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ARBITRATION LAW

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I INTRODUCTION

THE ARBITRATION ecosystem in India gained greater momentum in the survey year 2024, with major interpretations and rulings coming from the three-judge and five-judge benches of the Supreme Court of India. Every year, several cases reach the highest constitutional court concerning this branch of law of dispute resolution. Still, fewer make history by shaping the new contours of the arbitration law, both for domestic and international parties. The entire law is party autonomy-centric, with another silver lining of the independence of the arbitrator's mandate. There is a very limited scope for the courts to even look through the arbitration matters in detail, unless warranted by law. The courts in matters of arbitration are guided by self-restraint and discipline to first give due recognition to the entire process of arbitration and take it up on good faith as a job well done, and only in rare cases should the court exercise its powers to check the veracity of the award. Such thoughts, values and approaches are depicted through the hand-picked judgments of the Supreme Court delivered during the survey year. Taking a closer look to appreciate the work of the Indian courts, which is a mixed bag of good and under performance; however, the Supreme Court has balanced it out throughout the survey year and added new dimensions to the judiciary's positive handholding of the arbitration mechanism in India.

II COURT'S INTERFERENCE IN ARBITRAL AWARDS AND INTERPRETATION OF CONTRACTS

The year 2024 began with some of the perpetually evolving yet significant issues post-declaration of an arbitral award. These include- modification of the arbitral award. In January 2024, a division bench of the Supreme Court began taking a deep dive into the tenets of award procedure, the way the courts below at the district and high court level appreciated the question of modification by interpreting the law. The judges in the case of *S. V. Samudram v. State of Karnataka*.¹ Recounted previous judgments of various benches of the Supreme Court, which have consistently held that any attempt to "modify an award" under

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1 2024 INSC 17.

Section 34 would amount to “crossing the Lakshman Rekha”². The division bench in this matter made out a strong case at the start of the year 2024, clarifying the stand of the highest court of the country as pro-arbitration by distancing itself from interfering in the arbitral awards. The court also cautioned the courts below to adhere to the same approach by differentiating between the supervisory role of the courts versus the occasion to revisit the merits of the case, which squarely falls under the ambit of the arbitral tribunal only. Citing from *Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited*,³ the Supreme Court reiterated:⁴

The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in a few circumstances only, like in the case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award, leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at a minimum level, and this can be justified as parties to the agreement make a conscious decision to exclude the court’s jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

Apparently, the High Court of Karnataka, *vide* its judgement under challenge, has confirmed the modification of the arbitral award as has been done by the Civil Judge, Sirsi, in April 2010. Finally, the Supreme set aside the orders of the courts below and restored the order of the arbitrator. A passing thought on this case that the Supreme Court decided this matter in January 2024, with the Civil Appeal filed in 2019 and the earliest impugned order of the Civil Judge dates back to April 2010, raises alarm on the time for which the arbitration petition post arbitral awards remains stuck between the district court to the Supreme Court. Not a good sign!

Later in February 2024, the Supreme Court faced a similar issue pursuant to the judgment passed by the Division Bench of the High Court of Madras, where the high court, while partly allowing the arbitral award, had modified the award passed by the arbitral tribunal. On this note, the Supreme Court observed that the opinion of the Supreme Court itself seems to be divided on this matter. Such that earlier in January 2024, the Supreme Court’s division bench declined to interfere in the arbitral award for modification, whereas in other cases the Supreme Court had modified or accepted the modified arbitral award. The Supreme Court in *State of Karnataka* has held that the courts are not empowered to modify the arbitral award under Sections 34 or 37 of the Arbitration Act, whereas in other aforementioned cases, the Supreme Court had modified or accepted the modified arbitral award. The fulcrum of this legal controversy rests on the following

2 *National Highways Authority of India v. M. Hakeem* (2021) 9 SCC 1.

3 (2021) 7 SCC 657.

