



Arbitration Newsletter

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Tarun Dhameja v. Sunil Dhameja, 2024 SCC OnLine SC 3715 – Supreme Court holds that Arbitration Clauses in an agreement cannot be treated as ‘optional’ merely because they require mutual consent for the appointment of an Arbitrator. – The Supreme Court emphasized that the invocation of arbitration under such clauses is mandatory if disputes arise, even if mutual agreement is required for the Arbitrator's appointment. By overturning a decision by the Madhya Pradesh High Court, the SC clarified that such clauses must be interpreted holistically to preserve their enforceability.

The dispute originated from an agreement containing an arbitration clause that stated disputes “shall be resolved through arbitration,” but later added that arbitration “shall be optional” and the Arbitrator would be appointed through mutual consent. The Respondents argued that this rendered arbitration contingent upon mutual agreement, leading the Petitioners to approach the Court under Section 11(6) of the Arbitration and Conciliation Act, 1996. The Madhya Pradesh High Court dismissed the plea, holding that arbitration could not proceed unless both parties explicitly agreed to invoke the clause. The Petitioners challenged this interpretation before the Supreme Court.

The Supreme Court analyzed the arbitration clause, rejecting the High Court's reasoning as excessively narrow and inconsistent with established arbitration principles. It held that while the parties must agree on the Arbitrator's identity, the clause's language did not render arbitration itself optional. Instead, the Court emphasized that arbitration clauses must be interpreted pragmatically and harmoniously. Referring to *Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1*, the Court reiterated that procedural ambiguities cannot override the fundamental intent of parties to resolve disputes through arbitration.

The bench clarified that arbitration clauses cannot be treated as non-existent or ineffective merely because their invocation is subject to certain conditions. Where the parties cannot agree on the Arbitrator's appointment, Courts are empowered under Section 11(6) to intervene and appoint an Arbitrator to ensure the arbitration mechanism is not frustrated. The Court cautioned against reading isolated phrases of arbitration clauses, instead emphasizing the need for context-sensitive and purposive interpretation.

The judgment also revisited the balance between party autonomy and judicial oversight in arbitration proceedings. While party autonomy remains a cornerstone of arbitration, the Court underscored that it cannot be exercised in a way

that negates the enforceability of arbitration agreements. The Court further relied on the *Vidya Drolia* case to highlight its duty to uphold arbitration clauses and resolve ambiguities in favor of arbitration.

Consequently, the appeal was allowed, and the Court appointed an Arbitrator to adjudicate the disputes, reinforcing the principle that arbitration clauses must be binding and effective regardless of drafting ambiguities.

Section 11(6) of the Arbitration and Conciliation Act, 1996, provides the mechanism for the appointment of an Arbitrator when parties fail to mutually agree on one. This provision grants Indian Courts the authority to appoint an Arbitrator if the parties cannot reach consensus on the choice of an Arbitrator, ensuring that the arbitration process proceeds without unnecessary delays. The Section ensures that parties cannot obstruct the arbitration process by failing to agree on the appointment, thus reinforcing the binding nature of arbitration agreements and promoting the efficiency of dispute resolution. This provision is pivotal in cases where arbitration is mandatory but parties refuse to cooperate in the appointment process.

NDMC v. S.A. Builders Ltd., 2024 SCC OnLine SC 3768 – The Supreme Court provides

clarification on the Limited nature of Jurisdiction of Arbitral Tribunals Post-Award – Section 33 of the Arbitration Act Permits Tribunals to Issue Clarifications Even After Becoming *Functus Officio*.

The Supreme Court clarified that while Arbitral Tribunals ordinarily become *functus officio* upon issuing a final award, they retain limited jurisdiction to correct errors or clarify ambiguities under Section 33 of the Arbitration and Conciliation Act, 1996. This interpretation underscores the tribunal's capacity to address genuine procedural or substantive concerns without reopening the merits of the award, ensuring the finality and fairness of arbitral outcomes.

The matter arose from a dispute regarding the calculation of post-award interest under Section 31(7)(b) of the Arbitration Act. The Respondents sought clarification from the Arbitral Tribunal on whether post-award interest should be calculated on the principal amount alone or the principal plus pre-award interest. The Petitioners argued that the tribunal lacked jurisdiction to entertain this query, contending it had become *functus officio* upon delivering the award. The Delhi High Court rejected this contention and permitted the Respondents to approach the tribunal for clarification, prompting the Petitioners to escalate the matter to the Supreme Court.

