ARBITRA

YOUR MONTHLY GUIDE TO NAVIGATE THE EVOLVING LANDSCAPE OF ARBITRATION

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REASONABLE APPREHENSION

COVER STORY

PIVOTAL ISSUES

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EDITOR's NOTE

How long is too long in the pursuit of justice, lies at the heart of our cover story this month, "Navigating the 60-Day Deadline in Indian Arbitration Petitions. "This edition of ARBITRA delves into the crucial law of limitation in arbitration, exploring how Indian courts are shaping the evolving jurisprudence where the Arbitration Act remains silent on specific timeframes for petitions.

This edition also brings you up to speed on other pivotal developments across the arbitration landscape. We highlight the Delhi High Court's ruling that an arbitration clause alone cannot bar a plaint under Order VII Rule 11 CPC without a Section 8 application. We also examine landmark decisions affirming the arbitrator's authority on party joinder and clause incorporation, and how even past professional relationships can lead to arbitrator disqualification due to perceived bias.

Further refining the boundaries, we feature rulings on pleading jurisdictional defects beyond initial filings, the principle that awards must be performed if in force, and the clarification that the ACA's even-number bar is inapplicable to MSMED Act arbitrations. We also cover significant judgments on arbitrator mandate termination for delayed awards, the prevalence of independent exclusive jurisdiction when arbitration rules are unsettled, and the confirmation that a main contract's arbitration clause supersedes later invoice terms. Finally, we look at decisions validating sole arbitrator appointments when a party defaults, and affirming that the exclusive path to challenge MSME Council jurisdiction is via Section 34 of the A&C Act.

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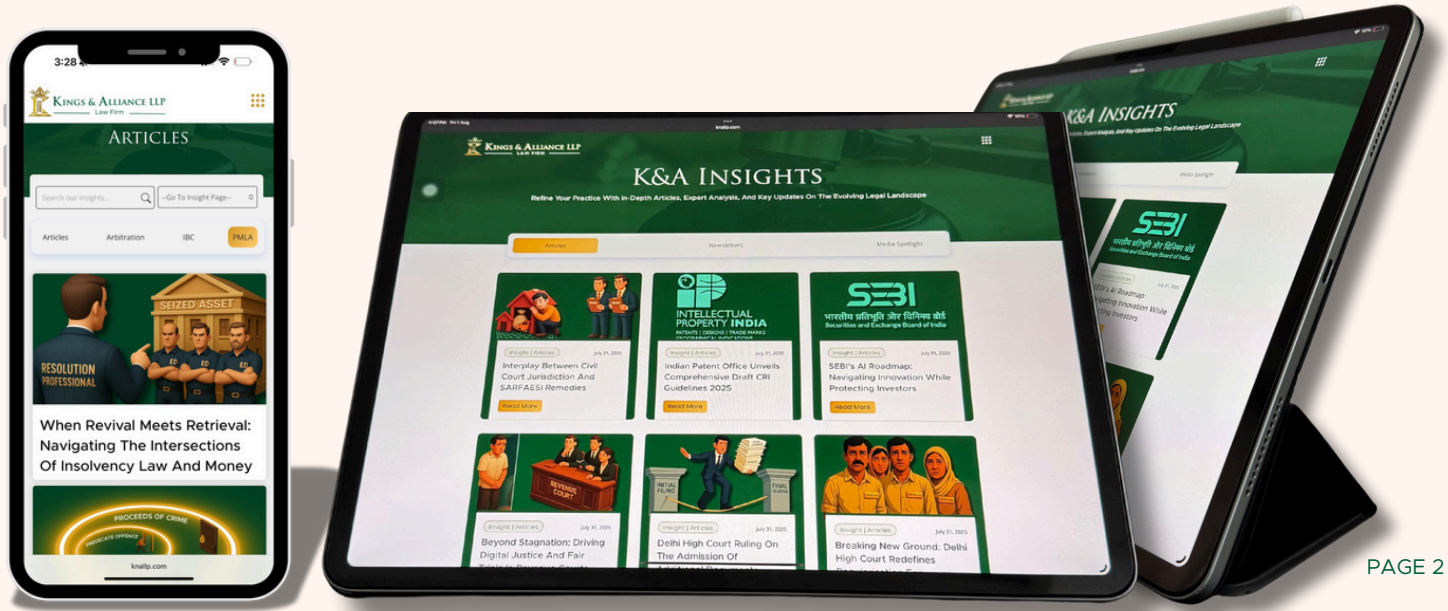

