the doctrine of judicial oversight regarding maritime claims balancing the same with the public interest, in the case of **Liverpool & London S.P. & I Asson. Ltd vs M.V. Sea Success I & Anr** the apex court recognised the international character of the maritime concerns that emerged in this case and the judiciary's role in mediating controversies concerning public policy in maritime disputes.

In 2003, the Indian court held in the case of **Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd** that the arbitral awards may be set aside by the court if there has been a clash with the principles of public policy, sovereignty, natural justice and the principles of equity and fairness because this case establishes a broad interpretation of the term 'public policy'. The Supreme Court once again reminded, in the case of **Swiss Timing Ltd vs Organizing Committee Commonwealth Games, 2010** that matters touching vital public policy or statutory interpretation cannot be referred for arbitration, apply this to the maritime disputes related to salvage claims the issue related to environmental protection and third parties' interest, raises significant legal and policy concerns on arbitrability.

International Frameworks on Salvage Arbitration

Salvage arbitration has been recognized globally but the same has been restricted due to various factors and thus to be carefully applied. The **Salvage Convention of 1989 ("Convention")** which 69 states have ratified, replaced the earlier *'no cure, no pay'* principle. This Convention encourages arbitration under standard form/such as Lloyds Open Form ("LOF"). However, India has not yet adopted this Convention.

In the case of public authorities, Article 5 of this Convention explicitly states that *"the Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities."* However, in the case of private parties, these frameworks contain judicial checks to protect public policy concerns such as environmental liability. In 2011, the *English High Court* approved the arbitration concerning salvage under the LOF agreement in the case of **Samce Europe and MSC Prestige** but later the court intervention prevailed due to the issue of the environment related to the arrest of the vessel.

Furthermore, The Arrest Convention of 1999, provides rules for the arrest of the vessel and equilibrates arbitral procedural freedom to the arrest of the ship, under Article 2 of this convention. This convention also mentions the public policy ('*ordre public*') under Article 7(5) which discusses the jurisdiction on the case merits, with judicial oversight in enforcement. India's failure to ratify these conventions underscores the legislative void related to salvage arbitration and leads to unparalleled counterparts related to admirals and arbitration legal systems.

Challenges and Proposed Reforms in Arbitrating Salvage Claims

The arbitration in the process of salvaging poses various challenges these include, *firstly*, the salvage operations entail the preservation of the environment or human lives, which ultimately become the concerns of public interest and require social control in the form of judicial interference. *Secondly*, the most contentious aspect of salvage claims is that they are often commonly associated with numerous participants ranging from insurers, shipowners and environmental organisations, the diversity of parties renders arbitration cumbersome. *Thirdly,* the issue of salvage requires urgent relief by the courts because they are associated with the arrest of vessels and injunctions which admiralty courts can timely do under Section 5 of the Admiralty Act. Furthermore, Section 36 of the Arbitration Act allows for enforcing foreign awards in Indian courts. Still, it resolves longer and poses enforcement issues contrary to the nature of arbitration in urgent salvage concerns.

To address these challenges India should amend the Admiralty Act which explicitly approved autonomy-based frameworks for salvage arbitration and bridge the gap between autonomy and oversight. India's complex admiralty structure could be made far more efficient by specific centres, equipped with specialised courts that deal with admiralty and environmental law to handle disputes arising from salvage issues.

India could adopt a Hybrid Dispute Resolution mechanism where the complex salvage issues could be referred to arbitration and admiral courts simultaneously. The problems regarding contractual parties could be redressed to arbitration. In contrast, the court could modify and address the General Terms and Conditions regulating consumer's rights if the latter discovers that these Terms and Conditions infringe on public interest. Lastly, India should rectify the Salvage Convention and the Arrest Convention to align with international norms, reducing ambiguity associated with the arbitration of salvage claims.

Practices in other Jurisdictions

India could emulate the approaches adopted by various countries to reconcile the admiralty law and arbitration law without compromising the public interest. United Kingdom, has accepted arbitration for maritime claims such as salvage under legislations like the LOF under their **Arbitration Act of 1996.** Section 68 of the UK, Arbitration Act empowers the court to continue to possess the ability to interfere and rule on matters related to public policy. Hence, they also have the right to arrest ships.

