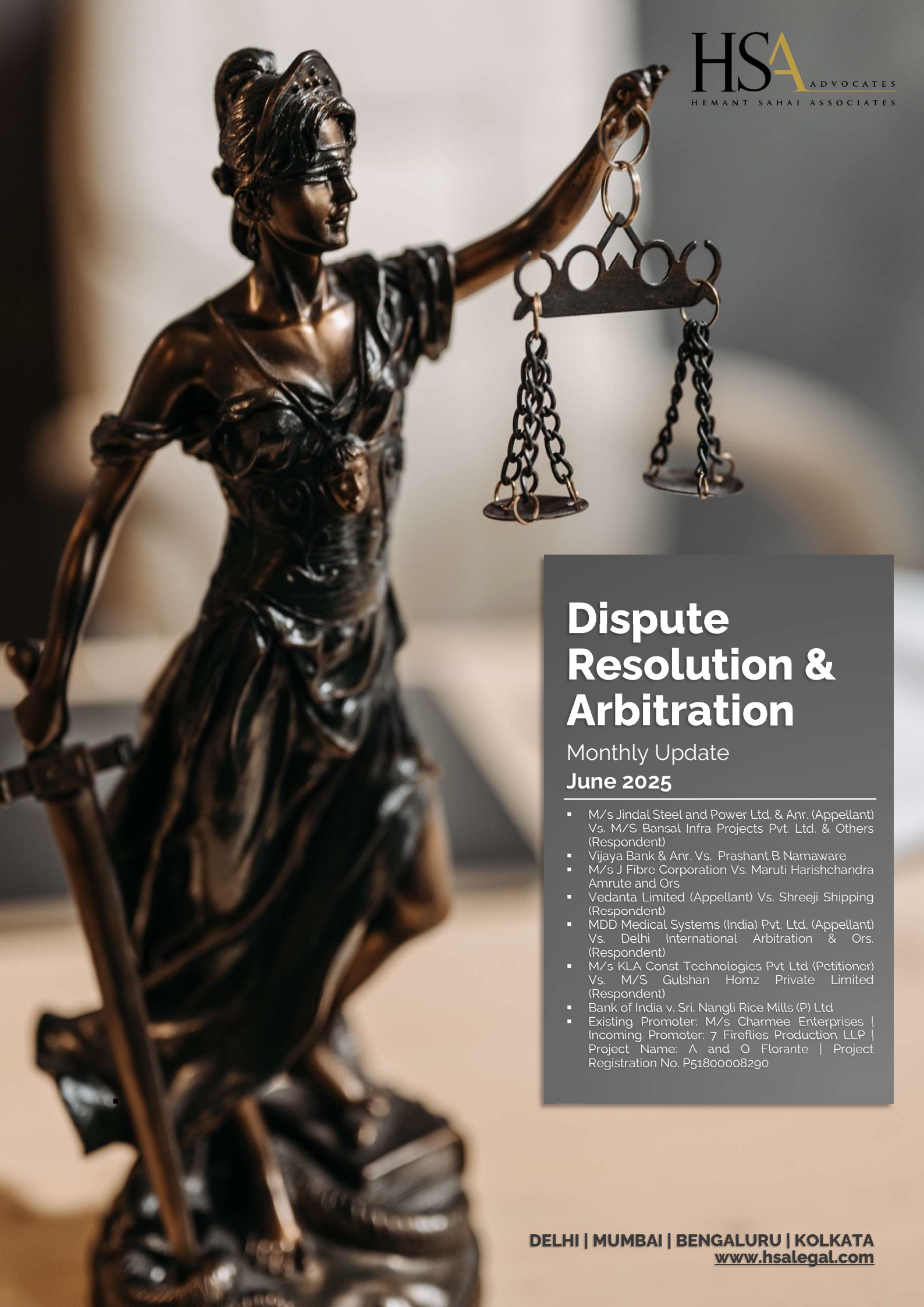

HSA ADVOCATES
HEMANT SAHAI ASSOCIATES

Dispute Resolution & Arbitration

Monthly Update

June 2025

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- Bank of India v. Sri. Nangli Rice Mills (P) Ltd
- Existing Promoter: M/s Charmee Enterprises | Incoming Promoter: 7 Fireflies Production LLP | Project Name: A and O Florante | Project Registration No. P51800008290

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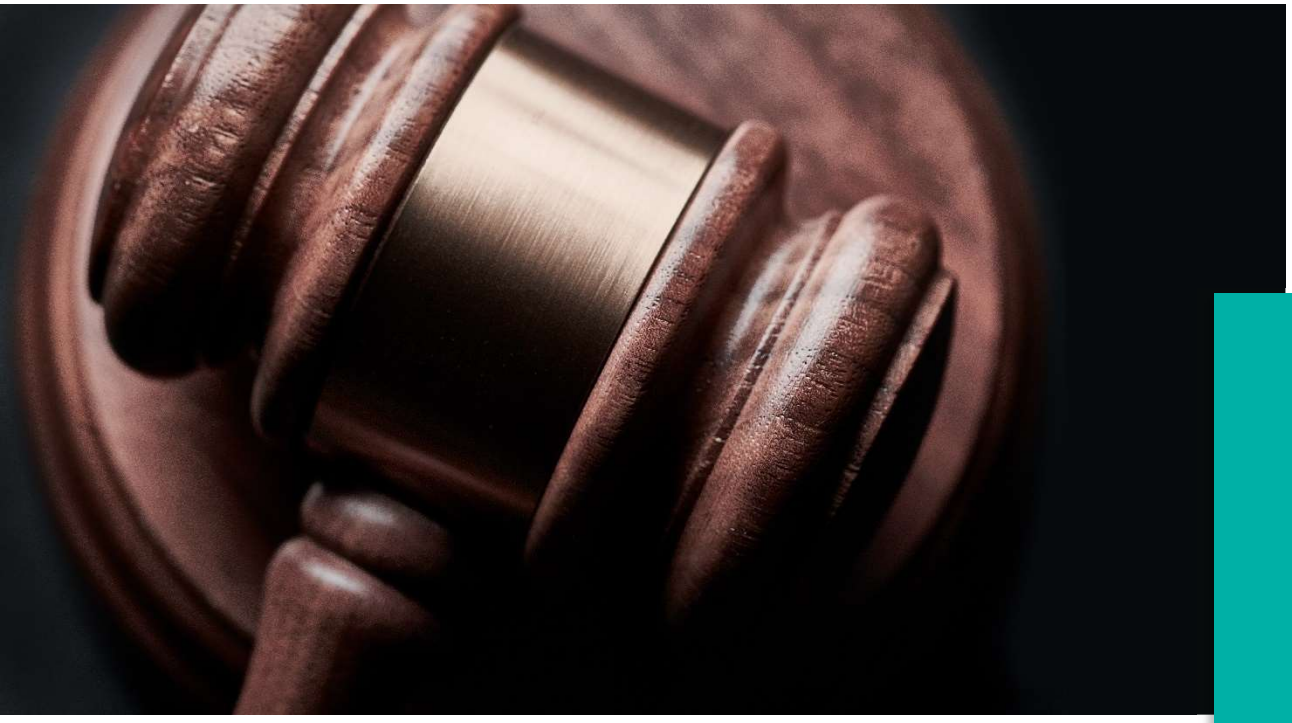
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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In The Supreme Court of India

