

## **LANDMARK JUDGMENTS UNDER ARBITRATION ACT.**

### **I] SEC.7 -ARBITRATION AGREEMENT AND SEC.8 POWER TO REFER PARTIES TO ARBITRATION**

#### **1. AIR 2011 SC 2507**

**Booz Allen and Hamilton Inc v. SBI Home Finance Ltd. and Ors**

Suit for enforcement of mortgage by sale - Is enforcement of right in rem - Suit should be tried by Civil Court and not by arbitral tribunal - Reference to arbitration, not tenable.

- enumerated some of non arbitrable disputes and held that such action would be an action in rem and not in personam
- Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. The well recognized examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

#### **2. AIR 2016 SC 4675**

**A. Ayyasamy v. A. Paramasivam and Ors.**

Reference to arbitrator - Mere allegations of fraud by one party against other - Would not nullify effect of arbitration agreement between parties - Such issues can be determined by Arbitral Tribunal.

- where there are serious allegations of fraud, they are to be treated as non-arbitrable and it is only the civil court which should decide such matters. However, where there are allegations of fraud simplicitor and such allegations are merely alleged, we are of the opinion it may not be necessary to nullify the effect of the arbitration agreement between the parties as such issues can be determined by the Arbitral Tribunal.

#### **3. AIR 2017 SC 2105**

**Indus Mobile Distribution Pvt. Ltd v. Datawind Innovation Pvt. Ltd** and Ors.

'Seat of arbitration' - 'Neutral venue' can be chosen by parties to arbitration - Even if no cause of action may have arisen at neutral venue, not having jurisdiction in classical sense.

Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to seat is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction - that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment seat is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

#### **4. 2018 DGLS(SC) 338**

Cheran Properties Limited

Versus

Kasturi and Sons Limited and Others

Section 7 - Arbitral agreement - Binding on non-signatory - Circumstances in which parties entered into arbitral agreement may reflect intention to bind both signatory and non-signatory entities - Factors such as relationship of non-signatory to party which is signatory to agreement, commonality of subject matter and composite nature of transaction weigh in balance - Group of companies doctrine is essentially intended to facilitate fulfilment of mutually held intent between parties, where circumstances indicate that intent was to bind both signatories and non-signatories.

#### **5. AIR 2016 SC 5359**

**Ananthesh Bhakta Represented by Mother Usha A. Bhakta** and Ors. v. **Nayana S. Bhakta** and Ors.

Reference to arbitration - Original or certified copy of arbitration agreement though not accompanied with application - But filed at time of consideration of such application by court - Does not entail rejection of application under S. 8(2).

#### **6. 2017 SCC(2) 268 Greaves Cotton Limited**

Versus

United Machinery and Appliances

Right to seek reference of dispute to arbitration - When cannot be said to be waived - Application under section 8 of defendant is rejected on ground that defendant sought further time to file written statement and there by waived his right to refer dispute to arbitration - Held, seeking further time to file written statement does not amount to making first statement on substance of dispute. Hence, order rejecting application under section 8, set aside

## **7. 2006 SCC (7) 275 Rashtriya Ispat Nigam Limited & Anr**

Versus

Verma Transport Company

App u/s 8 can be made even after filing of say to interim appn

## **8.2003 SCC (5) 531 Sukanya Holdings Pvt.Ltd.**

Versus

Jayesh H.Pandya and another

- A matter is not required to be referred to arbitration if no applicatn is made
- app u/s8 is mandatory
- the court has no suo-moto jurisdiction to refer the dispute between the parties to arbitration.

Power to refer to Arbitration -- Whether the Cause of Action can be bifurcated to be tried in part by the Court and in part by the Arbitration Tribunal -- Civil Procedure Code, 1908, Section 89 cannot be used to interpret Section 8 -- Reasons: (1) If bifurcation of the subject matter of a Suit was contemplated, the legislature would have used appropriate language to permit such a course -- (2) Bifurcation will delay the proceedings -- (3) Cost of litigation would increase -- (4) Parties will be harassed more -- (5) Bifurcation of Cause of Action may result in possibility of conflicting judgements and orders by two different forums.