The Singapore Chamber of Maritime Arbitration **("SCMA")** specialises in arbitration by providing the advantages of an institutional approach in maritime disputes. The High Court (Admiralty Jurisdiction) Act, of 1961 allow courts to exercise jurisdiction over maritime claims while recognising arbitration agreements under Section 5 of this act.

The Australian courts have reinforced the party's autonomy in naval disputes, provided they do not contradict public policy. This was observed in the case of **Bunga Melati 5 v. Murray Clayton**. Sections 12 & 13 of Australia's Admiralty Act of 1988, allow arbitration to resolve contractual aspects of salvage disputes, while courts address non-contractual elements like environmental liability. Furthermore, Australia also incorporated the international framework in resolving maritime disputes through arbitration by adopting the International Arbitration Act of 1974.

Conclusion

Maritime salvage claims present a complex interplay between admiralty jurisdiction and arbitration settlement in India. Though the arbitration offers autonomy to the parties in dispute, the same cannot be compromised because salvage claims incorporate public policy dimensions which necessitate judicial oversight. Solving this paradox calls for legislation change, global inclement, and the introduction of unique approaches such as Hybrid Dispute Resolution to resolve the conflict.

To strike a balance between the efficiency of arbitration and judicial oversight, India requires modernisation of the existing legal frameworks which align with the present times and thus position itself as a global maritime hub. The integration of arbitration into salvage disputes along with adequate protection to enforce awards by the admiral courts will strengthen India's maritime law and ultimately promote economic and environmental interests.

DOMESTIC CASES

Section 11 petition not maintainable for foreign seated arbitration: Supreme Court [*Balaji Steel Trade v. Fludor Benin S.A. and Others, 2025 SCC OnLine SC 2517]*

The petitioner and Fludor Benin S.A(‘**Respondent No.1’**), entered into a Buyer and Seller Agreement (‘**BSA**’) and incorporated an arbitration clause providing for arbitration to be conducted in Benin. Moreover, its Addendum expressly stated that the BSA will be governed by laws of Berlin. Dispute arose between the parties with respect to supply and the respondent invoked the arbitration process in Benin. The petitioner filed an application under section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996 (the ‘**Act’**) for the appointment of sole arbitrator for the adjudication of the dispute in India.

The Supreme Court (the ‘**Court’**) emphasized that the dispute entirely falls within the walls of international commercial arbitration as defined in Section 2(1)(f) of the Act and therefore, the applicability of Part I (including section 11) is excluded where the parties have chosen a foreign seat and the jurisdiction of the court to entertain the application is ousted at the threshold. Relying on *Bharat Aluminum Co. v. Kaiser Aluminium Technical Services Inc. (BALCO), (2012) 9 SCC 552*, the Court reiterated that Part I of the Act has no application to arbitrations seated outside India. The court also held that BSA is the ‘mother agreement’ and it clearly established Benin as the juridical seat.

Upon a valid challenge under Section 34, the court must apply its judicial mind and provide cogent reasons when upholding or rejecting the objections: Delhi High Court [*Mahanagar Telephone Nigam Limited v. M/S Motorola Inc, FAO(OS) 169/2017]*

The Appellant and the Respondent engaged in some purchase order. Later on, a dispute arose between the parties related to acceptance testing, in-building coverage requirements, and the performance of the CDMA system. Consequently, the respondent invoked the arbitration process seeking release of outstanding payments along with the interest. The learned Arbitrator granted the award in the favour of the respondent. Subsequently, an additional award was also rendered in the favour of the respondent. The appellant challenged both the awards under section 34 of the Arbitration and Conciliation Act, 1996 (the ‘**Act**’) before the Delhi High Court (the ‘**Court’**). The single judge of the High Court dismissed its section 34 petition. Later on, the appellant filed an appeal before the court for setting aside the Arbitral award and the impugned judgement.

The court reiterated that the scope of judicial interference with the arbitral proceedings is narrow and the appellate power under section 37 of the Act is not similar to the normal appellate jurisdiction of the civil courts. The court referred to *MMTC v. Vedanta Limited, [2019 (4) SCC 163]* and observed that the scope of interference in an appeal under section 37 is not beyond the scope of interference under section 34. However, the limited jurisdiction under section 34 cannot justify merely objecting and dismissing the application without substantive engagement on the merits. In *Kalanithi Maran v. Ajay Singh and Another, [(2024) SCC OnLine SC 1280]*, the court held that despite the limited scope of interference under Section 34, the court must apply its judicial mind to the raised objections and provide reasons for their respective conclusion. The single judge judgement fails to consider the issues raised by the Appellant and remitted the matter back to the single judge for fresh consideration.

