

MONTHLY ROUND-UP

NATIONAL INTERNATIONAL COMMERCIAL CORPORATE

INDIAN ARBITRATION LAW REVIEW

MARCH 2024

THE ARBITRATION ACT SHOULD BE AMENDED BY PARLIAMENT TO SPECIFY THE LIMITATION PERIOD FOR FILING S.11 APPLICATIONS

In the case of *M/S Arif Azim Co Ltd v. M/S Aptech Ltd*, the Supreme Court voiced concerns about the excessively long three-year filing period permitted under Article 137 of the Limitation Act and emphasized the lack of a statutory prescription on the time limit for such applications. The court acknowledged the absence of legislation but recommended that Parliament alter the Act to set a deadline for submitting applications under Section 11(6) of the Arbitration and Conciliation Act (A&C Act). The ruling tackled the possible consequences of not having a time-bound framework and stressed the importance of quickly resolving commercial conflicts.

GENERAL REFERENCE HAS NOTHING TO DO WITH THE INCLUSION OF AN ARBITRATION CLAUSE IN ANOTHER CONTRACT

In the case of *NBCC (India) Ltd. v. Zillion Infra Projects Pvt. Ltd.*, the Supreme Court reaffirmed that unless there is a specific mention in the main contract to incorporate the arbitration clause into the main contract, a dispute cannot be referred to arbitration based on the arbitration clause contained in another contract. They overturned the High Court's determinations and concluded that the parties must resolve their disagreement using the method specified in the main contract unless there is a clear reference in the main contract to include the arbitration clause of another contract.

ENFORCEMENT OF FOREIGN AWARD MUST BE REFUSED ONLY RARELY, INTERNATIONAL STANDARDS TO BE APPLIED TO DETERMINE BIAS: SUPREME COURT

The Supreme Court in the case of *Avitel Post Studios Ltd. & Ors. v. HSBC Pi Holdings (Mauritius) Ltd.* held that, in determining the factor of arbitral bias, the Court should attempt to follow international standards rather than domestic ones, even though it allowed the enforcement of a foreign arbitral award. The Court stated that enforcement of a foreign judgment should only be denied in extraordinary cases due to bias.

NON-FILING OF ARBITRAL AWARD ALONG SECTION 34 IS A FATAL DEFECT

The Delhi High Court ruled in the latest case of *Union of India v. NCC Ltd.* that failing to file the arbitral award with the petition in accordance with Section 34 of the A&C Act constitutes a fatal defect and renders the filing non-est. The High Court stressed that in order to properly consider reasons for setting aside an award, a copy of the contested award must be included with an application made under Section 34 of the A&C Act.

PROCEEDINGS UNDER IBC DO NOT EXCLUDE COURT JURISDICTION TO ENTERTAIN SECTION 11 APPLICATIONS

The Delhi High Court ruled in the case of *Godavari Projects (J.V.) v. Union of India* that the procedures outlined in Section 14 of the Insolvency and Bankruptcy Code, 2016 do not specifically preclude the Court's or its authorities' ability to consider applications made in accordance with Section 11(6) of the A&C Act or other actions taken by the corporate debtor against a third party. It was decided by the bench that a Joint Venture's insolvency does not bar the corporate debtor from submitting an application under Section 11.

A COMPLETE REVISION OF THE ARBITRATION AND CONCILIATION ACT, 1996 IS PROPOSED BY THE EXPERT COMMITTEE ON ARBITRATION LAW

The eagerly awaited report from the Expert Committee on Arbitration Law, which was established on June 12, 2023, has finally been made public. The committee's mandate was to evaluate the country's arbitration laws and suggest changes to the A&C Act. A thorough examination of the existing arbitration system, specific reform recommendations, and the introduction of a draft bill intended to put the suggested changes into effect are some of the report's standout features. The report also includes an Explanatory Memorandum that clarifies the Bill's contents.

PRE-LITIGATION MEDIATION IS MANDATORY UNDER SECTION 12-A OF THE COMMERCIAL COURTS ACT

Pre-litigation mediation must be conducted under Section 12-A of the Commercial Courts Act, 2015, the Delhi High Court ruled in *M/s Sabsons Agencies Private Limited v. M/s Harihar Polymers & Anr.* Pre-institution mediation is required before initiating a lawsuit, according to Section 12-A of the A&C Act, as long as no immediate interim relief is requested. Legal Services Authorities may be authorized by the Central Government for this purpose. The mediation will last for three months, with the parties' approval to extend it by an additional two months.

TIME-BARRED CLAIMS SHOULD NOT BE ENTERTAINED

In the case of *Mahavir Enterprise v. Chandravati Sunder Salian*, the Bombay High Court ruled that claims that are clearly time-barred should not be granted because doing so would uphold injustice rather than the law. The High Court ruled that if there is even the smallest dispute as to whether a claim was filed on time, it should be sent to arbitration because the tribunal's jurisdiction would be violated if it became involved.