The Supreme Court upheld the Delhi High Court's decision, ruling that the tribunal's authority to issue clarifications under Section 33 extended beyond its traditional *functus officio* status. The Court referred to ***Hyder Consulting (UK) Ltd. v. Governor, State of Orissa Thr. Chief Engineer Civil Appeal No. 3148 of 2012***, where it was held that post-award interest under Section 31(7)(b) could be calculated on the aggregate of the principal amount and pre-award interest. This decision overruled the earlier precedent set in *State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690*, which had excluded pre-award interest from the calculation of post-award interest as inconsistent with legislative intent.

The Court emphasized that Section 33(1) of the Arbitration Act allows parties to seek corrections or clarifications within 30 days of receiving the award, unless another period is agreed upon. The tribunal, in this case, acted within its jurisdiction since the Respondents sought clarification beyond the initial timeframe with the Court's approval, and the Petitioners participated fully in the subsequent proceedings. The Court held that the legislative intent of Section 33 was to rectify minor procedural errors or ambiguities, thereby ensuring the enforceability of the award without reopening substantive adjudication.

This interpretation balances the finality of arbitral awards with the need for procedural fairness. The judgment also reiterated the primacy of ***M/S Hyder Consulting***, confirming that tribunals could account for both principal and pre-award interest when calculating post-award interest under Section 31(7). The Court underscored that this approach aligns with the pro-arbitration policy of the Arbitration Act, ensuring clarity while safeguarding the legitimate expectations of parties.

Accordingly, the appeal was dismissed, and the tribunal's clarification was upheld.

The decision in *State of Haryana vs. S.L. Arora (2010)* set a precedent regarding the calculation of post-award interest under the Arbitration and Conciliation Act, 1996. The case ruled that pre-award interest should not be included in post-award interest calculations. This judgment was later overruled by the *Hyder Consulting (UK) Ltd v. Governor of Orissa* decision, which aligned post-award interest with both principal and pre-award interest.

The *S.L. Arora* judgment had initially focused on excluding pre-award interest to ensure that post-award interest was calculated solely on the principal amount. However, the *Hyder Consulting* case corrected this interpretation, reflecting a more inclusive and balanced

approach to calculating interest in arbitration proceedings.

The decision in **M/S Hyder Consulting (UK) Ltd v. Governor of Orissa (2015)** is a significant ruling regarding post-award interest under Section 31(7) of the Arbitration and Conciliation Act, 1996. The case clarified that post-award interest could be calculated on the sum that includes both the principal amount and any pre-award interest. This judgment overruled earlier precedents that excluded pre-award interest from post-award interest calculations, highlighting that such exclusion was inconsistent with the legislative intent of Section 31(7). The decision reinforced the notion that Arbitral Tribunals have the authority to award interest in a manner that reflects the actual sums owed to the parties, ensuring that the compensation is fair and consistent with the principles of justice and equity.

Rita Banerjee v. S.E. Builders & Realtors Ltd., 2024 SCC OnLine Cal 10961 – Calcutta High Court provides clarity on the nature of Remedy Under Arbitration Act and Special Statutes – The Court addressed the interplay between remedies under the Arbitration and Conciliation Act, 1996 (Arbitration Act) and special statutes such as the Real Estate

(Regulation and Development) Act, 2016 (RERA).

The case arose when the Petitioners sought recovery of funds for a canceled real estate allotment, asserting that the agreement and arbitration clause violated RERA provisions. Although the agreement contained an arbitration clause, the Petitioners also pursued relief under RERA, leading to a conflict over jurisdiction and applicable remedies. The Respondents countered by invoking an arbitration clause under the agreement.

The Court noted that **Section 79 of RERA** expressly bars civil Courts from adjudicating disputes within the exclusive purview of RERA authorities. Citing **Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783**, the Petitioner reiterated that such statutory provisions establish clear jurisdictional boundaries. However, the Respondents argued that the arbitration clause in the agreement remained valid and enforceable, emphasizing that disputes could be resolved through arbitration irrespective of RERA's jurisdiction. They relied on **Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2), (2023) 6 SCC 401**, where the Supreme Court clarified that statutory forums like the MSMED Council under the **MSME Development Act, 2006** could retain

jurisdiction despite the existence of arbitration clauses unless the election of remedies conflicted with statutory objectives.

