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ARBITRATION NEWSLETTER APRIL,2026

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1.RELEVANCE AND OPERATION OF AN UNDISPUTED ARBITRATION CLAUSE CANNOT BE OUSTED BY MERE EXISTENCE OF A CLAUSE ENTITLING THE PARTIES TO FILE A SUIT FOR SPECIFIC PERFORMANCE: PUNJAB & HARYANA HIGH COURT [APRIL 06, 2026]

Introduction:

In the case of **M/S VCA Estate Private Limited v Baldev Raj & Ors. [1]**, the Hon'ble Punjab & Haryana High Court ("**Hon'ble Court**") ruled that when an agreement contains an arbitration clause which is undisputed, the mere existence of another clause entitling the parties to file a suit for specific performance cannot obliterate the effect of the arbitration clause.

Facts:

The Petitioner and Respondents entered into an agreement to sell land belonging to the Respondents ("**Agreement**"). The Petitioner paid the Respondents some earnest money. The Agreement contained an arbitration clause which provided that in the event of any disputes or differences arising out of the Agreement, the same would be referred to arbitration and the proceedings would be conducted by a sole arbitrator mutually appointed by the parties.

Owing to disputes between the parties, the Petitioner issued a notice invoking the arbitration clause and proposed the names of the arbitrators. The Respondents responded to the notice stating that they did not agree to the appointment of the arbitrator. Therefore, the Petitioner approached the Hon'ble Court under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") for appointment of a sole arbitrator to adjudicate the dispute.

The Respondents objected to the petition stating that in addition to the arbitration clause, the Agreement also provided for specific performance. The Respondents contended that the signatures on the agreement were obtained from the Respondents under undue influence and coercion and that the terms and conditions of the Agreement were unreasonable and were never agreed to by the Respondents. Regarding the earnest money paid to the Respondents, it was submitted that the same was not in dispute and the Respondents were ready and willing to refund the same to the Petitioner and therefore the petition was liable to be dismissed.

Issue:

Whether proceedings are maintainable under the Arbitration Act when an agreement also provides for the remedy of specific performance through a civil suit.

Held:

The Hon'ble Court held that the objections in relation to undue influence, coercion and the terms of the Agreement being unreasonable were unsustainable. The Hon'ble Court stated that it is settled law that at the stage of reference, the court only has to consider the *prima facie* existence of an arbitration clause and its invocation by issuance of a notice. It was noted that both the aforesaid conditions which are *sine qua non* exist in the present case and were not disputed by the Respondents. Further, it was held that at the reference stage, the court cannot hold a mini trial since the scope and subject matter of the same would lie with the arbitrator and not the reference court.

The Hon'ble Court further held that the Respondents' objection regarding the existence of another clause providing for filing of a suit for specific performance was not tenable. It ruled that when an agreement provides a specific clause for arbitration which remains undisputed, then the mere fact that some other clause provides entitlement to file a suit for specific performance cannot oust the relevance and operation of the arbitration clause. In view of there being no ambiguity regarding the arbitration clause, the Hon'ble Court opined that the mere existence of another clause would not mean that the effect of the arbitration clause gets obliterated. Therefore, the Hon'ble Court rejected the Respondents' objection and proceeded to appoint an arbitrator.

2.INTENT OF PARTIES TO INCORPORATE ARBITRATION CLAUSE HAS TO BE EXPLICITLY CLEAR; A MERE GENERAL 'REFERENCE' IS INSUFFICIENT: SUPREME COURT OF INDIA [APRIL 09, 2026]

Introduction:

In the case of **Maharashtra State Electricity Distribution Company Limited (Msedcl) & Ors. v R Z Malpani [2]** the Hon'ble Supreme Court held that contractual obligations cannot be foisted upon a party without a clear indication of its intent to enter into a binding concluded contract. It ruled that intent of the parties to incorporate the arbitration clause has to be explicitly clear and a mere general 'reference' to the tender conditions would not suffice.

Facts:

In the present case, Maharashtra State Electricity Distribution Company Limited ("**Appellant**") floated a Tender containing four different constituents, being (i) Instructions to Tenderers & Qualifying Criteria (ii) General Specifications (iii) Technical Specifications (iv) Special Conditions of Contract ("**Tender documents**"). The Tender documents also contained an agreement proforma.

RZ Malpani ("**Respondent**") participated in the tender process, submitted a bank guarantee and thereafter submitted a bid. Vide a Letter of Intent ("**LoI**"), the Appellant accepted the bid of the Respondent.

