

# ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration



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**SpiceJet Arbitration Saga and the Limits of Judicial Indulgence** 04

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 [info@knallp.com](mailto:info@knallp.com)

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**Indulgence**, our cover story this month examines the limits of judicial accommodation in arbitration. Through the latest chapter of the SpiceJet arbitration saga, we explore when procedural leniency gives way to the need for finality, certainty, and enforcement.

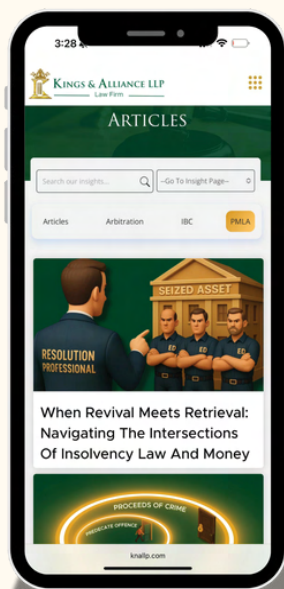
This edition also analyses the Supreme Court's reaffirmation of the **juridical seat's supremacy over venue**, the circumstances in which a **non-signatory can invoke an arbitration agreement**, the limits of **Article 226 jurisdiction in MSME interest disputes**, and the evolving interplay between **MSME remedies and contractual arbitration**.

Across these decisions, courts continue to draw sharper boundaries around judicial intervention, arbitral authority, and the remedies available to contracting parties.

**To cap it off**, we bring you case law developments and a curated selection of arbitration events and trainings from around the world.

Let's dive in.

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## COVER STORY

SpiceJet Arbitration Saga and the Limits of Judicial Indulgence

04



## PIVOTAL ISSUES

Principle v. Proximity: The Supremacy of the Juridical Seat over Arbitral Venue

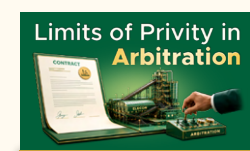
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## TRAINING & EVENTS

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# COVER STORY

SpiceJet Arbitration Saga and the Limits of Judicial Indulgence

## Runway of Recycled Pleas



Can a judgment debtor indefinitely delay compliance with an executable arbitral award by recycling pleas of financial distress, invoking geopolitical crises, and rotating between courts? The Delhi High Court's decision in *Spicejet Ltd. v. Kal Airways Pvt. Ltd. and Ors.* "In its judgment delivered on May 4, 2026, the Court rejected this contention, drawing a firm line between legitimate judicial relief and what it termed a 'complete abuse of the process of law.'" The judgment is significant not only for its outcome but for its articulation of the limits of review jurisdiction, the preclusive effect of apex court dismissals, and the constitutional imperative under Article 144 that courts act in aid of the Supreme Court's directions.

The case arose from a Share Sale and Purchase Agreement (SSPA) dated 29 January 2015, under which the respondent's promoters transferred 58.46% shareholding in SpiceJet to Ajay Singh for a nominal consideration of Rs. 2, in exchange for infusion of Rs. 450 crores and release of personal guarantees. Disputes regarding reciprocal obligations were referred to arbitration, culminating in an award dated 20 July 2018 directing SpiceJet to pay Kal Airways Rs. 308,21,89,461 with interest at 12% per annum from November 2015. While both parties challenged portions of the award under Section 34 of the Arbitration and Conciliation Act, 1996, enforcement proceedings under Section 36 continued simultaneously. By February 2023, the Supreme Court directed that failure to pay Rs. 75 crores within three months would render the award executable in full. SpiceJet defaulted on the Supreme Court's February 2023 direction to pay Rs. 75 crores, leading the Court on 07 July 2023 to...

