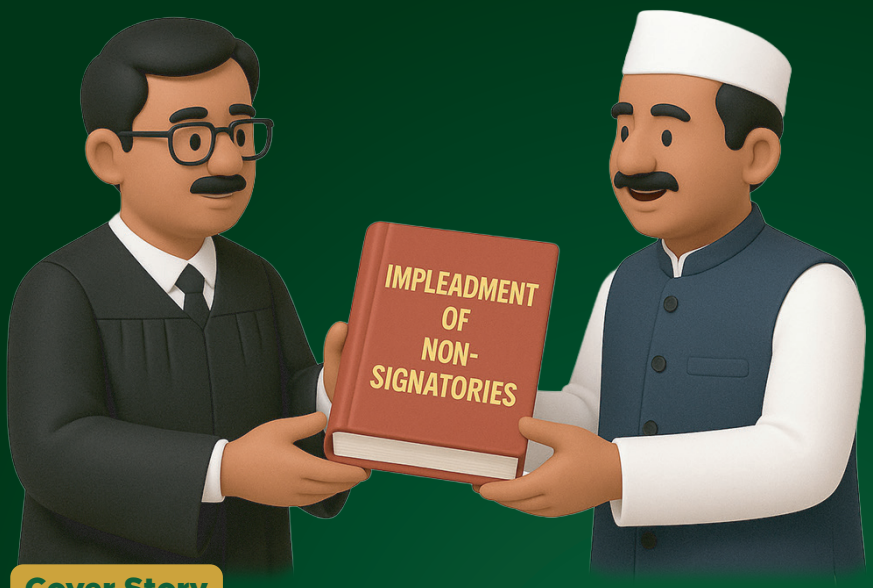
ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration



Cover Story

Impleading Non-Signatories in Arbitration

Supreme Court's Pro-Arbitration Shift and the Call for Legislative Reform 04

PIVOTAL ISSUES

Upholding MSME Interests: Ad-Hoc Arbitrators Empowered to Grant Higher Interest. 05

Judicial Intervention in arbitration pertaining to Bank Guarantees: When Should Courts Step In? 06

Arbitration Award Enforcement Streamlined: Delhi High Court Restricts CPC Route. 07

Arbitration Award Stands Despite Late MP Act Objection: SC Clarifie. 08

and more...

SIGNIFICANT CASE LAWs

- *Supreme Infrastructure India Limited vs. Freyssinet Memard India Pvt. Ltd.*
- *Pcl Sticco (JV) vs. National Highways Authority of India*
- *Harshvardhan Metals Ltd & Anr. vs. ISF Commodities (P) Ltd*
- *Ram Krishan Associates Pvt. Ltd. vs. Asian Hotel (North) Ltd*

and more...

REGULATORY UPDATES

Updated MCIA Rules 2025

1. *Managing Multi-Party and Multi-Contract Arbitration.*
2. *Expedited and Interim Procedures.*
3. *Stakeholder Participation and Support and more.*

Upcoming Events & Trainings 12

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K&A INSIGHTS

INDEX

04 Cover story (Impleading Non-Signatories in Arbitration: Supreme Court's Pro-Arbitration Shift and the Call for Legislative Reform)

05 Pivotal Issues (Future Trajectory: Leveling the Playing Field for MSMEs in Arbitration)

06 Pivotal Issues (Balancing Act: SC Navigates Arbitration and Bank Guarantee Conundrum)

07 Pivotal Issues (Interpreting the Inapplicability of Section 47 CPC Post Section 34 Proceedings under Arbitration Act)

08 Pivotal Issues (Arbitration Act Vs. MP Madhyastham Adhikaran Adhiniyam)

09 Pivotal Issues (Arbitration Clause No Bar: Calcutta HC Allows Writ Against Third-Party Demurrage Deductions)

10 Significant Case laws

- Supreme Infrastructure India Limited vs. Freyssinet Memard India Pvt. Ltd.
- Pcl Sticco (JV) vs. National Highways Authority of India.
- Harshvardhan Metals Ltd & Anr. vs. ISF Commodities (P) Ltd.
- Ram Krishan Associates Pvt. Ltd. vs. Asian Hotel (North) Ltd.
- Rhine Power Pvt. Ltd. vs. Ramprastha Promoters And Developers Pvt. Ltd. & Ors.
- Interstate Construction vs. National Projects Construction Corporation Ltd.
- Union Of India vs. Gr-Gawa R(J.V.).