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The Enduring Shadow of Bias: A Deep Dive into Arbitrator Disqualification by the Courts

> *a reasonable apprehension of bias can arise even from professional relationships spanning nearly two decades*

The hallowed halls of justice often echo with pronouncements that redefine the contours of legal interpretation, shaping the very fabric of dispute resolution. One such recent pronouncement from the Delhi High Court in Roshan Real Estates Pvt Ltd Versus Government Of NCT Of Delhi casts a long shadow over the appointment of arbitrators, particularly concerning past professional relationships. How far back in time can a connection stretch before it compromises the impartiality vital to arbitration? Can a relationship, seemingly dormant for nearly two decades, still awaken the specter of bias? This is precisely the nuanced question the court grappled with, ultimately holding that a past professional or supervisory relationship, even one existing 17 years prior, can indeed disqualify an individual from serving as an arbitrator if it creates a "reasonable apprehension of bias" under Entry 1 of the Seventh Schedule.

The core issue before the Court was the eligibility of an arbitrator whose impartiality was called into question due to a relationship that, while distant in time, was deemed to still hold sway. This article will delve into the underlying judicial pronouncements which formed the basis for the present judgment, exploring its...

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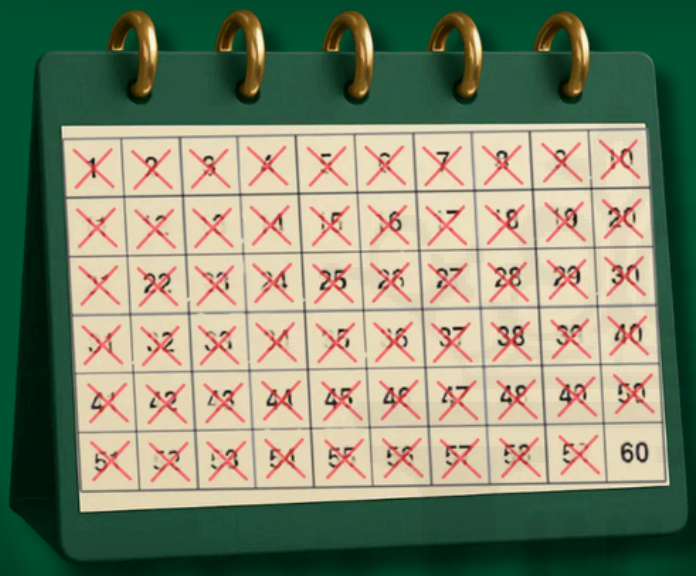
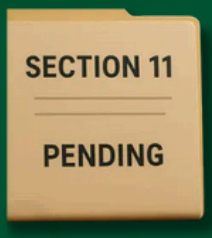
Navigating the 60-Day Deadline in Indian Arbitration Petitions





A decisive shift to align India's arbitration landscape with global best practices

Imagine a dispute brewing for years, discussions stretching into endless negotiations, and then, suddenly, one party decides to invoke arbitration. How long do they have? Can they wait indefinitely, hoping for a miracle resolution, or does the law, like a diligent timekeeper, step in to ensure disputes don't fester forever? This very question lies at the heart of the "law of limitation" in India, a legal principle beautifully encapsulated by the Latin maxim: “vigilantibus non dormientibus jura subveniunt” – the law assists the vigilant, not those who sleep over their rights.

This principle, enshrined in the Limitation Act of 1963, acts as a guardian, preventing parties from being subjected to an indefinite period of liability. Just as there are different deadlines for filing your taxes or renewing your passport, various legal actions have prescribed periods within which they must be initiated. While the Limitation Act provides a general framework, special laws often carve out their own specific timelines, and Arbitration Act is a prime example of legislation striving for faster dispute resolution.

Yet, despite the Arbitration Act's emphasis on speed, a curious gap has persisted...

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Unpacking Jurisprudence Where the Arbitration Clause, Unless Awakened by a Section 8 Application, Cannot Bar a Plaint Under Order VII Rule 11 CPC

The exercise of power under Section 8 of the Act is dependent upon a party applying under the Act to refer the parties to arbitration.