4 *Id.*, para 52.

questions: Are Indian courts jurisdictionally empowered to modify an arbitral award? If permissible, then to what extent? The controversy arises because the Arbitration and Conciliation Act, 1996, does not expressly empower courts to modify or vary an arbitral award. Section 34 of the Act only confers upon courts the power to set aside an award. Nevertheless, this court, on several instances, has been compelled to modify arbitral awards, seeking to minimise protracted litigation and foster the ends of justice. In contrast, some judgments have held that the Indian courts cannot modify awards, due to the narrowly defined scope of section 34. Therefore, divergent and contrasting judicial opinions exist on this question.

Thus, the court noted that it is therefore of seminal importance that through an authoritative pronouncement, clarity is provided for the guidance of the Courts which are required to exercise jurisdiction under the aforesaid sections 34 and 37, as the case may be, day in and day out. Accordingly, the three-judge bench in this matter of *Gayatri Balasamy v. ISG Novasoft Technologies Limited*⁵ referred the case to the bench of the Chief Justice of India to decide appropriately. This once again reflects the lack of consistency in interpretation in the high courts and the Supreme Court on speedily disposing of arbitration litigation, which may also guide the courts below. Hoping the dust would settle soon, paving the way for healthier streamlining of arbitration interpretation and judgments.

A closer reading of the arbitration judgements pronounced by the Supreme Court in the survey year 2024, reflect that in this year the apex court was repeatedly called upon to create an ecosystem through its judgments of shielding itself from a narrative that the courts below and the highest court of the land loosely interpret the arbitration law and enjoy the discretion as exercising in regular matters of appeal.

The role of the Indian courts *vis-a-vis* decision of the arbitration tribunal in the form of the arbitral award was once again in question before the Supreme Court in the survey year in the case of *National Highway Authority of India v. Hindustan Construction Company Ltd.*⁶ Reviewing the arbitral award, the division bench of the Apex Court discovered and opined that all the courts and benches below, the single judge and the division bench of the high court are seen to have examined the challenge to the award within four corners of limitation imposed by sections 34 and 37 of the Arbitration and Conciliation Act, 1994, hence the appeal is dismissed for want of merits. This is one of the very cases wherein the Supreme Court maintained the brevity of expression and repeated the decisions and experts thereon which have been relied upon. This deserves appreciation in terms of the summary style of writing the judgment, especially when previous judgments are available on the same subject matter. Nonetheless, a passing reference as made by the court in a subtle tone that the courts must refrain from sitting in appeal on the awards authored by the arbitral tribunal, unless otherwise provided by the law for issues

5 Special Leave to Appeal (C) Nos.15336-15337/2021

6 2024 INSC 388.

like public policy as discussed at length the by Supreme Court in cases like *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*,⁷ and *MMTC Ltd. v. Vedanta Ltd.*⁸

Sometimes, even the orders of the Supreme Court can be profound in terms of the impact. This is what we observed in the survey year in the arbitration litigation that travelled through the High Court of Delhi and landed before the Supreme Court of India. On the subject matter of court's restraining from interfering with the arbitral award, the order passed by the bench in the case of *Kalanithi Maran v. Ajay Singh*⁹ comprising of the Chief Justice of India with two other judges of the apex court remanded the proceedings back to the single judge for reconsidering the petition under Section 34 of the Arbitration and Conciliation Act 1996. The bench of the Supreme Court also requested the Chief Justice of the High Court of Delhi to assign the hearing of the petition under Section 34 Arbitration and Conciliation Act 1996 to a judge other than the judge who heard and passed the impugned order.

The three-judge bench of the apex court closed the case categorically observing:

Interference with an arbitral award under Section 34 must be confined to the grounds which are permissible under the statute. But equally, the Judge hearing an application under Section 34 must apply their mind to the grounds of challenge and then deduce as to whether a case for interference within the parameters of Section 34 has been made out.