The Court affirmed that remedies under the Arbitration Act are supplementary to those available under special statutes. It emphasized the principle of election: once a party chooses a specific remedy, alternate forums for the same dispute are barred. Referring to *Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd., 2022 SCC OnLine Del 4717*, it underscored that parties cannot simultaneously pursue arbitration and RERA remedies, as this would undermine judicial consistency and legislative intent.

In this case, the Petitioners had already filed a complaint under **Section 31 of RERA**, which remained pending. The Court ruled that their subsequent suit for monetary recovery and the Respondents' application to refer the matter to arbitration under **Section 8 of the Arbitration Act** were both unsustainable. It observed that RERA provides a comprehensive mechanism for resolving disputes between homebuyers and developers, thereby precluding the need for arbitration in this context.

By dismissing the Respondents' arbitration application, the Court reinforced that statutory remedies must be elected with finality. This decision highlights the judiciary's commitment to

upholding statutory jurisdiction while balancing the rights of parties under arbitration agreements.

Section 31 of RERA allows any aggrieved person, including homebuyers or developers, to file complaints with the Real Estate Regulatory Authority (RERA) or Adjudicating Officer for violations of RERA provisions. It ensures swift grievance redressal for issues like project delays or non-compliance, promoting transparency and accountability in the real estate sector.

Las Ground Force (P) Ltd. v. Goldair Handling Sa, 2024 SCC OnLine Del 8740 – Delhi High Court holds Restraining Participation in Tender Under Section 9 of Arbitration Act as anti-competitive conduct – The Delhi High Court declined to restrain the Respondents from participating in tenders for ground-handling services, noting that such an action by the Court will hamper the competition in the bidding process.

In a judgment rendered by the Delhi High Court, the bench addressed petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim relief to restrain the Respondents from participating in tender processes for ground handling services at airports managed by the Airports Authority of India (AAI).

The dispute arose from alleged violations of exclusivity and collaboration agreements between the Petitioners and the Respondents, both of whom were engaged in providing ground handling services at airports.

The Petitioners argued that the Respondents' participation in ongoing tender processes, particularly for Ranchi and Vijayawada Airports, would violate the terms of the agreements and cause irreparable harm. These agreements included an exclusivity clause and restrictive covenants intended to prevent competition between the parties at certain airports. However, the exclusivity agreement had been terminated, and disputes under the agreements were already the subject of arbitration proceedings. The Petitioners sought an interim injunction to prevent the Respondents from participating in the tender process until the arbitration was resolved.

The Court focused on two central considerations: whether granting the interim relief would lead to irreparable harm and whether the balance of convenience favored such an injunction. It observed that an interim measure of this nature could potentially cause greater harm than it sought to prevent. If, after arbitration, the Petitioners' claims were rejected, the Respondents would have suffered irreparable harm by being excluded from tender participation, whereas any potential harm to the

Petitioners could be compensated through damages and a requirement for the Respondents to render accounts. The Court concluded that the balance of convenience and irreparable harm clearly favored the Respondents.

Additionally, the Court declined to adjudicate the validity of the restrictive covenants under Section 27 of the Indian Contract Act, 1872, which prohibits agreements in restraint of trade. It clarified that this issue was central to the arbitration and any ruling at this stage would prejudice the arbitration proceedings, leaving little substantive matter for the Arbitral Tribunal to decide. This stance reinforced the judicial principle of non-interference with issues meant for arbitral determination, as recognized in past judgements, where it was emphasized that Courts must exercise restraint in granting interim measures under Section 9 to avoid encroaching upon the tribunal's jurisdiction.

Furthermore, the Court highlighted the public interest implications of the requested injunction. Restricting the Respondents' participation in tenders would unfairly thwart competition, undermining the competitive bidding process central to awarding contracts in sectors such as airport ground handling services. The Court noted that this outcome would be contrary to public interest, as competition ensures efficiency and fairness in such processes.

