

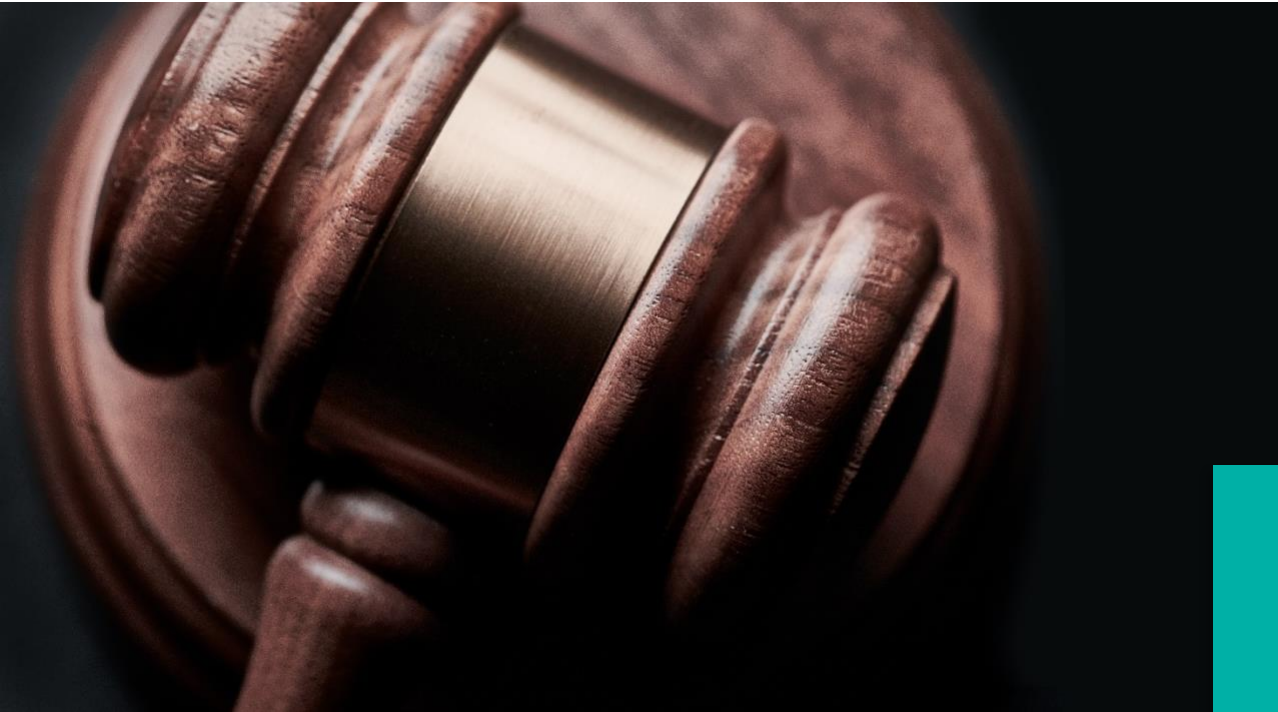


Dispute Resolution & Arbitration

Monthly Update
April 2023

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DISPUTE RESOLUTION AND ARBITRATION UPDATE



Contributors

Faranaaz Karbhari
Counsel

Kshitiz Khera
Associate Partner

Rahul Jain
Associate Counsel

Khushboo Rupani
Principal Associate

Mahafrin Mehta
Principal Associate

Akriti Shikha
Senior Associate

Mantras Green Resources Ltd & Ors v. Canara Bank

High Court of Bombay | Commercial Arbitration Application (L) No. 12570 of 2021

Background facts

- Mantras Green Resources Ltd (**Applicant**), a company engaged in eco-friendly solutions for conservation of environment, executed a common hypothecation agreement (**Agreement**) with Canara Bank (**Respondent**) on December 19, 2017, wherein it was agreed that any dispute arising in connection with the Agreement would be referred to an Arbitrator or if there is no agreement reached, then to be referred to a panel of three Arbitrators, one appointed by each party and third selected by the two Arbitrators.
- The Applicant availed facility from the Respondent amounting approximately INR 8.5 crore out of the total sanctioned facility of INR 20 crore. However, on account of numerous breaches committed by the Respondent, the Applicant suffered a loss amounting to INR 14,20,51,051.
- Therefore, the Applicant invoked arbitration vide its notice dated April 9, 2021 wherein it demanded arbitration by clearly setting out the dispute and claimed that the sum of INR 14,20,51,051 with further interest at the rate of 12% payable to it. The Respondent received the said notice on April 15, 2021 but it did not accord any consent to the proposed name of the Arbitrator. Instead, the Respondent forwarded a reply on May 5, 2021 accusing the Applicant of raising sham defenses and raising untenable contentions.
- In view of the above, the Applicant filed an Application under the Arbitration and Conciliation Act, 1996 before the High Court of Bombay (HC), seeking appointment of a Sole Arbitrator in terms of the clause contained in the Agreement.

Issue at hand?

