



Dispute Resolution & Arbitration

Monthly Update
July 2025

- M/s Mahavir Prasad Gupta and Sons vs Govt. of NCT of Delhi
- Mahnoor Fatima Imran & Ors. v. M/s Visweswara Infrastructure Pvt. Ltd. & Ors.
- Before the Hon'ble High Court of Delhi
Roshan Real Estates Pvt Ltd (Appellant) Vs. Government of Delhi (Respondent)
- Before the Hon'ble High Court of Delhi
Raheja Developers Limited (Petitioner) Vs. Ahluwalia Contractors India Ltd (Respondent)
- In The High Court of Judicature at Bombay
Hindustan Petroleum Corporation Limited (Petitioner) Vs. G. R. Engineering Private Limited (Respondent)
- South Delhi Municipal Corporation of Delhi vs. SMS Limited

DISPUTE RESOLUTION AND ARBITRATION UPDATE



M/s Mahavir Prasad Gupta and Sons vs Govt. of NCT of Delhi

FAO (COMM) 170/2023 decided on May 31, 2025

Background facts

- M/s Mahavir Prasad Gupta and Sons ("Appellant") was awarded a contract by the Government of NCT of Delhi ("Respondent"), for strengthening Road No. 58 from RUB Vivek Vihar to Road No.72 for a total contract value of INR 5,16,82,612/- ("consideration") ("Project").
- The work commenced with effect from 09.12.2014 and the work which was supposed to be completed in three months was completed only on 21.05.2015.
- In terms of the agreement, the Quality Assurance Unit of GNCTD conducted an inspection of the work site and randomly measured the thickness of the layers at different locations, and found that the actual thickness of some of the layers was significantly below the required aggregate thickness of 165mm. The Appellant submitted the final bill on 16.11.2015, however, the Respondent withheld the Appellant's payments on the ground that the thickness of the constructed road was allegedly less than the prescribed specifications.
- An independent third-party audit was conducted in March 2016 by IIT Roorkee and the Public Works Department which found the work done by the Appellant acceptable and within permissible tolerances.
- Despite this, the Respondent did not pay the Appellant citing dissatisfaction with the Appellant's work. In view thereof, the Appellant invoked arbitration on 18.10.2018 and unilaterally appointed a sole arbitrator, Mr. A.K. Singhal, to adjudicate the disputes.
- The Arbitrator relying on the report submitted by the third-party auditors awarded a sum of INR 1,76,01,359/- in favour of the Appellant along with an interest of 10% per annum from the date of the award till realisation of payment ("Award").
- The Respondent challenged the Award under Section 34 of the Arbitration & Conciliation Act, 1996 ("Act"). The challenge to the Award was allowed and the same was set aside by the court.
- The Appellant then filed the present appeal against the order of the lower court under Section 37 of the Act before the Delhi High Court.

Contributors

Amrita Narayan
Partner

Pragya Ohri
Partner

Faranaaz Karbhari
Counsel

Himani Singh Sood
Partner

Saurobroto Dutta
Principal Associate

Aditi Soni
Senior Associate

Shray Mehta
Senior Associate

Varchasva
Bhardwaj
Associate

Sharan Shetty
Associate

Devam Singh
Associate

Madhav Sharma
Associate

Issue(s) at hand

- Whether unilateral appointment of an Arbitrator by one party renders the arbitral award a nullity under Section 12(5) read with the Seventh Schedule of the Act?
- Can a party, having participated in the arbitration proceedings without at the outset objecting to the Arbitrator's appointment, be deemed to have waived their right to challenge under Section 12(5)?
- Is such a waiver valid if not done by an "*express agreement in writing*" as required under the proviso to Section 12(5) of the Act?
- Can a challenge to the jurisdiction of the Arbitrator be raised for the first time under Section 34 or 36 of the Act, even if no objection was made earlier?

