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ANM GLOBAL'S ARBITRATION NEWSLETTER FEBRUARY, 2026

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1.ALLEGATIONS OF FRAUD IN RELATION TO ARBITRATION AGREEMENTS MUST BE EXAMINED BY COURT TO DETERMINE ARBITRABILITY OF DISPUTE: SUPREME COURT OF INDIA [FEBRUARY 02, 2026]

Introduction:

In the case of **Barnali Mukherjee v Rajia Begum & Ors. [1]**, the Hon'ble Supreme Court observed that when the arbitration agreement itself is alleged to be fraudulent, such a dispute is generally recognized as being non-arbitrable. It was ruled that the Courts would have to examine whether such disputes have become non-arbitrable since they are jurisdictional in nature.

Facts:

Barnali Mukherjee ("**Appellant**"), Aftabuddin ("**Respondent No. 2**") and Raihan Ikbal ("**Respondent No. 3**") constituted a partnership firm styled as 'M/s RDDHI Gold' through a Partnership Deed. The Respondent No. 1, i.e. Rahu Begum ("**Respondent No. 1**") claimed that Respondent Nos. 2 and 3 executed a Power of Attorney empowering her to manage the affairs of the firm on their behalf. Pursuant to the aforementioned Power of Attorney, Respondent No. 1 executed a Deed of Admission and Retirement whereby Respondent Nos. 2 and 3 retired from the firm ("**Admission Deed**").

The Appellant alleged that the business of the reconstituted partnership form was absorbed and taken over by a company named 'RDDHI Gold Pvt. Ltd.' pursuant to an Absorption Deed ("**Absorption Deed**"). Respondent No. 1 issued a notice to the Appellant claiming that on the basis of the aforesaid Admission Deed, she acquired a 50.33% interest in the erstwhile partnership firm and that Respondent Nos. 2 and 3 retired as partners. The Appellant denied that the Admission Deed was executed by her or the other Respondents and also that Respondent No. 1 was a partner. The Appellant contended that the Admission Deed was forged and fabricated by Respondent No. 1.

Respondent No. 1 made an Application under Section 9 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") for preservation of the subject matter of the dispute and for appointment of a receiver for the company which was allowed by the Hon'ble Trial Court. The Hon'ble High Court allowed the appeal filed by the Appellant holding that it would not be prudent to exercise jurisdiction under Section 9 of the Arbitration Act, when the Respondent No. 1 failed to demonstrate the existence of an arbitration agreement in a prima facie manner. The Respondent No. 1 challenged the order of the Hon'ble High Court before the Hon'ble Supreme Court which dismissed the Respondent No. 1's Appeal and upheld the order of the Hon'ble High Court.

The Appellant filed a civil suit before the competent civil court seeking a declaration and injunction against Respondent No. 1 that the Admission Deed was a forged document. Respondent No. 1 made an application under Section 8 of the Arbitration Act. The Hon'ble Trial Court dismissed the said application and *inter alia* held that the allegations of fraud relating to the validity of the Admission Deed were complicated and Respondent No. 1 failed to produce the original Admission Deed or the certified copy. The order of the Hon'ble Trial Court was appealed before the Hon'ble Additional District Judge who also dismissed the Appeal. This order was challenged by the Respondent in a revision before the Hon'ble High Court which set aside the orders of the Hon'ble Trial Court and the First Appellate Court and directed the dispute to be resolved through arbitration. The Appellant approached the Hon'ble Supreme Court in appeal against the order of the Hon'ble High Court.

Respondent No. 1 also filed a petition under Section 11 of the Arbitration Act seeking appointment of an arbitrator. The aforementioned Section 11 petition was dismissed holding that it would not be expedient to appoint an arbitrator till such time that the issue regarding the existence of the arbitration agreement was answered finally. The Respondent No. 1 challenged the order of the Hon'ble High Court before the Hon'ble Supreme Court.

Issues:

1. Whether the disputes between the parties could be referred to arbitration under Section 8 of the Arbitration Act.
2. Whether the Hon'ble High Court was justified in declining the appointment of arbitrator under Section 11 of the Arbitration Act.

Held:

After hearing the parties as well as reviewing the case law relevant to the case at hand, the Hon'ble Supreme Court held that when an allegation of fraud is made in relation to an arbitration agreement itself, such a dispute is generally recognised as a dispute which is in the realm of non-arbitrability. It was further held that the Court will have to examine the same since it is a jurisdictional issue to enquire whether the dispute has become non-arbitrable.

While examining the facts of the case, the Hon'ble Supreme Court observed that the heart of the controversy is the Admission Deed and a prima facie consideration of the material on record casts serious doubt on the genuineness of the same. The Hon'ble Supreme Court noted that in the Section 9 proceedings, the Hon'ble High Court recorded a prima facie finding that the existence of the Admission Deed was doubtful

[1] 2026 INSC 106

and declined to grant interim protection. It was further noted that the Hon'ble Supreme Court upheld the order of the Hon'ble High Court thereby, lending finality to the said *prima facie* assessment between the parties. The Hon'ble Supreme Court opined that such *prima facie* findings which have attained finality cannot be ignored in subsequent proceedings founded on the same issue and the same would be relevant while examining the applications under Sections 8 and 11 of the Arbitration Act.

The Hon'ble Supreme Court ruled that the cumulative effect of the circumstances lent considerable credence to the contention of the Appellant that the Admission Deed is not genuine. It was observed that at the very least, the Admission Deed is under grave cloud of doubt requiring a detailed and full-fledged inquiry. The Hon'ble Supreme Court noted that in the present case, the arbitration clause does not exist independently but, is embedded in the document whose existence is disputed. It was stated that arbitration is founded upon consent and a party may be bound by the arbitral process only if it is first shown, even at a prima facie level that such party agreed to submit disputes to arbitration. The Hon'ble Supreme Court ruled that where the arbitration agreement itself was alleged to be forged or fabricated, the disputes cease to be merely contractual. It was opined that allegations of forgery and fabrication strike at the very root of arbitral jurisdiction and fall squarely within the category of disputes that are generally recognized as non-arbitrable.

Thus, the Hon'ble Supreme Court ruled that the dispute relating to the Admission Deed involved serious allegations going to the root of the arbitration agreement and the same was not amenable to arbitration at this stage. The order of the Hon'ble High Court allowing Respondent No. 1's application under Section 8 of the Arbitration Act was held to be unsustainable and was quashed and set aside. The Hon'ble Supreme Court affirmed the order passed by the Hon'ble High Court rejecting Respondent No. 1's application under Section 11 of the Arbitration Act.

2.PROCEEDINGS BEFORE A UNILATERALLY APPOINTED ARBITRATOR CANNOT RESULT IN ENFORCEABLE AWARD: BOMBAY HIGH COURT [FEBRUARY 02, 2026]

Introduction:

In the case of **Ajeet Kumar Sharma v Tata Motors Finance Limited [2]** the Hon'ble Bombay High Court has ruled that a person who has interest in the outcome of a decision is ineligible to act as an arbitrator and also appoint anyone else as an arbitrator. It was held that any proceedings conducted before a unilaterally appointed arbitral tribunal could not result in an enforceable award.

Facts:

The Petitioner availed of an auto loan of Rs. 15,06,496/- from the Respondent which is a finance company. The Petitioner defaulted in repaying the loan and a dispute arose between the parties. The Respondent referred the dispute to the arbitration of a sole arbitrator pursuant to the arbitration clause in the Loan cum Hypothecation cum Guarantee Agreement which permitted the appointment of the sole arbitrator by the Respondent.

The Respondent failed to serve the notice of appointment of arbitrator on the Petitioner and the Petitioner never consented to the appointment. Therefore, the Petitioner challenged the award dated May 19, 2023 passed by the sole arbitrator which allowed the claim of the Respondent and directed the Petitioner to make payment of Rs. 9,65,156.06/- along with interest thereon @ 18% p.a. from February 06, 2023 till realization and costs of Rs. 7,000/.