The survey year of 2024 witnessed quite a few matters reaching the Supreme Court on account of the minimalist role of the judiciary in arbitration petitions, especially after the delivery of an arbitral award. The judgment in the case of *OPG Power Generation Pvt. Ltd. v. Enxio Power Cooling Solutions India Pvt Ltd.*¹⁰ Factually, in this matter, the Division Bench affirmed the view taken by the arbitral tribunal and opined that there was no patent illegality in the award meriting interference under Section 34 of the Arbitration and Conciliation 1996 Act. Consequently, the order of the single judge was set aside, and the arbitral award was restored. Citing a plethora of judgments of the Supreme Court itself, the court sent out a clear reminder to all the courts below on how they should deal with post-award arbitration matters in the following words:¹¹

Courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation

7 (2019) 7 SCC 236.

8 4 (2019) 4 SCC 163.

9 SLP(C) No. 14936/2024.

10 2024 INSC 711.

11 *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Lt.*, (2019) 20 SCC 1, para 27-43.

that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as parties' autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

The issue of the jurisdiction of the courts *vis-à-vis* arbitration matters repeatedly kept heating up the debate in the corridors of courts, the legal fraternity and the legal academia.

How should the courts observe greater scrutiny in exercising their powers without disturbing the tenets of arbitration on merits, once again came up before the Supreme Court for deliberation in *Aslam Ismail Khan Deshmukhv ASAP Fluids Pvt. Ltd.*¹² In this case, the arbitration petitions arose out of disputes under the shareholders agreement, which provides for the arbitration clause, and the same has not been disputed by the parties. Based on the contention of the parties, the apex court summarised that its jurisdiction was basically invoked to determine whether the court should decline to refer to section 11(6) of the Arbitration and Conciliation Act, 1996, by examining whether the substantive claims of the petitioner are *ex facie* and hopelessly time-barred. At this juncture, the court recalled the words of caution read out in *Vidya Drolia v. Durga Trading Corporation*.¹³

... while dealing with the scope of powers of the referral court under Sections 8 and 11 respectively, endorsed the *prima facie* test and opined that Courts at the referral stage can interfere only in rare cases where it is manifest that the claims are *ex facie* time-barred and dead, or there is no subsisting dispute. Such a restricted and limited review was considered necessary to check and protect parties from being forced to arbitrate when the matter is demonstrably “non-arbitrable” and to cut off the deadwood..... It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is *ex facie* time-barred, or that the dispute is non-arbitrable, that the court may decline to refer. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration; otherwise, it would encroach upon what is essentially a matter to be determined by the tribunal.

Therefore, the Supreme Court further boosted an environment where the Indian judiciary could be seen keeping a safe distance from interfering in arbitration matters unless necessitated by facts and law, however, with a minimalist approach.

Arbitrator's appointments and the court's minor surgery approach

The courts in India, from the district level to the high courts and the Supreme Court of India, have often been doing cosmetic or minor surgeries or patchwork to give more meaningful interpretation to the Arbitration and Conciliation Act, 1996, so that the parties' autonomy is respected, and the arbitral tribunal's jurisdiction is also honoured. One of the principal thoughts has been to ensure the least judicial

¹² 2024 INSC 849.

¹³ (2021) 2 SCC 1.

interference, as arbitration is not the judiciary's main stakeholder, unlike cases emanating from other statutes, where cases are primarily filed in the courts *per se*. A few similar situations came up before the courts in India during the survey year, which led to certain conflicting as well as converging opinions of the courts, ultimately paving the way for an arbitration-friendly interpretation. Discussing such instances through the courtroom scenarios as the matters unfolded before the highest court of the country.

One of the earliest contentions in arbitration matters is mostly the starting point itself- the reference of the matter to an arbitrator or the appointment of the arbitral tribunal. One such matter was decided by the three-judge bench of the apex court in the first quarter of 2024 in the case of *Arif Azim Co Ltd v. Aptech Ltd*.¹⁴ The court was faced with a critical question on the application of the law of limitation in an arbitration matter *vis-à-vis* the Arbitration and Conciliation Act, 1996, especially when the arbitration law was silent on the matter. This moot question was:¹⁵

Whether the Limitation Act, 1963, applies to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996? If yes, whether the present petition is barred by limitation?

