

MONTHLY ROUND-UP

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INDIAN ARBITRATION LAW REVIEW

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COURT HAS HELD THAT NO COMPENSATION CAN BE AWARDED TO PROLONG THE CONTRACT IN THE SITUATION WHERE THE CONTRACTOR HAS NOT RESERVED THEIR RIGHT TO SUCH COMPENSATION WHILE SEEKING FOR A TIME EXTENSION.

The Delhi High Court, in the case of *Government of NCT of Delhi v. R.S. Sharma Contractors Pvt. Ltd.*, has upheld the tribunal's decision in relation to the prolongation cost being denied due to the contractor's failure to reserve this right while asking for an extension of time. The court held that this situation does not need any such intervention by it, under Section 34 of the Arbitration and Conciliation Act, 1996.

AN ARBITRATOR CANNOT REFUSE ANY ADDITIONAL MATERIAL EVIDENCE ON THE MERE GROUNDS THAT A PARTY HAS NOT PAID PROCEDURAL COSTS WHILE SUBMITTING SUCH EVIDENCE

In the case of *Zakir Hussain v. Sunshine Agrisystem Pvt. Ltd.*, the High Court of Delhi held that the failure to accept additional evidence due to issues in procedural aspects is not a valid basis for overturning the award. The ruling also held that all parties must give sufficient time to the other party to address all documents in their rebuttal evidence, in the situation that the party seeks to introduce a document before the start of cross-examination.

DELHI HIGH COURT HAS HELD THAT NO STAMP DUTY IS TO BE PAYABLE ON AN INSTRUMENT EXECUTED BY OR ON BEHALF OF THE GOVERNMENT

The bench of Justice Rekha Palli in the case of *M/s SVK Infrastructures v. Delhi Tourism and Transportation Development Corporation Ltd.* held that the judgement delivered in the case of *N.N Global* has no standing in applications of agreements by, or, on behalf of the government. The Bench also held that the Court exercising powers under Section 11 of the Arbitration and Conciliation Act, 1996 does not have the power or capability to refuse to appoint an arbitrator once it has been decided that the instrument is within the exception mentioned in the Stamp Act by the government.

THE COURT HAS HELD THAT PROVISIONS OF UTTAR PRADESH REGULATION OF COLD STORAGES ACT, 1976 DOES NOT EXCLUDE THE REMEDY OF ARBITRATION.

In the case of *Zakir Hussain v. Sunshine Agrisystem Pvt. Ltd.*, the Court determined that the 1976 Act does not establish any unique rights, remedies or procedures that cannot be pursued before a Civil Court or Arbitral Tribunal.

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What it does is, merely establishing an informal mechanism for resolving disputes and there is no explicit limitation on the arbitral jurisdiction. The Bench held that a restriction on using arbitration is applicable in situations where the alternative remedy serves as a comprehensive legal framework on its own and offers a specific Statutory Right or protection that cannot be granted by a Civil Court.

THE DELHI HIGH COURT HAS RULED THAT CLAIMS RESOLVED THROUGH A RESOLUTION PLAN CANNOT BE SUBJECT TO ARBITRATION, AS REFERRING SUCH CLAIMS FOR ARBITRATION WOULD ESSENTIALLY REOPEN THE RESOLUTION PLAN

In the case of *IOCL v. Arcelor Mittal Nippon Steel India Limited*, the Bench emphasized the “clean slate” doctrine, which necessitates that a successful resolution application starts with a clean slate. The parties are obligated to address the claims outlined in the resolution plan and should not be made to defend claims which were originally not included in the plan, neither shall they face actions which are related to the unacknowledged debts of the Corporate Debtors. Furthermore, the Court also observed that once the Supreme Court has given its official approval to the plan submitted by the parties, by establishing an arbitral tribunal, this would amount to re-opening the resolution plan which is not ideal.

HONG KONG COURT OF FIRST INSTANCE DECLINED TO UPHOLD AN AWARD FROM THE CHENGDU ARBITRATION COMMISSION OWING TO GROSSLY UNFAIR AND UNJUST PROCEDURE

In the case of *CIC v Wu and Ors.*, the Court remarked that the video evidence presented shows the arbitrator was displaying significant behavioral irregularities during the hearing. The arbitrator was seen moving from room to room without using headphones, engaging in conversations with others and being distracted by his surroundings rather than paying attention to the proceedings. Based on this, the courts decided to reject the award to maintain the Fundamental Principles of Justice within their jurisdiction. The Court decided to reject the enforcement of the award based on public policy under the ground of Section 5(3) of the Hong Kong Arbitration Ordinances.

THE HONG KONG COURT OF FIRST INSTANCE HAS REJECTED A CHALLENGE TO ENFORCE A \$50 MILLION ARBITRAL TRIBUNAL THAT WAS ISSUED IN CHICAGO WHICH WAS IN FAVOUR OF A U.S LAW FIRM AND PERTAINED TO THE SUCCESS FEE AGREEMENT.

In the case of *BB v KO*, the main contention brought about was whether the fee agreement was linked in part to litigation in Hong Kong, making the enforcement of the award contrary to public policy. The common law principles prohibit the Hong Kong litigation from accepting such agreements and thus it was held as invalid and the challenge was rejected.

SENIOR ADVOCATE GOURAB BANERJI HIGHLIGHTS THE IMPORTANCE OF ALIGNING INDIAN ARBITRATION LAW WITH THE UNCITRAL MODEL LAWS

Gourab Banerji lauded the importance of the recent attempts of the UK Law Commission to bring the UK Arbitration Act of 1996 more in consonance with the UNCITRAL Model Laws, especially in the aspect of confidentiality and arbitrator disclosure. This is contrasted with their erstwhile approach of deliberate excluding the Model Laws into their domestic legislation. He went on to elaborate upon the ongoing reforms in India to incorporate the Model Laws into the Arbitration and Conciliation Act, 1996, and noted that despite the divergent approaches in these jurisdictions, the core principles of separability and Kompetenz-Kompetenz has influenced the respective domestic arbitration laws.

INTERNATIONAL

FEDERAL COURT OF AUSTRALIA AFFIRMS JURISDICTION TO ENFORCE ARBITRAL AWARDS AGAINST FOREIGN STATES PARTY TO THE NEW YORK CONVENTION

In the case of *CDM Holdings, LLC v Republic of India*, the Federal Court of Australia dismissed India's application to set aside an arbitral award based on the principles of sovereign immunity. The issue in dispute pertained to the alleged waiver of India about sovereign immunity, as they are a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). It was held by the Federal Court that India has waived off their sovereign immunity as it has submitted to the Court's jurisdiction by agreement, as understood within the meaning of the Foreign States Immunities Act 1985. This was operative due to India being a signatory to the New York Convention as well as the tendering of the Mauritian investors, of the arbitral award along with the arbitration agreement.