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DISPUTES NEWSLETTER NOVEMBER, 2025

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1.NO BAR ON FILING COMMERCIAL SUIT WITHOUT PRE-LITIGATION MEDIATION WHERE THE PLAINTIFF HAS ESTABLISHED URGENT RELIEF IN THE PLAINT: CALCUTTA HIGH COURT [NOVEMBER 7, 2025]

Introduction

In the case of **Berger Paints India Limited v. GPHP Holdings Pvt. Ltd. [1]**, the Hon'ble Calcutta High Court held that where the Plaintiff contemplates an urgent relief, the mandate under Section 12A of the Commercial Courts Act, 2015 **("CC Act")** to file a commercial suit only after exhausting the remedy of pre-litigation mediation would not apply to the Plaintiff. The Hon'ble High Court further ruled that to ascertain whether urgent interim relief has been contemplated by the Plaintiff, the same has to be specifically averred in the Plaint of the Plaintiff.

Facts

Berger Paints India Ltd. ("**Plaintiff**") claimed unpaid consideration for goods supplied and delivered to GPHP Holdings Pvt. Ltd. ("**Defendant**") for which the parties were maintaining a running and continuous account. The Defendant made some payments and after adjustment of the same, a total outstanding amount which was commensurate with invoices from February, 2024 to June, 2024 was due and payable to the Plaintiff. The Plaintiff requested the Defendant to pay the Outstanding Amount from time to time, however, the Defendant failed to do so. Eventually, the parties held a meeting where the Defendant informed that owing to financial difficulties, they were trying to sell their plant situated at Sarupur Industrial Area, Faridabad ("**Plant**"). Thereafter, the parties had another meeting in March, 2025 where the Defendant expressed its precarious financial condition and the closure of operations on the Plant. The Defendant further informed that an application for scheme in compromise and arrangement under Sections 230-232 of the Companies Act, 2013 was filed before the Hon'ble National Company Law Tribunal, Kolkata for settling the dues with its creditors and forwarded the scheme prepared to the Plaintiff. Finding the aforesaid scheme to be not acceptable, the Plaintiff filed a Commercial Suit before the Hon'ble Calcutta High Court alongwith an application for dispensing the mandatory requirement for pre-institution mediation and settlement. The Hon'ble High Court passed an order allowing dispensation of the requirement for pre-litigation / mediation under Section 12A of the CC Act and admitted the Plaint of the Plaintiff.

Aggrieved by the admission of the Plaint, the Defendant filed an Application seeking the withdrawal and / or cancellation and / or revocation of the direction granting dispensation of the requirement under Section 12A of the CC Act on the ground that there was no sudden and immediate urgency for interim relief as all the facts were known to the Plaintiff at a much prior point in time and the question for dispensation of the requirement under Section 12A of the CC Act did not arise.

Issue

Whether the requirement for mandatory pre-litigation mediation under Section 12A of the CC Act can be dispensed with and commercial suit can be instituted where the Plaintiff contemplates urgent interim relief in its Plaint.

Held

The Hon'ble High Court, upon hearing submissions and perusing the materials on record, noted that the averments clearly show that admittedly, a meeting of the parties was held wherein the Defendant informed the Plaintiff that the Plant would be sold, for which the Defendant has sought permission from the appropriate authority. The Hon'ble High Court further took note of Scheme for Compromise submitted by the Defendant which showed that the claim of Plaintiff was substantially reduced under the said Scheme which the Plaintiff did not accept. Since the Defendant contemplated sale of its property and informed the Plaintiff in writing, the same gave rise to the contemplation of the Plaintiff for an urgent interim relief and hence, the Plaintiff prayed for dispensation of the requirement for pre-litigation mediation.

The Hon'ble High Court reviewed Section 12A of the CC Act and opined that if the Plaintiff does not contemplate any urgent interim relief, then it is a mandatory requirement under the statute to avail the remedy of pre-litigation mediation. However, if an urgent relief is contemplated by the Plaintiff, nothing bars the Plaintiff from instituting a commercial suit without exhausting the remedy of pre-litigation mediation. The High Court further held that in order to ascertain whether an urgent interim relief has been contemplated by the Plaintiff, the averments in the Plaint are to be taken as true and correct, and read as sacrosanct.

The Hon'ble High Court held that the phrase "contemplate any urgent interim relief" under Section 12A(1) of the CC Act shall qualify the plaintiff, if pleaded in the Plaint, to pray for dispensation of the requirement for pre-litigation mediation under Section 12A of the CC Act. The Hon'ble High Court ruled that irrespective of success of Plaintiff on its prayer for interim relief or its suit on merits, what is required to be considered by the courts is that the averments in the Plaint shall establish the Plaintiff's contemplation for urgent interim relief, which was *prima facie* found to be so in the present case. Conclusively, the Hon'ble High Court dismissed the application filed by the Defendant and upheld to order of dispensation granted to the Plaintiff.

[1] IA No. GA-COM/3/2025 in CS-COM/48/2025

2.AN ORDER REJECTING A COMMERCIAL SUIT UNDER ORDER VII RULE 11 OF CPC CONSTITUTES A DECREE AND IS THEREFORE APPEALABLE UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015: SUPREME COURT OF INDIA [NOVEMBER 10, 2025]

Introduction

In the case of **MITC Rolling Mills Pvt. Ltd. v. Renuka Realtors Pvt. Ltd. & Ors. [2]**, the Hon'ble Supreme Court held that an order rejecting a Commercial Suit under Order VII Rule 11 Code of Civil Procedure, 1908 ("**CPC**") is a 'decree' and therefore appealable under Section 13(1A) of the Commercial Courts Act, 2015 ("**CC Act**").

Facts

In the present case, MITC Rolling Mills Pvt. Ltd. ("**Appellant**"), engaged in the business of manufacturing and supplying steel materials, were supplying such materials to Renuka Realtors Pvt. Ltd. and its allied entities ("**Respondents**") in the ordinary course of their commercial dealings.

Disputes arose between the parties when the Respondents, despite repeated demands, failed to make payments to the Appellant towards the steel materials supplied by the Appellant. The Appellant instituted a Commercial Suit before the Hon'ble Commercial Court, Nashik ("**Hon'ble Trial Court**") against the Respondents seeking recovery of the outstanding amount alongwith interest thereon. At the time of filing said commercial suit, the Appellant also filed an interim application seeking exemption from pre-institution mediation and settlement under Section 12A of the CC Act. Subsequently, the Respondents moved an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the Appellant had not undertaken the mandatory Pre-Institution Mediation and Settlement (PIMS) as prescribed under Section 12A of CC Act. The Hon'ble Trial Court allowed the application of the Respondent rejecting the plaint under Order VII Rule 11 of CPC without considering the application of the Appellant seeking exemption from process of pre-institution mediation and settlement.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble Bombay High Court under Section 13(1A) of the CC Act challenging the order of the Hon'ble Trial Court on various grounds. The Hon'ble High Court, however, dismissed the appeal holding that since the order rejecting the plaint under Order VII Rule 11 of CPC does not fall within the ambit of Order XLIII of CPC, no appeal is maintainable under Section 13(1A) of the CC Act read with the proviso appended thereto. The Appellant approached the Hon'ble Supreme Court, by way of a Special Leave Petition, challenging the order of the Hon'ble High Court.

Issue

Whether the order of rejection of a plaint under Order VII Rule 11 CPC passed by the Commercial Court is appealable under Section 13(1A) of the CC Act before the Commercial Appellate Division of the Hon'ble High Court.

Held

At the outset, the Hon'ble Supreme Court noted that an order rejecting the plaint under Order VII Rule 11 CPC decides the *lis* finally and would constitute as a 'decree' within the meaning of Section 2(2) CPC. The Hon'ble Court noted that a decree passed by a Commercial Court at the level of a District Judge or by the Commercial Division of a High Court exercising original civil jurisdiction, would ordinarily be appealable before the High Court under Section 13(1A) of the CC Act.

The Hon'ble Supreme Court observed that the main provision of Section 13(1A) of the CC Act is divided into two distinct parts which contemplates appeals against 'judgments' and 'orders' of the Commercial Courts to the Commercial Appellate Division of the High Court.

The Hon'ble Court further held that the proviso merely restricts appeals against interlocutory orders to those specifically enumerated under Order XLIII CPC and Section 37 of the Arbitration & Conciliation Act,1996. Consequently, only such interlocutory orders, as are expressly specified therein, would be amenable to an appeal under the proviso.

The Hon'ble Court explained that the proviso to Section 13(1A) of CC Act, operating as an exception, must be construed harmoniously with the main provision and not in derogation thereof. The Hon'ble Court further observed that where the language of the main provision is plain and unambiguous, the proviso cannot be invoked to curtail or whittle down the scope of the principal enactment, save and except where such exclusion is clearly and expressly contemplated.

