ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration

SEP 2025

COVER STORY

PIVOTAL ISSUES

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Editor's Note

Fate sealed by statute, lies at the heart of our cover story this month, it delves into the crucial legal boundaries of arbitral finality exploring how Indian courts are shaping the evolving jurisprudence to prevent parties from re-litigating disputes in civil courts.

Building on this theme of arbitral boundaries, we examine whether an arbitral tribunal, when granting interim relief, can enforce a non-compete clause that the law might otherwise consider void. We also explore whether an arbitrator's mandate to rectify clerical errors opens the door for additional adjudication of claims.

From there, we turn to significant rulings that further refine the arbitral process, clarifying that non-signatories have no right to attend confidential proceedings, and affirming how Indian courts can intervene in abusive foreign-seated arbitrations despite the principle of minimal judicial intervention.

This edition also covers judgments on how a contract's "as is where is" clause can be rendered ineffective by subsequent conduct of parties, and how a fresh cause of action can arise from an acknowledgment and assurance in a long-standing dispute.

We also feature significant decisions that are shaping the jurisprudence of arbitration, together with a brief analysis of the UK Arbitration Act, 2025, and key upcoming training and events in the field of arbitration.

Let's dive in.

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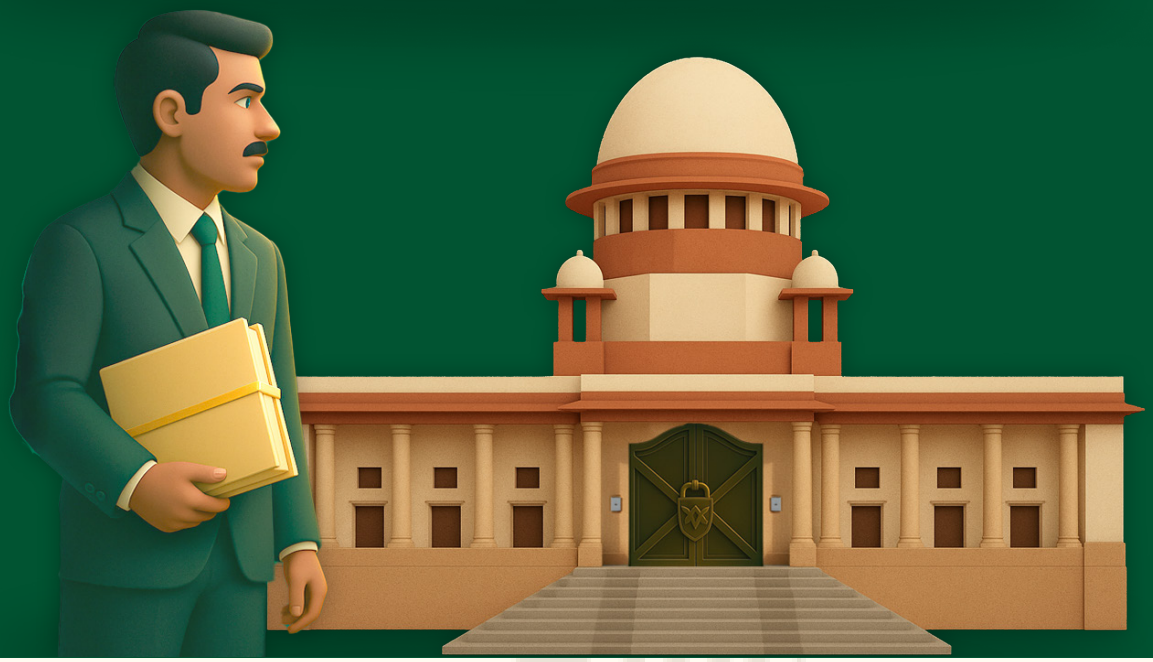
The Non-Obstante Mandate: How Sections 5 & 34 of the Arbitration Act Seal the Fate of Challenging Suits



Section 5 is to minimise the supervisory role of Courts in the arbitral process

In the high-stakes world of commercial disputes, an arbitral award is often seen as the final word. However, for a losing party, it can feel more like a setback to be overcome than a conclusion to be accepted. It's a common maneuver in India's legal landscape for a company on the wrong side of a decision to seek an alternative battlefield. Instead of accepting the arbitrator's verdict, they might launch a new offensive by filing a civil suit, hoping to find a sympathetic ear in a regular court. This tactic is a strategic attempt to circumvent the finality of the award, essentially asking a judge to undo what the arbitrator has done—a move that often puts the entire arbitration process on trial once again.

