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LAW ADVISORY

Arbitration Newsletter

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AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, 2025 SCC OnLine SC 281 – *The Supreme Court holds that Oral Undertaking Falls Within Scope of Arbitration Clause* – Supreme Court addressed the applicability of arbitration clauses to non-signatories, specifically concerning oral agreements that impose joint and several liabilities.

The dispute involved a stockbroker (Petitioner) and a couple (Respondents) over a debit balance in the wife's demat account. The Petitioner initiated arbitration against both Respondents, asserting that an oral agreement rendered them jointly and severally liable for the transactions. The Arbitral Tribunal upheld this claim, holding both Respondents liable for the outstanding amount. However, upon appeal, the High Court set aside the award against the husband (Respondent No. 1), reasoning that his liability was a "private transaction" beyond the scope of the arbitration agreement. This led to the present appeal before the Supreme Court.

The Supreme Court examined whether an oral agreement imposing joint liability could bind a non-signatory to an arbitration clause. The Court emphasized that arbitration is fundamentally a matter of contract, and typically, only parties to an arbitration agreement are bound by it. However, exceptions exist where non-signatories can be compelled to arbitrate under doctrines such as equitable estoppel. This principle prevents a party from accepting the benefits of a contract while simultaneously avoiding its burdens, including arbitration clauses.

The Court noted that if a non-signatory knowingly exploits an agreement containing an arbitration clause, they may be estopped from avoiding arbitration. In this case, the husband's active involvement in the transactions within his wife's account indicated his acceptance of the benefits and obligations arising from the contractual relationship. Therefore, he could not evade the arbitration clause embedded in the agreement. The Court also highlighted the principle of *kompetenz-kompetenz*, which allows an Arbitral Tribunal to rule on its own jurisdiction, including issues concerning the existence or validity of the arbitration agreement. This reinforces the autonomy of the arbitration process and limits judicial intervention in matters that the parties have agreed to arbitrate.

In conclusion, the Supreme Court set aside the High Court's decision, reaffirming the arbitral award against both Respondents. This judgment underscores the judiciary's support for arbitration as an effective dispute resolution mechanism and clarifies that non-signatories who derive benefits from a contract may be bound by its arbitration clause under the doctrine of equitable estoppel.

Under **Section 31(7) of the Arbitration and Conciliation Act, 1996**, an arbitral tribunal has the discretion to award both pre-award and post-award interest. Courts have consistently held that interest serves as compensation for the time value of money and prevents unjust enrichment of the losing party.

However, if the contract explicitly prohibits interest, tribunals must adhere to the contractual terms.

M/s Isc Projects Private Limited v. Steel Authority of India Limited O.M.P. (COMM) 370/2021 – *The Delhi High Court Sets Aside Arbitral Award Due to Missing Arbitrator's Signature* – The Delhi High Court emphasized that the signing of an arbitral award is not a mere formality but a substantive requirement under Section 31 of the Arbitration and Conciliation Act, 1996.

The case arose from disputes between the parties regarding railway track work at the Respondent's Steel Plant. A three-member arbitral tribunal was constituted, consisting of two former Supreme Court judges and a former Chief Labour Commissioner as arbitrators. The final award, issued on March 12, 2020, was signed only by one arbitrator, with a single-page endorsement by the Presiding Arbitrator concurring with the decision. The third arbitrator ('Arbitrator A'), however, neither signed the award nor issued a dissenting opinion, instead expressing his disagreement via email and citing a lack of time to provide his views before the tribunal's mandate expired. The Petitioner challenged the award on the grounds that it did not comply with statutory requirements, as it lacked the signature of all arbitrators or an explanation for the omission.

The Court relied on ***Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657***, which held that all members of an arbitral tribunal must sign the award and, if an arbitrator dissents, their opinion must be delivered contemporaneously with the majority decision. Citing earlier Delhi High Court rulings in ***Mahanagar Telephone Nigam Ltd. v. Siemens Public Communication Network Ltd., 2005 SCC OnLine Del 237***, ***Government of India v. Acome, 2008 SCC OnLine Del 808***, and ***Chandok Machineries v. S.N. Sunderson & Co., 2016 SCC OnLine Del 5253***, the Court underscored that an arbitral award must bear the signatures of all members to demonstrate that due deliberation occurred. If a signature is missing, the reasons must be recorded to safeguard against arbitrary decision-making.