The Respondent conceded to the settled position of law and that the impugned award is required to be set aside on the ground of unilateral appointment. The Respondent further prayed that liberty should be granted to the Respondent to invoke arbitration in a manner known in law.

Issue:

Whether the arbitral award by a unilaterally appointed arbitrator ought to be set aside.

Held:

The Hon'ble High Court reviewed the cases of *TRF Limited v. Energo Engineering Projects Limited (2017) 8 SCC 377* and *Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited AIR 2020 SC 59* and ruled that a person who has interest in the outcome or decision of a dispute is not only ineligible to act as an arbitrator, but is rendered ineligible to appoint anyone else as an arbitrator. It was further held that any proceedings conducted before any unilaterally appointed arbitral tribunal could not result in an enforceable award. In this view of the matter, the impugned award was set aside and liberty was granted to the Respondent to invoke arbitration afresh against the Petitioner.

3.APPLICATION UNDER SECTION 29A NOT BARRED EVEN WHEN ARBITRAL AWARD IS PASSED, THOUGH AFTER EXPIRY OF THE ARBITRATOR'S MANDATE: SUPREME COURT OF INDIA [FEBRUARY 03, 2026]

Introduction:

In the case of **C. Velusamy v K Indhera [3]**, the Hon'ble Supreme Court of India has ruled that an application

[2] 2026:BHC-OS:3237
[3] 2026 INSC 112

under Section 29A(5) of the Arbitration Act for extension of the mandate of the arbitrator is maintainable even after the expiry of the time under Sections 29A(1) and (3) and even after rendering of an award during that time.

Facts:

In the case at hand, disputes arose between the parties out of three agreements to sell. The Appellant filed an application under Section 11 of the Arbitration Act and the Hon'ble Madras High Court appointed a sole arbitrator. The arbitrator issued notice, convened the first meeting and subsequently, pleadings were completed which marked the commencement of the period of 12 months provided under Section 29A(1) of the Arbitration Act for the making the arbitral award. Before the conclusion of 12 months, parties filed a joint memo under Section 29A(3) of the Arbitration Act and extended the mandate of the arbitrator by a further period of 6 months. Arguments concluded, and the matter was reserved for final award.

Despite the award being indicated to be almost ready, the proceedings were reopened on the representation of the parties. On the basis of emails from the Respondent that settlement discussions were ongoing and were expected to be finalized, the matter was adjourned. However, when it was reported that the discussions did not fructify into a settlement, the arbitrator reserved the matter for award. Despite such reservation, the settlement discussions continued and the same resulted in a tripartite agreement between the Appellant, Respondent and a third party. The said agreement was never placed before the arbitrator and ultimately, the arbitrator passed an award. In the meantime, the mandate of the arbitrator had terminated even prior to the award being passed.

Aggrieved by the award, the Respondent filed an application under Section 34 of the Arbitration Act for setting aside the award on the ground that the mandate of the arbitral tribunal expired and arbitral proceedings stood terminated before passing of the award. On the other hand, the Appellant filed an application under Section 29A of the Arbitration Act seeking an extension of the mandate of the tribunal.

Holding that if an award is passed subsequent to the expiry of the mandate of the arbitrator, it is a nullity and the application for extension of the mandate of the arbitrator is not maintainable, the Hon'ble High Court passed an order dismissing the Section 29A ("**Impugned Order**"). Vide the Impugned Order, the Hon'ble High Court held that Further, relying upon the Impugned Order, the Hon'ble High Court allowed the Section 34 petition filed by the Respondent.

The matter finally came up before the Hon'ble Supreme Court of India.

Issue:

Whether a Court can entertain an application under Section 29A(5) of the Arbitration Act to extend the mandate of the arbitrator(s) for making the award even after an 'award' is rendered, though after the expiry of the statutory limit of 18-month period.

Held:

The Hon'ble Supreme Court noted that party autonomy, coupled with minimal intervention of judicial authorities, has been the guiding principle for the Arbitration Act. In stated the same to perhaps be the reason for not provisioning a statutory timeline for delivering awards and instead prescribing consequences of not delivering them on time.

The Hon'ble Supreme Court further noted that the Statement of Objects and Reasons in the Arbitration and Conciliation (Amendment) Bill, 2015 records that practical difficulties had arisen, necessitating amendments to make arbitration more user-friendly, cost-effective, and expeditious. The Hon'ble Court observed that accordingly, provision was made requiring the arbitral tribunal to render the award within 12 months from the date it enters upon the reference, with liberty to the parties to extend the period by a further 6 months; any extension thereafter being permissible only by order of the Court on sufficient cause being shown. The Hon'ble Court further found that the Arbitration Act was thereafter amendment with effect from August 30, 2019 to provide, *inter alia*, that, where an application seeking extension of time under sub-section (5) of Section 29A is pending, the mandate of the arbitrator shall continue until such application is finally decided.

The Hon'ble Court noted that in *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd. 2024 INSC 686*, it was explained that prior to the enactment of Section 29A of the Arbitration Act, the Act did not specify a time limit for making an arbitral award. It was further observed that the absence of specification was deliberate, given the fact that the First Schedule and Section 28 of the Arbitration Act, 1940 led to litigation and delay. The Hon'ble Court further noted its decision in *Lancor Holdings Ltd v. Prem Kumar Menon & Ors. 2025 INSC 1277* wherein it was held that where the negative effect of the delay in the arbitral award is explicit and adversely reflects on the findings of the award, then such delay, if it remains unexplained can be construed to result in the said award being in conflict with the public policy of India.

Relying upon its judgements in *Rohan Builders, Lancor Holdings Ltd., and Jagdeep Chowgule v Sheela Chowgule 2026 INSC 92*, the Hon'ble Supreme Court observed that there is no statutorily prescribed time limit for the Court to exercise the power under Section 29A(4) for extending

the period, except for its own discretion. It further observed that the Court can exercise the power before or after the expiry of the period under sub-sections 29A(1) or (3) of the Arbitration Act.

In view of the above, the Hon'ble Supreme Court held that Section 29A of the Arbitration Act does not, in terms, bar an application for extension of the mandate of an arbitrator in the event of the delivery of an award. It observed that the provision lacked any such prescription anywhere therein. It further clarified that if an award is made after expiry of the mandate, then such an award is non est and would be unenforceable under Section 36 of the Arbitration Act. The Hon'ble Court further held that a unilateral act or the indiscretion of the arbitrator in making such an award will have no bearing on the power and jurisdiction vested in the Court under Section 29A of the Arbitration Act. It further stated that the aforesaid power and jurisdiction of the Court stand on its own footing and remain uninfluenced by the act of the arbitrator in passing an award without mandate.

The Hon'ble Supreme Court explained that the phrase "*if an award is not made*" in Section 29A(4) of the Arbitration Act is employed in the context of enabling the Court to extend the mandate of the arbitrator. In light of the same and relying upon its decision in *Rohan Builders*, the Hon'ble Court held that the context in which the phrase is used makes it clear that the sub-section is not addressing a situation where an arbitral award has been rendered after the mandate of the arbitrator has expired, but rather to declare that the Court can extend the period before or after the expiry of the mandate.

It was further observed that provisions of Section 29A of the Arbitration Act make it apparent that the intention of the Parliament is to secure the arbitral proceedings and to ensure that they are taken to their logical conclusion of a binding award. This inference was drawn by the Hon'ble Court by noting that Section 29A(4) enables Courts to exercise the power of extension before or after the expiry of the 18 month period, proviso to 29A(4) declares continuation of the proceedings till the application for extension is pending, and Section 29A(6) and (7) declares that upon extension, the existing proceedings would continue uninterruptedly. The Hon'ble Court held that the aforesaid provisions make it evident that the intention of the Parliament is to safeguard the conduct and conclusion of arbitral proceedings.