The Hon'ble Supreme Court also took into consideration the judgment of the Hon'ble Bombay High Court in *Bank of India v. Maruti Civil Works SLP(C) 6039* of 2024 and held that the same is distinguishable as the dispute therein involved a challenge from the order refusing to reject a plaint, which is merely an interlocutory order and not a decree, and therefore, the same is not appealable under Section 13(1A) of CC Act.

The Hon'ble Supreme Court, while allowing the appeal and setting aside the order of the Hon'ble High Court, conclusively held that Appellant who is aggrieved of the order rejecting the plaint under Order VII Rule 11 CPC cannot be left remediless or compelled to institute a fresh suit for availing such a challenge and therefore, the order rejecting the plaint under Order VII Rule 11 CPC is an

[2] 2025 INSC 1300

appealable order in terms of Section 13(1A) of the CC Act.

3.INSURER CAN BE DIRECTED TO SATISFY THE LIABILITY TOWARDS VICTIMS IN MOTOR ACCIDENT CASES EVEN WHEN THERE IS A BREACH OF INSURANCE POLICY CONDITIONS AND CAN RETAIN THE RIGHT TO RECOVER THE COMPENSATION AMOUNT FROM THE INSURED THEREAFTER: SUPREME COURT OF INDIA [NOVEMBER 10, 2025]

Introduction

In the case of **Akula Narayana v. Oriental Insurance Company Ltd. & Anr. [3]**, the Hon'ble Supreme Court held that where the contract of insurance is not disputed and only the conditions mentioned therein are breached, the insurer of a vehicle is liable to pay the claimant the amount awarded by the Motor Accidents Tribunal ("**Tribunal**") and is entitled to recover the same from the insurer under the principle of 'pay and recover'.

Facts

In the present case, Akula Narayana ("**Appellant**"), being the claimant, approached the Tribunal, seeking compensation for the death of a person caused in a motor accident of an insured vehicle. The said vehicle was owned by Respondent No. 2 and was insured by Oriental Insurance Company Ltd. ("**Respondent No. 1**").

The Tribunal passed an award holding both, the Respondent Nos. 1 and 2, jointly and severally liable for the payment of compensation to the Appellant. The Tribunal passed the said award based on the observation that since Respondent No. 1 collected additional premium from Respondent No. 2 for carrying the conductor and cleaner, the deceased being a passenger in the vehicle would be a third party covered in terms of the insurance policy.

Aggrieved by the Tribunal's award, Respondent No. 1 approached the Hon'ble Telangana High Court which held that though the Respondent No. 1 might have collected the additional premium for the driver, conductor and cleaner, the policy would not cover the risk of any other person or passenger. The Hon'ble High Court further observed that the insured vehicle was a five-seater carrying nine persons and therefore, the Respondent No. 2–Insured was in clear breach of the terms and conditions of the policy and the Respondent No. 1 could not be held liable for the same.

Since it was difficult for the Appellant to recover the compensation from the Respondent No. 2–Insured, the Appellant approached the Hon'ble Supreme Court challenging the order passed by the Hon'ble High Court.

Issue

Whether the Hon'ble High Court was correct in completely absolving the insurer of its liability or if it ought to have directed the insurer to pay with liberty to recover the same from Respondent No. 2.

Held

The Hon'ble Supreme Court observed that the Respondent No. 2 did not file an appeal against the order of the Hon'ble High Court which held that he was not entitled to the benefit of insurance. Relying on its decision in the case of *Rama Bai v. Amit Minerals (2025 SCC OnLine SC 2067*, the Hon'ble Supreme Court noted that the 'pay and recover' principle has been followed consistently and where the contract of insurance was not disputed, even on breach of the insurance conditions, recovery of compensation from the insurer was allowed by giving the insurer the right to recover the same from the vehicle owner.

In view of the above, the Hon'ble Supreme Court allowed the appeal filed by the Appellant and directed the Respondent No. 1 to satisfy the award and recover the same from Respondent No. 2.

4.IN EXECUTION PETITION, PRIMARY ONUS LIES ON DECREE-HOLDER TO SHOW WILFUL VIOLATION OF DECREE BY JUDGMENT DEBTOR: SUPREME COURT OF INDIA [NOVEMBER 11, 2025]

Introduction

In the case of **Kapadam Sangalappa & Ors. v. Kamatam Sangalappa & Ors. [4]**, the Hon'ble Supreme Court dismissed the appeals filed by the decree-holders challenging the Hon'ble High Court's order that had set aside the execution of a compromise decree recorded nearly a century earlier. The Hon'ble Court held that the decree-holders had entirely failed to discharge the burden of demonstrating any violation of the decree by the judgment-debtors, which is a foundational requirement in execution proceedings.

Facts

In the present case, disputes arose between the Kapadam families ("**Appellants**") and Kamatam families ("**Respondents**") in respect of performance of religious rituals and the custody of idols and paraphernalia associated with the deity Lord Sangalappa Swamy. After a series of suits and during the pendency of one such suit before the Hon'ble District Court, the parties arrived at a compromise. Through such compromise, the Respondents were required to pay a sum of Rs. 2,000/- to

[3] 2025 INSC 1301
[4] 2025 INSC 1307

the Appellants and both parties were to appoint trustees to supervise the performance of rituals, in addition to certain other terms.

Despite the compromise, disputes re-emerged when the Appellants raised allegations that the Respondents had refused to return the idols, thereby violating the compromise decree. Consequently, the Appellants filed an execution petition before the Hon'ble District Court seeking execution of the compromise decree. The Respondents filed a counter and then sought to amend the same. Both, the counter and the amendment sought by the Respondents came to be allowed by the Hon'ble Andhra Pradesh High Court and the matter was remitted back to the Hon'ble District Court with a specific direction to frame and decide a preliminary issue on the maintainability of the execution petition.

In compliance with the directions of the Hon'ble High Court, the Hon'ble District Court framed a preliminary issue on the maintainability and passed an order holding the execution petition to be maintainable. The subsequent revision petition sought by the Respondents was dismissed by the Hon'ble High Court holding that the execution petition was maintainable under Section 9 of CPC and that Section 42 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, did not oust the jurisdiction of the executing court i.e., the Hon'ble District Court. However, the Hon'ble High Court left open the questions of limitation and locus standi of the Appellants to execute the decree and directed the Hon'ble District Court to decide the same.

Upon remand, the Hon'ble District Court allowed the execution petition filed by the Appellants by directing the Respondents to give the idols and pooja articles to the Appellants within one month, failing which a warrant under Order XXI Rule 31 CPC would be issued for seizure of the aforesaid items. Aggrieved, the Respondents filed a revision petition before the Hon'ble High Court. Allowing the said revision petition, the Hon'ble High Court held that the Appellants had locus standi and that the execution petition was not barred by limitation. The Hon'ble High Court further held that since no proof was presented by the Appellants in support of its allegations that the Respondents had violated the compromise decree, the execution petition could not be sustained on facts. A subsequent revision petition filed by the Appellants came to be dismissed by the Hon'ble High Court and consequently, the matter was placed before the Hon'ble Supreme Court.

Issues

1. Whether the said compromise decree was capable of execution on the facts;
2. Whether the Respondents had in fact violated the terms of the said compromise, decree as alleged by the Appellants.

Held

The Hon'ble Supreme Court first scrutinized the judgement of the Hon'ble District Court whereby the execution petition filed by the Appellants had been allowed. It observed that there was no convincing evidence before the Hon'ble District Court to establish that the Respondents had violated the compromise decree. The Hon'ble Supreme Court observed that the Hon'ble District Court had assumed that, since no quarrel was raised for several decades, the compromise arrangement between the parties must have been in operation and that the Respondents must have been in possession of the idols. The Hon'ble Court further observed that the testimonies given by the witnesses of the parties were mere allegations which lacked any form of documentary proof or support of independent witnesses. The Hon'ble Court noted that a perusal of compromise decree led to a presumption that the possession of the idols then was with the Appellants themselves.

Further, the Hon'ble Supreme Court stated that in case of execution petitions, the primary onus lies on the decree-holder to show that the judgment debtor has wilfully disobeyed the conditions of the decree. In view of the same, the Hon'ble Court observed that in the present case, no evidence has been led by the Appellants to show that possession of the idols ever passed to the Respondents.

Upon an examination of the testimony of the Appellant's witness, the Hon'ble Supreme Court noted that the said witness had admitted to non-payment of Rs. 2,000/- which was required to be paid by the Respondents in compliance with the compromise decree. Consequently, the Hon'ble Court opined that it was highly probable that the compromise was never acted upon and the articles always remained with the Appellants owing to the failure of the Respondents to pay Rs. 2,000/- to the Appellants.