- Whether a dispute raised by a borrower which is ongoing before the Debt Recovery Tribunal can be parallelly instituted before the Civil Court?

Decision of the Court

- Upon hearing the contentions of both the parties, the HC noted that it is the case of the Applicant, who is a borrower, that arbitration is the appropriate remedy to settle the disputes that have arisen with the Respondent under the Agreement, whereas the Respondent is

opposing the invocation of arbitration on the ground that the dispute is non-arbitrable since the Debt Recovery Tribunal (DRT), being a special forum created under the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act), is adjudicating the dispute, and hence, the initiation of arbitration proceedings is not maintainable.

- The HC then analyzed the provisions under the RDB Act, particularly pertaining to the powers of DRT and noted that Section 17 of the RDB Act bars the jurisdiction of any Court or authority in relation to the matter to be determined by the DRT. The HC placed reliance upon the decision in ***Bank of Rajasthan Ltd v. VCK Shares & Stock Broking Services Ltd***¹, wherein the Supreme Court analyzed Section 17 and 18 of the RDB Act and held that Section 17 of the RDB Act bars the jurisdiction of the Civil Court only in respect of applications filed by the bank or financial institution, and not by the borrower. Accordingly, the HC held that there is no provision in the RDB Act by which the remedy of a civil suit by the defendant in a claim by the bank is ousted and the jurisdiction of Civil Court to try a suit filed by the borrower against the bank or financial institution is not ousted, despite the fact that the bank or financial institution has approached the DRT for recovery of its debt.
- While dealing with the issue of whether a suit filed by the borrower against a bank or financial institution is liable to be transferred and tried along with an application before the DRT, the HC clarified that the proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the Civil Court. The Court stated that the borrower has both the options i.e., to file a civil suit or a counterclaim in the said proceedings before the DRT, as he deems to be expedient.
- The HC further held that the Civil Court is duty bound under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the matter to arbitration in the presence of an arbitration agreement between the parties. In light of this, the HC appointed an Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996 considering the arbitration clause in the Agreement.

HSA Viewpoint

This judgment highlights the issue relating to the jurisdiction of Civil Courts and the DRT proceedings. The HC noted that the DRT deals with applications instituted by banks and financial institutions and not by the borrowers. While passing the judgment, the HC has largely relied upon the Supreme Court's decision in *VCK Shares* (supra) and emphasized that the DRT being a statutory quasi-judicial body will not have the jurisdiction to entertain suits involving inquiries beyond the contours of the powers of the DRT under the RDB Act. This judgment is surely a welcome development as it clarifies the position that an independent suit pending before a Civil Court cannot be transferred to a DRT.

Iron International Ltd v. Pioneer Fabricators Pvt Ltd

High Court of Delhi | FAO (Comm) 200/2022, CM Appl. 53724/2022 & CM Appl. 53724/2022;
2023 SCC OnLine Del 1811

Background facts

- The Appellant has challenged the order passed by District Judge (Commercial Court), Shahdara, Karkardooma Delhi, rejecting the petition filed by the Appellant under Section 19 of the Micro, Small, and Medium Enterprises Development Act, 2006 (**MSMED Act**) read with Section 34 of the Arbitration and Conciliation Act, 1996 (**Act**).
- The Appellant issued Purchase Order dated September 25, 2013 to the Respondent for supply, erection, testing & commissioning of 02 nos. 20 MT Mounded Underground LPG Storage Bullet & Pipeline for a rail coach factory at Rae Bareilly (U.P).
- The subject work was completed by July 21, 2015. The Respondent had also issued a 'No Claim Certificate' dated November 05, 2015, for INR 1,12,95,207, which was the agreed amount towards full and final payment between the parties.
- The Respondent had applied for the registration under Section 8 of the MSMED Act and on July 25, 2016 got registered under the provisions of the MSMED Act.
- The Respondent sent a legal notice dated February 02, 2017 to the Appellant wherein it admitted of having issued a 'No Claim Certificate' after having agreed on INR 1,12,95,207 being the full and final payment, while claiming having received only an amount of INR 1,01,81,349. The amount of INR 11,13,858 was withheld by the Appellant subject to the Respondent submitting proof of actual tax paid by it under Clause 5.2 of the Conditions of Contract (entered between the parties).
- Being aggrieved for non-payment of amount of INR 11,13,858, the Respondent lodged its claim with Micro and Small Enterprises Facilitation Council on December 11, 2018. Specifically, it had raised a claim of INR 36,49,707 towards deduction qua liquidated damages and INR 33,53,694.15 towards interest payable thereon.
- Conciliatory process had failed and thus the matter was further referred to arbitration in September, 2019 wherein the Appellant was directed to pay an amount of INR 63,35,077 to the Respondent vide Award dated January 09, 2022.
- The Award was challenged by the Appellant under Section 19 of the MSMED Act read with Section 34 of the Act before the District Judge, Commercial Court, Shahdara, Karkardooma, Delhi

¹ Civil Appeal Nos. 8972-8973/14

which was dismissed vide Order dated November 29, 2022 on the ground of lack of territorial jurisdiction to entertain the petition.