The Hon'ble Supreme Court opined that vesting of power and jurisdiction in the Court is a complete answer to any apprehension that extension of time, even in cases where an 'award' is passed, could introduce a culture of indiscipline, as arbitrator(s) and/or counsels could become indifferent to the mandatory timelines. It held that the Arbitration Act does not provide for any automatic extension of time. It further stated that the Court must exercise its discretion only after evaluating the facts and circumstances after close scrutiny.

In view of its analysis and observations, the Hon'ble Supreme Court opined that provisions of the Arbitration Act, particularly Section 29A, must not be interpreted to infer a threshold bar for an application under Section 29A(5) for extension of the mandate of the arbitrator even when an award is passed, though after the expiry of the mandate. It conclusively held that an application under Section 29A(5) of the Arbitration Act for extension of the mandate of the arbitrator is maintainable even after the expiry of the time under Sections 29A(1) and (3) of the Arbitration Act and even after rendering of an award during that time. However, it clarified that while an award of such is ineffective and unenforceable, the power of the Court to consider extension of the mandate is not impaired by such an indiscretion of the arbitrator. The Hon'ble Court further held that if the mandate stands extended, the arbitral tribunal will seamlessly continue the proceeding from the stage at which the mandate had expired, and conclude within the time granted.

4.ARBITRATOR CAN DECIDE A DISPUTE *EX AEQUOET BONO* OR AS *AMIABLE COMPOSITEUR* ONLY IF AUTHORIZED BY THE PARTIES: BOMBAY HIGH COURT [FEBRUARY 03, 2026]

Introduction:

In the case of **Nirmal Bang Securities Pvt. Ltd. v. Shashi Mehra HUF [4]** the Hon'ble Bombay High Court ("**Hon'ble High Court**") held that the theory of distributive justice is unknown to arbitral law and that in arbitral jurisprudence, disputes are to be decided strictly in accordance with the terms of the contract. It was further held that under Section 28 (2) of the Arbitration Act, the arbitral tribunal can decide *ex aequoet bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

Facts:

The Petitioner is an incorporated entity, a stock broker ("**Petitioner**") and a member of the National Stock Exchange of India Ltd. ("**NSE**") and Bombay Stock Exchange. The Respondent is a Hindu Undivided Family ("**HUF**") with Mr. Shashi Mehra as its Karta ("**Respondent**"). The Respondent opened a demat account with the Petitioner which became inactive. Eventually, the Respondent reactivated the account at the behest of one Mr. Mateen Attar ("**Mateen**") who introduced himself as the Authorized Person ("**AP**") of the Petitioner.

The Respondent alleged that Mateen represented that he was an expert in handling assets of Rs. 200 crores of high net worth investors at the Petitioner's HNI Desk. The

[4] 2026:BHC-OS:3229

Respondent executed the requisite forms for reactivation of his Trading Account and his shares were transferred to his new Demat Account with the Petitioner. The Respondent handed over the login ID and password of his trading account to Mateen who commenced trading in his account. The Petitioner stated that the first date of trading generated a debit balance of Rs. 4 crores in the Respondent's ledgers and the Respondent confirmed the trades with the Petitioner's Compliance Officers. The volume of trades effected by Mateen in the account of the Respondent was enormous.

Later, it transpired that Mateen was not the AP of the Petitioner, but, his father was the registered AP of the Petitioner. The trades effected by Mateen for the period April 25, 2019 and June 21, 2019 resulted in losses, it also generated brokerage liability. To recover the amounts due from the Respondent, the Petitioner liquidated the Respondent's shares worth Rs. 1,38,33,050/- in the Demat Account. The Respondent transferred his Trading Account to another broker, transferred the shares in the account to the new broker and closed his account with the Petitioner. Thereafter, the Respondent raised objections to the trades and sought details of various charges and brokerages. He further raised allegations against Mateen and was informed that Mateen was never the AP of the Petitioner.

The Respondent filed a complaint before the Investor Grievance Redressal Committee ("IGRC") of NSE alleging execution of unauthorized trades by Mateen and charging of excessive brokerage by the Petitioner. The Respondent prayed for restitution of shares and for meeting the debit balance or in the alternative recovery of the amount equivalent to the value of his holdings as well as compensation. The IGRC passed an order dated January 14, 2022 holding that both the Petitioner and Respondent were responsible for the losses suffered by the Respondent. IGRC held that since the trades were effected in informal and unauthorized portfolio management with the covert support of the Petitioner to Mateen, the Petitioner could not be permitted to retain the entire brokerage earned from such unauthorized / illegal trades. IGRC allowed the claim of the Respondent to the extent of 75% of the brokerage earned by the Petitioner and allowed the claim of the Respondent in the sum of Rs. 58,99,940/-.

The Petitioner and the Respondent were aggrieved by the IGRC's order. The Petitioner filed an Arbitration Application before a Three Member Arbitral Tribunal of NSE ("**Arbitral Tribunal**") challenging IGRC's order. The Respondent also filed a joint statement of defence and counter claim to the extent of rejection of claim for reinstatement of shares in his account and non-refund of 25% brokerage. The Arbitral Tribunal, after hearing both sides, proceeded to pass an award dismissing the Petitioner's challenge and partly allowed the Respondent's challenge. It was held that the Respondent was entitled to a 100% refund of brokerage earned by the Petitioner and directed the Petitioner to pay the Respondent Rs. 78,66,586/- with interest @ 10% p.a. from the date of the IGRC order.

The Petitioner appealed against the award of the Arbitral Tribunal before the Appellate Arbitral Tribunal constituted under the Rules, Regulations and Bye-laws of NSE ("**Appellate Arbitral Tribunal**"). The Respondent also challenged the Arbitral Award to the extent of non-reinstatement of shares. The Appellate Arbitral Tribunal passed an award confirming the award of the Arbitral Tribunal and dismissing the Petitioner's appeal.

The IGRC, Arbitral Tribunal and Appellate Arbitral Tribunal recorded findings against the Respondent and that the Respondent was extremely negligent when the transactions of a large magnitude were executed in his trading account by Mateen. The Respondent trusted Mateen and allowed him to operate his account. Therefore, the transactions could not be held to be unauthorised and all three fora refused the claim of the Respondent for restoration of shares sold by the Petitioner to recover the losses generated through the transactions. All three fora held the Respondent responsible for effecting the trades and denied him the prayer for restoration of his shares sold by the Petitioner to recover the losses in the trades. However, the brokerage was directed to be refunded.

Aggrieved by the order of IGRC, the award of the Arbitral Tribunal as well as Appellate Arbitral Tribunal, the Petitioner approached the Hon'ble High Court under Section 34 of the Arbitration Act.

Issue:

Whether an arbitral tribunal can decide ex aequoet bono or as amiable compositeur even if the parties have not expressly authorized it to do so.

Held:

The Hon'ble High Court observed that all three fora considered the quantum of brokerage generated from the trades in the account of the Respondent as the primary reason for directing the refund of brokerage with GST. The Hon'ble High Court ruled that there was absolutely no basis for this finding. It was observed that the Respondent was looking at earning profits out of the trades and that it was difficult to presume that any person can possess such articulate skills to ensure that the investor's account is operated by effecting transactions in such a way that only brokerage is generated without any profit or loss in the account. It was noted that all three fora completely ignored that though the amount of brokerage may sound high, when compared to the total volume of transactions, the same was negligible. It was further noted that the Respondent is a Chartered Accountant and was not incapable of understanding the nature of transactions occurring on his trading account.

The Hon'ble High Court also noted that only after realizing that the Respondent was unable to recover the lost shares from Mateen did the Respondent proceed against the Petitioner for the same demands and then filed a complaint with IGRC falsely contending that he never authorized any trades and his login credentials were misused by someone in the Petitioner's office.