Arbitral awards granting contractual rates of interest in commercial loan transactions cannot be interfered with unless they violate the fundamental policy of Indian law: Supreme Court *[Sri Lakshmi Hotel (P) Ltd. v. Sriram City Union Finance Ltd., 2025 SCC OnLine SC 2473]*

The Petitioner availed two loan facilities from the respondent aggregating to Rs. 1,57,25,000, under loan agreements stipulating an interest rate of 24% per annum. Upon default in repayment, arbitration was invoked, and an arbitral award dated 27.12.2014 directed the appellants to pay Rs. 2,21,08,244 along with interest. The appellants challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 (the '**Act**'), contending that the interest rate was unconscionable, usurious, contrary to RBI guidelines, and opposed to public policy. The challenge was dismissed by the Single Judge of the Madras High Court and subsequently by the Division Bench under Section 37 of the Act. Aggrieved, the appellants approached the Supreme Court (the **'Court'**)

The Court dismissed the appeal and upheld the arbitral award, reiterating that the scope of interference under Sections 34 and 37 of the Act is extremely limited and does not permit reappreciation of evidence or reassessment of contractual terms. The Court held that under Section 31(7) of the Act, arbitral tribunals possess wide discretion to award pre-award and post-award interest, and in the absence of an express statutory or contractual bar, such discretion cannot be curtailed. It was further held that charging a high rate of interest in a purely commercial transaction, particularly involving a high-risk borrower, does not by itself violate public policy or attract the Usurious Loans Act, 1918. The Court clarified that an arbitral award can be set aside on public policy grounds only where it contravenes the fundamental policy of Indian law or shocks the conscience of the court. Accordingly, the Court refused to interfere with the findings of the arbitral tribunal and the High Court.

An unregistered and unstamped agreement to sell, transferring leasehold or sub-leasehold rights in immovable property, is unenforceable, and arbitral proceedings can be terminated where the underlying contract is legally invalid: Delhi High Court *[Gaurav Aggarwal v. Richa Gupta, 2025 SCC OnLine Del 8466]*

The Respondent was the holder of sub-leasehold rights in a residential flat, which she agreed to transfer to the petitioner under an Agreement. The agreement required the respondent to obtain prior permissions from Jaypee Infratech Ltd. and the Yamuna Expressway Industrial Development Authority before execution of the sale deed. Subsequently, disputes arose, leading the respondent to terminate the agreement. The petitioner invoked the arbitration clause contained in the agreement. During the arbitral proceedings, the respondent filed an application under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996 (the '**Act**'), contending that the Agreement to Sell was unenforceable as it was neither registered nor stamped, which was mandatory under the Registration Act, 1908 (the '**1908 Act**') as amended in the State of Uttar Pradesh. The Sole Arbitrator allowed the application and terminated the arbitral proceedings. Aggrieved, the petitioner challenged the award under Section 34 of the Act before the Delhi High Court (the '**Court**').

The Court dismissed the petition and upheld the arbitral award, holding that the Arbitrator had correctly applied the law. The Court affirmed that even transfer of leasehold or sub-leasehold rights in immovable property constitutes a 'sale' within the meaning of Section 54 of the Transfer of Property Act, 1882, and any contract for such transfer in Uttar Pradesh mandatorily requires registration under Section 17(1)(f) of the 1908 Act as amended. In the absence of registration and proper stamping, the agreement is rendered unenforceable by virtue of Section 49 of the 1908 Act and Section 35 of the Stamp Act and cannot be specifically enforced. The Court further held that the issue raised was a pure question of law requiring no evidence, and the termination of arbitral proceedings under Section 32(2)(c) was justified to prevent continuation of proceedings based on a legally invalid contract.

An arbitration agreement does not become unenforceable merely because the agreed appointment mechanism is rendered inoperative by statutory disqualification: Supreme Court *[Offshore Infrastructures Ltd. v. Bharat Petroleum Corporation Ltd., 2025 INSC 1196]*

The dispute arose from a work contract where the Appellant raised claims for unpaid dues following the completion of the project. The Appellant invoked arbitration; however, the contractual clause designated the Respondent's Managing Director as the arbitrator. Since the 2015 amendment to the Arbitration and Conciliation Act, 1996 (the 'Act') rendered such officials statutorily ineligible, the 'Appellant' sought the appointment of an independent arbitrator. The Madhya Pradesh High Court dismissed the application as time-barred, calculating the limitation from the issuance of a "No Claim Certificate" in October 2018.