However, in a significant ruling in MMTC Limited vs. Anglo-American Metallurgical Pty Limited and Ors., the Delhi High Court, through the bench of Justice Jasmeet Singh, has clarified that this practice is legally impermissible. The court held that an arbitral award cannot be challenged by way of a civil suit, as this course of action is expressly barred under Section 5 read with Section 34 of the Arbitration Act. The judgment further stated that such a lawsuit must be rejected under Order VII Rule 11(d) of the CPC on the grounds that it is barred by law.

This legal battle began with a fascinating contention. The plaintiff, having already invoked criminal remedies by filing a complaint with the CBI, also sought to independently challenge the arbitral award through a civil suit. The plaintiff argued that such a suit was maintainable...

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An Analysis of Interim Measures, Restrictive Covenants, and the Doctrine of Contractual Subsistence

The appellate court must exercise its power with "due circumspection and restraint''

Imagine a business partnership governed by a Shareholders' Agreement (SHA). One partner decides to start a competing venture despite a non-compete clause in the SHA. The other partner fears this will cripple their joint business and seeks urgent legal protection. They approached an arbitral tribunal for an interim award under Section 17 of the Arbitration Act asking for an immediate halt to the new business.

This is the very heart of the issue recently addressed by the Delhi High Court in Paul Deepak Rajaratnam & Ors. Versus Surgeport Logistics Private Limited & Anr.The court was faced with a critical question: Can an arbitral tribunal issue an interim order to restrain a party from breaching a contract, specifically a non-compete clause, even though Section 27 of the Indian Contract Act generally voids agreements that restrain trade?

In a significant ruling, the Delhi High Court's bench of Justice Jasmeet Singh held that such an interim award is not barred by Section 27 of the Indian Contract Act. The court reasoned that if a contract, like the SHA, is still valid and has not been lawfully terminated, an interim award under Section 17 can be used to prevent the subject matter of the arbitration from being rendered useless.

This particular case stemmed from an appeal filed under Section 37 of the Arbitration Act, challenging an interim award passed under Section 17. The judgment provides a crucial...

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When is an Arbitrator's Mandate Truly Over? A Deep Dive into Section 33 of the ACA

Section 33 is a provision for correction, not for a fresh bite at the cherry

In a significant judgement in Nayeem Noor Mohamed & Anr. V. Nazim Noor Mohamed with far-reaching implications for arbitration jurisprudence in India, the Karnataka High Court, in a bench comprising Justices Anu Sivaraman and Justice K. Manmadha, has meticulously dissected the scope and nature of orders passed under Section 33 of the Act .The court held that an order issued under Section 33, even if it is of an interim character, constitutes an arbitral award, not a mere interlocutory order. This pronouncement clarifies a crucial distinction that often blurs the lines in post-award proceedings.

This judgment shines a spotlight on the precise boundaries of an arbitrator's power under Section 33. The court firmly held that this provision is narrowly confined to rectifying clerical errors, similar mistakes, or recomputing claims, and is explicitly not a gateway for "additional adjudication" of claims previously omitted from the award. But what happens when a party believes the arbitrator has overlooked a key claim? Can they seek a fresh adjudication under the guise of Section 33? This very question was at the heart of the matter before the court.

The dispute arose from an arbitral award where certain claims were rejected. A subsequent application was filed under Section 33(4) by the respondents, seeking adjudication on claims that they argued were presented but not decided upon by the arbitrator.

The learned senior counsel for the appellants, building upon this foundational argument...

