MONTHLY ROUND-UP

NATIONAL INTERNATIONAL COMMERCIAL CORPORATE

INDIAN ARBITRATION LAW REVIEW

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IALR Indian Arbitration Law Review

THE INDIAN SUPREME COURT NULLIFIES AN ARBITRAL AWARD BY EXERCISING ITS CURATIVE JURISDICTION.

The Indian Supreme Court set aside a USD 960 million arbitral award issued in favor of a construction consortium after multiple attempts to challenge it. The dispute, originating from a 2008 Concession Agreement between Delhi Metro Rail Corporation (DMRC) and a consortium led by Reliance Infrastructure, involved the construction and operation of the Delhi Airport Metro Express. Following operational issues and alleged defects, the consortium terminated the agreement and led to arbitration. The DMRC challenged the award through various legal avenues, culminating in the Supreme Court's curative jurisdiction under Article 142 of the Indian Constitution. The Court found the award patently illegal, criticizing the Tribunal's misinterpretation of the termination clause and failure to consider key evidence, notably the CMRS certificate on safety. This decision underscores the Supreme Court's role in correcting grave miscarriages of justice, especially in large infrastructure disputes involving public utilities.

TO BAR OR NOT TO BAR – THE INDIAN SUPREME COURT ON LIMITATION AND APPLICATIONS FOR APPOINTMENT OF ARBITRATORS

In the landmark case of Arif Azim Co. Ltd. v. Aptech Ltd., the Supreme Court of India clarified the application of the Limitation Act to requests for the appointment of arbitrators under Section 11(6) of the Arbitration and Conciliation Act, 1996. The Court ruled that parties have three years from the respondent's failure to comply with the agreed appointment procedure to seek court intervention for appointing arbitrators. Additionally, the Court recognized its authority to refuse such applications if the claims are evidently time-barred, although this power should be exercised sparingly. This decision underscores the necessity for timely arbitration applications and hints at a potential legislative amendment to shorten the limitation period. In the specific case, the Court found both the application and substantive claims to be within the limitation period and appointed an arbitrator accordingly, emphasizing a more rigorous scrutiny of claims to prevent unwarranted arbitration proceedings.

THE ARBITRATION PROCEEDINGS CANNOT BE TERMINATED MERELY BECAUSE CLAIMANT FAILED TO REQUEST ARBITRAL TRIBUNAL TO FIX A DATE FOR HEARING: SC

In Dani Wooltex Corporation & Ors. v. Sheil Properties Pvt. Ltd. & Anr, the Supreme Court clarified that under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996, the power to terminate arbitral proceedings can only be exercised if continuing the proceedings becomes unnecessary or impossible. The Court stated that the claimant's failure to request the Arbitral Tribunal to set a hearing date does not justify terminating the proceedings. It emphasized that the Tribunal must be satisfied, based on the material on record, that the proceedings are indeed unnecessary or impossible. The Court warned against casual use of this power, as it would defeat the Arbitration Act's purpose. The case involved a dispute over a development agreement in Mumbai, where the Tribunal's termination order was contested and ultimately dismissed by the Supreme Court, which reiterated the Tribunal's duty to fix hearing dates and adjudicate disputes.

DELHI HIGH COURT OVERTURNS SINGLE BENCH ORDER ON SPICEJET REFUND TO KALANITHI MARAN

The Division Bench of the Delhi High Court, comprising Justice Yashwant Varma and Justice Ravinder Dudeja, accepted an appeal by SpiceJet and its CMD, Ajay Singh, challenging a single bench's directive to refund over ₹270 crore to Kalanithi Maran and Kal Airways. The bench overturned the July 2022 order, upholding the Arbitral Award from July 20, 2018, issued by a tribunal of three retired Supreme Court Judges. Kal Airways and Kalanithi Maran's petition to overturn the award for not granting interest and damages was restored under Section 34 of the Arbitration and Reconciliation Act, 1996, allowing for a fresh review. The Arbitral Award had mandated a refund of ₹308 crore for warrants and ₹270 crore for Cumulative Redeemable Preference Shares (CRPS) to Kal Airways and Kalanithi Maran, with interest penalties for delayed payments.

DELHI HIGH COURT: BROAD EXPLANATIONS OF INTERNAL REVIEW NOT SUFFICIENT FOR APPEAL DELAYS

In the case of Telecommunication Consultants India Ltd (TCIL) v. Ngbps Ltd, the Delhi High Court ruled that a general explanation of intra-departmental analysis and discussions cannot serve as a credible explanation for condoning a delay in filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. The appellant, seeking condonation of a 118-day delay in filing the appeal, argued that as a Public Sector Undertaking (PSU), it should be treated differently.

However, the court observed that the provided reasons, primarily centered around administrative processes and discussions, did not constitute a valid justification for the substantial delay, which nearly doubled the allotted filing period. Citing recent Supreme Court decisions emphasizing the importance of timely dispute resolution, the High Court dismissed the application for condonation of delay.

