

IALR MONTHLY ROUND-UP

Initial court which heard arbitration plea alone has jurisdiction to hear subsequent applications: Madras High Court

Delivered on: 02.09.2022

A Single judge Bench of the Madras High Court in the case of Andal Dorairaj & Ors v. M/s Rithwik Infor Park Pvt Ltd & Ors., decided on a petition filed to challenge the jurisdiction of the Coimbatore Court. The parties had previously filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, before the High Court of Madras, subjecting themselves to the jurisdiction of Chennai. Thus, the petitioners had submitted that

the respondents had waived the earlier agreement as to the venue of arbitration, so, the subsequent applications must lie within the jurisdiction of Chennai. Further, it was also argued that as per Section 42 of the Act, subsequent applications are to be made in the initial courts only. The court allowed the petitions while upholding the jurisdiction of Court in Chennai and ordering the Respondent's petition in the the Court at Coimbatore to be presented before an appropriate court.



Appointment of Arbitrator is Not Barred by Pendency of Insolvency Petition: Delhi High Court

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In the case of Millennium Education Foundation v. Educomp Infrastructure and School Management Limited, the Delhi High Court shed light on the interplay between Arbitration and Insolvency and clarified that the appointment of an Arbitrator in accordance with Section 11 of the Arbitration and Conciliation Act, 1996 is not barred by the mere pendency of an insolvency petition under Section 9 of the Insolvency and Conciliation Code, 2016. It was further held that the merits or validity of a legal notice are not to be decided by the Court in the exercise of its power under Section 11 of the Arbitration and Conciliation Act, 1996. It held that as long as the petition is merely pending and not admitted and no moratorium has commenced, there can be no embargo on the proceedings under the Arbitration Act and on the petitioner seeking reference of disputes and appointment of an Arbitral Tribunal.

Writ Maintainable Against An Award Passed by Statutory Arbitrator Violating The Principles Of Natural Justice: Calcutta High Court

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The Bench of Justices Arijit Banerjee and Kausik Chanda held that an arbitral award under the National Highways Act, 1956 was violative of natural justice where no notice of arbitration was served nor was a copy of the award provided to the Appellants. The Calcutta High Court further expounded in *Sri Ganesh Chandra and Ors. v. The State of West Bengal and Ors.* that the availability of an alternative efficacious remedy under Section 34 of the Arbitration and Conciliation Act, 1996 cannot act as a bar to the maintainability of a writ petition challenging an award passed violating the principles of natural justice.

It was further observed that the action of disposing of 299 petitions in one day by the arbitrator, in this case, was a gross violation of the principles of natural justice.



Disputes Related to Tax Concessions Not Arbitrable: Supreme Court

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In the recent case of *M/s Shree Enterprise Coal Sales Pvt Ltd vs Union of India & Anr.*, the Hon'ble Supreme Court of India ruled that disputes related to tax concessions are not arbitrable in nature. The appellant was aggrieved by the order of the department refusing to grant Form E-1 and the benefit of Form C while changing tax rate from two percent to four per cent. The judgement overruled the Ahmedabad High Court judgement which held that the terms of e-auction provided for any dispute to be resolved by arbitration, on grounds that the dispute in present case was not of contractual nature. The decision was delivered by a division bench comprising Justice D. Y. Chandrachud and Justice Hima Kohli.



Rejection of Belated Application For Amendment Of Claim - Not An Interim Award: Delhi High Court

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The Delhi High Court clarified that an Arbitral Tribunal's order rejecting an application to amend the statement of claims on the grounds that it was filed belatedly does not qualify as an interim award and cannot be challenged under Section 34 of the Arbitration and Conciliation Act, 1996. Justice Prateek Jalan further noted in *Punita Bhardwaj v. Rashmi Juneja* that Section 23(3) of the Arbitration and Conciliation Act vests Arbitral Tribunals with the authority to deny a party's request to amend or supplement its pleadings on the grounds that it was filed at a belated stage.