The Hon'ble Supreme Court held that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him and no one else. Therefore, as the Appellants had not produced any material to show that the compromise was in operation and that the Respondents had violated the same, the Hon'ble High Court was correct in its observations.

In light of the facts, circumstances and the materials on record, the Hon'ble Supreme Court opined that the Appellants had failed to establish violation of the compromise decree by the Respondents. Reiterating that the burden of proving violation of the decree rests squarely on the decree-holders, the Hon'ble Supreme Court held that in the absence of cogent proof of such violation, the execution petition could not be sustained. Thus, holding that the burden of proof, which lay upon

the Appellants, had not been discharged, the Hon'ble Court upheld the judgement of the Hon'ble High Court and dismissed the appeal.

5.AN EXECUTED CONTRACT CANNOT BE RE-WRITTEN ON THE BASIS OF INFERENCE DRAWN FROM INTERNAL NOTINGS: BOMBAY HIGH COURT [NOVEMBER 14, 2025]

Introduction

In the case of **Konkan Railway Corporation Ltd. v M/s. SRC Company Infra Private Ltd. [5]**, the Hon'ble Bombay High Court set aside an arbitral award holding that the Arbitral Tribunal had committed a patent illegality by disregarding the plain terms of the contract and inferring a different intention from that envisaged under the said contract It ruled that inter-departmental communications / file notings have no legal sanctity and consequently, can neither create any enforceable rights nor supersede the final written contract.

Facts

In the present case, Konkan Railway Corporation Ltd. ("**Petitioner**") was appointed as the Project Executing Agency for setting up Super Thermal Power Plant in the state of Madhya Pradesh. Subsequent to a tendering process, the Petitioner issued a Letter of Acceptance in favour of M/s. SRC Company Infra Private Ltd. ("**Respondent**"). Pursuant to the same, the Respondent commenced the subject work in July, 2017 and a formal written contract was executed between the parties in December, 2017 ("**said Contract**").

A dispute arose between the parties after the Madhya Pradesh Collector's Office addressed a demand letter directing the Respondent to make payment of certain royalty charges in connection with the subject work. Consequently, the Respondent invoked arbitration and by a majority Award, the Petitioner was held liable to bear the royalty ("**said Award**"). The Arbitral Tribunal further invoked Section 26 of the Specific Relief Act, 1963 and Section 20 of the Indian Contract Act, 1872 and directed the Petitioner to modify / amend the said Contract to correctly reflect the consensus ad idem between the parties.

Aggrieved, the Petitioner challenged the said Award by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") before the Hon'ble Bombay High Court on the ground that the contract explicitly placed the royalty payment obligation upon the contractor i.e., the Respondent herein. Disputing such interpretation, the Respondent contended that the tender-committee's internal notings and deliberations prior to contract execution demonstrated that the parties had a common understanding / *consensus ad idem* that the royalty was not payable or, alternatively, was to be borne by Petitioner.

Issue

Whether the Arbitral Tribunal could rely upon internal tender-committee notings and pre-contract deliberations to rewrite or reinterpret an otherwise clear and unambiguous written contract, and thereby shift the contractual liability for royalty from the contractor to the employer.

Held

At the outset, the Hon'ble Bombay High Court reiterated that the Arbitral Tribunal being a creature of contract, cannot traverse beyond the same and is bound by such contract. It noted that the Arbitral Tribunal had accepted the literal interpretation of the said Contract i.e., that the royalty payments were to be borne by the Respondent. Consequently, the Hon'ble Court observed that it was not competent for the Arbitral Tribunal to delve into the "*real intention*" of the parties and to do so, the Arbitral Tribunal would first need to hold the terms of the said Contract to be ambiguous or vague. However, no such finding as to ambiguity of the said Contract was rendered by the Arbitral Tribunal.The Hon'ble Court further noted that both the parties were in agreement that a plain reading of the said Contract clearly placed the royalty liability upon the Respondent. Accordingly, it held that the Arbitral Tribunal had committed a patent illegality by disregarding the plain and unambiguous terms of the said Contract and inferring a different intention from that contemplated by the said Contract.

The Hon'ble Court further noted the internal inconsistency of the Arbitral Tribunal. It found that despite acknowledging that the terms of the said Contract placed the royalty liability on the contractor, the Arbitral Tribunal had imposed such liability upon the Petitioner. The Hon'ble Court observed that such inconsistency rendered the said Award perverse in addition to being patently illegal.

Further, finding that the Arbitral Tribunal has erroneously relied on the internal notings which made the Petitioner liable for royalty payment, the Hon'ble Court pointed out that the settled law clearly holds that inter-departmental communications / file notings have no legal sanctity and do not create any enforceable rights. In light of this, the Hon'ble Court held that the Arbitral Tribunal's reliance on internal notings constituted a gross error in law and a failure to apply settled legal principles. The Hon'ble Court also held that since the internal notings were done prior to the execution of the said Contract, they were pre-contract negotiations which could not supersede the final written document.

The Hon'ble Court further observed that the Respondent had never made any attempts to clarify or modify the terms of the said Contract in respect of the royalty payment clause. On the contrary, Respondent had

[5] 2025:BHC-OS:20965

submitted its bid unconditionally, accepting the terms including those that placed an unconditional liability for royalty on the contractor. Therefore, the Hon'ble Court held that by arriving at a finding beyond the scope of the said Contract, the Arbitral Tribunal had created a parallel negotiation after Contract finalization, which defeats the very purpose of tendering, and renders the said Award liable to be set aside.

In view of the above, the Hon'ble Court held that the Arbitral Tribunal had improperly invoked Section 26 of the Specific Relief Act, 1963, by effectively rewriting the said Contract, despite the absence of any foundational plea, prayer, or issues framed for rectification, as is required under the provision. The Hon'ble Court further held that by rewriting the contractual terms through invocation of Section 26, the Arbitral Tribunal not only violated the procedural safeguards under the statute, but also offended the fundamental policy of Indian law, which requires adjudicatory bodies to remain within the scope of the dispute as framed by the parties. Accordingly, the petition was allowed and the said Award was quashed and set aside.

1.OBJECTIONS TO EXECUTION OF ARBITRAL AWARD ARE MAINTAINABLE ONLY WITHIN THE NARROW COMPASS OF JURISDICTIONAL ERROR OR VOIDNESS: SUPREME COURT OF INDIA [NOVEMBER 03, 2025]

Introduction

In the case of **MMTC Limited v. Anglo American Metallurgical Coal Pvt. Limited [1]**, the Hon'ble Supreme Court dismissed MMTC's appeal, holding that objections at the execution stage are maintainable only in extremely limited circumstances, namely where the award sought to be executed is a nullity or where the arbitral tribunal lacked inherent jurisdiction. The Court ruled that the execution could not be resisted merely on the basis of allegations relating to internal misconduct or pricing irregularities and maintained the enforceability of the award.

Facts

In the present case, MMTC Limited ("**Appellant**") and Anglo American Metallurgical Coal Pvt. Ltd. ("**Respondent**") entered into a Long-Term Agreement ("**LTA**") under which the Respondent was to supply coking coal to the Appellant over successive delivery periods. The said LTA detailed the price, delivery schedule and the method of computing damages in the event of non-lifting of the contracted quantities and further contained an arbitration clause providing for referring the disputes to arbitration.

The dispute was about the fifth delivery period when the Appellant did not lift a large portion of the coal that was contracted. The Respondent invoked the arbitration clause in the said LTA claiming damages on account of the unlifted quantity of coal contracted by the Appellant. On May 12, 2014, the Arbitral Tribunal passed an award in favour of the Respondent ("**said Award**"). Consequently, the Appellant challenged the said Award under Section 34 of the Arbitration and Conciliation, 1996 ("**Arbitration Act**") and the same was rejected by the Hon'ble Single Judge of the Delhi High Court ("**Hon'ble Single Judge**"). However, the Hon'ble Division Bench of the Delhi High Court ("**Hon'ble Division Bench**") allowed the Appellant's appeal under Section 37 of the Arbitration Act and set aside the said Award along with the judgement of the Hon'ble Single Judge.