This was a matter concerning the application under Section 11(6) of the Arbitration and Conciliation Act, 1996, and the jurisdiction of the Supreme Court was invoked since this was a case of an "International Commercial Arbitration" within the meaning of section 2(f) of the Arbitration and Conciliation Act, 1996. The court assessed the scope of the application of the law of limitation in reference to the section 11 (6) application in the case and even recounted the fundamental rationale for defining the scope of limitation in litigation in the following words: ¹⁶

..... The object behind having a prescribed limitation period is to ensure that there is certainty and finality to litigation and assurance to the opposite party that it will not be subject to an indefinite period of liability. Another object achieved by a fixed limitation period is to only allow those claims which are initiated before the deterioration of evidence takes place. The law of limitation does not act to extinguish the right but only bars the remedy.

This turned out to be a one-off case, where the Supreme Court had to cull out the limitation clause from a deeper scrutiny of the Limitation Act, 1963. On the face value, none of the articles of the Limitation Act provided for the period of limitation for applying section 11(6) of the Arbitration and Conciliation Act, 1996. However, a further reading of the law led to invoking the residual provision of the law for the situations where the Limitation Act has categorically not provided a period of limitation. In this case, it was Article 137 of the Limitation Act, which read as "Any other application for which no period of limitation is provided elsewhere

14 2024 INSC 155.

15 *Id.*, para 51.

16 *Id.*, para 44.

in this Division” and allows a period of three years from the date when the right to apply accrues. Thus, determining the limitation period, the court finally opined that:¹⁷

The present arbitration petition, having been filed within a period of three years from the date when the respondent failed to comply with the notice of invocation of arbitration issued by the petitioner, is not hit by limitation. The notice for invocation of arbitration having been issued by the petitioner within a period of three years from the date of accrual of cause of action, the claims cannot be said to be ex facie dead or time-barred on the date of commencement of the arbitration proceedings.

And the court further appointed a former judge of the Supreme Court to act as a sole arbitrator in the matter. Although the case was decided on the merits of the facts, the apex court found a slippery road in the extension of the applicability of article 137 of the Limitation Act to the filing of an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, and registered its concern as follows:

..... the applicability of Section 137 to applications under Section 11(6) of the Act, 1996 is a result of a legislative vacuum, as there is no statutory prescription regarding the time limit. We would again like to reiterate that the period of three years is an unduly long period for applying Section 11 of the Act, 1996 and goes against the very spirit of the Act, 1996, which provides for expeditious resolution of commercial disputes within a time-bound manner. Various amendments to the Act, 1996, have been made over the years so as to ensure that arbitration proceedings are conducted and concluded expeditiously. We are of the considered opinion that the Parliament should consider bringing an amendment to the Act, 1996, prescribing a specific period of limitation within which a party may move the court for making an application for appointment of arbitrators under Section 11 of the Act, 1996.

As indicated above, arbitration-related litigations most often do involve the teething problem of starting the arbitration per se and the intervention of the courts is sought for this purpose alone. However, the courts have to exercise caution in handling such matters so that they give a necessary push for the commencement of the arbitration proceedings without touching the matters best left for the arbitral tribunal’s jurisdiction. The judgment *SBI General Insurance Co. Ltd. v. Krish Spinning*¹⁸ is a reminder of the same judicial thought. In this case when the parties were unable to arrive at any amicable resolution of the dispute, and as no arbitrator was nominated by the appellant in response to the notice invoking arbitration, the respondent, filed a petition for the appointment of arbitrator

¹⁷ *Id.*, para 90.

¹⁸ 2024 INSC 532.

under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the High Court of Gujarat and the arbitrator was eventually appointed by the High Court of Gujarat. *Inter alia*, other questions for determination, one of the major issues before the Supreme Court was: “What is the scope and standard of judicial scrutiny that an application under section 11(6) of the Act, 1996 can be subjected to when a plea of ‘accord and satisfaction’ is taken by the defendant?”

On the issue of limitation applicable to section 11(6) application, the court cited the judgment delivered by the same bench of the Supreme Court in *Arif Azim Co Ltd v. Aptech Ltd* in March 2024 and declined to interfere. Further on the powers and role of the referral courts for arbitration matters, the court observed that: “prima facie examine and reject non-arbitrable or dead claims, to protect the other party from being drawn into a time-consuming and costly arbitration process.” The apex court further clarified a consolidated opinion and noted:¹⁹

.....Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test – first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues is answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an arbitral tribunal.