Findings of the Court

1. On Unilateral Appointment

- The Court reaffirmed the law laid down in TRF Limited vs Energo Engineering Projects Limited (2017) 8 SCC 377 and Perkins Eastman Architects DPC vs HSCC India Limited 2019 SCC OnLine SC 517, that a party who has an interest in the outcome of the decision in an arbitration proceeding must not have the power to appoint the arbitrator since the same is against the principles of impartiality under Section 12(5) of the Act. In a situation where the right to appoint the arbitrator rests solely with one party, that party's selection will inherently carry an exclusive influence in shaping or directing the path of dispute resolution.
- The Court observed that it has also been held by the Hon'ble Supreme Court that a clause allowing unilateral appointment of an arbitrator gives justifiable doubts as to the independence and impartiality of the sole arbitrator and unilateral appointment clauses are violative of Article 14 of the Constitution of India, specifically in public private contracts.
- Therefore, the Court held that a unilateral appointment of the sole arbitrator or the presiding arbitrator by a party to the arbitrations seated in India is strictly prohibited and considered as null and void since its very inception, and any proceedings conducted before such unilaterally appointed Arbitral Tribunal would be null and void. Thus, any award passed by a unilaterally appointed Arbitral Tribunal would be unenforceable as the same would be against the public policy of India.

2. On Waiver

- The Court clarified, that the proviso to Section 12(5) of the Act specifically provides for an "*express agreement in writing*" allowing a waiver from the disqualification to act as an arbitrator. The Court observed, that the general waiver by conduct under Section 4 of the Act would not be applicable to the unilateral appointment of an arbitrator, which is specifically governed by Section 12 (5) of the Act. The Court held, that as Section 12(5) of the Act is subsequent to Section 4 in the Act sequentially, it would override the general waiver by requirement of waiver by express agreement in writing under Section 12(5) of the Act. The express agreement in writing under Section 12(5) of the Act is an exception to the general rule of waiver under Section 4 of the Act.
- In view of the catena of judgments, the Court held that mere participation by parties or not objecting to the unilateral appointment of the arbitrator during the arbitration proceedings, would not constitute a valid waiver under the proviso to Section 12 (5) of the Act.

3. On Raising Objection at Section 34/36 Stage

- The Court relying on various Supreme Court and High Court judgments, including Bharat Broadband, Hindustan Zinc, Govind Singh, and Kotak Mahindra Bank, held that in absence of any express waiver in writing by the party objecting to the unilateral appointment can raise the issue at any time even at the stage of Section 34 proceedings or during the enforcement under Section 36 of the Act.
- The Hon'ble Court observed and held that Section 34(2)(b) of the Act empowers courts to set aside an award if "the Court finds that", which places an obligation on the courts to ensure that any award passed is not against the Public Policy of India. Therefore, implying that even if any of the parties have not raised an objection regarding the unilateral appointment of the arbitrator at any stage, if the courts while considering the application under Section 34 of the Act find that the award is null and void due to such unilateral appointment of the arbitrator, has power to set aside the award without recording any objection by any of the parties in this regard.
- Similarly, the Court held that at the stage of execution of the award under Section 36 of the Act read with Order XXI of the Code of Civil Procedure, 1908 ("CPC"), the court can refuse to enforce the award on the grounds that a decree passed by a court which lacks the inherent jurisdiction to pass such a decree would be a nullity. The Court applying the same principles to the award passed by a unilaterally appointed Arbitral Tribunal held that such an award, considered as

decree under Section 36 of the Act, must not be enforced by the court, being a nullity having lack of inherent jurisdiction to pass the award.

HSA
Viewpoint

The decision of the Delhi High Court reaffirms the strict approach taken by the courts in ensuring procedural fairness, neutrality, and equality in the arbitration process.

Mahnoor Fatima Imran & Ors. v. M/s Visweswara Infrastructure Pvt. Ltd. & Ors

2025 INSC 646

Introduction

- In a significant ruling on the evidentiary value of registered sale deeds in property transactions, the Supreme Court has held that mere registration of a sale deed does not confer ownership, particularly where the vendor lacks a valid and lawful title. The Court underscored that ownership must be established through a valid root of title, lawful possession, and strict adherence to statutory requirements, including registration under the applicable land laws.
- The dispute involved 53 acres of land in Raidurg Panmaktha, Telangana, where the petitioners, relying on registered sale deeds derived from an unregistered 1982 agreement, sought protection under Article 226 against dispossession by the Telangana State Industrial Infrastructure Corporation (TSIIC). The Supreme Court restored the judgment of the Telangana High Court's Single Judge, dismissing the petition for lack of valid title and possession.

