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AUTHORS:

SNEHA NANANDKAR, PARTNER

MUKUL BHAGTANI, SENIOR ASSOCIATE

ARYAA PARULEKAR, ASSOCIATE

MICHELLE D'SILVA, ASSOCIATE

1.FAILURE TO ISSUE A SECTION 21 NOTICE WOULD NOT BE FATAL TO A PARTY IN ARBITRATION IF THE CLAIM IS OTHERWISE VALID AND THE DISPUTES ARBITRABLE: SUPREME COURT OF INDIA [JANUARY 05, 2026]

Introduction:

In the case of **M/s Bhagheeratha Engineering Ltd. v. State of Kerala [1]**, holding that Section 21 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation, the Hon'ble Supreme Court of India has ruled that there is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of arbitration and accordingly, failure to issue notice would not be fatal to a party in arbitration if the claim is otherwise valid and the disputes arbitrable.

Facts:

In the case at hand, disputes arose between the parties out of 4 packages of Road Maintenance Contract ("**Contract**") awarded to the Appellant for development of roads in Kerala in collaboration with the World Bank. The General Conditions of Contract ("**GCC**") provided for the following dispute resolution mechanism:

1. Decisions of the Engineer which were erroneous or beyond his scope were be referred to the Adjudicator within 14 days of such decision ("**Clause 24.1**");
2. The Adjudicator was to give a decision within 28 days of the receipt of the notification of a dispute ("**Clause 25.1**"); and
3. Either party could refer the Adjudicator's decision to an Arbitrator within 28 days of the Adjudicator's written decision and if neither party did so within 28 days, the Adjudicator's decision would be final and binding ("**Clause 25.2**").

Clause 25.3 further provided the process for arbitration ("**Clause 25.3**"). The Appellant herein, by letters, quantified the amounts due and submitted the same for decision by the Executive Engineer. Alleging that the Executive Engineer/Superintending Engineer had failed to take any decision, the Appellant approached the Adjudicator under Clause 25.1 of the GCC for decision on pending payments classifying the disputes as Dispute Nos.1 to 4. The Adjudicator ruled in favour of the Appellant on Dispute Nos.1 and 3 and ruled against the Appellant on Dispute Nos. 2 and 4 ("**Adjudicator's Order**").

Rejecting the finding of the Adjudicator in respect of Dispute No.1 on the ground that the same was unacceptable to it, the Respondent did not settle the final bill submitted by the Appellant in accordance with the Adjudicator's Order in respect of Dispute No.1. Consequently, the Respondent informed the Appellant of its position and referred the dispute to arbitration under Clause 25.3.

The Arbitral Tribunal passed an award in favour of the Appellant in respect of all the 4 disputes and recorded that the arbitration agreement was comprehensive enough to cover any dispute arising out of or in connection with the agreement. The Arbitral Tribunal further recorded that the Respondent had prayed to declare the decision of the Adjudicator null and void and that the same indicated the Respondent's intention to open all 4 disputes before the Arbitral Tribunal.

Aggrieved by the Arbitral Award, the Respondent challenged the same under Section 34 of the Arbitration Act before the Hon'ble District Judge, Thiruvananthapuram ("**Hon'ble District Judge"**). Noting that the Respondent had referred the matter to arbitration after the lapse of 28 days from the passing of the Adjudicator's Order, the Hon'ble District Judge set aside the Arbitral Award and held that there was no provision in the contract for extending the time for referring the issue beyond the period of 28 days. It further held that in the absence of any such provision for extension, there could not be any question of there being any consensus between the parties for referring all the disputes to arbitration and finally restored the Adjudicator's Order.

Aggrieved, the appellant filed an appeal under Section 37 of the Arbitration Act before the Hon'ble Division Bench of the High Court of Kerala at Ernakulam ("**Hon'ble Division Bench**"). The Hon'ble Division Bench found the Arbitral Award invalid on the ground that the Arbitral Tribunal was appointed at the request of the Respondent to adjudicate only on Dispute no. (1) alone and that the Appellant never sought reference of the Dispute Nos. 2 to 4 by issuing any notice under Section 21 of the Arbitration Act. However, the order restoring the Adjudicator's Order was not disturbed. The matter finally came up before the Hon'ble Supreme Court of India.

Issues:

1. Whether the Hon'ble Division Bench was justified in holding that the Arbitral Tribunal was appointed at the request of the Respondent to adjudicate Dispute No. 1 only;
2. Was the non-issuance of a notice under Section 21 of the Arbitration Act by the Appellant fatal for it to pursue its claim before the Arbitrator.

Held:

The Hon'ble Supreme Court ruled that the Hon'ble Division Bench had totally erred in setting aside the award on the basis that the appointment of the Arbitral Tribunal was only to adjudicate Dispute No.1 and that the non-issuance of notice under Section 21 of the Arbitration Act by the Appellant with regard to Dispute nos. 2 to 4 was fatal for it to pursue its claim before the

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arbitrator. It therefore ruled that the Hon'ble Division Bench had erred in holding that the Arbitral Tribunal exceeded its jurisdiction in deciding all the 4 disputes. The Hon'ble Supreme Court provided following reasons for its ruling:

A.Conduct of the Respondent.

The Hon'ble Supreme Court noted that neither the Respondent nor the Appellant had acted in accordance with the timelines set out under Clauses 24 and 25 and that neither party had at any point in time raised any objections as to the timelines being breached. The Hon'ble Court further found that the Adjudicator was required to pass his order in 28 days, but had failed to do so. The Hon'ble Court noted this to be the second instance of the parties including the Adjudicator deviating from Clauses 24 and 25. Thereafter, even though 28 days had elapsed, the matter proceeded to arbitration and the Appellant had filed its entire claim in respect of all 4 disputes. Therefore, it was apparent that neither party had followed the timelines / procedure set out under the agreement.

Noting such defaults on part of the Respondent, the Hon'ble Supreme Court placed reliance upon its decision in *M.K. Shah Engineers & Contractors v State of M.P. [(1999) 2 SCC 594]* wherein it was held that the party at fault cannot be permitted to take advantage of the same.

Thus, the Hon'ble Supreme Court held that the sequence of events clearly demonstrated that the rigors of Clauses 24, 24.1 and 25 had not been followed by the parties and the conduct of the Respondent clearly precluded it from relying on the mandate of Clauses 24, 24.1 and 25 to contend that the Appellant was foreclosed from raising the entire dispute before the Arbitrator.

B.Object of Section 21 of the Arbitration Act.

Drawing from its decisions in *ASF Buildtech Private Limited v. Shapoorji Pallonji & Company Private Limited [(2025) 9 SCC 76]*, *Adavya Projects Private Limited v Vishal Structurals Private Limited [(2025) 9 SCC 686] and others*, *Indian Oil Corporation Ltd. v Amritsar Gas Service and Others [(1991) 1 SCC 533]*, the Hon'ble Supreme Court held that Section 21 of the Arbitration Act is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of arbitration. It further held that issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim and the failure to issue a Section 21 notice would not be fatal to a party in arbitration if the claim is otherwise valid and the disputes arbitrable.

C. Widely worded arbitration clause.

The Hon'ble Supreme Court held that Clause 25.3 was widely worded and any dispute or difference arising between the parties relating to any matter arising out of or concerned with the agreement were to be settled in accordance with the Arbitration Act by the Arbitral Tribunal.

Looking to the conduct of the parties, the Hon'ble Supreme Court relied upon its decision in *State of Goa v Praveen Enterprises [(2012) 12 SCC 581]* wherein it was held that if an arbitration agreement provides that all disputes between the parties relating to the contract shall be referred to arbitration, the reference contemplated is the act of parties to the arbitration agreement. The conduct of the parties already showed that the procedure set out under the agreement had not been followed and the disputes had been referred to arbitration.

D.Sections 2(9) and 23 of the Arbitration Act.

Considering Sections 2(9) and 23 of the Arbitration Act which deal with claims, counter-claims, Statement of Claim and Defence, the Hon'ble Supreme Court observed that once the Arbitral Tribunal is constituted claims, defence and, counter claims are filed. It further observed that the party filing first is termed the 'claimant' and the responding part is termed the 'respondent'. The respondent is also entitled to file a counter claim along with the defence statement. The Hon'ble Court therefore held that to contend that the Appellant herein cannot be referred to as a claimant because no notice under Section 21 of the Arbitration Act has been issued is completely untenable.

In view of the above reasons, the Hon'ble Supreme Court set aside the judgement of the Hon'ble Division Bench and upheld the Arbitral Award in its entirety.

2.WAIVER OF RIGHT TO OBJECT TO APPOINTMENT OF AN INELIGIBLE ARBITRATOR MUST BE CLEAR, UNEQUIVOCAL AND WRITTEN: SUPREME COURT OF INDIA [JANUARY 05, 2026]

Introduction:

The Hon'ble Supreme Court in the case of **Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India [2],** has held that the right of a party to object to the appointment of an ineligible arbitrator cannot be taken away by mere implication. Even if the Appellant participated in the proceedings without raising any objection, it cannot be said that he had waived his right under Section 12(5) of the Arbitration Act. The Hon'ble Court held that the agreement referred to in the proviso to Section 12(5) of the Arbitration Act must be a clear, unequivocal, written agreement.

Facts:

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In the present case, Bhadra International (India) Pvt. Ltd. ("**Appellant No. 1**") and one other entered into respective License Agreements with the Airports Authority of India ("**Respondent**"). Clause 78 of the License Agreement provided for resolution of disputes through arbitration wherein a sole arbitrator would be appointed by the Chairman of the Respondent ("**Clause 78**").

Thereafter, the Arbitration and Conciliation (Amendment) Act, 2015 ("**2015 Amendment**") came into effect by which sub-section (5) was inserted into Section 12 of the ("Arbitration Act"). According to Section 12(5), notwithstanding any prior agreement between the parties, any person whose relationship with the parties or counsel, or the subject-matter of the dispute, falls under any of the grounds mentioned in the Seventh Schedule, would be ineligible to be appointed as an arbitrator. The proviso to Section 12(5) further states that after a dispute arises between the parties, they may waive the applicability of Section 12(5) by entering into an express agreement in writing.

Owing to disputes between the parties, the Appellants invoked the arbitration clause in the License Agreement and requested the Respondent to appoint an arbitrator in terms of Clause 78 thereto. Accordingly, a sole arbitrator was appointed by the Chairman of the Respondent. Subsequently, the sole arbitrator passed the first procedural order recording that none of the parties had any objection to his appointment.

