**LANDMARK JUDGMENTS UNDER ARBITRATION ACT.**

**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**

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

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| 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**

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

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| 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. |

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| 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**

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

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| 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. |

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| 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.

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| 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. |

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| 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.**