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Chamber - 511, Ad. Complex, Supreme Court of India, New Delhi - 110001



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# PIVOTAL ISSUES

Principle v. Proximity: The Supremacy of the Juridical Seat over Arbitral Venue

## Principle vs. Proximity

The Supremacy of the Juridical Seat over Arbitral Venue



Can the physical location where an arbitrator signs an award or where the parties meet for convenience override an express agreement on the "seat" of arbitration? The Supreme Court of India, in its landmark ruling in *J&K Economic Reconstruction Agency v. Rash Builders India Pvt. Ltd*, rejected this view. In a move to settle persistent confusion at the High Court level, the Court reaffirmed that the juridical seat acts as the "legal home" of the arbitration, vesting exclusive supervisory jurisdiction in the courts of that seat. Even if every hearing takes place elsewhere and the final award is rendered in a different city, the designated seat remains the immutable anchor of the proceedings.

The dispute originated from infrastructure projects in Jammu & Kashmir (J&K) managed by the J&K Economic Reconstruction Agency (JKERA). When contractual disagreements led to arbitration, a pivotal moment occurred during the tribunal's proceedings: on 26th March 2016, with the express consent of both parties, the Arbitral Tribunal fixed Srinagar as the "seat" and New Delhi merely as the "venue." Despite this, the final award was delivered in New Delhi in 2024. When JKERA challenged the award before the High Court at Srinagar under Section 34 of the Act, the respondent objected, arguing that because the award was signed and the proceedings conducted in New Delhi, the Srinagar court lacked jurisdiction. The High Court erroneously agreed and returned the petition. Aggrieved by the said decision, JKERA preferred an appeal before the Supreme Court asserting that the designation of Srinagar as the arbitral seat vested exclusive supervisory jurisdiction in the...



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# PIVOTAL ISSUES

Supreme Court Clarifies When a Non-Signatory Can Invoke an Arbitration Agreement: Elecon Engineering v. BRBCL

## Limits of Privity in Arbitration



Can a party that never signed the principal contract still be bound by and entitled to invoke the arbitration clause embedded within it? This is one of the most nuanced and commercially consequential questions in Indian arbitration law, and the Supreme Court's decision dated May 7, 2026 in Elecon Engineering Company Ltd. v. Bhartiya Rail Bijlee Company Ltd. and Anr. provides a firm and doctrinally sound answer: yes, where the architecture of the contract itself makes that party's participation indispensable, non-signatory status is no bar to the invocation of arbitration. The Court, comprising Justice Sanjay Kumar and Justice K. Vinod Chandran, set aside the High Court's dismissal of a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 filed by the Collaborator Elecon Engineering Company Ltd. and appointed a sole arbitrator, recognising that the Collaborator was a "veritable party" to the employer-contractor contract by reason of the Deed of Joint Undertaking (DJU) forming an inextricable part of it.

The dispute arose from a contract for installing a Coal Handling Plant Package for the Nabinagar Thermal Power Project, awarded by Bhartiya Rail Bijlee Company Ltd. (the Employer) to a contractor who features in the proceedings as the second respondent. The bid documents contained stringent qualification thresholds specifically, experience in design and commissioning of an integrated bulk material handling plant with a rated capacity of 1,000 metric tonnes per hour or above for a minimum period of one year. The Contractor, unable to satisfy these requirements independently, collaborated with Elecon Engineering...