Thereafter, two separate applications were filed under Section 29A of the Arbitration Act seeking extension of time for completion of the proceedings. Ultimately, the sole arbitrator passed arbitral awards whereby the claims and counter-claims of the respective parties were rejected.

Aggrieved, the Appellants challenged the award by filing applications under Section 34 of the Arbitration Act before the Hon'ble Single Judge of the Delhi High Court ("**Hon'ble Single Judge**"). Thereafter, the Appellants sought to amend the aforesaid applications to contend that since the arbitrator was appointed unilaterally, the award was liable to be set aside. The said applications came to be rejected by the Hon'ble Singh Judge. Aggrieved, the Appellants preferred appeals under Section 37 of the Arbitration Act seeking to challenge the judgment and order passed by the Hon'ble Single Judge. The said appeals as well were dismissed by the Hon'ble Division Bench of the Delhi High Court ("**Hon'ble Division Bench**").

Finally, the Appellants preferred an appeal before the Hon'ble Supreme Court of India.

Issues:

1. Whether the sole arbitrator could be said to have become "*ineligible to be appointed as an arbitrator*" by virtue of Section 12(5) of the Arbitration Act;
2. Whether the parties could be said to have waived the applicability of Section 12(5) of the Arbitration Act, by way of their conduct, either expressed or implied;
3. Whether the appellants could have raised an objection to the appointment of the sole arbitrator for the first time in an application under Section 34 of the Arbitration Act.

Held:

Setting aside the impugned judgements of the Hon'ble Division Bench and Hon'ble Singh Judge along with the arbitral awards, the Hon'ble Supreme Court provided its judgement on the following key aspects:

A.Ineligibility of the appointed arbitrator.

i. Interplay between equal treatment of parties and party autonomy:

In view of Section 18 of the Arbitration Act, the Hon'ble Court observed that the principle of 'equal treatment of parties' means that the parties must have the possibility of participating in the constitution of the arbitral tribunal on equal terms. Simultaneously, the Hon'ble Court held that while party autonomy is stipulated under Section 11(6) of the Arbitration Act, the same must operate within the framework of the Arbitration Act and in case of conflict, mandatory provisions of the Arbitration Act shall prevail over the arbitration agreement. Accordingly, the Hon'ble Court held that the exercise of party autonomy has to be in consonance with the principles of equal treatment of parties, which impliedly include the independence and impartiality of arbitrators. The Hon'ble Court further held that the principle of equal treatment of parties applies to both, the arbitral proceedings and the procedure for appointment of arbitrator.

ii Scope and Application of sub-section (5) of Section 12 of the Arbitration Act:

The Hon'ble Supreme Court observed that the aim of the 2015 Amendment was to inculcate the principles of independence and impartiality. Examining Section 12(5) of the Arbitration Act, the Hon'ble Court noted that prior agreement waiving ineligibility of arbitrator as specified under Section 12(5) of the Arbitration Act is invalidated. It further noted that according to the proviso to Section 12(5) of the Arbitration Act, waiver of the right to object to the appointment of the arbitrator can be done only after disputes have arisen between the parties and by entering into an express agreement in writing. The Hon'ble Court further clarified that Seventh Schedule of the Arbitration Act applies irrespective of whether the appointment has been made unilaterally.

iii Appointment of the sole arbitrator in light of sub-section (5) of Section 12 of the Arbitration Act:

The Hon'ble Court observed that Section 12(5) of the

Arbitration Act provides that whenever an appointment of arbitrator is hit by the bar under Section 12(5), the arbitrator would be ineligible to act, irrespective of whether the appointment was unilateral or with consent of both parties. In such circumstances, the parties may, in the manner provided under the proviso to Section 12(5), waive the ineligibility.

Flowing from the above understanding and relying upon its decisions in *TRF Ltd. v Energo Engineering Projects Ltd. [(2017) 8 SCC 377], Bharat Broadband Network Limited v United Telecoms Limited [(2019) 5 SCC 755] and Perkins Eastman Architects DPC and Anr. v HSCC (India) Ltd. [(2020) 20 SCC 760],* the Hon'ble Court held that the ineligibility of the arbitrator stems from the operation of law; not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would also be ex facie invalid.

iv *De Jure* inability of the arbitrator to perform his functions :

The Hon'ble Court explained that *de jure* inability refers to a situation in which an arbitrator is legally incapable of performing his functions and is, by operation of law, barred from continuing in office. In the context of the Arbitration Act, the Hon'ble Court clarified that *de jure* inability referred to under Section 14(1)(a) of the Arbitration Act renders an arbitrator legally incapable of performing his functions. It further explained that *de jure* ineligibility which flows from sub-section (5) of Section 12 read with the Seventh Schedule of the Arbitration disqualifies certain persons from being appointed or continuing as arbitrators and precedes *de jure* inability under Section 14(1)(a). Thus, an arbitrator's inability can be determined only when an aggrieved party is able to indicate that the circumstances under the Seventh Schedule have been met.

In the aforesaid context, the Hon'ble Supreme Court held that in the present case, the Seventh Schedule to the Arbitration Act clearly applied to the Chairman of the Respondent. Hence, the Chairman was rendered wholly ineligible by operation of law and being rendered so, he could not nominate or appoint another person as an arbitrator. Accordingly, the Hon'ble Supreme Court held that the Hon'ble High Court had erred in holding that the appointment was not unilateral merely because the Respondent proceeded to appoint the sole arbitrator pursuant to notice invoking arbitration.

B. Waiver of applicability of Section 12(5) of the Arbitration Act.

i Meaning and import of the expression "express agreement in writing" used in proviso to sub-section (5) of Section 12 of the Arbitration Act:

The Hon'ble Supreme Court noted its decision in *Central Organization for Railway Electrification v SPIR SMO MCML [(2025) 4 SCC 641]* ("**CORE-II**") wherein it was held that the waiver under the proviso to Section 12(5) of the Arbitration is subject to two factors. First, that the parties can only waive the applicability of Section 12(5) after the dispute has arisen. This allows parties to determine whether they will be required or necessitated to draw upon the services of specific individuals as arbitrators to decide upon specific issues. Second, that the parties must consciously abandon their existing legal right through an express agreement. Following its aforementioned judgement in Core-II, the Hon'ble Supreme Court held that the ineligibility of an arbitrator can be waived only by an express agreement in writing. It held that in the present case, there was no agreement in writing after the disputes arose which waived the ineligibility of the sole arbitrator or the right to object under Section 12(5) of the Arbitration Act. It also held that the conduct of the parties is inconsequential and does not constitute a valid waiver as per the proviso to Section 12(5) of the Arbitration Act.

ii "Statement of Claim" as a parameter of waiver:

Further, having noted a specific submission by the Respondent on the point, the Hon'ble Supreme Court relied upon its judgement in Bharat Broadband and clarified that a Statement of Claim cannot be equated to an "express agreement in writing" in terms of proviso to Section 12(5).

iii "Extension of Time" under Section 29A of the Arbitration Act as a parameter of waiver:

The Hon'ble Supreme Court relied upon its decision in *Hindustan Construction Co. Ltd. v Bihar Rajya Pul Nirman Nigam Ltd [2025 SCC OnLine SC 2578]* wherein it was held that moving under Section 29A of the Arbitration Act for extending the arbitrator's mandate amounts to a valid waiver under Section 4 of the Arbitration Act, except in cases of statutory ineligibility under Section 12(5). The Hon'ble Supreme Court further relied upon the Hon'ble Delhi High Court's ruling in *Man Industries (India) Ltd. v Indian Oil Corporation Ltd. [2023 SCC OnLine Del 3537]* wherein it was held that participation in the arbitration proceedings or filing of applications under Section 29A of the Arbitration Act seeking extension of the mandate of the arbitrator cannot amount to a waiver under the proviso to Section 12(5) of the Arbitration Act. Therefore, the position of law stands clear that filing of an application under Section 29A of the Arbitration Act does not constitute as a waiver under Section 12(5) of the Arbitration Act.

iv "Continued Participation" as a parameter of waiver:

The Hon'ble Supreme Court noted that the Respondent had contended that continued participation of the Appellant had indicated that the Appellant had waived its right as per proviso to Section 12(5) of the Arbitration Act. In this respect, the Hon'ble Supreme Court referred to the Hon'ble Delhi High Court's ruling in *Govind*

Singh v Satya Group Pvt. Ltd. [2023 SCC OnLine Del 37] wherein it was held that even if the appellant had participated in the proceedings without raising any objection, it cannot be said that he had waived his right under Section 12(5) of the Arbitration Act. Therefore, the Hon'ble Supreme Court held that continued participation of the Appellant would not act as a waiver under the proviso to Section 12(5) of the Arbitration Act.

The Hon'ble Supreme Court therefore, concluded that a notice invoking the arbitration clause under Section 21 of the Arbitration Act, a procedural order, submission of statement of claim by the appellants, the filing an application seeking interim relief, or a reply to an application under Section 33 of the Arbitration Act, cannot be countenanced to mean "an express agreement in writing" within the meaning of the proviso to Section 12(5) of the Arbitration Act.

C. Stage of raising objection to the appointment of an ineligible arbitration.

The Hon'ble Supreme Court held that a challenge to an arbitrator's ineligibility can be raised any stage because an award passed in such circumstance is *non-est*, i.e., it carries no enforceability or recognition in law. The Hon'ble Court explained that such is the case since an arbitrator does not possess the jurisdiction to pass an award. It further explained that jurisdiction means the authority of an arbitral tribunal to render a decision affecting the merits of the case. Thus, an arbitrator who lacks jurisdiction cannot make an award on the merits and such an award can be challenged at any stage. In this respect, the Hon'ble Supreme Court drew a parallel with a decree by a Court and observed that the validity of a decree can be challenged even in execution proceedings if the court passing such decree lacked subject-matter jurisdiction over the dispute. It stated that any decision passed by a court lacking jurisdiction would be *coram non judice,* since a court cannot give itself jurisdiction and no act of the parties can cure an inherent lack of jurisdiction.