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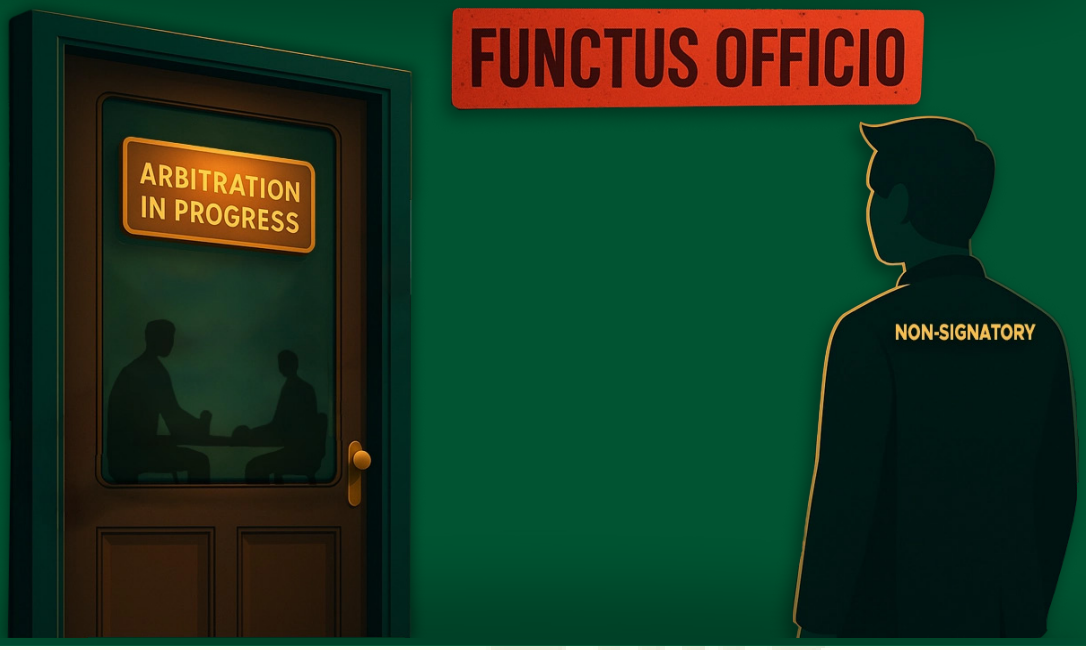
A Question of Presence: When Can a Non-Signatory Participate in Arbitration?



If strangers were allowed to observe the proceedings. The privacy and trust that underpin arbitration would be eroded

Imagine a tense family business dispute where two brothers, who are signatories to a formal agreement, decide to resolve their differences through arbitration. The situation becomes complicated when a third brother, not a signatory, insists on being present during the proceedings. He argues that the outcome will undoubtedly affect his interests, even though he is not a formal party to the contract. This hypothetical scenario cuts to the heart of a crucial legal question: Can a non-signatory to an arbitration agreement participate in the proceedings? The Supreme Court has repeatedly addressed this issue, emphasizing that the sanctity and confidentiality of arbitration must be protected.

The Court stance has been clear: a non-signatory generally has no right to attend arbitration proceedings. This principle is rooted in the very nature of arbitration as a private and confidential process. The judiciary's role is to ensure that this confidentiality, a cornerstone of the A&C Act, 1996, is not compromised.

In a crucial observation in Kamal Gupta & Anr. Versus M/S L.R. Builders Pvt. Ltd & Anr. Etc., the Supreme Court of India, through a bench comprising Justices PS Narasimha and AS Chandurkar, set aside a Delhi High Court decision that had allowed non-signatories to attend arbitration proceedings with their counsels. This ruling clarifies a critical question with a firm "no," reinforcing the principle that arbitration is a private, confidential, and exclusive matter for the signatories.