M/S Jindal Steel and Power Ltd. & Anr. (Appellant) V/S. M/S Bansal Infra Projects Pvt. Ltd. & Others (Respondent)

2025 SCC OnLine SC 1041

Background facts

- M/s Jindal Steel and Power Ltd. ("Appellant") issued a work order on 24.01.2022 to M/s Bansal Infra Projects Pvt. Ltd. ("Respondent No. 1") for constructing 400 flats at Jindal Nagar, valued at Rs. 43,99,46,924.13, with an advance of Rs. 3,73,95,490/- secured by a bank guarantee dated 08.03.2022.
- The project, initially due by September 30, 2022, was extended to 30.06.2023 and later to 30.09.2023 with a condition that retention money would be forfeited if not completed.
- The Appellant terminated the work order on July 7, 2023, citing Respondent No. 1's poor performance, quality issues, and non-compliance with contract terms. Subsequently, on March 25, 2024, the Appellant demanded Rs. 4,12,54,904/- by 30.04.2024 for unadjusted advances to and encash the bank guarantee if unpaid.
- Respondent No. 1 filed Arbitration Petition No. 14 of 2024 under Section 9 of the Arbitration and Conciliation Act, 1996, before the Commercial Court, Cuttack, to restrain termination and encashment, along with an ex parte injunction application.
- The Commercial Court, on April 30, 2024, rejected the ex parte injunction, requiring a hearing of the parties, and set a date for appearance on 25.06.2024.
- Respondent No. 1 challenged this order via a writ petition under Article 227 before the Hon'ble Orissa High Court, which issued a status quo order on May 20, 2024 and, on August 20, 2024, directed the bank guarantee's extension to December 31, 2024 and conclusion of proceedings within six weeks.

- Respondent No. 1 invoked arbitration on May 13, 2024; an Arbitral Tribunal was formed on November 6, 2024, with a hearing held on 03.01.2025.
- The Appellant appealed to the Hon'ble Supreme Court, arguing the Hon'ble High Court's order was appealable under Section 37 and its Article 227 intervention was improper.
- Respondent No. 1 maintained the Commercial Court's order was an interlocutory one, and thus not appealable, and extended the bank guarantee to June 30, 2025 to show good faith.

Issue(s) at hand?

- Whether the Hon'ble High Court could decide the matter on merits under Article 227 or interfere with an unconditional bank guarantee's encashment.
- Whether the Commercial Court's rejection of the ex parte injunction was an order under Section 9 of the Arbitration and Concilliation Act 1996 ("Act"), appealable under Section 37(1)(b) of the Act, making the Article 227 petition inappropriate.
- Whether Respondent No.1's simultaneous pursuit of court remedies and arbitration violated the Act's principle of minimal judicial intervention.
- Whether the Commercial Court's order under Order XXXIX Rule 3 CPC was an interlocutory order, not appealable under Section 37 or CPC, thus justifying recourse to Article 227.

Findings of the Court

- The Court noted the Appellant's claim that an interim order under Order XXXIX Rule 3 CPC in a Section 9 petition is an order under Section 9, appealable under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996, but reserved this issue for future adjudication.
- The Court acknowledged the Appellant's argument that the Hon'ble High Court's use of Article 227 jurisdiction was improper due to an available appeal under Section 37(1)(b) against the Commercial Court's 30.04.2024 order, but did not rule on the remedy's applicability.
- The Court observed Respondent No. 1's simultaneous arbitration initiation on 13.05.2024 and Article 227 writ petition, which Appellant claimed delayed arbitration, but refrained from ruling on the permissibility of such parallel proceedings.
- The Court examined whether an interlocutory order rejecting an ex parte stay under Order XXXIX Rule 3 CPC in a Section 9 petition is appealable under Section 37, barring Article 227 recourse, or non-appealable under Order XLIII Rule 1(r) and Section 104 CPC, allowing Article 227 challenge, but left this unresolved.
- The Court found the High Court's August 20, 2024 order, restraining bank guarantee encashment, to be an interim measure to protect both parties, without addressing the validity of Article 227 jurisdiction.
- The Court held that maintaining the status quo on the bank guarantee was necessary until the Section 9 petition's disposal, given Respondent No. 1's extension to June 30, 2025.
- The Court directed the Commercial Court, Cuttack, to conclude Arbitration Petition No. 14 of 2024 within eight weeks, keeping the bank guarantee operative, subject to the petition's outcome, without prejudicing Appellant' contentions.
- The Court noted the Section 9 petition was partly heard, with Respondent No. 1 and No. 2's arguments concluded, and arbitration was progressing, with a Tribunal formed on November 6, 2024 and a hearing on January 3, 2025, causing no immediate prejudice to Appellant.

HSA
Viewpoint

The Supreme Court's judgment represents a judicious and equitable resolution that upholds the principles of arbitration while safeguarding the interests of both parties. The decision to maintain the interim restraint on the encashment of the bank guarantee, contingent upon its extended validity until June 30, 2025, ensures that Jindal Steel faces no financial prejudice, while affording Bansal Infra a fair opportunity to substantiate its claims regarding Jindal's contributory delays.

However, the Court's reluctance to address the pivotal legal questions, particularly concerning the Hon'ble High Court's exercise of Article 227 jurisdiction and the appealability of interim orders under Section 37 of the Arbitration Act, leaves unresolved ambiguities that could impact future litigation.