And the court affirmed the order of the appointment of the retired judge in the case.

The Arbitration and Conciliation Act, 1996 have adequate landscape for the party autonomy, however, the Supreme Court through its judgment in *HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad*²⁰ sent out a word of caution that filing application, withdrawing and re-filing cannot be treated as normal and permissible as the core purpose of the arbitration law is to expedite the dispute resolution and not frustrate it. The respondent has earlier filed an application under Section 11(6) before the High Court of Judicature at Bombay for appointment of an arbitrator, then withdrew application and went before NCLT and having failed there as it was a wrong forum, came back to the high court which allowed the appointment of the arbitrator and appointed a retired judge as the arbitrator in the case. However, the Supreme Court did not appreciate this approach of the high court and observed that:

.....Arbitration as a dispute resolution method, too, seeks to curtail the time spent by disputing parties in pursuing legal proceedings. This is evident from the various provisions of the Act, 1996, which

¹⁹ *Supra* note 14 , para 89.

²⁰ 2024 INSC 851.

provide a timeline for compliance with various procedural requirements under the said Act. An application for the appointment of an arbitrator under Section 11(6) of the Act, 1996, is required to be filed when there is a failure on the part of the parties or their nominated arbitrators to commence the arbitration proceedings as per the agreed-upon procedure. This Court, being conscious of the temporally sensitive nature of proceedings under Section 11(6), has issued various directions from time to time to ensure that applications for appointment of arbitrators are decided expeditiously...

The Supreme Court further observed and clarified a position that the second application under section 11(6) would be maintainable when the invocation of the same arbitration clause is sought for a different cause of action that may arise on a later date. And the court reminded the courts to note:

One important aspect that needs to be kept in mind while applying the principles of Order 23 Rule 1 to applications under Section 11(6) of the Act, 1996, is that it will act as a bar to only those applications which are filed after the withdrawal of a previous Section 11(6) application filed based on the same cause of action. The extension of the aforesaid principle cannot be construed to mean that it bars the invocation of the same arbitration clause on more than one occasion. Certain claims or disputes may arise between the parties after a tribunal has already been appointed in furtherance of an application under Section 11(6). In such a scenario, a party cannot be precluded from invoking the arbitration clause only on the ground that it had previously invoked the same arbitration clause. If the cause of action for invoking subsequent arbitration has arisen after the invocation of the first arbitration, then the application for appointment of arbitrator cannot be rejected on the ground of multiplicity alone.

Finally, setting aside the order passed by the High Court of Bombay, the court opined:

The legislative intent of expeditious dispute resolution under the Act, 1996 must also be kept in mind by the courts while considering an application for condonation of delay in the filing of an application for appointment of arbitrator under Section 11(6). Thus, the court should exercise its discretion under Section 5 of the Limitation Act only in exceptional cases where a very strong case is made by the applicant for the condonation of delay in filing a Section 11(6) application.

While the Arbitration and Conciliation Act, 1996 law lays down principal guidelines for initiating the arbitration process, at times the decisions of the parties to the arbitration compel the constitutional courts to revisit the legislative intent of the law and decipher the true purpose. The five-judge bench of the Supreme

Court faced one such situation in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company*,²¹ wherein the court had to establish a restore a balance between the party autonomy and independence and impartiality of the arbitral tribunal. This was a matter which was referred to the five-judge bench and covered three material questions for determination:

- i. Whether an appointment process which allows a party who has an interest in the dispute to unilaterally appoint a sole arbitrator, or curate a panel of arbitrators and mandate that the other party select their arbitrator from the panel, is valid in law;
- ii. Whether the principle of equal treatment of parties applies at the stage of the appointment of arbitrators; and
- iii. Whether an appointment process in a public-private contract, which allows a government entity to unilaterally appoint a sole arbitrator or a majority of the arbitrators of the arbitral tribunal, violates Article 14 of the Constitution.

