

# MONTHLY ROUND-UP

**JUNE 2023**

INDIAN ARBITRATION  
LAW REVIEW





## **ARBITRATORS ARE DUTY BOUND TO SUPPLY COPIES OF ARBITRAL AWARD WHETHER THE PARTIES ARE CONTESTING OR EX-PARTE**

It is the bounden duty of the Arbitrator appointed by the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) to issue signed copies of the Award to the parties irrespective of the fact whether the parties have contested the proceedings or were proceeded *ex-parte*. The Arbitral Award is to be made available to the parties by the Arbitrator himself in accordance with the provisions of Section 31(5) of the Arbitration and Conciliation Act, 1996 (the A&C Act).

## **PETITION FILED UNDER SECTION 9 OF IBC FOR ENFORCEMENT OF ARBITRAL AWARD IS NOT MAINTAINABLE**

A Petition filed under Section 9 of IBC for implementation of an Arbitral Award is not maintainable and not in tune with the objective of IBC. The Bench has further held that Arbitration and IBC proceedings cannot go on together.

## **ONLY IN EXCEPTIONAL CIRCUMSTANCES CAN AN ORDER UNDER SECTION 16 OF THE A&C ACT BE CHALLENGED UNDER ARTICLE 227**

The remedy under Article 227 of the Constitution of India against the order of the Arbitral Tribunal rejecting the challenge to its jurisdiction under Section 16 of the A&C Act, can be invoked only on ground of the Arbitrator's patent lack in inherent jurisdiction, or exceptional circumstances, or 'bad faith' on part of the other party.

## **UNNECESSARY LITIGATION BY PWD, COURT IMPOSES A FINE OF INR 10 LAKH**

The Court noted that public sector undertakings are throwing sheafs of paper at the Court and believe that such voluminous tomes would dissuade judges from looking deep into the matter and be frightened enough to grant an adjournment and delay the inevitable. The Court further noted that the only way this can be ensured is by imposing actual and primitive costs for such misadventure.



## **FILING OF WRITTEN STATEMENT ALONG WITH A SECTION 8 APPLICATION DOES NOT LEAD TO THE PRESUMPTION THAT THE DEFENDANT HAS WAIVED THEIR RIGHT TO REFER TO ARBITRATION**

In **Nemai Chandra Roy Karmakar alias Nemai Roy v. Sarada Construction**, the Court opined that it is the duty of the Defendant to file the application under Section 8 of the A&C Act, seeking arbitral reference, before the filing of the suit. However, such simultaneous filing of the written statement along with the application under Section 8 rebuts any presumption on the lines that the Defendant has waived their right to refer to Arbitration.

## **FAILURE TO RESOLVE A DISPUTE THAT WAS REFERRED TO ARBITRATION, DOES NOT ENTITLE THE PARTIES TO CLAIM REFUND OF COURT FEE**

The Kerala High Court has ruled that, until it has been resolved between the parties, a party's simple referral for settlement under Section 89 of the Code of Civil Procedure, 1908 does not entitle such party to a court fee refund under Section 69A of the Kerala Court Fees and Suits Valuation Act.

## **AN ARBITRATOR'S VIEW IS SACROSANCT AND SHOULD NOT BE SUBSTITUTED WITH AN ALTERNATE OPINION THAT A COURT MAY POSSIBLY HAVE ON RE-APPRECIATION OF EVIDENCE**

In **Jaldhi Overseas Pte Ltd v. Steer Overseas Pvt Ltd**, the judge ruled that unless it is manifestly evident that there was no Arbitral Agreement, the Court should not overrule the Arbitrator's decision or go beyond a preliminary ruling. Justice Saraf further stated that a Court's latitude in these circumstances was constrained. The Court then noted that this case was not one in which there was "no concluded contract" or no Arbitration Agreement, and it declined to interfere with the arbitral result.



## ORDERS OF THE ARBITRAL TRIBUNAL NOT SIGNED BY ALL OF THE ARBITRATORS AND AN ARBITRATOR'S ABSENCE FROM CERTAIN PROCEEDINGS ARE NOT GROUNDS FOR SETTING ASIDE OF AN AWARD

In **MMTC Limited v. Aust Grain Exports Pty Ltd.**, the Delhi High Court has reaffirmed that a procedural error cannot be a basis for overturning an Arbitral Award unless it is so serious as to shock the Court's conscience, thus making the Award illegal. The bench headed by Justice Chandra Dhari Singh made the observation while rejecting a petition file under Section 34 of the 1996 A&C Act.

## MERELY USING THE TERM "ARBITRATION" OR "ARBITRATOR" IN A HEADING OR CLAUSE DOES NOT RESULT INTO THE EXISTENCE OF AN ARBITRATION AGREEMENT

In **Blue Star Limited v. Rahul Saraf**, the Calcutta High Court held that although an Arbitration Agreement may be drafted in a variety of ways and formats, the mere mention of the terms "arbitration" or "arbitrator" in a heading or their scattered presence in clauses of Agreements between parties does not amount to the existence of an Arbitration Agreement. The prospect that the parties "may" submit matters to Arbitration in the future cannot be used to infer an express Arbitration Agreement entered into by the parties. The parties' purpose to compel Arbitration must be expressly stated in the Arbitration Agreement in clear and unambiguous terms.