Background facts

- The dispute concerns approximately 53 acres of land in Survey No. 83/2, Raidurg Panmaktha Village, Ranga Reddy District, Telangana. The petitioners claimed ownership and possession based on registered sale deeds executed by M/s Bhavana Cooperative Housing Society Ltd., which in turn relied on an unregistered sale agreement dated 19 March 1982.
- However, the land had been declared surplus under the Andhra Pradesh Land Reforms Act, 1973, and vested with the State in 1975. Although a "revalidated" version of the 1982 agreement surfaced in 2006, it differed significantly in land extent and consideration, raising questions of authenticity. Notably, Bhavana Society's suit for specific performance filed in 1991 was dismissed in 2001 and not restored.
- Despite this, the petitioners approached the Telangana High Court under Article 226, seeking to restrain the Telangana State Industrial Infrastructure Corporation (TSIIC) from entering the land and demolishing structures. The Single Judge dismissed the petition citing lack of valid title and possession. However, the Division Bench allowed the appeal, prompting the present challenge before the Supreme Court by the State and legal heirs of the original landowners.

Issue(s) at hand?

- Whether a registered sale deed based on an unregistered and inconsistent agreement of sale can confer valid ownership?
- Whether the petitioners had established lawful possession sufficient to seek protection under writ jurisdiction?
- Whether disputes involving defective title and disputed possession can be adjudicated under Article 226 or require recourse to civil remedies?

Findings of the Court

- On Registered Deeds Based on Unregistered Agreements
The Court held that a registered sale deed does not, in itself, confer ownership if the seller lacks valid title. In this case, the Bhavana Cooperative Housing Society, from whom the petitioners derived their title, based its claim on an unregistered agreement of sale dated 19 March 1982, which was never acted upon within the statutory period under the Registration Act. A revalidated version introduced in 2006 differed materially in land extent and consideration, raising doubts about its authenticity. The Society's earlier suit for specific performance was dismissed for default in 2001, and no credible link to title was established thereafter.
- On Establishment of Possession
The Court found that the petitioners failed to establish actual or lawful possession of the land. Reliance on interim High Court orders was found insufficient. There was no contemporaneous evidence of possession, such as land revenue records or physical occupation, to support their claim. The Court reiterated that mere reliance on possession claims without factual proof cannot be the basis for relief under Article 226.
- On Maintainability of the Writ Petition and Final Outcome
Given the absence of valid title and failure to prove possession, the Court held that the petition was not maintainable under Article 226 of the Constitution. The dispute pertained to 53 acres of land in Raidurg Panmaktha, Telangana, which had already been declared surplus and vested with the State in 1975 under the Andhra Pradesh Land Reforms Act. The sale deeds relied upon were derived from a disputed and inconsistent agreement, and the petitioners' claim lacked both legal foundation and

factual support. Accordingly, the Supreme Court **restored the judgment of the Telangana High Court's Single Judge**, who had dismissed the writ petition, and set aside the contrary decision of the Division Bench.

HSA

Viewpoint

The Supreme Court's decision in *Mahnoor Fatima Imran v. Visweswara Infrastructure Pvt. Ltd.* serves as a compelling reminder that formal documentation such as a registered sale deed cannot substitute for a valid root of title. The Court's approach reinforces the principle that property rights must be grounded in legal entitlement and factual possession, not merely in procedural compliance.

Crucially, the Court clarified that where a sale deed is based on a defective or fraudulent agreement, even its registration offers no protection. This underscores the judiciary's commitment to preserving the integrity of land ownership and public land records, especially in high-value and contested urban territories.