Nevertheless, the directive to expedite the Section 9 proceedings within eight weeks reinforces the Arbitration Act's emphasis on minimal judicial interference and swift dispute resolution.

Vijaya Bank & Anr. Vs. Prashant B Narnaware

2025 SCC OnLine SC 1107

Background facts

- The Respondent was appointed as a Senior Manager in the Appellant (Bank) pursuant to a recruitment process that expressly required selected candidates to serve a minimum of three years or, in the alternative, pay INR 2 lakhs as liquidated damages. This stipulation was incorporated into both the recruitment notification and *Clause 11(k)* of the appointment letter. The respondent accepted these terms, joined the post, and executed an indemnity bond accordingly. However, he resigned before the three-year period elapsed and, though he paid the stipulated amount under protest, challenged the clause before the High Court. The High Court ruled the clause void under *Articles 14* and *19(1)(g)* of the *Constitution* and *Sections 23* and *27* of the *Contract Act*. The Bank appealed to the Supreme Court.

Issue(s) at hand?

- Whether *Clause 11(k)* amounted to a restraint of trade under *Section 27* of the *Indian Contract Act, 1872*.
- Whether the *Clause* was opposed to public policy under *Section 23* of the *Contract Act* and thereby violative of *Articles 14* and *19* of the *Constitution*.

Findings of the Court

- The Supreme Court upheld the validity of *Clause 11(k)*, reiterating the established position that negative covenants operating during the subsistence of an employment contract do not amount to restraint of trade under *Section 27*. Drawing on authoritative precedents such as *Niranjan Shankar Golikari v. Century Spinning and Manufacturing Co* 1967 SCC OnLine SC 72 and *Superintendence Company (P) Ltd. v. Krishan Murgai* (1981) 2 SCC 246, the Court distinguished between covenants operative during employment, which does not put a clog on the freedom of a contracting party to trade or employment, and those extending beyond termination, which may be struck down.
- *Clause 11(k)* did not restrict the respondent's ability to seek future employment; it merely imposed a financial consequence for failing to complete the agreed term of service. The Court clarified that such covenants, which aim to preserve institutional continuity and mitigate attrition-related costs, are in furtherance of contractual employment and not a bar to trade or profession.
- *Apropos* public policy, the Court rejected the contention that the clause was unconscionable merely because it was part of a standard-form contract. It noted that public sector banks operate under constitutional obligations to ensure transparent and merit-based recruitment. The Apex Court observed that an untimely resignation would require the Bank to undertake a prolix and expensive recruitment process involving open advertisement, fair competitive procedure lest the appointment falls foul of the constitutional mandate under *Articles 14* and *16*. Acknowledging the administrative and financial strain caused by untimely resignations, especially in institutions that cannot resort to private hiring mechanisms, the imposition of liquidated damages for premature resignation was found to be neither arbitrary nor excessive by the Court. The clause was therefore held to be a legitimate safeguard, not an instrument of unjust enrichment.
- The Court also clarified that the decision of the Karnataka High Court in *W.A. No. 2736/2009 K.Y Venkatesh Kumar v. BEML Ltd.* was inapplicable, as that case involved restrictions impeding future employability, an element absent in the present matter. It cautioned against applying precedents without a careful appreciation of the factual matrix.
- Accordingly, the Supreme Court, setting aside the order of the High Court, allowed the instant Appeal and held that the restrictive covenant in *Clause 11(k)* of the appointment letter does not amount to restraint of trade nor is it opposed to public policy.

HSA
Viewpoint

This judgment reaffirms the enforceability of minimum service tenure clauses in employment contracts, particularly within public institutions. The Supreme Court's decision is legally robust and commercially astute. By upholding such clauses when reasonably framed and tied to identifiable institutional interests, the Court has balanced contractual autonomy with public interest.

The ruling is a significant clarification for public sector employers who face high attrition and prolonged recruitment cycles. It also highlights that standard-form employment agreements, while susceptible to scrutiny, are not per se invalid. The Court's emphasis on context and proportionality provides much-needed guidance on how public policy and *Section 27* of the *Contract Act* are to be interpreted in employment matters.

The Supreme Court's reasoning is compelling and rooted in commercial and constitutional pragmatism. In essence, the decision delineates the boundary between permissible employment conditions and unlawful restraints, affirming that enforceable tenure clauses, when not excessive or punitive, serve legitimate commercial and administrative objectives.

M/s J Fibre Corporation V. Maruti Harishchandra Amrute and Ors.

Writ Petition No. 10454 of 2024

Background facts

- M/s J Fibre Corporation (Employer/Petitioner) is a partnership firm and engaged in manufacturing of nonwoven fabric, nylon, monofilament yarn and drinking straw. Mr. Maruti Harishchandra Amrute (Employee/Respondent No.1) was employed as Shift Supervisor with the Employer since April 01, 2011.
- On May 17, 2018, the Employer terminated the services of Employee on the grounds of cost-cutting measures. Further, the Employer stated that the Employee was the most junior out of the 3 employees performing similar functions and was therefore considered for termination.
- A termination letter and a cheque for 1 months' notice pay were also issued on the same day. While the Employee initially declined to accept the termination letter, he acknowledged the letter 2 days later but returned the cheque.
- Subsequently, the Employee raised a demand for reinstatement and initiated conciliation proceedings. Upon failure of conciliation, the matter was referred to the 3rd Labour Court, Thane (Labour Court). Vide an award dated November 2, 2022, the Labour Court directed reinstatement with full back wages and continuity of service (Award).
- Aggrieved by the Award, the Employer filed a Writ Petition before the Bombay High Court (**HC**) on the grounds that the direction for reinstatement was not sustainable as the Employee had already reached the age of retirement by the time of Award, and that termination had been carried out in accordance with due process.

Issue(s) at hand?

- Whether the Labour Court was justified in directing reinstatement when the Employee had reached the age of retirement by the time Award was passed?
- Whether the termination was legally valid? If not, what would be the appropriate relief?

