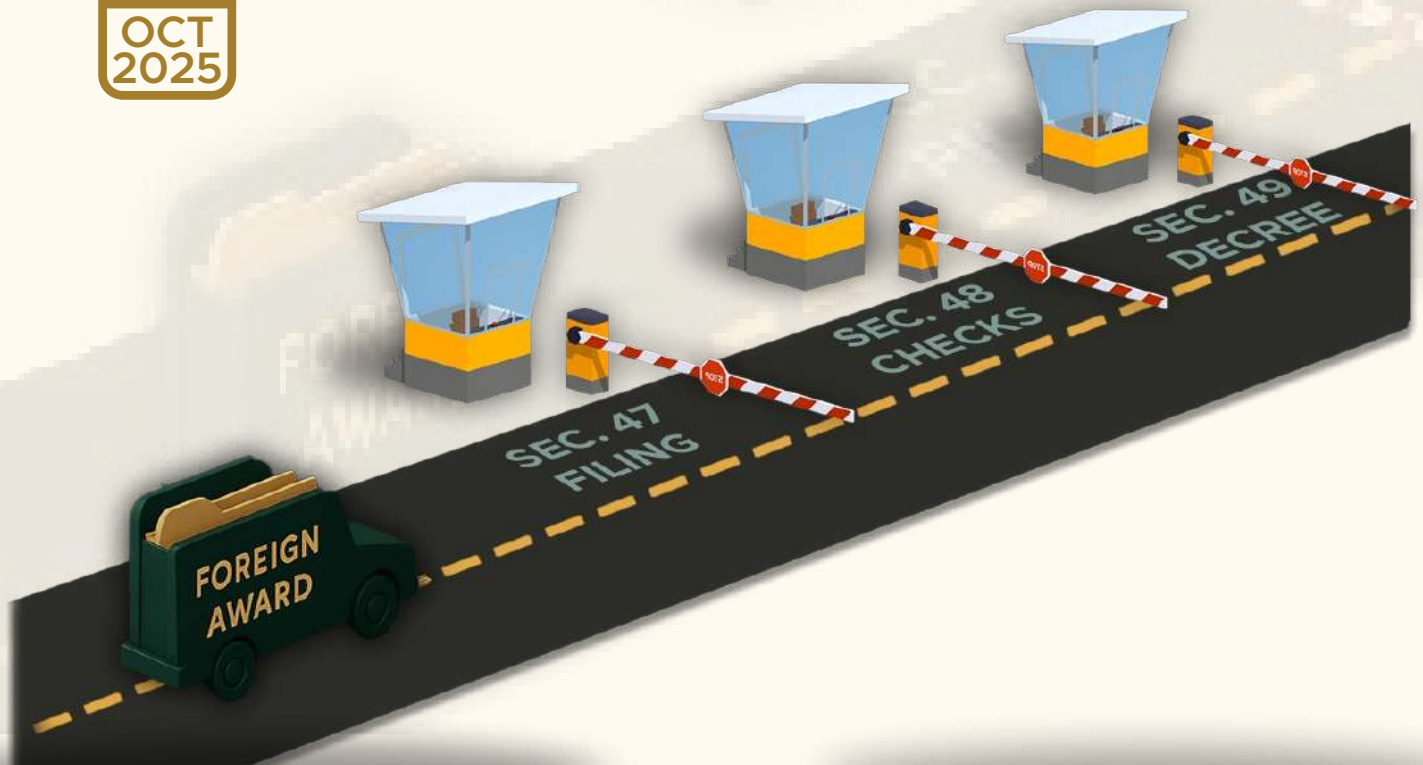


ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration



COVER STORY

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A Deep Dive into the Enforcement of New
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From Foreign Victory to Domestic Decree, lies at the heart of our cover story which delves into the complex legal terrain of both international and domestic arbitration, highlighting the Indian judiciary's drive to establish clarity and procedural fairness. Our Cover Story provides essential guidance on enforcing a New York Convention Award in India, clarifying its distinct legal status and the mandatory procedural route under the A&C Act, with the limitation period definitively set by Article 137. This foundational clarity is echoed in our Pivotal Issues, where courts address the delicate balance of procedural rights: the Calcutta High Court ruled against introducing counterclaims after evidence commences to preserve the level playing field, while the Allahabad High Court demonstrated judicial flexibility, allowing for the conversion of a writ petition into a Section 37 appeal to ensure justice prevails over procedural form. Furthermore, key rulings reinforce contractual discipline—binding parties to the rules of institutional arbitration—but temper this by confirming the arbitrator's statutory power to award pendente lite interest unless explicitly barred by the contract.