3.ARBITRATOR CAN BE APPOINTED TO DECIDE MONETARY DISPUTE BETWEEN LICENSOR AND LICENSEE: SUPREME COURT OF INDIA [JANUARY 05, 2026]

Introduction:

In the case of **Motilal Oswal Financial Services Limited v. Santosh Cordeiro & Anr. [3]**, the Hon'ble Supreme Court held that in cases where a dispute between a licensor and licensee pertains to a monetary claim, if an arbitration clause is contained in the Leave and License Agreement, an arbitrator can be appointed under Section 11 of the Arbitration Act and disputes need not be referred to the Small Causes Court as per the provision of Section 41 of the Presidency Small Causes Courts Act, 1882 ("**1882 Act**"). The Hon'ble Supreme Court ruled that Section 41 of the 1882 Act cannot neutralize arbitration clauses in agreements and that while exercising jurisdiction under Section 11 of the Arbitration Act, the court must only determine the existence of an arbitration agreement and not examine the merits of the dispute.

Facts:

The Respondent being the Licensor executed a Leave and License Agreement ("**said Agreement**") with the Appellant as a Licensee in respect of a premises situated at Malad (West), Mumbai. The term of the Leave and License Agreement was 60 months. The Appellant terminated the said Agreement, however, after discussing the matter, the termination was reversed and the parties executed an Addendum extending the term of the Leave and License for 96 months with a lock-in period of 72 months. Due to the COVID – 19 pandemic, the Appellant cited the force majeure clause and stated that the arrangement could not be continued and handed over the keys and vacant and peaceful possession of the premises. The Respondent called upon the Appellant to pay a sum of Rs. 94,40,152/- along with interest @ 24% towards the alleged arrears of license fees for the balance lock-in period. The Appellants denied their liability and sought refund of the security deposit of Rs. 10,00,000/-.

The Respondent issued a notice to the Appellant under Section 21 of the Arbitration Act, invoking the arbitration clause of the said Agreement and later filed an Application under Section 11 of the Arbitration Act seeking appointment of a sole arbitrator in accordance with the arbitration clause. The Appellant filed its reply objecting to the appointment of an arbitrator and relied on Section 41 of the 1882 Act and contended that only the Small Causes Court would have the exclusive jurisdiction to entertain and try any suit or proceeding arising from the relationship between a licensor and licensee and since the 1882 Act is a special remedy, the dispute is not arbitrable. The Hon'ble High Court allowed the Respondent's Application and appointed an arbitrator. Proceedings before the arbitrator commenced and the Appellant raised the ground of non-arbitrability under Section 41 of the 1882 Act and filed an Application under Section 16 of the Arbitration Act before the arbitrator. The arbitrator dismissed the Section 16 Application and held that the amount sought to be recovered partakes the character of a 'debt' and is not a claim for a license fee for use and occupation. Aggrieved, the Appellant approached the Supreme Court by way of a Special Leave Petition.

Issue:

Whether the Hon'ble High Court rightly allowed the application filed by the Respondent under Section 11 of the Arbitration Act.

Held:

The Hon'ble Supreme Court noted that there was no

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dispute that the said Agreement contained an arbitration clause and that in a proceeding under Section 11 of the Arbitration Act, the Court's jurisdiction is limited to determining the existence of an arbitration agreement and not launch a laborious or contested inquiry.

The Hon'ble Supreme Court then proceeded to examine the case of *Central Warehousing Corporation, Mumbai v Fortpoint Automotive Pvt. Ltd., Mumbai [2008 SCC Online Bom 2023]* wherein it was held that exclusive jurisdiction was conferred on the small causes court to entertain and decide all suits and proceedings between a licensor and licensee or a landlord and a tenant relating to recovery of possession or recovery of license fee/ rent. It was observed that the aforementioned judgment had to be understood in the context in which it came to be decided which did not apply to the present case.The Hon'ble Supreme Court then distinguished the cases and stated that in the case of *Central Warehousing*, the respondent was in possession of the premises, whereas, in the present case, it was undisputed that possession has been handed over by the Appellant to the Respondent. The Hon'ble Supreme Court observed that the dispute between the parties was regarding a monetary claim with the Appellant asserting that the security deposit should be repaid by the Respondent and the Respondent claiming sums of money towards alleged arrears for the balance lock-in period.

The Hon'ble Supreme Court also reviewed the judgment in the case of *Vidya Drolia & Ors. v Durga Trading Corporation [(2019) 20 SCC 406]* and noted that the Supreme Court emphasised that creation of a specific forum as a substitute for a Civil Court or specifying the Civil Court may not be enough to accept the inference of implicit non-arbitrability and that conferment of jurisdiction on a specific court or creation of a public forum though eminently significant may not be the decisive test to answer and decide whether arbitrability is impliedly barred.

The Hon'ble Supreme Court stated that in the case at hand if Section 41 of the 1882 Act is appreciated, it would be clear that Section 41 confers jurisdiction on the Small Causes Court for certain types of disputes and cannot be interpreted to mean that ex proprio vigore (by its own force), it neutralizes the arbitration clauses in agreements. The Hon'ble Supreme Court also observed that arbitration clauses have their roots in Section 28 of the Contract Act, 1872, which is not considered in the case of Central Warehousing (supra). The Hon'ble Supreme Court noted the exceptions to Section 28 of the Contract Act, 1872 and held that it is clear that when parties agree to refer a matter to arbitration, Section 28 will not render that agreement invalid.

Since both parties made submissions relating to the nature of the claim, whether the same pertained to matters covered within the Ambit of Section 41 (1) of the 1882 Act and if the dispute is personam, the Hon'ble Supreme Court ruled that these questions would be decided by the arbitrator. Further, the Hon'ble Supreme Court noted that since the arbitrator had already decided the Section 16 Application, the parties would have to work out their remedies in accordance with the law and that the decisions in this regard would be uninfluenced by the observations of the Hon'ble Supreme Court in the present proceedings.

The Hon'ble Supreme Court further held that the arbitration clause in the present proceedings was not non-existent and dismissed the appeal. The arbitrator was directed to proceed with the adjudication of disputes and conclude the proceedings within 6 months from the date of the order.

4.ARBITRAL AWARD CANNOT BE SET ASIDE EVEN IF THERE IS A POSSIBLE SECOND VIEW REGARDING THE INTERPRETATION OF CLAUSES IN THE CONTRACT: SUPREME COURT OF INDIA [JANUARY 07, 2026]

Introduction:

In the case of **Jan De Nul Dredging India Private Limited v. Tuticorin Port Trust [4]**, the Hon'ble Supreme Court has held that the Arbitral Award could not have been set aside even if there was a possible second view regarding the interpretation of the clauses of the agreement in question. The Hon'ble Court observed that the view taken by the Arbitral Tribunal had been accepted by the court and hence passed its judgement relying upon its decision in *Larsen Air Conditioning and Refrigeration Company v. Union of India & Ors. [(2023) 15 SCC 472].*

Facts:

In the case at hand, the parties entered into a License Agreement for a major dredging project. As per the License Agreement, the Appellant was free to deploy the equipment as required for dredging purposes. The equipment deployed by the Appellant included one Backhoe Dredger ("**BHD**").

Upon completion of the work, the Appellant submitted a final bill. Thereafter, disputes arose between the parties relating to alleged non-payment and under-payment of dues as raised under the final bill. Consequently, the Appellant invoked the arbitration clause contained in the License Agreement.

The Appellant raised several claims; Claim No. 7, in particular, pertained to idle time due to the Respondent's failure to provide possession of and access to site ("**Claim No. 7**"). An arbitral award came to be passed whereby an amount towards Claim No. 7 was awarded to the Appellant.

Aggrieved, the Respondent challenged the arbitral award before the Hon'ble Single Judge of the Madras High Court ("**Hon'ble Single Judge**") under Section 34 of the Arbitration Act. While the Respondent assailed multiple

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claims of the Appellant, at the time of hearing it restricted its challenge only to the amount awarded under Claim No.7 with regard to idling charges for the BHD. The Respondent contended that under Clause 38 of the License Agreement, the Respondent was only required to pay idling charges for the major dredgers and that BHD did not fall in that category. The Hon'ble Single Judge dismissed the Section 34 Petition upholding the findings of the Arbitral Tribunal and further holding that Clause 38 of the License Agreement did not confine the payment of idle time compensation in respect of major dredgers only.

The Respondent further preferred an appeal before the Hon'ble Division Bench of the Madras High Court ("**Hon'ble Division Bench**") and the said appeal was restricted to Claim No. 7. The Hon'ble Division Bench allowed the appeal and directed for the deletion of the claim awarded by the Arbitral Tribunal in respect of Claim No. 7. Aggrieved, the Appellant preferred an appeal before the Hon'ble Supreme Court.

Issue:

Whether the Hon'ble Division Bench in exercise of powers under Section 37 of the Arbitration Act was justified to interfere with the judgment and order of the Hon'ble Single Judge passed under Section 34 of the Arbitration Act upholding the award of the Arbitral Tribunal.

Held:

Considering the primary objective of the Arbitration Act and Section 5 therein, the Hon'ble Supreme Court observed that in order to speed up the remedial measures under the Arbitration Act in relation to domestic arbitration, there has to be minimum intervention of the court and, if necessary, it has to be only in strict compliance with the provisions of the Act.

The Hon'ble Court further noted that under Section 34 of the Arbitration Act, an award can be challenged only on limited grounds and apart from such limited grounds, the arbitral award is not open for challenge under Section 34 of the Arbitration Act on any other grounds. Thus, the Hon'ble Court stated that the intervention of courts in this respect is limited.

Examining the facts and circumstances of the present case, the Hon'ble Court observed that main ground for challenge of the arbitral award was that of the award being in conflict with the public policy of India. It further noted that the challenge of the arbitral award before the Hon'ble Single Judge was confined to Claim No. 7 and that too on the merits of the same. The Hon'ble Court observed that the challenge was neither on the ground of violation of the public policy of India nor that the said award against the basic notions of morality or justice. Therefore, the challenge raised by the Respondent was neither on any of the grounds enumerated under Section 34 of the Arbitration Act, nor on the ground that the award of Claim No.7 was against the fundamental policy of India or the basic notions of morality or justice. Consequently, the Hon'ble Court held that the arbitral award was not to be disturbed under Section 34 of the Arbitration Act and was rightly left undisturbed by the Hon'ble Single Judge. Reiterating the settled position of law that appellate powers under Section 37 of the Arbitration Act are limited to the scope of Section 34 and cannot exceed beyond it, the Hon'ble Court opined that if an award is not liable to be disturbed under Section 34 of the Arbitration Act, the same could not have been interfered with in exercise of powers under Section 37.