In the realm of civil litigation, the existence of an arbitration clause in an agreement often presents a critical juncture, raising questions about a court's jurisdiction and the proper course of dispute resolution. While arbitration is a preferred mode for many commercial disputes, its invocation typically requires a formal application by the parties. It is against this backdrop that the Delhi High Court, in a significant judgement in DIN Dayal Agrawal HUF Versus Capriso Finance Ltd., delivered by Justice Ravinder Dudeja, recently clarified the circumstances under which a plaint may be rejected under Order VII Rule 11(d) of CPC, when an arbitration agreement is present.

The court held that a court must refer parties to arbitration if a proper application is filed under Section 8 of the Arbitration and Conciliation Act, 1996, and may consequently reject the plaint as barred by law. However, crucially, the Court stipulated that the mere existence of an arbitration clause, without such an application or a prayer for reference to arbitration, is insufficient grounds for rejecting a plaint under Order VII Rule 11 CPC. This pronouncement arose from a petition filed under Article 227 of the Constitution of India, challenging an order of...

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Beyond the Referral Court: Deconstructing the Arbitrator's Authority on Party Joinder and Clause Incorporation

It is well within the jurisdiction of the Arbitral Tribunal to decide the issue of joinder and non-joinder of parties and to assess the applicability of the Group of Companies Doctrine.

In the intricate landscape of contract law and dispute resolution, a recurring challenge arises: when do the terms of an original agreement, particularly an arbitration clause, continue to bind parties through subsequent contracts or even after the initial agreement's natural conclusion? This fundamental question often dictates whether a dispute lands before a court or an arbitral tribunal, profoundly impacting the trajectory of legal proceedings.

It is against this backdrop that the Calcutta High Court, through the astute observations of Justice Shampa Sarkar, recently provided a significant clarification in Bimla Devi Jaiswal Vs. M/S. Indus Towers Limited. In allowing an application for the appointment of an arbitrator, the Court unequivocally held that critical preliminary issues—such as the misjoinder or non-joinder of parties, and whether an arbitration clause from a principal agreement has been validly incorporated by reference into a subsequent agreement between successors-in-interest—fall squarely within the exclusive domain of the arbitral tribunal itself.

The heart of the matter revolved around a dispute concerning a mobile tower installation. The core issue was whether an arbitration clause, embedded in a "Principal Agreement" that had expired

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Revisiting Arbitral Mandates: When Jurisdictional Defects Can Be Pleaded Beyond Initial Filings

> *while statutory limitation periods are paramount, they are not an insurmountable barrier*

In a significant judgement in Raheja Developers Limited Versus Ahluwalia Contractors India Ltd., concerning the procedural landscape of arbitration in India, the Delhi High Court, through the discerning bench of Justice Manoj Kumar Ohri, recently articulated a pivotal principle regarding the scope of Section 34 petitions under the A&C Act. This decision delves into the intricate balance between procedural adherence and substantive justice, particularly when it comes to challenging arbitral awards. Can an omission in the initial challenge be rectified later, especially if it strikes at the very heart of the tribunal's authority? The Court decisively held that an omission to plead a ground of challenge in the original Section 34 petition, specifically concerning non-adherence to the mandatory procedure of Section 29A of the A&C Act, would not divest the Section 34 Court of its jurisdiction to scrutinize such a critical defect. This ruling underscores a crucial carve-out, aligning with the exceptions delineated by the Supreme Court in the landmark case of State of Maharashtra v. Hindustan Construction.

This article will delve into a detailed analysis of the rationale behind this judgment, exploring the High Court's interpretation of Section 34 and its interplay with Section 29A, and how it navigates the delicate balance between procedural strictness and...

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SIGNIFICANT CASE LAWS

The Delhi High Court Affirmed that Contractual obligations from a Final Partial Award must be performed if the award remains in force

The Delhi High Court, in a judgement by Justice Jasmeet Singh in Union of India Versus Vedanta Limited & Anr., dismissed an appeal seeking to restrain a respondent from unilaterally implementing a Final Partial Award (FPA). The core of the High Court's decision rests on the principle that contractual obligations, as interpreted by an FPA, cannot be prevented from being performed, especially when neither the FPA nor the underlying contract has been stayed and both remain in force. The appellant had argued that enforcement of the FPA was premature until final quantification was agreed upon or determined by the Arbitral Tribunal (AT), and that unilateral revision of accounts by the respondent contravened the FPA.