The Supreme Court (the 'Court') set aside the order, holding that under Section 12(5) of the Act, while an ineligible appointment procedure is invalidated, the arbitration agreement itself remains enforceable. The Court emphasized that courts retain the power under Section 11(6) of the Act to appoint a neutral arbitrator to preserve the parties' intent to arbitrate. Regarding limitation, the Court ruled that the period from 15.03.2020 to 28.02.2022 must be excluded due to the COVID-19 pandemic, bringing the application within the statutory timeframe. The appeal was allowed, reinforcing that procedural infirmities caused by legislative changes do not vitiate the substantive right to arbitral adjudication. The impugned orders were set aside, and the matter referred to the Delhi International Arbitration Centre for appointment of an arbitrator.

Prior Interpretation of the Same Clause is No Bar to Arbitrator Eligibility: Delhi High Court *[Steel Authority of India Limited v. British Marine PLC, 2025: DHC:9073]*

The dispute arose from a Contract of Affreightment (the '**COA**') dated 05.12.2007, where the Respondent agreed to ship coking coal for the Petitioner. SAIL, citing market downturn and other issues, terminated the COA in 2012, invoking the 'Default Clause' (**Clause 62**), which allowed termination without any liabilities on either side. The Respondent initiated arbitration claiming damages for wrongful termination and loss of freight. The arbitral tribunal held the termination invalid and awarded damages of approximately US$ 29.74 million to British Marine. Aggrieved, the petitioner filed the petition under section 34. SAIL objected to the appointment of the arbitrators on the ground that they had previously dealt with Clause 62 of the same long-term contract of affreightment in an earlier arbitration involving the same parties. SAIL argued that, having ruled once before on the same clause, the arbitrators could not be expected to reconsider it independently and should therefore be treated as disqualified, vitiating the award on the doctrine of 'issue conflict'.

The High Court (the '**Court**') dismissed the petition and upheld the award. The Court held that the grounds of ineligibility or disqualification of arbitrators cannot be outside the Fifth and Seventh Schedules to the Arbitration and Conciliation Act, 1996. Issue conflict, on which the jurisdiction of the arbitrators is questioned, is not a ground in either of the 2 schedules. Relying on precedents like HRD Corporation *(Marcus Oil and Chemical Division) v. GAIL (India) Ltd., (2018) 12 SCC 471, and Ickale Insaat Limited Sirketi v. Turkmenistan, ICSID Case No. ARB/10/24*, the Court ruled that 'issue conflict' requires more than prior involvement, and it must be shown that the arbitrator had decided with a "closed mind". Since SAIL failed to demonstrate actual partiality or prejudgment, the challenge failed. The Court held that Clause 62 was designed to legislate for events consulting frustration of the agreement and cannot be read to permit a party to declare the contract at an end for its own breach. Further, the force majeure clause was never invoked at the relevant time and was a mere afterthought.

Courts cannot reappreciate evidence or substitute the plausible interpretation of an arbitrator as judicial interference remains strictly circumscribed: Supreme Court *[Indian Railways Catering and Tourism Corporation Ltd. v. Brandavan Food Products, 2025 SCC OnLine SC 2369]*

The dispute arose from a Tender Notice issued by the Northern Railway on 27.05.2013 for catering services on Rajdhani Express trains. The Appellant and Respondent entered into a Master Licence Agreement ('**MLA**') on 21.04.2014, which governed claims regarding two primary issues: the reimbursement for a second regular meal served at a lower "combo meal" tariff under Commercial Circular No. 67 of 2013, and the provision of "welcome drinks" introduced via Commercial Circular No. 32 of 2014 without additional payment. While an initial Arbitrator awarded the respondent approximately ₹26 crores based on notions of equity and appellant's dominant position, the Supreme Court (the '**Court**') noted that the respondent had previously failed to successfully challenge these specific policy circulars in a writ petition, leaving the directives legally binding and untouched.