The Significant Case Laws Update and Regulatory Update map the current boundaries of arbitral authority and jurisdiction. Landmark judgments underscore the principle that an arbitrator is a creature of the contract, with courts setting aside awards for deviations from essential contract terms and voiding unilateral appointments that breach fairness. Jurisdictional supremacy is affirmed with the NCLAT ruling on the IBC overriding the Arbitration Act for enforcement against insolvent companies, and the Supreme Court defining valid service on the Government as requiring receipt by a competent, decision-making official. We also see courts clarifying that an exclusive jurisdiction clause effectively establishes the seat of arbitration and that courts can mandate security even without a Section 9 application. These domestic developments are contextualised by an overview of Singapore's recent global regulatory reforms and a listing of major upcoming events like the IBA India Litigation and ADR Symposium, solidifying this month's focus on the convergence of rigorous domestic enforcement and evolving global standards.

Let's dive in.

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COVER STORY

04

From Award to Decree: A Deep Dive into the Enforcement of New York Convention Awards in India



PIVOTAL ISSUES

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The Verdict on Delay: Unpacking the Jurisprudence of Counterclaims in Arbitration



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PIVOTAL ISSUES

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The Binding Nature of Arbitration Clauses: A Case for Procedural Discipline in Institutional Arbitration, Confirmed by the High Court



PIVOTAL ISSUES

08

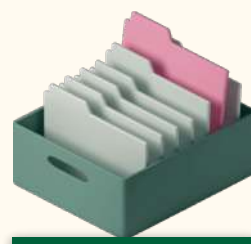
Pendente Lite Interest in Arbitration: When Can Arbitrators Go Beyond the Contractual Bar



CASE LAWS

09

- Beevee Enterprises & Ors. v. L & T Finance Limited
- BHEL v. Xiamen Longking Bulk Material Science and Engineering Co.
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- M/S. Motilal Agarwala v. State of West Bengal & Anr
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- M/S Shaheed G. M. Filling Station, Vs Indian Oil Corporation Limited