[1] 2026:PHHC:052700
[2] 2026 INSC 342

Thereafter, despite repeated requests by the Respondent for issuance of a Work Order in terms of the LoI, the same was never issued by the Appellant. Consequently, the Respondent issued a notice under Clause 23 of the Special Conditions of Contract ("**SCC**") in the Tender documents, seeking reference of the disputes to arbitration and seeking compensation. Subsequently, the Appellant cancelled the Tender and refunded the security deposit to the Respondent.

The Respondent again invoked the arbitration agreement contained in Clause 23 of the SCC. The Appellant replied to the Respondent's arbitration notice stating that the Tender documents along with LoI are not sufficient to form a valid contract or arbitration agreement. Finally, the Respondent filed an application under Section 11 of the Arbitration Act before the Hon'ble Bombay High Court and a sole arbitrator was appointed.

Aggrieved, the Appellant preferred an appeal before the Hon'ble Supreme Court of India.

Issue:

Whether, on a *prima facie* view, there exists an arbitration agreement between the parties.

Held:

The Hon'ble Supreme Court first set out the scope for its inquiry in the present case. Referring to its decisions in *Vidya Drolia & Ors. v. Durga Trading Corporation (2021) 2 SCC 1, NTPC Ltd. v. SPML Infra Ltd. (2023) 9 SCC 385* and *SBI General Insurance Co. Ltd. v. Krish Spg. (2024) 12 SCC 1,* the Hon'ble Supreme Court observed that the scope of examination at the stage of Section 11 proceedings is limited to finding a prima facie existence of arbitration agreement and nothing beyond it.

The Hon'ble Supreme Court considered the arbitration clause i.e., Clause 23 of the SCC. It noted that the 'Instructions to Tenderers' ("**ITT**") contained in the Tender documents at Clause 23 provided that the successful tenderer would have to execute an agreement with the Appellant in the Appellant's standard proforma. It further found that as per Clause 42 of the ITT, in case the work was cancelled before starting, for any reason after placement of work order, only the security deposit would be refunded and no other claim would be entertained. Further, Clause 39 of the ITT provided that the ITT formed part of the contract.

With respect to the arguments of the parties in the present case, the Hon'ble Supreme Court found that the Respondent's primary contention was that Clause 23 of the SCC was incorporated in the contract which was concluded by the LoI. It noted that the LoI referenced the Tender documents and provided that the terms and conditions of the contract as per the reference documents would be interpreted by reading together with them the terms of the LoI itself and in case of conflict, the terms of the LoI would prevail. The Hon'ble Supreme Court observed that it was admitted by the parties that neither any work order was issued to the Respondent nor any formal agreement was entered into. Therefore, the Hon'ble Supreme Court limited its finding and holding to whether any agreement to arbitrate had formed at the aforesaid stage in order to meet the requirement of Section 7 of the Arbitration Act.

The Hon'ble Supreme Court noted that under Section 7(1) of the Arbitration Act, there must be a defined 'legal relationship' between the parties and the agreement to arbitrate may or may not be contractual. It observed that conclusion of a contract may not be necessary for determining an agreement to arbitrate and what needs to be seen is whether the parties were *ad idem* in their intention to refer a dispute to arbitration as inferred from their communication. The Hon'ble Court however, pointed out that a distinction would arise when the arbitration agreement is contained in some document which is sought to be incorporated within another. In this respect, it considered Section 7(5) of the Arbitration Act which refers to the incorporation of an arbitration agreement contained in some document into a 'contract' which has to be in writing. Observing that in the present case, the Respondent's contention was that the LoI incorporated the arbitration agreement from the terms of the Tender documents, the Hon'ble Supreme Court examined both, the contractual nature of the LoI as well as the validity of incorporation.

Examining the record, the Hon'ble Supreme Court found that the Appellant vide its Reply had contended that there was no concluded contract between the parties and that the LoI was merely indicative of a party's intention to enter into a contract. Relying upon its decision in *State of Himachal Pradesh and Anr. v. OASYS Cybernatics Pvt. Ltd. 2025 SCC OnLine SC 2536,* the Hon'ble Court observed that a letter of intent does not, in and of itself, create a legal relationship or contractual obligations until there is a clear, unambiguous final acceptance by the parties. It is an expression of one party's intent to enter into a contract with the other party in the forthcoming future. Elaborating further, the Hon'ble Supreme Court ruled that when the intent of the parties can be evinced from the letter of intent or the tender specifications and it is clear that the former is to be followed by a final award or a concluded agreement, it cannot be said that the letter of intent itself binds the parties to the terms of the tender. It held that contractual obligations cannot be foisted upon a party without a clear indication of its intent to enter into a binding concluded contract. In view of the same, the Hon'ble Court clarified that it must be distinguished whether the intent of the parties is to make a 'promise' or a 'promise to make a promise'.