The Court issued a clear caution to property purchasers, developers, and lenders that registration alone does not confer ownership unless supported by substantive legal rights. It emphasised the importance of verifying the entire chain of title, confirming the seller's lawful possession and the absence of competing claims or pending litigation, and ensuring that registration is completed within the statutory period of four months from execution, as mandated by Section 23 of the Registration Act, 1908. The judgment also highlights the limited scope of writ jurisdiction in property disputes. When both title and possession are under dispute, writ courts are not the appropriate forum. Relief must instead be sought through civil proceedings, where evidence can be led, and facts properly examined.

By restoring the Single Judge's dismissal of the writ petition, the Supreme Court reaffirmed that equitable remedies cannot be granted when the underlying transaction is tainted by procedural irregularities or substantive illegality. This ruling should encourage enhanced due diligence practices across the real estate sector and curb attempts to assert speculative claims over land through unregistered or inconsistent instruments.

Before the Hon'ble High Court of Delhi

Roshan Real Estates Pvt Ltd (Appellant) Vs. Government of Delhi (Respondent)

OMP (T)(COMM) No. 23 of 2025

Background facts

- In the instant case, Roshan Real Estate Pvt. Ltd. ("Petitioner") had been awarded a contract by the Central Public Works Department ("Respondent / CPWD") in 2019 for certain construction-related works across seven government schools. After completion of the said project to the satisfaction of the Respondent, the Petitioner submitted its final bill of ₹20,73,39,891/- in May 2022. However, when payments were eventually made by the Respondent in March 2023, the amount disbursed was unilaterally reduced to ₹5,09,52,388/-, leading to the Petitioner questioning the same.
- Thereafter, following the failure of the contractual dispute resolution process stipulated under Clause 25 of the contract between July 2023 and February 2024, the Petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 ("Act") for the initiation of arbitration proceedings. However, no arbitrator was appointed in response to the Section 21 notice and therefore, the Petitioner approached the Hon'ble Delhi High Court ("Hon'ble Court") under Section 11 of the Act, leading to the appointment of Mr. B.B. Dhar ("the appointed arbitrator"), a retired CPWD engineer, as the sole arbitrator.
- Subsequent thereto, the Petitioner discovered that the appointed arbitrator had previously acted as a supervising engineer on several of its past projects for the Respondent and the Respondent had even withdrawn the appointment of the said arbitrator in another dispute in 2020. Aggrieved by the aforesaid, the Petitioner filed the instant petition under Sections 14 and 15 of the Act seeking termination of the mandate of the appointed arbitrator, and appointment of an independent arbitrator.
- The Petitioner alleged that there would be perceived bias and a lack of neutrality if the appointed arbitrator was allowed to adjudicate the arbitration proceedings, and therefore the Petitioner sought termination of the arbitrator's mandate. Conversely, the Respondent contended that the arbitrator's prior involvement had occurred over 17 years ago and was of a supervisory nature and therefore did not disqualify him under the Fifth or Seventh Schedule to the Act.

Issue(s) at hand?

- The following issue was put before the Hon'ble Court:
Whether the past professional association between the appointed arbitrator and the Petitioner disqualifies the arbitrator under the Seventh Schedule to the Act and warrants termination of his mandate under Sections 14 and 15 of the Act.

Findings of the Court

- After considering the submissions advanced by both the parties, the Hon'ble Court began by reaffirming the statutory framework under Section 12(5) read with the Seventh Schedule and Section 14(1)(a) of the Act, which disqualifies any person from acting as an arbitrator if they have had a professional, business, or other specified relationship with any party to the dispute.
- The Hon'ble Court placed emphasis on Entry 1 of the Seventh Schedule, which bars a person from being appointed as an arbitrator if they have had a professional or supervisory relationship with a party, regardless of the passage of time. Further, the Hon'ble Court clarified that the key test under this provision is not the nature or length of the association, but whether such a relationship gives rise to a reasonable apprehension of bias.
- Additionally, the Hon'ble Court relied on various precedents including *TRF Ltd. v. Energo Engineering Projects Ltd.*¹, *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*², *Proddatur Cable TV Digi Services*³, and *Govind Singh v. M/s Satya Group Private Limited & Anr.*⁴, to reaffirm that actual or perceived bias undermines the integrity of arbitration and any person having an interest in the dispute or a past relationship that may impact independence is disqualified.
- In the context of the instant case, the Hon'ble Court opined that the arbitrator had served as a CPWD Superintendent Engineer during projects executed by the Petitioner, and such role, even though over 17 years old, was deemed sufficient to raise a reasonable apprehension of bias. The Hon'ble Court further observed that no written waiver under the proviso to Section 12(5) had