17 Training & Events.

18 About K&A.

Editor's Note

Law has limits, our cover story this month explores the Supreme Court's timely call for legislative intervention on the contentious issue of impleading non-signatories in arbitration. With jurisprudence fragmented and practical uncertainty mounting, the Court's signal is clear: it's time for Parliament to draw the line.

This edition of ARBITRA also tracks significant developments across the arbitration landscape. We look at the Delhi High Court's welcome move to restrict procedural delays by limiting CPC's applicability in enforcement. In another push for efficiency, the Supreme Court upheld an award despite a late objection under the Madhya Pradesh Act. Meanwhile, MSMEs secured a win, with ad-hoc arbitrators now empowered to grant higher interest.

From the blurred boundary between writ jurisdiction and arbitration clauses, to judicial restraint around bank guarantee disputes, the courts are refining arbitration's outer edges. We also break down the newly released MCIA Rules 2025, setting the tone for modern institutional arbitration in India.

Let's dive in.

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COVER STORY

Impleading Non-Signatories in Arbitration

Supreme Court's Pro-Arbitration Shift and the Call for Legislative Reform

Imagine a complex tapestry of modern commerce, where numerous entities, though legally distinct, are interwoven in intricate deals. When disputes arise in this web, can arbitration, a creature of contractual consent, pull in those who never formally signed the dotted line? This question, though seemingly straightforward, has vexed Indian courts for years, creating a legal landscape as nuanced as the transactions themselves.

While the Arbitration Actremained conspicuously silent on the issue of joining non-signatory parties, judicial ingenuity stepped in, birthing doctrines like the "Group of Companies" to prevent crafty maneuvering through complex corporate structures. The ability to bind non-signatories became a crucial tool for effective dispute resolution, preventing parties from hiding behind veils of incorporation. Yet, this judge-made law existed in a statutory vacuum, leaving both practitioners and the judiciary in a state of perpetual interpretive flux....

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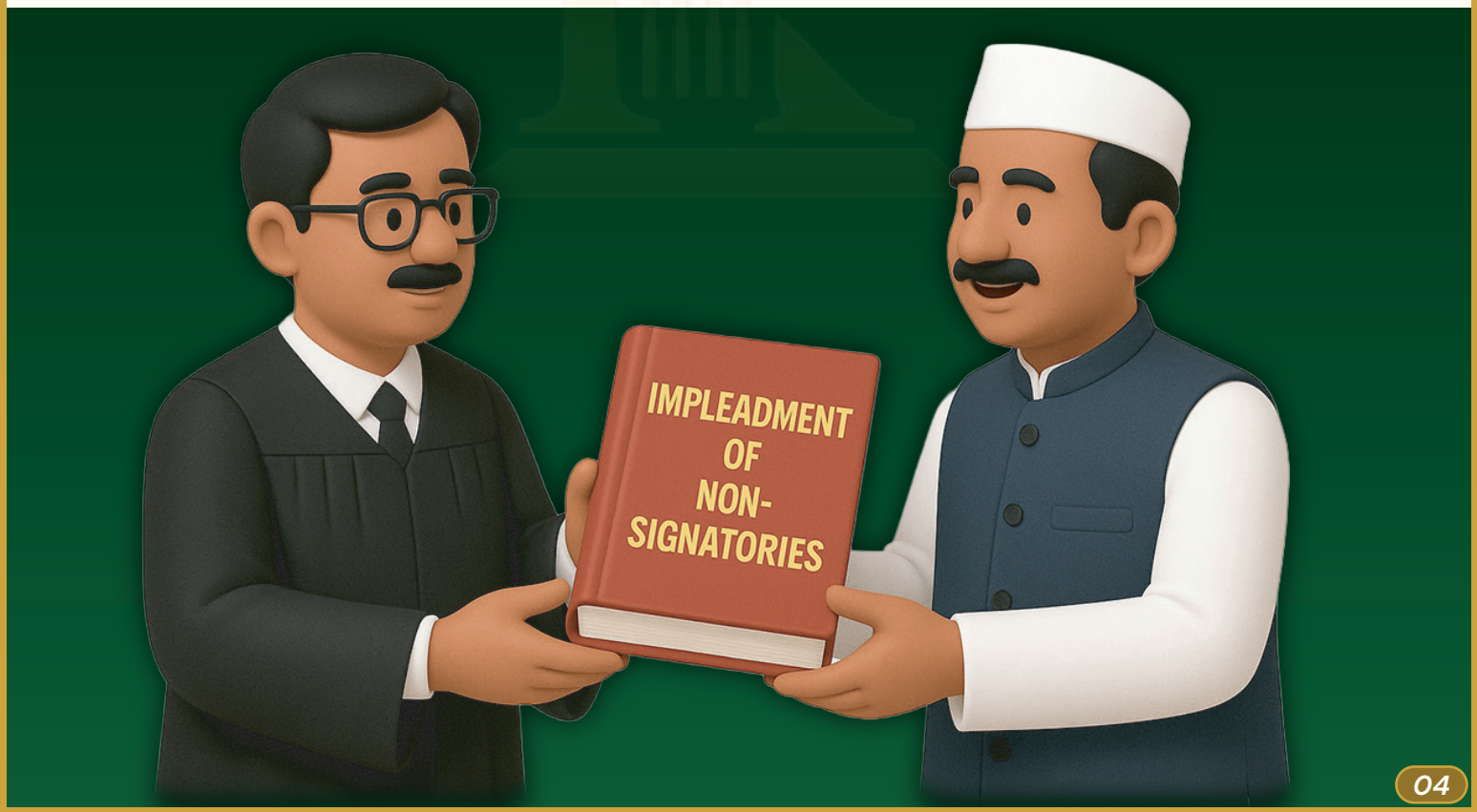