REGULATORY UPDATE

16

A Game-Changer for Global Arbitration: Singapore's Reforms Set a New Standard



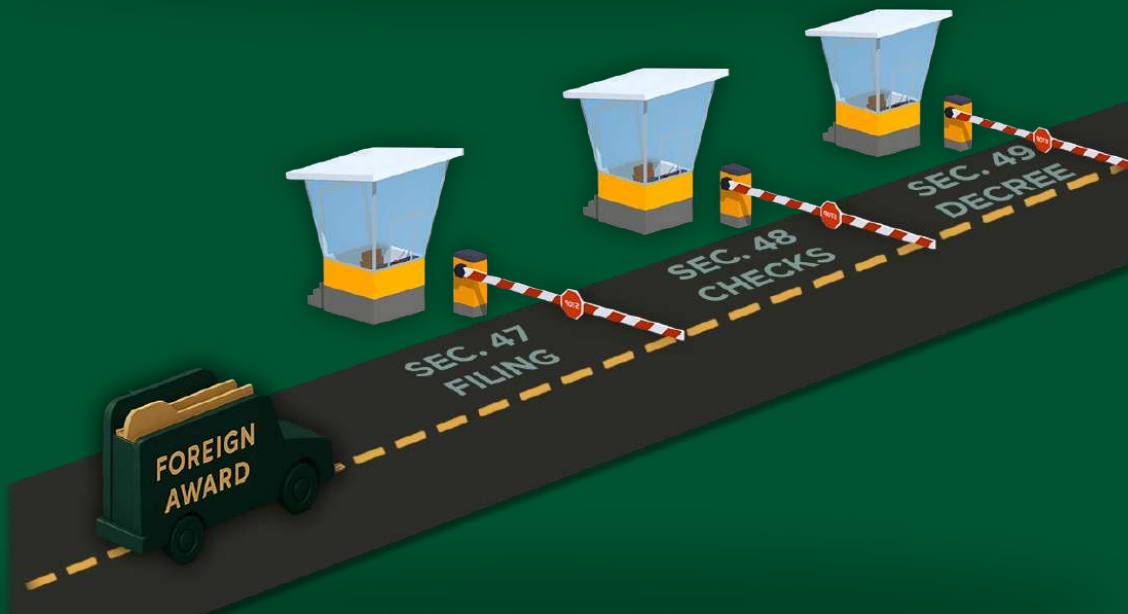
TRAINING & EVENTS

17



COVER STORY

From Award to Decree: A Deep Dive into the Enforcement of New York Convention Awards in India



“

public policy must be construed in a narrow sense

In the complex tapestry of international commercial law, the enforcement of a foreign arbitral award in India presents a fascinating interplay of domestic statutes and international obligations. A common misconception is that once an arbitral award is rendered in a foreign jurisdiction, its automatic enforcement in India is guaranteed. However, as the Delhi High Court judgement in *Roger Shashoua & Others Versus Mukesh Sharma & Others* and a long line of judicial precedents have clarified, this process is far from automatic. It requires a formal legal proceeding that carefully balances the principles of comity and the sanctity of due process.

The journey of a foreign arbitral award to becoming a legally binding and executable decree in India is governed by a precise legal framework. A crucial point, as noted by the Delhi High Court, is that an award, even after it is deemed enforceable, does not automatically transform into a decree. This is a critical distinction that sets foreign arbitral awards apart from foreign court decrees. CPC, in its Section 44A, provides for the direct execution of decrees from courts in "reciprocating territories." Yet, as Explanation 2 to this very section clarifies, an "arbitration award" is expressly excluded from the definition of a "decree," even if it is enforceable as one. This legislative nuance underscores the need for a specific, separate procedure for the enforcement of foreign awards. So, what is the path to enforcement for a foreign award? A party seeking to enforce a foreign award must file a petition under Sections 47 and 49 of the A&C Act. This procedural requirement was cemented...

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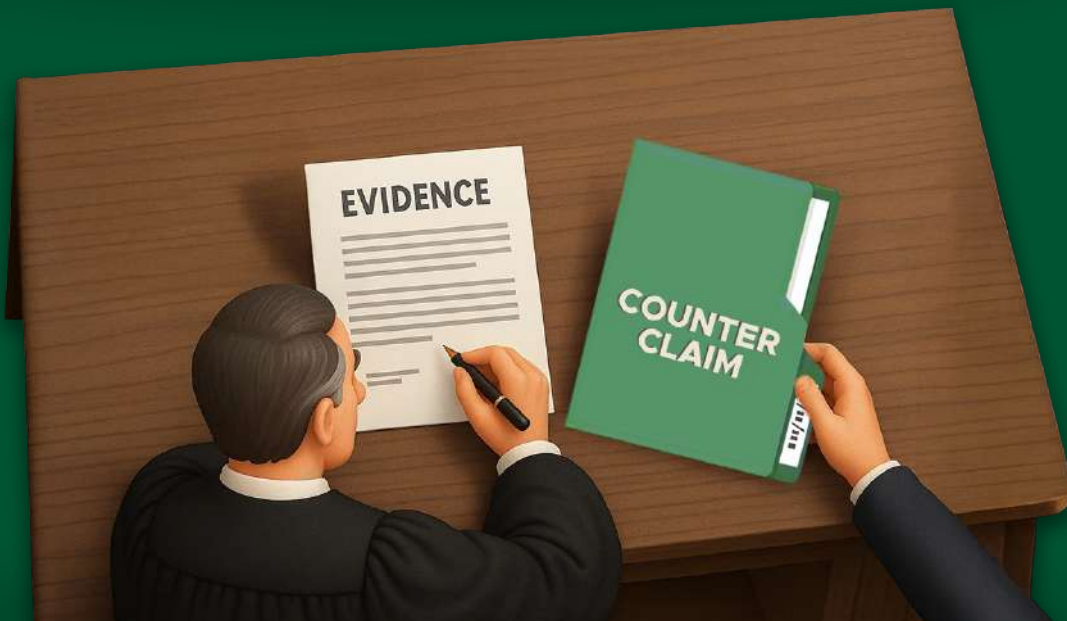