HSA Viewpoint

In our opinion, the Hon'ble High Court's decision reinforces the fundamental requirement of neutrality in arbitral proceedings. The judgment underscores that even past relationships, however old may disqualify an arbitrator if they create a reasonable apprehension of bias, which would undermine one of the bedrocks of arbitration proceedings. Moreover, the aforesaid decision of the Hon'ble Court affirms that appointments made under Section 11 are not immune from subsequent scrutiny under Sections 12 and 14 of the Act. Therefore, we opine that the decision is a strong reaffirmation of the integrity mechanisms built into the Arbitration Act to preserve the trust of the parties in the mechanism of arbitration.

¹ (2017) 8 SCC 377

² (2020) 20 SCC 760

³ 2020:DHC:354

⁴ 2023:DHC:81-DB

been furnished by the Petitioner. Additionally, the Hon'ble Court also considered the fact that the arbitrator had previously acted as a nominee arbitrator for the Respondent in other disputes contributed to the perception of partiality.

- Accordingly, in light of the aforesaid the Hon'ble Court held that the mandate of the arbitrator could not be salvaged by the fact that he had been appointed vide an order of the Hon'ble Court in a Section 11 petition, as such an appointment cannot not override statutory disqualifications given under the Act. It was also noted that the Respondent had earlier withdrawn the arbitrator's nomination on similar grounds and the arbitrator's declaration under Section 12(1) was not found to cure his ineligibility under Section 12(5), especially in the absence of an express written waiver by the Petitioner.
- Accordingly, the Hon'ble Court allowed the petition and terminated the mandate of the arbitrator, while also appointing a fresh arbitrator to adjudicate the arbitration proceedings.

In The High Court of Delhi

Raheja Developers Limited (Petitioner) Vs. Ahluwalia Contractors India Ltd (Respondent)

IA/44283/2024

Background facts

- A Civil Works Contract Agreement ("Agreement") dated December 6th 2010 was executed between Raheja Developers Limited ("Petitioner") and Ahluwalia Contractors India Ltd ("Respondent") for the construction work of 6 towers and a non-tower area.
- Disputes arose between the Petitioner and Respondent in respect of the said Agreement and accordingly, on February 14th 2019, Mr. Prem Kumar was appointed as the Sole Arbitrator for adjudicating the disputes.
- The Respondent filed 10 claims and thereafter filed 3 additional claims amounting to Rs 2,20,30,880/- before the Arbitral Tribunal.
- The Petitioner disputed the claims filed by the Respondent and filed 6 counterclaims before the Arbitral Tribunal.
- However, the Sole Arbitrator Mr. Prem Kumar, recused himself from adjudicating the said dispute on account of ill health.
- In view of the same, former Justice Jayant Nath was appointed as the Sole Arbitrator vide order dated November 3rd 2022, passed by the Hon'ble Delhi High Court.
- The Ld. Sole Arbitrator passed an arbitral award dated April 29th 2024 ("Arbitral Award") in favour of the Respondent.
- As per the said Arbitral Award, the Petitioner was required to pay a sum of Rs 10,22,46,103/- to the Respondent along with simple interest @ 8% per annum on the awarded sum.
- Aggrieved by the Arbitral Award the Petitioner filed a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act") on July 26th 2024.
- Thereafter, the Petitioner filed the present Application to place on record additional grounds and documents for setting aside the Arbitral Award in pursuance the order dated October 24th 2024 passed by the Hon'ble Delhi High Court.

Issue(s) at hand?

- Whether the amendment to bring additional grounds for setting aside an Arbitral Award under Section 34 of the Act is maintainable?