Findings of the Court

- At the outset, the HC observed that the Employee's permanent account number (PAN) card reflected his date of birth as June 24, 1961. Based on this, the HC noted that the Employee had attained 60 years of age by June 24, 2021. Since the Labour Court's Award was passed in November 2022 i.e. after the Employee had reached the retirement age, the HC held that reinstatement was not a legally tenable remedy in such circumstances.
- Further, the HC delved in the issue of the status of Employee as 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act (ID Act). The HC concurred with the decision of Labour Court which conducted factual inquiry into the duties and responsibilities performed by the Employee. The HC held that predominant work of the Employee was of technical nature and the entries made in the reports written by him could at best be treated as clerical work and not supervisory work.
- With regards to the legality of termination, the HC noted that the Employer had failed to comply with the conditions under Section 25F of the Industrial Disputes Act, 1957 (ID Act). The HC specifically observed that the retrenchment compensation was not paid at the time of termination but was deposited into the Employee's bank account nearly 6 months later. The HC further noted that the Employer failed to produce any seniority list to substantiate its claim that the Employee was the most junior among the 3 employees in same category.
- In view of the above, while upholding the Labour Court's finding that the termination was procedurally defective, the HC modified the relief granted and directed payment of monetary compensation in lieu of reinstatement. The amount was quantified at INR 3,58,073.

HSA
Viewpoint

By way of this decision, the HC has reaffirmed that strict compliance with the Industrial Disputes Act is essential during redundancies, including timely compensation and a fair selection process. Indian courts have time and again held that failure to adhere to procedural compliance requirements can invalidate terminations.

In the present case, although the termination was procedurally flawed, reinstatement was denied due to the employee's retirement, and lumpsum compensation was awarded instead.

This ruling provides important directions for employers in this regard and emphasizes the need to adhere to legal process while also recognising practical limitations on reinstatement in long-pending disputes involving retired employees.

In The High Court of Delhi

Vedanta Limited (Appellant) Vs. Shreeji Shipping (Respondent)

2025 SCC OnLine SC 1041

Background facts

- Vedanta Limited ("Appellant") entered into a contract with Shreeji Shipping ("Respondent") for the transportation of coal. The coal was to be transported from Kandla Port to Vedanta's Bhachau Plant and from Bedi Port to its Khambhalia Plant, both located in Gujarat. The contractual terms were set out in two work orders dated March 22, 2022, and March 29, 2022.
- Each work order contained an arbitration clause (Clause 21), which provided for dispute resolution through arbitration under the Arbitration and Conciliation Act, 1996 ("Act"). The clause stated that arbitration could be held either in Bhuj or in New Delhi. Disputes later arose between the parties regarding alleged deficiencies in performance and pending payments, and accordingly the Appellant invoked Clause 21 and initiated arbitration proceedings by nominating a sole arbitrator.
- However, the Respondent did not agree to the nomination, resulting in a deadlock in the appointment process. The Appellant then filed a petition before the Hon'ble Delhi High Court under Section 11(6) of the Act, seeking the Hon'ble Court's intervention for appointment of an arbitrator.
- The Respondent opposed the petition on two grounds: firstly, that no arbitrable dispute existed, and secondly, that the Hon'ble Delhi High Court lacked territorial jurisdiction since the arbitration clause permitted arbitration in either Bhuj or New Delhi.

Issue(s) at hand?

- Whether an arbitration clause that specifies more than one seat of arbitration is rendered void for uncertainty under Section 29 of the Indian Contract Act, 1872.
- Whether the Hon'ble Delhi High Court had territorial jurisdiction to entertain a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, when the arbitration clause provides an option between two alternative seats.
- Whether the specification of a seat of arbitration in an agreement implies exclusive jurisdiction of the courts at that seat for all matters related to the arbitration.

Findings of the Court

- The Hon'ble Court first considered whether an arbitration clause that allows for multiple seats is void for uncertainty under Section 29 of the Indian Contract Act, 1872.
- It held that a clause offering a choice between two seats, Bhuj or New Delhi in this case does not suffer from vagueness or ambiguity. The presence of alternatives does not render the agreement uncertain or unenforceable.
- Instead, the Hon'ble Court viewed such a clause as an expression of party autonomy. The parties are free to designate more than one potential seat, with the understanding that the final choice will be made when a dispute arises.
- On the question of jurisdiction under Section 11(6) of the Act, the Hon'ble Court observed that once a seat of arbitration is chosen, the courts at that location gain exclusive jurisdiction over the arbitral proceedings.
- Relying on the Hon'ble Supreme Court's decision in *Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.*,[1] the Court reaffirmed that the "seat" is not just a venue, it carries legal implications, including exclusive supervisory jurisdiction.
- In the present case, since the Appellant had approached the Hon'ble Delhi High Court and chose New Delhi as the seat of arbitration, the Hon'ble Court held that it had the territorial jurisdiction to hear the Section 11(6) petition.
- The Hon'ble Court also rejected the Respondent's objection that there was no arbitrable dispute. It held that such objections relate to the merits of the dispute and do not bar the appointment of an arbitrator at the pre-reference stage.
- Having found the arbitration clause to be valid, enforceable, and not hit by Section 29, the Hon'ble Court proceeded to appoint an arbitrator under Section 11(6) of the Act.

HSA
Viewpoint

The judgment rightly upholds the principle of party autonomy in arbitration and provides much-needed clarity on the interpretation of clauses offering multiple seats. By rejecting the argument that such clauses are void for uncertainty under Section 29 of the Indian Contract Act, the Hon'ble Court has reinforced the commercial practicality of allowing parties flexibility in determining procedural aspects of arbitration. The reliance on *Indus Mobile* case to emphasize the legal significance of the "seat" is well-founded, as it distinguishes between a mere venue and a juridical seat with exclusive supervisory jurisdiction. The Hon'ble Court's pragmatic approach in recognising that jurisdiction crystallises once a seat is chosen ensures that procedural challenges do not derail arbitration proceedings.