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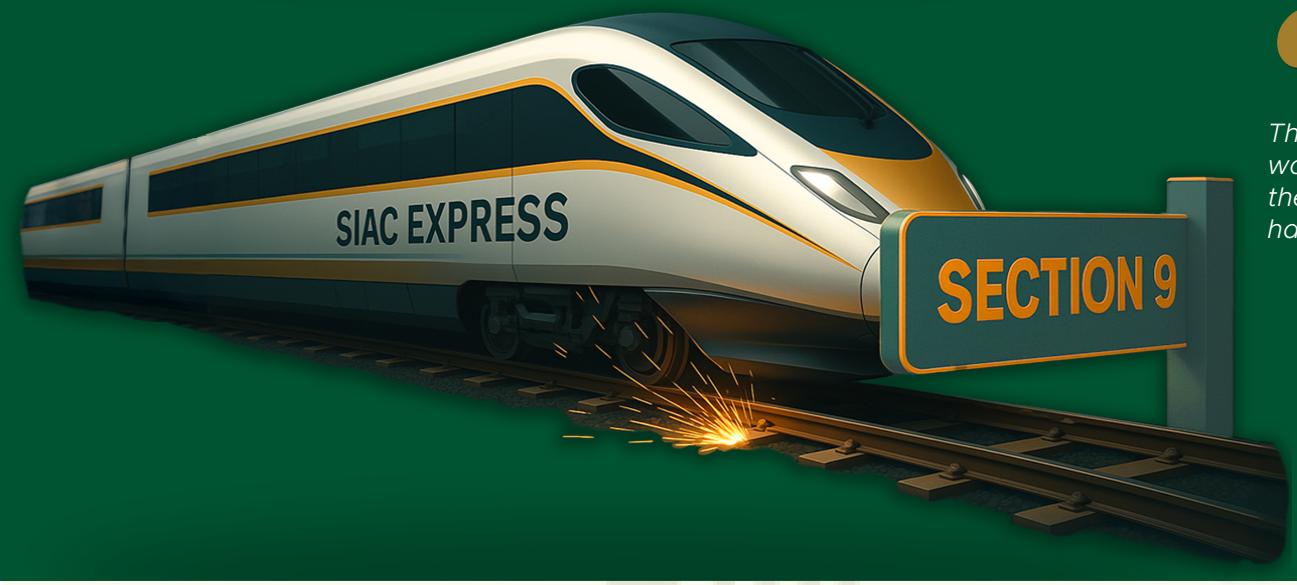
The Guardian's Gavel: How an Indian Court Reasserted Jurisdiction over Abusive Foreign-Seated Arbitrations



> *The message was clear: let the arbitrators handle it*

The gavel falls not in Singapore, but in a courtroom in Delhi. A foreign-seated arbitration, a process designed for minimal court interference, has been abruptly halted by an Indian civil court. This isn't just a legal curiosity; it's a seismic shift in India's jurisprudence, challenging the long-held tenet that courts should keep their hands off international arbitrations. The Delhi High Court's landmark judgment in Engineering Projects (India) Ltd v. MSA Global LLC provides a narrow, yet potent, pathway for courts to intervene, affirming that the principles of justice can, and must, override the sanctity of an abusive arbitral process.

This is a story of clashing legal philosophies. The Arbitration Act, was built on the foundation of minimal judicial intervention, a philosophy aimed at making India an arbitration-friendly destination. But what happens when that very process is compromised? What if a party-nominated arbitrator fails to disclose a past relationship with the very company that nominated them? The legal community had been grappling with this very question, with courts taking divergent paths. The Delhi High Court, in the case of Bina Modi v. Lalit Modi, took a hands-off approach, asserting that the arbitral tribunal, under Section 16 of the Act, had the sole authority to rule on its own jurisdiction. Section 16 is a foundational principle of arbitration law, known as kompetenz-kompetenz, which empowers the tribunal to decide on its own competence, including challenges to the existence or validity of the arbitration agreement itself. This was the embodiment of the kompetenz-kompetenz principle. The message was clear: let the arbitrators handle it.

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SIGNIFICANT CASE LAWS

As Is Where Is' Clause Rendered Ineffective by Conduct of Parties, Holds Delhi HC

In the case of PEC Ltd V. Ms Badri Singh Vinimay Pvt. Ltd, The Hon'ble Delhi High held that an "as is where is" clause in a tender can be diluted or rendered inoperative by the subsequent conduct of the parties. Once the parties mutually agree to a joint third-party survey and accept its findings, those later actions prevail over the original tender condition. The court upheld the arbitral award in affirming that the arbitrator's conclusions were well-reasoned and based on evidence.

The dispute had arisen from a tender floated by PEC Ltd. for the sale of 100 metric tons of Canadian-origin red lentils on an "as is where is" basis. The respondent, the highest bidder, in its acceptance letter added a stipulation that only cargo in "sound and good condition" would be lifted. After lifting part of the stock, the respondent complained that the lentils were mixed and partially damaged, refused further delivery, and sought a refund. PEC Ltd., relying on the original tender terms, rejected the claim and forfeited the earnest money deposit.

A joint third-party survey was then undertaken, which revealed that nearly 70% of the stock was damaged. The arbitral tribunal found that a public sector undertaking could not offload such a large quantity of perishable, edible commodities unfit for consumption. The findings of the survey, coupled with the later sale of the balance stock at a steep 86% discount, established that the cargo was indeed defective. Both the District Judge and the Delhi High Court agreed with the tribunal's view that the initial clause was effectively overridden by the later conduct of the parties. Hence, the appellant PEC Ltd. was directed to refund the excess amount received from the respondent along with interest, and the appeal was dismissed.