The Court rejected the Respondent's contention that the absence of Arbitrator A's signature did not invalidate the award. It found that Arbitrator A had been excluded from the final deliberation

process, preventing him from issuing a dissenting opinion. Unlike cases where missing signatures were justified or where arbitrators were given time to dissent but failed to do so, the present case revealed procedural irregularities that undermined the integrity of the arbitral process. The Court also dismissed concerns that allowing such challenges would incentivize obstructive behaviour by dissenting arbitrators, emphasizing that there was no evidence of deliberate delay or misconduct by Arbitrator A.

Consequently, the Court set aside the award, reaffirming that expediency in arbitration cannot override principles of fairness and procedural due process. While acknowledging that this decision would lead to fresh arbitral proceedings, the Court maintained that adherence to statutory safeguards is essential to uphold the legitimacy of the arbitral process.

Section 34 of the Arbitration and Conciliation Act, 1996 provides limited grounds for setting aside an arbitral award, such as patent illegality, procedural impropriety, or violation of public policy. Courts have emphasized that judicial review under this section is not an appellate process but a safeguard against fundamental legal errors. This narrow scope ensures that arbitration remains an effective alternative to litigation.

Systra MVA Consulting (India) Pvt. Ltd. vs. Mumbai Metropolitan Region Development Authority (W.P. (L) No. 2889 of 2025) – *The Bombay High Court Quashes MMRDA's Termination Notice for Mumbai Metro Consultancy as Arbitrary due to Discontinuing Contract Without Giving Reasons* – The Court quashed a termination notice issued by the Respondent against the Claimant and ruled that the cancellation of the consultancy contract for the Contracted Mumbai Metro Lines was arbitrary and violated principles of fairness and reasonableness.

The case arose from MMRDA's unilateral termination of the contract without assigning any reasons, despite extending Systra's consultancy term until December 31, 2026. The Petitioner challenged this termination, arguing that contractual discretion cannot be exercised arbitrarily, particularly in public contracts where government actions are subject to judicial review.

The Hon'ble Bench relied on ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703*** and ***Subodh Kumar Singh Rathour v. Chief Executive Officer, 2024 SCC OnLine SC 1682***, where the Supreme Court emphasized that public contracts, even if non-statutory, remain subject to judicial scrutiny if the government's actions are arbitrary or lacking bona fide reasoning. The

Court held that while MMRDA relied on Clause 2.8.1(f) of the General Conditions of Contract, which permitted termination without assigning reasons, this clause could not be interpreted as granting unfettered discretion. The Court reiterated that all actions of public bodies must be transparent and accountable, and failure to provide justification for termination rendered the decision unlawful.

Additionally, the Court rejected MMRDA's argument that the dispute should be resolved through arbitration due to the existence of an arbitration clause in the contract. It held that while arbitration is the preferred mechanism for resolving contractual disputes, questions of public law—such as arbitrariness in state action—fall within the jurisdiction of constitutional courts. Citing past precedents, the Court clarified that judicial review is maintainable even when an alternate remedy like arbitration is available, particularly where the dispute involves violations of fundamental administrative law principles.

The Court concluded that MMRDA's termination order was in violation of established legal principles governing public contracts and administrative discretion. It held that setting aside the termination notice was necessary to prevent arbitrary decision-making and to uphold procedural fairness in government contracting. The Court directed MMRDA to reconsider the matter, granting Systra an opportunity to be heard before making a fresh, reasoned decision in the form of a speaking order.

The Bombay High Court invoked the doctrine of *unconscionable contracts* to strike down a tender condition that imposed excessive penalties on a contractor. It cited precedents where courts have intervened to prevent the abuse of bargaining power by government agencies in contractual dealings, aligning with the Supreme Court's stance in *Central Inland Water Transport Corpn. v. Brojo Nath Ganguly, (1986) 3 SCC 156*.

The **doctrine of unconscionable contracts** in India allows courts to invalidate contractual terms that are excessively unfair or one-sided, particularly when one party has significantly weaker bargaining power. While the Indian Contract Act, 1872, does not explicitly define unconscionability, courts rely on **Sections 16 (undue influence) and 23 (public policy)** to strike down oppressive clauses. Landmark cases like ***Central Inland Water Transport Corpn. v. Brojo Nath Ganguly, (1986) 3 SCC 156*** have reinforced that unfair terms, especially in employment and consumer contracts, can be declared void if they go against principles of fairness and justice.