Findings of the Court

- At the outset, the Hon'ble Court relied on the judgment in the case of *State of Maharashtra Vs Hindustan Construction*¹ and held that the Supreme Court has provided a small window for possible amendment to a petition filed under Section 34 of the Act, notwithstanding the period of limitation.
- The Hon'ble Court further held that an amendment to a petition filed under Section 34 of the Act is legally tenable, provided the petition was filed within the prescribed limitation period as in the Act.
- The Hon'ble Court once again relied on the judgment in the case of *State of Maharashtra Vs Hindustan Construction (supra)* and held that if basic facts supporting a new ground are already mentioned in the petition filed under Section 34 of the Act, then that ground can be added later through an amendment. However, the Hon'ble Court further held that if an amendment is intended to regularise an otherwise *non est* filing, the same may not be permissible.
- The Hon'ble Court held that the jurisdictional competence of an Arbitral Tribunal to continue after expiry of the time period as prescribed under Section 29A Act is a legal question the court can examine under a petition filed under Section 34 of the Act, if brought to its notice. The Hon'ble Court further held that even if a party fails to raise an objection regarding termination of mandate of the Arbitral Tribunal in a petition filed Section 34 of the Act, it does not cure the jurisdictional defect, and the court adjudication petition filed under Section 34 of the Act can still examine if the Arbitral Award was passed by an Arbitral Tribunal that had become functus officio.
- In view of the above, the Hon'ble Court held that the additional ground raised by the Petitioner is legal in nature and supported by the foundation facts provided in the petition and hence allowed the amendment.

¹(2010) 4 SCC 518

- However, the Hon'ble Court clarified that its observations were without prejudice to the Respondent's right to contest the merits of the additional ground during final arguments.

HSA

Viewpoint

The judgment, in our view, rightly reinforces that an amendment to a petition filed under Section 34 of the Act is permissible even after the expiry of the limitation period, as long as the original petition was filed within the prescribed time. Importantly, the judgment provides clarity that if the foundational facts supporting a new legal ground are already set out in the original petition filed under Section 34 of the Act, such a ground can be subsequently added through an amendment, ensuring procedural flexibility in the interest of justice.

With respect to the issue of jurisdictional competence of an Arbitral Tribunal under Section 29A of the Act, the Court has, in our opinion, correctly clarified that even if a party has not specifically raised the above issue as a ground in its petition under Section 34 of the Act, the Court is not precluded from examining whether the Arbitral Award was passed by a Arbitral Tribunal that had become functus officio due to expiry of its mandate under Section 29A of the Act. Since this issue goes to the root of the Arbitral Tribunal's authority, it remains open to judicial scrutiny and must be considered while adjudicating the challenge to an Arbitral Award.

In The High Court of Judicature at Bombay Hindustan Petroleum Corporation Limited (Petitioner) Vs. G. R. Engineering Private Limited (Respondent)

Commercial Arbitration Petition No. 984 of 2018

Background facts

- The Hindustan Petroleum Corporation Limited [Petitioner] awarded G.R. Engineering [Respondent] a contract to construct “mounded bullets” to store liquefied petroleum gas.
- The Project was to be completed by December 5, 2007 but was completed on February 2, 2010.
- HPCL Computed liquidated damages in the payments due, on the invoices raised by GRE. This gave rise to a dispute between the parties.
- HPCL also withheld various other amounts on the payments made to GRE, which led to initiation of arbitration proceedings by GRE [Applicant]. The Impugned Award by the Arbitral Tribunal held that the amount withheld by HPCL [Respondent] on account of Civil Works (Rs. 1,99,07,227); under-insurance (Rs.25,64,026); Customs Duty variation (Rs. 86,38,491.50); Service Tax (Rs.3,08,85,583); normalising ‘Dished Ends’ (Rs. 5,00,000); and liquidated damages (Rs.5,83,67,973) ought not to have been withheld while directing the payment of such sums by HPCL to GRE with interest at the rate of 7% per annum from the date of filing of the claim (September 6, 2012) until the date of actual payment.
- HPCL filed a Section 34 petition challenging the award, alleging perversity in findings, incorrect reliance on evidence, and failure to award liquidated damages.

Issue(s) at hand?