The Hon'ble High Court also noted that the three fora granted the Respondent refund of brokerage which he never prayed for. It was observed by the Hon'ble High Court that the three fora adopted a "*panchayati approach*". The Hon'ble High Court noted that when the three fora found that the Respondent was negligent and authorized all the trades and could not be awarded the value of shares sold from his account to recover losses, they came up with a novel idea of directing the Petitioner to refund the brokerage to ensure that the Petitioner does not earn anything out of the transactions. It was observed that since no order could be passed by the three fora against Mateen, they made the Petitioner a scapegoat by directing it to refund the brokerage. The Hon'ble High Court opined that this kind of "*Robinhood jurisprudence*" or theory of distributive justice is unknown to arbitral law. It was ruled that it is axiomatic in arbitral jurisprudence that the disputes are decided strictly in accordance with the terms of the contract. The Hon'ble High Court noted that the Respondent contractually agreed to pay the brokerage in respect of each trade to the Petitioner.

The Hon'ble High Court ruled that under Section 28 (2) of the Arbitration Act, the Arbitral Tribunal can decide *ex aequoet bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so. It was held that in the present case, the parties did not authorize the Arbitral Tribunal to decide *ex aequoet bono* or as an *amiable compositeur*. Therefore, it was held that jurisdiction in equity could not have been exercised by the Arbitral Tribunal. The Hon'ble High Court opined that the "justice-oriented" or "equitable approach" adopted by all three fora in directing the Petitioner to refund the brokerage despite trades having been held authorised clearly contradicts Section 28 of the Arbitration Act which renders the orders of the IGRC, Arbitral Tribunal and Appellate Arbitral Tribunal as patently illegal.

It was noted that the fundamental policy of Indian law is that compensation could be awarded to a person only if there is a breach of contract and the injured party suffers losses. It was observed in the present case, breach on the part of the Petitioner was not established which was contrary to both the fundamental policy of Indian law and contrary to the provisions of Section 73 of the Indian Contract Act, 1872. It was ruled that, once the trades were held to be authorized, the award of damages to the Respondent would be faulty and there was no question of refunding the brokerage generated out of the trades. The Hon'ble High Court observed that the findings of the three fora resulted in an absurd situation where 70% of the brokerage was already shared by the Petitioner with Mateen, but, it was also made to refund the brokerage to the Respondent. The Hon'ble High Court further ruled that any regulatory breaches by the Petitioner could not be a ground for directing refund of the brokerage when the trades were ultimately held to be authorized.

Thus, the Hon'ble High Court ruled that the awards of both the Arbitral Tribunal and the Appellate Arbitral Tribunal were in conflict with the fundamental policy of Indian law and that an egregious error was committed by awarding brokerage to the Respondent despite holding that the trades were authorized. Therefore, the awards were held to be unsustainable and liable to be set aside.

5.PRIOR ARBITRAL PROCEEDINGS HELD DURING OPERATION OF A MORATORIUM UNDER SECTION 14 OF THE IBC CANNOT BE NULLIFIED BY A COURT ACTING UNDER SECTION 15(2) OF THE ARBITRATION ACT: SUPREME COURT OF INDIA [FEBRUARY 04, 2026]

Introduction:

In the case of **Ankhim Holdings Pvt. Ltd. & Anr. v Zaveri Construction Pvt. Lt. [5]**, the Hon'ble Supreme Court set aside the order passed by the Hon'ble High Court which, while deciding an application under Section 15(2) of the Arbitration Act, had declared arbitral proceedings held during the subsistence of moratorium to be null. The Hon'ble Supreme Court held that in passing such an order, the Hon'ble High Court had assumed and exercised power which was clearly not conferred by the Arbitration Act.

Facts:

The Appellants and the Respondent had entered into a partnership firm to develop and construct an SRA project. Owing to certain disputes, the Appellants preferred an application under Section 9 of the Arbitration Act ("**Section 9 Application**") before the Hon'ble Bombay High Court ("**Hon'ble High Court**") against the Respondent. Pursuant to the filing of Section 9 petition, an interim arrangement was worked out and based on the same, the parties proceeded with the project.

The Hon'ble High Court passed an order in the Section 9 Application accepting the interim arrangement minutes as consent terms between the parties ("**Section 9 Order**"). Further, the Hon'ble Court appointed an arbitrator to arbitrate the disputes and differences between the parties.

Thereafter, the National Company Law Tribunal, Mumbai ("**NCLT**") admitted the Respondent to corporate insolvency resolution process and imposed a moratorium under Section 14 of the Insolvency

[5]2026 INSC 137

Bankruptcy Code, 2016 ("**IBC**").

Subsequently, the Appellants filed two petitions under Section 9 of the Arbitration Act before the Hon'ble High Court whereby they sought to restrain the Resolution Professional ("**RP**") of the Respondent from obstructing the sale of certain flats and further sought permission to sell and enter into agreements of sale in respect of those flats in the light of the consent terms recorded in the Section 9 Order.

The Hon'ble High Court dismissed both the Section 9 petitions and passed an order in both the recording that the Interim Resolution Professional had become *functus officio* and no order for liquidation was passed by the NCLT. However, liberty was granted to the Appellants to move applications under Section 17 of the Arbitration Act.

In pursuance of the Hon'ble High Court's order, the Appellants preferred Section 17 applications before the arbitrator. The arbitrator proceeded to pass an order allowing the reliefs sought by the Appellants ("**said Orders**") thereby allowing the Appellants to sell and execute agreements of sale in respect of some flats.

The Respondent preferred an application under Section 16 of the Arbitration Act challenging the jurisdiction of the Arbitral Tribunal on the ground of the moratorium under Section 14 of the IBC. The Arbitral Tribunal rejected the Section 16 application.

Thereafter, the NCLT proceeded to pass an order initiating liquidation proceedings against the Respondent. Subsequently, the Arbitral Tribunal passed an order terminating the arbitration proceedings.

The Appellants filed a petition under Section 15(2) of the Arbitration Act seeking appointment of substitute Arbitrator and for extension of time for passing arbitral award. The Hon'ble High Court appointed a substitute sole arbitrator, however, also proceeded observe that all proceedings undertaken by the Arbitral Tribunal during the operation of the moratorium period, were a nullity ("**Impugned Order**").

Consequently, the Appellants approached the Hon'ble Supreme Court in appeal.

Issue:

Whether the Hon'ble High Court was justified in saying that the proceedings held by the Arbitral Tribunal during the operation of the moratorium were liable to be declared as nullity on the premise that those proceedings were undertaken during the period of moratorium under Section 14 of the IBC.

Held:

The Hon'ble Supreme Court observed that a bare perusal of Section 15 of the Arbitration Act indicates that Section 15(2) is not a standalone provision and should be read with Section 15(3) and Section 15(4) respectively. It further noted that Section 15(2) of the Arbitration Act states that when mandate of an arbitrator is terminated under Section 14 of the Arbitration Act, a substitute arbitrator has to be appointed. It found that Section 15(2) of the Arbitration Act further states that such an appointment must be made according to the rules that were made applicable to the appointment of the arbitrator being replaced.

The Hon'ble Court noted that according to Section 15(3) of the Arbitration Act, after the arbitrator has been replaced under Section 15(2) of the Arbitration Act, any previous hearing may be repeated at the discretion of the arbitral tribunal, however, such repetition is subject to the agreement between the parties. In view of this provision, the Hon'ble Supreme Court observed that in the event that the parties agree to repetition of hearing, such repetition becomes mandatory. However, if the parties agree to not repeat the previous hearing, then the arbitrator is bound to not repeat the same. In case the parties fail to arrive at a conclusion, the arbitral tribunal would decide whether the hearing already conducted before his substitution would be repeated. In respect of this, the Hon'ble Court clarified that the parties can come to an agreement on the question of re-hearing either prior to the stage of substitution being reached or after the arbitrator has been substituted.

The Hon'ble Supreme Court observed that in the present case, the arbitrator had been appointed under the Arbitration Act and therefore, Section 11 of the Arbitration Act would have been applicable to his appointment. Accordingly, as per Section 15(2) of the Arbitration Act, the stipulations under Section 11 of the Arbitration Act as applicable to the arbitrator would be applicable to the substitute arbitrator's appointment as well.

