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# SIGNIFICANT JUDGMENTS ON ARBITRATION AND CONCILIATION ACT, 1996

## - MAY, 2020 TO JULY, 2020

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SOLICITORS AND ADVOCATES

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# Introduction

The Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") has been enacted in order to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation. The legislative intent and essence of the Arbitration Act is to bring domestic as well as international commercial arbitration in consonance with the UNCITRAL Model Rules, the New York Convention and the Geneva Convention. The main objective of the Arbitration Act is to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration and to minimize the supervisory role of the courts in the arbitral process and to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings in settlement of the disputes. In furtherance of the aforesaid objective, the Arbitration Act underwent two major amendments in the year 2015 and 2019, respectively, in order to bring forth pertinent changes in the arbitration landscape of the country with the sole motive of making India an arbitration friendly nation.

This compilation seeks to identify the significant developments in arbitration law by the courts of India after the advent of the COVID-19 pandemic i.e. from May, 2020 to July, 2020 and how the arbitration scenario in the country remains ever evolving.

# Section 2(1)(f)

1. ***Barminco Indian Underground Mining Services LLP* v. *Hindustan Zinc Limited,* S.B. Arbitration Application No. 10 of 2020 (Rajasthan High Court). Decided on July 20, 2020**.

   Which would be the relevant court to entertain a Section 9 application, arising out of a foreign seated arbitration proceeding, where both the parties to the dispute are Indian entities? This was the issue which was answered by a single bench of the Rajasthan High Court in the case of *Barminco Indian Underground Mining Services LLP* v. *Hindustan Zinc Limited.*, [S.B. Arbitration Application No. 10 of 2020 decided on July 20, 2020 (Rajasthan)].

   The court observed that, the expression "*international commercial arbitration*" under Section 2(1)(f) of the Arbitration Act is a nationality centric definition which clearly suggests that for an arbitration to be termed or treated as an international commercial arbitration, the agreement has to have at least one foreign party or a company whose nationality is other than that of India. In the instant case, as both the parties were of Indian origin (and conversely, none of the parties were a foreign party), the Court noted that, such an arbitration would not qualify as an *international commercial arbitration*, although the award may be a foreign award.

   The determination of whether the proceeding would qualify as *international commercial arbitration* was significant for determining the jurisdiction of the court to entertain Section 9 application, which jurisdiction vests with principal civil court of original jurisdiction. In the instant case, as High Court of Rajasthan lacked original jurisdiction or a separate commercial division, it was held that the High Court lacked the jurisdiction to entertain Section 9 application.

   Interestingly, to reach the conclusion that the court of principal civil court of original jurisdiction would have the jurisdiction to consider Section 9 application, the Court observed that, whilst the definition of '*Court*' was contained in Section 2 of the Arbitration Act, which in turn was applicable only to Part I of the Arbitration Act, restricting it to only Part I would result in confusing, if not confusing situation. Accordingly, it held that the

definition clause given in Section 2(1) of the Arbitration Act would apply to whole of the Act and would not be confined to Part-I thereof.

## Section 8

2. ***Dharamvir Khosla* v. *Asian Hotels (North) Limited*, CS(COMM) 184/2020 (Delhi High Court). Decided on July 21, 2020**.

   The pertinent issues which arose for consideration before the Single Bench were, first, whether an objection under Section 8 of the Arbitration Act can be taken without filing an application? Second, on an objection being taken, can the court decide that whether the dispute is arbitrable or not? Third, can claims which are relatable to special statute alone, cannot be referred to arbitration or even where there is a claim for a judgment in *rem*, the dispute cannot be referred to arbitration?

   With respect to the first issue, the court, while placing reliance on the judgment rendered by the Delhi High Court in the case of *Parasramka Holdings Private Limited* v. *Ambience Private Limited and another*, CS (SO) No.125/2017, held that that party invoking the arbitration clause does not have to file a formal application seeking a specific prayer for reference of the dispute to arbitration as long as it raises an objection in the written statement that the present suit is not maintainable in view of the arbitration clause in the agreement.

   The court, while deciding the second and third issues together, placed reliance upon the judgment of the Supreme Court in the case of *Emaar MGF Land Limited* v. *Aftab Singh,* (2019) 12 SCC 751 and held that, unlike an application under amended Section 11, which does not delve into the issue of arbitrability of dispute, an application under Section 8 of the Arbitration Act, requires the court to examine if the dispute is intended to covered by the arbitration clause. The Court also relied on *Emaar MGF* decision to read down the impact of amendments to Section 8.

   The Delhi High Court also observed that, the law down in *Booz Allen & Hamilton Inc*. v. *SBI Home Finance Limited and ors*, (2011) 5 SCC 532 and *Emaar MFG Land Limited (supra)*, though lays down certain categories of disputes which are inarbitrable in nature, the said categories cannot be held to be exhaustive and thus, would depend on the facts of each case that whether the remedy provided under the Arbitration Act for deciding such a dispute is barred by implication or otherwise.

## Section 9

3. ***Goodwill Non-Woven (P) Limited* v. *Xcoal Energy & Resources LLC.*, O.M.P.(I)(COMM) 120/2020 (Delhi High Court). Decided on June 9, 2020.**

   The Delhi High Court held that a court cannot refuse to entertain a petition under Section 9 of the Arbitration Act on the ground that the foreign party does not have any assets in India, as passing of orders/granting interim-measures under Section 9 does not presuppose existence of asset(s) in India.

4. **Blue Coast Infrastructure Developments Private Limited v. *Blue Coast Hotels Limited and ors.,* O.M.P. (I)(COMM) No. 35/2020 (Delhi High Court). Decided on June 10, 2020.**

   The Delhi High Court held that the scope of power of a court under Section 9 of the Arbitration Act is not limited to parties to an arbitration agreement and the court can also issue interim directions even against a third party. Further, the court while observing that

the distinction between the powers under Section 9 of the Arbitration Act and Section 17 of the Arbitration Act has a clear rationale, held that, an arbitrator is a creature of the contract between the parties and therefore, cannot venture outside the contract to issue directions to parties who are non-parties to the arbitration agreement, however, the same limitation is not applicable to a court exercising its powers under Section 9 of the Arbitration Act. However, it is pertinent to note that the Bombay High Court in the case of *Prabhat Steel Traders Private Limited* v. *Excel Metal Processors Private Limited*, Arbitration Petition No. 619 of 2017, while taking a contrary view, had held that a perusal of Section 17(1)(ii) clearly indicates that though such interim measures under Section 17 of the Arbitration Act can be applied only by a party to the arbitral tribunal and more particularly specified in Section 17(1)(ii)(a) to (e), such reliefs may in some of the cases affect even third parties.