Thereafter, when the matter came up before the Hon'ble Supreme Court, the appeal filed by the Respondent was allowed and after setting aside the judgment of the Hon'ble Division Bench, the Hon'ble Supreme Court restored the said Award alongwith the judgment of the Hon'ble Single Judge. Subsequently, the Respondent filed an Execution Petition seeking enforcement of the said Award and the Appellant deposited a significant sum with the Hon'ble Delhi High Court. Following such deposit, the Appellant filed its objections under Section 47 of the Code of Civil Procedure, 1908 ("**CPC**"), contending that the said Award was the result of a fraudulent collusion between some internal officials of the Respondent and Appellant and was therefore non-executable. The Appellant also moved for stay under Order XXI Rule 29 of the CPC. The Hon'ble High Court dismissed the objections under Section 47 as well as the Order XXI Rule 29 application seeking stay of execution ("**Impugned Judgement**").

Aggrieved, the Appellant challenged the rejection of its objections before the Hon'ble Supreme Court.

Issue

Whether the Hon'ble High Court was justified in not entertaining the objections filed by the Appellant under Section 47 of CPC and in dismissing the same.

Held

At the outset, the Hon'ble the Supreme Court held that the jurisdiction of an executing court is extremely narrow and confined to examining whether the decree is a nullity or was passed without jurisdiction. The Hon'ble Court reiterated that an executing court cannot revisit the merits of the dispute, re-evaluate evidence, or re-examine alleged errors of law or fact decided by the arbitral tribunal or by courts in Section 34 and Section 37 proceedings. Once an arbitral award has attained finality, objections at the execution stage cannot serve as a second challenge on merits. Accordingly, the Appellant's allegations relating to pricing irregularities or decision-making within its own organisation could not be grounds to resist execution unless they directly showed that the arbitral tribunal lacked jurisdiction or that the award was void in law.

The Hon'ble Court observed that fraud undoubtedly vitiates judicial acts, but only a very specific category of fraud namely fraud that goes to the jurisdiction of the forum or fraud that renders the decree itself a nullity can be invoked at the execution stage. The Appellant's allegations did not suggest that the arbitral tribunal lacked competence, nor that the award was procured by fraud perpetrated upon the tribunal. Rather, the allegations pertained to alleged internal misconduct involving the Appellant's own officers in the pricing process. Such allegations, even if later found to be true, would not render the award void nor empower the executing court to reopen findings which had already been adjudicated upon and affirmed up to the Hon'ble Supreme Court.

The Hon'ble Court further emphasised that the framework of the Arbitration Act is designed to ensure minimal judicial interference and promote finality. It would be contrary to the whole arbitral process, to allow the judgment-debtor to file fresh suits raising recitals of Section 47 objections, thereby enabling an infinite number of pleadings, to the effect that the Hon'ble Court

[1] 2025 INSC 1279

held that such a procedure would wreck the whole explosion of the arbitral process. It is not the intention of the executing court to become another forum for the re-trial of disputes which have already been decided on merits.The Hon'ble Court also mentioned that the court should be vigilant to ensure that the integrity of the arbitral process is not breached and therefore, Section 47 of CPC is to be strictly construed as being limited only to irregularities relating to the jurisdiction and void provisions.

In view of the above, the Hon'ble Court held that Appellant's objections did not fall within the narrow grounds recognised under Section 47 of CPC, as the arbitral award was neither void nor passed without jurisdiction. The allegations of internal collusion did not affect the competence of the arbitral tribunal nor the validity of the award, and therefore could not stall execution. The Hon'ble Court further upheld the executing court's order, holding that the objections were not maintainable, and consequently dismissed the appeal. The award in favour of the Respondent was thus held to be enforceable.

2.ABSENCE OF ARBITRATION CLAUSE IN A SUPPLEMENTAL AGREEMENT DOES NOT RENDER DISPUTE NON-ARBITRABLE WHEN THE PRINCIPAL AGREEMENT CONTAINS AN ARBITRATION CLAUSE: BOMBAY HIGH COURT [NOVEMBER 04, 2025]

Introduction

In the case of **Om Swayambhu Siddhivinayak v. Harischandra Dinkar Gaikwad & Ors [2]**, the Hon'ble Bombay High Court allowed the appeal before it and held that when the principal agreement contains an arbitration clause, the lack of the same in a subsequent supplemental agreement would not render the dispute between the parties non-arbitrable. The Hon'ble High Court reiterated that once a valid arbitration agreement covering the subject matter exists, a judicial authority is bound to refer parties to arbitration unless it finds that *prima facie*, no valid arbitration agreement exists.

Facts

Disputes arose between the parties out of a Development Agreement and a further Supplemental Agreement. Under the Development Agreement, Om Swayambhu Siddhivinayak ("**Appellant**") had agreed to provide a certain specified area of developed property to the Respondents herein ("**Respondents**") who were the landowners seeking development of their property. Clause 30 of the Development Agreement contained a comprehensive arbitration clause providing that all disputes and differences between the parties in connection with the development contracted in that Development Agreement would be referred to arbitration. The Supplemental Agreement, however, lacked an arbitration clause.

Owing to the disputes between the parties, the Respondents filed a Special Civil Suit No. 157 of 2024 ("**said Suit**") before the Hon'ble District Court seeking specific performance of the Development Agreement and cancellation of the Supplemental Agreement alleging the Supplemental Agreement to be a product of fraud. On the other hand, the Appellant filed an application under Section 8 of the Arbitration Act ("**Section 8 Application**") before the Hon'ble District Court.

Considering the absence of an arbitration clause in the subsequent agreement i.e., the Supplemental Agreement and the allegations of fraud raised by the Respondents, the Hon'ble District Court ruled that the arbitrator is not empowered to decide the disputes between the parties. Accordingly, the Hon'ble District Court rejected the Section 8 Application on the ground that the subsequent agreement i.e., the Supplemental Agreement did not contain any arbitration clause and that the Development Agreement alone contained an arbitration clause ("**Impugned Order**"). Subsequently after passing impugned order, the Hon'ble District Court continued to deal with the said Suit. Consequently, the Appellant preferred the present appeal against the Impugned Order before the Hon'ble Bombay High Court.

Issue

Whether the Hon'ble District Court erred in refusing to refer the parties to arbitration under Section 8 of the Arbitration on the ground that the Supplemental Agreement lacked an arbitration clause and that allegations of fraud had been raised in the said Suit.

Held

The Hon'ble Bombay High Court first took notice of Section 8 of the Arbitration Act. The Hon'ble Court explained that the scope of review by a Court under Section 8 of the Arbitration Act is restricted to examining the subject matter of the proceedings before it, compare it with the subject matter of the arbitration agreement and thereafter refer the parties to arbitration, unless the Court comes to *prima facie* view that no valid arbitration agreement exists. The Hon'ble Court further observed that once it is found that an arbitration agreement exists in respect of the same subject matter as that of the proceedings before the Court dealing with the Section 8 application, the correct forum to deal with all matters is the arbitral forum. On the other hand, if the Court *prima facie* finds that the existence itself is in doubt, the Court would not need to refer the dispute to arbitration. The Hon'ble Court noted that the Impugned Order was silent on all the aforementioned aspects and that the sole ground taken by the Hon'ble District Court in rejecting the Section 8 Application was that the Supplemental Agreement did not contain an arbitration clause. The Hon'ble Court further found that while the Impugned Order referred to the "nature" of the issues involved, it did not make any finding as to whether the allegation of fraud would bring the matter outside the jurisdiction of

[2] 2025:BHC-AS:47203

an arbitral tribunal.

Upon an examination of the Development Agreement, the Hon'ble Court observed that Clause 30 contained therein was expansive in its terms and all disputes and differences in connection with the Development Agreement would fall within the ambit of the arbitration between the parties. Further, the Hon'ble Court observed that if the parties wished to keep disputes of a particular nature, such as the present one, the parties would have adopted exclusionary language in the Development agreement. The absence of such exclusionary language indicated that all differences and disputes between the parties were to be referred to arbitration.

The Hon'ble Court further noted that the Respondents' prayer about the Supplemental Agreement was essentially a prayer about the flow of consideration under the Development Agreement and therefore, the Supplemental Agreement would fall within the ambit of the arbitration agreement contained in the Development Agreement.

With respect to the said Suit, the Hon'ble Court observed that since the said Suit sought specific performance of the Development Agreement, the dispute squarely related to the terms and conditions of the Development Agreement, which is subject matter of Clause 30 of the agreement. In view of the same and noting that Clause 30 of the agreement did not contain any exclusionary language, the Hon'ble Court held that the subject matter of the said Suit was covered under the subject matter of the arbitration clause. The Hon'ble Court further held that since the Supplemental Agreement sought to record the discharge of consideration under Development Agreement, it did not need a separate arbitration clause, when Clause 30 of the Development Agreement squarely dealt with disputes arising out of the Development Agreement and discharge of consideration fell within the scope of the same.