## **9. 2018 DGLS(SC) 165 Kerala State Electricity Board and Another**

Versus

Kurien E.Kalathil and Another

Code of Civil Procedure, 1908, Section 89 - Arbitration and Conciliation Act, 1996, Section 7 - Absence of arbitral agreement - Reference to arbitration - Since referring parties to arbitration has serious consequences of taking them away from stream of civil courts and subject them to rigour of arbitration proceedings - In absence of arbitration agreement - Court can refer them to arbitration only with written consent of parties either by way of joint memo or joint application.

## **II|SEC.9 AND SEC.17- INTERIM MEASURES BY COURT AND TRIBUNAL**

### **1. Parsoli Motor Works vs BMW India p ltd**

- power to grant injunctive relief, under [Section 9](#) of the 1996 Act, has to abide by the provisions of the [Specific Relief Act](#). Injunction which cannot be granted under [Section 41](#) of the Specific Relief Act, cannot be granted under [Section 9](#) of the 1996 Act, either. Neither can relief be granted, under [Section 9](#), as would amount to specific enforcement of a contract which, by nature, is determinable, in view of [Section 41](#) of the Specific Relief Act. Even in cases where a contract is being sought to be terminated, in violation of the terms thereof, if it appears that the party who suffers as a result of such termination could be adequately compensated in terms of money at the stage of final adjudication of the dispute, no injunctive relief, under [Section 9](#) of the 1996 Act, would be granted.

## **2.2004 SCC(3) 155 Ashok Traders (Firm) & Anr.**

Versus

Gurumukh Das Saluja & Ors

Section 9 -- Invocation of, Scope -- The party invoking Section 9 may not have actually commenced the arbitral proceedings but must be able to satisfy the court that the arbitral proceedings are actually contemplated or manifestly intended and are positively going to commence within a reasonable time -- What is a reasonable time will depend on the facts and circumstances of each case and the nature of interim relief sought for would itself give an indication thereof -- If arbitral proceedings are not commenced within a reasonable time of an order under Section 9, the relationship between the order under Section 9 and the arbitral proceedings would stand snapped and the relief allowed to the party shall cease to be an order made before is in contemplation of arbitral proceedings -- Court may also while passing an order u/s 9 put the party on terms and may recall the order if the party commits breach of the terms.

### **III] SEC.34- SETTING ASIDE OF AWARD**

Limitation-

#### **1. 2012 SCC(2) 624 Assam Urban Water Supply & Sew.Board**

Versus

Subash Projects & Marketing Ltd.

Application under Section 34 can be made within three months of the receipt of the Award -- In terms of Proviso to Section 34 (3), Court may extend the time by a further period 30 days, not thereafter, that too, on showing sufficient cause -- Limitation Act, although made applicable to arbitrations as it applies to proceedings in the Court, but, benefit of Section 4 pertaining to exclusion of time, shall be available, only in respect of period of three months, initially, prescribed under Section 34, not in respect of further period of 30 days, which may be extended by the Court on showing sufficient cause in terms of Section 34(3).

#### **2. AIR 2011 SC 1374 Lodha**

**State of Maharashtra and Ors v. M/s. Ark Builders Pvt. Ltd**

Application for setting aside arbitration award - Limitation - Starts running from date signed copy of award is delivered to party making application for setting it aside.

#### **3. AIR 2001 SC4010 Followed in many cases**

**Union of India Appellant v. M/s. Popular Construction Co Respondent**

Application challenging award - Filing of - Time limit prescribed under S. 34 - Is absolute and unextendable - S. 5 of Limitation Act is not applicable to it.