The Arbitral Tribunal concluded that the claimant intended to purposefully impede the completion of the arbitration proceedings after noting the delay in filing the application for amendment of the statement of claims.



Court's Power To Grant Interim Relief U/s. 9 Of Arbitration Act Not Curtailed By Rigours Of Every Procedural Provision In CPC: Supreme Court

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The Hon'ble Supreme Court of India recently stated that *"In deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of the CPC. At the same time, the power Court to grant relief is not curtailed by the rigours of every procedural provision in the CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of the CPC."* This was held in the case of *Essar House Private Limited v. Arcellor Mittal Nippon*

Steel India Limited by a division bench comprising Justice A. S. Bopanna and Justice Indira Banerjee. The Court further observed that, *"If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC."*



Court Cannot Modify Arbitral Award By Awarding Interest Under Section 34 of the Arbitration and Conciliation Act: Delhi High Court

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The Division Bench of the Delhi High Court comprising Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad in the case of Canara Bank v. The State Trading Corporation of India Ltd. & Anr., has ruled that though the claimant is entitled to pre-arbitration interest on the amount of counter-guarantee released in its favour, the Court, in view of the limited scope of judicial review as guaranteed under section 34 of the Arbitration and Conciliation Act, 1996, cannot award interest to the claimant as it would amount to modification of award, which is not allowed. In this case, Canara bank had raised a claim of interest that had accrued to it on account of counter guarantee release to it.

However, in the award no such pre-arbitration interest was awarded. While holding that though Canara Bank was entitled to interest for the pre-arbitration period, and that the Arbitral Tribunal had committed a manifest error in not coming to any finding on the said issue, the Court held that it cannot, however, modify an award under Section 34 of the Arbitration and Conciliation Act.



Challenge Against Appointment Of Arbitrator Can Be Entertained Only After Passing Of The Award

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A Single judge Bench of the Rajasthan High Court in the case of Surya Wires Private Limited v. Rajasthan Skills and Livelihoods Development Corporation, ruled that the Empowered Committee of Ministry of Rural Development, Government of India is in fact the Arbitral Tribunal contemplated in the Arbitration Agreement of the parties.

It differentiated the circumstances from that of the cases relied upon by the petitioner by stating that the Empowered Committee was not an interested party under Section 12(5) of the Arbitration and conciliation Act, 1996. Therefore, the court dismissed the Application under Section 12(5) of the Act.



Arbitration Clause, Effect of Novation, Cannot Be Decided Under Section 11 of Arbitration and Conciliation Act: Karnataka High Court

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According to the Karnataka High Court, the question of whether an agreement containing an arbitration clause stood novated with the execution of a second agreement and, as a result, the parties' arbitration agreement was no longer subsisting, cannot be resolved at the stage of reference to arbitration under Section 11 of the Arbitration and Conciliation Act, 1996, as it involves a detailed inquiry that must be decided by the Arbitrator himself in accordance with Section 16 of the Act.

Justice B.M. Shyam Prasad in *Jaganmayi Builders and Developers Private Limited & Ors. v. Sumanth Reddy & Ors.* clarified that it is unsafe to draw a conclusion about the subsistence of an arbitration agreement at the stage of reference based on a prima facie review of facts in cases where novation of a contract containing an arbitration clause is alleged.



Mere Proposal Containing An Arbitration Clause, Unilaterally Signed By One Party, Would Not Amount To An Arbitration Agreement: Bombay High Court

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The Hon'ble High Court of Bombay in the case of *TCI Infrastructure Limited & Anr. v. M/s. Kirby Building Systems (Uttaranchal) Private Limited & Anr.*, ruled that the parties did not have an arbitration agreement as the letter of intent did not incorporate an arbitration agreement.

The Single Bench of Justice Manish Pitale noted that there was no consensus ad idem between the parties as mere reference to the proposal containing the arbitration clause in the letter of intent which was the only signed document, does not lead to an arbitration agreement between the parties.