In the context of the facts of the present case and the aforementioned legal principles, the Hon'ble Court held that the LoI in the instant case was a promise to make a promise and not a promise itself and no agreement had

concluded between the parties.

The Hon'ble Court further noted that the LoI contemplated the issuance of a work order at a subsequent stage and had specified that the said LoI had been issued to enable the Respondent to start with the preliminaries. It further observed that neither the Tender documents nor the LoI provided that the sad LoI itself would result in a concluded contract. On the contrary, Clause 23 of the ITT specifically provided for an agreement to be entered into between the Appellant and the successful tenderer i.e., the Respondent in the present case. The Hon'ble Court observed that the intent behind the LoI was explicitly clarified as merely to ensure that preliminaries were complied with so that the work could begin upon issuance of a work order, however, no such work order was issued.

In light of the above facts and findings, the Hon'ble Supreme Court held that the LoI did not evince the commercial intention of the Appellant to create a binding legal relationship and as such, it could not be said that the LoI had the effect of creating a binding legal relationship between the parties.

Delving further into the existence of an arbitration agreement between the parties by virtue of a general reference to the Tender documents in the LoI, the Hon'ble Court noted that as per Section 7(5) of the Arbitration Act, a reference in contract to some other document containing an arbitration clause would constitute an arbitration agreement only if the said contract is in writing and the said reference makes that arbitration clause part of the contract. The Hon'ble Court observed that the present case was a case of 'reference' and not 'incorporation'. Noting that there was neither any mention of any arbitration or dispute resolution clause in the LoI itself nor any specific incorporation from the Tender documents, the Hon'ble Court held that the arbitration clause contained in the Tender documents could not be said to have been incorporated in the LoI. Thus, having found that the LoI did not constitute a concluded contract and that the LoI did not contain any specific incorporation of the arbitration clause in the Tender documents, the Hon'ble Supreme Court held that on a *prima facie* view of the matter, there was no arbitration agreement between the parties.

3.ARBITRATOR'S INELIGIBILITY CAN BE REMEDIED ONLY BY EXPRESS WAIVER AND NOT BY PARTIES' CONDUCT: DELHI HIGH COURT [APRIL 13, 2026]

Introduction:

In the case of **Titagarh Rail Systems Limited v Railway Board, Ministry of Railways, Government of India [3]**, a Division Bench of the Hon'ble Delhi High Court ("**Hon'ble Court**") held that a waiver of the applicability of Section 12(5) of the Arbitration Act must in writing, as required by the proviso thereto. It ruled that merely following the procedure envisaged by the contract would not result in waiver of the applicability of Section 12(5).

Facts:

The Indian Railway Board ("**Respondent**") contracted with Titagarh Rail Systems Limited ("**Appellant**") for the supply of a certain number of railway wagons. The Respondent short-closed the contract insofar as it related to the supply of the remaining wagons and forfeited the bank guarantee provided by the Appellant. Thus, disputes arose between the parties. The Indian Railways General Conditions of Contract for Manufacture and Supply ("**GCC**") governed the contract between the parties and envisaged settlement of disputes by arbitration. The arbitration clause in the GCC permitted the parties to waive the applicability of Section 12(5) of the Arbitration Act, in writing and in situations where the waiver was granted, the arbitral tribunal would consist of Railway Officers.

The Appellant wrote to the Respondent invoking the arbitration clause, proposing the name of a nominee arbitrator and stating that it was not waving the provisions of Section 12(5) of the Arbitration Act. As the Respondent did not respond, the Appellant filed a petition under Section 11(6) of the Arbitration Act before the Hon'ble Court and prayed for a sole arbitrator to be appointed. The Respondent submitted that the arbitration would be decided by the Fast Track Procedure envisaged in a Railway Board Circular and accordingly the petition under Section 11(6) of the Arbitration Act was disposed as withdrawn. The Appellant consented to conducting the arbitration through the Fast Track Procedure and the Responded recommended the names of four Railway Officers for the appointment of Sole Arbitrator. The Appellant shortlisted the names of 2 Railway Officers and the Respondent consented to appoint one of the Railway Officers as the sole arbitrator.