5. ***Hero Wind Energy Limited* v*. Inox Renewables Limited,* O.M.P.(I) (COMM.) 429/2019 (Delhi High Court). Decided on July 7, 2020.**

   The Delhi High Court decided upon the question of law qua interpretation of Section 9(3) of the Arbitration Act i.e. if an arbitral tribunal has already been constituted to adjudicate the disputes which have arisen out of an agreement or set of agreements containing an arbitration clause, whether the remedy of approaching the court for interim measures with respect to disputes subsequently arising from the same agreement or set of agreements is barred by Section 9(3) of the Arbitration Act?

   The Delhi High Court held that if a separate arbitral tribunal, even if of same composition is to be constituted for disputes arising out of successive causes of action, the arbitral tribunal constituted for adjudication of disputes arisen from an earlier cause of action cannot be the arbitral tribunal constituted for the disputes arising from a subsequent cause of action qua which interim measures are being sought. Thus, as per the court, the petition was not barred under Section 9(3) of the Arbitration Act.

6. ***Ashwani Minda and M/s Jay Ushin Limited* v. *M/s U-Shin Limited and M/s Minebea Mitsumi Incorporated,* FAO(OS)(COMM) 65/2020 (Delhi High Court). Decided on July 7, 2020*.***

   The Delhi High Court while deciding upon the scope of applicability of Section 9 of the Arbitration Act in connection with foreign seated arbitrations, held that an application under Section 9 of the Arbitration Act would not be maintainable after constitution of arbitral tribunal in a foreign seated arbitration, if efficacious remedy is available before the arbitral tribunal.

## Section 11

7. ***Parsvnath Developers Limited and ors.* v. *Rail Land Development Authority*, Arb. P. 710/2019 (Delhi High Court). Decided on May 19, 2020**.

   The Delhi High Court while deciding upon the scope of Section 11 of the Arbitration Act noted that the scope and power is restricted only to examining the existence of an arbitration clause and not even its validity. Therefore, the court held that the objection raised by the respondent requiring the court to examine whether the disputes sought to be raised are overlapping with the claims in the earlier arbitrations between the parties and/or are barred by principles of Order II Rule 2 of the Code of Civil Procedure, 1908 cannot be sustained in law. As per the court, these issues clearly fall in the domain of the arbitral tribunal and can only be decided by the tribunal, as and when raised before it.

8. ***Rajesh Gupta* v. *Smt. Mohit Lata Sunda and ors.*, ARB. P. 494/2019 (Delhi High Court). Decided on May 27, 2020**.

The issue which arose for consideration before the Single Bench of the Delhi High Court was whether a petition under Section 11(5) of the Arbitration Act is only maintainable only against a 'party' to an arbitration agreement or does it include an assignee of a party as well?

The court while considering the arguments of the petitioner that the arbitration agreement is binding on the third party (respondent no.3), placed reliance on the judgment of the Rajasthan High Court in the case of *Aerens Goldsouk International Limited Company* v. *Samit Kavadia and ors*., (2008) 2 Arb. LR 545 (Rajasthan), and held that considering the facts and circumstances of the case, since the respondent no.3 has stepped into the shoes of the respondent no.1 and 2 as their assignee, the arbitration agreement between the petitioner and the respondent no.1 would also bind the respondent no.3. The court, thus, permitted the appointment of an arbitrator in the case under Section 11(6) of the Arbitration Act.

9. ***Quick Heal Technologies Limited* v. *NCS Computech Private Limited and ors.*, Arbitration Petition No.43 of 2018 (Bombay High Court). Decided on June 5, 2020.**

The Bombay High Court while determining a petition for appointment of a sole arbitrator under Section 11(6) of the Arbitration Act, discussed upon the mandatory nature of pre-arbitration clauses and examined if an arbitration clause, which provides a discretion to the disputing parties to invoke arbitration, would qualify as an arbitration clause.

Whilst the court acknowledged the mandatory nature of a pre-arbitration mediation clause enumerated in the contract between the parties, it also placed reliance on the judgment rendered by the Supreme Court in the case of *Visa International Limited* v. *Continental Resorts (USA) Limited*, (2009) 2 SCC 55, wherein it was held that, if from the correspondence between the parties, it becomes clear that both parties do not intend to come to any kind of settlement, then a pre-condition for amicable discussion for resolution which is mandatory/binding on the parties, will not hinder furtherance of the dispute resolution process. The court, thus, on consideration of the facts and circumstances of the instant case held that since, there was no scope for an amicable settlement between the parties, the invocation of arbitration without complying with pre-arbitration mediation clause was not fatal.

Further, the court, while examining if the clause was a valid arbitration clause held that, in the instant case there was no pre-existing agreement between the parties which stated that they "*should*" or they "*will*" refer their disputes to arbitration. The court, interpreted the terms "*shall*" and "*may*" used in the said clause and held that, the parties clearly made it optional for them to refer their disputes to arbitration by using the word "*may*" in the second part of the clause in contrast to the first part, wherein the word "*shall*" has been used in order to indicate the mandatory agreement between the parties to refer the disputes for amicable settlement to the designated personnel of each party first and it is only after failing in the same, the parties "*may*" refer the dispute to arbitration.

The court thus, held that the said clause was not an arbitration clause.

10. ***DSC Ventures Private Limited* v. *Ministry of Road Transport and Highways, Union of India*, Arb.P. 203 of 2020 (Delhi High Court). Decided on June 29, 2020.**

The dispute arose in the instant matter with regard to the power of a party to appoint a substitute arbitrator in accordance with Section 15 of the Arbitration Act after the

termination of mandate of an arbitrator as per Section 14 of the Arbitration Act against the power of the court to appoint to appoint an arbitrator under Section 11(6).

It is the case of the petitioner that reading Section 15(2) along with Section 11(4) of the Arbitration Act, a time of 30 (thirty) days is available with the respondent for appointing a substitute arbitrator and since, the said 30 (thirty) days period has expired, the petitioner *vide* the instant petition under Section 11(6) of the Arbitration Act has the right to demand the appointment an arbitrator by the court.