- Hence, the instant FAO.
- **Submissions of the Appellant:**
 - The District Court had accepted the fact that the MSMED Act has an overriding effect over the Act. However, on the issue of the jurisdiction, it had given primacy to the concept of ‘seat of arbitration’ over the mandate of Section 19 of the MSMED Act.
 - Section 19 of the MSMED Act allows filing of objection before ‘any Court’ having the jurisdiction, which includes both territorial and pecuniary jurisdiction. The District Court misinterpreted the provision when it held that Section 19 of the MSMED Act does not grant territorial jurisdiction. The words ‘any Court’ inserted by the Legislature under Section 19 of the MSMED Act, is not merely a surplusage. While referring to the judgment of the Supreme Court of India in **Gujarat State Civil Supplies Corporation Ltd v. Mahakali Foods Pvt Ltd (Unit 2)**², the Appellant submitted that efforts should be made by the Courts to give effect to each and every word used by the legislature whilst interpreting a statute. Reliance was further placed on the judgment of the Constitutional Bench of the Apex Court in the case of **Nath Devi v. Radha Devi Gupta**³.
 - If the District Court had no jurisdiction to entertain the subject petition, then as a corollary it could not have exercised its jurisdiction to direct the release of the pre-deposit to the respondent.
 - The MSMED Act contemplates a statutory arbitration as compared to the Act in as much as the former Act, being a special statute, overrides the provisions of the Act, which is only a general act.
 - The MSMED Act is inconsistent with the Act and distinction had also been drawn between the provisions of the MSMED Act and the Act, to highlight the inconsistencies.
- **Submissions of the First Respondent:**
 - The agreement that was executed between the parties did not have any arbitration clause.
 - The seat of arbitration was at Kanpur since the Respondent was a resident of Kanpur and the Award was rendered by the Facilitation Council at Kanpur. So, as a corollary, the challenge to the Award should be filed before the Court in Kanpur.
 - That the District Judge was right for directing the Appellant herein to release the pre-deposit amount in favour of the Respondent, on the ground that the District Judge did not have the territorial jurisdiction to entertain the challenge filed against the Award passed by the Facilitation Council at Kanpur.

Issue at hand?

- Whether Courts in Delhi shall have the territorial jurisdiction to entertain the challenge against the Award passed by the Arbitrator at Kanpur, Uttar Pradesh?

Decision of the Court

- Once the Arbitral Award is pronounced, and there is an exclusionary clause of jurisdiction agreed between the parties thereby agreeing upon the jurisdiction of only one Court in exclusion of others, the challenge initiated by the aggrieved party under the Act, even against an Award passed by the Facilitation Council under the MSMED Act will lie only before the Court upon which the parties have agreed to place exclusive jurisdiction.
- Similar is the conclusion of the Division Bench of this Court in the case of **Indian Oil Corporation Ltd v. FEPL Engineering (P) Ltd**⁴, to the effect that arbitration proceedings undertaken before the Facilitation Council under Section 18 of the MSMED Act are undertaken at the ‘venue’ where the Facilitation Council is located.
- The place of the arbitration continues to be the place over which the Court has exclusive jurisdiction, as agreed between the parties.
- By operation of the provisions of the MSMED Act, only the procedure of constitution of the Arbitral Tribunal is obliterated in terms of the law laid down by the Supreme Court in the case of **Gujarat State Civil Supplies Corporation Ltd v. Mahakali Foods Pvt Ltd (Unit 2)** (*supra*). The same does not eclipse the agreement between the parties of foisting exclusive jurisdiction on a particular Court.

HSA Viewpoint

The Delhi High Court reaffirmed the settled legal position of the overriding effect of the provisions of the MSMED Act over the Act, while also distinctly bringing out the legal position of the jurisdiction of Courts for challenge to arbitral awards passed under the regime of the MSMED Act to be vested with the seat of arbitration and exclusion jurisdiction clause as per the agreement between the parties, the settled legal position as laid down under the Act.

² 2022 SCC OnLine SC 1492

³ (2005) 2 SCC 271

⁴ 2019 SCC OnLine Del 8007

- The judgments cited by the District Judge and the counsel for the Respondent also hold that the seat designated by the parties in an agreement shall determine the territorial jurisdiction of Courts to entertain a challenge to the Award, which is consistent with our holding in the preceding paragraphs, except that in this case, the proceedings held at Kanpur, where the facilitation council is situated, have been deemed a 'venue' which is distinct from the 'seat' that is Delhi, given that the parties have agreed to the jurisdiction of Courts in Delhi, which includes a challenge to the Award.
- Appeal allowed with the Appellant's objections filed as OMP (COMM) 01/2022 to be reinstated on the file of the District Judge (Commercial Court), Shahdara, Delhi, for consideration on merits in accordance with the law.

