

MONTHLY ROUND-UP

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INDIAN ARBITRATION
LAW REVIEW



ARBITRAL TRIBUNAL CANNOT IMPEAD NON-SIGNATORIES: DELHI HIGH COURT

The Delhi High Court in the case of *M/s Arupri Logistics Private Ltd. v. Vilas Gupta and Ors. and Taurus India Limited v. Vilas Gupta and Ors.*, upheld that the arbitral tribunal did not have the inherent power to implead non-signatories in an ad-hoc arbitration proceeding. The Court attempted at delineating the Arbitral Tribunal's powers and held the same cannot be considered on par with an adjudicatory institution. The Court held that impleading would be tantamount to a fundamental and impermissible alteration of the original reference vide which an Arbitral Tribunal was created in the first place.

THE APPLICATION UNDER SECTION 8 FILED AFTER THE WRITTEN STATEMENT CAN BE REFERRED TO ARBITRATION.

The provisions of Section 8 of the Arbitration & Conciliation Act (A&C Act) provides that a party merely needs to indicate the judicial authority about the arbitration clause at the time of filing the first statement on the substance of the disputes, and thereafter the judicial authority is compelled to refer disputes to arbitration. The Court clarified in a recent case of *Nemai Chandra Roy Karmakar alias Nemai Roy v. Sarada Construction* that once the objection regarding the existence of arbitration and the disputes being governed by the same were raised in the written statement, which was the first statement on the substance of the dispute, it cannot be concluded that there was a failure to request reference of disputes to arbitration in time.

COUNTERBALANCE BETWEEN THE PARTIES IS AFFECTED WHEN RESPONDENT HAS POWER TO APPROVE PLAINTIFF'S LIST OF ARBITRATORS: DELHI HIGH COURT

The Delhi High Court in the case of *Steelman Telecom Limited v. Power Grid Corporation of India Limited* disapproved of appointment procedure/s giving greater say to one of the contracting parties. It said counterbalance is disturbed when the party drawing up the panel is further given the power to afford confirmation to the choice made by the other party. Court held that it tilts the balance in favour of the party drawing the panel. Accordingly, the Court allowed the arbitration petition and appointed Justice (Retd.) Najmi Waziri as the sole arbitrator.

CONSTITUTION OF AN ARBITRAL TRIBUNAL CANNOT PREVENT THE COURT TO HEAR AN APPLICATION UNDER SECTION 9(1) OF THE A&C ACT, IF THE COURT HAS ALREADY ‘ENTERTAINED’ SUCH APPLICATION PRIOR TO THE CONSTITUTION: CALCUTTA HIGH COURT.

The Calcutta High Court held in the case of *Jaya Industries v. Mother Dairy Calcutta & Anr.* that the power of the Court to continue hearing an application for interim relief under Section 9(1) of the A&C Act even though Section 9(3) of the A&C Act would not be “fettered” under Section 9(3) after the constitution of an arbitral tribunal, if the court has already applied its mind to the issues involved in the matter. The Court reiterated that the importance of minimum intervention by courts, but emphasized that the same cannot be at the cost of the parties rearguing the issues.

INTENSE APPELLATE REVIEW IN ARBITRAL AWARD IS OUTSIDE COURT’S PURVIEW: SUPREME COURT

While adjudging whether an arbitration award calls for interference, Courts must be conscious that the arbitrator is the sole judge of facts; unless an error of law is shown, interference with the award should be avoided. Under Section 30/33 of the A&C Act, 1940 ‘Error of Law’ was within the jurisdiction of court and not ‘Error of Fact’. Consequently, the Supreme Court set aside the impugned judgment and restored the award, and directed the state to ensure full payment to the appellant in line with the award within eight weeks.

ORDER OF A FOREIGN-SEATED ARBITRATION IS A SUPPLEMENTAL FACTOR UNDER SECTION 9 OF THE A&C ACT BY AN EMERGENCY ARBITRATOR: CALCUTTA HC

An order of the Emergency Arbitrator in a foreign-seated arbitration, while not directly enforceable under the A&C Act due to the absence of a provision akin to Section 17(2) of the Act in Part II, should nonetheless be considered by the Court as a supplemental factor under Section 9 of the A&C Act. The court also noted that the award is reasoned and no illegality or perversity or contravention of any law.

SENDING SCANNED COPIES OF ARBITRAL AWARDS IS VALID UNDER SECTION 31(5) OF A&C ACT: DELHI HIGH COURT

Delhi High Court noted in the case of *Ministry of Youth Affairs and Sports v. Ernst and Young Pvt Ltd*, that law has to keep its pace in tandem with the developing technology. When service by email is an accepted mode of service, then sending scanned signed copy of the award/order of the Arbitral Tribunal to the parties would be a valid delivery as envisaged under Section 31(5) of the A&C Act.

IF THE MAJORITY ORDER IS SET ASIDE THEN DISSENTING OPINION CANNOT BE TREATED AS AWARD: SUPREME COURT

In the case of *Sarvesh Rajput v. State of Madhya Pradesh*, the High Court of Madhya Pradesh has held that the cause of action for referring the dispute to arbitration under Section 3G(5) of the National Highways Act, 1956 (Act) arises on the date of the determination of the amount of compensation by the competent authority under Section 3G(1) of the Act. The Court held that though there is no period of limitation provided for referring the dispute to arbitrator under the said Section, however, it is governed by the residuary clause as contained under Article 137 of the Limitation Act wherein a period of 3 years is provided.