The Delhi High Court observed that Section 15(2) does not, either expressly or by necessary implication, make the provisions of Section 11 of the Arbitration Act, applicable to the appointment of a substitute arbitrator, in place of the arbitrator who has become unable to perform his functions. The only provision, relating to appointment of arbitrators, which stipulates any time period therefore, in the Arbitration Act, is Section 11 (4). However, the court held that Section 11 (4), in its express terms, does not, however, apply to the present case, for two reasons; firstly, because the provision relates to the initial appointment of arbitrators, and not to the appointment of a substitute arbitrator and, secondly, because no request, to appoint a substitute arbitrator, was ever made, by the petitioner to the respondent.

With regard to applicability of Section 11(6) of the Arbitration Act to the facts of the instant case, the Delhi High Court while placing reliance on the *Yashwith Constructions (P) Limited* v. *Simplex Concrete Piles India Limited*, (2006) 6 SCC 204, held that, since the appointment of the substitute arbitrator by the respondent was in accordance to the terms of the agreement for appointment of arbitrators agreed upon between the parties, which does not provide for a time limit, the same would not justify the acts of the petitioner to recourse to the instant proceeding under Section 11 of the Arbitration Act. Further, the court while reiterating the principle of party autonomy stated that any statutory provision which results in eviscerating or even reducing such autonomy has to be interpreted strictly and hence, it is only if the party defaults in complying with the procedure stipulated in the agreement between them for appointment of arbitrators, does the autonomy of the parties becomes imperiled and the recourse to courts can be undertaken by either party. Thus, the court held that, it cannot be said that the right of the respondent to appoint a substitute arbitrator, as per the agreement, stood extinguished the day the petitioner filed the instant petition application before the court since no time period, least of all a period of 30 days, applies in the instant circumstances. The court also noted that taking into consideration the COVID-19 situation, the appointment of the substitute arbitrator by the respondent on June 8, 2020 after the demise of the preceding arbitrator on February 24, 2020, cannot be regarded as an inordinate delay.

**11. *Aarka Sports Management Private Limited* v. *Kalsi Buildcon Private Limited*, Arb. P. 662/2019 (Delhi High Court). Decided on July 6, 2020.**

An issue arose in the instant case with respect to the jurisdiction of the Delhi High Court to entertain the petition seeking appointment of an arbitrator under Section 11 of the Arbitration Act since Delhi was neither the seat of arbitration nor did any cause of action arose in Delhi. The agreement was drawn at Ranchi; it was signed at Lucknow and the place of performance/execution of the agreement was at Patna, Bihar.

The Single Bench of the court held that, since the parties have not agreed on the seat of arbitration in their agreement, the expression “Court” within the meaning of Section 2(1)(e) of the Arbitration Act read with Sections 16 to 20 of the Code of Civil Procedure, 1908 would be competent to entertain an application under Section 11 of the Arbitration Act. The Delhi High Court thus, held that it lacks territorial jurisdiction since Delhi is not the seat of arbitration; no cause of action arose at Delhi and the respondent does not work at Delhi and the agreement was drawn at Ranchi; it was signed at Lucknow and the place of

performance/execution of the agreement was at Patna, Bihar. However, the court also noted that the Delhi High Court could have jurisdiction if the agreement had provided the seat of arbitration to be at Delhi.

12. ***M/s Hamdard Laboratories (India)* v. *M/s Sterling Electro Enterprises,* Arb. P. 218 of 2020 (Delhi High Court). Decided on July 21, 2020.**

In the instant case, the parties had stipulated in their arbitration agreement that the court of law at Delhi shall alone have the jurisdiction over the disputes and thus, the petitioner contended that as a necessary corollary, the parties have agreed to designate the seat of arbitration in Delhi. The respondent, on the contrary, argued that the parties had never agreed upon a seat of arbitration in their agreement and therefore, the 'Court' within the meaning of Section 2(1)(e) of the Arbitration Act, within whose jurisdiction the cause of action arose i.e. in Aurangabad, Maharashtra, would have the jurisdiction. An issue thus, arose before the Single Bench of the Delhi High Court that whether it has the territorial jurisdiction to entertain the instant petition under Section 11(6) of the Arbitration Act?

The Delhi High Court held that the reference to the phrase "*The courts of law at Delhi alone shall have the jurisdiction*", makes it *ex-facie* evident that the Delhi has not been designated as the venue but has been designated as the seat of arbitration. Further, the court also held that the absence of the term "seat" while referring to the courts in Delhi in the arbitration agreement between the parties, does not alter the significant fact that the courts of law at Delhi alone have been vested with the jurisdiction upon the arbitration proceedings arising out of the agreement between the parties and the fact that the parties chose Delhi as a neutral seat of arbitration.

It is also pertinent to mention that the Single Bench of the Delhi High Court while distinguishing the judgment rendered by a Coordinate Bench of the court in the case of *Aarka Sports Management Private Limited* v. *Kalsi Buildcon Private Limited.*, Arb. P. 662/2019 ("**Arka Sports**"), held that the parties in Arka Sports, did not provide for exclusive jurisdiction of the courts at Delhi in respect of the arbitration and rather the petitioner in that case had relied upon the jurisdiction conferred under the dispute resolution clause in the agreement titled "Governing Law, Jurisdiction & Dispute Resolution" which was in fact, only a general stipulation on dispute resolution and not a part of the arbitration clauses like in the instant case, wherein the parties have expressly provided within their arbitration clause itself that the court at Delhi will have jurisdiction over all arbitration proceedings arising out of the agreement between the parties.

The Delhi High Court thus, in the instant case, held that it had the jurisdiction to entertain the petition under Section 11(6) of the Arbitration Act.

## Section 12

13. ***Afcons Infrastructure Limited* v. *Konkan Railway Corporation Limited*, ARBP no. 10 of 2019 (Bombay High Court). Decided on June 2, 2020**.

The Bombay High Court in the instant case determined the issues encompassing the procedure for appointment of arbitrators from a panel comprising gazetted railway officers as per the provisions of the Arbitration Act as amended by the Arbitration and Conciliation (Amendment Act) 2015 ("**Amendment Act, 2015**").

