THE CADR

NEWSLETTER

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ABOUT US

The Centre for Alternative Dispute Resolution, RGNUL (CADR-RGNUL) is a research centre dedicated to research and capacity-building in ADR. The ultimate objective, at CADR, is to strengthen ADR mechanisms in the country by emerging as a platform that enables students and professionals to further their interests in the field.

In its attempt to further the objective of providing quality research and information to the ADR fraternity, the CADR team is elated to present the Special Edition of the Fourth Volume of 'The CADR Newsletter'. The Newsletter initiative began with the observation that there exists a lacuna in the provision of information relating to ADR to the practicing community. With an aim to lessen this gap, the Newsletter has been comprehensively covering developments in the field of ADR, both national and international. The CADR Newsletter is a one-stop destination for all that one needs to know about the ADR world; a 'monthly dose' of ADR News!

DOMESTIC ARBITRATION

Only the Disputes Commenced and Concluded prior to the amendment of 2019 will be subjected to the Pre-Amended Section 34(2)(a): Supreme Court

Upholding an order passed by the Karnataka High Court in the case of *Alpine Housing Development Corpn. (P) Ltd.* v. *Ashok S. Dhariwal*, the Supreme Court, while adjudicating the case held that pre-amended Section 34(2)(a) of the Arbitration and Conciliation Act,1996 (A&C act) will be only applicable to the arbitral proceedings that have commenced and concluded prior to the amendment of Section 34(2)(a) in 2019. In the present case, the appellants had filed an application under the impugned section against the award passed by the arbitrators on the ground that allowing the respondents to adduce evidence under Section 34 of the A&C act is against the purpose and object of the amending section 34(2)(a) . It was held that the High Court made no error in allowing the respondents to file affidavits/additional evidence in the proceedings under Section 34 of the A&C Act. The Apex court also observed that an arbitral award is to be set aside only on the grounds mentioned in 34(2)(a) and 34(2)(b) and stated that the purport behind the amendment was the speedy resolution of arbitral disputes. Furthermore, it was observed that in ordinary scenarios, an application for setting aside an arbitral award will not require anything more than the record that was placed before the arbitrator. Read More

Arbitration made under MSMED Act, 2006 would be Void-ab-initio if the supplier was not registered under the Act: Gujarat HC

The Gujarat High Court set aside an arbitral award in the case of Anupam Industries Ltd. v. State Level Industry Facilitation Council. The MSME facilitation council had passed the award in the proceedings under section 18(3) of the Act. The Petitioner filed the petition to set aside the award as the supplies in dispute had been provided prior to the registration under MSMED Act. The Gujarat High Court held that the registration made under the MSMED Act would not operate retrospectively and would only concern supplies made afterwards. Therefore, the High Court held that the entire proceedings of the facilitation council were without jurisdiction. Read More

Arbitration Agreements made between Parties would be Superseded by Reference made under Section 18(1) MSMED Act: Bombay High Court

DOMESTIC ARBITRATION

The Bombay High Court, in the case of *Bajaj Electricals Limited* v. *Chanda S. Khetawat & Anr.*, held that once the facilitation council is in the way of commencing arbitral proceedings under section 18(3) of the MSMED Act, it will supersede reference made to arbitration by the parties. The applicant contended that Section 18(4) of the MSMED Act does not nullify a bilateral agreement such as that of arbitration while giving the jurisdiction to Facilitation Council to act as Arbitrator/Conciliator. The Court while dismissing the application held that once the statutory mechanism has commenced under Section 18(1) of the MSMED Act, it would supersede the arbitration agreement between the parties. Read More.

The limitation Aspect of Substantive Claims is an Issue to be decided by the Arbitral Tribunal and not the Courts: Bombay High Court

The Bombay High Court in the case of *TLG India Pvt Ltd* v. *Rebel Foods Pvt. Ltd*. held that the issue of whether the major claim in a case is time-barred or not is an issue to be decided on merits by the arbitral tribunal and not by the courts. The only exception to this principle is when the claim is hopelessly barred by limitation as evident from the case-specific facts and documents. In the present case, the applicant filed an application under Section 11 of the A&C Act invoking arbitration. The Respondent contested that claims were ex-facie time-barred. The court referred to the law laid down in *Vidya Drolia v. Durga Trading Corporation,* and applied the *prima facie* test jurisdiction to "screen and knockdown ex facie meritless, frivolous and dishonest litigation" and held that the applicant case did not fall into the category. The appeal was accordingly allowed. Read More

In Case of Inconsistency between Two Clauses of the Same Instrument, the Former will Override the Latter in Arbitration Agreements: Delhi High Court

While adjudicating the case of *Sunil Kumar Chandra* v. *Spire Techpark Private Limited*, the Delhi High Court held that a former clause will have an overriding effect over the latter clause relating to the mode of dispute resolution and seat of arbitration. In this case, the petition was filed seeking the constitution of the Arbitral tribunal u/s 11 of the A&C Act. The court held that since the parties agreed upon New Delhi as the seat of arbitration, the court has the jurisdiction to entertain the same and accordingly appoint an arbitrator. Read More.