PIVOTAL ISSUES

The Verdict on Delay: Unpacking the Jurisprudence of Counterclaims in Arbitration

“

A counterclaim could be permitted until the commencement of the recording of evidence



A core tenet of any legal or dispute resolution process is the principle of a level playing field. Imagine a legal proceeding as a structured debate, where each party presents their case based on a pre-determined set of arguments and facts. What happens when, mid-way through the trial, one party seeks to introduce a new, substantive claim that fundamentally alters the scope of the dispute? Would this not disrupt the very equilibrium that the process is designed to maintain? This is the precise challenge that came before the Calcutta High Court, which was called upon to determine whether a counterclaim could be permitted in an arbitration proceeding after the claimant had already commenced presenting their evidence?

In a significant judgement, the bench of Justice Hiranmay Bhattacharyya in *Gayatri Granites & Ors. VS. Srei Equipment Finance Ltd.* held that such an act would cause serious injustice to the other party and, therefore, a counterclaim cannot be allowed after the commencement of the claimant's evidence. The court's decision centered on the principles of fairness and due process in arbitration.

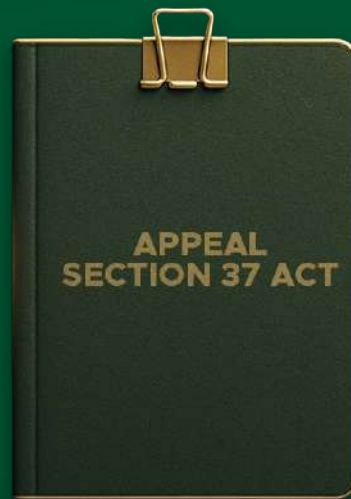
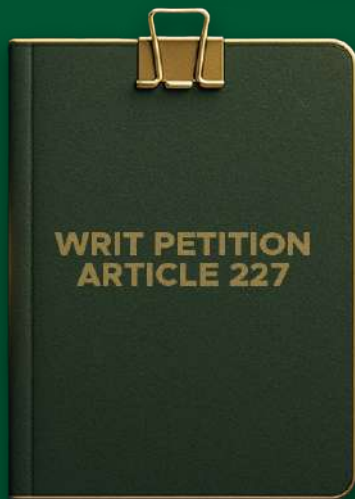
This judicial saga, born from a petition under Article 227 of the Indian Constitution, zeroed in on an arbitrator's refusal to permit an amendment to the Statement of Defence. The petitioners, conceding an "inadvertent omission," argued their case on the strength of existing documentary evidence and the absence of a specific legal embargo under Section...

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PIVOTAL ISSUES

The Convergence of Arbitration and Litigation: A Case for Procedural Flexibility



*judiciary's
primary role is
to dispense
justice*

Navigating the intricate landscape of judicial remedies can often feel like a complex puzzle. Imagine a litigant, after exhausting their options in one legal avenue, discovers that the correct path was a completely different one all along. Does the law offer a way to correct this procedural misstep, or does it leave them to face the consequences of their initial error? This very question was recently addressed by the Allahabad High Court in a case that underscores the judiciary's commitment to ensuring substantive justice prevails over procedural rigidity.

The court, in a notable decision in *Union of India Thru C.W.E Air Force Maharajpur v. M/S Bhular Construction Company and Others*, held that a writ petition filed under Article 227 of the Constitution of India can be converted into an appeal under Section 37 of the Arbitration Act, provided it adheres to the legal requirements of limitation and court fees. This ruling arose from a petition challenging a District Judge's rejection of objections against an arbitral award, where the respondent argued that only a Section 37 appeal was maintainable.