The Court held that the Arbitrator committed a patent illegality and violated Section 28(3) of the Arbitration and Conciliation Act, 1996 (the '**Act**') by effectively rewriting the contract contrary to the express language of the Railway Board's catering policy. The Court clarified that the MLA explicitly gave primacy to the latest catering policies, and because the appellant had no independent discretion to deviate from these Ministry directives, the Arbitrator could not substitute contractual terms with personal interpretations of fairness or Article 14 principles. Consequently, the Supreme Court allowed appeals, setting aside the arbitral award as they were found to be in conflict with the public policy of India.

Emergency arbitrator lacks authority to extend Interim Orders beyond the 90-day statutory period prescribed under DIAC rules, 2023: Delhi High Court *[Municipal Corporation of Delhi v. Himalayan Flora & Aromas Pvt. Ltd., 2025: DHC:8977]*

The dispute arose from an appeal filed by the Petitioner under Section 37 of the Arbitration & Conciliation Act, 1996 (the '**Act**'), challenging an interim award dated 11.12.2024. The award was passed by an Emergency Arbitrator appointed under the Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2023 (the '**Rules**'). The Petitioner contended that the Emergency Arbitrator erred by extending the operation of the order beyond the 90-day limit prescribed by Rule 14.13, arguing that such power is reserved solely for the Arbitral Tribunal. The Respondent opposed this, asserting that the definition of 'Arbitral Tribunal' includes an 'Emergency Arbitrator', thus granting them the power to extend their own orders.

The High Court of Delhi (the '**Court**') held that for the purposes of Rule 14, the terms 'Emergency Arbitrator' and 'Arbitral Tribunal' cannot be used interchangeably. The Court observed that Rule 14.13 specifically dictates that an order passed by an Emergency Arbitrator remains operative for only 90 days unless modified or extended by the Arbitral Tribunal. Furthermore, Rule 14.11 provides that an Emergency Arbitrator becomes functus officio after the order is made and is generally barred from being part of the subsequent Arbitral Tribunal. The Court emphasised that allowing an Emergency Arbitrator to exercise powers reserved for the Arbitral Tribunal would defeat the scheme and object of emergency arbitration. The appeal was allowed, and the order dated 11.12.2024 was set aside as it had become inoperative by operation of the rules after 90 days. However, to enable the Respondent to seek redressal under Section 9 or 17 of the Act before the Arbitral Tribunal, the Court directed the maintenance of the status quo for a period of seven days.

An order terminating arbitration proceedings under Section 25(a) for procedural default is not an "arbitral award"; therefore, it cannot be challenged under Section 34, and the remedy lies in seeking restoration of the mandate under Section 14(2): Delhi High Court *[Mecwel Constructions Pvt. Ltd. v. GE Power Systems India Pvt. Ltd., 2025: DHC:9326]*

The Petitioner filed petitions under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (the '**Act**'), seeking substitution and appointment of an arbitrator in disputes arising from purchase orders for the erection and commissioning of mechanical packages. The Respondent challenged the maintainability of the petitions, contending that an earlier order of the arbitrator, which closed the arbitration proceedings due to the Petitioner's failure to file a Statement of Claims and non-payment of arbitral fees under Section 25(a) of the Act, constituted a final "award" that could only be challenged under Section 34 of the Act, not under Sections 14 and 15.

The Delhi High Court (the '**Court**') held that an order terminating arbitration proceedings due to default in compliance with procedural requirements (such as failure to file Statement of Claims or non-payment of fees) does not constitute an "award" within the meaning of Sections 2(1)(c) and 31 of the Act. The Court distinguished between orders that adjudicate substantive disputes between parties and orders that merely close procedural rights without deciding the merits of the dispute. The Court clarified that Section 25(a) termination orders are procedural in nature and do not result in an "award" as defined under the Act. The appropriate remedy to challenge such termination orders is an application under Section 14(2) of the Act (addressing termination of the arbitrator's mandate), not an application under Section 34 (setting aside award). Consequently, the Court held that applications under Sections 14 and 15 were maintainable, and the petitions were not barred by the contention that the termination order was a final award.