Goyal MG Gases Pvt Ltd v. Panama Infrastructure Developers Pvt Ltd

High Court of Delhi | 2023 SCC OnLine Del 1894

Background facts

- The appeal, filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (**A&C Act**), and Section 13 of the Commercial Courts Act, 2015 (**Act**), seeks to challenge the order passed by the Single Judge in OMP (Comm) 235/2019 dated July 05, 2019. The Respondents, who were the owners of 11 windmill assets, entered into five separate sale agreements dated September 02, 2016 with the Appellant, selling these projects as ongoing businesses/units for INR 19.62 crore. The Appellant paid INR 1.96 crore as advance, subject to conditions such as site inspection and receipt of all necessary documentation within 30 days.
- The Respondents, however, failed to provide the complete set of required documents and a No Objection Certificate from the Operations and Maintenance Contractor and unilaterally terminating the Agreement to Sell in violation of Clause 9. The Appellant filed petitions under Section 9 of Act, following which the Court directed the Respondents to maintain status quo in terms of the five Agreements to Sell. Subsequently, the Court appointed a former judge as Sole Arbitrator under Section 11 of the A&C Act, who passed an order providing interim relief under Section 17 of Act. The Respondents filed a statement of defense on September 14, 2019, disclosing details of the alleged sale of 11 windmill projects vide Agreement to Sell dated July 19, 2017, for total consideration of INR 7 crore. The Appellant filed a fresh application under Section 17 of Act seeking interim relief in the form of direction against the Respondents to deposit the sale consideration receipt from the alleged sale of 11 windmills, but the same was dismissed.
- On April 29, 2019, the Appellant filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (**CPC**) for impleadment of the subsequent transferees in the arbitration proceedings, but the same was dismissed by the learned Sole Arbitrator vide order dated May 14, 2019, stating that these parties were neither necessary nor proper parties. An appeal was then filed under Section 34 of Act, challenging the order dated May 14, 2019 on the grounds that the Arbitral Tribunal passed the interim award against public policy, and the respondents had disclosed about the alleged Sale Agreements to the subsequent buyers only on September 14, 2018.
- **Submissions of the Appellant:**
 - The Appellant argued that the Arbitrator has exceeded his jurisdiction by deciding an issue of the Respondent's capacity to execute the sale deed that was not referred to him for arbitration.
 - The Appellant also contended that the third-party purchaser of the disputed property, who is not a signatory to the agreement, should have been impleaded as a party to the arbitration proceedings. Reliance was placed on the decision of the Supreme Court of India in *Chrolo Controls India Pvt Ltd v. Severn Trent Water Purification Inc*⁵, wherein it was held that parties who are not signatories can be joined in arbitration proceedings.
 - Reliance was further placed on the decision of the Supreme Court of India in *Kasturi v. Iyyamperumal*⁶, *Cheran Properties Ltd v. Kasturi & Sons Ltd*⁷, and the decision of the Delhi High Court in the matter of *Nirmala Jain v. Jasbir Singh*⁸ to argue that a non-signatory subsequent purchaser can be impleaded in arbitral proceedings. The necessary parties in a suit for specific performance of a contract for sale are the parties to the

⁵ (2013) 1 SCC 641

⁶ (2005) 6 SCC 733

⁷ (2018) 16 SCC 413,

⁸ (2019) 256 DLT 186 [DB]

contract, their legal representatives if they are dead, and a person who had purchased the contracted property from the vendor.

▪ **Submissions of the Respondent:**

- It is only the parties to the agreement who are bound by the arbitral proceedings, and no third party can be impleaded. A third-party purchaser of the disputed property, who is not a signatory to the agreement, cannot be impleaded as a party to the arbitration proceedings.
- The Arbitrator did not exceed his jurisdiction by deciding the issue of the Respondent's capacity to execute the sale deed, which was a part of the reference and the Appellant had raised the same before the Arbitrator.
- The Respondents referred to the decision in *Chrolo Controls India Pvt Ltd v. Severn Trent Water Purification Inc (supra)* and submitted that a third party can be joined in arbitration proceedings only if they can establish that they are claiming 'through' or 'under' the signatory party as contemplated under Section 45 of the A&C Act. The Respondents contended that the third-party purchaser of the disputed property has no such claim and therefore cannot be impleaded as a party to the arbitration proceedings.

Issues at hand?

- Whether the alleged subsequent buyer who is not signatory to the arbitration agreement can be impleaded in the arbitral proceedings?
- Whether an application rejecting a prayer for impleadment can constitute an interim award?
- Whether an order dismissing application under Order 1 Rule 10 CPC can be taken as an interim award?