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PIVOTAL ISSUES

Future Trajectory: Leveling the Playing Field for MSMEs in Arbitration

The power of an arbitral tribunal to award interest is a crucial aspect of dispute resolution, ensuring that successful parties are adequately compensated for time value of money and any delays in receiving their due. In a significant pronouncement on this subject in **Shristi Infrastructure Development Versus Scorpio Engineering Private Limited And Anr.**, Delhi High Court, under judicious eye of Justice Jasmeet Singh, addressed specific question of whether an ad-hoc arbitrator appointed under **Arbitration Act** possesses authority to grant elevated interest rate stipulated under Section 16 of **MSMED Act**, even when dispute was not initially referred to MSME Facilitation Council.

Core question before Delhi High Court stemmed from Shristi Infrastructure Development's challenge to an arbitral award obtained by Scorpio Engineering Pvt. Ltd., specifically concerning imposition of interest under MSMED Act. This article will delve into a detailed analysis of rationale underpinning this judgment and explore its potential implications for the landscape of arbitration involving MSMEs...

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PIVOTAL ISSUES

Balancing Act: SC Navigates Arbitration and Bank Guarantee Conundrum

The legal arena often witnesses a delicate dance between seemingly conflicting principles. One such intricate interplay exists between the sanctity of arbitration agreements, designed to minimize judicial intervention, and the robust mechanism of bank guarantees, instruments intended to be both independent and unconditional. While courts generally exercise restraint in interfering with the invocation of these guarantees, the scales of justice sometimes demand intervention, particularly when faced with the specter of egregious fraud or the certainty of irretrievable harm. This very tension was at the heart of a recent decision by the Supreme Court of India.

In **Jindal Steel And Power Limited V. Bansal Infra Projects Pvt. Ltd. & Others,** a division bench comprising Justices JB Pardiwala and R Mahadevan grappled with the question of how far a High Court can, and indeed should, step in under its supervisory jurisdiction **under Article 227 of the Constitution** in matters involving bank guarantees, especially within the framework of the Arbitration Act...