The dispute originated from a Production Sharing Contract (PSC) between the appellant and ONGC. An FPA was passed by the AT, resolving interpretational issues and allowing parties to approach the AT for quantification if they failed to agree on figures. The AT subsequently reclassified the award as partial and confirmed its jurisdiction over quantum and costs. The appellant's application under Section 17 of the Arbitration Act, seeking to restrain the respondent from making unilateral deductions based on the FPA, was dismissed by the AT, leading to the present appeal under Section 37 of the Arbitration Act.

The High Court affirmed that the FPA's declaratory findings are binding and must guide the implementation of the PSC, as non-compliance would render the award a mere "paper award." It held that the respondent's actions, even if leading to deductions, were not "unilateral" but rather an adherence to their contractual obligations under the PSC as interpreted by the FPA, which was not a money decree and whose final quantification was pending. The court emphasized that the FPA allowed for quantification later and that the respondent, as operator, was mandated to prepare accounts. Ultimately, the High Court concluded that curtailing these adjustments would contradict the PSC and FPA, leading to the dismissal of the appeal.

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SIGNIFICANT CASE LAWS

Calcutta High Court rules Section 10 ACA's even-number bar inapplicable to MSMED Act arbitrations.

A Calcutta High Court division bench, comprising Justices Uday Kumar and Sabyasachi Bhattacharya, in M/s BESCO v M/s Hindon Chemicals Pvt. Ltd., delivered a significant judgment clarifying the applicability of the Arbitration and Conciliation Act, 1996 (ACA) to statutory arbitrations under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). The Court held that the ACA's prohibition on an even number of arbitrators (Section 10) does not vitiate an award made by a Micro and Small Enterprises Facilitation Council (Council), even if an even number of Council members acted as arbitrators. This stems from the nature of arbitration under the MSMED Act as a statutory arbitration, governed primarily by the MSMED Act's provisions, which override general ACA provisions where there is a conflict.

The judgment arose from an appeal against a Section 34 ACA order that had set aside an award made by the West Bengal State Micro and Small Enterprises Facilitation Council. The appellant had argued that the Council violated Section 80 ACA by acting as both conciliator and arbitrator, that the four-member arbitral tribunal violated Section 10 ACA, and that the Section 34 application was wrongly dismissed for pre-deposit issues and limitation. The High Court, however, found the Section 34 application to be within limitation, clarifying that the limitation period commences from the receipt of a signed copy of the award, not a mere photocopy, and that the 75% pre-deposit under Section 19 MSMED Act only affects the "entertainment" of the application, not its filing.

Crucially, the Court emphasized that Section 18 of the MSMED Act, read with Section 24, gives overriding effect to its provisions. Therefore, the Council is empowered to act as both conciliator and arbitrator despite Section 80 ACA, a position affirmed by the Supreme Court. The Court further elucidated that the statutory nature of arbitration under Section 18(3) MSMED Act exempts it from the Section 10 ACA bar on even numbers of arbitrators, as this bar applies primarily to party-appointed arbitrations under the ACA's general scheme. Consequently, the High Court allowed the appeal, setting aside the lower court's order and upholding the Council's award.

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SIGNIFICANT CASE LAWS

Delhi High Court holds Arbitrator mandate can end for delayed awards, even without automatic NSE Bye-Law termination.

The Delhi High Court, through Justice Jasmeet Singh, in Ram Kawar Garg Versus Bajaj Capital Investor Services Limited has ruled that while the National Stock Exchange (NSE) Bye-Laws may not explicitly provide for automatic termination of an arbitrator's mandate upon expiry of stipulated timeframes, the spirit of both the NSE Bye-Laws and the Arbitration and Conciliation Act, 1996 (ACA) points to an indirect limitation. The Court observed that the "Relevant Authority" under Bye-Law 7(b) of the NSE Bye-Laws can terminate an arbitrator's mandate if an award is not passed within the prescribed time, thereby ensuring adherence to time limits. This aligns the intent of the NSE regulations with the ACA's emphasis on timely dispute resolution, which is a core tenet of public policy in arbitration.