DOMESTIC ARBITRATION

Doctrine of *contra proferentem* should be considered by arbitrators while interpreting contracts: Delhi High Court

A single judge bench of the Delhi High Court remarked that the doctrine of *contra proferentem* is to be considered as a 'general canon' of interpreting contracts irrespective of the national legal system. The doctrine was applied by the court to uphold the interpretation and findings of the Sole Arbitrator in the case of *Flowmore Ltd*. v. *Skipper Ltd*. In the instant case, the Petitioner had created the Purchase Contract and the Respondent had signed it. After considering multiple interpretations of the contract, the Sole Arbitrator decided to support the interpretation that benefitted the Respondent. Read more.

Petition under Section 34 cannot be amended to include new grounds with new facts: Delhi HC.

Justice Yashwant Varma rejected NDMC's application to add extra grounds to contest the arbitral award. He noted that although it is allowed to introduce amendments in a petition filed under Section 34 of the A&C Act, it is not permissible to add new grounds of challenge that contain fresh material or facts if they were not raised in the initial petition under Section 34 or before the Arbitral Tribunal. The amendments raised by NDMC in its case against Décor India Pvt. Ltd. failed to satisfy the criteria set forth by the Supreme Court in *State of Maharashtra* v. *Hindustan Construction Co. Ltd* (2010). The Hindustan Construction Co. judgment necessitates that the amendments must be necessary due to the existence of highly unusual circumstances of the case and must be in the interest of justice. Since, the amendment proposed by NDMC did not fall under either of the requirements laid down by the apex court in the 2010 judgment, the court rejected NDMC's application. Read more | Read judgment.

There cannot be any review of an order passed under Section 11 of the Act: Calcutta HC.

In the case of *Sarada Construction* v. *Bhupendra Pramanik*, the petitioner sought the review of an order under Section 11 of the act. The court held that the A&C Act is a complete code and does not include any provision for reviewing an order issued under Section 11 of the Act. Therefore, the court ruled that the law did not create an authority to conduct a review for an order under Section 11 of the A&C Act. The court added that while the Supreme Court has an inherent power

to review under Article 137 of the Indian Constitution, the Constitution does not bestow High Courts with similar powers, meaning that they cannot review an order passed under Section 11 of the Act. Read more.

The court cannot determine the question of 'accord and satisfaction' under Section 11(6A): Calcutta HC

A single bench of Justice Shekhar B. Saraf has held that an issue of accord and satisfaction cannot be decided under Section 11 application. The Calcutta High Court has placed reliance on the judgment of *Mayavati Tradin*g v. *Pradyvat Deb Burman* and has constructed an interpretation of the *Vidya Drolia* judgement in its recent decision in the case of *Jhajjar K.T. Transco Pvt. Ltd*. v. *Oriental Insurance Company*. It has stated that even though the *Vidya Drolia* decision had widened the scope of interference under Section 11 to some extent; issues based on contentious and questionable facts of a case cannot be settled under Section 11. Therefore, the cout cannot decide on a question of 'accord and satisfaction' while examining an application under Section 11 of the Act. Read more.

DMRC requests the Supreme Court to take into account a curative plea in DAMEPL matter

The Delhi Metro Rail Corporation (DMRC) has asked the Supreme Court to hear its curative petition against the top court's 2021 decision to reject its request for a review of a decision. The decision upheld a 2017 arbitration award in favour of the Delhi Airport Metro Express Private Limited (DAMEPL), a Reliance Infrastructure subsidiary, and made the award enforceable against DMRC.

DMRC and DAMEPL had entered into a contract in 2008 for the design, installation, commissioning, operation and maintenance of a Metro Express Line. However, in 2012, DAMEPL issued a notice terminating the contract claiming that the deficiencies it had identified in the civil structure had not been corrected. DMRC invoked the Concession Agreement's arbitration provision. In 2017, the Arbitral Tribunal decided in DAMEPL's favour and granted a total sum of Rs. 2782.33 crore along with additional interest. The Supreme Court overturned the decision of the division bench and upheld the tribunal's award in 2021. Read more

DOMESTIC ARBITRATION

Participation in a Civil Action Brought by a Partner is not a withdrawal of the Right To Request Arbitration: Delhi High Court

According to the Delhi High Court in the case of *Chadha Motor Transport Company Pvt Ltd vs. Barinderjit Singh Sahni*, the defendant cannot be regarded to have forfeited his right to employ arbitration for any future disputes between the parties under the Agreement simply because he took part in a civil suit brought by the plaintiff.

The Court further stated that the defendant's involvement in the civil matter would not amount to a waiver of his right to request arbitration because the declaration and permanent injunction sought by the plaintiff in that litigation were not subject to arbitration. **Read more**

Solely labeling a clause "Arbitration" doesn't mandate arbitration: Bombay HC

The Bombay High Court dismissed an arbitration application seeking the appointment of a Sole Arbitrator in *Nagreeka Indcon Products Pvt. Ltd. v. Cargocare Logistics (India) Pvt. Ltd.* on the basis of the bill issued by the Respondent, which contained a clause that said "...difference of opinion or dispute thereunder can be settled by arbitration..."