THE VENUE IN THE ARBITRATION CLAUSE SHOULD BE THE SEAT OF ARBITRAL PROCEEDINGS UNLESS EXPLICITLY CONTRARY INTENTION

In the recent case of *Ved Contracts Pvt Ltd v. Indian Oil Corporation Ltd.*, the Delhi High Court reiterated in its judgement that the venue designated in an arbitration provision shall be regarded as the seat of arbitral proceedings unless there is unambiguous evidence to the contrary. The ruling emphasized how crucial it is to read the full contract in order to determine the parties' intentions.

PARTY FAILS TO APPEAL IN HIGH COURT UNDER ARTICLE 226 DUE TO ARBITRAL AWARD U/S 34 A&C ACT

In the case of *The Executive Engineer & Ors v. M/S Bholasingh Jaiprakash Construction Ltd & Anr.*, the Delhi High Court ruled that Article 226 of the Indian Constitution is an unusual remedy that cannot be used in cases where a party has exhausted all other legal remedies. It was decided that a party could not file a Writ Petition under Article 226 of the Indian Constitution to the High Court in the event that they failed to contest the arbitration verdict under Section 34 of the A&C Act.

A PARTY IS NOT ELIGIBLE TO APPOINT TWO-THIRDS OF THE ARBITRAL TRIBUNAL

In *Apex Buldsys Limited v. IRCON International Ltd.*, the Delhi High Court ruled that limiting the names on an panel to recommend arbitrators to only three would go against the principle of broad-based representation. Furthermore, it would be against the principles of neutrality and counterbalancing for one party to appoint two-thirds of the arbitral tribunal's members. The Court restated that simply because the appointment procedure was found to be illegal, it wouldn't render the entire arbitration clause invalid. Instead, the illegal portion could be separated from the rest of the clause, allowing the remaining portion to be upheld and enforced.

SECTION 34, A&C ACT DELAY RE-FILING: IF THE DELAY IS PROCEDURAL AND CURABLE, THE APPLICATION MUST BE ALLOWED

In the case of *Department Of Transport Govt NCT Of Delhi Vs. Green City Transport Corporation Pvt Ltd*, the Delhi High Court adopted a lenient stance for the condonation of delay and concluded that not all inconsistencies result in the dismissal of a petition under Section 34 of the A&C Act. It was decided that certain flaws might be classified as procedural or treatable rather than fundamental.

UNDER SECTION 27 OF A&C, THE COURT IS UNABLE TO DETERMINE THE ADMISSIBILITY, RELEVANCE, MATERIALITY, OR WEIGHT OF ANY EVIDENCE

In the case of *Steel Authority of India Ltd v. Uniper Global Commodities*, the Delhi High Court ruled that the court could not decide any evidence's admissibility, relevancy, materiality, or weight under Section 27 of the A&C Act, because doing so would constitute unlawful interference with the Tribunal's proceedings.

ENFORCEMENT OF ARBITRAL AWARDS: AWARD CREDITOR SUCCESSFULLY SEEKS REMEDY FROM EUROPEAN COURT OF HUMAN RIGHTS FOR ALBANIA'S EXTRAORDINARY DELAY IN RECOGNISING ARBITRAL AWARD

The Republic of Albania violated its responsibilities under Article 6 (Right to a Fair Trial) of the European Convention on Human Rights by refusing to recognise an arbitral ruling against it, according to the European Court of Human Rights. Proceedings must be decided "within a reasonable time," according to Article 6(1). Iliria SRL attempted to get an arbitral ruling recognised legally by Albanian domestic courts for 17 years and 9 months. The Albanian Supreme Court, the Albanian Constitutional Court, and the Tirana Court of Appeal all heard cases before denying the arbitration award recognition due to public policy concerns. Iliria was granted €10,800 in compensation after successfully arguing that Albania had violated Article 6(1) by neglecting to address Iliria's application in a timely manner.

SINGAPORE COURT RECOGNISES INDONESIAN PKP PROCEEDINGS FOR THE FIRST TIME

The first-ever acceptance of Indonesian PKPU proceedings by Singapore's International Commercial Court has made it easier for cross-border insolvency processes between the two nations to integrate smoothly. This action helps creditors, debtors, and insolvency specialists working on Indonesian bankruptcy cases who want to extend PKPU protections to assets or claims that are situated in Singapore.

HKIAC TRIBUNAL DOES NOT HAVE JURISDICTION OVER CLAIMS UNDER RELATED AGREEMENT, HONG KONG COURT RULES

A decision rendered by a HKIAC tribunal appointed pursuant to a loan agreement has been overturned by the Hong Kong Court of First Instance. The tribunal had been granted jurisdiction to adjudicate claims arising from a related promissory note that featured an alternative HKIAC arbitration clause. The decision offers valuable insights into the probable approach of Hong Kong courts in situations involving multiple contracts, where a dispute may potentially be governed by conflicting or distinct dispute resolution provisions.