Alliance Enterprises v. A.P. State Fiber Net Ltd., 2025 SCC OnLine AP 670 – *The Andhra Pradesh High Court Clarifies Starting Point for Limitation Period under Section 11(6) of the Arbitration and Conciliation Act, 1996* – The Andhra Pradesh High Court reaffirmed that the limitation period for filing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") seeking the appointment of an arbitrator begins only when the opposing party fails to comply with the requirements specified in the notice invoking arbitration. The ruling clarifies that the limitation period does not commence from the date on which the cause of action arose but from the point at which the party requesting arbitration is met with failure or refusal by the other party to appoint an arbitrator.

The dispute arose from a work and contract agreement executed between the parties on August 5, 2016, for commissioning and maintenance of last-mile optical fiber connectivity in certain government offices. The Respondents terminated the contract on January 2, 2019, prompting the Petitioner to issue a notice invoking arbitration on October 17, 2022. The Respondents failed to appoint an arbitrator, leading the Petitioner to file the present application before the Court on August 31, 2023. The Respondents contested the application, asserting that it was barred by limitation, arguing that the three-year limitation period under Article 137 of the Limitation Act, 1963, began from the date of contract termination in 2019.

The Hon'ble Bench rejected the Respondents' argument, emphasizing that the limitation period for seeking the appointment of an arbitrator under Section 11(6) differs from the limitation period for substantive claims. Relying on ***Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313*** and ***Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd., (2025) 1 SCC 502***, the Court observed that the limitation clock starts only from the date on which the party receiving the notice fails to act upon the request for arbitration. The Court held that the notice invoking arbitration, issued on October 17, 2022, marked the starting point for the limitation period, making the present application filed in August 2023 well within the three-year statutory period.

Additionally, the Court noted that the arbitration clause in the agreement, which authorized the Managing Director of the Respondents to appoint the sole arbitrator, was contrary to the principles laid down in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760*** as well as those laid down in ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co., 2024 SCC OnLine SC 3219***, which prohibits unilateral

appointment of arbitrators by interested parties. Accordingly, the Court exercised its powers under Section 11(6) of the Arbitration Act to appoint Justice U Durga Prasad Rao, former Judge of the Andhra Pradesh High Court, as the sole arbitrator.

By reaffirming the settled legal principle that the limitation period for the appointment of an arbitrator is distinct from the limitation for raising substantive claims, the judgment strengthens the procedural safeguards for arbitration proceedings. The ruling also reinforces the importance of fair and impartial arbitral appointments, in line with the pro-arbitration framework envisaged by the Arbitration Act.

Emergency arbitration allows parties to seek urgent interim relief before the constitution of a full arbitral tribunal. While the Arbitration Act does not explicitly recognize emergency arbitration, Indian courts have upheld such orders, especially in India-seated arbitrations, following the Supreme Court's ruling in ***Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd., 2021 SCC OnLine SC 145***. This reflects the growing acceptance of emergency arbitration in India's pro-arbitration regime.

Kalpataru Projects International Limited vs. Bharat Heavy Electrical Limited (BHEL) AP-COM/94/2025 – ***The Calcutta High Court holds that Referral Courts Cannot Conduct Detailed Inquiry into Whether Claims Are Time-Barred –*** **The Calcutta High Court reaffirmed that at the referral stage under Section 11 of the Arbitration and Conciliation Act, 1996, courts are not to engage in a detailed evidentiary inquiry into whether claims are time-barred. The Hon'ble Court emphasized that unless the claims are manifestly barred by limitation or there exist no subsisting disputes, the matter must be referred to arbitration.**

The dispute arose from a work order issued to JMC Projects (India) Limited, which later merged with Kalpataru Projects International Limited (Petitioner). The Petitioner raised disputes regarding unpaid bills submitted in July 2020, leading to an attempted amicable settlement, which remained inconclusive. The Petitioner invoked arbitration on October 27, 2023. The Respondents contested the application, arguing that (i) the claim was time-barred under Article 137 of the Limitation Act, 1963, as the limitation period commenced from July 2020, and (ii) the application suffered from non-joinder of Simplex Projects Limited, the other consortium member.