According to the Court, an arbitration agreement must necessarily be an agreement or consensus between the parties to send disagreements or disputes to arbitration, and the parties must explicitly or implicitly state their desire. The Court further noted that the phrase "can" had qualified arbitration as a method of dispute resolution, and that it had been further qualified by the option of having the arbitration either in India or a location that the parties had mutually agreed upon. The same did not imply that the parties mutually agreed that they “shall” refer themselves to arbitration.. **Read more**. **Read Judgement.**

Apex Court to expound on whether an arbitrator's unilateral fee increase against the preferences of one party increases the risk of bias

The Supreme Court has decided to address the question of whether an arbitrator's unilateral price increase against the preferences of one side could indicate that he is biased. Over the course of arguments, the appellants reasoned that if an arbitrator unilaterally increases the fees against the wishes of one of the parties, then there is likelihood of bias in the mind of the arbitrator against

such a party. Meanwhile, the respondents were of the opinion that matters pertaining to bias should be covered u/s 13 and challenged only after passing of award.

When deciding the case of *Chennai Metro Rail Ltd Administrative Building v. M/S Transtonnelstroy Afcons*, a division bench of Justices B.R. Gavai and Aravinda Kumar noted that the matter would have "wider repercussions" and so needed to be handled quickly. The Court instructed the registrar to bring the current case before the CJI after noting that a Special Bench is being established to handle arbitration cases**. Read more.**

INTERNATIONAL COMMERCIAL ARBITRATION

Spanish Insurer Company Mapfre Settles Pulp Mill Dispute with Chilean Producer

In August 2017, CMPC, a Chilean pulp mill producer company, reported the stoppage and repair of the recovery boiler. Further, in October 2017, they claimed that the insurer company, Mapfre, had denied coverage for the boiler and hence, CMPC filed an arbitration claim. The tribunal, in January 2021, ruled that the indicated claim was indeed covered by the contracted policy. Finally, on January 5, the Board of Directors approved an out-of-court settlement reached with the insurer and reinsurer of the incident, whereby CMPC will be compensated for the physical damages and lost profits suffered as a result of the incident, for a total amount of USD 215 million. Read More

Chinese Company Awarded Damages over Indian Coal Project

As of August 2019, Shanghai Electric ("SEGCL") was owed an amount of US$ 135,320,728.42 (approximately INR 995 crores) under its contract with Reliance Infrastructure Ltd ("Reliance"), for which, a notice of dispute dated 23rd August, 2019 was issued to Reliance. Owing to non-compliance of the afore-noted notice of dispute, SEGCL invoked arbitration against Reliance on 13th December, 2019. The arbitration proceedings seated in Singapore and administered by Singapore International Arbitration Centre ("SIAC") have since commenced. The Chinese Company, SEGCL, has now been awarded US$146 million in damages with Reliance Infrastructure Ltd. over outstanding payments for its coal-fired power plant project. Read More

General Electric and Mytilineos SA Settle Dispute with Algerian State-owned Entity

General Electric International Inc. and its Greek partner, Mytilineos SA (formerly Metka SA) have settled an ICC Arbitration dispute with Société Algérienne de Production de l'Electricité ("SAPE"), an Algerian state-owned entity responsible for production of electricity. The dispute was centered around a US$234 million power plant project and has been ongoing since 2020. In fact, it had even given rise to interim measures enforced in New York Courts in 2022. Read More

Edison Pays Award over Environmental Breaches

In 2021, the ICC arbitral tribunal had determined that Edison, the former owner of Belgian chemicals group Solvay's Spinetta Marengo and Bussi sul Tirino sites, is liable for breaching environmental representations and warranties in its sale to Solvay in 2001. The partial decision ordered Edison to compensate Solvay for losses and damages incurred up until the end of 2016. In

2022, this decision was upheld by a Swiss court as well. Finally, in February 2023, the Italian power utility Edison paid nearly €92 million to Solvay to satisfy the ICC award. Read More

Czech Energy Group Pursues ICC Claim Against Gazprom

CEZ, a Czech energy group, has launched a US$45 million ICC arbitration against Gazprom over undelivered Russian gas supplies. This has been the latest claim in the recent wave of claims against Gazprom. In fact, a French utility by the name of Engie is also currently pursuing a claim against Gazprom's export arm, accusing the Russian state entity of gas delivery shortages following a payment dispute. CEZ seeks to recover damages of approximately CZK 1 billion arising from Gazprom's significant under deliveries of natural gas supplies in 2022. The seat of arbitration is Geneva and it will be settled by a three-member arbitral tribunal. Read More