In the instant case, the contract between the parties comprised of an arbitration clause, as per which, the arbitral tribunal was to consist of three gazetted railway officers. The panel of such gazetted railway officers was to be prepared by the respondent from amongst the officers of one or more departments of the railway. The panel so prepared would be shared with the petitioner who would be asked to suggest upto two names out of the panel for

appointment as the petitioner's nominee. The power to appoint the nominee arbitrator of the petitioner vested with the managing director of the respondent with the only rider that he shall appoint at least one out of the two names suggested by the petitioner. The power to appoint the rest of the arbitrators from within or outside the panel and the presiding arbitrator from amongst those three arbitrators, vested with the managing director of the respondent.

The court with regard to the aforementioned procedure of appointment of arbitrators held that, the procedure for appointment of the arbitral tribunal is in flagrant violation of the amended provisions of Section 12 read in conjunction with the Fifth and Seventh Schedule of the Arbitration Act, introduced by the Amendment Act, 2015.

The court held that, in view of the amended provisions of the Arbitration Act, the officers of the respondent or for that matter, Indian Railways are simply ineligible to be appointed as the arbitrators. The court further held that, the procedure of appointment which does not vest free choice to nominate an arbitrator with the contractor and conversely, vests the power to appoint the presiding arbitrator with the managing director of the respondent also militates against the principles of autonomy and neutrality and impartiality, respectively.

The court, therefore, permitted the petitioner to constitute an independent arbitral tribunal after declaring the procedure envisaged under the contract for appointment of arbitrator as invalid.

## Section 29A

14. ***Suryadev Alloys and Power Private Limited* v. *Shri Govindraja Textiles Private Limited*, O.P. Nos. 955 of 2019 and 15 of 2020 (Madras High Court). Decided on May 8, 2020**.

A question arose for consideration before the court with regard to the validity of an arbitral award which was passed a year after the period fixed by the court had lapsed.

The court after undertaking a comparative analysis of Section 28(1) under the erstwhile Arbitration Act, 1940 and the Section 29A of the Arbitration Act, held that unlike the provision of Section 28(1) of the Arbitration Act, 1940 which gave wide powers to the court to enlarge the time for making an award even after the expiry of the time for making the award or even after the award has been made; the Arbitration Act has curtailed these powers and restricted the extension only within the provisions of Section 29A(3) and 29A(4). Thus, as per the court a similar power has not been incorporated under Section 29A of the Arbitration Act unlike Section 28(1) of the Arbitration Act, 1940. Hence, the Madras High Court held that it is only the court that can extend the period for making of the award after the expiry of the 1 (one) year period under Section 29A(1) or the extended period under Section 29A(3). Thus, the Madras High Court held that, even the court cannot ratify an award *ex post facto* by extending the period in a petition filed under Section 34 of the Arbitration Act by an aggrieved party. Further, the court also enumerated that the language of Section 29A(4) of the Arbitration Act clearly stipulates that if the award is not made within the stipulated period or the extended period then the mandate of the arbitrator stands terminated unless extended by court.

15. ***DDA* v. *Tara Chand Sumit Construction Company*, OMP(MISC.)(COMM) 236 of 2019 (Delhi High Court). Decided on May 12, 2020.**

The Delhi High Court in the instant case, interpreted the term "court" enumerated under Section 29A(4) of Arbitration Act.

The court observed that in case a petition under Section 29A of the Arbitration Act is filed before the Principal Civil Court for extension of mandate and the occasion for substitution arises, then the Principal Civil Court will be called upon to exercise the power of substituting the arbitrator and thus, the same would lead to a situation where a conflict would arise between the power of superior courts to appoint arbitrators under Section 11 of the Arbitration Act and those of the civil court to substitute those arbitrators under Section 29A of the Arbitration Act, since, the provisions of Section 11 of the Arbitration Act, confers power of appointment of arbitrators only on the High Court or the Supreme Court, as the case may be.

The court thus, held that an application under Section 29A of the Arbitration Act seeking extension of mandate of the arbitrator would lie only before the court which has the power to appoint an arbitrator under Section 11 of the Arbitration Act and not the civil courts.

16. ***ONGC Petro Additions Limited* v. *Ferns Constructions Company INC.*, OMP(MISC)(COMM) 256/2019 (Delhi High Court). Decided on July 21, 2020.**

The petitioner in the instant case had filed an application claiming that the time limit for the arbitral tribunal to pass an award under Section 29A of the Arbitration Act, does not apply to international commercial arbitrations as defined under Section 2(1)(f) of the Arbitration Act owing to the retrospective applicability of the amendment made to Section 29A *vide* the Arbitration and Conciliation (Amendment) Act, 2019 ("**Amendment Act, 2019**") (with effect from August 30, 2019).

The Delhi High Court observed that there exists a dichotomy in the decisions rendered by two Coordinate Benches of the Delhi High Court in the case of *Shapoorji Pallonji and Company Private Limited* v. *Jindal India Thermal Power Limited*, O.M.P.(MISC.) (COMM.) 512/2019, and *MBL Infrastructures Limited* v. *Rites Limited*, O.M.P.(MISC)(COMM) 56/2020, wherein in the case of *Shapoorji (supra)*, the court held that the amended Section 29A(1) of the Arbitration Act being a procedural law would also apply to the pending arbitrations as on the date of the amendment whereas, the court in the case of *MBL Infrastructure (supra)*, by referring to the notification August 30, 2019 held that, from the perusal of the said notification it does not have a retrospective effect. The Delhi High Court in the instant case also noted that in the case of *MBL Infrastructure (supra)*, the attention of the court was not drawn to the earlier order in *Shapoorji (supra)* and thus, held that, to that extent the order in *MBL Infrastructure (supra)* is *per incuriam*.

The Delhi High Court thus, held that the provisions of Section 29A(1) of the Arbitration Act shall be applicable to all pending arbitrations seated in India as on August 30, 2019 and commenced after October 23, 2015.

Determining the issue with regard to international commercial arbitrations, the Delhi High Court held that with the amendment to Section 29A(1) of the Arbitration Act *vide* the Amendment Act, 2019, the time period for making an arbitral award in international commercial arbitration has been made inapplicable and thus, there is no strict time line of 12 months prescribed to the proceedings which are in nature of international commercial arbitration as defined under the Arbitration Act, seated in India.

## Section 30

17. ***The State of Jharkhand* v. *Gitanjali Enterprises*, Arb. Appeal No. 09 of 2017 (Jharkhand High Court). Decided on June 10, 2020.**

The issue which arose for consideration before the court while determining a challenge to an arbitral award under Section 34 of the Arbitration Act was, whether the requirement of having a specific settlement agreement in writing and signed between the parties (as

specified under Section 73 of the Arbitration Act) mandatory in respect of a settlement arrived at between the parties to an arbitration, in an arbitration proceeding?