Relying upon its decisions in *MMTC Limited v Vedanta Limited [(2019) 4 SCC 163], Konkan Railway Corpn. Ltd. v Chenab Bridge Project [(2023) 9 SCC 85],* and several others, the Hon'ble Supreme Court observed that the jurisdiction of the court under Section 37 of the Arbitration Act is akin to the jurisdiction of the court under Section 34. Therefore, the Hon'ble Supreme Court held that the scope of interference by the court in appeal under Section 37 of the Arbitration Act cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Arbitration Act. Going further, the Hon'ble Court also held that courts exercising powers under Sections 34 and 37 of the Arbitration Act, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view. Further, the Hon'ble Court held that the award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Arbitration Act or the terms of the agreement.

In regard to the contention that the arbitral award was contrary to the terms of the Licence Agreement, the Hon'ble Court stated that due and proper interpretation of the clauses of the Licence Agreement was given by the Arbitral Tribunal and was also approved by the Hon'ble Single Judge in exercise of his powers under Section 34 of the Arbitration Act. In view of the same, the Hon'ble Court held that the Appellate Court could not have given a different interpretation to the said clauses. It further held that the Appellate Court was actually bound by the interpretation as given by the Arbitral Tribunal and accepted by the Hon'ble Single Judge under Section 34 of the Arbitration Act.

In respect of the facts of the case at hand, the Hon'ble Supreme Court observed that when the License Agreement was read as a whole, idle time charges or compensation were available even if any equipment was kept idle on account of delay or non-providing of the site for operation within time. Therefore, it held that the Arbitral Tribunal was correct in its interpretation and making the award in favour of the Appellant in respect of Claim No. 7. Finding the view of the Arbitral Tribunal to be plausible, the Hon'ble Supreme Court held that the

same was rightly upheld by the Hon'ble Singh Judge. Therefore, in appeal under Section 37 of the Arbitration Act, the said reasoning could not have been disturbed so as to permit a different view. The interpretation given by the Arbitral Tribunal had to be accepted by the Appellate Court.

Finally, in light of the aforementioned observations, holdings and facts of the case, the Hon'ble Supreme Court held that the arbitral award contained logical reasons in construing the various clauses of the License Agreement and the view taken by the Arbitral Tribunal had been accepted by the court under Section 34 of the Act as a reasonable and a possible view. Therefore, considering the judgement in *Larsen Air Conditioning and Refrigeration Company v Union of India & Ors. [(2023) 15 SCC 472],* the Hon'ble Court opined that the arbitral award could not have been set aside even if there was a possible second view regarding the interpretation of the clauses of the License Agreement.

5.THE RESPONDENT'S RECEIPT OF A SECTION 21 NOTICE SETS THE ARBITRAL PROCEEDINGS IN MOTION AND NO JUDICIAL APPLICATION WHETHER UNDER SECTION 9 OR SECTION 11, CONSTITUTES COMMENCEMENT OF ARBITRAL PROCEEDINGS: SUPREME COURT OF INDIA [JANUARY 07, 2026]

Introduction:

In the case of **Regenta Hotels Private Limited v. M/s Hotel Grand Centre Point and Others [5]**, the Hon'ble Supreme Court has held that the commencement of arbitral proceedings is a statutory event defined exclusively under Section 21 of the Arbitration Act, wherein the respondent's receipt of a request to refer the dispute to arbitration sets the arbitral proceedings in motion and no judicial application i.e., whether under Section 9 or Section 11 petition, constitutes commencement.

Facts:

In the case at hand, the Appellant entered into a Franchisee Agreement with and Respondent No. 1, a partnership firm with Respondent Nos. 2 to 5 as its partners. According to the Agreement, the Appellant was to aid and facilitate the business of Respondent No. 1. Subsequently, Respondent Nos. 2 to 5, who belonged to one family, entered into a Settlement Deed owing to a family dispute over rights on properties. Through the Settlement Deed, responsibilities and profits in operation of Respondent No. 1 Hotel were divided between Respondent Nos. 2 to 5.

Soon thereafter, the Appellant raised allegations of interference in functioning of Respondent No. 1 by Respondent No. 2. Consequently, the Appellant approached the Hon'ble Trial Court way of an application under Section 9 of the Arbitration Act and further filed three interim applications seeking various interim reliefs to restrain the Respondent No. 2.

The Hon'ble Trial Court passed an order granting the *ad-interim* injunction against the Respondent No. 2 as prayed for in the interim applications till next date of the hearing and issued notice to the Respondents.

Thereafter, the Appellant issued an Arbitration Notice to the Respondents invoking arbitration in terms of the arbitration clause contained in the Franchise Agreement. In response, the Respondent No. 2 refused to concur with the nomination of the arbitrator on the ground that he did not sign the Franchisee Agreement. Consequently, the Appellant approached the Hon'ble High Court of Karnataka at Bengaluru ("**Hon'ble High Court**") under Section 11(6) of the Arbitration Act seeking appointment of a sole arbitrator. Meanwhile, the Hon'ble Trial Court dismissed the Appellant's Section 9 Application on the ground that it had failed to establish how Respondent No. 2 was a signatory to the Franchisee Agreement. Aggrieved, the Appellant preferred an appeal before the Hon'ble High Court.

The Hon'ble High Court dismissed the appeal holding that Section 9(2) of the Arbitration Act read with Rule 9(4) of the Arbitration (Proceedings Before the Courts) Rules, 2001 ("**2001 Rules**") mandate that arbitral proceedings must commence within 90 days or 3 months from the date of an interim order or presentation of the Section 9 application, failing which any interim relief granted stands vacated automatically. The Hon'ble High Court rejected the finding of the Hon'ble Trial Court that no prima facie case had been made out by the Appellant in respect of Respondent No. 2 being a signatory to the Franchisee Agreement. However, the Hon'ble High Court upheld the dismissal of the Appellant's application, holding that failure to initiate arbitration within 90 days rendered the interim order unsustainable, and issuance of notice alone could not be construed as commencement of arbitration.

Aggrieved, the Appellant approached the Hon'ble Supreme Court of India.

Issue:

Whether the Hon'ble High Court was correct in holding that the Appellant has initiated arbitral proceedings after the expiry of 90 days period as prescribed under Section 9(2) of the Arbitration Act, thereby resulting in automatic vacation of ad-interim injunction in terms of Rule 9(4) of the 2001 Rules.

Held:

The Hon'ble Court observed that the jurisprudential foundation governing the commencement of arbitral proceedings under the Arbitration Act was consistent. In *Sundaram Finance Ltd. v NEPC India Ltd. [(1999) 2 SCC 479],* it was observed that a reading of Section 21 of the Arbitration Act clearly shows that the arbitral

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proceedings commence on the date on which a request for a dispute to be referred to arbitration is received by the respondent. This principle was further sharpened in *Milkfood Ltd. v GMC Ice Cream (P) Ltd [(2004) 7 SCC 288]* wherein it was held that the Legislature has deliberately adopted the UNCITRAL Model Law's formulation, whereby the arbitral proceedings commence upon respondent's receipt of a request or notice that the dispute be referred to arbitration. The Hon'ble Supreme Court observed the provisions under Section 21 of the Arbitration Act to be consistent with Article 21 of the Model Law of UNCITRAL. The Hon'ble Supreme Court further relied upon its decision in *Arif Azim Company Limited v Aptech Limited [(2024) 5 SCC 313]* wherein the judgement in *Milkfood Ltd* case was restated and it was held that the date on which the respondent receives a notice or request invoking arbitration is the moment at which the arbitral proceedings commence under Section 21 of the Arbitration Act.

Upon perusal of the aforementioned binding decisions and the provisions of the Arbitration Act, the Hon'ble Supreme Court held that the commencement of arbitral proceedings is a statutory event defined exclusively under Section 21 of the Arbitration Act, wherein the respondent's receipt of a request to refer the dispute to arbitration sets the arbitral proceedings in motion and no judicial application i.e., whether under Section 9 or Section 11 petition, constitutes commencement. Therefore, the statutory consequences tied to commencement, including the mandate under Section 9(2) of the Arbitration Act, must be assessed solely with reference to the date of receipt of request invoking arbitration under Section 21 of the Arbitration Act.

The Hon'ble Supreme Court further noted that Section 9 of the Arbitration Act does not provide for the consequences of non-compliance with its mandate of commencing arbitral proceedings within ninety days, however, the said vacuum stands statutorily filled through Rule 9(4) of the 2001 Rules. It observed that as per this Rule where an interim order has been granted on an application made under Section 9 of the Act but no arbitral proceedings are initiated within three months from the date of presentation of the application, the interim order shall stand vacated automatically.

The Hon'ble Court observed that Rule 9(4) of the 2001 Rules employs the expression "initiated" whereas Section 9(2) of the Arbitration Act uses the expression "commenced" in the context of arbitral proceedings. Despite such linguistic difference, the Hon'ble Supreme Court observed that the expression "initiated" occurring in Rule 9(4) of the 2001 Rules must be construed harmoniously since Rule 9 has been framed to give procedural effect to Section 9 of the Arbitration Act. Therefore, the Hon'ble Supreme Court concluded that for the purposes of Rule 9(4), the expression "initiated" has necessarily to be read as "commenced" within the meaning of Section 21 of the Act. Accordingly, the Hon'ble Court held that it follows that upon failure to commence arbitral proceedings within three months, the period stipulated under Rule 9(4) of 2001 Rules attracts the consequence of automatic vacation of the interim order.

The Hon'ble Supreme Court further observed that the very frame of Section 21 of the Arbitration Act provides that the Legislature has consciously delinked the commencement of arbitral proceedings from any judicial proceedings. It held that the objective of this statutory scheme would be defeated if a court is permitted to substitute the date of commencement under Section 21 of the Arbitration Act with the date of filing a Section 11 petition. The Hon'ble Court clarified that proceedings under Section 11 of the Arbitration Act would be looked into only in case of refusal or lack of a response to the notice under Section 21 of the Arbitration Act. It further observed that if the date of filing of the Section 11 petition is to be treated as the date of commencement of arbitral proceedings, as had been observed by the High Court in its judgment, the same would result into the displacement of commencement of arbitral proceedings as provided under Section 21 of the Arbitration Act and would be contrary to the text and purpose of the Act.