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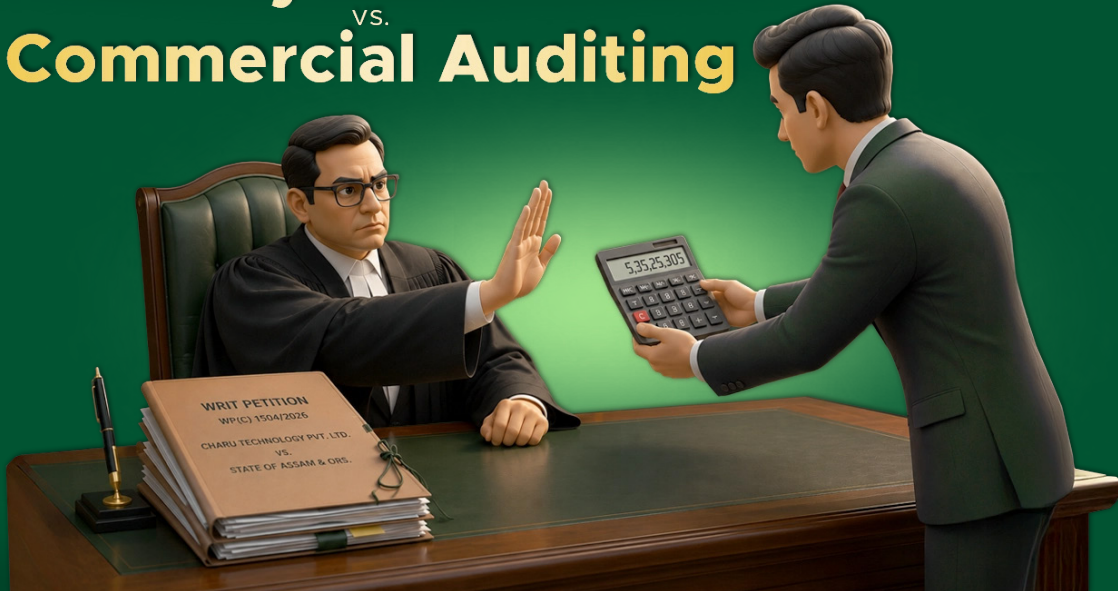


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# PIVOTAL ISSUES

Writ Courts as Enforcers, Not Accountants: The Limits of Article 226 in MSMED Interest Claims

## Statutory Enforcement vs. Commercial Auditing



Can a writ court under Article 226 of the Constitution of India directly adjudicate complex contractual disputes and calculate statutory interest under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 when the underlying questions of fact remain unresolved? In *Charu Technology Pvt. Ltd. v. State of Assam and Ors.*, the High Court of Gauhati answered this decisively in the negative, holding that while Micro, Small, and Medium Enterprises (MSMEs) are statutorily entitled to protection and compound interest for delayed payments, a writ court cannot transform itself into a fact-finding forum to calculate exact interest liabilities or verify supply timelines. Instead, the Court established that the proper recourse is to direct the state department to verify the claims based on structured mathematical computations provided by the claimant, reserving the right of the parties to approach the MSME Facilitation Council under Section 18 if an amicable resolution fails.

The petitioner, Charu Technology Pvt. Ltd., claiming status as a small enterprise under the MSMED Act, 2006, supplied UPVC pipes to the Public Health Engineering (PHE) Department of the Government of Assam pursuant to multiple work orders. Following persistent non-payment of its dues, the petitioner initially approached the High Court in 2018, which directed the department to consider its representations. When the department failed to comply, contempt proceedings were initiated, culminating in a Memorandum of Understanding (MoU) where the final outstanding dues under the National Rural Drinking Water Programme (NRDWP) account were mutually settled at ₹5,35,25,305. Following this...

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# PIVOTAL ISSUES

MSME Proceedings, Election of Remedies, Contractual Arbitration, and the Limits of the Abandonment Doctrine

## When Does Trying One Door Close **All the Others?**



When a contractor exhausts a statutory remedy in good faith, only to be told it was never eligible in the first place, can the other party use that failed detour to argue that contractual arbitration stands abandoned forever? The Delhi High Court’s Division Bench decision dated 16 April 2026 in *Newton Engineering and Chemicals Ltd. v. Indian Oil Corporation Ltd.* answers that question with a firm no. The judgment holds that an unsuccessful invocation of MSME jurisdiction, rejected not on merits but on the threshold ground of the claimant’s ineligibility as a “supplier,” does not extinguish or abandon a pre-existing contractual arbitration, particularly when it was the respondent’s own inaction that drove the claimant to seek relief elsewhere in the first place.

A contract dated 05 October 2011 was executed between Newton Engineering and Indian Oil Corporation Ltd. (IOCL) for Mechanical and Piping Works at the FCCU and PRU Revamp project at Mathura Refinery. Upon completion of work, disputes arose, and Newton invoked arbitration on 25 June 2019 under Clause 9.0.1.0 of the General Conditions of Contract (GCC). The GCC, however, contained a critical precondition: only “notified claims” could be referred to arbitration, and whether a claim qualified as such had to be determined first by IOCL’s General Manager under Clause 9.0.2.0, before the arbitrator could proceed at all. IOCL acknowledged this obligation. On 05 August 2019, the Chief General Manager granted Newton three weeks to file a reply regarding the Clause 9.0.2.0 determination. Newton submitted its documents on 03 October 2019 and followed up in December 2019, requesting...