Decision of the Court

- Reliance was placed on the judgment of the Co-ordinate Bench decision of the Delhi High Court in the matter of ***National Highway Authority of India v. Lucknow Sitapur Expressway Ltd***⁹ wherein it was held that an order can be considered as an award only when it decides a substantive dispute that exists between the parties. It is important for an order to meet the attributes of the decision on the merits of the dispute, which pertains to the core issue. The order must qualify as an award with respect to an issue that constitutes a vital aspect of the dispute.
- Reference was made to the judgment of the Delhi High Court in the matter of ***Rhiti Sports v. Powerplay Sports***¹⁰ wherein it was held that an order passed by the Arbitrator would have the attributes of an interim award when it decides the 'matters of moment' or disposes of a substantive claim raised by the parties.
- The impugned order did not decide the substantive question of law or touch upon the merits of the case. Therefore, it has not answered the attributes of determination of an issue.
- The Sole Arbitrator rightly observed that the subsequent transferees are neither the necessary parties nor proper parties for disposal of the claims, and arbitral proceedings can proceed between the Appellant and the Respondents. If the decree is passed in favour of the Appellant, in that eventuality, subsequent sale agreements shall become null and void.
- There being no illegality in the impugned order to call for interference by the Court, the present appeal stands dismissed.

Agra Development Authority Agra v. Baba Construction Pvt Ltd

Allahabad High Court | First Appeal from Order No. 1033 of 2021, 1867 of 2021, 1868 of 2021, and 1869 of 2021

Background facts

- Agra Development Authority (**Appellant**) issued a tender for construction of a 52-storey deluxe type flats in Phase II, Taj Nagar, Agra (**Project**). After opening of bid, the bid of Baba Construction Pvt Ltd (**Respondent**) was found the most suitable and was accepted on May 15, 2008, after which an agreement was executed between them (**Agreement**). It is pertinent to note that said Agreement contained an arbitration clause stating that any dispute in respect to the said project shall be referred to an Arbitrator.

HSA
Viewpoint

The Delhi High Court reaffirmed the settled legal position and applicable conditions on impleadment of third parties to an arbitration proceeding while also bringing out the ingredients of an interim award vis-à-vis order on such impleadment for the purpose of challenge before the Court.

⁹ OMP (Comm) 477/2022

¹⁰ 2018 SCC OnLine Del 8678

- The project was extended beyond the completion date and the Respondent alleged that the work could not be completed on time solely due to the delays on part of the Appellant. It was further alleged that the Appellant was responsible to make payments of service tax as per the Agreement. In furtherance thereof, on March 18, 2010, the Respondent raised a bill and asked the Appellant to pay the service tax. Since the said service tax was not paid, a dispute arose between the parties.
- In view of the same, vide an Order dated December 23, 2010, the Vice Chairman of the Appellant appointed Shri Sudhanshu Saroha as an Arbitrator, which was intimated to the Arbitrator by a letter dated January 13, 2011.
- Thereafter, the Arbitrator entered into reference and vide letter dated January 23, 2011 called upon the parties to file their Statement of Claim and Defence, etc. On March 23, 2011, the Respondent filed its Statement of Claim.
- On June 10, 2011, the Appellant raised preliminary objection i.e., the Arbitrator was appointed solely for dealing with service tax related matters and not for any other dispute. Thereafter, a hearing was held for arguments on the above preliminary objection and the Respondents application under Section 17 of the Arbitration and Conciliation Act (**Act**). In respect of the same, the Arbitrator passed an Order dated August 20, 2011, thereby rejecting the application of the Respondent filed under Section 17 of the Act and the preliminary objection was ordered to be disposed of after submission of the Appellants' Written Submissions and evidence of both the parties.
- Despite various chances as well as the said Order dated August 20, 2011, the Appellant chose not to file its Written Statement. The Respondent opposed aforesaid preliminary objection about the change in the scope of arbitration once the arbitration had commenced.
- Ultimately, the Arbitrator passed an award dated January 5, 2012 (**Award**) holding that the preliminary objections raised by Appellant are not sustainable and awarding certain claims of the Respondent, in addition to directing the Appellant to pay an amount of INR 1,38,78,735 along with 10% simple interest on the said amount. Further, the Arbitrator also directed the Appellants to make a payment of INR 50,000 to the Respondent, towards the cost of arbitration borne by the Respondent.
- Aggrieved by the said Award, the Appellant preferred a petition under Section 34 of the Act before the Commercial Court, Agra. Vide its judgment dated April 2, 2021, the Commercial Court dismissed the said petition under Section 34 of the Act.
- Aggrieved by the Order of the Commercial Court, the Appellant preferred the instant appeal under Section 13(1-A) of the Commercial Courts Act, 2015.

Issues at hand?

- Whether the Arbitrator acted beyond his jurisdiction by deciding other issues apart from issues relating to service tax?
- Whether reasonable opportunity was given to the Appellant to present his case and whether the Arbitrator erred in passing the ex-parte order?
- Whether the Arbitrator was justified in not assigning any reason for arriving at its finding in the Award and whether the interest awarded by the Arbitrator was excessive?