***T*he unilateral appointment of a sole arbitrator is void ab initio under Section 12(5) and cannot be validated by conduct or consent letters; a valid waiver requires a specific "express agreement in writing" entered into after the dispute arises: Delhi High Court** *[M/S Alpro Industries v. M/S Ambience Pvt. Ltd. & Anr., 2025 SCC OnLine Del 8373]*

The Petitioner filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (the '**Act**'), challenging an interim award. The Interim Award refused the petitioner's prayer for the impleadment of Alankar Apartments Pvt. Ltd. (the '**Respondent no. 2**') as a party to the arbitration. The petitioner contended that the arbitration agreement, contained in Clause 23 of the contract, expressly vested the unilateral right to appoint the sole arbitrator in M/S Ambience Pvt. Ltd. (the '**Respondent no. 1**') only, rendering the appointment void ab initio under Section 12(5) of the Act. The Respondent defended the appointment by relying on a letter, arguing that the petitioner had expressly consented to the arbitrator's appointment, thereby waiving any objection.

The Delhi High Court (the '**Court**') held that when an arbitration agreement provides for the unilateral appointment of a sole arbitrator by one party, such appointment is void ab initio and results in a nullity. Relying on B*harat Broadband Network Ltd. v. United Telecoms Ltd. [(2019) 5 SCC 755]*, the Court emphasized that the proviso to Section 12(5) requires an "express agreement in writing" after disputes have arisen, made with full knowledge of the ineligibility. Further relying on *Mahavir Prasad Gupta v GNCTD [2025 SCC OnLine Del 4241]*, the Court reiterated that mere participation does not constitute a waiver. The Court rejected the 2018 consent letter as a valid waiver because it was conditional upon the impleadment of Respondent no. 2, which never occurred. Consequently, the Court set aside the Interim Award, ruling that the Tribunal lacked jurisdiction from its inception.

INTERNATIONAL CASES

An appeal lies only against a formal judgment or an order that operatively disposes of proceedings, not against a preliminary decision that merely provides reasoning without granting or dismissing specific prayers: Singapore International Commercial Court *[Hulley Enterprises Ltd. & Ors. v. The Russian Federation, 2025 SGHC(I) 27]*

The Claimant filed an application seeking to enforce a foreign arbitral award against the defendant. The Defendant filed a separate summons seeking permission to appeal a preliminary decision that had determined certain issues related to the award debtor's application to set aside the enforcement leave order. The Defendant contended that the preliminary decision constituted a "judgment or order" capable of being appealed. The Claimants argued that the initial decision merely contained reasons for prospective orders and was not itself an order that disposed of the proceedings.

The Singapore International Commercial Court (the '**Court**') held that an appeal lies against the outcome (the formal order), not against the reasons given for that outcome. The preliminary decision, although it contained detailed reasoning on preliminary issues concerning preclusion and immunity, had not, in formal terms, made any orders dismissing the prayers in the setting-aside application. The Court clarified that the decision was not a judgment or order that could be appealed against, as no operative orders disposing of or dealing with the proceedings had been made. The Court further held that only when the award debtor's application to set aside the enforcement leave order was fully disposed of, by formal orders either granting or dismissing specific prayers, would an appealable order come into existence. Consequently, the Court dismissed the permission application and ordered that the Russian Federation would have 28 days from the date of the formal orders (to be made subsequently) to appeal against those orders if it so wished.

Costs awarded following a successful challenge to arbitral awards should ordinarily be denominated in the currency in which the receiving party incurred and discharged its liability: Supreme Court of the United Kingdom *[Federal Republic of Nigeria v. Process & Industrial Developments Ltd., [2025] UKSC 36]*

The Petitioner applied before the English Commercial Court to set aside two arbitral awards in favour of the Respondent, which awarded over USD 6.6 billion plus interest and were later found to have been procured by fraud and contrary to public policy. In pursuing the challenge under section 68 of the Arbitration Act 1996 (the '**Act**'), Nigeria incurred legal costs exceeding £44 million, which were invoiced and paid in sterling over several years. When costs were awarded in Nigeria's favour, the Commercial Court ordered that costs be paid in sterling. The Respondent challenged this decision, arguing that costs should instead be awarded in Nigerian naira. The Court of Appeal dismissed the challenge. Further, an appeal was filed in the UK Supreme Court (the '**Court**').

The Court dismissed the appeal and upheld the award of costs in sterling. The Court held that an order for costs is not compensatory in nature like damages, but a discretionary statutory indemnity against the liability incurred by a party to its own lawyers. The correct reference point is therefore the currency in which that liability arose and was discharged, not the currency that may reflect the receiving party's broader economic loss. The Court rejected the argument that courts should undertake an inquiry into how litigation was funded or which currency best reflects loss. While acknowledging that courts have jurisdiction to award costs in foreign currencies, the Court clarified that the general rule should be to award costs in sterling or in the currency in which the lawyers billed and were paid, subject to exceptional circumstances such as abuse or manipulation of currency choice. The Court dismissed the appeal.