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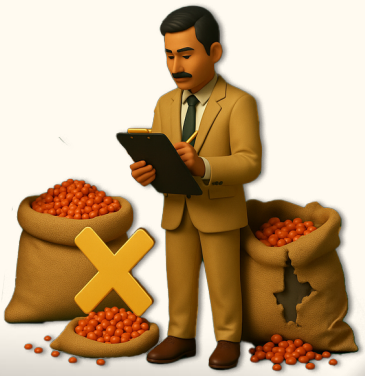

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SIGNIFICANT CASE LAWS

Calcutta HC: Fresh Cause of Action Arises from Acknowledgment and Assurances in Construction Dispute

In a recent judgment of Kamini Ferrous Limited v. Om Shiv Mangalam Builders Pvt. Ltd. & Anr., the Calcutta High Court bench of Justice Shampa Sarkar clarified that, in contractual disputes particularly in construction and development agreements, the date of the cause of action is not necessarily the date of initial non-performance. Where subsequent conduct, such as negotiations, assurances, or renewed commitments, indicates that the parties treated the contract as subsisting and mutually extended the time for performance, the cause of action may instead arise from the date of a clear and final refusal to perform.

The matter arose from a 2012 development agreement for two flats and parking spaces, for which the petitioner had made substantial payment. Due to delays in sanction plans, the respondents in December 2020 acknowledged their inability to perform and offered to refund the principal amount along with a penalty, contingent on cancellation of the agreement—yet no refund followed from their end. The petitioner invoked the arbitration clause in August 2023 under Section 11(6) of the Arbitration and Conciliation Act, 1996. The respondents opposed, contending that the claims were time-barred as the breach dated back to January 2014, further citing earlier proceedings before the NCLT and Consumer Forum.

Justice Shampa Sarkar held that the December 15, 2020 correspondence, admitting liability and proposing refund, effectively kept the contractual relationship alive and could constitute a fresh cause of action. Even if the original claim for specific performance were barred by limitation, the refund claim could independently be examined by the arbitrator. The Court reiterated that at the Section 11(6) stage, judicial scrutiny of limitation is only prima facie; it should not reject a claim as “dead wood” if there is plausible evidence of extended performance timelines or a revived cause of action; such issues must be determined by the arbitral tribunal after evidence is led.

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SIGNIFICANT CASE LAWS

The SC Reaffirms that Choice of Exclusive Jurisdiction Excludes All Other Courts in Arbitration Matters

The Supreme Court, in M/S Activitas Management Advisor Pvt. Ltd. v. Mind Plus Healthcare Pvt. Ltd., set aside an order of the Punjab and Haryana High Court which had appointed a sole arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, despite the parties' agreement conferring exclusive jurisdiction on the Mumbai High Courts. The dispute arose from a 09.07.2023 agreement containing an arbitration clause and a jurisdiction clause stipulating that the client "submits to the exclusive jurisdiction of the Mumbai High Courts." The High Court had held that the objection on territorial jurisdiction was not sustainable and proceeded with the appointment.

Allowing the appeal, the Supreme Court relied on Brahmani River Pellets Ltd. v. Kamachi Industries Ltd. (2020) to reaffirm that where parties agree to confer jurisdiction on a specific court, such choice excludes all other courts. The Court further held that, although the agreement did not explicitly use the terms "seat" or "venue," the exclusive jurisdiction clause must be read in the context of arbitration, thereby fixing the seat at Mumbai. Consequently, the High Court's order was set aside, and the parties were directed to pursue the pending Section 11 application before the Mumbai High Court, with liberty to raise all legally available objections.

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SIGNIFICANT CASE LAWS

Calcutta HC: Arbitration Clause Must Show Clear Intent, Not Just Carry the Name

The Calcutta High Court in Roshan Agarwal v. NPCCL & Anr. held that mere use of the term "Arbitration" in a contractual clause does not automatically create a binding arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996. Justice Shampa Sarkar observed that an arbitration clause must clearly reflect the parties' intention to refer disputes to arbitration and must be couched in mandatory, not precatory, terms. In the present case, Clause 76.0 of the General Conditions of Contract, despite being titled "Arbitration", did not evidence a determination by the parties to submit disputes to arbitration, nor did it constitute a dispute resolution mechanism.