[1](2017) 7 SCC 678

In The High Court of Delhi

MDD Medical Systems (India) Pvt. Ltd. (Appellant) V/s. Delhi International Arbitration & Ors. (Respondent)

W.P.(C) 10850/2019, CM APPL. 44897/2019 and CM APPL. 45233/2019

Background facts

- The MDD Medical Systems (India) Pvt. Ltd. and LSR Medical Pvt. Ltd, Petitioners, entered into a business relationship with an MSME unit engaged in manufacturing rails, curtain rods, and roller blinds for the privacy and sun protection industry, Respondent No.3, for supply of goods.
- The MSME unit alleged that the Petitioners failed to clear the outstanding dues for the transaction and lodged a claim before**,** Micro and Small Enterprises Facilitation Council (MSEFC), over unpaid dues by the Petitioners.
- Upon failure of conciliation proceedings, the dispute was referred to Delhi International Arbitration Centre (DIAC), for arbitration under Section 18(3) of the MSMED Act, 2006.
- DIAC initially closed the arbitration proceedings after the MSME unit failed to submit its Statement of Claim (SOC) within the prescribed period.
- After several months, DIAC revived the arbitration proceedings, accepting a late SOC from the MSME unit and directing the Petitioners to respond. Due to this allegedly wrongful revival by DIAC, it is made a party in this petition as Respondent No.1. As MSEFC adjudicated the matter in its initial stages, it was made a party to the petition before the Delhi High Court as Respondent No.2 in the Petition.
- The writ petition filed by the Petitioner before the Delhi High Court, contended that:
  - The 90-day statutory limit under Section 18(5) MSMED Act had lapsed.
  - DIAC lacked authority to unilaterally revive proceedings without a fresh reference.
  - Such revival was contrary to law, especially in the absence of a request from Respondent No. 3 and without sufficient cause for delay.

Issue(s) at hand?

- Whether DIAC had the authority to revive arbitration proceedings under the 2012 or 2018 Rules without a fresh request, and whether such revival is a jurisdictional issue to be decided by the arbitral tribunal under Section 16 of the A&C Act.
- Whether the 90-day timeline under Section 18(5) of the MSMED Act is mandatory, resulting in automatic termination of the arbitration mandate upon expiry, or directory, permitting continuation or revival of proceedings.

Findings of the Court

- Citing the Delhi High Court judgment in *Indian Highways Management Company Limited v. Mukesh & Associates*[1] the Court held that the 90-day timeline under Section 18(5) of the MSMED Act applies to references to the Facilitation Council, not to arbitration proceedings. The Court noted that Section 18(3) incorporates the A&C Act, treating the arbitration as pursuant to an arbitration agreement under Section 7 of the A&C Act.
- The Calcutta High Court observed, citing *Porel Dass Water & Effluent Control (P) Ltd. v. W.B. Power Development Corpn. Ltd*[2]**.**, that unlike Section 29 A(4) of the A&C Act, which mandates termination of the arbitral tribunal's mandate for non-compliance with timelines, Section 18(5) of the MSMED Act lacks any consequence for non-adherence, rendering the timeline directory, not mandatory.
- The Court found that Rule 3(6) of the 2012 Rules, applicable as the reference was received before the 2018 Rules' effective date (July 1, 2018), allows DIAC to close proceedings without prejudice to the claimant's right to file an SOC later, distinguishing this administrative closure from termination of the arbitral tribunal's mandate.
- The Supreme Court of India, relying on *Vidya Drolia v. Durga Trading Corporation*[3] and *Cox & Kings Ltd. v. SAP India (P) Ltd*[4]., held that challenges to the revival of proceedings concern the arbitral tribunal's jurisdiction, which must be adjudicated under Section 16 of the A&C Act. The principle of competence-competence limits judicial intervention at this stage.

[1](2021) SCC OnLine Del 2868
[2](2024) SCC OnLine Cal 8927
[3](2021) 2 SCC 1
[4](2024) 4 SCC 1

- The Court rejected the applicability of Section 25 of the A&C Act, as DIAC's actions were pre-arbitration administrative functions, not requiring a constituted arbitral tribunal. The reliance on the Apex Court's Judgment in *SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited*[5] was deemed misplaced, as the proceedings were closed administratively, not terminated.
- The Delhi High Court concluded that the writ petitions were not maintainable, as the Petitioners could raise jurisdictional objections before the arbitral tribunal. The Court disposed of the petitions, leaving all claims and counterclaims for the arbitral tribunal to decide without commenting on the merits.

HSA
Viewpoint

This judgment adeptly balances statutory interpretation with arbitral autonomy by ruling that the 90-day timeline to refer a dispute to arbitration under Section 18(5) of the MSMED Act is directory, not mandatory, thus preventing procedural rigidity from undermining the Arbitration Act's dispute resolution objectives.

The MSME Council's mandate remains intact even if the 90-day period is not observed. The ruling also reinforces the principle that jurisdictional disputes concerning arbitration proceedings under the MSMED Act must be resolved within the arbitration framework itself, rather than through writ petitions before the Court.

This approach upholds the legislative intent to provide a streamlined and specialized dispute resolution mechanism for micro and small enterprises, ensuring that such disputes are addressed expeditiously within the statutory framework established by the MSMED Act.

[5](2018) 11 SCC 470

In The High Court of Delhi
M/S Kla Const Technologies Pvt Ltd (Petitioner) V/s. M/S Gulshan Homz Private Limited (Respondent)

Background facts

- M/s KLA Const Technologies Pvt Ltd ("Petitioner") was issued a Letter of Intent on July 29th 2023 by M/s Gulshan Homz Private Limited ("Respondent") for carrying out civil and structural works for the Gulshan Dynasty Moradabad Project ("project"). The said project was valued at Rs. 101.8 Crores.
- A formal agreement ("Agreement") in respect of the said project was executed between the Petitioner and the Respondent on September 6th 2023.
- The Petitioner alleged that the said project faced delays due to the Respondent's failure to provide timely access to work fronts, complete escalation details, approved Bill of Quantities (BOQ), regular supply of water and electricity, as well as failure to make timely payments for Running Account bills and compensate for additional work.
- In August 2024, the Respondent informed the Petitioner of project discontinuation due to poor market response. Accordingly, a mutually agreed final work bill of Rs. 9.64 Crores was recorded on September 9, 2024 and September 17, 2024, in the minutes of the meeting, with a balance of Rs. 2 Crore.
- Thereafter, on November 6, 2024 the Respondent issued a termination notice under Clause 33 of the Agreement without the mandatory 7-day prior notice. Subsequently, the Petitioner invoked the arbitration clause under the Agreement by issuing a notice dated November 13, 2024 for appointing a Sole Arbitrator.
- However, since the Respondent didn't respond to the notice of the Petitioner for appointing a Sole Arbitrator, the Petitioner filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 ("Act").

Issue(s) at hand?

- Whether this Hon'ble Court possesses the territorial jurisdiction to try the present petition for appointing an Arbitrator, given the conflicting contractual provisions designating multiple locations as the seat of arbitration and conferring exclusive jurisdiction on courts in different locations.