In respect of Section 11 of the Arbitration Act, the Hon'ble Supreme Court observed that the said provision affords the Court with a very limited scope essentially requiring the Court only to make *prima facie* finding that an arbitration agreement exists. Consequently, owing to the stipulations of Sections 11, 15(2) and 15(4) of the Arbitration Act, the Hon'ble Supreme Court opined that the Hon'ble High Court had exceeded its jurisdiction while taking the view that the proceedings held by the Arbitral Tribunal during the subsistence of the moratorium were a nullity.

The Hon'ble Supreme Court referred to its decision in *Hindustan Construction Co. Ltd. v Bihar Rajya Pul Nirman Nigam Ltd 2025 INSC 1365* wherein it was held that when an arbitrator is unable to act owing to recusal, the proper course would be to invoke Section 15(2) and appoint a substitute arbitrator to continue from the existing stage of the proceedings. The Hon'ble Supreme Court observed that its observations in Bihar Rajya Pul

succinctly captured that substitution preserves continuity, and prior proceedings remain valid unless either party objects.

The Hon'ble Supreme Court also took note of the dictum in *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1* which held that being a self-contained and exhaustive code on arbitration law, the Arbitration Act carries the imperative that what is permissible under the law ought to be performed only in the manner indicated. Accordingly, matters governed by the Arbitration Act such as the arbitration agreement, appointment of arbitrators and competence of the Arbitral Tribunal to rule on its jurisdiction have to be assessed in the manner specified under the law. Following this judgement, the Hon'ble Supreme Court held that it would be impermissible for a court acting under Section 15(2) to adopt a procedure whereby it exercises jurisdiction barred to it by the Act, 1996 as has occurred in the present case, where the Hon'ble High Court had:

1. set aside an order rejecting an application under Section 16, which the Arbitration Act does not allow in any provision;
2. set aside Section 17 orders but not in a proceeding under Section 37;
3. set aside further procedural orders, which is not a power vested in any court exercising jurisdiction under the Arbitration Act.

The Hon'ble Supreme Court also took note of its decision in *Official Trustee v Sachindra Nath Chatterjee AIR 1969 SC 823* wherein it was held that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit.

The Hon'ble held that the Hon'ble High Court had assumed and exercised power which has clearly not been conferred by the Arbitration Act, more particularly, wherein the statute itself envisages minimal judicial intervention. The Hon'ble Supreme Court opined that the proper and legal course for the Hon'ble High Court acting under Section 15(2) of the Arbitration Act, should have been to appoint a substitute arbitrator to continue from the existing stage of the proceedings. It further recorded that impugned part of the judgment rendered by the Hon'ble High Court led to a situation where the arbitration proceedings would have to be restarted afresh and the same would have a direct impact on the sale of flats made pursuant to the said Orders. The Hon'ble Court held that such a situation could be both, inequitable and inefficient, which would defeat the object of the Arbitration Act. Accordingly, the Hon'ble Supreme Court set aside the Impugned Order to the extent that it held that the proceedings held by the Arbitral Tribunal during the operation of the moratorium were a nullity.

6.COURT'S FINDING ON THE EXISTANCE OF A VALID ARBITRATION AGREEEMENT UNDER SECTION 11, PRIOR TO 2015 AMENDMENT ACT IS BINDING ON PARTIES IF NOT CHALLENGED: SUPREME COURT OF INDIA [FEBRUARY 04, 2026]

Introduction:

In the case of **M/s. Eminent Colonizers Pvt. Ltd. v. Rajasthan Housing Board & Ors. [6]** the Hon'ble Supreme Court has held that only post the Arbitration and Conciliation Amendment Act, 2015 ("**Amendment Act**"), the enquiry of the courts in respect of applications under Section 11 of the Arbitration Act has been limited to the existence of the arbitration clause. It was ruled that prior to the Amendment Act, the Section 11 court was bound to decide whether there was an arbitration agreement and the finding on the existence of a valid arbitration agreement would bind the parties, if the same has not been challenged.

Facts:

In the judgment at hand, the Hon'ble Supreme Court dealt with two cases having similar facts and questions of law.

In the matter pertaining to Civil Appeal No. 753 of 2026, the Appellant was a sole proprietorship engaged in the business of supply and construction. The Respondent awarded the construction of certain High-Income Group flats in Rajasthan to the Appellant.The value of the contract between the Appellant and the Respondent was Rs. 5,27,00,070/- to be paid on a lump sum basis and the work was to be completed in 12 months. The Appellant allegedly completed the work before the 12 months deadline at a lower cost of Rs. 4,67,72,922/-. The dispute between the parties arose as a result of non-payment of Rs. 18,95,123/- towards cost escalation under clause 45 of the agreement which dealt with the prices of labour and material.

Since the Respondents failed to pay the disputed amount or to constitute an empowered Standing Committee to adjudicate the dispute as per Clause 23 of the agreement, the Appellant approached the Hon'ble High Court under Section 11 of the Arbitration Act. The Hon'ble High Court allowed the application under Section 11 and appointed a retired High Court judge as the sole arbitrator. The order of the Hon'ble High Court was accepted and it attained finality.

The Ld. Arbitrator entered upon the reference and passed an award allowing the claim of the Appellant to the tune of Rs. 17,10,642.70/- along with interest @ 9% per annum. The Ld. Arbitrator dealt with the objection regarding the validity of the arbitration clause and held that since no appeal was filed against the order of appointment, the objection was not sustainable. The Ld. Arbitrator supported his ruling by relying on the judgment in the case of *SBP & Co. v. Patel Engineering*

[6] 2026 INSC 116

Limited & Anr. (2005) 8 SCC 618.

The Respondent filed an Application under Section 34 before the Hon'ble Commercial Court at Jaipur ("**Hon'ble Commercial Court**") to set aside the award. They contended that the Clause 23 did not have the character of an arbitration clause. Their contention was accepted by the Hon'ble Commercial Court and the award was set aside. It was also ruled that the order appointing the arbitrator was not binding in nature.

The Appellant appealed against the order of the Hon'ble Commercial Court before the Hon'ble High Court which upheld the order of the Hon'ble Commercial Court and maintained that Clause 23 was not an arbitration clause. Aggrieved by the order of the Hon'ble High Court, the Appellant approached the Hon'ble Supreme Court.

In the matter of Civil Appeal No. 754 of 2026, the Appellant was awarded work by the Respondents to construct 180 LIG flats in Rajasthan. The value of the contract was Rs. 4,58,05,217.45 and it was agreed that the work would be completed by July 19, 2009. Additional work to the tune of Rs. 64,01,689/- was awarded and the Appellant raised an escalation bill amounting to Rs. 55,77,080/- under Clause 45 of the agreement. The escalation bill was not paid and a penalty of Rs. 2.5 lakhs was levied and not refunded.

The Appellants approached the Hon'ble High Court under Section 11, stating that the Respondent failed to constitute an empowered Standing Committee under Clause 23 of the agreement. The Hon'ble High Court appointed a retired judge as the Sole Arbitrator. The Ld. Arbitrator entered upon the reference and passed an award directing the refund of Rs. 2.50 lakhs as penalty and awarded escalation charge of Rs. 5,09,468/- along with interest @ 10%.

The Respondents contended that Clause 23 of the agreement was not an arbitration clause, however, the Ld. Tribunal held that since the Section 11 application was allowed the tribunal could not sit over the order of the Hon'ble High Court. The Respondents filed an application under Section 34 of the Arbitration Act challenging the award. The Hon'ble High Court held that Clause 23 was not an arbitration clause. Aggrieved by the order of the Hon'ble High Court, the Appellant filed a special leave petition before the Hon'ble Supreme Court.