DIFC Court Upholds Award Against Iraqi State Entity

Although the arbitrators found that the claimant engaged in "unethical and criminal" conduct by paying a member of parliament, a court in the Dubai International Financial Centre rejected an Iraqi state oil company's appeal of a US$40 million ICC decision. In *Muzama v. Mihanti* [2022] DIFC ARB 004, the DIFC court has refused to set aside the ICC award, despite finding that the award creditor had engaged in bribery and corruption. Read More

Paris Court Upholds the Stay on Award Against Malaysia to Pay Sulu's 'Heirs' US$ 14.9 Billion

The dispute, *Heirs of the Sultan of Sulu and North Borneo* v. *Malaysia*, is regarding the territorial claim advanced by Sulu's heirs on the Borneo state of Subah. In 2022, a French Arbitration Court located in Paris ordered Malaysia to pay Sulu descendants an amount of US$ 14.9 billion over their claim. However, Malaysia filed a request in Paris Court for a stay by contending that the entire arbitration is invalid, which was accepted by the Court. The stay order was subsequently challenged by the Sulu claimants in the Paris Court of Appeal, but the Court rejected the same. Thus, the stay order remains intact. Read More

Arbitral Award Rendered Non-Enforceable by the Hong Kong Court on the Grounds of Grossly Unfair and Unjust Procedure

INTERNATIONAL COMMERCIAL ARBITRATION

In the case of *CIC v Wu and Ors*, the arbitration proceedings were divided into two parts wherein the first part decided the liability between the creditor and principal debtor, and the second part concerned itself with the liability between the creditor and guarantors. In the first part of the proceedings, there was no legal representation from the debtor's side and an interim award was issued in favour of CIC (Canudilo International Company Limited). The arbitrator then resigned to avoid bias in the second part of the proceedings. The second arbitrator held the award issued in the first part of the arbitration proceedings binding not only on the debtor and creditor but also on the guarantors. An application was filed to set aside the enforcement of the award, which was upheld by the court. It was noted that the second arbitrator's finding that the guarantors had the chance to present their arguments in the first process but failed to do the same and binding them with the interim award for the same reason was unreasonable and unfair. Read More

An Award of $ 1.65 Billion Passed in Favour of "Agility AGLT.KW" in an Arbitration Case Against Korek Telecom

The International Court of Arbitration of the International Chamber of Commerce awarded one of the subsidiaries and an affiliate of Kuwati logistic firm Agility AGLT.KW damages amounting to $1.65 billion concerning the allegations of fraud and corruption against Iraq's Korek Telecom and businessman Sirwan Barzani. The company is considering the award as final and binding while the Korek spokesperson said that they have been considering other options including setting aside the arbitral award. Read more

Hong Kong Court rejects an 'untenable' challenge to a US $ 21 Million CIETAC award

In the case of *COG v E*, the award debtor challenged the US$ 21 Million CIETAC award on the grounds that they had been unable to present their case and the enforcement of the same would be contrary to public policy. The Hong Kong Court of first instance rejected the debtor's contention and held that the challenge was untenable since the debtor had a reasonable opportunity to present his case. Thus, the award was held to be manifestly valid. Indemnity costs were imposed on the debtor following the unsuccessful challenge to resist enforcement. Read more

INVESTMENT ARBITRATION

UK Lord threatens to file treaty claim against Belize

Due to a projected port terminal, UK peer Lord Ashcroft has threatened to file a treaty claim against Belize. Prime Minister John Briceo has received a letter from Lord Ashcroft, chairman of Waterloo Investment Holdings Ltd., outlining the company's proposal to build a cruise terminal at the Port of Belize Ltd. (PBL). Once the project's environmental approval was denied in January of last year, Ashcroft vowed to submit the dispute to international arbitration under the 1982 Belize-UK BIT. In reaction to the second rejection of the PBL cruise terminal and cargo expansion project, a new letter was issued to the government as part of a continuing appeal procedure. The letter is being handled by Belize's Ministry of Sustainable Development and their legal staff. Read more

Hungarian oil company seeks to enforce arbitral award against Croatian Petrochemical Group

After winning the state's bribery defence, a Hungarian oil and gas company MOL obtained a US$237 million ICSID award against Croatia regarding the 2009 agreement that allowed MOL to acquire a dominating position in INA, a Croatian petrochemicals group. In 2014, Croatia contacted the UNCITRAL Arbitral Tribunal in an effort to revoke the 2009 agreement. The Croatian government asserted that MOL won control of INA through corruption and broke its promise to invest in Croatian oil refineries in the shareholders' agreement. Croatia's accusations about bribery, corporate governance, and alleged violations of the shareholders' agreement from 2003 were all rejected by the Geneva arbitration court. The award became public when MOL sought to enforce it in a US court. Read more

US Group threatens ICSID claim against Latvia

A Latvian regulator, according to a US private equity group that specialises in media and telecommunications, is preventing the company from investing in the mobile 5G sector, and it has warned Latvia of a future ICSID claim. The owner of the operator Bite Latvia, Providence Equity Partners, a US-based corporation, has written a letter to the prime minister of Latvia. It asserts that specific acts taken by SPRK, the country's national public service regulator, point to a potential breach of the bilateral investment promotion and mutual protection agreement between the US and Latvian governments. The US investor intends to file a claim against the Latvian state for postponing the development of strategically significant infrastructure with the International Centre for Settlement

of Investment Disputes (ICSID) if a resolution cannot be reached through discussions and negotiations with the Latvian government. Read more