Arbitral proceedings commenced and culminated in an award whereby the arbitrator reinstated the contract. The award was challenged under Section 34 of the Arbitration Act, before the Ld. Single Judge of the Hon'ble Delhi High Court ("**Ld. Single Judge**") by both parties. The Appellant challenged the award to the extent that it did not grant interest on the amount awarded in its favour, granted extension of only $4^1/_2$ months for delivery of the remaining wagons and also did not direct refund of the security deposit paid by the Appellant with interest. The Respondent contended that the appointment was illegal in view of Section 12(5) of the Arbitration Act. The Ld. Single Judge noted that the Appellant, in its initial communication, specifically stated that it was not waiving Section 12(5) of the Arbitration Act. It was further observed that there was no written waiver either by the Appellant or by the Respondent

[3] 2026:DHC:3076-DB

regarding the applicability of Section 12(5). The Ld. Single Judge also did not find any substance in the Appellant's contention that the adoption of the Fast Track Procedure, constituted waiver of Section 12(5) as envisaged in the proviso thereto. The Ld. Single Judge placed extensive reliance on the Supreme Court Judgment in the case of *Bhadra International (India) (P) Ltd. v. Airport Authority of India 2026 SCC OnLine SC 7* and allowed the petition filed by the Respondent. Aggrieved by the decision of the Ld. Single Judge, the Appellant preferred appeals under Section 13 of the Commercial Courts Act, 2014 read with Section 37 of the Arbitration Act.

Issue:

Whether in the facts of the present case, the proviso to Section 12(5) of the Arbitration Act applies.

Held:

The Hon'ble Court observed that the Appellant did not contest the Ld. Single Judge's finding that in the present case, there was no written communication, much less a written agreement between the parties waiving the applicability of Section 12(5). It was held that following the procedure envisaged in a contract by itself cannot result in waiver. The Hon'ble Court ruled that there must be a waiver of applicability of Section 12(5) in writing as required by the proviso thereto read with the decision in the case of Bhadra International and only thereafter, if such an express waiver exists in writing would the procedure as envisaged in the contract apply. Such a situation could not be read in reverse.

The Hon'ble Court ruled that the procedure as laid down in the contract between the parties would apply only where there was a waiver of applicability of Section 12(5) of the Arbitration Act and if there was no waiver, the procedure itself would not apply. It was held that waiver of Section 12(5) cannot be implied by erroneously invoking the procedure which applies where to situations where Section 12(5) has already been waived. The Hon'ble Court further observed that the Appellant had failed to produce any communication revoking the earlier communication whereby the Appellant expressly stated that it was not waiving Section 12(5). It was observed that there was no communication whereby the Respondent waived the applicability of Section 12(5) of the Arbitration Act.

Thus, the Hon'ble Court dismissed the appeals and upheld the decision of the Single Judge.

4.ONCE THE SEAT OF ARBITRATION HAS BEEN AGREED UPON BY THE PARTIES, IT REMAINS IMMUTABLE UNLESS ALTERED BY EXPRESS AGREEMENT: SUPREME COURT OF INDIA [APRIL 15, 2026]

Introduction:

The Hon'ble Supreme Court of India in the case of **J&K Economic Reconstruction Agency v Rash Builders India Pvt. Ltd. [4]**, held that once the seat of arbitration is fixed, it remains immutable unless altered by an express agreement. It ruled that conducting proceedings or rendering award at a place other than the seat of arbitration, would not alter the juridical seat of arbitration.

Facts:

The Jammu and Kashmir Economic Reconstruction Agency ("**Appellant**") functions as a special purpose vehicle for execution of externally aided infrastructure projects. The Appellant entered into agreements with Rash Builders India Pvt. Ltd. ("**Respondent**") for execution of 4 infrastructure road projects in the State of Jammu & Kashmir. Disputes arose between the parties and the Respondent invoked the arbitration clause in the agreements. The Respondent filed 4 separate applications under Section 11 of the Jammu & Kashmir Arbitration and Conciliation Act, 1997 ("**said Act**") before the Hon'ble High Court of Jammu & Kashmir and Ladakh at Srinagar ("**Hon'ble High Court**") for appointment of a sole arbitrator for each project and the arbitrator was appointed.

With the consent of the parties, the arbitrator fixed Srinagar as the seat of arbitration and New Delhi as the venue, and the award was delivered at New Delhi. The Appellant filed a petition under Section 34 of the said Act before the Hon'ble High Court for setting aside the award in so far as it related to a particular project. The Respondent raised a preliminary objection regarding the territorial jurisdiction. The Hon'ble High Court returned the petition holding that since the arbitration proceedings were conducted in New Delhi and the award too was rendered in New Delhi, the courts at New Delhi alone had the jurisdiction to entertain the petition under Section 34 of the said Act. Aggrieved, the Appellant approached the Hon'ble Supreme Court.