Findings of the Court

- At the outset the Hon'ble Court relied on the judgement in the case of *Ramkishorelal & Anr. vs. Kamal Narayan*[1] wherein it was held that in order to ascertain the intention of the parties, the terms of the contract must be read as a whole and in a harmonious manner.
- The Hon'ble Court further relied on the judgement in the case of *Devyani International Ltd. vs. Siddhivinayak Builders and Developers*[2] wherein it was held that when an arbitration agreement designates a specific seat of arbitration, the court at that seat will have exclusive jurisdiction over arbitration related matters, even if another clause grants jurisdiction to a different location.
- The Court found Clause 37(a) of the Agreement designates Noida/Delhi as the arbitration seat, allowing either location, with disputes to be resolved by a sole arbitrator under the Arbitration and Conciliation Act, 1996.
- The Hon'ble Court held that since Clause 37(a) of the Agreement clearly states that the seat and venue of arbitration shall be Noida/Delhi, and Clause 37(b) of the Agreement is expressly made "subject to" the arbitration clause, the jurisdiction lies with the courts at the seat of arbitration. Therefore, the arbitration-related matters must be heard by the courts at Delhi/Noida, not Allahabad.
- The Hon'ble Court, relied on the judgement in the case of *Inder Mohan Bhambri vs. Landmark Apartments Pvt. Ltd*[3]. wherein it was held when an exclusive jurisdiction Clause is expressly made subject to the arbitration clause and the arbitration clause specifies a different jurisdiction as seat of arbitration then the arbitration clause, including the stipulation regarding the seat will prevail over the exclusive jurisdiction clause.

[1] 1962 SCC OnLine SC 113
[2] 2017 SCC OnLine Del 11156
[3] 2024 SCC OnLine Del 8208

- The Hon'ble Court further held that the judgement in the case of *Axalta Coating Systems India (P) Ltd.Vs. Madhuban Motors (P) Ltd.*[4] is not applicable to the present case as facts of both the cases are materially different.
- The Hon'ble Court further held that that when an arbitration Clause provides for multiple jurisdictional seats, the jurisdiction of the Courts at any of the defined seats can be invoked.
- The Hon'ble Court emphasized that Clause 92.10 of the Agreement must be read with Clause 91.2, of the Agreement which gives exclusive jurisdiction to courts in New Delhi for any matter arising out of the contract. Similarly, the Hon'ble Court held that Clause 37(b) (jurisdiction to Noida courts) of the Agreement must be read as being subordinate to Clause 37(a) (seat/venue of arbitration at Delhi) of the Agreement.
- Accordingly, the Hon'ble Court concluded that arbitration-related disputes are to be governed by the courts in New Delhi, as per the agreed seat, while other non-arbitrable disputes may fall under the jurisdiction of Noida courts. Thus, the Hon'ble Court held it had the jurisdiction to adjudicate the present petition.
- Hence, the Hon'ble Court appointed Mr. Justice Adarsh Kumar Goel as sole arbitrator.

HSA
Viewpoint

The judgment rendered by the Hon'ble Court clarifies that when a contract designates more than one possible seat of arbitration, then courts at either location may have jurisdiction, provided such designation is expressed with equal weight and without contradiction.

The judgement also reaffirmed the principal that if the court's jurisdiction is said to be "subject to" the arbitration clause, this confirms that arbitration seat takes priority over general jurisdiction clause. The judgment further reiterates that in determining jurisdiction, the "seat" of arbitration carries exclusive supervisory jurisdiction and overrides any contrary venue or forum selection clause.

The judgement also clarified that the scope of judicial scrutiny under Section 11(6) of the Act is limited to examining the prima facie existence of an arbitration agreement. It does not extend to evaluating the merits of the dispute, frivolity of claims, or other contentious issues, which fall within the domain of the Arbitral Tribunal.

[4] 2024 SCC OnLine Del 9303

Bank of India V/s. Sri. Nangli Rice Mills (P) Ltd.

Hon'ble Supreme Court Judgment dated 23.05.2025, 2025 SCC OnLine SC 1229

Background facts

- Bank of India ("BOI"/"Appellant") and Punjab National Bank ("PNB"/"Respondent No. 2"), both nationalized banks, were involved in a dispute over competing claims on the same secured assets of a common borrower, M/s Sri Nangli Rice Mills Pvt. Ltd. ("Respondent No. 1"). The borrower, engaged in the rice industry, had availed a credit facility from BOI on July 31, 2003, formalized through a Credit Facility Agreement dated September 23, 2006.
- Despite restrictive covenants in the BOI agreement, the borrower obtained a separate credit facility from PNB. On December 6, 2013, an Agreement of Advance/Pledge was executed in favour of PNB, pledging Warehouse Receipts ("WHRs") for stocks stored in godowns managed by National Bulk Handling Corporation ("NBHC"/"Respondent No. 3"), acting as collateral manager. As per the terms of the agreement, the sale proceeds were to be credited to the borrower's loan account with PNB.
- BOI, unaware of this arrangement, continued to enhance its credit until 2014 and discovered the PNB pledge in 2015 after the borrower defaulted. BOI declared the account NPA and issued a SARFAESI notice, later sealing the NBHC godown.
- BOI filed a Civil Suit No. 127 of 2015 to injunct PNB from selling the pledged stock. The suit was dismissed as infructuous on November 11, 2021, following a joint sale under DRT supervision. Separately, BOI filed a Section 14 SARFAESI application, which the District Magistrate ("**DM**") partially allowed on October 12, 2016 but excluded the pledged stocks held by PNB. A writ petition challenging the DM's order (CWP-COM No. 177/2017) was dismissed by the Punjab and Haryana High Court on May 26, 2017, directing BOI to approach the Debt Recovery Tribunal ("**DRT**").
- **First Round of Proceedings before DRT:**

  BOI filed S.A. No. 285/2017 before DRT-I, Chandigarh under Section 17 of the SARFAESI Act, challenging the DM's exclusion of PNB-pledged stocks. DRT initially allowed a joint sale of the perishable stock under Section 19(25) of the RDDBFI Act, and on 10.11.2017 ruled in BOI's favour, recognizing its prior hypothecation rights and faulting PNB and NBHC for failing to verify encumbrances.
- **Debt Recovery Appellate Tribunal ("DRAT") Appeal:**