Mauritius court blocks treaty claim in Devas saga

The Indian government is believed to be trying to avoid the implementation of an ICC judgement worth US$1.3 billion, while the Supreme Court of Mauritius has barred investors from proceeding with an investment treaty arbitration against India. The foreign investors in Devas have launched a new notice of arbitration under the bilateral investment treaty between India and Mauritius in response to the Supreme Court's ruling permitting the closure of the satellite firm Devas Multimedia on the basis of fraud. On March 22, 2017, India unilaterally cancelled the India-Mauritius BIT. However, in the event of a unilateral termination, in accordance with Article 13.3 of the BIT, the investment made before to the termination will continue to be covered by the treaty for the next ten years. Read more

Abu Dhabi's IPIC and Aabar reached a consensus to pay Malaysia $1.8 billion and resolve the dispute.

On February 27, the International Petroleum Investment Company (IPIC) of Abu Dhabi and its subsidiary Aabar Investments PJS agreed to pay $1.8 billion to resolve a legal dispute over the 1MDB scandal. In 2018, Malaysia filed a challenge in a London court against a settlement deal reached between 1MDB and IPIC a year earlier under Najib Razak's leadership. Najib was condemned to 12 years in prison after being found guilty in a corruption case involving 1MDB. Malaysia had claimed in its challenge that the 2017 settlement was obtained through fraud. Readmore

Asiaphos v China Tribunal Awards, Expropriation ruling not made

The case involves a dispute brought before the Tribunal on the basis of the 21 November 1985 Agreement on the Promotion and Protection of Investments between the Governments of the People's Republic of China and the Republic of Singapore, which came into effect on 7 February 1986. The tribunal after analyzing the facts and the circumstances issued its award that it does not have jurisdiction on any of the claims made by the claimants and furthermore, the claimants shall bear all the fees and the expenses of the arbitration along with the costs incurred by the respondents

in connection with the proceedings. All subsequent requests made by the Parties were refused. Readmore

Nagorno- Karabakh dispute between Armenia and Azerbaijan sees provisional measures orders from the International Court of Justice.

On September 16, 2021, the Republic of Armenia ('Armenia') initiated proceedings against the Republic of Azerbaijan for claimed violations of the 21 December 1965 International Convention on the Elimination of All Forms of Racial Discrimination. In the current instance, having considered the terms of Armenia's requested provisional measures as well as the facts of the case, the Court concluded that, awaiting the final decision in the case and in accordance with its obligations under the CERD, Azerbaijan shall adopt all measures available to guarantee unhindered movement of persons, vehicles, and cargo along the Lachin Corridor in both directions. Readmore

US District Court restricts Spain from seeking anti-suit injunctions to prevent investors from enforcing intra-EU ECT awards.

On February 15, 2023, the US District Court for the District of Columbia issued a temporary restraining order against the Kingdom of Spain, directing it to discontinue proceedings against two Dutch entities before the Dutch District Court. The case involves both foreign treaties and domestic laws, raising complex questions about how they interact in the context of sovereign immunity. The court in view of the circumstances, will Enjoin spain from from obtaining an interlocutory decree or any other relief and from seeking any other overseas litigation that impedes, obstructs, or delays the resolution of NextEra's Petition to Confirm the Award. Readmore

LNG Companies Seek $20 Billion in Compensation from Canada for Canceled Project

GNL Québec and Gazoduq are seeking US $20 billion in compensation from the Canadian government for canceling their $14 billion project to build a liquified natural gas terminal and pipeline in Saguenay, Quebec. The project was aimed to export natural gas from Western Canada to other countries via the Saguenay River. Ruby River Capital LLC, owned by Freestone and Breyer Capital, has filed for arbitration with the International Center for Settlement of Investment Disputes, citing NAFTA and CUSMA agreements. Read More

INVESTMENT ARBITRATION

US District Court decides to vacate the Award in the case of Perenco Ecuador Limited v. Republic of Ecuador

The US District Court recently vacated the award of ICSID in the case of Perenco Ecuador Limited v. Republic of Ecuador. The case was filed by Perenco Ecuador Limited, a subsidiary of the UK-based oil company Perenco, against the Republic of Ecuador in 2008. Perenco claimed that Ecuador had violated its obligations under the Ecuador-UK bilateral investment treaty by expropriating the company's oil assets without adequate compensation. In February 2017, the tribunal issued its final award, awarding Perenco approximately $425 million in damages. However, in March 2023, a United States District Court issued a memorandum opinion vacating the award on the grounds that one of the arbitrators had failed to disclose a potential conflict of interest. The court's decision means that the case will need to be re-heard by a new tribunal. Read More