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# SIGNIFICANT CASE LAWS

## Losing Party Can Seek Post-Award Interim Relief Under Section 9 Subject to Higher Judicial Scrutiny

The Supreme Court resolved a conflict in *Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi* among various High Courts regarding whether an unsuccessful party in an arbitration can seek post-award interim measures under Section 9 of the Arbitration and Conciliation Act, 1996. The Court held that the plain statutory definition of "a party" under Section 2(h) means any party to the arbitration agreement and cannot be contextually narrowed post-award to mean only a successful party or award-holder. It clarified that Section 9 protects the subject matter or amount in dispute and operates in a distinct sphere from the challenge and stay mechanisms of Sections 34 and 36. Denying Section 9 recourse could leave a losing party remediless, especially given the court's recognized power to modify or sever awards. Ultimately, the Supreme Court affirmed the maintainability of such petitions by losing parties but held that courts must apply a higher threshold of scrutiny when granting discretionary interim relief to them.



VIEW JUDGEMENT



# SIGNIFICANT CASE LAWS

## Award Deemed Nullity Due to Lack of Mutual Consent in Unilaterally Signed Acknowledgement Letter

The appellant appealed in *Matsya Fincap Pvt. Ltd. v. Govind Lal* an executing court's order that refused to enforce an ex parte arbitral award of ₹10,00,000 based on a receipt-cum-acknowledgement letter containing an arbitration clause. The High Court observed that the acknowledgement letter was signed only by the respondent and not by the appellant, failing to meet the written agreement criteria of Section 7(4)(a). Furthermore, there were no supporting exchanges of communications to attract Section 7(4)(b) or establish a concluded bilateral contract. Because arbitral jurisdiction fundamentally flows from mutual consent, the lack of a valid agreement rendered the award a nullity suffering from inherent lack of jurisdiction. The Court also noted suspect surrounding features, including the repeated unilateral appointment of the same sole arbitrator across multiple borrowers. Consequently, the High Court held that the executing court was fully competent under Section 47 CPC to decline enforcement and dismissed the appeal.



VIEW JUDGEMENT



# SIGNIFICANT CASE LAWS

## High Court Appointment in International Commercial Arbitration Inherent Lack of Jurisdiction Rendered Award Void Ab Initio

Ssangyong appealed a Section 34 dismissal in *Ssangyong Engineering and Construction Company Ltd. v. S.B. Engineering Associates* raised a threshold jurisdictional objection for the first time in a Section 37 appeal. Because Ssangyong was a body corporate incorporated in the Republic of Korea, the dispute legally fell under the definition of an "international commercial arbitration" under Section 2(1)(f)(ii). Under the unamended Section 11(12) of the Act, the power to appoint an arbitrator upon court intervention vests exclusively with the Chief Justice of India, meaning the High Court's appointment order was entirely without jurisdiction. The High Court held that such statutory appointment provisions are mandatory and non-derogable, meaning they cannot be bypassed by party autonomy, consent, or acquiescence. Inherent lack of jurisdiction goes to the root of the matter, rendering the arbitrator coram non iudice and the entire proceedings and resultant award void ab initio. The High Court therefore allowed Ssangyong's appeal and set aside the arbitral award.



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# SIGNIFICANT CASE LAWS

Section 29A(4) Permits Mandate Extension  
Post-Expiry if Arbitrator's Administrative Duties  
Constitute Sufficient Cause

The applicant filed an application under Section 29A(4) in *Sanjeev Kumar v. Union of India and Ors.* seeking an extension of time to conclude arbitral proceedings regarding land acquisition compensation enhancement, which was filed after the statutory time limit had expired. Relying on Supreme Court precedent, the High Court ruled that the plain language of Section 29A(4) permits court-ordered extensions either prior to or after the expiry of the prescribed period. Factually, the proceedings had advanced significantly, but an award could not be passed because the arbitrator who was also the Divisional Commissioner of Mandi was heavily pre-engaged with pressing administrative duties. The Court observed that the term "sufficient cause" signifies situations entirely beyond the ordinary control of the litigants. Since the administrative delays were out of the parties' hands, they constituted sufficient cause under Section 29A(5). The High Court allowed the application and directed the arbitrator to culminate the proceedings by July 27, 2026.