Considering the validity of an arbitration clause which prescribed that the appointment of the arbitrator will happen from a panel of arbitrators provided for by one of the parties (in this case public sector undertaking (PSU)). The issue has been critical that maintaining a panel of potential arbitrators is one thing and is permissible; however, compelling the other party to choose the arbitrator from the same panel is not justifiable and defeats the sentiment of party autonomy by such compulsion. The Supreme Court thus laid the following through a three-judge authored judgment, the other two judges wrote separate opinions, one partial dissent:

- i. The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;
- ii. The Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs.
- iii. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. *Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;*
- iv. In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in CORE²² is unequal and prejudiced in favour of the Railways.

²¹ 2024 INSC 857.

²² *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, (2020) 14 SCC 712. Hereinafter referred to as “CORE”.

- v. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;
- vi. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the *nemo iudex* rule; and
- vii. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals.

It is significant to note that Pamidighantam Narasimha J., wrote a separate opinion with partial dissent in this case and mentioned that at this stage it would be difficult to apply the doctrine of bias or real likelihood of bias. In this separate opinion, the judge further observes that:

The real issue is about the imbalance caused by to unilateral power of one of the parties to the contract to constitute the arbitral tribunal. The composition of the arbitral tribunal is part of party autonomy, but there is always the power, coupled with duty, of the court to ensure that the procedure under the arbitration clause enables the constitution of an independent arbitral tribunal. This scrutiny or enquiry by the court is at the stage of considering the application under Section 11.

Therefore, the judge cautions that, “we cannot, as an advance ruling, give a declaration that all arbitration clauses enabling unilateral appointments are null and void at this stage.” Narasimha J., further observed that:

.....it is necessary to note that the mere existence of some relationship with the appointing authority does not inherently undermine autonomy. For instance, senior officers always serve as appellate authorities, and their objectivity is not compromised due to their employment. The solution is in the remedies and certainty in law. Systems of governance must evolve and recognise the capability in handling distinct professional duties. It is said that the key difference between humans and other beings lies in their ability to think independently and even against their own interests. While it is important to acknowledge potential conflicts of interest, it does not mean that the system must bend backwards to cater to unending suspicion and doubt. A balance must be struck between ensuring confidence in the system and fostering a healthy culture of independence and objectivity in functioning. If we focus solely on identifying and disqualifying individuals for perceived conflicts, the process becomes an endless cycle of mistrust.

Hrishikesh Roy J., also authored a separate opinion and found his side closer to the opinion expressed by Narasimha J., separately, which needs no further

elaboration. This five-judge bench judgment, nonetheless, has placed a final lid on the ever-emerging issues of handling unilateral arbitration clauses or various other clauses with defects which may endanger party autonomy and increase the risk of creating imbalance in the arbitration process.

Enlarged judicial support post declaration of arbitral award

*The Supreme Court has always come to the rescue of India's global image as an arbitration-friendly judicial system. In the survey year 2024, while handling a variety of arbitration matters, the apex court clarified that the enforcement of foreign awards may be refused for bias only in exceptional circumstances, while speaking from the bench in the case of Avitel Post Studios Limited v. HSBC PI Holdings (Mauritius) Limited.*²³ The apex court has categorically observed that the threshold for scrutiny in cases of international arbitrations and awards thereof is placed on a much higher pedestal, and it should meet global best practices, especially different from the standards followed and adopted in matters of domestic arbitrations. The court thus observed:

What is also essential to note is that Courts across the world do not adopt a uniform test while dealing with allegations of bias. The standards for determining bias vary across different legal systems and jurisdictions. English Courts, for instance, adopt the “informed or fair-minded” observer test to conclude whether there is a “real possibility of bias”. Australia adopts the “real danger of bias” test, and Singapore prefers the standard of “reasonable suspicion”, rejecting the “real danger of bias” test. Therefore, the outcome of a challenge on the grounds of bias would vary, depending on domestic standards.