Clive Palmer files $198.2bn claim against Australian government over stalled iron ore projects

Clive Palmer filed a notice of arbitration seeking $198.2 billion in damages, plus interest and costs, under international trade law against the Australian government. The claim relates to stalled iron ore projects and emergency legislation passed by the West Australian government, which breached the ASEAN-Australia-New Zealand free trade agreement. The claim comes after Palmer lost a High Court battle with the WA government in 2020 over a stalled iron ore project in the Pilbara, and the High Court confirmed the validity of emergency legislation that stripped his rights to obtain compensation. Read More

MEDIATION

Law and Justice ministry formulated a working committee to draft the rules and standards for mediation in India

The Department of Legal Affairs of the Law Ministry issued an office memorandum in this regard, stating that the committee would provide a draft of the rules and regulations as envisaged under the Mediation Bill/Act, as well as suggestions regarding the setting of various standards, including certifications, accreditation, grading, criteria, and so on, for various stakeholders under the Mediation Bill. The committee is also directed to refer to the mentioned subject and state that the Mediation Bill, 2021, promotes institutional mediation, provides for the enforcement of a mediated settlement agreement, promotes training through Mediation Institutes, and emphasizes ODR [Online Dispute Resolution] and community mediation through its objectives. Read More

Six mediation centres e-inaugurated by the Chief justice of MP across the state.

Six centres have been established in sagar, dewas, khandwa, bhind and ujjain district of Madhya Pradesh. Justice Malimath said on the occasion that the access of litigants and potential mediators to court must be ensured in order for matters to be resolved quickly. Mediation is another method of case resolution that is effective in resolving disputes between litigants. ReadMore

Mediation Training Programme for judicial officers and advocates in Bilaspur

5 Additional District Judges and 47 Advocates underwent the 5 day mediation training program in Bilaspur. The target was to provide training with a view to giving speedy justice to the common man. 2 senior trainers from Delhi and 4 potential trainers from UP and Jharkhand were asked to provide training to the judicial officers and the advocates. The Chief Justice of Chhattisgarh, Arun Kumar Goswami, exhorted the mediators to analyze and understand the disputes between the parties and endeavor to resolve the conflicts through mutual understanding. He emphasized on using the knowledge, experience and training in resolving the cases in the mediation process.The necessity of mediation training was also asserted so that more cases are resolved through mediation. Readmore

Mediation Friendly Protocol launched to Advance Singapore as an Asian hub for dispute resolution

The Singapore International Commercial Court (SICC) and the Singapore International Mediation Centre (SIMC) have jointly endeavored to create a framework for promoting the amicable

resolution of international commercial disputes. The framework that came into effect from 12 January 2023, will be based upon litigation-mediation-litigation(LML). When negotiating contracts, parties may choose to apply the LML Protocol by including the model LML Clause into their agreements. Alternatively, parties may adopt the LML Protocol at any other time, such as after a dispute has developed, by a separate agreement. Readmore

Pre- institution mediation mandated U/S 12A of the Commercial Courts Act is a pre-suit legal drill and it cannot be ordered as a post suit exercise: Madras HC

In *Mr. AD Padmasingh Issac & Ors. v. Karaikudi Achi Mess & Anr,* Madras High Court rejected a plaint by Aachi Spices and Foods seeking an injunction restraining Karaikudi Achi Mess from using a trademark name or similar sounding expression in any media, websites and other platforms. The Court has highlighted that "pre-institution mediation" mandated under Section 12A of the Commercial Courts Act is a pre-suit legal drill and it cannot be ordered as a post suit exercise. It was noted that Section 12A is in the nature of a jurisdictional fact. This means that a party cannot plead that the pre-institution mediation will be carried out after the institution of the suit. Thus, any such attempt by the parties to dispense with pre-institution mediation is impermissible. Read More

Defamation Matter between Vijay Sethupathi And Maha Gandhi referred to Mediation: Supreme Court

Vijay Sethupathi and Maha Gandhi reportedly had a disagreement over a topic during their flight from Chennai to Bangalore. But the heated argument then turned into a fight, and Maha Gandhi was seen fighting with Vijay Sethupathi's team at the Bangalore airport in the video that went viral on social media. Later, a petition was filed by Maha Gandhi in the court claiming that he was attacked by Vijay Sethupathi and sought compensation. The case came to a hearing recently, and the court stated that if Maha Gandhi and Vijay Sethupathi wish to compromise on this matter, they will arrange to resolve the issue, while both of them should respect each other. So, both parties have been ordered to appear before the Supreme Court for mediation through video conferencing on March 2 under the conciliation issue. Read More

50 Cent's $1B 'Power' Lawsuit with Ex-Drug Lord Sent to Mediation

The $1 billion lawsuit brought by an ex-drug lord over his "Power" television series against rapper 50 Cent has reached the mediation stage. Curtis "50 Cent" Jacksonwill square off against former drug

lord Corey "Ghost" Holland Jr. in May when they are both expected to attend a mediation session. In 2021, Holland sued 50 Cent and fellow executive producer Courtney Kemp, claiming they appropriated his real-life experience for Power. Holland asserts that at least 200 sequences from the television show "Power" were based on his life, and he now fears for his safety. He's also accused them of bullying, and claims they've made threats to his life. Holland has said that 50 Cent has thrown "a lot of subliminal shots" at him in the five months since he filed the lawsuit. Read More