Decision of the Court

- At the outset, the Court held that Appellant's argument that the Arbitrator was appointed solely to adjudicate issue of service tax cannot be sustained, as the letters dated December 23, 2010 and January 13, 2011 did not mention that the appointment was limited only to the issue of service tax. The Court further held that the arbitration clause in the Agreement provided that any dispute can be raised to the Arbitrator, in respect whereof the Respondent had raised various disputes vide various letters even prior to the appointment of the Arbitrator and hence the Arbitrator was correct in deciding on the same.
- The Court observed that several opportunities were given to the Appellant to present his case and file the Written Statement, however it failed to do so. Hence, it was held that the ex-parte award was justified.
- Furthermore, it was noted that since the award was a speaking award wherein each claim had been considered separately, hence the argument of the Appellant that no reason was given as to how the award has been arrived at is not maintainable. The Court also held that the simple interest of 10% per annum awarded by the Arbitrator is not excessive.
- The Court placed reliance on the judgment in the case of *McDermott International Inc*¹¹ where it was held that claim for damages which has been made prior to invocation of arbitration,

¹¹ (2006) 11 SCC 181

becomes a dispute within the meaning of the provision of the Act. Further the Court also relied on the judgement case of Dharma Pratihthanam¹² where it was held that it is open to the parties to enlarge the scope of reference by inclusion of fresh disputes that must be held to have done so when they filed the statements putting forward claims not covered by the original reference.

- The Court also relied on the judgement of the Supreme Court in the case of **State of Goa v. Praveen Enterprises**¹³ whereby the Court held that where the arbitration agreement provides for referring all disputes between the parties, the Arbitrator will have jurisdiction to entertain any claim, including counterclaims, even though it was not raised at a stage earlier to the stage of pleading before the Arbitrator.
- Relying on the said Judgements the Court held that the Arbitrator's authority cannot be restricted to deciding only one dispute if all disputes arising out of the contract are within the ambit of the arbitration clause.
- Further the Court relied on various judgments passed in the matters of **Punjab State Civil Supplies Corporation Ltd**¹⁴, **JG Engineers Pvt Ltd v. Union of India**¹⁵, **ONGC Ltd v. Saw Pipes Ltd**¹⁶, **MTNL v. Fajutshu India Pvt Ltd**¹⁷ where it was held that the scope of interference in appeal under Section 34 of the Act is limited. The Court held that interference is possible only where the finding of the tribunal is either contrary to the terms of the contract between the parties or ex facie perverse, such that interference by the Court would be absolutely necessary.
- In view of the above, the Court held that the appeal filed under Section 34 of the Act was rightly dismissed. Finally, the Court held that scope of interference under Section 37 of the Act is very narrow, and the present case is not a case which calls for an interference. As such, the instant appeals were held to be devoid of merit and were accordingly dismissed.

HSA

Viewpoint

The judgment of the Court clarifies that once an Arbitrator is appointed, the scope of arbitration or purpose for which an Arbitrator is appointed cannot be changed. The significance of the judgment is that it further makes it clear that the scope of appeal under Section 37 of the Act is very narrow and limited and that the Court cannot entertain an appeal merely because it is of the view that an award of the Arbitrator is erroneous. This judgment removes all ambiguities and makes it clear that if arbitration clause covers various disputes, then the jurisdiction cannot be limited to a particular dispute.

Shiva Kumar v. State of Karnataka

Supreme Court of India | Criminal Appeal No. 942 of 2023

Background facts

- Shiv Kumar (**Appellant/Accused**) was working as a driver for a reputed and prominent company, having its office at Electronic City, Bengaluru. The company used to provide cars/conveyance facility to its employees due to the long working hours.
- The Victim (**Deceased Woman**) was an employee working with the said company. On the fateful day the Victim left office at 2:00 a.m. in the car provided by the company.
- The Victim usually rode in a car that travelled on route 131. However, on the said day the Appellant informed the Victim that there is no vehicle available that travelled on route 131, and hence she would have to travel in his vehicle that travelled on route 405 to reach home.
- However, since the Victim didn't reach home the said day, her maternal uncle logged a missing complaint. Ultimately, the dead body of the Victim was recovered by the police on the instance of the Appellant.
- A case was filed against the Appellant, where the Prosecution successfully established the charge of the offence of rape, punishable under Section 376 of the IPC as well as the offence under Section 366 and Section 302 of Indian Penal Code, 1860 (IPC) against the Appellant.
- In view of the same, the Sessions Judge (**Fast-Track Court**) sentenced the Appellant to undergo rigorous imprisonment for the rest of his life.
- Being aggrieved by the said Order, the Appellant preferred an appeal before the High Court of Karnataka challenging the conviction and the sentence. Similarly, the State Government also preferred an appeal for enhancement of the sentence pronounced by the Sessions Judge.
- The High Court of Karnataka vide the Impugned Order dismissed both the appeals. In view of the same and being aggrieved by the said order, the Appellant filed the present appeal at Supreme Court of India.

Issue at hand?

- Whether Constitutional Courts can impose life sentence for fixed term without remission even in cases where death penalty was not imposed?