Annex 14-C of USMCA extends procedural consent but not substantive NAFTA protections to post-termination measures: International Centre for Settlement of Investment Disputes *[Access Business Group LLC v. United Mexican States, ICSID Case No. ARB/23/15]*

This dispute, involving the alleged expropriation of an organic farming estate in Mexico, hinged on the arbitration principle of jurisdiction ratione temporis during treaty succession. The Applicant alleged that measures taken in 2022 violated North American Free Trade Agreement (the '**NAFTA**') standards, despite NAFTA being superseded by the US-Mexico-Canada Agreement (the '**USMCA**') in 2020. The 'Respondent' raised a preliminary objection, arguing that Annex 14-C of the USMCA merely provided a three-year procedural extension of 'consent' to arbitrate for 'Legacy Investments' and did not prolong the substantive validity of NAFTA Section A. The Tribunal sustained this objection, clarifying that the 'consent' to arbitrate is legally distinct from the 'obligation' to perform. Applying Article 70 of the 'Vienna Convention on the Law of Treaties' (the '**VCLT**') and the intertemporal rule, the majority held that because NAFTA had terminated, its substantive protections could not be engaged by post-termination conduct unless the new treaty provided an express 'sunset clause' for substantive rights.

The award underscores a strict textualist approach to 'grandfathering' provisions in investment treaties. The majority emphasised that the absence of explicit language extending substantive rights meant that investors could not rely on the previous treaty's standards for conduct occurring during the transitional window. This creates a significant burden on investors to verify whether a successor treaty's transitional regime preserves the 'governing law' or merely the 'forum'. While the 'Claimant' argued that the referral to Section B procedures (which include governing law clauses) should incorporate Section A protections, the Tribunal prioritised the 'clean break' intended by the Contracting States. Conversely, the dissent warned that such a bifurcation of rights renders the transitional protection a "legal mirage", as it offers a procedural remedy for a substantive right that the majority deems to have already expired.

Assignment of Awards is not permitted by the ICSID Convention or the ECT and the Issue Estoppel is not available against the state that has appeared in the foreign proceedings only to contest jurisdiction: England and Wales Commercial Court *[Operafund Eco-Invest SICAV Plc and another v. Kingdom of Spain, [2025] EWHC 2874 (Comm)]*

The Claimants initiated ICSID arbitration proceedings against the Kingdom of Spain over the breach of the terms of the Energy Charter Treaty 1994 (the '**ECT**'). The tribunal rendered the award in the favor of claimants and they were seeking the registration of the ICSID award in the United Kingdom (the '**U.K.**') under section 1(2) of the Arbitration (International Investment Disputes) Act 1966 (the '**Act**'). The English High court granted an ex parte registration order which was challenged by Spain on the ground of State immunity from the jurisdiction of the English Courts. Later on, the claimants entered into an Assignment agreement with Blasket Renewal Investments LLC ('**Blasket**') where they assigned all their rights under the ICSID award to Blasket and applied to the English High Court to substitute Blasket as the new claimant in the proceedings. Spain contested such substitution as the award was unassignable under international law.

The English High Court (the '**Court**') applied the principles of construction contained in Article 31 & 32 of the Vienna Convention on the Law of the Treaties 1969 and concluded that the use of the term 'party' in the Article 54(2) of ICSID Convention can be inferred as only the party to the arbitration, excluding third party. Moreover, awards under ECT were not assignable as under Article 15 (Subrogation), assignment of indemnity payments is allowed only if there is an express consent of the host state. The court observed that there are three principal requirements for issue estoppel as set out in *Hulley Enterprises Ltd v Russian Federation, [2025] EWCA Civ 108* - a) the judgement is entitled to recognition in the English Courts, b) the parties in the two suits are same, and c) the issue decided in foreign court and English court must be same. The FCA judgement lacked finality and binding effect, rendering it not entitled to recognition in English Courts. The recognition of the foreign judgement in the court requires the judgement debtor's submission to the jurisdiction and in the present case, Spain only appeared to contest the court's jurisdiction in FCA proceedings which did not amount to submission and therefore no issue estoppel arose in the present case.

SAMVAAD

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