UK Will Become a Party to the Singapore Convention on Mediation

On 2 March 2023, the UK Government announced that it "is the right time" for the UK to become a party to the Singapore Convention and that the UK will join it as soon as possible. This follows a year-long consultation by the UK Ministry of Justice on whether the UK should accede to the Singapore Convention and, if so, how to apply it in domestic law. The results of that consultation were released concurrently with this announcement. It was revealed that some felt it best to avoid joining the Convention, given that there are already reliable enforcement mechanisms in place in the UK. However, the majority believed the UK should join the Singapore Convention right away. The UK Government has agreed and has accepted that mediation is indeed an integral part of the UK's justice system. Read More

UK Plans to Protect Children under New Mediation Reforms

Proposals have been made, under the new reforms of the justice system of the UK, to make mediation mandatory in all appropriate low-level family court cases, with the exception of those that involve allegations or a history of domestic violence. As a result, divorcing spouses will have to use a certified mediator to try and reach an agreement over their child custody and financial arrangements, with court intervention being a last resort. Making mediation mandatory will give the family courts more flexibility in prioritizing and protecting the most important cases involving safeguarding issues in situations where it is not a possibility, such as domestic abuse and child safety. Faster hearings and speedier resolutions will benefit an estimated 36,000 vulnerable families each year. This move aims to protect children from the damaging impact of bitter courtroom battles. Read More

Supreme Court Judge Urges Lawyers to Undergo a Training Course in Mediation

In the recent case of *Jai Prakash Associates Ltd. V. Jaypee Kasablanca Buyers Welfare Association*, Justice Rastogi requested the lawyers to undergo the training course in mediation, wherever and

whenever they get time. He further emphasized that it would lead to a change in their lifestyle, perception towards oneself and perception towards their family. In his opinion, their response to clients would also improve once they had undergone the course. The advocates also highlighted that all lawyers should look to mediation first as everything easily becomes adversarial in litigation. Read More

ARTICLE

Reference to Arbitration in case of Multiple Agreements between the Parties

- Hrishabh Khatwani and Aditi Garg

Introduction

Parties frequently enter into multiple agreements with respect to the same transaction. Such parties may enter into some sort of an umbrella/general agreement which sets out the general terms of performance of obligations between the parties and also subsequent agreements which lay down the specific details of the performance. These subsequent agreements commonly take the form of purchase orders issued under general agreements or hire agreements for equipment. The parties may sometimes execute a number of documents forming part of the contract. In some of the cases, these documents may contain different arbitration clauses.

In such situations, when any dispute arises, the Courts have to identify which arbitration clause would govern the arbitration. The Supreme Court of India ['**SC**'] has time and again recognized that the intention of the parties holds absolute primacy while interpreting the agreements amongst parties.[1] The same is deduced by perusing contractual documents, the communications between the parties, and the conduct of the parties. The present article discusses and analyzes the settled stance and general trend of the courts in these different sets of situations where there exist multiple agreements referring to arbitration in different, sometimes overlapping ways.

Main Agreement v. Subsequent Agreements

In *Balasore Alloys Limited v. Medima LLC*[2], the parties entered a transaction for the supply of High Carbon Ferro Chrome. Numerous purchase orders were placed specifying the details of the supply to be made. The parties also entered into an agreement referred to as a "pricing agreement" relating to the same transaction. Both the purchase orders and the pricing agreement contained different arbitration clauses. The main issue for consideration before the Hon'ble SC was to determine which

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[1] Jugal Kishore Prabhatilal Sharma v. Vijayendra Prabhatilal Sharma, (1993) 1 SCC 114; Swarnam Ramachandran v. Aravacode Chakungal Jayapalan, (2004) 8 SCC 689; Ravindra Kumar Gupta & Co. v. Union of India, (2010) 1 SCC 409.

[2] Balasore Alloys Ltd. v. Medima LLC, (2020) 9 SCC 136.

arbitration clause would be applicable when the multiple agreements containing different arbitration agreements had concurrent jurisdiction over the dispute.

The SC relied on its judgment in the case of *Olympus Superstructures Pvt. Ltd. vs. Meena Vijay Khetan & Ors.*[3] and called for harmonizing the two clauses as per the parties' intention to avoid overlapping the conflicts covered by the two agreements. Thus, reconciling both clauses and avoiding conflicting awards, the Apex Court held that the parties should get the dispute resolved under the main agreement and if the dispute is not covered under the main agreement, then only the clause of the subsequent related agreement would come into play.