¹² (2005) 9 SCC 686

¹³ (2012) 12 SCC 581

¹⁴ SC Civil Appeal No. 6832 of 2021

¹⁵ (2011) 5 SCC 758

¹⁶ (2003) 5 SCC 750

¹⁷ 2015 (2) ARBLR 332 (Delhi)

Decision of the Court

- At the outset, the Supreme Court held that Section 53 of IPC provides for five categories of punishments i.e. the death penalty, imprisonment for life, imprisonment (either rigorous or simple), forfeiture of property, and fine. It further stated that it is a well settled position of law that when an offender is sentenced to undergo life imprisonment, the incarceration may continue until the end of the accused's life. However, the same is subject to the grant of remission under the Code of Criminal Procedure, 1973 (CrPC).
- The Court further held that the Appellant's Counsel's reliance on judgements in the cases of *Swamy Shraddananda v. State of Karnataka*¹⁸ and *Union of India v. Sriharan & Ors*¹⁹ cannot be construed in a narrow perspective. Though the judgement in the case of Union of India v. Sriharan & Ors states that 'modified sentence for a fixed term without remission can be awarded by the Constitutional Courts as an alternative to death penalty', the same does not mean that a modified sentence can be imposed only in lieu of a death penalty. In view of the same, the Court held that even in a case where death penalty/capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence shall be of a fixed period.
- The Court further held that when a Constitutional Court finds that though a case is not falling in the category of 'rarest of the rare' case, considering the gravity and nature of the offence and all other relevant factors, it can always impose a fixed-term sentence so that the benefit of statutory remission, etc. is not available to the accused.
- The Supreme Court finally held that though the Court has a duty to take into account all relevant circumstances, while considering the prospect of the accused being reformed, the Court must keep in mind that granting the accused undue mercy in such a cruel case will undermine public confidence in the effectiveness of the legal system. In view of the same, the Supreme Court modified the sentence and held that the Appellant shall undergo imprisonment for life and further stated that Appellant shall be released only after he completes thirty years of actual sentence.

HSA Viewpoint

The judgment of the Supreme Court clarifies that Constitutional Courts can impose life sentence for fixed term without remission. The judgment makes it clear that even in cases where death penalty/capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence shall be of a fixed period.

Omanand Industries v. Secretary to the Government of India

High Court of Bombay | 2023 SCC OnLine Bom 748

Background facts

- The writ petition challenged the award dated September 06, 2013 passed by the Arbitrator under Section 3-G (5) of the National Highways Act, 1956 (**NH Act**) in Arbitration Case No. 62/2012 and seeks its modification.
- The petitioners claimed to be owners of certain land claimed to have been put to non-agricultural use. Disputes arose in respect of compensation for land acquisition as per notification dated June 21, 2010 issued under Section 3A(1) of the NH Act pursuant to which land was acquired for the purpose of widening of the National Highway No. 7 (Kamptee-Kanhan bye-pass).
- Arbitration was invoked wherein the petitioners claimed a total compensation of INR 82,58,23,020 while the Arbitrator vide Arbitral Award dated December 23, 2011 granted a total compensation of INR 1,09,00,000 to the Petitioners.
- Being aggrieved by the Arbitral Award, the Petitioners approached the Arbitrator/Respondent No. 4 under Section 3-G(5) of the NH Act for enhancement of compensation.
- The learned Arbitrator vide his award dated September 06, 2013 (**Award**) partly allowed the claim of the Petitioners for enhancement of the compensation to INR 13,26,37,382 which was challenged by the Respondent under Section 34 of the Arbitration and Conciliation Act, 1996 (Act) and was allowed vide order dated August 28, 2015 passed by the Principal District Judge by setting aside the Award and restoring the Arbitral Award dated December 23, 2011 passed by the Land Acquisition Officer. The said order was set aside by the Bombay High Court in appeal under Section 37 of Act and restored the Award passed by the Arbitrator. Petition for Special Leave to Appeal with connected petitions, as preferred by Respondent No. 1, were dismissed on July 11, 2022. Hence, the present writ petitions were filed by the Petitioners claiming enhancement of the compensation as awarded by the Arbitrator under Section 3-G(5) of the NH Act.

¹⁸ 2008 (13) SCC 767

¹⁹ 2016 (7) SCC 1

▪ **Submissions of the Petitioners:**

- The petitioners were not satisfied with the award of the Arbitrator under Section 3-G(5) of the NH Act. The Principal District Judge had no power to modify the award or to substitute a new award for further enhancement of compensation under Section 34 of Act, but could only set aside the award under Section 34 of Act.
- Reliance was placed on *National Highways Authority of India v. VM Hakeem*²⁰, wherein the Apex Court held that the Petitioners were deprived of any remedy to seek any redress for further enhancement of compensation as awarded to them by the Arbitrator under Section 3-G(5) of the NH Act and in such circumstances, it was permissible for the Petitioners to invoke the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.
- Reference was also made to *PSA SICAL Terminals (P) Ltd v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin*²¹ wherein the Apex Court considered the scope and ambit of Section 34 of Act and held that in an application under Section 34, the Court is not expected to act as an Appellate Court and reappraise the evidence and the scope of interference would be limited to grounds provided under Section 34 of Act including challenge to an award being in violation of ‘public policy of India’, which has been held to mean ‘the fundamental policy of Indian law’. The Apex Court further held that the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of Act would continue to be the grounds of challenge of an award apart from the award being in conflict with justice or morality which is to be understood as a conflict with the ‘most basic notions of morality or justice’. The Court can set aside an award which shocks the conscience of the Court, that can be set aside on the said ground or suffers from patent illegality appearing on the face of the award, thereby going to the root of the matter.
- The grounds of challenge to an award passed by the Arbitrator under Section 3-G (5) of the NH Act, are controlled and limited by the provisions of Section 34 of Act.