- Whether Civil Works disputes were non-arbitrable under the General Conditions of Contract.
- Whether the arbitral tribunal wrongly admitted and relied on the 'Jangid Report' introduced by GRE, disregarding HPCL's objections.
- Whether denial of liquidated damages despite contractual provisions and repeated reservation of rights was perverse.
- Whether HPCL was justified in withholding amounts for under-insurance, Service Tax, and Customs Duty variation.

Findings of the Court

- The Bombay High Court upheld the arbitral tribunal's decision on most counts while intervening solely on the issue of liquidated damages.
- On the Civil Works claim, the Court held that Clause 8.b of the GCC permitted recoveries only on the recommendation of a Government of India agency, which HPCL's internal vigilance department did not constitute. In the absence of an external agency recommendation, the Court affirmed the dispute was arbitrable.
- Regarding the evidentiary challenge, the Court upheld the tribunal's discretion in admitting and considering the Jangid Report, noting that arbitral proceedings allow procedural flexibility and that HPCL neither confronted the expert nor formally objected to its inclusion.
- On the issue of liquidated damages, the Court found the tribunal's reasoning vague and arbitrary. It noted the failure to examine whether actual loss was difficult to prove or if the stipulated damages were a genuine pre-estimate, as mandated under Section 74 of the Indian Contract Act, 1872. Relying on *Kailash Nath Associates v. DDA*¹, the Court set aside this portion of the award while confirming it was severable from the rest.
- The Court upheld the tribunal's findings on the insurance claim, observing no contractually fixed insurance value existed and that HPCL's withholding was unjustified. Similarly, the award granting GRE reimbursement of service tax liabilities arising from legislative changes was upheld, with the Court noting HPCL's failure to substantiate retrospective liability. Lastly, the Court affirmed the tribunal's conclusion that HPCL had not proved GRE's liability for Customs Duty variations.
- In conclusion, the Court partially upheld the arbitral award, interfering only to quash the denial of liquidated damages, while maintaining the award's remaining findings as legal, reasoned, and defensible under Section 34 of the Arbitration and Conciliation Act, 1996.

HSA Viewpoint

The judgment reinforces the limited scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996, confirming courts will not reappraise facts or evidence unless the award is patently illegal, totally perverse or contrary to public policy.

It rightly set aside the denial of liquidated damages as arbitrary for lacking reasoning, upholding the principle under Section 74 of the Indian Contract Act, 1872 that liquidated damages must either represent a genuine pre-estimate of loss or be justified where proving actual loss is difficult.

The decision maintains a balanced approach — preserving arbitral autonomy while ensuring awards conform to statutory contract law standards and public policy.

¹(2015) 4 SCC 136

South Delhi Municipal Corporation of Delhi vs. SMS Limited

2025 SCC Online 1138

Background facts

- There were three cases that differ in the details, but they converge on a common interpretative dissonance concerning the dispute resolution clauses.
- In *South Delhi Municipal Corporation v. SMS Ltd.* [SLP (C) No. 16913/2017], SDMC challenged an arbitral appointment made by the Hon'ble Delhi High Court on the basis that Article 20 was not an arbitration clause. The Hon'ble High Court disagreed and appointed an arbitrator, holding Article 20 to include arbitration. The Supreme Court stayed the proceedings on 07.07.2017.
- In contrast, in *M/s DSC Ltd. v. MCD* [SLP (C) No. 21437/2022], the Hon'ble Delhi High Court ruled against the invocation of arbitration under the same clause. Despite the SMS Ltd. precedent, the Hon'ble Court held that Article 20 provided only for mediation and dismissed the petition. The matter was pending before the Hon'ble Supreme Court, which issued notice on 07.12.2022.
- Similarly, in *MCD v. M/s Consolidated Construction Consortium Ltd.* [SLP (C) No. 17510/2023], CCC Ltd. sought arbitration under Article 20 after issuing a legal notice claiming INR 41.88 crore. The Hon'ble Delhi High Court upheld the clause as an arbitration agreement and directed arbitration under DIAC. MCD's challenge was pending before the Hon'ble Supreme Court following notice issued on 24.07.2023.