Issue:

Whether despite an express designation of Srinagar as the seat of arbitration, the conduct of proceedings and rendering of the award at New Delhi would confer jurisdiction upon the courts at New Delhi.

Held:

Reviewing a catena of case laws pertaining to the principles governing the distinction between seat and venue and the jurisdictional consequences, the Hon'ble Supreme Court summarized the distinctions as follows:

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(i)The seat of arbitration constitutes the juridical home or legal place of arbitration. It determines the curial law governing the arbitral process and identifies the court having supervisory control over the arbitration.

(ii)Once the seat is designated by agreement of the parties, the courts of that place alone have exclusive jurisdiction to entertain all proceedings arising out of the arbitration including challenges to the award. The designation of the seat is akin to an exclusive jurisdiction clause.

(iii) The venue is merely the geographical location chosen for convenience of holding hearings, examination of witnesses or meetings of the arbitral tribunal. It does not confer jurisdiction and does not, by itself, alter or determine the seat. The arbitral tribunal is free to conduct proceedings at locations different from the seat without affecting the juridical seat.

(iv) Merely conducting proceedings or rendering the award at a particular place does not confer jurisdiction on courts of that place if it is different from the designated seat. The seat remains fixed unless expressly altered by agreement of the parties.

(v)Where the seat is not expressly designated, courts may determine it by applying:

a.The closest and most intimate connection test, identifying the place most closely connected with the arbitration; and

b.In appropriate cases, construing the venue as the seat where the agreement and surrounding circumstances indicate such intention.

(vi) The intention of the parties, as discerned from the arbitration agreement and surrounding circumstances is the paramount factor in determining the seat. Once such intention is expressed, it must be given full effect by the courts.

In the present case, the Hon'ble Supreme Court observed that the parties not only expressly agreed upon Srinagar as the seat of arbitration, but, even the surrounding circumstances reinforced this conclusion. It was noted that the contracts were executed in the State of Jammu & Kashmir and the works were to be carried out within the said State. The arbitration proceedings were initiated in the State of Jammu & Kashmir and the Hon'ble High Court appointed the arbitrator. The Hon'ble Supreme Court thus ruled that the aforestated factors as well as the 'closest and most intimate connection test' unmistakably anchors the arbitration at Srinagar.

The Hon'ble Supreme Court held that the seat of arbitration is governed by the agreement of the parties and not by any stray recital in the award.

It was ruled that once the seat of arbitration is fixed it remains immutable unless altered by an express agreement. The mere fact that the arbitral tribunal conducted the proceedings at New Delhi for convenience and rendered the award at that place does not and cannot alter the juridical seat of arbitration. It was observed that if the approach adopted by the Hon'ble High Court was upheld, the concept of juridical seat would be rendered otiose and would introduce uncertainty in arbitration proceedings by allowing the place of hearing or the place where the award is signed to determine jurisdiction. It was further opined that such a consequence would be contrary to the principles of party autonomy and legal certainty which underly the Arbitration Act.

Thus, the Hon'ble Supreme Court set aside the order of the Hon'ble High Court and restored the proceedings under Section 34 of the said Act.

5.CLAUSE MERELY INDICATING FUTURE POSSIBILITY OF REFERRING DISPUTES TO ARBITRATION CANNOT BE CONSIDERED A BINDING ARBITRATION AGREEMENT: SUPREME COURT OF INDIA [APRIL 17, 2026]

Introduction:

The Hon'ble Supreme Court in the case of **Nagreeka Indcon Products Pvt. Ltd. v Cargocare Logistics (India) Pvt. Ltd. [5]** held that when the purported arbitration clause only indicates the mere future possibility of referring disputes to arbitration, it cannot be said to be a binding arbitration agreement. It ruled that the words used in the agreement should disclose the parties' determination and obligation to go for arbitration.

Facts:

In the present case, Appellant received a contract for certain products from M/s. American Alupack Industries ("**AAI**"). For the purpose of transportation of the final product for its delivery in South Carolina, USA, the Appellant entered into a contract with the Respondent.

The total consignment was of six products, out of which four were already successfully delivered. Disputes arose between the parties in relation to the delivery of the fifth product. The Respondent contended that when the fifth product was delivered to AAI, AII failed to pay the requisite amount or, as per established practice, produced the original bill of lading at the time of delivery. Despite this, the Respondent handed over the goods resulting into financial loss to the Appellant since it did not receive payment for supply of the goods.