The Jharkhand High Court observed that, whilst both Section 73 and Section 30 of the Arbitration Act deal with settlement of disputes between the parties, the requirement specified under Section 73 is not required to be complied with, if a settlement is arrived at between the parties to an agreement in an arbitration proceeding. To arrive at the conclusion, the Court noted that Section 73 forms part of Part III of the Arbitration Act, which deals only with *conciliation* proceedings, and would have no bearing on Section 30 of the Arbitration Act, which falls under Part I of the Arbitration Act.

## Section 31

**18. *V4 Infrastructure Private Limited* v. *Jindal Biochem Private Limited*, FAO(OS) (COMM) 107/2018 (Delhi High Court). Decided on May 5, 2020.**

A Division Bench of the Delhi High Court had the occasion to adjudicate upon the legality of awarding a high rate of interest by way of damages at the rate of interest at the rate of 18% per annum by an arbitrator.

The court observed that, having regard to the fact that the banking rate of interest at all relevant times and even as on date of the judgment was much lower than the rate of interest awarded by the arbitrator and in absence of any evidence placed on record that could justify grant of interest at the rate of 18% per annum, the court was constrained to take into account the market rates and trade practice. Accordingly, the court held that, the award of interest at the rate of 18% per annum by way of damages by the arbitrator to be unreasonable, irrational, unjustified and reduced the same to 9% per annum.

**19. *Turner Morrison Limited* v. *Rani Parvati Devi and anr.*, O.M.P. (COMM.) 50/2018 (Delhi High Court). Decided on May 14, 2020.**

In the instant case, an issue arose for consideration before a Single Bench of the Delhi High Court regarding the validity of the decision of the arbitrator to reduce the rate of compound interest from 36% per annum, to a simple interest at the rate of 7.5% per annum relying on Section 3 of the Usurious Loans Act, 1918.

The Delhi High Court held that there was no patent illegality or perversity in the part of the award of the arbitrator where the arbitrator has declined to grant compound interest and has granted only simple interest since the agreement between the parties provided for only interest at the rate of 36% per annum and did not stipulate charging of compound interest.

In respect of the reduction of rate of interest, the court held the same to be patently illegal and contrary to the terms of the agreement between the parties since, Usurious Loans Act, 1918 was inapplicable to the said arbitration proceedings since the same arose out of a contract between the parties wherein an agreed rate of interest was already provided. The court thus, held that where the parties have already agreed to a rate of interest that is payable by one party to the other as a part of the terms of the contract, it is not open to the tribunal or to the court to interfere in the rate of interest. Therefore, the court enumerated that insofar as preference and *pendente lite interest* is concerned, the arbitral tribunal is bound by the provisions of the contract between the parties and set aside the arbitral award to the extent of reduction of the rate of interest stipulated in the contract at the rate of 36% per annum to 7.5% per annum.

**20. *Ashi Limited* v. *Union of India*, O.M.P. 200/2015 (Delhi High Court). Decided on May 19, 2020.**

In the instant case, a dispute, *inter-alia*, arose with respect to payment of interest at the rate of 18% per annum from the date the payment became due till their realization. The petitioner claimed *pendente lite* interest not only limited to unpaid invoices but also other claims arising due to the breach on the part of the respondent. The arbitrator rejected the claim of the petitioner with respect to the unpaid bills relying on two clauses of the contract between the parties which stipulated that there will be no payment of interest. However, the arbitrator awarded interest from the date of the arbitral award and rejected the interest on the claims of damages since the claim was quantified only through the arbitral award. For arriving on the rate of interest, the arbitrator relied upon Section 31(7)(a) of the Arbitration Act which provides discretion to the arbitrator to award interest at a reasonable rate and hence, the arbitrator allowed interest at the rate of 9% per annum from the date of award.

The Delhi High Court while upholding the finding of the arbitrator held that Section 31(7)(a) of the Arbitration Act clearly stipulates that unless otherwise agreed between the parties, where the award is for payment of money, the arbitral tribunal may grant interest at such a rate as it deems reasonable, on the whole or any part of the money and for the whole or any part of the period between the date of cause of action and the date of the award.

**21. *IRCON International Limited* v. *M/s Meumal Athwani*, A.P. 141 of 2006 (Calcutta High Court). Decided on May 26, 2020**.

A Single Bench of the court while deciding upon an application under Section 34 of the Arbitration Act, examined a situation wherein the arbitrator had not provided any reason for awarding *pendente lite* interest to the respondent at the rate of 12% per annum instead of 18% per annum (as claimed) although, the arbitrator had provided reasons for the awards in relation to other specific claims.

The court observed that, the requirement of intelligible and adequate reasons has been settled in numerous decisions of the Supreme Court and that the Calcutta High Court itself has found that the mandate of Section 31(3) of the Arbitration Act for providing reasons is a mandatory obligation unless the parties have decided otherwise. Thus, the court although it upheld the power of the arbitrator to grant interest post-award and that a clause in a contract prohibiting the same cannot oust such a power, as held in *Ambica Construction* v. *Union of India*, AIR 2017 SC 2586, the Calcutta High Court held that, the total absence of reasons either by way of adjudication or the quantum of interest awarded in respect of the claim, cannot be accepted or upheld. The court, therefore, set aside the award in relation to the said claim.

**22. *Italian Thai Development Public Company Limited* v. *MCM Services Limited*, O.M.P. (COMM.) 297/2017 (Delhi High Court). Decided on May 27, 2020.**

A dispute arose in the instant matter with respect to the power of the arbitrator to grant *pendente lite* interest when the same is barred under the clauses of the contract between the parties.

The Single Bench of the Delhi High Court observed that there has been a paradigm shift in the law with respect to grant of *pendente lite* interest under the Arbitration Act from the Arbitration Act, 1940 since, the Legislature in its wisdom has clearly sanctified the principle of party autonomy and agreements between the parties by introducing Section 31(7) in the Arbitration Act and has made the power of the arbitrator to grant *pendente lite* interest, subject to any agreement between the parties. Hence, the court held that it was not open to the arbitrator to grant *pendente lite* interest as the parties had under the clauses of their

contract, agreed to have a bar on the grant of interest. The court thus, set aside the award to the extent of grant of *pendente lite* interest by the arbitrator.