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PIVOTAL ISSUES

Interpreting the Inapplicability of Section 47 CPC Post Section 34 Proceedings under Arbitration Act

The enforcement of arbitral awards in India, a process intended to be streamlined and efficient under the Arbitration and Conciliation Act, 1996 (ACA), recently witnessed a significant clarification by **Justice Jasmeet Singh in Anglo-American Metallurgical Coal Pvt. Ltd.** Versus Mmtc Ltd from the Delhi High Court, the court addressed a crucial question regarding the permissible avenues for challenging an award at the enforcement stage. The core issue revolved around whether a party, having failed to successfully contest an arbitral award under the specific provisions of **Section 34 of the ACA,** could then raise objections to its execution by invoking the broader provisions of **Section 47 of the Code of Civil Procedure, 1908 (CPC)...**

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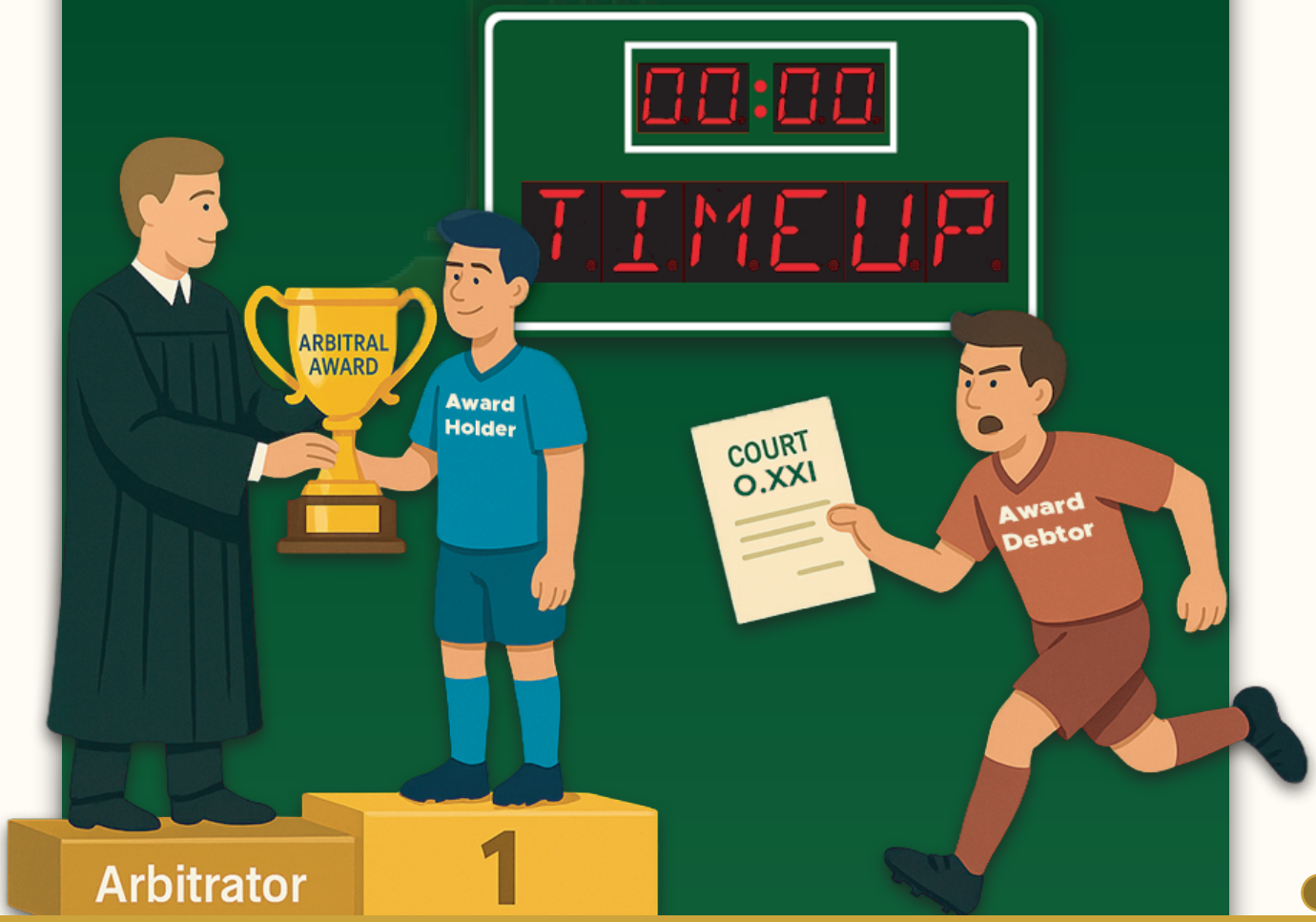