The provisions of S. 5 Limitation Act, 1963 are not applicable to an application challenging an award, under S. 34 and as such there was no scope for assessing sufficiency of the cause for the delay beyond the period prescribed in proviso to S. 34. The crucial words in S. 34 are 'but not thereafter' used in the proviso to sub-section (3). This phrase would amount to an express exclusion within the meaning of S. 29(2) of the Limitation Act, and would therefore bar the application of S. 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase ' but not thereafter' wholly otiose.

## **SET-ASIDE-**

### **1. 2012(3)MLJ 737**

Arbitral Award -- Challenge -- Powers of Court -- Scope and extent of exercise -- Court does not sit in appeal over an Arbitral Award by re-assessing or re-appreciating evidence -- An award can be challenged only on grounds mentioned under Section 34(2) An Arbitral Tribunal cannot make use of their personal knowledge of facts of dispute, which is not part of record, to decide the dispute -- But, it can certainly use its personal expert or technical knowledge or general knowledge about a particular trade.

### **2.AIR 2003 SC 2629 FOLLOWED IN MANY**

**Oil and Natural Gas Corporation Ltd Appellant v. SAW Pipes Ltd Respondent.**

Arbitral award - Setting aside - Phrase 'public policy of India' - To be given wider meaning - Award could be set aside if it is contrary to fundamental policy of Indian law, interest of India, justice or morality or is patently illegal.

if the award is contrary to the substantive provisions of law or the provisions of the Act or against the terms of the contract, it would be patently illegal, which could be interfered under S. 34. However, such failure of procedure should be patent affecting the rights of the parties.

Under sub-section (1)(a) of Section 28 there is a mandate to the arbitral tribunal to decide the dispute in accordance with the substantive law for the time being in force in India. Admittedly, substantive law would include the Indian Contract Act, the Transfer of Property Act and other such laws in force.

If the arbitral Tribunal has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under S. 34.

Award could be set aside if it is contrary to :- (a) fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality; or (d) in addition, if it is patently illegal. Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

- if it is on contravention to the terms of contract /arbitration agreement.

### **3. 2015 BCR(2) 457- 2006 (11) SCC181**

Court cannot correct errors of arbitrator. can set aside award wholly or partially but cannot make an award.

Court can only quash the award leaving parties free to begin the arbitration again.

### **4. Geojit Financial services vs Kritika Nagpal Bom. HC - Radha Chemicals vs Union of India 2018- Kinnari Mullick vs Ghanshyam Das Damani SCC2018 (11) 328**

- Court cannot remand the proceedings back to the arbitral tribunal for fresh decision once the court has set aside the award.

- Discretion of court u/s34(4) to defer the proceeding for a specified purpose is limited only upon request by a party prior to setting aside of award.

### **5.2010 (1) BCR 529 -AIR 2010 SC 3543 Doctrine of Severability**

- Valid part of award can be saved by severance from invalid part,

### **7.Apparel Export Promotion Council v. Prabhati Patni, Proprietor Comfort Furnishers and Anr.**

Delhi high court 2005

It was held that the situs of arbitration or the fact that the award was made at a particular place, would not be relevant for conferring jurisdiction on a court.

### **8.Globe Congeneration Power Limited v. Sri Hiranyakeshi Sahakari Sakkere Karkhane Niyamit 2005**

The Karnataka High Court held that simply because the parties have agreed to resolve the disputes between them at a particular place, by way of arbitration, the court of such place cannot be held as 'Court' within the meaning of Section 2(1)(e) of the Arbitration Act.

### **9. Mikuni Corporation v. UCAL Fuel Systems Limited, Carburettors Limited and Siemens VDO Automotive 2007**

The Delhi High Court held that the place where arbitration may take place is not relevant for deciding the jurisdiction of the Court for the purpose of interim reliefs.