Issue:

Whether a dispute regarding the existence and validity of an arbitration clause can be raised before the arbitrator in proceedings initiated prior to the 2015 Amendment to the Arbitration Act.

Held:

The Hon'ble Supreme Court, after hearing the submissions of both parties and reviewing the case of *SBP & Co.* held that the Hon'ble Commercial Court (in Civil Appeal No. 753 of 2026) and the Hon'ble High Court (Civil Appeal No. 754 of 2026) erred in examining the existence and validity of Clause 23 and pronouncing that the same was not an arbitration clause. It was observed that the Ld. Arbitrator was appointed prior to the amendments to the Arbitration Act which came into effect from October 23, 2015. The Hon'ble Supreme Court opined that the introduction of Section 11 (6A) brought a paradigm shift in the scope of jurisdiction of the Section 11 court. It was ruled that post the amendment the enquiry is limited to the existence of the arbitration clause.

The Hon'ble Supreme Court noted that as per the judgment of *SBP & Co.*, a Section 11 court was bound to decide whether there was an arbitration agreement and further that the finding on the existence of a valid arbitration agreement would bind the parties when the matters went before the tribunal and at subsequent stages of the proceedings. It was further noted that the only exception was when the order appointing an arbitrator was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that in the present cases, the orders appointing the Ld. Arbitrator had attained finality as the Respondents did not challenge the same.

The Hon'ble Supreme Court opined that the scenario would have been totally different if the 2015 (Amendment) Act had applied to the arbitral proceedings. The Hon'ble Supreme Court reviewed the judgment in the case of *In re Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899* and noted that the Hon'ble Supreme Court therein observed that the legislature confined the scope of reference under Section 11 (6-A) to the examination of the existence of an arbitration agreement. It was observed that the use of the term "examination" connotes that the scope of power is limited to a prima facie determination.

It was noted that the scope of examination under Section 11 (6A) should be confined to the existence of an arbitration agreement. It was further noted that this interpretation gives true effect to the doctrine of competence – competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by the arbitral tribunal under Section 16. The Hon'ble Supreme Court held that Section 26 of the 2015 Amendment Act made it very clear that the same would not be applicable to pending arbitral proceedings and would apply only to those proceedings commenced on or after the date of commencement of the Amendment Act.

The Hon'ble Supreme Court ruled that the decision of the Section 11 court to entertain the application should bind the parties whether the same is right or wrong. It was held that the case of *SBP & Co.* puts the matter beyond controversy by holding that not only would the

[6] 2026:BHC-OS:397

parties be bound before the arbitrator regarding the finding on the existence and validity of the arbitration agreement, they would also be bound during subsequent stages of proceedings including those under Section 34.

Thus, the Hon'ble Supreme Court held that courts below erred in examining the existence and validity of Clause 23 and pronouncing that the said clause was not an arbitration clause and accordingly set aside the orders.

7.POST AWARD TRANSFEREE IS A TRANSFEREE PENDENTE LITE AND CANNOT RESIST EXECUTION OF ARBITRAL AWARD: SUPREME COURT OF INDIA [FEBRUARY 12, 2026]

Introduction:

The Hon'ble Supreme Court, in the case of **R. Savithri Naidu v. M/s. The Cotton Corporation of India Ltd. & Anr. [7]** observed that under Section 36 of the Arbitration Act, an arbitral award is enforceable in the same manner as a decree of a court. It was ruled that the protections available to bona fide claimants under Order XXI Rules 98 and 100 of the Code of Civil Procedure, 1908 ("**CPC**") do not apply to a transferee *pendente lite*. The Hon'ble Supreme Court held that a judgment debtor cannot defeat a decree by alienating property after the decree is passed, but, before it is realized.

Facts:

M/s. Lakshmi Ganesh Textiles Limited ("**Respondent No. 2**") was a public limited company which was later incorporated as a private limited company. Cotton Corporation of India Limited ("**Respondent No. 1**") engages in the business of sale and purchase of cotton / cotton bales. Respondent Nos. 1 and 2 entered into an agreement for the sale of cotton bales ("**said Agreement**"). The Appellant is the mother of the Managing Director of Respondent No. 2 and was also a non-executive director of Respondent No. 2.

On account of a dispute in the recovery of the sale price of cotton bales supplied under the said Agreement, Respondent No. 1 raised an arbitral dispute. The Ld. Arbitrator passed an award directing Respondent No. 2 to pay Respondent No. 1 a sum of Rs. 26,00,572.90/- with interest @ 18 p.a. and costs. Aggrieved by the award, Respondent No. 2 challenged the same under Section 34 in AOP No. 10 of 2006 before the Principal District Judge, Coimbatore ("**AOP No. 10 of 2006**"). AOP No. 10 of 2006 was dismissed and the award became final since Respondent No. 2 did not file any appeal.

Respondent No. 2 was also a borrower of ICICI Bank, which, initiated recovery proceedings against Respondent No. 2 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") and attached the properties of Respondent No. 2. ICICI Bank, Respondent No. 2 and the Appellant executed a Sale Deed in respect of certain properties and the proceedings initiated by ICICI Bank were closed pursuant to a compromise agreement executed by a tripartite agreement.

Respondent No. 1 filed an Execution Petition ("**EP**") for executing the award. The executing court ordered the conditional attachment of the EP Schedule Properties which were among the properties bought by ICICI Bank. The Appellant claiming to be a third party filed an application under Order XXI Rule 58 of the CPC praying for the removal of the attachment. She contended that she became the absolute owner of the EP Schedule Property and that the sale in her favour was for valid consideration and without knowledge of the ongoing dispute between Respondent Nos. 1 and 2. It was stated that on the date of attachment, Respondent No. 2 was not the owner of the property and therefore, the attachment and consequent realization steps for the sum due under the arbitral award were unsustainable and illegal.

Respondent No. 1 alleged that the Appellant and Respondent No. 2 colluded and executed the sale deed. It was contended that the completion of sale under the SARFAESI Act would not affect the right of the decree holder in AOP 10 of 2006. Respondent No. 1 stated that the tripartite agreement was not exhibited to establish the absence of collusion or ignorance of ongoing proceedings. It was submitted that the third-party claimant had taken the risk of the execution petition and the objection was hit by Order XXI Rule 102 of the CPC. The claim petition was thus dismissed. The Appellant thereafter filed a revision before the Hon'ble High Court which dismissed the revision. Therefore, the Appellant approached the Hon'ble Supreme Court by filing a special leave petition.

Issue:

Whether a post-award transferee can resist execution of an arbitral award.

Held:

The Hon'ble Supreme Court noted that the arbitral proceedings were instituted in 1999 and the award was dated June 11, 2001. It was observed that under Section 36 of the Arbitration Act, an arbitral award is enforceable in the same manner as a decree of a court. The Hon'ble Supreme Court further noted that Order XXI Rule 102 of the CPC explicitly states that the protections available to bona fide claimants under Rules 98 and 100 do not apply to a transferee *pendente lite.* The Hon'ble Supreme Court stated that a transferee *pendente lite* refers to a person to whom the property is transferred after the institution of a suit in which a decree is passed.

[7] 2026 INSC 150

It was held that in the present case, the Appellant is a transferee *pendente lite* and is barred by Order XXI Rule 102 from resisting the execution.

Though the Appellant argued that no litigation was pending when the sale took place, the Hon'ble Supreme Court held that Order XXI Rule 102 does not depend on the pendency of the Section 34 challenge but is based on the fact that the transfer occurred after the institution of proceedings. It was ruled that a judgment debtor cannot defeat a decree by alienating the property after the decree is passed but, before the decree is realized.

The Hon'ble Supreme Court ruled that the Appellant failed to discharge the onus on the sale being without notice of the existing claim. The Hon'ble Supreme Court held that if the contention of the Appellant was to be accepted and third parties were permitted to bypass procedural safeguards and initiate separate suits or raise belated objections long after execution processes, it would completely derail the statutory machinery. It was held that judgment debtors would be incentivized to defeat decrees by transferring properties or planting surrogate objectors to initiate endless collateral litigation and the execution proceedings would get trapped in an infinite loop.