In terms of the Respondents' allegations of fraud, the Hon'ble Court relied upon the Hon'ble Supreme Court's judgement in *Deccan Paper Mills Co. Ltd. Vs. Regency Mahavir Properties (2021) 4 SCC 786* and held that merely on the ground that there are "criminal overtones" or because a party claims that there are "public overtones", the dispute would not become non-arbitrable. It further held that a prayer to declare an instrument illegal would not be rendered non-arbitrable. The Hon'ble Court clarified that merely because the Courts have power to grant specific performance, it would not follow that the parties could not agree upon a privately chosen arbitral tribunal having the same power to grant such declaratory specific relief.

In view of the above, the Hon'ble Court disposed of the appeal by allowing it and quashing and setting aside the Impugned Order. Further, since the subject matter of the said Suit would need to be referred to arbitration, the continuance of the said Suit was declared to be inappropriate.

3.MERE USE OF THE TERM 'ARBITRATION' IS NOT SUFFICIENT TO TREAT THE CLAUSE AS AN ARBITRATION AGREEMENT WHEN THE CORRESPONDING INTENT OF THE PARTIES IS MISSING: SUPREME COURT OF INDIA [NOVEMBER 6, 2025]

Introduction

In the case of **Alchemist Hospitals Ltd. v. ICT Health Technology Services India Pvt. Ltd. [3]**, the Hon'ble Supreme Court dismissed the appeal before it and held that mere repetition of the word 'arbitration' in a clause of an agreement is not decisive when the express intention of the parties to resolve their differences / disputes through arbitration is missing. The Hon'ble Court clarified that mere reference to the term 'arbitration' is not sufficient to meet the threshold set out under Section 7 of the Arbitration Act.

Facts

In the present case, Alchemist Hospitals Ltd. ("**Appellant**") is a private healthcare institution, which engaged ICT Health Technology Services India Pvt. Ltd. ("**Respondent**") a technology company, to upgrade and implement its hospital-information software. The parties executed a Software Implementation Agreement ("**said Agreement**") under which the Respondent agreed to install and integrate its proprietary "HINAI Web Software" to manage patient-care operations, billing and diagnostics across the Appellant's facilities. Clause 8.28 of the said Agreement ("**Clause 8.28**") put in place a three-step process for resolution of disputes between the parties providing for negotiation, then mediation through senior management of the parties by arbitration, and finally, through courts of law if the dispute remained pending for more than fifteen days.

Following the execution of the said Agreement, disputes arose between the parties after the Appellant complained of repeated delays, technical failures and performance issues. Consequently, the Appellant invoked Clause 8.28 by requesting a mediation meeting between the Chairmen of both parties. Thereafter, the Appellant called upon the Respondent to concur in respect of the names of the arbitrator. Upon failure of the Respondent to do so, the Appellant approached the Hon'ble Punjab and Haryana High Court ("**Hon'ble High Court**") under Section 11(6) of the Arbitration Act.

The Hon'ble High Court observed that Clause 8.28 envisaged a three-tier process for resolving disputes: first, by negotiation between senior management executives; next, through mediation between the respective Chairmen of the parties; and finally, by permitting the complaining party to seek remedies through the courts of law if the dispute remained unresolved within fifteen

[3] 2025 INSC 1289

days.The Hon'ble High Court further observed that the term "arbitration" had been loosely employed in Clause 8.28 and that the true intention discernible from its language was only to provide for negotiation and mediation at an internal company level. Moreover, it observed that nothing in Clause 8.28 indicated any intention of the parties to refer their disputes to a private adjudicatory forum or to abide by its decision. Therefore, observing that Clause 8.28 merely contemplated negotiation and mediation without creating a binding arbitral process, the Hon'ble High Court held that Clause 8.28 was not a valid arbitration agreement and dismissed the Appellant's application ("**Impugned Order**"). Consequently, the Appellant approached the Hon'ble Supreme Court.

Issues

1.Whether Clause 8.28 of the said Agreement could be considered to be a valid arbitration agreement under the Arbitration Act;
2.Whether the non-denial of the arbitration agreement by the Respondent in the correspondence between the parties post the notice being issued by the Respondent would have any bearing upon the decision to refer the parties to arbitration.

Held

Taking into account the specific requirements so as to satisfy the attributes of an arbitration agreement under Section 7 of the Arbitration Act and its judgements in several cases such as *K.K. Modi v. K.N. Modi (1998) 3 SCC 573 and Jagdish Chander v. Ramesh Chander (2007) 5 SCC 719,* the Hon'ble Supreme Court observed that an arbitration agreement should have an element of the nature of finality to refer the matters to arbitration. Particularly relying upon its decision in *Jagdish Chander v. Ramesh Chander (2007) 5 SCC 719*, the Hon'ble Supreme Court observed that mere use of the word "arbitration" is not sufficient to treat a clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing.

The Hon'ble Court further observed that mere use of the word "arbitration" in a clause of an agreement is not clinching or decisive and that Section 7 of the Arbitration Act presupposes an express intention of the dispute being resolved through arbitration and mere reference to the term is not sufficient to meet this threshold. The Hon'ble Court remarked that the Arbitration Act being the creature of a contract, the *ad idem* intention of the parties is paramount to determine whether a valid arbitration agreement exists.

Upon a perusal of Clause 8.28, the Hon'ble Court observed that there was no indication that the proposed "arbitration" was supposed to be final and binding.

The Hon'ble Court noted that on the contrary, the final step of the dispute resolution process as laid down by Clause 8.28 was seeking remedies through courts of law if the dispute remained unresolved beyond fifteen days. In view of the same, Hon'ble Court observed that Clause 8.28 was an attempt at amicable resolution between the parties rather than a definitive submission to arbitration, failing which the parties had the option to proceed to the courts of law.

The Hon'ble Court further found that Clause 8.28 designated the respective Chairmen of the parties themselves as "arbitrators". It highlighted that arbitration contemplates reference to a neutral third party, a process supported by Section 12 read with the Seventh Schedule of the Arbitration Act. However, in the present case, the mechanism envisaged under Clause 8.28 was akin to an internal settlement process between the Chairmen of the parties.

In view of the abovementioned observations, the Hon'ble Court held that Clause 8.28 did not evince an intention to refer disputes to arbitration.

In terms of the second issue, the Hon'ble Court noted that there was no denial of the existence of an arbitration agreement by the Respondent in its responses to the notice issued by the Appellant. Accordingly, it held that in the present case, subsequent correspondence between the parties could not displace the original intention when there was never an arbitration agreement in the first place.

Owing to the abovementioned findings and conclusions, the Hon'ble Supreme Court affirmed the Impugned Order of the Hon'ble High Court and dismissed the appeal before it.

4.ARBITRAL TRIBUNAL'S REFUSAL TO GRANT ACCESS OF RELEVANT INFORMATION TO A PARTY AMOUNTS TO VIOLATION OF PRINCIPLES OF NATURAL JUSTICE AND DUE PROCESS [NOVEMBER 10, 2025]

Introduction

In the case of **Iqbal Trading Company v. Union of India & Others [4]**, the Hon'ble Bombay High Court set aside both, the impugned order and the arbitral award, holding that the Arbitral Tribunal's refusal to provide the Appellant with essential documents and information prevented the Appellant from presenting its case and resulted in a non-reasoned summary award passed without a judicial approach. The Hon'ble Court further held that the arbitral proceedings were carried out in complete disregard of the basic requirements of natural justice.

Facts

In the present case, a tender was floated by the

[4] 2025:BHC-AS:47439

Government of India ("**Respondent No. 1**") in December 1994 for the supply of meat and related products for a specified period ("**Supply Period**"). Although no formal agreement in the name of the President of India was executed, the bid of one Iqbal Trading Company ("**Appellant**") was accepted. The Appellant furnished the security deposit and the supplies commenced on the basis of the tender documents and acceptance letter issued to the Appellant.

A dispute arose between the parties when the Appellant informed the Respondent that it could not continue the supply of meat at the contracted rated owing to non-availability of the meat in the market and a sudden rise in prices. Consequently, the Respondent No. 1 invoked arbitration claiming damages for alleged excess expenditure incurred in procuring meat from the open market. For this purpose, the Respondent No. 1 appointed an officer ranked as Lt. Colonel as the arbitrator ("**Arbitral Tribunal**"). The Arbitral Tribunal entered reference after the Arbitration and Conciliation Act, 1996 ("**1996 Act**") had come into force.

Contending that there was no validly executed contract in the name of President of India which contained an arbitration clause, the Appellant filed a civil suit to stay the arbitral proceedings and obtained a status quo order. However, the status quo order was subsequently vacated.