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# SIGNIFICANT CASE LAWS

## Explicit Contractual Venue and Jurisdiction Clauses Override Default Institutional Rules to Determine Juridical Seat

The petitioner approached the Delhi High Court under Section 29A in SP Singla Constructions Pvt. Ltd. v. State of Jharkhand and Anr. to extend an arbitral tribunal's mandate, which the respondent opposed for want of territorial jurisdiction. The petitioner argued that Delhi had jurisdiction because a prior Section 9 petition was filed there (invoking Section 42 exclusivity) and default SAROD institutional rules designated New Delhi as the seat. The High Court rejected the Section 42 argument, holding that a petition withdrawn at a nascent stage without any judicial adjudication cannot permanently "seize" jurisdiction. On the question of seat, the Court observed that the core contract explicitly fixed the "venue" at Ranchi and gave exclusive jurisdiction to Ranchi courts. It held that clear and specific contractual terms localize the juridical seat and override default institutional provisions. Finding that the juridical seat of arbitration was Ranchi, the Delhi High Court dismissed the petition for lack of territorial jurisdiction.



VIEW JUDGEMENT

# SIGNIFICANT CASE LAWS

MSMED Act Overrides General Arbitration Act, Empowering MSEFC to Arbitrate Despite Private Agreements or Section 80 Bars

The petitioner filed a writ petition in *Vina Electrical Pvt. Ltd. v. Micro and Small Enterprises Facilitation Council Nashik and Anr.* seeking to set aside a statutory arbitral award passed by the Micro and Small Enterprises Facilitation Council (MSEFC). The petitioner argued that the award was barred by Section 80 of the Arbitration and Conciliation Act, 1996, contending that the Council could not legally act as an arbitrator after its attempts at conciliation had failed. It also argued that an independent commercial arbitration agreement between the parties barred a reference to the Council. The High Court dismissed the writ petition by placing reliance on a binding three-judge Supreme Court precedent. The Court held that Chapter V of the MSMED Act, 2006, is a special enactment that explicitly overrides the general Arbitration Act. Consequently, a reference under Section 18 is maintainable despite private agreements, and the statutory bar in Section 80 is superseded, fully empowering the Council to arbitrate after conciliation fails.



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## MOHIT CHAUDHARY

### FOUNDER AND MANAGING PARTNER

Former AAG for State of J&K at Supreme Court of India  
Advocate on Record, Supreme Court of India

+91 98106 63997

mohit@knallp.com

mohitchaudhary2020@gmail.com



## KUNAL SACHDEVA

### PARTNER

+91 99536 55270

kunal@knallp.com

kunalsachdeva826@gmail.com



## PUJA CHAUDHARY

### PARTNER

+91 98106 22198

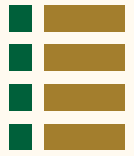
puja@knallp.com

pujabhaskar1@rediffmail.com

# EXPOSITORS

**Associate**  
Adv. Aparna Shukla

**Associate**  
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## LOCATIONS

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13 Ring Road, Lajpat Nagar IV,  
New Delhi - 110024

### CHAMBER

511, Ad. Complex, Supreme Court  
of India, New Delhi - 110001

### IPR OFFICE

T 518, Sector 99, Supreme Tower,  
Noida, Uttar Pradesh - 201303

### INSIGHT DIVISION

62/6, Channi Himmat  
(Green Belt), Jammu - 180015

### MUMBAI

Chamber No.3, Block No.23, O2nd Floor,  
Bell Building, Sir Phirozshah, Mehta Road,  
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