Therefore, the Hon'ble Supreme Court dismissed the Civil Appeal and directed the executing court to dispose of the execution proceedings within two months.

8.MERE STATUS OF A NON-SIGNATORY AS A PROJECT BENEFICIARY IS INSUFFICIENT FOR IMPLEADMENT IN ARBITRAL PROCEEDINGS: DELHI HIGH COURT [FEBRUARY 19, 2026]

Introduction:

The Hon'ble Delhi High Court in the case of **M/s Ramacivil India Construction Pvt. Ltd. v Central Public Works Department [8]** has held mere status of a principal entity or project beneficiary does not suffice for impleadment in arbitral proceedings and that the legal relationship between the parties is defined by the instrument executed and not by the identity of ultimate institutional beneficiary.

Facts:

In the present case, IIM Jammu had entered into a Memorandum of Understanding with Central Public Works Department ("**CPWD**"). Pursuant thereto, CPWD issued a tender acceptance letter. The disputes between the parties emanated solely from the agreement executed thereafter between the Petitioner and CPWD, which contained an arbitration clause. Owing to the disputes, proceedings between the Petitioner and CPWD were initiated under Sections 9 and 11 of the Arbitration Act.

The present appeal before the Hon'ble Delhi High Court arose out of an order ("**Impugned Order**") passed by the Joint Registrar (Judicial) of the Hon'ble Delhi High Court ("**Joint Registrar**") allowing the impleadment of IIM Jammu as a party to the proceedings under Sections 9 and 11 of the Arbitration Act.

The Petitioner contended that although IIM Jammu may be the principal entity, it was CPWD that issued the tender in question, pursuant to which the tender agreement came to be executed exclusively between the Petitioner and CPWD. Accordingly, the Petitioner contended that no contractual privity existed between the Petitioner and IIM Jammu so as to warrant IIM Jammu's impleadment in the proceedings.

On the other hand, IIM Jammu contended that IIM Jammu was a necessary and proper party to the present Petition. It further contended that IIM Jammu was the ultimate beneficiary of the works executed and played a substantive role in the decision-making process governing the execution of the project. In order to demonstrate the predominant role was played by IIM Jammu in the overall execution of the project, IIM Jammu presented minutes of various meetings which showed that the said meetings were chaired by the Director of IIM Jammu, thereby justifying its impleadment in the proceedings.

Issue:

Whether IIM Jammu as a non-signatory to the contract which constitutes the subject matter of the present *lis* can be made a party to the same by virtue of being the project beneficiary.

Held:

Upon a consideration of the facts at hand, the Hon'ble Delhi High Court observed that IIM Jammu was a non-signatory to the agreement which constituted the subject matter of the proceedings before it. It further observed that the agreement giving rise to the disputes was executed exclusively between the Petitioner and the CPWD and the arbitration clause invoked in the present proceedings also found its source in the aforesaid agreement only.

The Hon'ble High Court observed that it is a matter of common commercial practice, particularly in governmental projects, that principal institutions entrust execution to specialised agencies such as CPWD, which alone undertake the tendering process and execute agreements with contractors. Contractors, in turn, perform works and raise bills strictly within the contractual framework entered into with the tendering authority. Therefore, the Hon'ble Court held that the legal relationship is defined by the instrument executed and not by the identity of the ultimate institutional

[8] 2026:DHC:1579

beneficiary. It further stated that if the mere status of a principal entity or project beneficiary were to suffice for impleadment, virtually every arbitration arising out of layered or delegated public works would witness the compulsory addition of principals at multiple tiers, thereby unsettling the carefully structured regime of party autonomy underlying the Arbitration Act.

The Hon'ble High Court observed that the scheme of the Arbitration Act proceeds on the foundation that each arbitration agreement operates within the confines of the specific contract and the parties thereto. It further stated that where disputes arise out of distinct agreements, even if they may be factually connected, the Court, while exercising jurisdiction under Section 11 of the Arbitration Act, is required to independently examine the existence of an arbitration agreement in respect of each such contract.

The Hon'ble High Court placed reliance upon its decision in *Arunachalam Chandrasekharan and Ors v Concept Capital Infra Project Pvt. Ltd and Anr 2026:DHC:1364* wherein, while dealing with 5 separate contracts each having independent arbitration clauses, the Hon'ble Delhi High Court held that a single arbitral tribunal cannot be constituted to adjudicate disputes arising out of all such contracts. Basis such holding in Arunachalam, the Hon'ble Delhi High Court observed that the statutory framework of the Arbitration Act does not contemplate a composite or omnibus arbitral reference merely on the basis of perceived interlinkages between transactions. In view of the same, the Hon'ble Court held that the adjudicatory exercise must remain anchored to the particular agreement which binds the parties to arbitration, and cannot be expanded so as to encompass entities or arrangements falling outside the scope of that defined legal relationship.

The Hon'ble Court noted that the Impugned Order proceeded on the premise that IIM Jammu, being the ultimate beneficiary and funding authority, deserved impleadment. It noted that the Joint Registrar had permitted impleadment on the ground that IIM Jammu stood to benefit from the works and has supervised certain aspects of execution. In respect of such holding, the Hon'ble Court held that arbitration, being consensual in nature, cannot be expanded to include entities solely because they derive indirect advantage or bear institutional interest in the project. It further opined that the reasoning adopted by the learned Joint Registrar would produce anomalous consequences. Observing that complex infrastructure projects consist of multiple stakeholders across several institutional layers, the Hon'ble Supreme Court held that if all beneficiaries were to be treated as necessary parties, arbitral proceedings would lose their consensual character and be transformed into sprawling multi-party disputes divorced from the contractual foundation of arbitration law.

Looking to the facts of the case, the Hon'ble High Court noted that any observations by IIM Jammu were required to be communicated through the CWPD engineers. Accordingly, it observed that the contractual framework recognized CPWD as the nodal authority responsible for supervision, communication and contractual enforcement. In view of the same, the Hon'ble High Court held that acceptance of the reasoning adopted in the Impugned Order would effectively rewrite the contractual architecture by permitting IIM Jammu to assume a direct supervisory and contractual role inconsistent with the express terms of the agreement itself.

In light of its findings, analysis and observations, the Hon'ble Delhi High Court ruled that the Impugned Order suffered from fundamental errors. It held that the reasoning adopted in the Impugned Order overlooked the settled position of law that arbitration is founded upon consent and that a party can be subjected to arbitral proceedings only if it is bound by the arbitration agreement. It further held that in the absence of privity of contract between the Petitioner and IIM Jammu, and there being no material to demonstrate that the said entity is a signatory to, or otherwise bound by, the arbitration agreement, its impleadment was legally unsustainable.

9.DISCRETION OF THE ARBITRATOR TO AWARD INTEREST IS SUBBORDINATE TO CONTRACT: SUPREME COURT [FEBRUARY 27, 2026]

Introduction:

The Hon'ble Supreme Court in the case of **Union of India & Ors. v. Larsen & Tubro Ltd. [9]**, held as per the provisions of Sections 28 (3), 31 (7) (a) and 31 (7) (b) of the Arbitration Act, the discretion of the arbitrator to award interest is subordinate to the contractual provisions governing interest. It was ruled that Section 31 (7) (a) gives paramount importance to the agreement between the parties and the power of the arbitrator to award pre-award / *pendente lite* is restricted. The Hon'ble Supreme Court held that when there is no express exclusion for post-award interest, the provision of Section 31 (7) (b) must prevail and post-award interest can be granted.

Facts:

The Union of India & North Central Railway Administration ("**Appellants**") entered into an agreement with Larsen & Tubro Limited ("**Respondent**"). The agreement was in respect of execution of modernization of the Jhansi Workshop of North Central Railways valued at a negotiated rate of Rs. 93,08,07696/-. The original date for completion of work was July 18, 2012, however, the Appellants extended the date 10 times until

[9] 2026 INSC 203

November 30, 2015.