The Hon'ble Court held that the non-joinder issue could be raised before the arbitral tribunal, as all communications and settlement efforts had been conducted with the Petitioner, which had stepped into the role of the consortium's lead member.

Relying on ***Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd.***, the Court observed that its role at the referral stage was limited to assessing whether the application under Section 11(6) had been filed within the three-year period prescribed under Article 137 of the Limitation Act. The Court further referred to ***Arif Azeem Co. Ltd. v. Aptech Ltd.***, reaffirming that the limitation period for seeking the appointment of an arbitrator begins only after a notice invoking arbitration is issued and the opposing party fails or refuses to act upon it. Since the Petitioner invoked arbitration on October 27, 2023, the claim could not be considered 'deadwood.'

Additionally, the Court cited ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, which clarified that at the stage of appointing an arbitrator, the court's scrutiny is restricted to determining the prima facie existence of an arbitration agreement. The Court also held that the arbitration clause, which provided for an arbitrator to be appointed by an officer of BHEL, was not in line with the principle laid down in ***Central Organization for Railway Electrification v. ECI SPIC SMO MCML (JV)***, prohibiting unilateral appointments by interested parties.

Accordingly, the Court allowed the application and appointed Justice Bhaskar Bhattacharya, former Chief Justice of the Gujarat High Court, as the arbitrator.

By reiterating the limited role of courts at the referral stage and emphasizing the principle of minimal judicial interference, the ruling strengthens India's pro-arbitration jurisprudence and reinforces the autonomy of the arbitral process.

Executive Engineer National Highway Division v. Sanjay Shankar Surve, 2025 SCC OnLine Bom 339 – *The Bombay High Court holds Limitation for Appeals Under Section 37 of the Arbitration Act is Governed by Article 116 of the Limitation Act; Delay Cannot Be Mechanically Condoned* – The Bombay High Court has reiterated that the limitation period for filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") is governed by Article 116 of the Limitation Act, 1963, which prescribes a 90-day period.

The Court, following the Supreme Court's ruling **in *State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd., (2021) 6 SCC 460***, held that while a delay beyond this period can be condoned under Section 5 of the Limitation Act, such condonation cannot be granted mechanically and must be based on a demonstration of sufficient cause.

The Applicant sought condonation of a 124-day delay in filing an appeal under Section 37 of the Arbitration Act, citing internal procedures and the involvement of multiple stakeholders as reasons for the delay. The Applicant also contended that transferring case records from Ratnagiri and re-establishing the paper trail caused further delays.

The Respondent opposed the condonation, arguing that the same advocate who handled the Section 34 proceedings before the District Court had filed the present appeal, rendering the Applicant's claim of procedural delays baseless. It was further submitted that the Supreme Court in ***MTNL v. State of Maharashtra, (2013) 9 SCC 92*** had held that parties making misleading submissions should not benefit from the condonation of delay. Given that condonation is an equitable remedy, the Respondent argued that the Applicant's conduct did not warrant such relief.

The Court found that the Applicant's claim of procedural delays was unfounded, as the same advocate who handled the Section 34 proceedings had filed the present appeal. It emphasized that state agencies must exercise greater diligence in legal proceedings and cannot expect special treatment solely because they are government entities. The Court relied on the Supreme Court's decisions in ***Borse Brothers*** **and** ***Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563*** to underscore that delay cannot be condoned automatically, particularly when the party seeking condonation is well-acquainted with the case.

The Court reaffirmed that after ***Borse Brothers***, the limitation period prescribed under Article 116 of the Limitation Act applies to appeals under Section 37 of the Arbitration Act, requiring them to be filed within 90 days. While Section 5 of the Limitation Act allows for condonation of delay upon showing sufficient cause, courts must also consider the Arbitration Act's objective of ensuring expeditious dispute resolution. Notably, the Court observed that the Arbitration Act's application to compensation matters under the National Highways Act, 1956, reflects the legislature's intent to provide for swift dispute resolution.

In light of the above findings, the Court held that the Applicant had failed to establish sufficient cause for condoning the 124-day delay in filing the appeal. The application for condonation was accordingly dismissed. This ruling reinforces the principle that judicial delays must not be condoned without valid justification, especially in arbitration-related matters, where timely resolution is paramount.