The Hon'ble Supreme Court found that the Hon'ble High Court had treated the date of filing of the Section 11 petition as the date of commencement of the arbitral proceedings resulting into the finding that ad-interim stay stood vacated and proceedings commenced after the expiry of ninety days period provided under Section 9(2) of the Arbitration Act. The Hon'ble Supreme Court held that this finding was not sustainable as it was contrary to the objective and purpose of the Arbitration Act.

In view of the above, the Hon'ble Supreme Court allowed the appeal before it and set aside the judgement of the Hon'ble High Court.

6.APPOINTMENT OF NOMINEE AND PRINCIPAL ARBITRATOR BY INSTITUTE CANNOT BE CHALLENGED ON GROUNDS THAT THEY WERE UNILATERALLY APPOINTED: BOMBAY HIGH COURT [JANUARY 08, 2026]

Introduction:

The Hon'ble Bombay High Court, ("Hon'ble High Court"), in the case of **Jalaram Fabrics v. Nisarg Textiles Pvt. Ltd. [6]** has ruled that it is a well settled principle that when parties agree to resolve disputes through institutional arbitration and when the institute appoints the arbitrator the proceedings would not suffer the vice of unilateral appointment. The Hon'ble High Court held that where a party fails to nominate an arbitrator and the arbitral institute appoints the nominee arbitrator and the presiding arbitrator and not the other party, the party who has failed to nominate an arbitrator cannot later contend that the tribunal was constituted unilaterally by the other party.

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Facts:

Jalaram Fabrics ("**Petitioner**") is engaged in the business of dealing with garments and Nisarg Textiles Pvt. Ltd. ("**Respondent**") carries out the business of *inter alia* manufacturing fabric including shirting. The Petitioner placed orders with the Respondent for supply of fabric and the Respondent supplied the same to the Petitioner and various invoices were raised in this regard.

The Petitioner alleged that during the period of March 2019 to July 2019, it noticed issues in the supply, quality and pricing of the Respondent's goods and requested the Respondent to replace and exchange the defective goods. Vide letter dated November 20, 2021, the Respondent claimed that a sum of Rs. 11,92,614/- was due and payable by the Petitioner towards goods supplied. The Respondent referred to the arbitration clause printed on the invoices and claimed total amount of Rs. 17,26,641/- including interest @ 18% p.a. and threatened the Petitioner to refer the disputes to the Arbitration Bench of Bharat Merchants' Chamber ("**Institute**"). The Petitioner replied to the Respondent claiming that an amount of Rs. 10,87,534/- was already paid to the Respondent in cash and that the balance amount was only Rs. 1,05,071/-. It was claimed that three cheques were issued towards the balance payment, but they were required to be stopped as the Respondent failed to deliver the goods. The Petitioner stated that if the Respondent delivered the goods, he would pay the balance amount.

Thereafter, the Petitioner's advocate addressed a letter to the Institute branding the same as 'say' of the Petitioner and repeating the stand taken in the previous reply. The Petitioner did not question the jurisdiction of the Institute to conduct arbitral proceedings. The Respondent was given a copy of the 'say' and the Respondent's advocate replied to the same denying the contents and once again demanded payment of Rs. 11,92,614/- along with 18% interest.

Since the Petitioner failed to nominate his arbitrator, the Institute issued a letter nominating an arbitrator as a nominee arbitrator of the Petitioner. The arbitral proceedings were scheduled and the next date was communicated to the Petitioner along with the names of the two nominee arbitrators and the presiding arbitrator. The Petitioner failed to appear before the tribunal and the tribunal proceeded to make an Award whereby the Respondent was awarded a sum of Rs. 17,81,996/- with post award interest @ 18% p.a. Aggrieved by the Award the Petitioner filed proceedings before the Bombay High Court under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Petitioner contended that the award was a nullity as the tribunal was constituted unilaterally by the Respondent.

Issue:

Whether an award can be challenged on grounds that the arbitral tribunal was appointed unilaterally when the appointment is made by the arbitral institute.

Held:

The Hon'ble High Court observed that there was no dispute that the Petitioner accepted all the tax invoices containing the arbitration clause and has paid many of them. It was further noted that the Petitioner never disputed the existence of the arbitration clause. Additionally, the Hon'ble High Court observed that when the Institute issued letters to the Petitioner calling upon him to nominate his arbitrator and file Statement of Defence, the Petitioner's advocate responded seeking to dispute the Respondent's claim on merits but did not raise any objection about the existence of the arbitration agreement and the same has not even been disputed in the present proceedings.

The Hon'ble High Court perused the arbitration clause on the invoices and noted that the parties agreed that the disputes arising out of the transactions would be referred to arbitration of the Institute, under their arbitration rules and thus, the parties agreed to resolve their disputes through institutional arbitration. The Hon'ble High Court noted that the Respondent who printed the arbitration clause on the invoices did not have a choice to appoint an arbitrator and the parties agreed to approach an institute who would resolve their disputes as per their arbitration rules. The Hon'ble High Court thus ruled that it could not be contended that the Respondent had the unilateral right to nominate or appoint an arbitrator.

The Hon'ble High Court noted that the Petitioner was given a copy of all the papers filed by the Respondent including the details of the nominated arbitrator and was called upon to nominate his own arbitrator from the panel. It was noticed that the Petitioner placed on record the copy of the panel of arbitrators of the Institute and thus it could not be contended that the Petitioner did not have the right to choose the arbitrator. The Hon'ble High Court observed that the Petitioner received the letter but failed to respond and one more letter was issued to the Petitioner which was responded to by the Petitioner's advocate. It was observed that the Petitioner's advocate's letter was titled 'Say of the Defendant' and thus the Petitioner partially complied with the requisition made by the Institute.

Since the Petitioner failed to nominate the arbitrator, the Institute proceeded to nominate arbitrator on behalf of the Petitioner. The Hon'ble High Court noted that the Respondent chose only its nominee arbitrator and the Petitioner was left to nominate his own arbitrator and due to the Petitioner's failure to nominate, the same was done by the Institute and not the Respondent. The Hon'ble High Court was of the view that since the appointment of the presiding arbitrator was made by the Institute and not by the Respondent, the Petitioner could not contend that the tribunal was appointed unilaterally by the Respondent. The Hon'ble High Court further

observed that the Respondent had to choose the arbitrator from the broad-based panel of the Institute and did not have the right of nominating the arbitrator of its choice, it did not curate the panel of arbitrators of the Institute and the Petitioner also had a similar choice to make. The Hon'ble High Court ruled that since the case did not involve resolution of disputes through the arbitrator chosen by the Respondent, the award did not suffer from the illegality of unilateral appointment.

The Hon'ble High Court reviewed case laws in relation to appointment of arbitrator by an institute and noted that the law in this regard is fairly well settled i.e. when parties agree to resolve disputes through institutional arbitration and when the institute appoints the arbitrator the arbitral proceedings would not suffer from the vice of unilateral appointment. The Hon'ble High Court noted that in the present case, under the Rules of the Institute, a broad-based panel of arbitrators was maintained and each party was given a right to nominate their own arbitrator. The Petitioner failed to nominate the arbitrator due to which the appointment was made by the Institute and not the Respondent and even the Presiding Officer was nominated by the Institute. In this view of the matter, the Hon'ble High Court held that the Petitioner could not contend that the Respondent unilaterally appointed or constituted the arbitral tribunal.

The Hon'ble High Court held that an application to the court for appointment of arbitrator can be made under Section 11 (6) (c) of the Arbitration Act only when an institute fails to perform any function entrusted to it. The Hon'ble High Court ruled that in cases where the institute proceeds to appoint the arbitrator and conducts arbitral proceedings, it is not necessary to approach the court under Section 11 (6) merely because one of the parties refuses to concur in appointment of arbitrator and that in institutional arbitration where the appointment of arbitrator is made by the institute there is no question of concurrence by the opposite party.

The Hon'ble High Court noted that the Petitioner did not contest the merits of the award and the only defence before the tribunal was in the 'Say' wherein it was stated that the Petitioner made payment of Rs. 10,87,534/- in cash without any evidence. The Hon'ble High Court was of the view that the tribunal rightly awarded the claim in favour of the Respondent. The Hon'ble High Court also took note of the fact that the tribunal accounted for payment of Rs. 46,764/- by the Petitioner during the pendency of the proceedings and accordingly reduced the claim amount. The Hon'ble High Court held that no valid ground of challenge was made to the award and that the award appears to be unexceptional and therefore dismissed the arbitration petition.

7.IN CHALLENGES TO ORDERS UNDER SECTION 17, JUDICIAL INTERFERENCE WARRANTED ONLY IN CASES OF ILLEGALITY AND PERVERSITY: DELHI HIGH COURT [JANUARY 19, 2026]

Introduction:

The Hon'ble Delhi High Court ("**Hon'ble High Court**") in the case of **M/s. R. K. Associates and Hoteliers Pvt. Ltd. v. Indian Railway Catering and Tourism Corporation Limited [7]** has held that judicial interference under Section 37 (2) (b) of the Arbitration Act, 1996 ("**Arbitration Act**"), should be minimal and should be exercised only when the impugned order suffers from patent illegality or perversity. The Hon'ble High Court further ruled that where termination of agreements is challenged, while considering applications under Section 17 of the Arbitration Act, the arbitrator is only required to take a *prima facie* view and is only required to assess whether the terminating party was entitled to take such action.

Facts:

A tender was floated by the Indian Railway Catering & Tourism Corporation Limited (IRCTC) ("**Respondent**") which also contained provisions relating to a Master License Agreement. The services contemplated in the said tender consisted of two parts:

Part A – Construction and operation of base kitchens at locations specified by the Respondent.

Part B – Provision of onboard catering services in certain cluster trains for a period of five years, further extendable up to two years. The cluster train included Train No. 12801-02, PURI-NDLS Purushottam Express ("**subject train**").

M/s. R. K. Associates and Hoteliers Pvt. Ltd. ("**Appellant**") was declared the successful bidder and by a Letter of Award, the Appellant was awarded the license for the commission and operation of base kitchens along with provision of on-board catering services in all trains of the cluster.