The court also cited a famous and renowned international arbitrator and author, Gary Born, who says that:²⁴

In light of developing sources of international standards concerning arbitrators' conflict of interest, it should be possible to identify and apply international minimum standards of impartiality and independence..... More generally, in considering whether to deny recognition of an award under Article V, national courts should not apply domestic standards of independence and impartiality without regard to their international context. Although national standards of independence and impartiality may be relevant to identifying international standards, just as domestic standards of procedural fairness can be relevant under Article V(1)(b), these standards should be considered with caution in international contexts....Only in rare cases should domestic standards of independence or impartiality be relied upon to produce a different result from that required by international standards.

23 2024 INSC 242.

24 Gary Born, International Commercial Arbitration (3rd edn.,2021) at 3946.

The Supreme Court also expressed its displeasure that this case has been dragged on for over a decade, which destroys the fast tracking of justice as the basic tenet of arbitration law and observed that:

This case has unfortunately seen a protracted and arduous battle to enforce an award for over 10 long years, with multiple phases of litigation.... This long list of events points to a saga of the award holder's protracted and arduous struggle to gather the fruits of the Award. This sort of challenge, where arbitral bias is raised at the enforcement stage, must be discouraged by our Courts to send out a clear message to the stakeholders that Indian Courts would ensure the enforcement of a foreign Award unless it is demonstrable that there is a clear violation of morality and justice. Refusal of enforcement of foreign award should only be in a rare case where non-adherence to International Standards is clearly demonstrable.

With such words of caution to the Indian courts, the Supreme Court disposed of the case by affirming that the high court in this matter has rightly held that the award debtors have failed to substantiate their allegation of bias, conflict of interest or the failure by the presiding arbitrator to render disclosure to the parties, as an objection to the enforcement of the award. Accordingly, the decision given by the high court for the enforcement/execution of the foreign award stands approved.

The issue of the post-award judicial interference in the decision of the arbitral tribunal continues to haunt the Supreme Court. Although the apex court has been issuing several guidelines from time to time, issuing several guidelines to develop a culture of conscious decision making with due respect for arbitral awards unless necessitated by law for a challenge to be upheld, it remains a perennial matter. One such matter of a similar nature was encountered by a division bench of the apex court in *Punjab State Civil Supplies Corporation Limited v. Sanman Rice Mills*.²⁵ The High Court of Punjab and Haryana has set aside the arbitral order under section 34 of the Arbitration and Conciliation Act, 1996, drawing power from section 37 of the same Act. The Supreme Court reiterated a principle that:²⁶

It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law, that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible, there is no scope for the court to reappraise the evidence and to take a different view other than that taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

²⁵ 2024 INSC 742.

²⁶ *Id.*, para 12.

The Supreme Court also registered its strong position that the courts shall refrain from interfering in the mandate of the arbitral tribunal by further observing, which may be seen as a beacon of light for future matters of a like nature for the courts below to approach:²⁷

The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that of superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered with unless a case for interference as set out in the earlier part of the decision is made out.... It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal.

Based on the reasons above and for want of any justification of the impugned order, the Supreme Court observed that the award was rightly upheld by the court exercising the powers under section 34 of the Act.

III CONCLUSION

The arbitration discourse has been evolving each year since major amendments to the Arbitration and Conciliation Act 1995, from 2015 onwards. The role of the courts, as visible from the decisions delivered during the survey year of 2024, has been strengthened further with a 'Laksman Rekha' being drawn for the courts. The survey year 2024 also witnessed various small arbitration petitions of a repetitive nature; however, they were more like offshoots of the judgments identified to be landmark either by laying down a new legal position or clarifying positions. These cases above and the judgments therein are expected to act as agents of change within the judicial approach towards the arbitration, which is no less than a bigger bottleneck, besides, few issues of legislative clarity, as was seen in the case of the applicability of the law of limitation to the filings under the arbitration law. More cases of alike nature and some with more technical questions of law are expected to dominate the next survey year 2025, and the legal academic lens shall report the same shortly for the readers to grasp a quick peek into the developments in this significant branch of law.

²⁷ *Id.*, para 20.