## Section 34

**23. *Salar Jung Museum and ors*. v. *Design Team Consultants Private Limited,* O.M.P. (COMM) 44/2017 (Delhi High Court). Decided on May 21, 2020.**

The issue which arose for consideration before the court was that can an objection pertaining to the jurisdiction of the arbitrator can be raised for the first time in a proceedings under Section 34 of the Arbitration Act, if not raised previously before the arbitral tribunal?

The Delhi High Court, in the instant case, distinguished the *ratio* laid down in the case of *Lion Engineering* v. *State of Madhya Pradesh*, (2018) 16 SCC 758, wherein it was held by the Supreme Court that though the plea regarding the jurisdiction of the arbitrator being circumscribed by a special statute had not been taken before the arbitrator, it could be still be urged before the court under Section 34 of the Arbitration Act. The Delhi High Court held that, the challenge is not based upon any inherent lack of jurisdiction in the arbitrator but upon the reference order itself; in such a case, the party concerned cannot be permitted to participate in the arbitration proceedings, contest the claim on merits, and thereafter, raise a jurisdictional objection. As per the court, the underlying difference stems from the concept of consensual dispute resolution itself. Even in a case where a particular dispute is referred to the arbitrator, and the claimant thereafter seeks adjudication of other claims as well, if the respondent does not object, it can be taken to have agreed to submit the subsequent claims also to arbitration. The court also noted that, if there were a statutory bar to submission of the additional claim, akin to the situation in *Lion Engineering (supra)* (or perhaps some other ground relatable to public policy), the situation might have been different. However, where the jurisdictional objection is capable of waiver by the affected party, the failure to raise it before the arbitrator signifies consent to the arbitrator's jurisdiction. A party thus, cannot, in such a case, participate in the proceedings without demur and then seek to assail the validity of the proceedings in the face of an unfavourable award. The court thus, dismissed the application for setting aside the award.

It is also pertinent to mention that a Coordinate Bench of the Delhi High Court on January 16, 2019 in the case of *Fitness First India Private Limited* v. *Ambience Developers and Infrastructure Private Limited.*, OMP.(COMM.) 202/2016, was also faced with a similar situation wherein in the final stage of dictation of the judgment in the court, the petitioner claimed that certain charges awarded by the arbitrator had no basis since the respondent had not justified the said charges on any basis before the arbitral tribunal. The respondent, *per contra*, submitted that the said charges has been claimed strictly in accordance with the clauses in the agreement and the same, having not being challenged by the petitioner before the arbitrator, cannot be challenged before the court in a petition under Section 34 of the Arbitration Act. The court found merit in the objections raised by the respondent and held that, there is no substantial challenge made to the award with respect to the said charges in favour of the respondent and the petitioner having failed to appear before the arbitrator and challenge the claim made by the respondent, cannot now challenge the same on the basis of lack of particulars for raising such a charge.

**24. *Prakash Industries Limited* v. *Bengal Energy Limited and ors.,* G.A. 394 of 2020 (Calcutta High Court). Decided on June 11, 2020.**

The issue which arose for consideration before the court pertained to the scope of amendment to an application filed under Section 34 of the Arbitration Act.

The court observed that what needs to be seen is whether the grounds which are sought to be brought in by way of an amendment would necessarily be new and independent

grounds without having a foundation in the original Section 34 application; which means that each case must be decided on the nature of the amendments.

The Calcutta High Court thus, held that, the test for allowing or rejecting an amendment to existing grounds in an arbitration petition is whether the proposed grounds would necessitate filing of a fresh application for setting aside of the award. The court, thus, dismissed the amendment application on the basis that since several of the new grounds did not have a foundational basis in the existing petition, the petitioner cannot enter through the 'amplification' route, as contended, and if the amplification recourse fails, the petitioner has no other statutory cushion to fall back on under the existing law.

**25. *Gammon India Limited* v. *National Highway Authority of India,* OMP 680/2011 (New No. O.M.P (COMM.) 392/2020) (Delhi High Court). Decided on June 23, 2020.**

The Delhi High Court decided upon the efficacy of multiple arbitrations arising under the same contract resulting in multiplicity of proceedings and its subsequent effect on the arbitral awards which is rendered.

The court, *inter-alia*, held that, constituting separate tribunals with respect to the same contract and/or wherein there is overlapping of issues, should be avoided since it would create multiplicity of proceedings and would consequently, prove as counter-productive to the basic purpose of arbitration which is to provide speedy resolution of disputes. The court while placing reliance on the *ratio* of *Dolphin Drilling Limited.* v. *ONGC*, AIR 2010 SC 1296, reiterated the position of law that all disputes which are in existence when the arbitration clause is invoked, is ought to be raised and referred at once. Further, the court held that the principles of *res judicata* enshrined under the Code of Civil Procedure, 1908 is also applicable to arbitration proceedings and therefore, it would be impermissible to allow claims to be raised at any stage and referred to multiple arbitral tribunals which sometimes results in multiplicity of proceedings as also contradictory awards. Additionally, the court also held that while hearing a petition under Section 34 of the Arbitration Act, it would be incongruous to hold that a finding in a subsequent award would render the previous award illegal or contrary to law.

**26. *Nirmal Singh* v. *Horizon Crest India Real Estate and ors*., O.M.P.(COMM) 434/2020 (Delhi High Court). Decided on July 24, 2020.**

In the instant case, the petitioner had filed an application under Section 34(3) of the Arbitration Act read with Section 151 of the Code of Civil Procedure, 1908 seeking condonation of delay. It was the case of the petitioner that the copy of the arbitral award dated July 02, 2019 was received by the petitioner on July 11, 2019. Thereafter, the petitioner, on August 01, 2019 had filed an application under Section 33(1) of the Arbitration Act before the arbitral tribunal seeking correction of the award within the prescribed period of 30 days of receipt of the award. Pursuant thereto, on November 20, 2019, the arbitral tribunal had heard the counsels for parties and closed the proceedings without passing a formal order deciding the petitioner's application and it was only on November 26, 2019 that the petitioner came to know about the disposal of the application vide an email received from the arbitral tribunal. Thus, it was the submission of the petitioner that the period of limitation for filing the petition under Section 34 of the Arbitration Act needs to be calculated from November 27, 2019, i.e. from the next date of receipt of the order dismissing the application under Section 33(1) of the Arbitration Act. Further, the petitioner also contended that even though the period of limitation of three months would expire on February 26, 2020 and that the petitioner had filed the instant petition much before that date i.e. on February 22, 2020

The issue which arose for consideration before the Single Bench of the court that whether the petitioner should have filed the instant petition for setting aside the award under Section

34 of the Arbitration Act within a period of 30 (thirty) days as prescribed under Section 34(3) of the Arbitration Act or the petitioner should have waited until the order was passed in its application for correction of the award under Section 33(1) of the Arbitration Act?