But what is the jurisprudential foundation that permits such a conversion? How does the judiciary balance the need for procedural correctness with the overarching goal of delivering justice? This article will delve into the underlying principles of this landmark ruling, exploring the Court's rationale and its reliance on the maxim 'ubi jus ibi remedium' (where there is a right, there is a remedy). We will unravel the legal and equitable considerations that...

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PIVOTAL ISSUES

The Binding Nature of Arbitration Clauses: A Case for Procedural Discipline in Institutional Arbitration, Confirmed by the High Court



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*party
autonomy is
the backbone
of arbitration*

One of the most celebrated features of arbitration is party autonomy—the freedom of parties to determine how their disputes should be resolved, including who will resolve them. But a critical question remains unresolved in the minds of many arbitration practitioners: Can a party, after agreeing to institutional arbitration, later assert an unrestricted right to appoint an arbitrator of its own choosing disregarding the institution’s procedural framework? This issue was squarely addressed by the Delhi High Court in the recent case of *M/s KNR Tirumala Infra Pvt. Ltd. v. National Highways Authority of India* which reaffirms a vital yet often misunderstood principle in arbitration law: once parties contractually agree to institutional arbitration, they are bound by the rules of that institution, including those governing the appointment of arbitrators. Thus, party autonomy does not extend so far as to permit deviation from the agreed institutional process.

At the heart of the decision lies a reaffirmation of contractual fidelity in arbitration procedures, but it also sheds considerable light on the contours of party autonomy. While party autonomy is the backbone of arbitration, it is not an abstract or unilateral right; it is defined and constrained by the very terms of the arbitration agreement that the parties choose to sign. The Arbitration & Conciliation Act (for brevity “the Act”), 1996 forms the bedrock to this as it contains several phrases that show the Indian legislature’s wisdom in prioritizing party autonomy throughout the arbitral process such as “unless otherwise agreed by the parties,” “failing any agreement,” “the parties are free to agree,” “failing such ...



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PIVOTAL ISSUES

Pendente Lite Interest in Arbitration: When Can Arbitrators Go Beyond the Contractual Bar

GENERAL INTEREST
DELAYED/DISPUTED PAYMENTS

PENDENTE LITE INTEREST
(S.31(7)(A))

OFF

ON

“

A contract may guide the arbitrator, but only clarity can bind them—vague bars on interest cannot silence statutory discretion.

Contemporary arbitration jurisprudence has placed growing emphasis on the evolving dynamics between the tribunal’s jurisdiction and the contractual autonomy of the parties. At its core, arbitration was introduced to balance the autonomy of parties and resolution of disputes. But, what happens when the very clause of the agreement becomes the source of the dispute between the parties? One such legal dilemma was perceived in *Oil and Natural Gas Corporation Ltd. v. M/s G & T Beckfield Drilling Services Pvt. Ltd.* before the Supreme Court, focusing on when an arbitral tribunal can award pendente lite interest despite the presence of a contractual clause that bars interest.

The bench composed of Justice Pamidighantam Sri Narasimha and Justice Manoj Misra, held that a contractual clause must explicitly or by necessary implication bar an arbitral tribunal’s power to award such interest. It has primarily clarified that a general clause barring interest on delayed or disputed payments is not sufficient to override the statutory power of the arbitrator to award pendente lite interest under Section 31(7)(a) of the Arbitration Act. The legal confrontation of the case was set in motion by a striking contention. The dispute arose from an arbitral award directing the appellant to pay a sum to the respondent, along with 12% pendente lite interest from the date of the claim until recovery. The appellant challenged the award, but the Gauhati High Court upheld it under Section 37 of the Act. The Supreme Court, however, limited its view to the issue of whether the 12% interest was permissible. The appellant argued that the clause stating “No interest shall be payable...



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SIGNIFICANT CASE LAWS

Calcutta High Court Rules Court Can Mandate Security in a Section 37 Appeal, Despite No Section 9 Application

The Calcutta High Court in *Beevee Enterprises & Ors. v. L & T Finance Limited* held that the unilateral appointment of a sole arbitrator by one party to a loan agreement was void, as it did not allow the other party any role in the appointment process. The court ruled that this rendered all subsequent orders made by the arbitrator, including an interim attachment order under Section 17 of the Arbitration and Conciliation Act, 1996, a nullity. However, while setting aside the arbitrator's order, the court exercised its own jurisdiction as the principal civil court to pass an interim order to secure the debt, ensuring the lender was not left without protection.