▪ **Submissions of the Respondents:**

- The contention that there is no remedy available to the petitioners to challenge the award of the Arbitrator, seeking further enhancement of the compensation awarded, has to be considered in light of the scheme of the NH Act read in consonance with the provisions of Section 34 of Act.
- The scheme of acquisition under the NH Act indicates that pursuant to the notification under Section 3-A(1) of the NH Act to acquire land, the objection received under Section 3-C of the NH Act from any person interested in the land, within 21 days from the date of publication of the above notification, has to be decided by the Competent Authority, to which finality has been rendered under Section 3-C (3) of the NH Act.
- Under Section 3-G (1) of the NH Act the Competent Authority is enjoined to determine the compensation of the land acquired, which is susceptible to challenge to be laid before the Arbitrator who is then empowered to determine the compensation under Section 3-G (5) of the NH Act. The determination of the compensation by the Arbitrator under Section 3-G (5) of the NH Act is then open to further scrutiny by the Court under Section 34 of Act which, in turn, is susceptible to further challenge under Section 37 of Act and amenable to further remedy by way of a special leave to appeal under Article 136 of the Constitution of India.

Issue at hand?

- Whether enhancement of compensation awarded to the Petitioners for the acquisition of their land under Section 3-G(5) of the National Highways Act could be granted in the present petitions in view of the Respondent’s challenge to the Arbitrator’s decision through an application under Section 34 of Act?

Decision of the Court

- Since the NH Act is a special statute that provides a remedy for acquisition disputes through the filing of an application under Section 34 of the Act, the only course of action available to the Petitioners for challenging the award passed by the Arbitrator under Section 3-G (5) of the NH Act was to avail of this remedy. However, the Petitioners did not file any application under Section 34 of Act against the award passed by the Arbitrator while it was the Respondent who filed such an application pursuant to which the Award was set aside. The Petitioners then filed an appeal under Section 37 of the Act before the Court, which restored the Award of the Arbitrator, a judgment that was confirmed by the Supreme Court.

²⁰ (2021) 9 SCC 1; AIR 2021 SC 3471

²¹ 2021 SCC OnLine SC 508

- The absence of a remedy and the limited scope of the remedy are two different things. In the present case, there was a remedy provided by the legislation, but it had a limited scope. While it is permissible for the legislature to narrow down the scope of a remedy against any challenge that a statute may afford to a litigant, Section 34 of Act provides for the setting aside of an award on certain grounds. As such, and it cannot be said that the legislature was ignorant of the nature and scope of the grounds provided in Section 34 when it framed Section 3-G(6) of the NH Act. The limitation of the scope of remedy under Section 34 of the Act is intentional, as indicated by the language thereof and the departure was made from the mode of appeals under the Land Acquisition Act, 2013. In order to challenge an award passed by the Arbitrator under Section 3-G(5) of the NH Act, the Petitioner must make out a case within the four corners of the grounds permitted in Section 34 of the Act, and any challenge beyond the scope, ambit and parameters of Section 34 was excluded.
- In the present case, the Petitioners were satisfied with the award passed by the Arbitrator and therefore did not prefer any application under Section 34 of the NH Act to the Court within the time permitted. The view taken by the Supreme Court in the case of M. Hakeem (*supra*) could not have been applicable to the present case since it was delivered after the award was passed by the Arbitrator in this case. Therefore, the plea that the remedy was limited, and the extraordinary jurisdiction of the Court under Article 226 of the Constitution could be invoked by the Petitioners was not available to them since they had not availed of the remedy provided under Section 34 of the Act.
- Hence, the writ petition was dismissed.

HSA Viewpoint

The Bombay High Court explained the interplay of the provisions of Act with special statutes such as the Land Acquisition Act, 2013 providing for resolution of disputes through the Act and the scope of application of principles enunciated under Section 34 of the Act to such disputes.

HSA AT A GLANCE

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CONTACT US



www.hsalegal.com



mail@hsalegal.com



HSA Advocates

PAN INDIA PRESENCE

New Delhi

Email: newdelhi@hsalegal.com

Mumbai

Email: mumbai@hsalegal.com

Bengaluru

Email: bengaluru@hsalegal.com

Kolkata

Email: kolkata@hsalegal.com