Issue(s) at hand?

- Whether the dispute resolution clauses viz. Article 20 in the subject-Concession Agreements, constitute a valid arbitration agreement between the parties?

Findings of the Court

- Hon'ble Justice Surya Kant and Hon'ble Justice N. Koteswar Singh of the Hon'ble Supreme Court examined whether there was a clear and mutual intent to arbitrate. It held that such intent must be demonstrated to be unambiguous and evident in the contract language and context. Article 20, titled "Mediation by Commissioner," was framed in conciliatory terms, suggesting a non-binding process rather than a binding arbitration mechanism.
- Secondly, the Hon'ble Court looked for a binding adjudicatory process. Unlike arbitration, which results in enforceable awards, Article 20 lacked terms like "arbitration" or "arbitrator," and made no provision for an enforceable decision. It involved no tribunal or reference to the Arbitration Act, which further confirmed it was not intended to have binding effect.
- The Hon'ble Court also noted the flawed appointment mechanism wherein Article 20 vested exclusive authority in the Commissioner to appoint the decision-maker, thereby denying the private party any role, which violated the principle of party autonomy, a core element of arbitration. Additionally, the process under Article 20 lacked procedural safeguards common to arbitration, such as oral hearings, cross-examinations, or reasoned decisions. Instead, it relied on informal submissions, thereby undermining the fairness and adjudicatory nature of the process.
- Even where the clause used the phrase "final and binding" in the DSC Ltd. and CCC Ltd. agreements, the Court noted that finality alone is not determinative of whether a process qualifies as arbitration. Many non-arbitral processes such as expert determinations or internal reviews may also produce decisions termed as final and binding. However, such terminology does not convert a non-adjudicatory process into arbitration. In the SMS Ltd. case, even this expression was absent, and only the word "final" was used, further weakening the case for Article 20 to be treated as an arbitration clause.
- Further, the Hon'ble Court stressed the lack of neutrality and independence in the process. The adjudicator was an MCD officer, often without legal training, appointed unilaterally, making the process inherently biased. This is particularly problematic when, as here, the clause does not even require the officer to have legal qualifications or training in adjudication. In the case of DSC Ltd. and CCC Ltd., the clause did not even contemplate an external officer, thereby entirely eliminating any semblance of neutrality.
- In conclusion, the Court held that Article 20 in all three agreements did not satisfy the statutory requirements of a valid arbitration agreement under Section 7. It lacked mutual consent to arbitrate, a binding process, procedural fairness, and a neutral forum. Accordingly, the Hon'ble Supreme Court ruled that Article 20 cannot be invoked to initiate arbitration, setting aside High Court rulings to the contrary. The Supreme Court affirmed the interpretation adopted in *M/s DSC Limited v. Municipal Corporation of Delhi*, wherein arbitration under Article 20 was expressly rejected.

HSA Viewpoint

The Hon'ble Supreme Court rightly clarified that Article 20 did not constitute a valid arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996. By underscoring the absence of mutual intent to arbitrate, a binding adjudicatory process, essential procedural safeguards, and party autonomy, the Hon'ble Court curtailed the misuse of vaguely worded clauses as a basis for arbitration. This judgment reinforces the need for precision in contractual drafting and upholds the integrity of arbitration as a consensual, fair, and neutral dispute resolution mechanism.

HSA

AT A GLANCE

FULL-SERVICE CAPABILITIES



BANKING & FINANCE



COMPETITION & ANTITRUST



CORPORATE & COMMERCIAL



DEFENCE & AEROSPACE



DISPUTE RESOLUTION



ENVIRONMENT, HEALTH & SAFETY



INVESTIGATIONS



LABOR & EMPLOYMENT



PROJECTS, ENERGY & INFRASTRUCTURE



PROJECT FINANCE



REAL ESTATE



REGULATORY & POLICY



RESTRUCTURING & INSOLVENCY

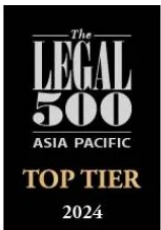


TAXATION



TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

GLOBAL RECOGNITION



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