When the Purchase Orders Submit to the Courts' Jurisdiction

In *Sanghvi Movers Limited v. Vivid Solaire Energy Private Limited*,[4] the respondent argued that the parties had not submitted to the process of arbitration in relation to the disputes raised by the petitioner. The purchase orders contained no arbitration clause but rather submitted to the jurisdiction of the courts in Delhi. The respondent contended that the relationship between the parties arose out of and was governed by the purchase orders as the same did not make any mention of the contract dated 18.01.2021, which was contended to be the umbrella/main agreement. In such a scenario, the dispute cannot be referred to arbitration under the main contract.

The High Court of Delhi found that the purchase orders in fact made reference to the equipment packages as described in the contract dated 18.01.2021. The court, therefore, concluded that the said contract prescribes the general agreement between the parties, and the purchase orders give a description of the specific quantities which are required for specific periods. Therefore, the contract and the purchase orders were intrinsically intertwined with each other and are connected fundamentally to the transaction between the parties. Relying on the Supreme Court judgment in *Balasore Alloys*, the court held that when there is a dispute under the main contract then the parties can be referred to arbitration. The court allowed the appeal as the disputes raised by the petitioner

[3] Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651.

[4] Sanghvi Movers Ltd. v. Vivid Solaire Energy (P) Ltd., 2022 SCC OnLine Del 4423.

related to the non-performance of an obligation under the main agreement, i.e., failure to secure the right of way.

When the Main Agreement is Entered into at a Later Date than the Purchase Orders

In *Balasore Alloys*, the counsel for the applicant pointed out the date on which the pricing agreement was entered into and contended that the same cannot be applicable to purchase orders entered before. But the court again referred to the intention of the parties and found that the contractual terms itself provided for the retrospective date of enforcement of the contract and covered all purchasing orders. While the purchase orders contained the arbitration clause, the same was for the limited purpose pertaining to more specific matters. Essentially, if the disputes could be referred to under the comprehensive terms and conditions of the main agreement, the arbitration clause of the main agreement would be placed reliance on while the arbitration clause provided in the purchase orders is for a limited purpose, not provided for in the main agreement. Thus, in the case of *Balasore Alloys*, the arbitration clause in the main agreement was adjudged to govern the dispute that has arisen among the parties with regard to price and terms of payment instead of the arbitration clause in the purchase order which is for the limited purpose of supply of the produce with more specific details.

Even in *Sanghvi Movers*, the purchase order was issued prior to the main agreement. However, the letter of intent for the purchase order clearly mentioned that the detailed contract shall be executed for the purpose of billing and capturing detailed terms and conditions. This clearly signified the intention of the parties to be governed by the main contract.

Multiple Arbitration Clauses Contained within Different Documents Forming Parts of Same Agreement

The Delhi High Court, in the case of *Johnson Controls-Hitachi Air Conditioning India Ltd. v. Mahamaya Infrastructure Private Limited*,[5] dealt with the issue of contradictory arbitration clauses under different contract documents executed under a single contract. Unlike *Balasore,* the Letter of

[5] Johnson Controls-Hitachi Air Conditioning India Ltd. v. Mahamaya Infrastructure (P) Ltd., 2022 SCC OnLine Del 392.

Acceptance (the LOA), the General Conditions of Contract (the GCC) and the Special Conditions of Contract (the SCC) in the present case formed parts of a single integrated agreement. Furthermore, no harmonization was possible between the arbitration clauses contained in the LOA and SCC since both laid a completely different procedure for the appointment of the arbitral tribunal .

In the said case, the court relied on a particular clause of the General Conditions of the Contract which accords an order of precedence to different contract documents if the provisions in different documents govern the same aspect. As per the aforementioned clause of GCC, the LOA would take precedence over the SCC. The court, therefore, ordered for the constitution of the tribunal as per the procedure laid down in the LOA.

Another interesting aspect of this case is that the arbitration clause contained in the LOA provided for the unilateral appointment of the arbitrator. The Court agreed that the method of appointment would not hold good in light of the Supreme Court judgment in *Perkins Eastman*[6] and *TRF v. Energo Engineering*[7]. However, this consideration did not convince the court to prefer the arbitration clause contained in the SCC over the one contained in LOA.

Conclusion

Analyzing the trend followed by the courts, it can be concluded that the courts, while reconciling the conflict between the contradictory clauses, have primarily referred to the intention of the parties. The intention of the parties has been further gauged from the contractual terms agreed upon by the parties and further, the focus has been also placed upon the nature of dispute between the parties. While there is no straight jacket formula that the courts have agreed upon to be applied in case of contradictory arbitration clauses, the common chain between the above-discussed and similar cases is reconciliation of the conflicting clauses with the aid of the intention of parties taken in totality. Arbitration is chosen over litigation for its efficiency and speed and at the same time, the binding character of the awards. However, the conflicting awards arising due to different arbitration clauses,

[6] Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760.

[7] TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377.

varying in the grant of jurisdiction or the forum of arbitration or for some other reasons, of the same transaction may render the whole process of arbitration inefficient. Hence, the courts' stance of harmonization and reconciliation is well appreciated in the yet booming landscape of arbitration in India.

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