Acting under the Arbitration Act, 1940 ("**1940 Act**"), the Arbitral Tribunal issued an award in favour of the Respondent No. 1 without giving any reasons or revealing any essential material that formed the basis of its evaluation ("**said Award**"). Thereupon, the Respondent No. 1 filed a civil suit seeking declaration of the said Award as a decree of the Court, as required under the 1940 Act. Conversely, the Appellant filed an application challenging the said Award.

Seven years later, the Hon'ble District Court, Pune ("**Hon'ble District Court**") passed a judgement holding that the 1940 Act had no application and returned the Appellant's application granting him liberty to challenge under the 1996 Act ("**Liberty Order**"). Accordingly, the Appellant filed a challenge under Section 34 of the 1996 Act before the Hon'ble District Court. After another six years, the Hon'ble District Court upheld the said Award and passed an order yet again holding that the said Award was governed by the 1940 Act and that the Section 34 challenge of the Appellant was barred by limitation ("**Impugned Order**").

Aggrieved, the Appellant approached the Hon'ble Bombay High Court ("**Hon'ble High Court**") challenging the Impugned Order.

Issues

Whether the said Award and Impugned Order were legally valid.

Held

Holding the Impugned Order and the said Award to be unsustainable, the Hon'ble High Court set the same aside and provided its judgement on the following key aspects:

1.Application of 1996 Act :

The Hon'ble Court observed that Section 85(2)(a) of the 1996 Act makes it abundantly clear that the 1940 Act would not apply to proceedings that commenced after the 1996 Act came into force. In this context, it noted that the Arbitral Tribunal was constituted by Respondent No. 1 well after 1996 Act came into force. Further, it was also highlighted that Arbitral Tribunal entered reference and sent notice to the Appellant after the 1996 Act came into force. Resultantly, the Hon'ble Court concluded that the commencement of the arbitral proceedings under Section 21 of the Act was clearly after the 1996 Act came into force. Therefore, it held the Impugned Order wrong in holding that the 1940 Act would apply. Further, observing that the Appellant had filed its challenge under Section 34 of the 1996 within the stipulated timeline, the Hon'ble Court held the Impugned Order incorrect in its holding that the said challenge was barred by limitation.

2.Standard of review applied while passing the Impugned Order :

The Hon'ble High Court observed that since the standard of the 1940 Act was applied, there was no application of the 1996 Act by the Hon'ble District Court. The Hon'ble High Court held that on this ground alone, the Impugned Order could be set aside. However, in line with the settled law that an appeal is a continuation of the original proceeding, the Hon'ble High Court proceeded to also examine the Arbitral Award under Section 34 of the 1996 Act.

3.Denial of natural justice :

Noting that the claim of Respondent No. 1 was for damages, the Hon'ble High Court observed that the Arbitral Tribunal ought to have examined and reasoned the issues of actual price of procurement for Respondent No. 1, efforts made by Respondent No. 1 to mitigate its losses and assessment of the veracity of the Appellant's claims as availability and increased prices for meat. The Hon'ble Court also noted that the parties' agreement which contained the arbitration clause explicitly stipulated that the arbitrator should provide reasons for any claim exceeding ₹30,000. The said Award, however, was conspicuously silent on the reasons for allowing the claim of Respondent No. 1. The Hon'ble Court observed that the entire claim of the Respondent No. 1 was allowed the without any analysis, assessment, or consideration of the aforementioned issues of actual prices and veracity of claims of the parties.

Further, it was found that when the Appellant had sought inspection of the data and material in order to defend against the claim, the Arbitral Tribunal had denied supply of the information sought even held material information to be irrelevant.

Owing to the aforementioned observations, the Hon'ble High Court held that the approach of the Arbitral Tribunal was untenable and violated the basic expectations of natural justice principles. Therefore, the Hon'ble Court held the said Award to be in serious violation of principles of natural justice.

4.Absence of judicial approach :

The Hon'ble Court held that in the absence of providing the material documents to the Appellant and in the absence of reasoning for the assessment and quantification of damages, the said Award appeared to have been made without adopting a judicial approach. In view of the same, the Hon'ble Court opined that the said Award deserved to be set aside.

5.Conflict with public policy :

The Hon'ble Court also observed the said Award to be in conflict with public policy for being in conflict with fundamental principles of natural justice by denying inspection of relevant material that would have assisted the Arbitral Tribunal in conducting a fair assessment of a fact-intensive question of assessment of damages. Further, observing that the assessment of damages necessarily involves adjudication of facts relating to the damage purportedly suffered, the Hon'ble Court held that the denial of the Arbitral Tribunal to provide information and pass a summary judgement on a question of damages resulted in the said Award being unsustainable and untenable.

5.INDIAN COURTS HAVE NO JURISDICTION TO APPOINT AN ARBITRATOR FOR A FOREIGN-SEATED ARBITRATION GOVERNED BY FOREIGN LAWS, IRRESPECTIVE OF THE NATIONALITY OR DOMICILE OF THE PARTIES: SUPREME COURT [NOVEMBER 21, 2025]

Introduction

In the case of **Balaji Steel Trade v. Fludor Benin S.A. & Others [5]**, the Hon'ble Supreme Court dismissed the arbitration petition filed under Section 11(6) read with Section 11(12)(a) of the Arbitration Act. The Hon'ble Court observed that the principal contract between the parties contained a clear choice of a foreign seat (Benin) and expressly adopted Benin law as the governing law. Therefore, it held that once a contract is governed by foreign law and designates a foreign seat, the jurisdiction of Indian courts under Part I, including Section 11 of the Arbitration Act, stands excluded.

Facts

In the present case, Fludor Benin S.A. ("**Respondent 1**") and Balaji Steel Trade ("**Petitioner**") entered into a Collaboration and Buy Back Agreement ("**Collaboration Agreement**"). The Collaboration Agreement contained an arbitration clause providing for arbitration before the CAMEC-CCIB in Benin. Subsequently, the Petitioner and Respondent No. 1 entered into a Buyer and Seller Agreement ("**BSA**") superseding the earlier Collaboration Agreement. The said BSA also incorporated two significant clauses – an arbitration clause which provided for ad hoc arbitration to be conducted in Benin and another clause specifying the BSA to be governed by Benin law.

After execution of the BSA, Respondent No. 1 allocated some of its supply obligations to Vink Corporations DMCC ("**Respondent No. 2**"). As a result, the Petitioner entered into a series of Sales Contracts with Respondent No. 2 which provided for reference of dispute to sole arbitrator in accordance with the Arbitration Act, with the place of arbitration at New Delhi. Owing to an alleged shortfall in supply, Tropical Industries International Pvt. Ltd. ("**Respondent No. 3**") was introduced to the Petitioner and several High Seas Sale Contracts ("**HSSAs**") were executed between the Petitioner and Respondent No. 3. The HSSAs too incorporated arbitration clauses, with the HSSAs referring disputes to arbitration under the Indian Arbitration Act, 1940 ("**1940 Act**").

Disputes arose between the parties leading to the Petitioner issuing a notice to all Respondents, raising grievances regarding performance under all three categories of contracts and thereafter terminating the BSA.

Upon receiving the termination, Respondent No. 1 invoked arbitration under the BSA by issuing a notice through CAMEC, requesting the Petitioner to nominate its arbitrator. The Petitioner opposed the Benin arbitration contending that all respondents were necessary parties and objected to Benin as the arbitral seat. Thus, instead of submitting to the Benin arbitration, the Petitioner issued its own notice in the terms of Section 21 of the Arbitration Act and proposed a composite arbitration in India based on the arbitration clauses in the Sales Contracts and HSSAs. Meanwhile, Respondent No. 1 proceeded with the Benin arbitration culminating in the Benin Commercial Court appointing a sole arbitrator. Consequently, the Petitioner instituted an Anti-Arbitration Injunction Suit before the Hon'ble Delhi High Court praying for a decree of permanent injunction restraining the Respondent No. 1 from continuing the Benin arbitration. Pending disposal of the anti-arbitration injunction suit, the Petitioner filed the present petition under Section 11(6) of the Arbitration Act before the Hon'ble Supreme Court ("**Section 11(6)**

[5] 2025 INSC 1342

Petition"). During the pendency of the aforesaid proceedings in India, the Benin arbitration advanced to completion and a final award was rendered. The anti-arbitration injunction suit also came to be dismissed by the Hon'ble Delhi High Court.