The court observed that the petitioner had filed the application under Section 33(1) of the Arbitration Act on August 1, 2019 and noted that the said application was actually in the form of review of the arbitral award on merits in the garb of seeking correction of the award and thus, the application was legally untenable. Therefore, the court held that the limitation would be calculated from the date of receipt of the award by the petitioner i.e. July 11, 2019 and the plea of the petitioner that he had received the order on the application under Section 33 (1) of the Arbitration Act only on November 26, 2019 and the limitation of three months shall start from November 27, 2019, was untenable. Further, with respect to the filing being done by the petitioner on February 22, 2020, i.e., within three months from November 27, 2019, the court held the same to be not a proper filing since on February 24, 2020 the case was marked as defective and sent for refiling and the same was done only on March 21, 2020, which was beyond the period of 3 months from November 27, 2019. Moreover, the court also noted that the petitioner was not able to provide any sufficient cause for not filing the proper petition within 3 months, even assuming the cause of action arose on November 27, 2019.

## Section 36/37 of the Arbitration Act

**27. *Prasar Bharati* v. *Stracon India Limited and others*., EFA(OS)(COMM) 4/2020 (Delhi High Court). Decided on July 13, 2020.**

The issue which arose for consideration before the court was whether an appeal which was directed against an interlocutory order passed in an arbitration proceeding under Section 36 of the Arbitration Act, is maintainable under Section 13 of the Commercial Courts Act, 2015?

The court held that there is no inconsistency between the Arbitration Act and the Commercial Courts Act, 2015 and that Section 11(1A) of the Commercial Courts Act, 2015 categorically states that an appeal under the Commercial Courts Act, 2015 would be maintainable only against those orders that find mention under Section 37 of the Arbitration Act. The court further applied the principle of "*generalia specialibus non derogant*", and enumerated that the Arbitration Act would be considered as a special Act for all proceedings arising under the Act and it would therefore, prevail over the Commercial Courts Act which would be treated as a general Act.

The court thus, held that under Section 37 of the Arbitration Act, no appeal is maintainable from any order passed under Section 36 of the Arbitration Act. Further, the court also observed that Section 36 of the Arbitration Act does not attract the provisions of the Code of Civil Procedure, 1908. Therefore, as per the Delhi High Court, since the statute does not provide for an appeal against and order passed under Section 36 of the Arbitration Act, it is axiomatic that the instant appeal was also held to be not maintainable since the order passed the arbitral tribunal would neither fall under Order XLIII of the Code of Civil Procedure, 1908, nor under Section 37 of the Arbitration Act. Therefore, the court held that, the present appeal filed under Section 13 of the Commercial Courts Act, was not maintainable.

## Section 48

**28. *Centrotrade Minerals and Metals Incorporated* v. *Hindustan Copper Limited*, Civil Appeal Nos. 2562 and 2564 of 2006 (Supreme Court). Decided on June 2, 2020.**

The agreement between the parties comprised a two-tier arbitration agreement by which the first tier was to be settled by arbitration in India and if either party disagrees with the result, that party will have the right to appeal to a second arbitration to be held by the International Chambers of Commerce ("**ICC**") in London. The appellant i.e. M/s. Centrotrade Minerals and Metals Incorporated., invoked the arbitration clause. By an award dated June 15, 1999, the arbitrator appointed by the Indian Council of Arbitration made a 'Nil Award'. Thereupon, the appellant invoked the second part of the arbitration agreement, wherein the arbitrator, appointed by the ICC, delivered an award in London, dated September 29, 2001.

The arbitral award rendered by the ICC, though was allowed to be executed by a Single Judge Bench of the Calcutta High Court, it was subsequently rejected by a Division Bench of the Calcutta High Court which held that an application under Section 48 of the Arbitration Act would be maintainable inasmuch as the London award could not be said to be a foreign award, but that a two-tier arbitration clause would be valid. However, the court held that since the arbitral award passed in India and in London, being arbitration awards by arbitrators who had concurrent jurisdiction, they were mutually destructive of each other and thus, neither could be enforced.

Thereafter, the matter came up for consideration before the Supreme Court wherein two separate judgments were delivered by S.B. Sinha, J. and Tarun Chatterjee, J. in *Centrotrade Minerals & Metals Incorporated.* v. *Hindustan Copper Limited*, (2006) 11 SCC 245. S.B. Sinha J., held that that a two tier arbitration clause is *non est* in the eyes of law and would be invalid under Section 23 of the Indian Contract Act, 1872 and thus, the foreign award cannot be enforced in India. Tarun Chatterjee J., on the contrary, held that the two-tier arbitration process was valid and permissible in Indian law; that the ICC arbitrator sat in appeal against the award of the Indian arbitrator; that the ICC award was a foreign award; but since Hindustan Copper Limited was not given a proper opportunity to present its case before the ICC arbitrator, Centrotrade's appeal would have to be dismissed and Hindustan Copper Limited`s appeal was to be allowed.

The matter was then referred to a 3-Judge Bench of the Supreme Court in the case of *Centrotrade Minerals & Metal Incorporated.* v. *Hindustan Copper Limited*, (2017) 2 SCC 228 wherein the Supreme Court held that settlement of disputes or differences through a two-tier arbitration procedure as provided in the contract between the parties is permissible under the laws of India. However, it left the question open for consideration on a later date regarding whether the award rendered in the London arbitration being a foreign award dated September 29, 2001, is liable to be enforced under the provisions of Section 48 of the Arbitration Act?

Thus, aforesaid question was decided by the Supreme Court in the instant case. The Supreme Court, while observing the errors in the judgment rendered by Tarun Chatterjee J. and applying the test laid down in the case of *Minmetals Minmetals Germany GmbH* v. *Ferco Steel Limited.*, (1999) C.L.C. 647 held that, it was not the case that Hindustan Copper Limited was never unable to present its case as it was at no time outside its control to furnish documents and legal submissions within the time given by the arbitrator. As per the Supreme Court, Hindustan Copper Limited chose not to appear before the arbitrator, and thereafter chose to submit documents and legal submissions outside the timelines granted by the arbitrator.