The bills of lading issued by the Respondent contained a dispute resolution mechanism captioned arbitration at Clause 25 which provided that "*any difference of opinion or dispute thereunder can be settled by arbitration in India or a place mutually agreed with each party appointing an arbitrator*" ("**Clause 25**").

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Owing to the dispute between the parties, the Appellant issued a notice of invocation of arbitration. The Respondent objected to the same on the ground that Clause 25 was not a mandate and merely an option to the parties to resolve disputes through arbitration. Consequently, the Appellant preferred an application before the Hon'ble Bombay High Court and the same was disposed holding that there was no arbitration agreement between the parties since Clause 25 did not make reference of disputes to arbitration mandatory.

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

Issue:

When the arbitration clause in the contract uses the word 'can', does it necessitate the reference of all disputes to arbitration or is recourse to other dispute resolution mechanisms, including that of the Civil Court, open for the parties.

Held:

Relying upon its judgement in *Cox & Kings Ltd. v. SAP India (P) Ltd. (2024) 4 SCC 1* wherein it was held that mutual consent to arbitrate is the *sine qua non* for arbitral proceedings, the Hon'ble Supreme Court observed that arbitration can only be the chosen method if both/all parties to the dispute agree on resolution of the dispute through arbitration.

The Hon'ble Court observed that the crux of the present dispute hinged on the interpretation of the word '*can*' in Clause 25 i.e., the arbitration clause. It noted that ordinarily, 'can' means capacity, capability or factual possibility. Basis the aforesaid meaning, the Hon'ble Court observed that its use in judicial interpretative context is limited and that most often the words '*may*' or '*shall*' are used. It further stated that while '*may*' denotes discretion but not compulsion to act, '*shall*' is the most appropriate word which signals a mandate or obligation. The Hon'ble Court further found that the sum and substance of the Appellant's case was that Clause 25 constituted a binding arbitration clause.

Looking into contractual principles, the Hon'ble Supreme Court held that the words chosen by the parties are the most reliable manifestation of the intent. It further stated that meaning of the words used in contract is not found in strict etymological propriety or popular usage of word(s) but is found in the subject, occasion or context in which they are used, within the contractual realm.

The Hon'ble Court relied upon its judgement in *Jagdish Chander v. Ramesh Chander 2007 (5) SCC 719* wherein it was held that words used in the agreement should disclose a determination and obligation to go for arbitration and not only provide for the possibility of going to arbitration. The Hon'ble Court noted that it was held in *Jagdish Chander* that when the word provides only a possibility, the same does not constitute a valid arbitration agreement. In this context, the Hon'ble Supreme Court examined the words used in Clause 25. It found that Clause 25 provided that if there was any dispute between the parties, they could settle the same by arbitration. In view of the same, the Hon'ble Court held that Clause 25 merely indicated the future possibility of referring disputes to arbitration and therefore, it could not be said to be a binding arbitration agreement. Accordingly, the appeal was declared bereft of merit.

6.REPRESENTATIVES HAVE THE RIGHT TO CHALLENGE AN AWARD ONLY UNDER SECTION 34 OF THE ARBITRATION ACT: SUPREME COURT OF INDIA [APRIL 20, 2026]

Introduction:

The Hon'ble Supreme Court, in the case of **V. K. John v S. Mukanchand Bothra and HUF (Died) Represented by LRs. & Ors. [6]**, held that the appropriate relief for a legal representative to challenge an award would be under Section 34 of the Arbitration Act and not under Article 227 of the Constitution / Section 115 of the Code of Civil Procedure, 1908 ("**CPC**"). It was ruled that the Arbitration Act is a complete code and that when an award is made enforceable against the legal representatives, the right to challenge the same also naturally flows to them.

Facts:

One Mr. Appu John and Mr. S. Mukanchand Bothra ("**Respondent No. 1**") entered into a Deed of Agreement for Sale in respect of a certain property ("**Agreement**"). The said Mr. Appu John passed away. Thereafter Respondent No. 1 initiated arbitration against Respondent No. 2 who was allegedly falsely shown as the legal representative of Mr. Appu John. Mr. V. K. John ("**Appellant**") claimed to be the nephew and sole surviving legal heir of Mr. Appu John.

An award was passed in favour of Respondent No. 1 and Respondent No. 2 was directed to execute the Sale Deed and an Execution Petition was also filed. The Appellant was informed about the arbitration proceedings much later and sought to be impleaded in the Execution Petition which was allowed by the Hon'ble Madras High Court ("**Hon'ble High Court**").