The judgment arose from a Section 34 ACA petition challenging an appellate arbitral award which upheld an original award dismissing the petitioner's claim against a stockbroker. A key contention by the petitioner was that both the original and appellate awards were time-barred under the respective NSE Bye-Laws. The Court emphasized that the use of "shall" in Bye-Law 19(b) of the NSE Bye-Laws and Clause 6.5 of the SEBI Circular dated August 11, 2010, makes the three-month period for issuing an appellate award mandatory. Even if considered directory, any extension beyond two months, as per Clause 6.6 of the SEBI Circular, would require specific grant, which was absent in this case.

The Delhi High Court ultimately held that the Appellate Award was passed beyond the prescribed time limits under the NSE Bye-Laws and SEBI Circular, thus violating public policy under Section 34 of the ACA. It reiterated that excessive delays in arbitration proceedings defeat the purpose of arbitration as an efficient dispute resolution mechanism and contravene the broader public policy mandate for swift and just resolution of disputes. The Court clarified that merely filing a written statement does not waive a party's right to challenge the arbitrator's mandate on grounds of delay. Consequently, the Appellate Award was set aside, underscoring the mandatory nature of stipulated timelines in arbitrations governed by specific regulations like those of the NSE.

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SIGNIFICANT CASE LAWS

Calcutta High Court confirms independent exclusive jurisdiction prevails if arbitration rules remain unsettled

The Calcutta High Court, in a Section 11 petition filed in Rakesh Kumar Chaudhary v. Steel Authority of India and Anr., has ruled that the Courts at Durgapur would have exclusive jurisdiction over arbitral proceedings when parties fail to agree upon the specific rules of arbitration as outlined in their contract. Justice Shampa Sarkar's bench observed that despite a contract clause (Clause 46.2.5) providing for New Delhi as a potential venue if specific arbitration rules were adopted (such as ICA Rules or SCFA Rules), the failure of the parties to agree on these rules meant this particular provision did not come into effect. Consequently, an independent clause (Clause 46.2.4) in the General Conditions of Contract (GCC) specifying Durgapur as the seat of arbitration and granting exclusive jurisdiction to Durgapur Courts would prevail.

The case involved a dispute arising from a contract for structural work at Durgapur Steel Plant, with allegations of unilateral contract amendments and unpaid bills. The petitioner sought the appointment of an arbitrator after attempts at amicable settlement failed, citing the respondent's silence on the request. The respondent challenged the Calcutta High Court's jurisdiction, arguing that Delhi was the agreed venue by virtue of Clause 46.2.5. The Court, however, relied on the principle that amicable settlement efforts, when fruitless, justify invoking arbitration, citing Supreme Court precedent.

The High Court held that the Section 11 application was maintainable, as Clause 46.2.2 explicitly stated that the arbitration would be governed by the Arbitration and Conciliation Act, 1996. The core legal finding emphasizes that where a contract provides for alternative jurisdictional arrangements contingent on the parties' agreement to specific arbitration rules, and that agreement does not materialize, then a general or independent clause establishing jurisdiction takes precedence. This decision clarifies that the default jurisdictional clause will apply when specific procedural agreements that could alter jurisdiction are not formalized by the parties.

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SIGNIFICANT CASE LAWS

Calcutta High Court confirms main contract's arbitration clause supersedes later invoice terms

The Calcutta High Court, in a Section 11 petition for arbitrator appointment filed in Super Smelters Limited v United Cables Limited, has clarified that the terms and conditions of a purchase order, including its arbitration agreement, will prevail over those of a subsequent tax invoice that lacks an arbitration clause. Justice Shampa Sarkar's bench held that the purchase order constituted the primary contract, embodying the parties' agreed terms and conditions. The tax invoice, issued later, merely detailed goods and payment and did not supersede the comprehensive agreement established by the purchase order. This ruling underscores that the parties' clear intention to arbitrate, evidenced in the principal contract, takes precedence.

The case involved a dispute where the petitioner had issued a purchase order for capacitor panels, which the respondent acknowledged and acted upon. Following issues with the panels and subsequent termination of the purchase order, the petitioner invoked the arbitration clause. The respondent, however, objected to arbitration, relying on a jurisdiction clause in a later-issued tax invoice. The Court noted that the purchase order contained all commercial and general terms, and the parties' conduct indicated their acceptance of these terms. It reaffirmed that consent for an arbitration agreement can be inferred from conduct and electronic exchange, satisfying Section 7 of the Arbitration and Conciliation Act.

