

MONTHLY ROUND-UP

MAY 2023

INDIAN ARBITRATION
LAW REVIEW



HIGH COURT'S INTERPRETATION OF SECTION 34 OF THE ARBITRATION ACT: EXAMINING CONDONATION OF DELAY AND THE IMPACT ON LIMITATION ACT'S SECTION 5

The High Court ruled in the case of *Union of India v. Jyoti Forge & Fabrication* that Section 5 of the Limitation Act does not apply to petitions filed under Section 34 of the Arbitration Act. The court held that the phrase "may entertain the application within a further period of 30 days but not thereafter" in Section 34 limits the period of condonation of delay. The court determined that this provision constitutes an express exclusion under Section 29(2) of the Limitation Act, preventing the application of Section 5.

COURT'S POWER TO EXTEND PERIOD AND EXCLUSION OF LIMITATION ACT IN ARBITRATION PROCEEDINGS

The court ruled in the case of *State of Rajasthan v. Godhara Construction Company* that delays beyond the prescribed period in Section 34 of the Arbitration and Conciliation Act cannot be condoned under the Limitation Act. The court held that the proviso to Section 34(3) allows for a 30-day extension if sufficient cause is shown, but the Limitation Act does not apply to Section 34 proceedings.

SUPREME COURT'S INTERPRETATION: EXCLUSION OF COURT CLOSURE PERIOD LIMITED TO PRESCRIBED LIMITATION PERIOD, LIMITATION ACT APPLICABLE TO ARBITRATION PROCEEDINGS

In the case of *Bhimashankar Sahakari Sakkare Karkhane Niyamita v. Walchandnagar Industries Ltd*, the Supreme Court clarified that the extended period resulting from the court's discretion should not be considered as the "prescribed period of limitation." The appellant had filed an application challenging an arbitration award, along with a request to condone the delay. The appellant argued that the purpose of the limitation period and statutory grace period in the Arbitration Act was to prevent parties from unnecessarily delaying their claims. The court examined whether the trial court was justified in not condoning the delay in filing the application after the prescribed 120-day period but within the court's winter/Christmas vacation. The Supreme Court ruled that the exclusion of the court-closed period applies only when the application is filed within the prescribed period of limitation, not when the court extends the period at its discretion. The court also noted that the Limitation Act applies to arbitration proceedings, as specified in Section 43(1) of the Arbitration Act.

SUPREME COURT CLARIFIES COURT'S DUTY IN DECIDING EXISTENCE AND VALIDITY OF ARBITRATION AGREEMENT IN PRE-REFERRAL STAGE

In the case of Magic Eye Developers Pvt. Ltd. v. M/s. Green Edge Infrastructure Pvt. Ltd. & Ors., the Supreme Court addressed the issue of whether the court or the arbitral tribunal should determine the existence and validity of an arbitration agreement. The dispute arose from a Shareholding Agreement and two Memorandum of Understanding (MoU), with only the Shareholding Agreement containing an arbitration clause. The respondent filed a petition before the High Court seeking appointment of an arbitrator for a dispute related to one of the MoUs that lacked an arbitration clause. The High Court referred the matter to arbitration based on the interconnection between the MoUs and the Shareholding Agreement. The appellant appealed to the Supreme Court, arguing that the court should decide the existence of an arbitration agreement under Section 11(6) of the Arbitration Act, rather than leaving it to the arbitral tribunal. The Supreme Court held that when the issue of the existence and validity of an arbitration agreement is raised at the pre-referral stage, it is the court's duty to conclusively decide the issue. Allowing the arbitral tribunal to decide would be contrary to Section 11(6A) of the Arbitration Act and would protect parties from being forced into arbitration without a valid arbitration agreement.

DELHI HIGH COURT DEEMS ARBITRAL AWARD PASSED AFTER UNJUSTIFIED DELAY AS CONTRARY TO JUSTICE AND PUBLIC POLICY

In the case of Department of Transport, GNCTD v. Star Bus Services Pvt Ltd, the dispute arose from a Concessionaire Agreement between the claimant, Star Bus Services Pvt Ltd, and the Department of Transport, GNCTD. The parties referred their disputes to arbitration, and an arbitral award was issued in favor of Star Bus. GNCTD filed a petition under Section 34 of the Arbitration and Conciliation Act before the Delhi High Court, arguing that the award was passed after an unexplained delay of 18 months and that it was contrary to justice and public policy. The Delhi High Court held that an arbitral award passed after a substantial and unexplained delay would be against justice and public policy.