Issues

1. Whether the Section 11(6) Petition is maintainable in case of international commercial arbitrations;

2. Whether the arbitration clauses contained in the Sales Contracts and HSSAs could be made applicable to a dispute arising out of the BSA;

3. Whether the Sales Contracts and HSSAs novated or superseded the BSA;

4. Whether the disputes are composite and inseparable for a composite reference to arbitration in India;

5. Whether the dismissal of the anti-arbitration suit by the Hon'ble Delhi High Court barred the Section 11(6) Petition by 'Issue Estoppel';

Held

Considering the facts and circumstances of the present case, the Hon'ble Supreme Court dismissed the Section 11(6) Petition before it and provided a comprehensive judgement on the following key points:

1.Maintainability of the Section 11(6) Petition in international commercial arbitration :

The Hon'ble Supreme Court held that the BSA constitutes the mother agreement, defining the core commercial relationship and obligations between the petitioner and Respondent No. 1. The arbitration clause in Article 11 clearly stipulates that arbitration shall "take place in Benin," and the Addendum explicitly states that the agreement shall be governed and interpreted in accordance with the laws of Benin. Once the parties choose Benin as the juridical seat, the power under Section 11 of the Arbitration Act stands excluded by virtue of Section 2(2). Thus, irrespective of the petitioner's Indian nationality or the existence of subsequent contracts containing Indian arbitration clauses, Indian courts lack jurisdiction to appoint an arbitrator or entertain a Section 11 petition in respect of a foreign-seated arbitration.

2.Inapplicability of Arbitration Clauses in Sales Contracts and HSSAs to dispute arising from BSA :

The Hon'ble Supreme Court took note of the Petitioner's contention that mere mention in BSA that arbitration shall take place in Benin did not by itself make Benin the juridical seat especially in light of contrary arbitration clauses in Sales Contracts and HSSAs. The Petitioner had further contended that the BSA stood novated or superseded by the Sales Contracts and HSSAs which provide for arbitration in India.The Hon'ble Supreme Court held both the aforementioned contentions of the Petitioner to be unmeritorious. It reiterated the settled position of law that novation of a contract must be established by clear and unequivocal intention of the parties to substitute the earlier agreement with a new one. The Hon'ble Supreme Court held that the BSA constituted the principal or "mother" contract between the Petitioner and Respondent no. 1, and contained its own dispute resolution clause providing for arbitration in Benin under Benin law.

3.No novation or supersession of BSA by Sales Contracts and HSSAs :

Examining the Sales Contracts and the HSSAs, the Hon'ble Supreme Court held the same to be independent contracts having their own arbitration clause which was applicable only to disputes arising from the respective agreement. The Hon'ble Court observed that each Sales Contract and HSSA were confined to a specific consignment or transaction, contained its own commercial terms and had separate arbitration clauses. It further observed that none of the aforementioned contracts incorporated or referred to the BSA or its arbitration clause, nor did they expressly substitute, novate, or supersede the BSA. Consequently, the Hon'ble Supreme Court held that the absence of cross-references or language of substitution made it impossible to infer novation under Section 62 of the Indian Contract Act, 1872. It further held that the BSA continued to subsist independently and governed the broader supply arrangement, while the Sales Contracts and HSSAs merely operated as implementing or ancillary arrangements for discrete transactions. Therefore, the Hon'ble Court opined that the arbitration agreements in the Sales Contracts or HSSAs could not displace or override the arbitration clause in the BSA, and disputes rooted in the BSA must be resolved exclusively through the arbitration agreed therein, i.e., arbitration seated in Benin and governed by Benin law.

4.Initiation and culmination of Benin arbitration :

The Hon'ble Court placed emphasis on the fact that Respondent No. 1 had already invoked the Benin arbitration under the BSA. The Benin Commercial Court had duly appointed a sole arbitrator under Benin law, and the arbitrator had rendered a final and reasoned award. In light of the same, the Hon'ble Court held that once an arbitration has commenced and culminated at the foreign seat chosen by the parties, the initiation of a parallel arbitration in India concerning the same disputes would undermine the doctrine of *kompetenz-kompetenz*, the finality of arbitral awards and the territorial principle which accords supervisory authority exclusively to the courts of the seat.

5.Dismissal of the anti-arbitration injunction suit by the Hon'ble High Court of Delhi and its findings as 'Issue Estoppel' :

The Hon'ble Supreme Court observed that the findings of the Delhi High Court in the anti-arbitration injunction suit had attained finality and therefore held that the same operated as issue estoppel. It held that the Hon'ble High Court, after a detailed examination of the contractual framework, had concluded that the BSA constituted the operative contractual framework between the Petitioner and Respondent No. 1 and that the arbitration clause designating Benin as the place of arbitration was binding. The Hon'ble High Court had further held that the Sales Contracts and HSSAs were separate, limited-purpose contracts which could not override the dispute resolution mechanism in the BSA. Additionally, finding that the BSA did not bind Respondents Nos. 2 and 3 and that their agreements with the Petitioner were independent, the Hon'ble High Court had held that Respondent Nos. 2 and 3 could not be compelled into a composite arbitration. Thus, the Hon'ble Supreme Court held that since these factual determinations had already been adjudicated by a competent court, the Petitioner was barred from reopening them in a Section 11 petition by merely shifting the statutory route from Section 45 to Section 11 of the Arbitration Act.

6.Misplaced reliance on Group of Companies Doctrine :

The Hon'ble Court held that the Petitioner's reliance on the Group of Companies Doctrine was misplaced. It observed that the said doctrine requires demonstrable common intention among all relevant parties to be bound by a single arbitration agreement. The mere fact that all three respondents were allegedly part of the Tropical General Investments Ltd. Group or that shareholding overlapped was insufficient. The Hon'ble Court further observed that there was no evidence of Respondents No. 2 or 3 participating in the negotiation, performance, or interpretation of the BSA, nor any indication that they intended to be bound by its arbitration clause. The BSA was executed solely between the petitioner and Respondent No. 1, and the subsequent contracts were discrete and self-contained. Accordingly, the doctrine could not be applied to force a composite arbitration under the BSA.

In the view of the above, the Hon'ble Court held that the BSA being the principal and governing agreement and the subsequent Sales Contracts and HSSAs being merely ancillary, could not override the BSA and the BSA would undoubtedly prevail. Further observing that the disputes raised by the Petitioner arise squarely from the BSA, and the parties' chosen forum for their adjudication was arbitration in Benin, the Hon'ble Supreme Court held that the application of Part I of the Arbitration Act was automatically removed. Consequently, the jurisdiction of Indian courts under Section 11 of the Arbitration Act was removed. With the Benin arbitration already concluded, the contractual intention clear, and the Hon'ble Delhi High Court's findings being binding as issue estoppel, the Petitioner's attempt to seek appointment of an arbitrator in India was held to be fundamentally misconceived.

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FIRM HIGHLIGHTS

ANM Global's Equity Partner and Head of Media, Entertainment & Gaming Practice, Anushree Rauta, participated in an inspiring panel discussion at #IndiaJoy2025, alongside celebrated leaders including Mrs. Manchu Lakshmi Prasanna, Dr. Viveka Kalidasan, PhD, Ms. Kavitha Jaubin, and Ms. Santhy Balachandran, moderated by Ms. Sree Chaitu.

ANM Global's Equity Partner and Head of Media, Entertainment & Gaming Practice, Anushree Rauta, has been quoted by The Economic Times in their article titled "Global shows skip India as licensing, censorship and costs limit streaming access for paid subscribers."

Her expert views offer critical perspective on the regulatory and licensing complexities impacting India's evolving streaming ecosystem.

Now Streaming Globally, But Indians Miss All the Action

BIG MYSTERY Unavailability of content on platforms in India an issue with paid users; OTTs release shows in specific regions as distribution strategy

Rajesh N Naidu

Mumbai: Scriptwriter Jaidev Hemmady says he has not been able to watch Tinker Tailor Soldier Spy and The Little Drummer Girl in India because the platforms that stream these series in other markets are not showing them here. Recently, paid Indian subscribers of Apple TV could not watch the documentary series on legendary film director Martin Scorsese, because the series was not released in the India region.

These are among many programmes that paid subscribers of the local arms of international platforms say are not available for viewing in India, even though the same platforms stream the content elsewhere.

Entertainment industry executives cite licensing agreements to censorship clearance as reasons for platforms not releasing content simultaneously in different markets. "Generally, content produced or acquired by a streamer is sold on a territory-to-territory basis. Streamers release content in specific territories where they have their best footprint," said Rajat Agrawal, chief operating officer at Ultra Media and Entertainment Group, which owns the streaming platform Ultra Play. "Streamers estimate content costs and devise ways of recovering costs. They identify markets and ways through which high revenues can be generated," Agrawal added.

Typically, streamers recover close to 50% of the content cost by releasing content on their own platforms through subscription, rental services and advertisements, said industry experts. They recover the remaining cost either by selling distribution rights to other streamers or to sales agents (who in turn sell distribution rights to streamers). This strategy decides the availability of content for viewing in a region.