  PNB filed Appeal No. 500/2017 before the DRAT. On November 4, 2019, the DRAT remanded the matter, holding that DRT had failed to consider the maintainability objection arguing Section 17 was inapplicable as no SARFAESI action was taken by PNB and noted BOI's concealment of the prior civil suit.
- **Second Round of Proceedings before the DRT:**

  On remand, DRT-I, Chandigarh, by order dated February 12, 2020, held that it had no jurisdiction over disputes between two banks regarding competing claims on the same asset. It held that such disputes must be resolved via arbitration under Section 11 of the SARFAESI Act, by filing an application under Section 11 of the Arbitration and Conciliation Act, 1996. The DRT dismissed the application as not maintainable and directed the parties to approach the High Court for appointment of an arbitrator.
- Aggrieved by the DRT's dismissal, BOI filed CWP No. 13538 of 2020 (O&M) before the Punjab and Haryana High Court, challenging the DRT's February 12, 2020 order. However, the High Court, in its judgment dated October 7, 2020, dismissed the writ petition, affirming the DRT's view.
- BOI, dissatisfied with the Hon'ble High Court's findings, filed the present appeal before the Hon'ble Supreme Court, challenging the impugned judgment dated October 7, 2020, which had upheld the DRT's lack of jurisdiction and the applicability of arbitration under Section 11 of the SARFAESI Act.

Issue(s) at hand?

- What is the scope of Section 11 of the SARFAESI Act, particularly with respect to the phrase *"any dispute relating to securitisation, reconstruction, or non-payment of dues including interest"*?
- What is the significance of the phrase *"arises amongst any of the parties i.e., bank, financial institution, Asset Reconstruction Companies ("ARC"), or qualified buyer"* in Section 11 read with Section 2 of the SARFAESI Act? What is the purpose behind mandating arbitration for disputes among these parties?
- Does Section 11 require a written arbitration agreement for its applicability?
- Whether Section 11 of the SARFAESI Act is mandatory in nature and creates a statutory arbitration mechanism in the absence of a consensual arbitration agreement?

Findings of the Court

- The Hon'ble Supreme Court Bench comprising Mr. Justice J.B. Pardiwala and Mr. Justice Manoj Mishra clarified that Section 11 of the SARFAESI Act. It was held that the provision is applicable only when: (1) the dispute is between banks, financial institutions, ARCs, or qualified buyers; and (2) it concerns securitisation, asset reconstruction, or non-payment of dues, including interest.
- It was held that the phrase *"non-payment of any amount due, including interest"* is of wide import and encompasses not only direct defaults but also indirect or third-party defaults leading to non-payment. The Hon'ble Supreme Court further clarified that Section 11 does not apply where the dispute is between two banks or financial institutions having a lender-borrower relationship, as such a dispute falls outside its purview. Referring to Section 2(f) of the Act, the Court observed that even banks, financial institutions, or asset reconstruction companies can be treated as "borrowers" under the SARFAESI framework if they receive financial assistance backed by security interest. Therefore, a lender who has subsequently become a borrower will also be covered under the Act.
- The Hon'ble Supreme Court emphasized that Section 11 creates a statutory arbitration mechanism, and no separate written arbitration agreement is required between the parties. It held that the provision gives rise to a legal fiction of an arbitration agreement, which mandates arbitration even in the absence of a consensual agreement.
- The Hon'ble Supreme Court concluded that the provision is mandatory in nature due to the use of the word "shall," and parties cannot bypass it. Accordingly, the appeal was dismissed, the Hon'ble High Court's direction to resolve the dispute through arbitration under Section 11 of the SARFAESI Act was upheld, and the parties were directed to bear their own costs.

HSA
Viewpoint

The Hon'ble Supreme Court's interpretation affirms that Section 11 of the SARFAESI Act mandates statutory arbitration for specified financial disputes, ensuring clarity and efficiency in resolution. By recognizing lender-turned-borrowers and removing the need for a written arbitration agreement, the judgment strengthens the statutory scheme and prevents forum shopping, thus reinforcing the Act's objective of swift recovery and dispute resolution within the financial sector.

Existing Promoter: M/s Charmee Enterprises | Incoming Promoter: 7 Fireflies Production LLP | Project Name: A and O Florante | Project Registration No. P51800008290

SUO MOTU CASE NO. SM12500050

Introduction

- The Maharashtra Real Estate Regulatory Authority, Mumbai (MahaRERA), in its Suo Moto Order dated May 16, 2025, with respect to the project **"**A and O Florante**"** clarified the regulatory issues concerning the substitution of promoters under the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the "RERA Act"*). It particularly addresses the non-voluntary replacement of the existing promoter in a slum rehabilitation project and examines the scope of Section 15 of the RERA Act in such cases. The Authority, comprising Chairperson Manoj Saunik and Members Mahesh Pathak and Ravindra Deshpande, clarified that where a promoter is terminated by the Slum Rehabilitation Authority (SRA) due to non-performance/non-compliance, the appointment of a new promoter by the SRA does not constitute a transfer under Section 15, and thus, the incoming promoter is not liable for obligations owed to previous allottees, the existing promoter remains solely liable for all obligations towards the existing allottees. The order effectively elucidates the regulatory approach of directing the issuance of a fresh registration number to the new developer and abeyance of the registration allotted to the existing promoter ensures clear separation of responsibilities and continued protection for affected homebuyers, who retain the right to seek redress against the original promoter.