DELHI HIGH COURT CLARIFIES SCOPE OF ARBITRATOR'S REMOVAL UNDER SECTION 14: BIAS AND PREJUDICE MUST MEET CRITERIA IN SCHEDULE VII FOR TERMINATION OF ARBITRATOR'S MANDATE

In the case of *Maj Pankaj Rai v. NIIT Ltd.*, a dispute arose between the parties regarding payments under a license agreement, which was referred to a Court-appointed arbitrator. The claimant, feeling aggrieved by the conduct of the arbitral proceedings, sought to terminate the mandate of the arbitrator and appoint a substitute arbitrator under Section 14 of the Arbitration and Conciliation Act. However, the Delhi High Court ruled that an arbitrator can only be removed if their appointment falls within the grounds mentioned in Schedule VII, which provides for de jure ineligibility. The court held that seeking removal based on bias or prejudice is beyond the scope of Section 14 unless it falls within the specific grounds mentioned in Schedule VII.

SUPREME COURT DEFINES 'BREAKING POINT' AS THE COMMENCEMENT OF CAUSE OF ACTION FOR APPOINTMENT OF ARBITRATOR IN CONTRACT DISPUTE WITH MINISTRY OF DEFENCE

In the case of *M/s B and T AG v. Ministry of Defence*, the Ministry of Defence of the Government of India issued a tender for Sub Machine Guns, which was won by M/s B and T AG. However, the petitioner allegedly caused delays in the supply of goods, leading to the Ministry directing the encashment of the bank guarantee as a form of recovery. Negotiations between the parties failed to reach a settlement, and the petitioner invoked arbitration in 2021. The petitioner filed a petition under Section 11(6) of the Arbitration Act in 2023, seeking the appointment of an arbitrator. The Supreme Court held that the cause of action to appoint an arbitrator arises at the "Breaking Point," which is the point where reasonable efforts for settlement have been abandoned and arbitration is contemplated. The "Breaking Point" is considered the date from which the cause of action arises for limitation purposes.

DELHI HIGH COURT'S DECISION EMPHASIZES UNINTERRUPTED PROGRESS OF INFRASTRUCTURE PROJECTS, DENIES INJUNCTION

In the case of Roadway Solutions India Infra Limited v National Highway Authority of India, the petitioner was awarded a contract by NHAI for certain road works. However, disputes arose between the parties, and NHAI issued a Notice of Intention to Terminate (NITT) claiming that the petitioner had failed to fulfill its obligations. The petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act seeking to stay the NITT. The Delhi High Court held that, in accordance with Sections 20A and 41(ha) of the Specific Relief Act, courts should not grant injunctions that may cause delays in infrastructure projects.

COURT REJECTS BIFURCATION OF DISPUTE, EMPHASIZING EFFICIENCY AND AVOIDANCE OF MULTIPLICITY IN ARBITRATION PROCEEDINGS

In the case of Town Essentials Pvt. Ltd. v. Daily Ninja Delivery Services Pvt. Ltd., the plaintiff and the first defendant had a Supplier and Service Provider Agreement. The plaintiff alleged that the defendants caused losses and induced a breach of contract. The plaintiff filed a Commercial Suit seeking injunction and monetary relief. The first defendant requested arbitration under Section 8 of the Arbitration and Conciliation Act. The court held that when the cause of action against all defendants is the same, it cannot be bifurcated, allowing arbitration against some defendants while continuing the suit against others, as it would lead to multiple proceedings, delays, increased costs, harassment, and the possibility of conflicting judgments.

DELHI HIGH COURT CLARIFIES SCOPE OF ARBITRATION CLAUSE IN INSURANCE POLICY DISPUTES

In the case of Shivalaya Construction Co. Pvt Ltd. v. National Insurance Company Ltd., the parties had an insurance policy agreement that included a clause for arbitration in disputes regarding the quantum of payment under the policy. The petitioner sought the appointment of an arbitrator after a dispute arose, but the respondent refused. The Delhi High Court held that generally, disputes regarding insurance policy claims would not be referred to arbitration when the dispute is limited to the quantum of compensation and the insurer disputes liability. However, if the dispute involves both the quantum of compensation and liability, the dispute can be within the ambit of the arbitration clause, and the respondent should raise such objections before the arbitrator.