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PIVOTAL ISSUES

Arbitration Act Vs. MP Madhyastham Adhikaran Adhiniyam

In the realm of dispute resolution, arbitration stands as a significant mechanism for settling conflicts outside the traditional court system. The Arbitration and Conciliation Act, 1996, in India provides a comprehensive framework for this process. However, questions regarding the jurisdiction of arbitral tribunals can arise, leading to legal challenges. Recently, a division bench of the Supreme Court comprising Justices JB Pardiwala and R Mahadevan has delivered a crucial judgment in M/S Gayatri Project Limited Versus Madhya Pradesh Road Development Corporation Limited clarifying the circumstances under which an arbitral award can be challenged on jurisdictional grounds, particularly when the objection was not raised during the arbitration proceedings. The Court firmly held that an arbitral award under the 1996 Act cannot be annulled solely due to a lack of jurisdiction if the objecting party failed to raise this issue before the arbitral tribunal itself at the relevant time, particularly under Section 16 of the Act...

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PIVOTAL ISSUES

Arbitration Clause No Bar: Calcutta HC Allows Writ Against Third-Party Demurrage Deductions

In the realm of commercial contracts, the presence of arbitration clauses often serves as a bulwark against judicial intervention, particularly in disputes arising between contracting parties. However, the Calcutta High Court, in a recent judgement in **India and others Versus Sunil Saha and others** by a bench comprising **Chief Justice T.S. Sivagnanam and Justice Chaitali Chatterjee (Das),** have carved out an exception to this principle. The court held that a writ petition can be entertained against a third party for arbitrary deductions of demurrage, even when an arbitration clause exists between the contracting parties, provided there are no disputes or differences between those contracting parties themselves. The specific issue before the court arose from appeals filed by the **Food Corporation of India (FCI)** and the **Central Warehousing Corporation (CWC)** against a Single Judge's order directing them to disburse a substantial amount deducted from the writ petitioner's handling and transport bills.

This article will delve into the nuanced reasoning and established legal precedents upon which this significant decision of the Calcutta High Court rests, exploring the circumstances under which the long arm of writ jurisdiction can extend to third parties despite the presence of a private arbitration agreement...

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SIGNIFICANT CASE LAWs

Delhi High Court clarifies: Not responding to a Section 21 notice under the Arbitration Act does not imply the consent to the unilateral appointment of proposed arbitrator

In **Supreme Infrastructure India Limited v Freyssinet Memard India Pvt. Ltd., Justice Jyoti Singh** of the Delhi High Court has set aside an arbitral award, unequivocally stating that the **unilateral appointment of an arbitrator vitiates the award.** The court held that a party's failure to respond to a notice under Section 21 of the Arbitration and Conciliation Act, 1996 ("ACA") cannot be construed as implied consent to the appointment of a named arbitrator. The only proper course in such a situation is for the party initiating arbitration to seek the court's

intervention for the appointment of an arbitrator. The court's decision was prompted by a challenge to an ex parte arbitral award, where the petitioner claimed they never received the mandatory Section 21 notice, were unaware of the proceedings, and that the arbitrator was appointed unilaterally.

Justice Singh's rationale was multi-faceted: the mandatory nature of the Section 21 notice for the commencement of proceedings, the principle that unilateral arbitrator appointments are void, and the clear directive that non-response to a Section 21 notice necessitates court intervention for arbitrator appointment, rather than self-appointment. The court found no proof of proper notice delivery and reiterated that an arbitrator's appointment requires mutual consent. Consequently, the arbitral award dated March 15, 2016, was deemed invalid and set aside due to the absence of a valid Section 21 notice and the arbitrator's unilateral appointment.

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SIGNIFICANT CASE LAWs

The Delhi High Court held that interest on a decreed amount deposited in court ceases when the award holder is made aware of the deposit.