Censorship clearance is another key factor. "A new censorship clearance is required for each territory to show streaming content in countries other than where it was originally censored," said Arun Kumar, a Chennai-based content syndicator who works with streamers and TV channels.

Marketing strategies of the platforms also play a role in its availability in a region. "Streamers release content in a staggered manner from one region to another. It is a part of a marketing strategy," explained Anushree Rauta, head of the media and entertainment practice at law firm ANM Global.

Challenges Remain

- Licence deals with other streamers or sales agents in different regions
- Staggered release of content
- Censorship clearance
- Content relevance/reach in a geography
- Marketing strategies of platforms also play a role in deciding a region

Streamers release content on their platforms

MODES:
- Subscription
- Rental services
- Advertisements

COST RECOVERY

CENSORSHIP CLEARANCE

A new censorship clearance is required for each territory to show streaming content in countries other than where it was originally censored, says a content syndicator

Apart from these, content reach and distribution costs could be possible reasons. "After evaluating content reach and its suitability in a region, streamers also consider operational costs involved in distributing content. There are costs related to servers and other technical infrastructure. So, if there is not a sufficiently high audience in a region, a streamer may not release content in that region," said Shrirang Nargund, an independent consultant on the streaming business.

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FIRM HIGHLIGHTS

The much-awaited De De Pyar De 2, starring R. Madhavan, released on 14th November.

ANM Global is proud to have represented R. Madhavan in negotiating and finalizing the artist agreement for the project, produced by Luv Ranjan Films.

Team ANM: Nidhish Mehrotra | Anushree Rauta | Samyak Surana

A testament to ANM Global's expertise in supporting artists and navigating complex entertainment agreements.

Ziddi Ishq, a gripping Hindi web series directed by Raj Chakraborty, premiered on 21st November on JioHotstar.

ANM Global is proud to have represented Raj Chakraborty Entertainment, providing end-to-end legal support for the series, including development, production, and cast & crew agreements.

Team ANM: Nidhish Mehrotra | Anushree Rauta | Ritisha Mukherjee | Shabbir Shamim

A reflection of ANM Global's expertise in guiding creative ventures through complex legal landscapes.

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FIRM HIGHLIGHTS

Gustaakh Ishq, a compelling Hindi feature film directed by Vibhu Puri, released on 28th November 2025.

ANM Global is proud to have represented Stage5 Productions LLP, providing end-to-end legal advisory, including script and content reviews, and drafting, reviewing, and negotiating all agreements for the film.

Team ANM: Nidhish Mehrotra | Anushree Rauta | Anisha Shetty | Samyak Surana | Shabbir Shamim

A reflection of ANM Global's commitment to supporting creative storytelling with strong legal expertise.

Andhra King Thaluka, released on 27th November 2025.

ANM Global is proud to have represented RKD Studios (RK Duggal Studios Private Limited) in the acquisition and exploitation of dubbing and all exploitation rights in Hindi and other Indian languages (excluding South Indian languages), as well as Hindi and all other world languages (excluding South Indian languages), ensuring seamless legal execution for the project.

Team ANM: Nidhish Mehrotra| Anushree Rauta| Anisha Shetty| Shabbir Shamim|Yashwini Balakrishna Amin

A reflection of ANM Global's expertise in managing complex rights and cross-language film exploitation agreements.

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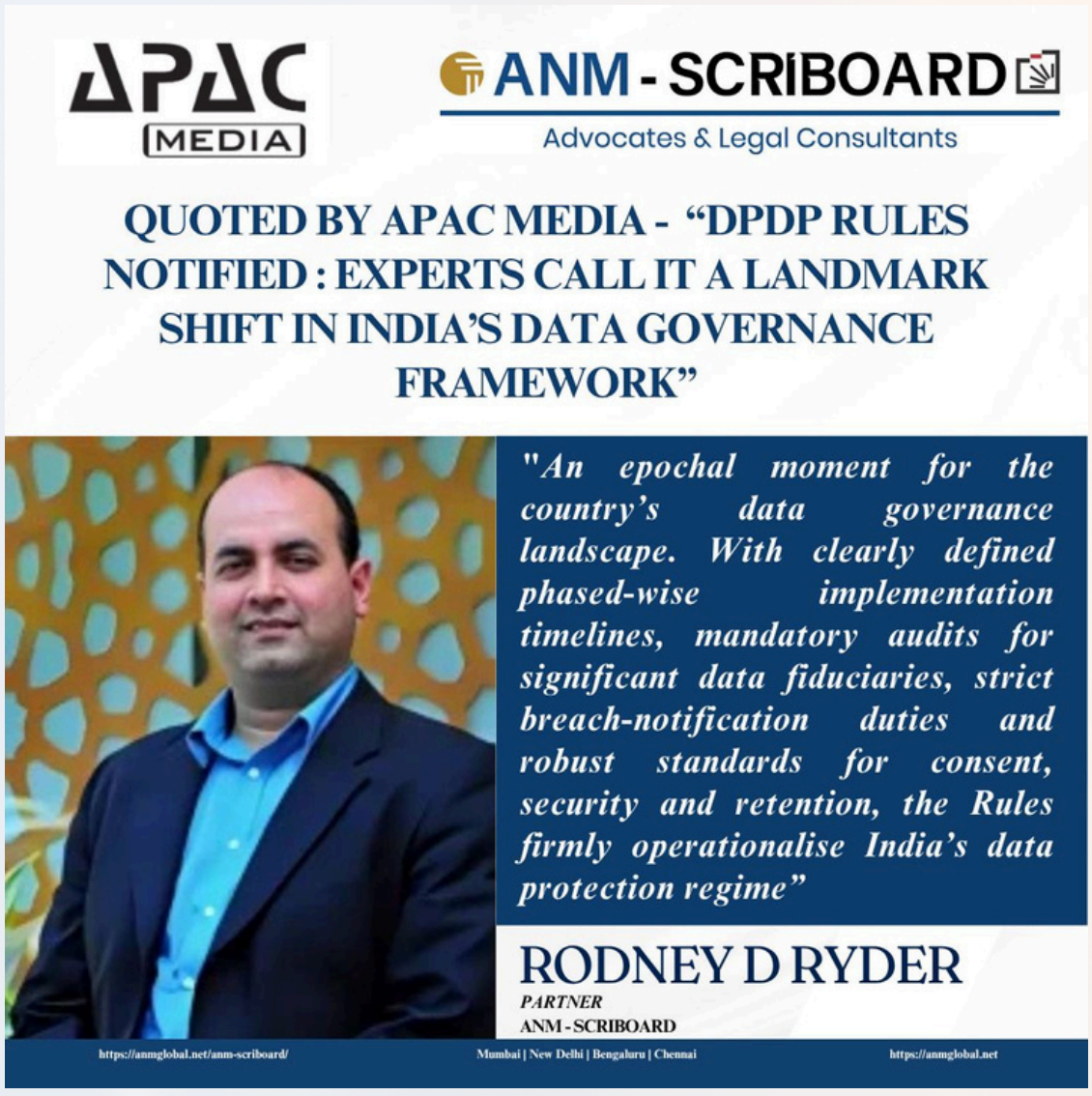

Rodney D. Ryder, Partner at ANM – Scriboard, has been quoted by APAC Media in their coverage of "DPDP Rules Notified: Experts Call It a Landmark Shift in India's Data Governance Framework."

Honoured recognition of his insights on India's evolving data protection and digital governance landscape.

ANM Global advised Pocket Aces Pictures Private Limited, a subsidiary of Saregama India Ltd. and a group company of RPSG Group, on the acquisition of Finnet Media Private Limited. This strategic acquisition supports the group's expansion into the influencer management space.

The transaction team was led by Supreme Waskar (Partner) and Dipesh Nassa (Associate).

A testament to ANM Global's expertise in guiding media and entertainment companies through strategic growth transactions.

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FIRM HIGHLIGHTS

Revolver Rita, released on 28th November.

ANM Global is proud to have advised RKD Studios (RK Duggal Studios Private Limited) on the acquisition and exploitation of Hindi dubbing rights for the film, as well as rights for other world languages (excluding South Indian languages), facilitating smooth commercial exploitation across territories.

Team ANM: Nidhish Mehrotra | Anushree Rauta | Anisha Shetty | Shabbir Shamim | Yashwini Balakrishna Amin

A testament to ANM Global's expertise in navigating complex rights and distribution agreements in the film industry.

ANM Global announced the onboarding of Mr. Varunraj Limaye and Dr. Venkatesh Seshan as Partners in its Intellectual Property practice, focusing on Patents and Designs. Their addition, along with a multi-disciplinary team, strengthened ANM Global's Patents practice.

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