The Appellant also assailed the arbitral award before the Hon'ble High Court in a Civil Revision Petition under Article 227 of the Constitution / Section 115 of the CPC. However, the Hon'ble Court dismissed the Civil Revision Petition observing that since the Appellant claims to be a legal representative of Mr. Appu John, the appropriate relief would be under the Arbitration Act. The Hon'ble High Court opined that in view of the statutory remedy, the challenge under Article 227 of the Constitution could

[6] 2026 INSC 393

not be permitted. Aggrieved by the order of the Hon'ble High Court, dismissing the Civil Revision Petition, the Appellant approached the Hon'ble Supreme Court.

Issue:

Whether the appropriate remedy for legal heirs aggrieved by an arbitral award would be a petition under Section 34 of the Arbitration Act or a Petition under Article 227 of the Constitution / Section 115 of the CPC.

Held:

The Hon'ble Supreme Court noted that the Appellant stated that his uncle was unmarried and had no issues and that the arbitrator did not enquire as to whether Respondent No. 2 was the actual legal heir of Mr. Appu John. The Hon'ble Supreme Court also took note of Appellant's submission that since he had a substantial claim over the property in question, the award stood vitiated. The Hon'ble Supreme Court considered the submissions made by the parties and opined that the appropriate relief for a legal representative to challenge the award would be under Section 34 of the Arbitration Act and not under Article 227 of the Constitution / Section 115 of the CPC.

The Hon'ble Supreme Court held that the Arbitration Act is a complete code in itself and that the object of the same is to consolidate the laws pertaining to domestic arbitration, international arbitration and enforcement of foreign awards. On a perusal of the provisions of Section 34 of the Arbitration Act, it was noted that judicial interference beyond the scope and procedure enumerated under Section 34 must be exercised in '*exceptional rarity*'.

The Hon'ble Supreme Court further examined the definition of 'legal representative' under Section 2(1)(g) as well as the provisions of Section 40 of the Arbitration Act which provides that the arbitration agreement is not discharged by the death of a party thereto. It was noted that the scheme of the Arbitration Act did not envision that arbitration proceedings would cease with the death of a party. The Hon'ble Supreme Court opined that when the scheme of the Arbitration Act is geared towards continuity of arbitral proceedings, in the event of death of a party, the natural corollary is that upon the death of a party, 'legal representatives' would step into the shoes of the deceased party.

The Hon'ble Supreme Court reviewed case laws and noted that legal heirs were permitted to invoke arbitration agreements and that the arbitration clause continued to bind all concerned parties. It held that when an award is made enforceable against the legal representatives, the right to challenge the same naturally flows to the legal representatives. The Hon'ble Supreme Court held that denying a legal representative the right to challenge an award under Section 34 would defeat the object and purpose of the Arbitration Act which was a self-contained complete code. It was ruled that legal representatives cannot be left remediless under the statute on one hand and be made liable to fulfil the award on the other hand.

Thus, the Hon'ble Supreme Court upheld the judgment of the Hon'ble High Court.

7.DISPATCH OF SIGNED COPY OF THE AWARD TO THE LAST KNOWN ADDRESS OF THE APPLICANT IS SUFFICIENT TO ESTABLISH VALID SERVICE: BOMBAY HIGH COURT [APRIL 22, 2026]

Introduction:

The Hon'ble Bombay High Court ("Hon'ble Court") in the case of **Veeramaneni Venugopalrao an Anr. v Mahindra & Mahindra Ltd**.**[7]** has held that once the signed copy of the arbitral award is shown to have been dispatched to the last known address of the Applicants, the same is sufficient to raise the deeming fiction under Section 3(2) of the Arbitration Act and to draw an inference under Section 114 of the Indian Evidence Act, 1872 ("**Evidence Act**").

Facts:

In the present case, dispute between the parties arose out of the dealership agreement ("**Dealership Agreement**") executed between the Respondent and the Applicants. Clause 32.5 of the Dealership Agreement provided for arbitration. Further, Clause 28 provided that any notice or other information sent by facsimile transmission or e-mail or any other comparable means, with confirmation of transmission shall be deemed to have been duly given on the next business day after transmission. It was agreed between the parties that service and any legal proceedings arising out of the Dealership Agreement shall be effected by delivering the same at the respective Party's registered office, or to such other address as may from time to time be notified in writing by the concerned Party.

The Applicants were served with the invocation notice and the same mentioned the e-mail addresses of the Applicants. Further, the said notice was duly received as well. Subsequently, arbitral proceedings commenced, however, the Applicants though being aware of the same, chose not to participate. Thereafter, an arbitral award came to be passed.