The Delhi High Court, in a recent decision in **PCL STICCO (JV) versus National Highways Authority of India** by **Justices Vibhu Bakhru and Tejas Karia,** has clarified that once a judgment debtor deposits the decretal amount with the court registry, and the award holder is aware of this deposit, **interest on that specific deposited sum ceases to accrue.** This means interest can only be claimed on any outstanding amount, not on the funds already placed with the court. This decision arose from an appeal filed under **Section 13(1A) of the Commercial Courts Act, 2015,** regarding the enforcement of an arbitral award, with the award holder's application under **Section 36 of the Arbitration and Conciliation Act, 1996 ("ACA")** for enforcement forming the core of the dispute. The award holder argued for continued interest accrual on the deposited amount until actual release, while the judgment debtor contended that the deposit itself should stop interest from running.

The court's rationale was grounded in the principle of partial discharge of debt, stating that a deposit, even if partial, discharges the decree to that extent, stopping interest on that portion. They emphasized that under **Order 21 Rule 1(4) and (5) of the Civil Procedure Code, 1908 (CPC),** interest ceases when the award holder has notice of the deposit. Citing Supreme Court precedents, the bench reiterated that payments are first appropriated towards interest, then costs, and finally the principal, and once a portion of the principal is satisfied, no further interest accrues on it. The court found that even without formal notice under **Order XXI Rule 1(2) CPC,** the award holder's official awareness of the deposit through court records was sufficient to halt further interest on the deposited sum.

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SIGNIFICANT CASE LAWs

Delhi High Court: Bye-laws cannot demand pre-deposit for challenging arbitration awards under Section 34

The Delhi High Court, in a recent judgement in **Harshvardhan Metals Ltd & Anr. Versus ISF Commodities (P) Ltd** by **Justice Jasmeet Singh,** has firmly established that **bye-laws cannot impose conditions that contradict statutory rights.** This means that if a law, like the **Arbitration and Conciliation Act, 1996 ("Arbitration Act"),** doesn't require a pre-deposit of an awarded amount to challenge an arbitral award, then no organizational bye-law can introduce such a condition. The specific issue before the court was whether Bye-Law 15.40.1 of the Multi Commodity Exchange of India Ltd. (MCX), which mandated a deposit before an "appeal" (understood as a challenge under **Section 34 of the Arbitration Act**), was legally sound.

Justice Singh's reasoning hinged on the principle that statutory remedies, such as a challenge under **Section 34 of the Arbitration Act,** are distinct from conventional appeals and cannot be burdened by financial prerequisites not present in the statute itself. Citing a Supreme Court precedent, the court underscored the supremacy of statutory rights over bye-laws, emphasizing that bye-laws should provide operational guidelines without undermining fundamental legal entitlements. The court also noted that accepting the respondent's interpretation of Bye-Law 15.40 would render another related bye-law, Bye-Law 15.41, meaningless, despite both acknowledging the applicability of the Arbitration Act. Therefore, the argument for a mandatory pre-deposit was rejected, reinforcing the notion that challenges to arbitral awards can proceed without such financial barriers.

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SIGNIFICANT CASE LAWs

Delhi High Court holds that an arbitrator's mandate isn't terminated if they acted as an 'observer' in a different case, finding no ineligibility under the A&C Act's 5th or 7th Schedule.

In a recent judgement in **RAM KRISHAN ASSOCIATES PVT. LTD. versus ASIAN HOTEL (NORTH) LTD.,** by **Justice Jasmeet Singh,** it is held that an arbitrator's appointment as an "observer" in a separate, unrelated matter does not automatically lead to their de facto or de jure ineligibility under the Fifth or Seventh Schedules of the **Arbitration and Conciliation Act, 1996 ("Arbitration Act").** Consequently, the arbitrator's mandate cannot be terminated under **Section 14 of the Act** on this ground. The court, however, permitted the petitioner to raise this objection under **Section 34** after the arbitral award was passed. The case revolved around a petitioner challenging the continued mandate of an arbitrator who had previously been appointed as an "Administrator" and then an "Observer" of Exclusive Capital Ltd. (ECL) by the NCLT, where shareholders of ECL were also shareholders of the respondent in the arbitration. The petitioner argued that this prior involvement created a conflict of interest that should have been disclosed and rendered the arbitrator disqualified. Justice Singh's decision was based on the interpretation of the Arbitration Act, drawing from Supreme Court precedents such as Chennai Metro Rail Ltd. and HRD Corporation (Marcus Oil and Chemical Division). The court emphasized that the Seventh Schedule provides specific, exhaustive grounds for de jure ineligibility, and expanding these would undermine the arbitration process. While the Fifth Schedule deals with circumstances that may raise justifiable doubts, challenges based on these grounds must be raised promptly or are typically addressed under Section 34 after the award. The court noted that the arbitrator had declared neutrality and independence, and their role as an "Observer" in an unrelated company, not directly involving the respondent in the arbitration, did not constitute a disqualifying factor under either schedule. The court therefore dismissed the petition seeking termination of the arbitrator's mandate.

