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LAW ADVISORY

Arbitration Newsletter

April 2024

Chabbras Associates vs M/s Hscc (India) Ltd & Anr., MANU/DEOR/17173/ 2024 - Respondent's argument that the arbitrator could not be challenged because it was made unilaterally in accordance with the contract was not accepted by the Delhi High Court single bench led by Justice Dinesh Kumar Sharma. The petitioner's only option was to question the arbitrator's authority. The Court noted that Clause 25 of the GCC's rule that one party can choose a judge was clearly and obviously illegal.

It is a well-known legal concept, according to the High Court, that an arbitration agreement that lets only one party choose the arbitrator is flawed and goes against what the law meant. The High Court agreed with the Supreme Court's ruling in Perkins Eastman Architect DPC and Anr. vs. HSCC (India) Ltd., that picking an arbitrator on your own is not legal. The court was very clear that Clause 25 of the GCC, which allows for one-sided appointments, is not valid.

The Respondent said that the appointment was in line with the contract, but the High Court said that challenging the arbitrator's authority was the only way out. They also said that the direct appointment, as per Clause 25 of GCC, was legally flawed. It said that the fact that the petition was made under Section 11 of the Arbitration Act and not under Sections 14 and 15 was not a reason to let the illegality continue.

The High Court rendered the mandates of the arbitrator shall cease to operate, and appointed a new arbitrator for the parties.

One sided, split-option, hybrid, unilateral or asymmetric arbitration clauses are the nomenclature given to the type of optional arbitration clauses where only one of the parties has the choice of referring the matter to arbitration or commencing proceedings before a Court. Such clauses are generally of two types – clauses which provide an option to arbitrate or those which provide for an option to litigate.

Ved Contracts Pvt Ltd Vs Indian Oil Corporation Ltd, MANU/DEOR/195976/2023 - The Delhi High Court concluded that the arbitration procedures should take place at the Venue stated in the arbitration clause unless there are unambiguous indications to the contrary.

Working with the principle of Party Autonomy, the Court noted that it is crucial to carefully examine the contract in its entirety in order to determine the parties' intentions. Referring to the Supreme Court's finding in BGS SGS Soma JV vs. NHPC Limited, 2020, the High Court emphasized that, absent a manifestly contradictory signal, the location specified in an arbitration clause shall be deemed the seat of arbitral proceedings.

Based on this reasoning, the High Court determined that, as stipulated by the contract's territorial jurisdiction provision, the seat of arbitration was Mathura, Uttar Pradesh, even though the arbitral proceedings might take place in New Delhi or any other location with mutual consent.

As a result, the High Court concluded that, in compliance with Section 11 of the Arbitration Act, it lacked territorial jurisdiction to consider the case.

The principle of party autonomy is when the parties consensually execute the arbitration agreement. The parties are said to be truly "autonomous" when they have the freedom to choose the substantive laws that will govern such an agreement, the composition the Arbitral Tribunal, the place/seat of arbitration, etc.

M/S. Assam Petroleum Ltd. & Ors Vs M/S. China Petroleum Technology Dev. Corp. & Ors, 2024 SCC OnLine Del 1832 - A defendant cannot later request that the disputes be referred to arbitration under Section 8 of the Arbitration Act after submitting to the jurisdiction of the court and withdrawing their application under section 11 of Arbitration and Conciliation Act,1996, according to the Delhi High Court.

The High Court observed that an arbitration clause was included in an agreement that the Plaintiff and Defendant No. 1 had signed on November 4, 2004. It additionally accepted that, as the outcome of Defendant No. 1's earlier application under Section 9, orders were issued with the parties' consent. Following that, in March 2006, the Plaintiff filed a civil lawsuit in which she sought restitution from Defendant No. 1 as well as Defendant No. 2.

In this instance, the defendant submitted an application under Section 8 on March 11, 2006, but it was later abandoned and never followed up on. Defendant, on the other hand, requested an extension to file a Written Statement, which it eventually neglected to do within the stipulated time frame. Due to the defendant's actions, the High Court determined that the party had consented to the court's jurisdiction. Furthermore, it concluded that although a previous Order under Section 9 had been passed, however, the deadline for giving notice of arbitration invocation had passed. As a result, the Defendant was given the option to request arbitration at that point or to have the current lawsuit's Section 8 submit the disagreements to arbitration. However, the Defendant's application under Section 8 was denied since it submitted to the Court's jurisdiction by requesting more time to file the Written Statement.