The court's decision was heavily influenced by the Supreme Court judgments in *TRF Ltd. v. Energo Engg. Projects Ltd.* and *Perkins Eastman Architects DPC v. HSCC (India) Ltd. & Anr.* which established that a party with a direct interest in a dispute cannot unilaterally appoint a sole arbitrator, as it creates an imbalance and violates principles of fairness. The court applied this reasoning to the present case, finding that the arbitration clause, which gave the lender exclusive power to nominate the arbitrator, was void in light of the 2015 amendments to the Act and subsequent judicial interpretations. This voiding of the arbitrator's mandate empowered the court to terminate his appointment and appoint a substitute arbitrator under Sections 14 and 15 of the Act.



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SIGNIFICANT CASE LAWS

An Arbitrator's Deviation from a Contract's Essential Pre-Condition Vitiates the Award: Delhi High Court

The Delhi High Court in *BHEL v. Xiamen Longking Bulk Material Science and Engineering Co.* set aside an arbitral award, finding that the arbitrator had exceeded his jurisdiction and disregarded the express terms of the contract between the parties. The court ruled that the arbitrator's finding, which allowed a party to defer the contractual pre-condition of opening a local office and bank account in India, was a direct departure from the agreed-upon Project Execution Methodology (PEM) and other contractual clauses. The court also held that the arbitrator's reliance on extraneous reasoning, such as the possibility of using a third party's bank account or conducting meetings via video conference, went beyond the pleadings and evidence presented, thereby rendering the award perverse and in conflict with the public policy of India.

The court's decision was based on the well-established principle that an arbitrator is a creature of the contract and cannot rewrite its terms. The judgment cited the Supreme Court's pronouncements in *Ssangyong Engg. & Construction Co. Ltd. v. NHAI* and *Renusagar Power Co. Ltd. v. General Electric Co.* which have consistently held that an arbitral award is liable to be set aside if it is in conflict with the public policy of India, particularly if the arbitrator's findings are irrational, perverse, or based on a misinterpretation of the contract's express terms. By applying this precedent, the High Court concluded that the arbitrator's findings were not only contrary to the specific clauses of the PEM and the General Conditions of Contract but also ignored the evidence of the petitioner's witness, thereby justifying the setting aside of the award.

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SIGNIFICANT CASE LAWS

IBC Overrides Arbitration Act: NCLAT Rules Adjudicating Authority Can Enforce Awards

The National Company Law Appellate Tribunal in *Jindal Lifestyle Ltd. v. Mr. Satyendra Sharma, RP of Arkin Creations Pvt. Ltd. and Ors.* upheld the decision that an arbitral award against a company in insolvency proceedings can be enforced by the Resolution Professional through the National Company Law Tribunal (NCLT) and does not require execution through a civil court. The tribunal held that the Insolvency and Bankruptcy Code (IBC) is a self-contained, time-bound legal framework designed to override other laws, including the Arbitration and Conciliation Act, 1996, in cases of conflict. It was therefore within the NCLT's jurisdiction to entertain the claim and enforce the award under Section 60(5) of the IBC.

The tribunal's reasoning was firmly rooted in the supremacy of the IBC over other laws. It cited its own previous judgment in *K.S. Oils Ltd. v. The State Trade Corporation of India Ltd. & Anr.* which explicitly held that the provisions of the IBC, as per section 238, override those of the Arbitration and Conciliation Act. The court also relied on a series of Supreme Court judgments, including *U.P. State Sugar Corporation v. Jain Construction Co.* and *P. Radha Bai v. P. Ashok Kumar* to establish that the limitation period for enforcing an award is 12 years and that unstamped awards are curable. The tribunal also referenced a Delhi High Court judgment in *Avery Cycle Industries Ltd. v. Parkash Metal Industries* concluded that the 90-day time limit for arbitral awards under the MSME Act, 2006, is directory, not mandatory, thus upholding the validity of the award despite the delay.