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SIGNIFICANT CASE LAWs

The Delhi High Court rules that a contempt court has the authority to reverse advantages acquired by disobeying injunctions issued under Sections 9 and 17 of the Arbitration Act.

The Delhi High Court in **Rhine Power Pvt. Ltd. Versus M/S Ramprastha Promoters And Developers Pvt. Ltd. & Ors.,** presided over by **Justice Anish Dayal,** has affirmed that a **contempt court possesses the power to issue directions to reverse any benefits gained through disobedience of an order passed under Section 9 of the Arbitration and Conciliation Act, 1996 (Arbitration Act).** This power is crucial to ensure that parties are effectively restrained from violating court orders. The ruling came in a case where the respondent was initially restrained from parting with properties under **Section 9 of the Arbitration Act,** and this injunction was subsequently continued by the Arbitrator under **Section 17 of the Act.** The core issue before the court was whether the respondents, who had allegedly transferred flats in violation of the court's injunction, could be allowed to retain the benefits of their contemptuous actions.

Justice Dayal's decision was heavily influenced by Supreme Court precedents, particularly Balwantbhai Somabhai Bhandari v Hiralal Somabhai Contractor (2023) and Amit Kumar Das v Shrimati Hutheesingh Tagore Charitable Trust (2024). These rulings firmly establish that a contempt court can not only punish a contemnor but also declare contemptuous transactions void or direct their reversal to prevent the contemnor from benefiting from their disobedience. The court noted that the respondent had indeed transferred possession of flats after the initial injunction order. Emphasizing that third parties, even bona fide purchasers, have no standing in contempt proceedings, the court held that issuing directions to preserve the property's status is essential to deter contemnors and uphold the rule of law.
Consequently, the court issued an interim order preventing further transfer, alienation, or creation of third-party rights in respect of the flats.

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SIGNIFICANT CASE LAWs

Supreme Court: Arbitral Tribunals can impose varying interest rates for pre-reference and pendente lite periods under Section 31(7) of the Arbitration Act.

The Supreme Court bench comprising **Justices Abhay S. Oka and Ujjal Bhuyan,** in **Interstate Construction Versus National Projects Construction Corporation Ltd.** has definitively held that an Arbitral Tribunal, under the **Arbitration and Conciliation Act, 1996 ("Arbitration Act"),** possesses the power to award **different rates of interest for different phases** of the dispute. This ruling overturned a Delhi High Court decision that had disallowed the tribunal's grant of interest on interest, deeming it impermissible under **Section 31(7)** of the Act. The case originated from a long-standing contract dispute from 1984, where the arbitral tribunal, in its 2020 award, had granted pre-reference interest at 18% per annum, pendente lite interest at 12% per annum (with an eight-year exclusion for claimant's delay), and future interest at 18% per annum. **Justice Bhuyan,** authoring the judgment, clarified that a careful reading of **Section 31(7)(a)** grants arbitral tribunals the discretion to award interest on the whole or any part of the money for the entire period from the cause of action to the award date, or for any part thereof, including applying different rates for sub-divided periods. The Court explicitly affirmed its 2015 ruling in Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, which established that the "sum" in **Section 31(7)(b)** includes both principal and accrued interest, thereby permitting compound interest. The Supreme Court emphasized that the Arbitration Act allows for pre-award, pendente lite, and post-award interest, and the High Court's narrow interpretation of Section 31(7)(a) was incorrect. Consequently, the Supreme Court allowed the appeal, directing the respondent to pay the awarded amount with compound interest as originally determined by the arbitrator.