Background facts

- In 2017, the real estate project titled "*A and O Florante*" was registered with MahaRERA under the Project Registration No. P51800008290 and fell within the jurisdiction of the Slum Rehabilitation Authority (*hereinafter referred to as "SRA"*).
- The project, located on a plot measuring approximately 2460 square meters in Andheri, Mumbai, involved the construction of a single 20-storey building comprising 113 residential units, of which 48 units were sold by the original promoter. However, possession of these sold units were still pending.
- M/s Charmee Enterprises (hereinafter referred to as "*existing promoter*"), was appointed under an SRA-sanctioned redevelopment scheme but failed to fulfil its obligations with respect to timely construction, delivery of units, and payment of rent to slum dwellers.
- Subsequently, due to persistent non-compliance and default, the SRA issued an order on January 20, 2023, terminating the appointment of the original developer, that is the existing promoter, and thereafter by the way of a revised Letter of Intent (*hereinafter referred to as* "*LOI*") dated March 13, 2024, appointed 7 Fireflies Production LLP (*hereinafter referred to as* "*incoming promoter")* to take over and complete the project.
- On January 17, 2024, the incoming promoter submitted a fresh application (No. RERA518165469) for registration under Section 3 of the RERA Act, as the project was already registered by the previous developer.
- Consequently, on May 16, 2025, MahaRERA passed an order recognizing that the appointment of the new promoter was not a voluntary transfer under Section 15 of the RERA Act, but a regulatory action under the SRA framework.
- The Authority directed that the incoming promoter must obtain a new RERA registration number, open a new designated bank account for the execution of the project, and resume the construction; however, it held that the incoming promoter shall bear no liability towards the obligations or defaults of the existing promoter.
- The registration of the project in the name of the original developer was suspended, subject to continued regulatory oversight, and the existing promoter was expressly barred from marketing, booking, or selling any apartments in the project.
- The original developer was held solely responsible for fulfilling all obligations towards the existing allottees and settling all pending claims. In the event of non-compliance, affected homebuyers were granted the liberty to approach MahaRERA for appropriate redressal.

Issue(s) at hand

- Whether the change of promoter in respect of the captioned real estate project qualifies as a "transfer of a real estate project" under Section 15 of the Real Estate (Regulation and Development) Act, 2016?

- Whether the existing allottees of the erstwhile promoter can claim continuation of rights and enforce obligations against the incoming promoter, in the absence of a Section 15 compliant transfer?
- Whether MahaRERA is justified in keeping the registration of the project as allotted to the existing promoter in abeyance, while granting new registration to the incoming promoter?
- Whether the incoming promoter is liable to fulfil obligations arising from the prior sale made by the existing promoter, especially where no such obligation is imposed by SRA under the Letter of Intent or relevant orders?

Findings of the Court

1. **Relevant provisions:** The Authority interpreted and applied the relevant provisions of the Real Estate (Regulation and Development) Act, 2016, with particular focus on Section 3 and Section 15. Section 15 was especially examined to determine whether the change in promoter due to termination by SRA falls within its ambit. In this case, the Authority referred to the statutory mechanism under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, and the role of the Slum Rehabilitation Authority (SRA) as the competent planning authority to regulate and control redevelopment projects within notified slum areas.
2. **Interpretation of Section 15:** The Authority observed that Section 15 governs cases where there is a voluntary transfer of a real estate project by an existing promoter to another party, with the prior consent of two-thirds of the allottees and the approval of the Authority. However, in the present case, the change in promoter occurred not through a voluntary transfer but rather by way of termination by the SRA on account of various defaults committed by the existing promoter. Thus, the Authority held that Section 15 does not apply to a situation where the transfer is not voluntary but enforced by statutory or public authorities in the public interest, SRA in the present case.
3. **Determination of Status: Incoming Promoter as "Promoter" under the Act:** The Authority, after perusing Section 2(zk) of the Act, held that since the Incoming Promoter is now responsible for the construction, marketing, and sale of the project as per the revised LOI and approvals granted by the SRA, this satisfies the definition of a "promoter" under the Act. The Authority further relied on Section 3, which mandates prior registration with MahaRERA before advertising or selling any part of the real estate project. It thus recognized the Incoming Promoter as the legally authorised promoter for the purpose of the project and directed the grant of a fresh RERA registration number accordingly.
4. **Effect on Existing Allottees:** The Authority noted that while the existing promoter has been removed, the rights and claims of existing allottees who have booked flats under him cannot be extinguished solely due to a change in promoter, especially since this change did not occur through a transfer under Section 15. However, since the appointment of the incoming promoter did not require him to assume obligations toward these allottees (no such directive having been issued under the LOI or any provision of the Slum Act), the Authority held that the Incoming Promoter does not bear liability towards the existing allottees. Their remedy lies solely against the Existing Promoter, who continues to be subject to the Authority's jurisdiction.
    - To ensure regulatory clarity, the Authority directed the MahaRERA Secretary to keep the registration number of the existing promoter in abeyance, thereby retaining jurisdiction over the existing promoter to enforce the obligations towards former allottees. Simultaneously, the Incoming Promoter was directed to open a separate designated bank account and comply with the registration process as per law, effectively segregating the liabilities and obligations of the two promoters.
    - The Authority concluded that while the Incoming Promoter is entitled to carry forward and complete the project with full legal mandate, no rights or liabilities towards prior allottees attach to him. The Existing Promoter remains accountable for redressal of grievances and fulfilment of promises made to such allottees. Any claims of allottees arising from prior sale may be enforced by approaching the Authority in separate proceedings against the existing promoter.

HSA
Viewpoint

In the present order, the MahaRERA authority was called upon to determine the obligations of promoters in situations where the transfer of a real estate project occurs not voluntarily, but as a consequence of regulatory intervention under the Slum Rehabilitation Authority (SRA). The Authority rightly distinguished this circumstance from a transfer under Section 15 of the RERA Act and held that such a replacement, effected by SRA due to default and breach of obligations, does not cast retrospective liabilities upon the incoming promoter.

MahaRERA has appropriately emphasized the principle of regulatory continuity without transference of liability, by directing that the incoming promoter, although tasked with completing the stalled project, shall not bear responsibility for prior defaults or pending claims of existing allottees. The Authority's insistence on issuing a new RERA registration number to the incoming promoter further reinforces the legal distinction between the two promoters and establishes a clear demarcation of rights and responsibilities.

The decision correctly upholds the accountability of the original promoter, mandating that claims by homebuyers be pursued against M/s Charmee Enterprises, whose registration was placed in abeyance for continued regulatory oversight. The requirement that the new promoter reimburse the old promoters certified expenditures before assuming construction obligations is an effective safeguard that ensures fairness while facilitating project completion.

By demarcating this distinction, MahaRERA has ensured that homebuyers interests remain protected, without imposing unfair burdens on the incoming promoter. The decision underscores the importance of transparency, due diligence, and statutory compliance in real estate development and aligns with the core objective of the RERA Act, protection of consumer interest while fostering accountability in the real estate sector. The Authority has struck an equitable balance by safeguarding existing allottees rights and enabling project revival through a compliant new promoter.

HSA
AT A GLANCE

FULL-SERVICE CAPABILITIES

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