The Court emphasized that even though arbitration clauses need not follow a standard form, the language must be certain, definite, and indicative of an obligation to arbitrate. Referring to precedents including Jagdish Chander v. Ramesh Chander and Wellington Associates Ltd. v. Kirit Mehta, the Court reiterated that a clause offering arbitration merely as an option, or requiring further consent of parties, cannot qualify as a valid arbitration agreement. In this case, Clause 73.3 of the contract also suggested arbitration only as a possible mode of settlement, alongside courts, and thus lacked the mandatory intent. Accordingly, the Court ruled that Clause 76.0 was not a valid arbitration agreement and dismissed the application for appointment of an arbitrator, granting the petitioner liberty to pursue remedies before the appropriate forum.

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SIGNIFICANT CASE LAWS

IGU Disaffiliation Quashed: HC Affirms Doctrine of Separability but Exercises Writ Jurisdiction

The Meghalaya High Court in Meghalaya Golf Promoters Society v. Union of India examined the arbitrability of the dispute concerning the Indian Golf Union's (IGU) withdrawal of affiliation from the petitioner society, as governed by Rule 66 of the IGU's Rules and Regulations. This clause mandates that all unresolved disputes be settled by the Arbitration Commission of the Indian Olympic Association, with affiliated members voluntarily surrendering their right to seek redress in courts. The petitioner contended that, post-disaffiliation, no arbitrable dispute existed, as Rule 66 applies only to subsisting memberships and disputes involving claims and denials, which were absent in this unilateral action. Conversely, the respondents argued that the matter fell within the contractual framework of the IGU's bylaws, rendering it amenable to arbitration or civil remedies, thereby questioning the maintainability of the writ petition under Article 226.

Drawing on the Supreme Court's ruling in N.N. Global Mercantile Private Limited v. Indo Unique Flame Limited (2021), the court affirmed the doctrine of separability, holding that the arbitration agreement survives the termination of the main affiliation contract and remains enforceable for resolving claims arising therefrom. However, despite acknowledging the availability of arbitration as an efficacious alternative remedy, the court exercised its discretionary powers under Article 226, citing the impugned order's arbitrary nature and violation of natural justice principles as grounds for intervention. The rule excluding writ jurisdiction due to alternative remedies was deemed one of discretion rather than compulsion, leading the court to quash the disaffiliation order and direct a fresh examination by the IGU, without relegating the parties to arbitration.

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SIGNIFICANT CASE LAWS

Arbitral Proceedings Post-Expiry Valid Once Mandate Extended, Rules Calcutta HC

The Calcutta High Court, in Glen Industries Private Limited Vs. Oriental Insurance Company Limited delivered by Justice Shampa Sarkar, clarified the legal effect of extending an Arbitrator's mandate under Section 29A of the Arbitration and Conciliation Act, 1996. The Court held that arbitral proceedings conducted between the expiry of the mandate and its subsequent extension cannot be treated as void once the extension is granted. Such an extension relates back to the date of expiry, thereby reviving the Arbitrator's jurisdiction from the point of termination and validating all interim proceedings. The Court emphasized that the legislative intent behind Section 29A(4) is to ensure the continuity of arbitral proceedings, permitting courts to extend the mandate either before or after its expiry.

In the case at hand, the Respondent opposed the extension, contending that the Arbitrator had become functus officio after the expiry of the initial 18-month period, and hence all subsequent proceedings were a nullity. It was further argued that the application for extension was delayed, and no sufficient cause had been shown for condoning such delay. However, the Court noted that the Petitioner had continuously participated in the arbitral proceedings, including the examination of witnesses, which amounted to implied consent for the continuation of the mandate. The Court also observed that the statutory language "prior to or after" clearly empowers courts to revive an expired mandate, ensuring that arbitral proceedings are not disrupted merely due to procedural lapses in seeking timely extension.