The Court determined that the tax invoice was an "ancillary document" to the main purchase order, primarily serving as evidence for goods supplied and for tax purposes, rather than a document intended to amend or supersede the foundational agreement. Since the tax invoice did not explicitly state that the purchase order was superseded and was unilaterally signed by the respondent, the arbitration clause in the purchase order remained binding. The Court also noted that any issue of "novation" of the purchase order by the tax invoice would fall within the jurisdiction of the appointed arbitrator to decide. Accordingly, the petition for the appointment of a sole arbitrator was allowed.

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SIGNIFICANT CASE LAWS

A party's failure to appoint an arbitrator after notice validates the other party's sole appointment: Telangana HC.

The Telangana High Court, in a judgment by Justice Moushumi Bhattacharya in St Frosso Shipping Corporation Petitioner Versus M/s Eastern Multitrans Logistics Pvt Ltd, has held that an arbitrator appointed by one party, in accordance with agreed terms and after due notice, cannot be considered a "unilateral appointment" if the other party was given a full and fair opportunity to nominate their own arbitrator but failed to do so. In such scenarios, the enforcement of a foreign award under Section 48 of the Arbitration and Conciliation Act, 1996, cannot be refused. The Court emphasized that this mechanism ensures equal opportunity for both parties to appoint an arbitrator, with the provision for a sole arbitrator only if the second party defaults, deeming it a matter of expediency rather than a denial of rights.

The case involved a petition for the enforcement of a foreign award. The respondent sought to resist enforcement under Section 48(2)(b) of the Arbitration Act, alleging that the unilateral appointment of the sole arbitrator violated the fundamental policy of Indian law and that they did not receive proper notice of the proceedings. However, the Court found that all arbitration communications were sent to the respondent's valid email address used during contract formation, and the respondent had even made a settlement offer after arbitration commenced, thereby negating their claim of lack of notice. The Court clarified that failure to open emails and submit a defense indicated deliberate avoidance, not lack of proper notice.

The Court further observed that Clause 22(a) of the BIMCO Terms 2015, which governed the arbitration, specifically allowed the initiating party to appoint their arbitrator as sole arbitrator if the other party failed to appoint theirs within 14 days after notification. This procedure, the Court held, provides adequate safeguards and ensures due process. The burden of proof to establish grounds for refusal under Section 48 of the Arbitration Act lies entirely on the objecting party, and the respondent failed to prove unilateral appointment or any contravention of the agreed-upon constitution of the arbitral tribunal. Consequently, the High Court allowed the enforcement of the foreign award.

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SIGNIFICANT CASE LAWS

The exclusive path to challenge MSME Council jurisdiction is Section 34 of A&C Act.

The Orissa High Court, through Justice K.R. Mohapatra, in M/s Odisha Mining Corporation Limited Versus Union of India, Ministry of Micro, Small and Medium Enterprises and Ors. has ruled that once the MSME Council initiates arbitration after conciliation proceedings terminate, any jurisdictional decision by the Council, or the eventual award, can only be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (ACA). The Court explicitly stated that an aggrieved party cannot invoke Article 227 of the Constitution to challenge an award passed under the MSMED Act, emphasizing the exclusivity of the remedy provided by the ACA for such challenges. This highlights the principle that when a special statute provides a specific remedy, that remedy must be pursued.

The case involved M/s Odisha Mining Corporation Limited (OMC) seeking to quash proceedings initiated by the Industries Facilitation Council (IFC), Thane, and an ex parte award passed by the MSME Facilitation Council. OMC had argued that the Council lacked territorial jurisdiction, that the MSMED Act could not retrospectively validate proceedings, and that they were not given proper notice or opportunity to file a defense during arbitration. The High Court, however, found that conciliation had duly terminated, and the Council at Thane possessed territorial jurisdiction as the supplier (Opposite Party No.3) was located within its area, aligning with the MSMED Act's objective of supporting SMEs.

The Court reiterated that the MSMED Act, being a special legislation, overrides the general provisions of the ACA and any contrary contractual clauses, including those related to jurisdiction. It held that the Council was within its rights to decide on its territorial jurisdiction, and any challenge to this finding, or to the procedural aspects of the arbitration, must be made under Section 34 of the ACA, read with Section 19 of the MSMED Act, which mandates a pre-deposit for such challenges. Consequently, the High Court dismissed OMC's writ petition, affirming that direct challenges to MSME Council awards or jurisdictional decisions via a writ petition are not maintainable.

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