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SIGNIFICANT CASE LAWS

Valid Service on the Government: Supreme Court Rules Delivery of Arbitral Award Must Be to an Official with Relevant Authority

The Supreme Court of India in *M/S. Motilal Agarwala v. State of West Bengal & Anr* held that the limitation period for a government department to challenge an arbitral award begins only when a competent, decision-making authority receives a signed copy of the award, not from the date an authorized representative, such as an Assistant Engineer, receives it. The court reasoned that for a large organization like the government, the definition of a "party" under Section 2(1)(h) of the Arbitration and Conciliation Act, 1996, is not a mere representative but a person with the authority to comprehend the award and decide whether to challenge it. Therefore, the delivery of a signed xerox copy to an assistant engineer who lacks this decision-making authority does not constitute valid service to start the limitation clock.

To support its conclusion, the Supreme Court placed significant reliance on its previous judgment in *Union of India v. Tecco Trichy Engineers & Contractors*. This precedent established that the delivery of an arbitral award is a matter of substance, not mere formality, and must be received by a person who is directly connected to the proceedings and is best suited to understand the award and make a decision on its challenge. By applying this reasoning to the current case, the court concluded that the assistant engineer, who was not a "party" to the arbitration and did not have the authority to decide whether to challenge the award, could not be considered a valid recipient. The court further reinforced this position by citing *Benarsi Krishna Committee and Ors. v. Karmyogi Shelters Pvt. Ltd.* which clarified that the term "party" in this context refers to the person who is a party to the arbitration agreement itself, not an agent or advocate.

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SIGNIFICANT CASE LAWS

Arbitration Agreements Can Confer Jurisdiction Without Explicitly Naming a "Seat" : Delhi High Court

The Delhi High Court in *SNS Engineering Pvt. Ltd. v. M/S Hariom Projects Pvt. Ltd. and Anr* dismissed a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, on the grounds of lack of territorial jurisdiction. The court's decision was based on an analysis of the arbitration clause in the agreement, which stated that all matters would be subject to the "jurisdiction of court in Ahmedabad only." The court concluded that even though the word "seat" was not explicitly used, the parties' intention to confer exclusive jurisdiction on courts in Ahmedabad for all disputes, including the appointment of an arbitrator, was clear and unambiguous. The court held that this specific jurisdictional clause overrides any other factor, such as where the cause of action might have arisen.

In its reasoning, the High Court relied heavily on a series of Supreme Court precedents. The court cited *Swastik Gases (P) Ltd. v. Indian Oil Corporation Ltd.*, *Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.*, and *Brahmani River Pellets Ltd. v. Kamachi Industries Ltd.* established the principle that when parties agree to vest exclusive jurisdiction in a particular court for arbitration-related matters, that court is deemed to be the "seat" of the arbitration. The court also referenced a very recent Supreme Court order in *M/S Activitas Management Advisor Private Limited v. Mind Plus Healthcare Private Limited*, which reiterated that an exclusive jurisdiction clause, even without the explicit use of the term "seat," effectively designates the seat of arbitration. The court, therefore, reasoned that the parties' mutual agreement on a specific court's jurisdiction takes precedence over the place where the cause of action arose, rendering the Delhi High Court without the authority to entertain the petition.



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SIGNIFICANT CASE LAWS

Interim Relief Under Section 9 of A&C Act Cannot Shut Down Partnership Business: HP High Court

The High Court of Himachal Pradesh in *Nitin Gupta v Arpit Aggarwal* held that it would not grant interim relief to the petitioner to shut down a profitable partnership firm's operations. The court reasoned that while the petitioner had the right to seek dissolution of the partnership, shutting down an operational business with over a hundred employees and numerous licenses would cause irreparable harm to the firm and the respondent. The court noted that it was not its role under Section 9 of the Arbitration and Conciliation Act, 1996, to destroy the subject matter of the dispute but rather to preserve it. The court also highlighted that the partnership deed contained clauses that suggested it was not a "partnership at will," and therefore the petitioner's claim of unilateral dissolution was a matter for arbitration, not for the court to decide at the interim stage.