During this period, disputes concerning the execution of the work and outstanding payments arose between the parties. The General Conditions of Contract ("**GCC**") contained an arbitration agreement. The Respondent filed an application for appointment of an Arbitral Tribunal and as per the arbitration clause, a three-member Arbitral Tribunal ("**AT**") was formally constituted. The AT entered into reference with the Respondent as the Claimant and the Appellants as the Respondent.

The Respondent submitted a statement of claim in respect of charges towards inordinate delay in release of payments against running account bills, costs due to variations in foreign exchange beyond the original contract period, non-payment of price variation component etc. After perusing the material available on record, the AT passed the arbitral award whereby the Claimant was awarded a sum of Rs. 5,53,57,597/- within 60 days ("**Award**"). If the Appellants defaulted, the awarded amount carried post-award interest @ 12% p.a. with effect from the date of the Award.

Aggrieved by the Award, the Appellants filed an application under Section 34 of the Arbitration Act before the Hon'ble Commercial Court, Jhansi ("**Hon'ble Commercial Court**") arguing that the award of interest / compensation violated the contractual prohibitions contained in Clause 16 (3) and 64 (5) of the GCC as well as the award of legal fees. The Hon'ble Commercial Court dismissed the Section 34 Application and affirmed the Award. It was further held that the scope of interference under Section 34 of the Arbitration Act is limited and since it was not a case where the Award could have been set aside based on the provisions of Section 34, the Application was rejected.

Dissatisfied with the findings of the Hon'ble Commercial Court, the Appellants filed an Arbitration Appeal under Section 37 of the Arbitration Act before the Hon'ble High Court of Judicature at Allahabad ("**Hon'ble High Court**"). The Hon'ble High Court dismissed the Appeal and upheld the Award, holding that Clause 16 (3) of the GCC pertained to earnest money and security deposits and Clause 64 (5) barred pendente lite interest which the AT correctly interpreted. The Appellants approached the Hon'ble Supreme Court against the order of the Hon'ble High Court.

Issues:

1. Whether the AT was justified in awarding pre-award / *pendente lite* interest, by way of compensation.
2. Whether the AT was justified in awarding post award interest.
3. Whether the Hon'ble Commercial Court and the Hon'ble High Court erred in dealing with the above issues while exercising powers under Sections 34 and 37 of the Arbitration Act.

Held:

The Hon'ble Supreme Court perused Clauses 16 (3) and 64 (5) of the GCC. The Hon'ble Supreme Court reviewed the provisions of Section 28 (3) and Section 31 (7) (a) and 31 (7) (b) of the Arbitration Act and held that it is clear that the statutory scheme subordinates the discretion of the arbitrator to the contractual provisions governing interest. It was noted that in the present case Clause 16 (3) of the GCC stipulates that no interest would be payable upon earnest money and security deposits or amounts payable to the contractor under the Contract. The Hon'ble Supreme Court held that the provisions of the Arbitration Act, including Section 31 (7) (a) give paramount importance to the contract entered into between the parties and categorically restricts the power of the arbitrator to award pre-award / *pendente lite* interest when the parties themselves have agreed to the contrary. Thus, it was held that the AT cannot award pre-award / *pendente lite* interest, even in the form of compensation in view of Clauses 16 (3) read with Clause 64 (5) of the GCC.

Regarding post-award interest, the Hon'ble Supreme Court noted that Section 31 (7) (b) of the Arbitration Act provides that unless the award otherwise directs, the sum awarded shall carry interest from the date of the award till payment. It was further noted that the legislative intent underlying the provision is two-fold: (a) to compensate the successful party for delayed realization of the award and (b) to ensure prompt compliance with the award by the judgment debtor. It was noted that Clause 65 (5) of the GCC barred interest only "till the date on which the award is made" and that it did not prohibit interest for the period subsequent thereto.

The Hon'ble Supreme Court reviewed the operative part of the Award in light of the provisions of the GCC as well as the Arbitration Act and noted that the AT awarded pre-award / *pendente lite* interest in respect of certain claims. It was held that the AT committed serious error by awarding pre-award / *pendente lite* interest even though the amounts were awarded by way of compensation. It was ruled that the Hon'ble Commercial Court and the Hon'ble High Court failed to appreciate that the AT awarded *pendente lite* interest in violation of the express contractual bar and such failure attracts interference within the limited scope of Sections 34 and 37 of the Arbitration Act.

The Hon'ble Supreme Court observed that there was no provision in the GCC which expressly barred the grant of post-award interest and in the absence of such an express exclusion, the statutory mandate under Section 31 (7) (b) of the Arbitration Act must prevail. It was ruled that the conditional grant of post-award interest was consistent with the statutory framework and serves the purpose of ensuring timely satisfaction of the award. Thus, the judgments by the Hon'ble High Court and Hon'ble Commercial Court were set aside to the extent of the grant of pre-award / *pendente lite* interest or amounts in the nature of interest.

ANM ThinkPod

FIRM HIGHLIGHTS

ANM Global is pleased to have advised STARS N STRIPES, the producer of the series, providing comprehensive legal support in relation to the lead artist engagements for the digital series. Our scope of work included drafting, negotiating, and executing the lead artist agreements for the series.

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

Anushree Rauta, Equity Partner and Head – Media, Entertainment & Gaming Practice, shares her perspective with Mint on the evolving copyright and contractual considerations emerging from AI integration.

Anushree Rauta, Equity Partner & Head – Media, Entertainment & Gaming at ANM Global, quoted by The Economic Times on the accelerating M&A activity in India's content ecosystem.

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More movies in the making, but fewer screens to go around

"This consolidation is likely to bolster output across segments, including niche, non-mainstream and small-to-mid budget films, particularly for boutique producers such as Sikhya, whose strength lies in story-driven cinema that often struggles to independently crack pre-sale or platform-led deals.

India continues to face a structural deficit in cinema screens, uneven regional distribution infrastructure, and a sharply narrowing theatrical window for films without established star casts.

On the digital side, platforms are becoming more cautious and increasingly tying acquisitions to performance metrics. Large studios, with slate-based deals that bundle smaller films with marquee titles, are better positioned in this environment, pressurising independent producers and acquisition prices."

Ms. Anushree Rauta
Equity Partner
(Head of Media, Entertainment & Gaming Practice)

Ms. Anushree Rauta, Equity Partner & Head – Media, Entertainment & Gaming Practice, shares her perspective with Mint.

Ms. Anushree Rauta, Equity Partner & Head – Media, Entertainment & Gaming Practice quoted in The Economic Times in the article, "Streamers Now Shoot for Satellite Rights to Step Up Play."

THE ECONOMIC TIMES | Industry

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QUOTED BY THE ECONOMIC TIMES - "STREAMERS NOW SHOOT FOR SATELLITE RIGHTS TO STEP UP PLAY"

"For pure-play streaming platforms, acquiring linear rights is a defensive masterstroke. By 'ring-fencing' content, these platforms can effectively limit competition with linear television to preserve digital exclusivity and drive subscriber growth."

ANUSHREE RAUTA
EQUITY PARTNER
(HEAD OF MEDIA, ENTERTAINMENT & GAMING PRACTICE)

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Rahul Dhote, Equity Partner and Head – Intellectual Property Practice at ANM Global, has been recognised in the Asian Legal Business - India Top IP Lawyers 2026 list.

ANM Global advised Clout Pocket Aces on the negotiation and execution of Artist Agreements for Viraj Ghelani and Sandeepa Dhar in connection with the film Do Deewane Seher Mein.

FIRM HIGHLIGHTS

ANM Global hosted the IBC & Banking Forum: Regulation, Resolution & Reform in Mumbai, bringing together senior professionals from the banking, financial services, insolvency, restructuring, and legal ecosystem for a thoughtful exchange of perspectives.

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