Subsequently, an agreement was entered into by the parties for the provision of services under Part A of the tender. Thereafter, a Letter of Commencement came to be issued by the Respondent in favour of the Appellant whereby the Appellant was intimated to operate the base kitchens at the places notified in the tender to commence the provision of on-board catering services on the subject train. Subsequent to the Letter of Commencement, the agreement *qua* the services mentioned in Part B of the tender came into force.

Thereafter disputes arose between the parties and the Appellant raised grievances, complaints and wrote several letters regarding the presence of unauthorized food vendors on the train due to which the Appellant was unable to enjoy the full benefits of the agreement. The Respondent issued two show cause notices to the Appellant highlighting complaints about service deficiencies against the Appellant on the subject train. The Appellant filed replies to the show cause notices and

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also requested for a personal hearing which was granted.

Subsequently, the Respondent issued a Termination Order ("**Termination Order**") terminating the license for the subject train on account of unsatisfactory response and continued breaches. Since the agreement between the parties contained an arbitration clause for resolving disputes and the respondent floated a fresh limited E-tender, the Appellant filed a petition under Section 9 of the Arbitration Act seeking interim relief against the Termination Order. While issuing notice in the aforementioned petition, the Hon'ble High Court recorded that the Appellant was continuing to provided catering services in the subject train and directed the parties to maintain status quo, till the next date of hearing and the said interim protection would continue to operate till the passing of judgment in the said case. The Hon'ble High Court vide judgment dated December 12, 2025 dismissed the Petition under Section 9 of the Arbitration Act and the interim order granted earlier was vacated. However, 7 days' time was granted to the Appellant to handover the subject train and cease operation along with catering services on the subject train. The Hon'ble High Court also referred the disputes between the parties to a sole arbitrator based on the Application filed by the Appellant under Section 11 (6) of the Arbitration Act.

Pursuant to the dismissal of the Section 9 petition and completion of the 7-day period, the Respondent issued a Termination Notice to the Appellant to cease the on-board catering services on the subject train. The Appellant challenged the judgment dated December 12, 2025 under Section 37 (1) (b) of the Arbitration Act and by order dated December 22, 2025, the said appeal was disposed with a direction to the Appellant to approach the Sole Arbitrator by filing an appropriate action.

The Appellant filed an application under Section 17 of the Arbitration Act. After hearing the parties and considering their submissions, the Sole Arbitrator vide the impugned order dated January 12, 2026 ("**Impugned Order**") dismissed the Appellant's application holding that the restoration of a terminated contract at the interim stage was neither warranted nor in public interest. The Appellant preferred an appeal against the Impugned Order before the Hon'ble High Court.

Issue:

Whether the arbitrator erred in passing the Impugned Order.

Held:

The Hon'ble High Court noted at the outset that it is a settled position of law that in case the view taken by the arbitral tribunal is plausible and free from perversity, interference under Section 37 (2) (b) of the Arbitration Act is not warranted. The Hon'ble High Court observed that the scheme of the Arbitration Act emphasises minimal judicial intervention and courts should not substitute their opinions for that of the tribunal. The Hon'ble High Court after reviewing case law concluded that the scope of interference in appeal against orders passed by arbitrators on Section 17 applications is limited and the restraints applicable on the court examining a challenge to a final award under Section 34 of the Arbitration Act would equally apply to a challenge under Section 37 (2) (b) of the Arbitration Act.

The Hon'ble High Court then proceeded to assess the matter at hand keeping in mind the aforesaid perspective. The Hon'ble High Court noted that the Appellant was informed about various complaints relating to service quality, hygiene, food quality, over-charging etc. and that the Appellant was directed to take measures to improve its services. Since the Appellant failed to take steps to improve, the Respondent could initiate process for imposition of penal action as per the terms and conditions of the agreement. The Hon'ble High Court also noted that there were numerous complaints against the Appellant on the Catering Service Information Management Portal on account of which penalties were imposed on the Appellant which were duly paid. In this view of the matter, the Hon'ble High Court ruled that prima facie at the interim stage, it could not be said that the Appellant was not put to notice before any action was taken against it or that the Appellant was not aware of the complaints against it.

The Hon'ble High Court further noted the termination provisions as per the Master License Agreement, especially the clause stipulating that that the agreement could be terminated without any previous notice to the licensee, in the event of unsatisfactory service, poor quality of articles, persistent complaints from passengers and services below the standard. It was observed that the Termination Notice referred to the aforementioned clause. Therefore, the Hon'ble High Court held that *prima facie*, the action taken by the Respondent could not be faulted with.

Regarding the Respondent's submission that the court could not direct the continuation of an arrangement under an agreement which stands terminated, the Hon'ble High Court held that the legality of the termination of the contract by the Respondent would be a matter to be determined and adjudicated in arbitration proceedings. It was held that at the interim stage, while considering an application under Section 17 of the Arbitration Act, the arbitrator is only required to consider whether the non-claimant / respondent is prima facie entitled to take action to terminate the agreement and that at the interim stage, validity of the Termination Order is considered only to the extent of ascertaining as to whether there is a prima facie case in favour of the Claimant. The Hon'ble High Court ruled that the arbitrator in the present circumstance has taken into account the material and has given a prima facie finding on the issues before it and therefore, the arbitrator's views cannot be said to be perverse and does not warrant

interference by the court. Thus, the Hon'ble High Court dismissed the appeal.

8.INTERIM RELIEF DIRECTED AGAINST THIRD PARTIES TO BE GRANTED SPARINGLY: BOMBAY HIGH COURT [JANUARY 21, 2026]

Introduction:

In the case of **Messe Frankfurt Trade Fairs India Pvt. Ltd. v. Netlink Solutions India Ltd. & Ors. [8]**, the Hon'ble Bombay High Court ("**Hon'ble High Court**") held that while interim measures under Section 9 of the Arbitration Act could be exercised against parties who are not signatories to the arbitration agreement, this power should be exercised sparingly. The Hon'ble High Court ruled that while such orders can be granted in order to preserve the subject matter of the arbitration, there must be sufficient material in order to exercise power under Section 9 against a third party.

Facts:

Messe Frankfurt Trade Fairs India Pvt. Ltd. ("**Petitioner**") is engaged in the business inter alia of organising, managing, holding and conducting trade fairs, exhibitions and conferences in India. Netlink Solutions India Ltd. ("**Respondent No. 1**") is also established in organising exhibitions and trade fairs in India and has a long-standing presence in India. Respondent No. 3 is the founder-director of Respondent No. 1. The Petitioner executed an Asset Purchase Agreement ("**APA**") with the Respondent No. 1 whereby it decided to purchase the business and assets of Respondent No. 1 in relation to three exhibitions of Respondent No. 1. However, for the initial 4 years, the Petitioner decided to associate with the Respondent for organisation of exhibitions during 2019 to 2022 by utilizing expertise and experience of Respondent No. 1. Under the APA, the Petitioner purchased intellectual property (trademarks), domain names, good will, databases and other assets of Respondent No. 1 in relation to the aforementioned three shows for a total consideration of Rs. 15.25 crores.

The exhibitions could not be held during the Covid-19 pandemic, therefore, the parties decided to extend the closing date to enable the Respondent No. 1 to associate with exhibitions during 2023 and 2024. Therefore, the parties executed an Amended APA whereby the closing date was extended and the Petitioner paid the Respondent No. 1 consideration for the years 2022, 2023 and 2024.

The APA and the Amended APA contained non-compete and non-solicit clauses as well as an arbitration agreement. Under Clause 6 of the APA it was agreed that Respondent Nos. 1 and 3 shall not directly or indirectly either by themselves or in concert with any other person, carry on, engage or be directly or indirectly interested in any business similar to or competing with the exhibitions or even participate as an investor, manager, consultant, employee or in any capacity under such business. The executed APA slightly amended Clause 6.1. and Respondent No. 2, who was a former employee and not a signatory to the amended APA was sought to be included in the restrictive covenant. Since the contractual arrangement between the Petitioner and Respondent ended on May 29, 2024, the five-year restriction operated till May 29, 2029.

The Petitioner claims that it learnt through market sources and business counterparts that attempts were being made to breach the APA and the amended APA. Accordingly, the Petitioner engaged an independent professional viz., IIRIS Consulting Services Pvt. Ltd. ("**IIRIS**") which submitted report dated December 4, 2025. The Petitioner impleaded Respondent No. 6, an Association of Persons i.e. distributors, wholesalers, dealers and other stakeholders, which claims to be the organizer of "Indian Gifts & Premium Show" and "PPS Expo-Pen, Paper & Stationer Show", scheduled from January 22, 2026 to January 24, 2026 at the Jio World Convention Centre, Mumbai ("**impugned exhibitions**"). The Petitioner contended that the impugned exhibitions are being held in breach of the APA and amended APA and therefore filed the present petition under Section 9 of the Arbitration Act seeking interim reliefs including an injunction restraining holding, organizing, participating, assisting, facilitating, promotion and/or otherwise being concerned with the impugned exhibitions, deposit of Rs. 2.50 crores towards damages, expenses, opportunity loss and disclosures on an affidavit pertaining to the involvement, participation and/or association with the impugned exhibitions.

Issue:

Whether the Petitioner is entitled to the interim relief as sought.

Held:

At the outset before going into the merits of the allegations, the Hon'ble High Court noted that the Petitioner filed the present Petition after substantial delay and has itself admitted acquisition of knowledge about the impugned exhibitions. Further, the Hon'ble High Court noted the email correspondence between the Petitioner and Respondent No. 6, wherein Respondent No. 6 objected to use of its logo by the Petitioner and stated that it was not willing to participate in the exhibitions of the Petitioner. The Respondent also advertised the impugned exhibitions on social media. The Hon'ble Court noted that the Petition was filed belatedly by showing false urgency of receipt of the IIRIS report. The Hon'ble High Court ruled that it *prima facie* appeared that the IIRIS report was sought for the sole purpose of creating false urgency when none existed and therefore, it was not inclined to grant equitable relief in favour of the Petitioner.

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The Hon'ble High Court held that the non-compete would not bind Respondent No. 2. It was noted that the non-compete / non-solicit restriction in the present case did not operate between an employer and employee but between the purchaser of the business and the employee who had not even signed the document containing the restrictive covenant and therefore, *prima facie*, the non-compete and non-solicit covenant did not bind Respondent No. 2.