**10. n M/s Videocon Industries Limited v. M/s JMC Projects (India) Limited(VIDEOCON Judgment) 2012 Bombay HC**

In this case, the contract between the parties was awarded in Gujarat, the work was to be conducted in Gujarat and the Respondent had its registered office in Aurangabad. However, the arbitral proceedings were conducted in Mumbai and the award was passed in Mumbai. The award was challenged under Section 34 of the Arbitration Act in the Bombay High Court. The Hon'ble Bombay High Court held that if the respondents were required to file a suit, if there was no arbitration clause, such a suit could not have been filed within the jurisdiction of the Bombay High Court and thus, the petition under Section 34 could not have been filed in the Bombay High Court merely on the ground that arbitration award was delivered in Mumbai. It was further held that, the situs of arbitration or that the award was made at particular place would not be relevant for conferring jurisdiction.

**11. Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc. (BALCO Judgment)**

**Supreme court 2012 (9) SCC 552**

Introduced the concept of 'supervisory jurisdiction' of courts with respect to arbitration. In the obiter dicta of the judgment, it was stated that the 'subject matter of suit' is different from the 'subject matter of arbitration'. The term 'subject matter' in Section 2(1)(e) of the Arbitration Act identifies the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process

The Court gave an example to explain the concept of supervisory jurisdiction, stating that where one party is from Mumbai and the other party is from Kolkata, and Delhi is chosen by the parties as a neutral place to hold the arbitration and the arbitral tribunal passes an interim order under the Arbitration Act, an appeal from the same must lie to the courts of Delhi, being the courts having supervisory jurisdiction over the arbitration proceedings and the arbitral tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or Kolkata, and only the arbitration is to take place at Delhi. In such circumstances, both the courts would have jurisdiction, i.e. the court within whose jurisdiction the subject matter of the suit is located and the courts within whose jurisdiction the dispute resolution process i.e. arbitration is located.

**The Hon'ble Supreme Court in the BALCO Judgment expounded the concept of dual jurisdiction, wherein the following courts would have jurisdiction:**

- (i) The Court within whose jurisdiction the subject matter of the suit is situated as per the provisions of the CPC; and**
- (ii) The courts within whose jurisdiction the dispute resolution process i.e. arbitration is located. (Supervisory jurisdiction)**

**In view of the above, it appears that an application to challenge a domestic arbitral award under Section 34 of the Arbitration Act may be either made in a court having jurisdiction over the subject matter of the suit as per the**

**provisions of Section 20 of the CPC or the court having jurisdiction over the seat of the arbitration.**

#### **IV] SEC.36 ENFORCEMENT**

##### **1. AIR 2016 JHARKHAND 47**

**M/s. Indusind Bank Limited, Dhanbad v. Rajesh Dayal**

The application under Section 34 of the Arbitration and Conciliation Act, 1996 can be filed at a place where award has been given or the place where the subject-matter of arbitration is situated. In the present case, the subject-matter of arbitration was a sum of Rs. 8,62,111/- with interest and not the **immovable** property situated within the local limits of the Hazaribagh Court and therefore, the application under Section 34 of the Arbitration and Conciliation Act, 1996 can be filed only in the Court of competent jurisdiction at Kolkata. Merely because the property which has been sought to be sold for satisfying the award is situated within the local limits of the Hazaribagh Court, the execution application cannot be filed in the Hazaribagh Court though, the Court at Hazaribagh can execute the award in the manner provided under the Code of Civil Procedure, after its transfer for execution.

##### **2. 2018 DGLS(SC) 92**

Enforcement of award execution can be filed anywhere in country where such decree can be executed and no requirement for obtaining a transfer of decree from Court, which have jurisdiction over arbitral proceedings

##### **3. AIR 2018 BOM 89**

Arbitration award - Made under Part I - enforcement - After award attains finality and crosses S. 34 stage, such final award has to be enforced in accordance with provision of Civil P.C. (1908) - As if it is decree of Court - At this stage provisions of Ss. 38, 39 of Civil P.C. (1908) come into play - These provisions permit decree to be executed either by Court which passed it - Or by Court to which it is sent for execution - Court passing decree can also transfer it for execution to any Subordinate Court of competent **jurisdiction**.