The ruling in *SPML Infra Ltd. v. Trisquare Switchgears (P) Ltd.* was cited by the High Court. The Coordinate Bench of the High Court ruled in this case that an application pursuant to Section 8(1) of the Arbitration and Conciliation Act, 1996 must be pursued within a specific time range. Therefore, a party loses the opportunity to apply under Section 8(1) of the Act if it does not pursue such an application within the specified time frame.

As a result, it decided that a defendant may not later request that the issues be referred to arbitration under Section 8 of the Arbitration Act once it had submitted to the Court's jurisdiction and withdrawn its application under Section 8.

Section 8 of the Arbitration and Conciliation Act, 1996 deals with the power of the judicial authority to refer the parties to arbitration. The crux of the provision is that if there is an arbitration agreement between the parties and a dispute arises between the parties which is a subject matter of arbitration, then the judicial authority before whom either of the parties has brought the case is obligated under Section 8 of the Arbitration and Conciliation Act, 1996 to direct the parties to resolve their dispute through arbitration.

M/s Sabsons Agencies Private Limited Vs M/s Harihar Polymers & Anr, CS(COMM) 899/2023 & I.As. 25472-25473/2023, 4893/2024 - The Delhi High Court held in the case that the requirement of pre-litigation mediation under Section 12-A of the Commercial Courts Act as mandatory.

The Delhi High Court bench comprising Justice Prateek Jalan held that the requirement of pre-litigation meditation under Section 12-A of the Commercial Courts Act, 2015 is mandatory in nature.

Section 12-A of the Act outlines the mandatory requirement for pre-institution mediation before filing a suit, provided urgent interim relief is not sought. The Central Government may authorize Legal Services Authorities for this purpose, with a three-month mediation timeframe extendable by two months with parties' consent. Settlements reached hold the same status as arbitral awards under the Arbitration Act.

The High Court noted that the circumstances in this case was distinguishable from the precedent in *Amit Walia v. Shweta Sharma*. In that case, the judgment was rendered based on mediation conducted under the Delhi High Court Mediation and Conciliation Centre, which the Court deemed sufficient compliance with Section 12-A, despite not occurring before the District Legal Services

Authority as stipulated by the Commercial Courts Act.

Arbitration agreements across jurisdictions commonly incorporate procedural measures, such as conciliation, negotiation, and mediation, which a party must undertake to amicably resolve disputes before formally triggering arbitration. These pre-arbitral steps give rise to significant legal questions. Firstly, whether the pre-arbitral steps are mandatory or not. Secondly, what happens if a party fails to adhere to the pre-arbitral measures? Can an objection be raised at the stage of reference to arbitration that the invocation of arbitration is premature due to failure of a party to exhaust the preliminary steps completely?

Central University of Jharkhand Vs M/S. King Furnishing and Safe Co., MANU/DE/1626/2024 - A petition under Section 34 of the Arbitration and Conciliation Act, 1996 may be filed without requiring a pre-deposit of 75% of the amount awarded under the Micro, Small and Medium Enterprises Development Act, 2006, according to the Delhi High Court

The Bench, however, opined that unless 75% of the granted sum is deposited, the case will not be "entertained" in accordance with Section 19 of the MSMED Act. Examining Section 19 of the MSMED Act, which stipulates the pre-deposit, it is necessary to define the phrase "entertain" in this section. The High Court decided that there are differences between the stages of filing and considering a petition. It decided that while submitting a petition under Section 34 of the Arbitration Act without a pre-deposit is allowed, the petition will not be considered by the court until the required deposit is received.

As a result, the application of the Respondent was denied. Four weeks were given to the petitioner to submit Rs. 8 crores. In addition, within six weeks, 25% of the remaining amount was to be deposited with the High Court Court's Registrar General, subject to execution procedures. Referred by the Respondent, the High Court cited the Supreme Court's decision in Snehadeep Structure Private Limited, noting that the case involved an appeal under the Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993 ("Interest Act"), with ancillary observations about Section 34 of the Arbitration Act. The implications of failing to submit a pre-deposit on

www.nirkalawadvisory.com
info@nirkalawadvisory.com