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SIGNIFICANT CASE LAWs

Delhi High Court: A partial initial arbitration filing, missing key documents, is legally void and can't be fixed to bypass the limitation period.

The Delhi High Court, in a recent judgement in **UNION OF INDIA Versus M/S GR-GAWA R(J.V.)** by **Justice Purushaindra Kumar Kaurav,** has ruled that an initial filing of a petition under **Section 34 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act")** made without essential documents, such as the impugned award, is **non est in law,** meaning it has no legal existence. The court emphasized that such a deficient filing, made merely to circumvent the limitation period prescribed by **Section 34(3) of the Arbitration Act,** cannot be considered valid. Furthermore, significant delays in rectifying these defects are not condonable if the complete filing occurs after the expiration of the limitation period, as correcting defects retrospectively does not validate an initially flawed submission. This decision stemmed from a challenge to an arbitral award where the respondent raised preliminary objections, arguing that the petitioner's initial filing was incomplete and thus legally invalid. Justice Kaurav's reasoning was rooted in the principle that a skeletal filing, lacking fundamental pleadings and annexures like the arbitral award itself, indicates a lack of bona fide intent and an attempt to bypass limitation laws. Citing precedents from the Supreme Court (e.g., Sunny Abraham v. Union of India) and the Delhi High Court (e.g., Pragati Construction Consultants v. Union of India), the court reiterated that the non-filing of the impugned arbitral award is not a mere procedural irregularity but a fundamental defect rendering the application "non est." While minor, curable defects may be condoned, the cumulative nature of substantial omissions, particularly when corrected long after the limitation period, leads to the conclusion that the initial filing was merely a tactic to stop the clock. The court dismissed the application, directing the Registry to strictly adhere to prescribed rules for rectifying defects.

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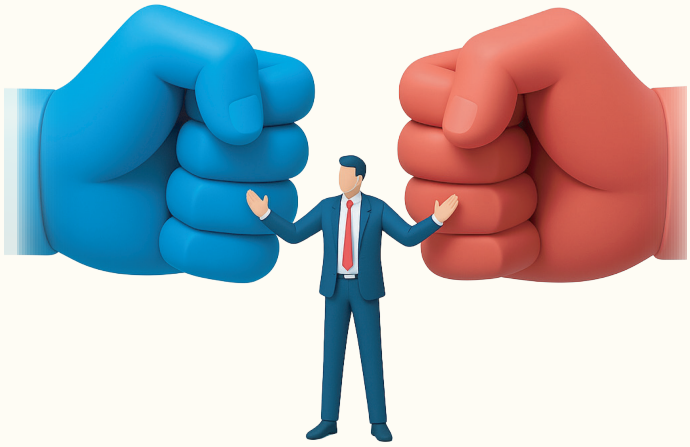

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REGULATORY UPDATES

Mumbai Centre for International Arbitration Unveils Transformative 2025 Rules: A New Era for Indian Arbitration

• The Mumbai Centre for International Arbitration (MCIA) released its 2025 Arbitration Rules on May 1, 2025.

• Key Amendments in the 2025 Rules:-

1. Managing Multi-Party and Multi-Contract Arbitration
2. Expedited and Interim Procedures
3. Stakeholder Participation and Support
4. Other Notable Amendments

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TRAINING AND EVENTS

1. Delhi Arbitration Weekend (DAW) 2025 will bring together leading judges, practitioners, scholars, and arbitration experts to advance dialogue, best practices, and India's crucial role in international arbitration.

Date: September 18-21, 2025

Venue: New Delhi

Organized by: Delhi International Arbitration Centre (DIAC)

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2. IPBA Arbitration Day 2025
Explore the sessions on **"Global Conflicts and the Role of International Arbitration: Evolving Solutions for Dispute Resolution."**

Date: September 17-18, 2025

Registration Fee: US$70 for IPBA members | US$90 for non-members

Venue: Trident Hotel, CR2 Nariman Point, Marine Drive, Mumbai - 400021

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3. ADR Week 2025 Organized by: MCIA

Date: 15–19 September 2025

Venue: Bengaluru, Mumbai, and Delhi

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