Pursuant to the award, the Applicants filed an arbitration petition under Section 34 of the Arbitration Act challenging the arbitral award before the Hon'ble Court. Additionally, the Applicants filed the present Interim Application seeking an order that the aforesaid arbitration petition was not barred by limitation. The Applicants pleaded that neither communications for request for arbitration nor any other communications in respect of commencement of arbitration were received by the Applicants. It was further contended that only the invocation notice was received.

[7]2026:BHC-OS:10204

Issue:

Whether deemed service of the notice constitutes compliance of Section 31(5) of Arbitration Act.

Held:

The Hon'ble Court observed that the entire case of the Applicants to overcome the bar of limitation hinged on their contention that the signed copy of the arbitral award was not served upon the Applicants since the Applicants had shut their operations at the registered address.

The Hon'ble Court noted the deeming fiction under Section 3 of the Arbitration Act. It found that Section 3 of the Arbitration Act raises a presumption of receipt of written communication and specifies the conditions to be fulfilled for the deeming fiction to arise. The Hon'ble Court further noted that Section 31(5) of the Arbitration Act provides that after an arbitral award is made, a signed copy of the same is to be delivered to each party. The Hon'ble Court observed that if the deeming fiction under Section 3 is not applied to Section 31(5), it would lead to a situation where the parties through would avoid service of the Award and not let the limitation period to commence. It was observed that compliance of Section 31(5) can be accepted in case of deemed service upon satisfaction of specified conditions for raising deeming fiction under Section 3 of the Arbitration Act. However, the Hon'ble Court stated that a party claiming deemed service under Section 31(5) read with Section 3(1)(b) is required to establish beyond doubt that the Award was delivered to the addressee at the last known address.

The Hon'ble Court noted that the Respondent had placed on record the e-mails sent during the arbitration proceedings and the attempt to effect service of the procedural order upon the last known address as well as alternate address of the Applicants, however, all these attempts had been unsuccessful. It was further found that the Applicants, despite being aware about the commencement of arbitration proceedings, had failed to participate in the same and that the Applicants had never informed the Respondent about its changed address. The Hon'ble Court observed that by placing on record the proof of dispatch of the Arbitral Award at the last known address of the Applicants, the presumption under Section 114(f) of the Evidence Act gets attracted. According to Section 114(f), a Court may presume that the common course of business was followed in a particular case.

In view of the above and noting the conduct of the Applicants, the Hon'ble Court held that a party who, despite being aware of the arbitration proceedings, choses to remain passive and permits the arbitration to proceed and conclude, cannot be permitted after a period of 3 years, to raise a plea of non-receipt of Arbitral Award under Section 31(5) of Arbitration Act without bothering to inform the Arbitrator or the other party about the permanent closure of the operations and the changed address for purpose of service. It observed that the Arbitrator had duly dispatched the signed copy of the Arbitral Award at the last known address of the Applicants in accordance with the provisions of Section 31(5) which in terms of Section 3(2) was deemed to have been received by the Applicants on the day of attempted delivery. Therefore, the Hon'ble Court held that once the signed copy of the Award is shown to have been dispatched to the last known address of the Applicants, the same is sufficient to raise the deeming fiction under Section 3(2) of the Arbitration Act and to draw an inference under Section 114 of Evidence Act. The Hon'ble Court observed that compliance of Section 31(5) of the Arbitration Act sets the law of limitation in motion and parties cannot be allowed to evade receiving signed copy of the Award by deliberately avoiding intimation of the changed address and then claim non-compliance of Section 31(5).

In light of the above holding, the Hon'ble Court held that since there was compliance of Section 31(5) of Arbitration Act in the present case, the limitation would commence from the date of attempted delivery of the Arbitral Award and therefore, the Arbitration Petition sought to be filed by the Respondent was barred by limitation. Accordingly, both, the Interim Application and Arbitration Petition were dismissed.

ANM ThinkPod

Ms. Anushree Rauta, Equity Partner and Head – Media, Entertainment & Gaming Practice at ANM Global, has been recognised amongst the Asian Legal Business Super 50 TMT Lawyers 2026.

ANM Global announces the elevation of Shikha Ginodia to Equity Partner, marking a significant milestone in the firm's continued growth and leadership strengthening.

FIRM HIGHLIGHTS

ANM Global is pleased to have represented Balaji Telefilms Limited, successfully advising on production deals, locking the lead artist agreements, and assisting in closing all revenue deals for the film.

ANM Global hosted “IP at an Inflection Point” — the International Trademark Association (INTA) Pre-Annual Meeting Reception 2026, bringing together key stakeholders from across the IP ecosystem for insightful discussions and meaningful exchange.

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