The Hon'ble High Court further observed that Respondent No. 6 made it abundantly clear to the Petitioner in January, 2025 that it would conduct its own exhibition and the Petitioner did not object to the same. It was noted that the Petitioner conceded that Respondent No. 6 was not a signatory to the contractual arrangement between the Petitioner and Respondent Nos. 1 and 3 and that Respondent No. 6 was free to organize its own exhibitions. The Hon'ble High Court noted the Petitioner's contention that since Respondent No. 6 did not have experience and expertise of organizing exhibitions of such large magnitude, it was actually Respondent Nos. 1 to 3 who were organizing the impugned exhibitions. However, the Hon'ble High Court observed that the Petitioner raised mere surmises on the basis of the IIRS report and failed to prima facie prove such associations. Therefore, the Hon'ble High Court held that the negative covenant in the APA and the Amended APA could not be enforced on the basis of mere speculative cause of action sought to be raised by the Petitioner. It was further observed that the Petitioner never questioned the ability of Respondent No. 6 to conduct the exhibition of such a large magnitude since January, 2025 and realized that the success of Respondent No. 6's exhibition might affect its own exhibition scheduled in February, 2026 and therefore sought to mix up the issue of breach of non-compete with Respondent Nos. 1 to 3 to stall the exhibition of Respondent No. 6. The Hon'ble High Court noted that in cases of collusion, fraudulent motive or design the colluding parties take care of not leaving direct evidence and it becomes difficult to produce direct substantive evidence and in such cases the courts can gather the act of collusion from the circumstances. However, it observed that in the present case, the Petitioner was unable to produce the requisite circumstances that Respondent Nos. 1 to 3 had connived with Respondent Nos. 4 to 6 in holding the impugned exhibitions. In view of the same, the Hon'ble High Court held that it was unable to *prima facie* hold that Respondent Nos. 1 / 3 have breached the covenants of the APA / Amended APA or that they have taken any direct or indirect part in organization of the impugned exhibitions.

The Hon'ble High Court stated that it is to be borne in mind that interim measures under Section 9 of the Arbitration Act can be made to inter alia preserve the subject matter of the arbitration and noted that there was sufficient material to gather that the impugned exhibitions were organized by Respondent No. 6. However, the question of whether they could be made subject matter of the proposed arbitration could be decided only by the arbitral tribunal. The Hon'ble High Court noted that powers under Section 9 can be extended even to third parties to preserve the subject matter of the arbitration. However, it held that when an order made under Section 9of the Arbitration Act is wholly directed against a third party, the power must be exercised sparingly. It was noted that the case did not involve a situation where exhibitions were organized by Respondent Nos. 1 or 3 and the interim measure would affect Respondent No. 6; instead, it was noted that the impugned exhibitions were that of Respondent No. 6 who is not a party to the arbitration agreement. The Hon'ble High Court ruled that the Petitioner failed to make out a case for exercise of such power against Respondent No. 6.

The Hon'ble High Court was also unable to trace any clandestine or fraudulent activities by Respondent Nos. 1 and 3 in organising the impugned exhibitions for Respondent No. 6 and observed that Respondent No. 6 has been open in respect of its intentions of organizing its own trade show and had even placed on record its agreement for event management executed with Respondent No. 5. The Hon'ble High Court ruled that in light of the abovementioned, it was not necessary to lift the corporate veil or apply the group of companies doctrine to find out whether any person in the management of Respondent Nos. 4 to 6 had any association with Respondent Nos. 1 / 3.

The Hon'ble High Court recorded that it was not inclined to grant any relief in favour of the Petitioner since the Petitioner could file a claim for damages before the Arbitrator against Respondent Nos. 1 and 3 who were signatories to the arbitration agreement and the non-compete clause. It was also open to the Petitioner to implead the other Respondents to the arbitral proceedings which would be decided by the tribunal on its own merits. The Hon'ble High Court held that since the Petitioner has sought damages of Rs. 2.50 crores even if interim measures were not granted the Petitioner would not be remediless.

The Hon'ble High Court was of the view that the Petitioner failed to make out a case for grant of interim measures since the petition was not filed with the requisite alacrity and also since it was difficult to prima facie hold at this stage that the impugned exhibitions were properties relating to the subject matter of arbitration in the hands of Respondent No. 6. Thus, the Hon'ble High Court declined grant of any interim measures in favour of the Petitioner and dismissed the Petition.

9. MANDATE OF ARBITRAL TRIBUNAL CAN BE EXTENDED ONLY BY CIVIL COURTS OF ORIGINAL JURISDICTION AND NOT REFERRAL COURTS: SUPREME COURT OF INDIA [JANUARY 29, 2026]

Introduction:

The Hon'ble Supreme Court in the case of **Jagdeep Chowgule v. Sheela Chowgule & Ors [9]** has held that the referral court's exercise of jurisdiction under Section 11 of the Arbitration Act stands exhausted upon constitution of arbitral tribunal. Therefore, mandate of the arbitral tribunal can be extended only by civil courts of original jurisdiction and no referral courts.

Facts:

The present dispute arose out of Memorandum of Family Settlement ("**MSF**") executed between the parties herein, who all form part of the 'Chowgule' family. Owing to further differences, arbitration was invoked under Clause 24 of the MFS ("**Clause 24**").

Thereafter, the Respondent No. 2 filed application for extension under Section 29A of the Arbitration Act before the Commercial Court. In the meanwhile, owing to the resignation of the presiding arbitrator, the Respondent No. 2 filed application for appointment of arbitrator under Section 11 of the Arbitration Act before the Hon'ble Bombay High Court and the same was allowed by the Hon'ble High Court. This was followed by the Commercial Court allowing the Section 29A application for extension of the arbitrator's mandate.

Subsequently, the Commercial Court's decision was challenged by the Respondent No. 1 by filing a write petition before the Hon'ble Single Judge of Bombay High Court ("**Hon'ble Single Judge**") on the ground that the Commercial Court did not have jurisdiction to extend duration under Section 29A of the Arbitration Act on account of appointment of the arbitrator by the Hon'ble High Court under Section 11 of the Arbitration Act.

The Hon'ble Single Judge referred the matter to the Hon'ble Division Bench of the Bombay High Court ("**Hon'ble Division Bench**") in view of certain conflicting judgments on the interpretation of Section 29A(4) of the Arbitration Act. The Hon'ble Division Bench passed an order that the application under Section 29A(4) of the Arbitration Act was not maintainable before the Commercial Court as the presiding arbitrator was appointed by the Hon'ble Bombay High Court at Goa in exercise of power under Section 11 of the Arbitration Act.

Following the decision of the Hon'ble Division Bench, the Hon'ble Single Judge set aside the order of the Commercial Court but permitted the parties to approach the Hon'ble High Court for extension of time.

Aggrieved, the Appellant approached the Hon'ble Supreme Court contending that the Commercial Court alone is the appropriate Court under Section 29A read with Section 2(1)(e) of the Arbitration Act.

Issue:

If an arbitral tribunal - appointed by the Hon'ble High Court or by the parties concerned – does not complete proceedings within the required or extended time limit, can an application to extend time under Section 29A of the Arbitration Act be filed before the Hon'ble High Court or the Civil Court?

Held:

The Hon'ble Supreme Court ruled that extension of the arbitrator's mandate under Section 29A of the Arbitration Act can be granted only by a Court as defined under Section 2(1)(e) of the Arbitration Act i.e., a Civil Court of original jurisdiction in a district or the Hon'ble High Court when exercising its original civil jurisdiction, irrespective of whether the arbitral tribunal was constituted by the consent of parties or by the Hon'ble High Court or Hon'ble Supreme Court, as the case may be. The Hon'ble Court provided its judgement basis the following reasons:

A.Divergent views of various High Courts on interpretation of "Court" under Section 2(1)(e) of the Arbitration Act.

The Hon'ble Supreme Court first acknowledged the divergent views taken by various High Courts and categorised the same in two streams. It observed that one stream held that the expression 'Court' in Section 29A of the Arbitration Act is the Court as defined under Section 2(1)(e) of the Arbitration Act, irrespective of whether the arbitral tribunal was constituted by the Hon'ble Supreme or High Courts under Section 11(6) of the Arbitration Act or by consent of parties under Section 11(2) of the Arbitration Act. The Hon'ble Court further observed that the judgements following this view hold that, once an arbitrator has been appointed through the judicial process, the Courts become *functus officio* and applications seeking extension of mandate under Section 29A of the Arbitration Act are to be filed before Court as defined in Section 2(1)(e) Arbitration Act.

The Hon'ble Supreme Court observed that the other stream of judgements have taken the view adopting contextual interpretation whereby it has been held that in cases where the appointment of arbitrator is by the Hon'ble High Court under Section 11(6) of the Arbitration Act, applications for extension of time under Section 29A cannot be made before Civil Courts. The Hon'ble Supreme Court noted that this stream has reasoned that as the exclusive power of appointment of arbitrator under Section 11 of the Arbitration Act is of the Hon'ble Supreme Court or the Hon'ble High Courts, the ancillary power of extension or substitution can only be of these Courts, or else a situation of "conflict of power" between the respective courts.

B.Scheme of the Arbitration Act.

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The Hon'ble Supreme Court held that the Arbitration Act is a complete code in itself with separate chapters covering the various aspects involved in an arbitration and laying down the procedures and judicial remedies for challenging the award, appeal, finality and enforcement.

C.Scope of Referral Court's Jurisdiction under Section 11 of the Arbitration Act.

The Hon'ble Supreme Court noted that under Section 11 of the Arbitration Act, the power and jurisdiction to constitute an arbitral tribunal and to appoint an arbitrator in case of domestic arbitrations is vested in the Hon'ble High Court and in case of international commercial arbitrations, in the Hon'ble Supreme Court and the same is special and limited in nature. The Hon'ble Court further reiterated the settled position of law that enquiry under Section 11 of the Arbitration Act is confined to a *prima facie* determination of the existence of an arbitration agreement and such enquiry goes no further. In view of the same, the Hon'ble Supreme Court held that the exercise of jurisdiction under Section 11 of the Arbitration Act stands exhausted upon the constitution of the arbitral tribunal. It further held that is no residual supervisory or controlling power left with the Hon'ble High Court or the Hon'ble Supreme Court over the arbitral proceedings after appointment is made.

D.True Text and Context of Section 29A of the Arbitration Act.