The court placed significant emphasis on the precedents set by the Supreme Court to guide its decision. It cited *Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd.* and *Firm Ashok Traders & Anr. v. Gurumukh Dass Saluja & Ors.* to establish the principle that the power under Section 9 of the Arbitration and Conciliation Act is for the preservation of the subject matter, not its destruction. This was the central reasoning for not granting the petitioner's request to close the business. The court also referenced *M.O.H. Uduman & Ors. v. M.O.H. Aslum and Karumuthu Thiagarajan Chettiar & Anr. v. E.M. Muthappa Chettiar* to interpret the partnership deed. These precedents helped the court conclude that even if a partnership is labeled "at will," other clauses in the agreement can create a provision for its duration or determination, thereby making the partnership not truly "at will." This was a key factor in the court's refusal to accept the petitioner's unilateral dissolution of the firm as a settled fact.



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SIGNIFICANT CASE LAWS

J&K&L High Court: Disputes Arising from Separate Dealership and Lease Agreements Cannot Be Litigated Together

The High Court of Jammu & Kashmir and Ladakh in *M/S Shaheed G. M. Filling Station, Vs Indian Oil Corporation Limited*, held that the Writ Petition filed by the respondent seeking termination of the lease agreement was not maintainable. The court concluded that since the lease agreement contained a valid arbitration clause, any dispute or difference of opinion between the parties had to be resolved through arbitration, not by a writ court. The judgment also clarified that the dealership agreement and the lease agreement were two separate and distinct contracts, each with its own cause of action. Therefore, the respondent was not required to club the two issues—termination of dealership and termination of lease—into a single petition. However, the court's ultimate decision was that, despite the distinct nature of the contracts, the existence of a specific contractual remedy through arbitration precluded a writ petition under Article 226 of the Constitution of India. The court emphasized that a writ petition should not be entertained when an alternative and efficacious remedy is available.

The court relied on a few key precedents to reach its conclusion. It emphasized the Supreme Court's pronouncement in *Rahul Yadav & Anr. v. M/S Indian Oil Corporation Ltd. & Ors.* and *Indian Oil Corporation Limited v. Shree Ganesh Petroleum Rajgurunagar*, which both established that lease agreements and dealership agreements are independent of each other. This legal principle was used to reject the appellant's argument that the second writ petition was barred by splitting the cause of action. The court also cited *Hindustan Petroleum Corporation Ltd. v. M/S Pinkcity Midway Petroleum* which made it clear that when an arbitration clause exists in an agreement, the court is obligated to relegate the parties to arbitration. This precedent was crucial to the final reasoning, as it directly addressed the primary issue of whether a writ petition was the appropriate legal recourse, leading the court to conclude that the writ petition was not maintainable.



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REGULATORY UPDATE:

From Inadvertence to Invalidity: The Supreme Court's Stern Warning on Demand Notices



Singapore, a leading international arbitration hub, is taking proactive steps to solidify its position by modernising its legal framework. In a keynote address at the Singapore International Arbitration Centre (SIAC) Symposium, Minister for Law Edwin Tong emphasised that for arbitration to remain relevant, it must be responsive to commercial needs while upholding its core values of fairness and efficiency. This vision has led to a comprehensive review of the Singapore International Arbitration Act 1994 (IAA) by the Singapore International Dispute Resolution Academy (SIDRA).

The SIDRA report addresses several critical areas, aiming to provide greater clarity, efficiency, and certainty for arbitration users. Here are the key recommendations and their practical implications:

Power to Award Costs: Currently, Singapore courts cannot award arbitration costs after a successful set-aside application. The SIDRA report proposes amending the IAA to empower courts to apportion arbitration costs or, in exceptional circumstances and with party agreement, remit the issue of costs to the tribunal. This would allow for a more just outcome, especially given the rising costs of arbitration proceedings. **Leave Requirement for Appeals:** Under the current law, parties can appeal a court's decision to set aside an arbitral award without seeking leave. The SIDRA Recommendations propose requiring parties to obtain leave from the appella...

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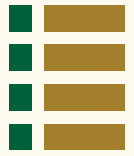
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