The Supreme Court thus, in the instant case, held the question of law which arose before it in the affirmative and allowed the appeal of Centrotrade Minerals and Metal Incorporated and permitted the enforcement of the London award (foreign award) dated September 29, 2001 as per Section 48 of the Arbitration Act.

29. ***Pueblo Holdings Limited* v. *Emirates Trading Agency LLC.,* E.P. No. 55 of 2019 (Madras High Court). Decided on June 3, 2020.**

The Madras High Court decided on two pertinent issues. First, where execution is levied by attachment of share, whether the appropriate court having jurisdiction for execution is the court within whose jurisdiction (i) the registered office of the company which has issued those shares or (ii) the shares/assets are located? Second, whether a foreign award holder can maintain multiple execution proceedings before different courts, without falling foul of forum shopping?

The court held, with respect to the first issue that, in any dispute between a company and shareholders, the jurisdiction would be with the court where the registered office of the company is situate, whereas, any disputes between a third party over the shares held in the company, the jurisdiction would vest with the court, where the sharers are located.

In respect to the second issue, the court held that there is no iota of doubt that the competent court for filing an application for enforcement of a foreign award is before the court in whose jurisdiction the assets of the award-debtor are located and further noted that, when the assets of the judgment-debtor are located in various territorial jurisdictions, the award holder can file simultaneously in all of such courts and the principle of forum non-convenience will not be applicable to execution proceedings qua foreign awards.

30. ***Glencore International AG* v. *Hindustan Zinc Limited*, O.M.P. (EFA)(COMM.) 9/2019 (Delhi High Court. Decided on June 8, 2020.**

The court held that an application for execution of foreign arbitral award can only be filed where the properties/assets of the judgment debtor are located, which may or may not be the chosen place of the parties for subject matter of the arbitration. Further, the Delhi High Court also held that the pendency of a petition under Section 34 read with Section 48 of the Arbitration Act, before the Rajasthan High Court regarding the same matter, will not prevent the decree holder from enforcing the foreign arbitral award before the Delhi High Court in whose jurisdiction, few moveable properties of the judgment debtor were located.

## Schedule IV

31. ***Rail Vikas Nigam Limited* v. *Simplex Infrastructures Limited.,* O.M.P. (T)(COMM.) 28/2020 (Delhi High Court). Decided on July 10, 2020.**

The question which arose for consideration before the court was with respect to interpretation of Entry No. 6 of Schedule IV of the Arbitration Act i.e. whether the ceiling limit of Rs. 30,00,000/- is inclusive of the base fee of Rs. 19,87,500/- or is it only applicable as a cap on the latter portion of the Model Fee prescribed, i.e., 0.5% of the claim amount over and above Rs. 20 crores?

The court observed that on a perusal of the Fourth Schedule, it becomes evident that every entry under ‘Sums in Dispute’ bears upper and lower limits, barring Entry No. 6 which is the last entry and does not bear an upper limit, and every entry against ‘Sums in Dispute’ has a corresponding model fee prescribed. Even the ‘Model Fee’ column bears two kinds of figures, the base fee component and the variable fee component. The court further observed that it is apparent that the base fee is a fixed fee prescribed against the lower limit of the sums in dispute, whereas the variable fee component is prescribed in relation

to the upper limit of the sums in dispute. Thus, the variable fee component, being additional in nature and calculated on a percentage basis, is dependent on the sums in dispute by virtue of the fact that the percentages decrease as the sums in dispute increase from entry nos. 1 to 6. Moreover, as per the court, evidently, the word 'plus' employed in the preceding rows containing entry Nos. 1 to 5 disjoint the two components of the Model Fee, which implies that the same is true for entry No. 6.

The Delhi High Court additionally observed that the plain text of entry No. 6 reveals that for all arbitrations involving sums in dispute exceeding Rs. 20,00,00,000/-, there is a base fee prescribed of Rs. 19,87,500/-. However, a certain amount of fee, i.e., the variable fee component, follows the word 'plus' and can be further charged by the arbitrator by way of a formula provided to calculate this amount, i.e., 0.5% of the sums in dispute which is over and above Rs. 20,00,000/-. Therefore, as per the court since the word 'plus' is the disjunctive between the base fee and variable fee component, it is evident that the ceiling of Rs. 30,00,000/- has been imposed on the variable fee component.

The court thus, held that the ceiling limit of Rs. 30,00,000/- under Entry 6 of the Fourth Schedule of the Arbitration Act is not inclusive of the base fee of Rs. 19,87,500/-.

## *Force Majeure*

**32. *Rashmi Cements Limited* v. *World Metals & Alloys (FZC) and ors.*, O.M.P. (I)(COMM) 117 (Delhi High Court). Decided on June 18, 2020.**

The Delhi High Court in the instant matter while deciding on a petition filed under Section 9 of the Arbitration Act, held that it is well settled that the question regarding applicability of a '*Force Majeure* clause' cannot be decided in abstract and has to be decided after an examination of the facts and circumstances of each case. Further, the court held that mere difficulty in performing the contractual obligations cannot be a ground for invoking a '*Force Majeure* clause'. Additionally, the court also refuted the contention of the petitioner who had claimed that as a result of COVID-19 and the consequent lockdown, the '*Force Majeure* clause' in the contract was squarely applicable and held that, this question will be required to be determined in the arbitration proceedings after considering the stand of both sides and keeping in view the well settled principle that a '*Force Majeure* clause' cannot be applied at the mere request of a party.

## Venue v. Seat

**33. *Geo Foundations and Structures Private Limited* v. *Tata Projects Limited,* O.P. No. 760 of 2019 (Madras High Court). Decided on May 7, 2020.**

The Madras High Court in the instant held that, it is open to parties to an arbitration agreement to exclude all other courts from exercising jurisdiction when more than one court have jurisdiction to adjudicate the disputes arising out of an arbitration agreement.

While observing the facts of the case, the court also noted that merely because the contract was said to have been signed in Chennai and the part of the cause of action arose at Chennai, when the parties agreed to have the arbitration at Hyderabad and had also agreed to submit to the jurisdiction of the courts in Hyderabad, such a clause implied that they have excluded other courts.

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