The Hon'ble Supreme Court held that a holistic reading of Section 29A of the Arbitration Act with the other provisions of the Arbitration Act mandates that The 'Court' under Section 29A of the Arbitration Act shall be the Civil Court of ordinary original jurisdiction in a district and includes the Hon'ble High Court in exercise of its original civil jurisdiction under Section 2(1)(e) of the Arbitration Act, and shall not be the Hon'ble High Court or the Hon'ble Supreme Court under Section 11(6) of the Arbitration Act.

E.Interpretation of the expression "Court" in Section 2(1)(e) of the Arbitration Act.

The Hon'ble Supreme Court drew upon its decision in *Nimet Resources Inc. & Anr. v Essar Steels Ltd. [(2009) 17 SCC 313]* wherein it was held that the jurisdiction under Section 11 of the Arbitration Act is limited and exhausted upon the constitution of the arbitral tribunal, leading to the appointing Court becoming functus officio thereafter. The Hon'ble Supreme Court held that the extension of mandate or substitution under Section 29A of the Arbitration Act does not bear the character of 'appointment' under Section 11 of the Arbitration Act but is only a measure designed to ensure timely conclusion of arbitration. The Hon'ble Court ruled that in the absence of any contextual indicia to the contrary, the expression "Court" in Section 29A of the Arbitration Act must, therefore, be accorded the meaning assigned to it under Section 2(1)(e) of the Arbitration Act.

F. Inapplicability of Section 42 of the Arbitration Act.

The Hon'ble Court noted its ruling in *State of Jharkhand v Hindustan Construction Co. [(2018) 2 SCC 602]* wherein it was held that solely because a superior Court appoints the arbitrator, or issues directions or has retained some control over the arbitrator, it cannot be regarded as a 'Court' of first instance for purposes of Section 42 of the Arbitration Act. Accordingly, it held that Section 42 of the Arbitration Act relating to jurisdiction for application will not apply to Section 11 of the Arbitration Act.

10.TAKING A DIFFERENT VIEW OF THE SAME MATTER FROM THE ONE TAKEN UNDER SECTION 34 OF THE ARBITRATION ACT IS BEYOND THE SCOPE OF SECTION 37 OF THE ACT: SUPREME COURT OF INDIA [JANUARY 30, 2026]

Introduction:

In the case of **M/s Saisudhir Energy Limited v. M/s NTPC Vidyut Nigam Ltd. [10]**, the Hon'ble Supreme Court held that the Court under Section 37 of the Arbitration Act must only determine whether the Section 34 Court had exercised its jurisdiction properly and rightly, without exceeding its scope. It further held that the Section 37 Court must not substitute its own view in the absence of any finding of perversity or arbitrariness in respect of the arbitral award.

Facts:

In the present case, the dispute between the parties related to the claim for liquidated damages raised by M/S NTPC Vidyut Vyapar Nigam Ltd. ("**NVVNL**") against the solar power developer, M/s Saisudhir Energy Limited ("**SEL"**), on account of delay caused in commissioning a power plant.

A three-member Arbitral Tribunal while holding that there was a delay in commissioning the power plant, by majority, awarded an amount of Rs. 1.2 crores towards the claim made by NVVNL ("**Arbitral Award**"). Both parties raised objections under Section 34 of the Arbitration Act. The Hon'ble Single Judge of the Delhi High Court ("**Hon'ble Single Judge**") proceeded to grant an amount of Rs. 27.06 crores to NVVNL on account of delay on the part of SEL in commissioning the power plant.

Unsatisfied, both parties further took recourse to Section 37 of the Arbitration Act. The Hon'ble Division Bench of the Delhi High Court ("**Hon'ble Division Bench**") passed a judgement modifying the order passed under Section 34 of the Arbitration Act in respect of the grant of liquidated damages and reduced the amount.

Aggrieved, the parties challenged the judgement of the Hon'ble Division Bench before the Hon'ble Supreme

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Court of India.

Issue:

Whether the Hon'ble Division Bench in exercise of jurisdiction under Section 37 of the Arbitration Act was justified in modifying the amount of compensation awarded by the Hon'ble Single Judge under Section 34 of the Arbitration Act.

Held:

The Hon'ble Supreme Court noted that the decision in *Gayatri Balasamy v ISG Novasoft Technologies Limited [2025 INSC 605]* has recognised the power of the Section 34 Court to modify an award to a limited extent. Upholding the judgement of the Hon'ble Single Judge, the Hon'ble Supreme Court opined that the Hon'ble Single Judge being the Section 34 Court had modified the Arbitral Award so as to enhance the amount of reasonable compensation and had not undertaken any examination of the merits of the dispute, therefore exercising its power within the contours of Section 34 of the Arbitration Act.

The Hon'ble Court took note of its judgement in M/s Construction and *Design Services v D.D.A. [2015 INSC 22]* wherein it was held in the context of delay in providing a public utility service that in such a case, the delay in commissioning of such utility service itself can be taken to have resulted in loss in the form of environmental degradation. It observed that the present case fell squarely within the bounds of its judgement in *M/s Construction and Design Services* since the objective of the agreement between NVVNL and SEL involved public interest and the environment at large, thereby making the timelines fixed by the parties relevant. Accordingly, the Hon'ble Supreme Court held that its decision in M/s Construction and Design Services sufficiently indicated the manner in which the aspect of reasonable compensation could be considered in case of a public utility project. Thus, relying upon its decision in M/s Construction and Design Services, the Hon'ble Supreme Court held that in such cases, the burden would be on the party committing the breach to show that no loss was caused by the delay or that the amount stipulated as liquidated damages was in the nature of penalty. Looking into the facts of the present case, the Hon'ble Court held that such burden had not been discharged by SEL and therefore, the Hon'ble Single Judge and the Hon'ble Division Bench were correct in holding that NVVNL was entitled to reasonable compensation.

Coming to the aspect of determination of the amount of reasonable compensation, the Hon'ble Supreme Court held that the Hon'ble Division Bench had exceeded its jurisdiction under Section 37 of the Arbitration Act when it had proceeded to re-work and re-calculate the amount of reasonable compensation to which NVVNL was entitled. It held that the Hon'ble Single Judge had already determined the reasonable compensation to which NVVNL was entitled basis the clauses contained in the agreement between the parties and in the absence of such determination being shown to be beyond the terms of the agreement or arbitrary or perverse, no interference with such determination was called for in exercise of jurisdiction under Section 37 of the Arbitration Act. The Hon'ble Supreme Court noted that the Hon'ble Division Bench had not recorded any finding that the determination of reasonable compensation by the Hon'ble Single Judge suffered from arbitrariness or that it travelled beyond what was provided by the agreement. In view of the same, the Hon'ble Court held that modification in the amount of reasonable compensation by the Hon'ble Division Bench was merely a substitution of its view in place of the plausible view taken by the Hon'ble Single Judge. The Hon'ble Supreme Court referred to its decision in *AC Chokshi Share Broker Private Limited v Jatin Pratap Desai and another [2025 INSC 174]* wherein it was held that the Court under Section 37 of the Arbitration Act must only determine whether the Section 34 Court had exercised its jurisdiction properly and rightly, without exceeding its scope. In light of the judgement in AC Chokshi and the mere substitution of its own view by the Hon'ble Division Bench despite recording any finding of perversity, the Hon'ble Supreme Court ruled that such course of taking a different view of the same matter from the one taken under Section 34 of the Arbitration Act would be beyond the scope of Section 37 of the Arbitration. Accordingly, it held that the Hon'ble Division Bench had erred to that extent in interfering with the judgment of the Hon'ble Single Judge.

Owing to its aforementioned findings, observations and holdings, the Hon'ble Supreme Court finally ruled that the Hon'ble Division Bench was not justified in modifying the decision of the Hon'ble Single Judge and thus, restored the judgement of the Hon'ble Single Judge.

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ANM Global has been recognised in the Legal 500 Rankings across multiple practice areas, with Tier 1 rankings in TMT and Intellectual Property in City Focus: Mumbai, and Tier 4 rankings in both practices in the India rankings. The firm's strength is further reflected in extensive individual recognitions across partner, next-generation, associate, and recommended lawyer categories, underscoring the depth and quality of its TMT and IP practices.

ANM Global's Intellectual Property practice has been recognised by the Legal Era Leading Lawyers Rankings 2025–2026, with Anushree Rauta named a Leading Lawyer – Notable Practitioner and Rahul Dhote recognised as a Gennext Rising Star Lawyer, reflecting the firm's growing strength and depth in IP advisory and enforcement.

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Anushree Rauta, Equity Partner and Head of our Media, Entertainment & Gaming practice, was quoted by Mint on how music labels are rethinking their growth strategies beyond soundtracks:

Anushree Rauta's insights highlight how evolving platform economics and content dependencies are accelerating the shift towards full-stack entertainment models across the industry.

Anushree Rauta, Equity Partner and Head of our Media, Entertainment & Gaming practice, was quoted by The Economic Times on the evolving landscape of film financing:

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ANM Global recently convened the IBC & Banking Forum: Regulation, Resolution & Reform—an invite-only, closed-door dialogue bringing together senior banking and finance leaders, insolvency professionals, and key stakeholders in India's restructuring ecosystem. The forum reflected the firm's deep engagement with insolvency, banking, and resolution frameworks, offering practical insights on regulatory developments, lender strategy, and the evolving direction of India's insolvency regime.

ANM Global is proud to have advised Kaustav Dreamworks Private Limited, providing comprehensive legal support in relation to the digital licensing of the film, including drafting, negotiating, and executing the agreement for exploitation of the film on the AAO NXT platform.

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contact@anmglobal.net

ANM Global

+91 22 2287 3499; +91 22 4971 1084

OFFICES

MUMBAI

1. 7, floor 2nd, Nagin Mahal, Plot-82, Veer Nariman Road, Churchgate, Mumbai 400020. Ph: 022-2287 3499

2. 411/413, Dilkap Chambers, Off. Veera Desai Road, Fun Republic Lane, Andheri West,Mumbai - 400053 Ph: 022-4971 1084

NEW DELHI

E-5, 2nd floor
Defence Colony
Delhi -110024
Ph: 011-4054 1860

BENGALURU

21/2, 1st Main Road,Opp Indian Overseas Bank,Gandhinagar, Bengaluru - 560009
Ph: 080-2350 9909

CHENNAI

715-A, 7th Floor,Spencer Plaza Suit No.1056,Mount Road, Anna Salai,
Chennai - 600002