DELHI HIGH COURT: ARBITRATION MERITS SHOULD BE ADDRESSED BY ARBITRATOR, NOT IN SECTION 11 PROCEEDINGS

The Delhi High Court, in Delhivery Limited vs. Far Left Retail Private Limited, ruled that objections regarding insufficiency of service are matters of merit that should be addressed by the arbitrator, not during Section 11 proceedings. Justice Neena Bansal Krishna observed that Delhivery Limited had made adequate attempts to amicably resolve the payment dispute with Far Left Retail Private Limited as required by their Service Agreement. Despite multiple reminders and a Demand Notice, Far Left Retail did not pay the outstanding amount of Rs. 8,69,743.78, prompting Delhivery to invoke arbitration and seek the appointment of an arbitrator. The Court noted that objections concerning service quality and settlement attempts are to be resolved within the arbitration process, thus directing the Delhi International Arbitration Centre to appoint an arbitrator according to the Arbitration and Conciliation Act, 1996.

ALLAHABAD HIGH COURT REJECTS APPEAL DUE TO UNEXPLAINED 393-DAY DELAY UNDER ARBITRATION ACT

In the case of Nirankar Dutt Tyagi and Anr. v. N.H.I. Unit Dehradun and Anr, the Allahabad High Court, while deciding an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, held that delays in filing appeals cannot be condoned without compelling reasons. The appellants sought condonation for a 393-day delay, citing the counsel's illness, but failed to provide supporting documents. The Court emphasized the necessity of timely dispute resolution under the Arbitration Act and referenced several precedents, including M/s N.V. International v. State of Assam & Ors. and Government of Maharashtra (Water Resources Department) v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., which limit condonation to exceptional cases. Given the appellants' inadequate justification, the Court dismissed the delay application and the appeal as time-barred.

HONG KONG COURT SETS ASIDE AWARD ON JURISDICTION AS CLAIMANT COMMENCED A SINGLE ARBITRATION UNDER RELATED CONTRACTS WITH INCOMPATIBLE ARBITRATION CLAUSES

The Hong Kong Court of First Instance set aside an arbitral award in SYL v GIF [2024] HKCFI 1324 due to incompatible arbitration clauses across related contracts. The claimant initiated a single arbitration under multiple contracts, but the court found the arbitration clauses' appointment procedures, which are a relevant factor for determining compatibility, conflicting. This, according to the court, infringed on party autonomy and contractual rights. This decision highlights the necessity for claimants to ensure compatibility in arbitration clauses when dealing with multiple related contracts to avoid jurisdictional challenges and ensure proper tribunal constitution.

THE 2024 HKIAC ADMINISTERED ARBITRATION RULES: EFFECTIVE FROM 1 JUNE 2024

The Hong Kong International Arbitration Centre (HKIAC) will implement its 2024 Administered Arbitration Rules on June 1, 2024. Key updates in these Rules include enhanced tribunal powers for time and cost efficiency as well as efficient determination of the dispute, expanded HKIAC authority, clarified emergency arbitrator powers, and strengthened information security measures. The new Rules promote diversity and environmentally friendly practices in arbitration, streamline multi-contract arbitration processes, protect the integrity of arbitration and refine the expedited procedure. Additional changes aim to improve cost management and communication methods, reflecting HKIAC's commitment to modernising arbitration practices while maintaining satisfaction of those who are subject to the arbitration process.

UK SUPREME COURT UPHOLDS ANTI-SUIT INJUNCTION FOR FOREIGN SEATED ARBITRATION

The UK Supreme Court has upheld an anti-suit injunction ("ASI") in the case of UniCredit Bank GmbH v RusChemAlliance LLC [2024] EWCA Civ 64, affirming that English courts can issue ASIs even for arbitration agreements governed by English law but seated abroad (in this case, Paris). The Court of Appeal overturned the lower court's refusal of the same. This decision stems from RusChemAlliance's proceedings in Russia, breaching the agreed arbitration terms. The ruling underscores the UK courts' support for contractual arbitration agreements despite foreign arbitration seats and anticipates potential impacts of the upcoming Arbitration Bill, which may limit such judicial interventions.

EXPANSION AND REGULATION ON THE HORIZON FOR THIRD-PARTY FUNDING IN IRELAND AND THE EU

With new regulations emerging, recent developments in the European Union indicate increased third-party funding for arbitral proceedings. Ireland has legalised third-party funding for international commercial arbitration through the Courts and Civil Law (Miscellaneous Provisions) Act 2023, while the EU Parliament has proposed a Directive to regulate such funding. The Directive introduces funder authorisation, transparency standards, fiduciary duties, funding restrictions, and caps on funders' shares of settlements. This move aims to harmonise the varied approaches across Member States, where countries like France and Spain allow third-party funding, while Germany imposes stricter regulations. The future impact on the broader legal landscape remains to be observed.

PAKISTAN'S DRAFT ARBITRATION BILL 2024: CHANGE AFTER 84 YEARS?

In April 2023, Pakistan's Chief Justice initiated the formation of an Arbitration Law Review Committee (ALRC) to modernise the nation's arbitration laws, aligning them with international standards, specifically the UNCITRAL Model Law. The ALRC, led by Justice Syed Mansoor Ali Shah, has finalised a Draft Arbitration Bill to replace the outdated Arbitration Act of 1940. The Bill, inspired by the Model Law and India's Arbitration and Conciliation Act, 1996, aims to streamline arbitration by reducing judicial intervention, distinguishing between international and domestic arbitration, and enhancing arbitrator appointment procedures. It includes provisions for court-ordered interim measures, limits on public policy challenges, and enforcement of arbitral awards without requiring court confirmation. The Bill, now presented to the Federal Law Minister, is expected to be enacted later this year, marking a significant overhaul towards an arbitration-friendly legal environment in Pakistan.