Finally, the Court concluded that there was no prima facie case in favor of the Petitioners, particularly given the termination of the exclusivity agreement and the lack of evidence to support their claims of irreparable harm. It dismissed the petitions, allowing the Respondents to participate in the tender process and leaving the resolution of the substantive disputes to the Arbitral Tribunal.

This judgment underscores the Delhi High Court's commitment to balancing the principles of arbitration autonomy, competitive fairness, and judicious interim relief. It aligns with established legal precedents and serves as a reminder that Section 9 relief should not be granted in a manner that prejudices the rights of either party or disrupts the public interest.

Section 9 of the Arbitration and Conciliation Act, 1996, grants the power to Indian Courts to provide interim measures before, during, or after arbitral proceedings. This Section is frequently invoked by parties seeking urgent relief when there is a perceived risk that arbitration could be rendered ineffective. Under Section 9, Courts can issue injunctions or take measures to protect the subject matter of the dispute or secure the arbitration process itself. The provision aims to maintain the status quo and ensure the efficacy of arbitration by allowing judicial intervention, when necessary,

while recognizing that arbitration should generally remain the primary method of dispute resolution.

RCC Infraventures Ltd. v. DMI Finance (P) Ltd., 2024 SCC OnLine Del 8961 – Delhi High Court Allows Petition Under Sections 29A(4) and (5) of Arbitration Act, on the grounds that Termination of Arbitrator's Mandate Leads to Waste of Time and Resources – The Delhi High Court, in a petition adjudicated by Justice Jasmeet Singh, held that the premature termination of an Arbitrator's mandate results in a significant waste of time, resources, and effort invested by both the parties and the tribunal. The Court reiterated that the Arbitration and Conciliation Act, 1996, seeks to promote cost-effective and expeditious resolution of disputes, emphasizing the importance of allowing Arbitrators to complete their mandates without unnecessary procedural hurdles.

The Petitioners had approached the Court under Sections 29A(4) and (5) of the Arbitration and Conciliation Act, 1996, seeking an extension of the mandate of the Sole Arbitrator for one year to conclude the arbitral proceedings and deliver the award. The dispute revolved around the execution of a Memorandum of Understanding (MOU) and a Reconstitution Deed (RD), which the Petitioners alleged were signed under coercion.

These agreements aimed to address outstanding payments owed to vendors, subcontractors, and suppliers in connection with a highway construction project. Following a failed mediation attempt initiated by the Delhi High Court Mediation and Conciliation Centre, the arbitration proceedings resumed, but confusion regarding the expiration of the Sole Arbitrator's mandate necessitated judicial intervention.

The Respondents argued that the mandate of the Sole Arbitrator should not be extended mechanically and should be granted only where the delay is adequately explained. The Court examined these contentions against the backdrop of the Arbitration Act's purpose, which prioritizes efficiency and cost-effectiveness. Relying on the judgment in *Rohan Builders (India) Private Limited v. Berger Paints India Limited*, 2024 SCC OnLine SC 2494, the Court noted that prematurely terminating the mandate of the Arbitrator would negate months of effort and cause unnecessary delays. The judgment also cited the Law Commission's 176th Report, which emphasized that the termination of arbitral mandates without sufficient cause directly undermines the efficiency of arbitration as an alternative dispute resolution mechanism.

The Court further observed that the delay of four and a half months in filing the petition was not substantial enough to justify replacing the Sole

Arbitrator. It highlighted the significant progress made in the proceedings, including the completion of pleadings, and found no compelling reason to restart the arbitration process with a new Arbitrator. Doing so would not only result in duplication of effort but also escalate costs and extend timelines, contrary to the principles underlying the Arbitration Act.

In granting the Petitioners' request, the Court reiterated its stance on preserving judicial economy in arbitration cases, allowing the Sole Arbitrator's mandate to be extended by one year to ensure the proceedings could conclude effectively.

Section 29A of the Arbitration and Conciliation Act, 1996, plays a vital role in ensuring timely arbitration proceedings in India. It imposes a one-year deadline for Arbitral Tribunals to conclude proceedings and pass an award, with provisions for extensions if required. The Section is designed to reduce delays in arbitration, emphasizing the need for swift resolution of disputes. If a tribunal fails to conclude the proceedings within the specified period, the parties can file an application to extend the mandate of the Arbitrator, ensuring that arbitral decisions are not unduly delayed and promoting the efficiency of the arbitration process.