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SIGNIFICANT CASE LAWS

Delhi High Court: Arbitrator's Refusal to Frame Issue on Counterclaim Renders Award Patently Illegal

The Delhi High Court in the case of Indraprastha Power Generation Co. Ltd V. EM Services P Ltd. per Justice Jasmeet Singh, set aside an arbitral award on the ground that the sole arbitrator had wrongly refused to frame an issue regarding the petitioner's counterclaim. The Court noted that the Petitioner, in its reply to the Statement of Claim, had clearly set out the reasons, basis, and computation of its counterclaim of ₹11.88 crores for losses suffered due to delay caused by the Respondent. Even though the counterclaim was not specifically included in the prayer clause, the pleadings contained sufficient material, and the Respondent had categorically denied the claim in its rejoinder. The Court held that under Section 23 of the Arbitration and Conciliation Act, there is no prescribed format for counterclaims, and once pleaded, it was incumbent upon the Arbitrator to frame an issue.

The Court observed that the Arbitrator's refusal deprived the Petitioner of the opportunity to lead evidence, since parties are required to adduce evidence only on framed issues. It emphasized that pleadings must be read holistically and not in isolation, and non-framing of an issue on a counterclaim that was properly pleaded amounted to a violation of the fundamental policy of Indian law and the basic notions of justice. Highlighting that the Petitioner could not challenge the Arbitrator's interim order earlier due to statutory limitations, the Court concluded that the impugned award was patently illegal and shocked the conscience of the Court. Accordingly, the arbitral award was set aside.

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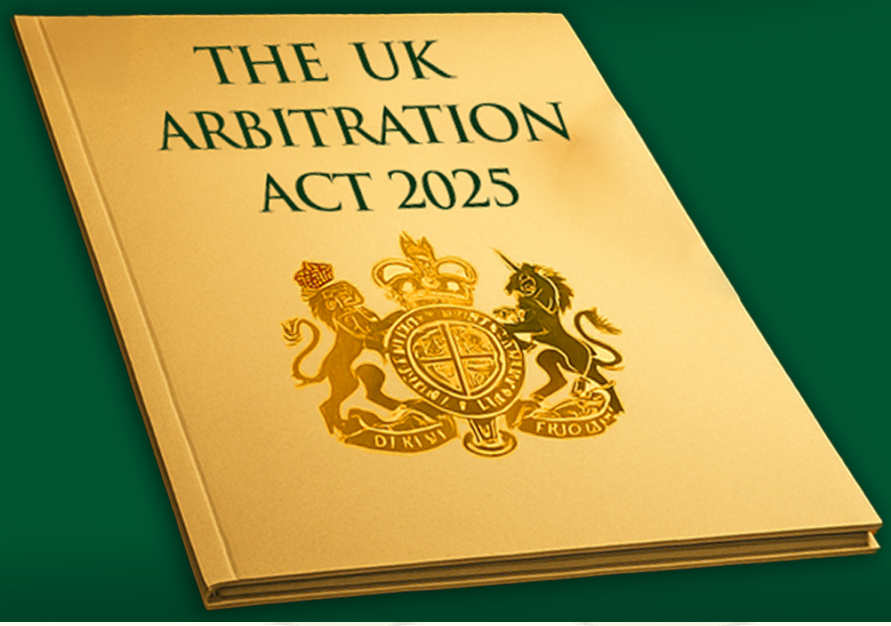
REGULATORY UPDATE:

The Arbitration Act 2025: An Update to the UK's Arbitration Framework



The substantive provisions of the Arbitration Act 2025 (the "2025 Act") came into effect on 1 August 2025 via the Arbitration Act 2025 (Commencement) Regulations 2025. The 2025 Act amends the Arbitration Act 1996 following a Law Commission review aimed at reinforcing London's position as a centre for international arbitration and aligning UK arbitration law with recent global reforms.

Governing Law of the Arbitration Agreement: The 2025 Act introduces a new default rule to address situations where parties have not expressly chosen the governing law for their arbitration agreement. The law of the arbitration seat will now apply. This reform provides much-needed clarity and predictability, replacing the previous, more complex common law approach from the case of Enka v. Chubb Russia and Chubb Europe. This case had established a presumption that the governing law of the main contract would also apply to the arbitration agreement, which could lead to uncertainty. The new rule ensures that the main contract's law will not automatically govern the arbitration agreement unless specifically agreed upon by the parties.

Statutory Duty of Disclosure and Arbitrator Immunity: The Act codifies a formal duty of disclosure for arbitrators, requiring them to disclose any circumstances that might reasonably raise doubts about their impartiality. This duty is continuous, applying both before and after their appointment, and reinforces the principles established...

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