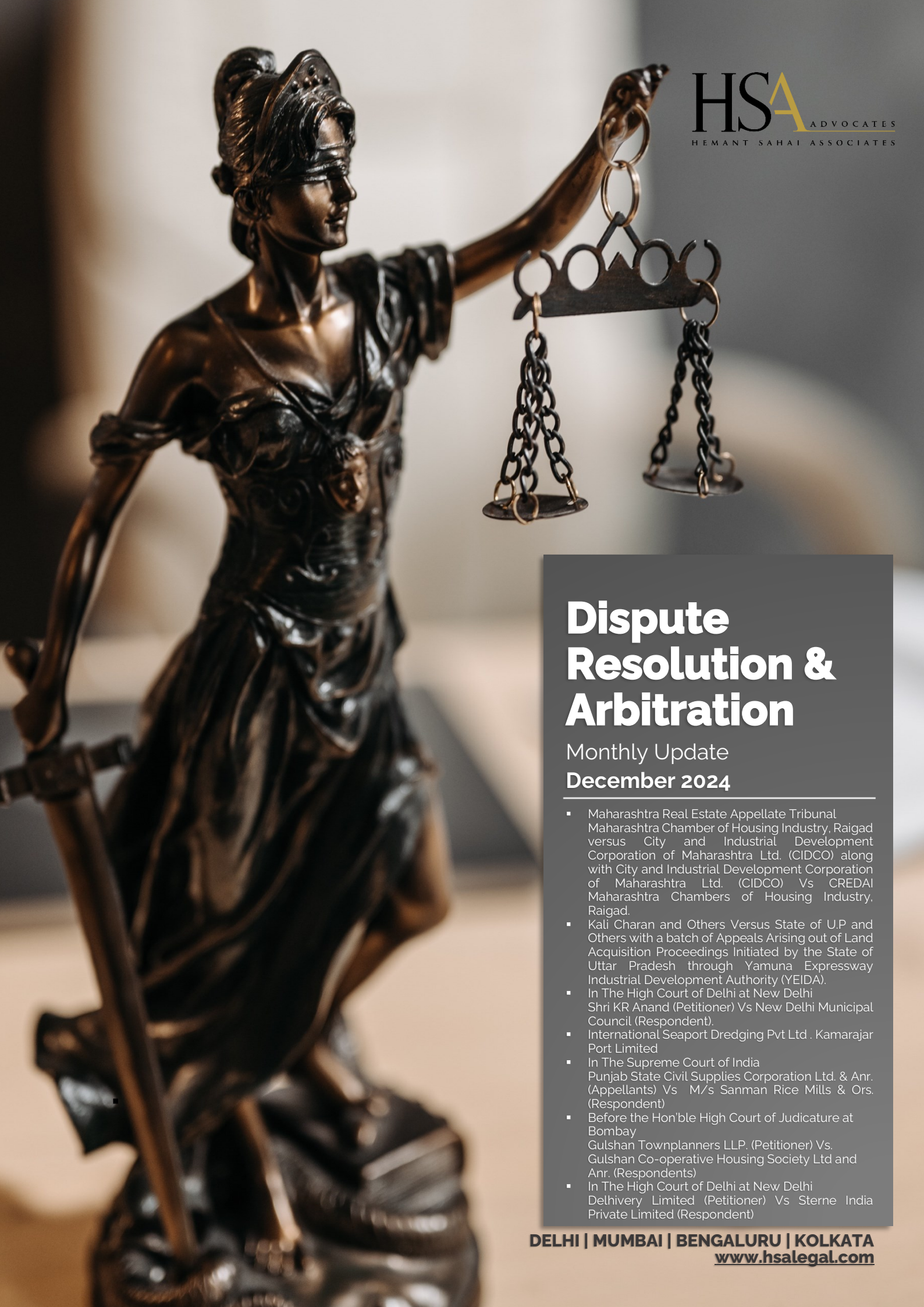


HSA ADVOCATES
HEMANT SAHAI ASSOCIATES

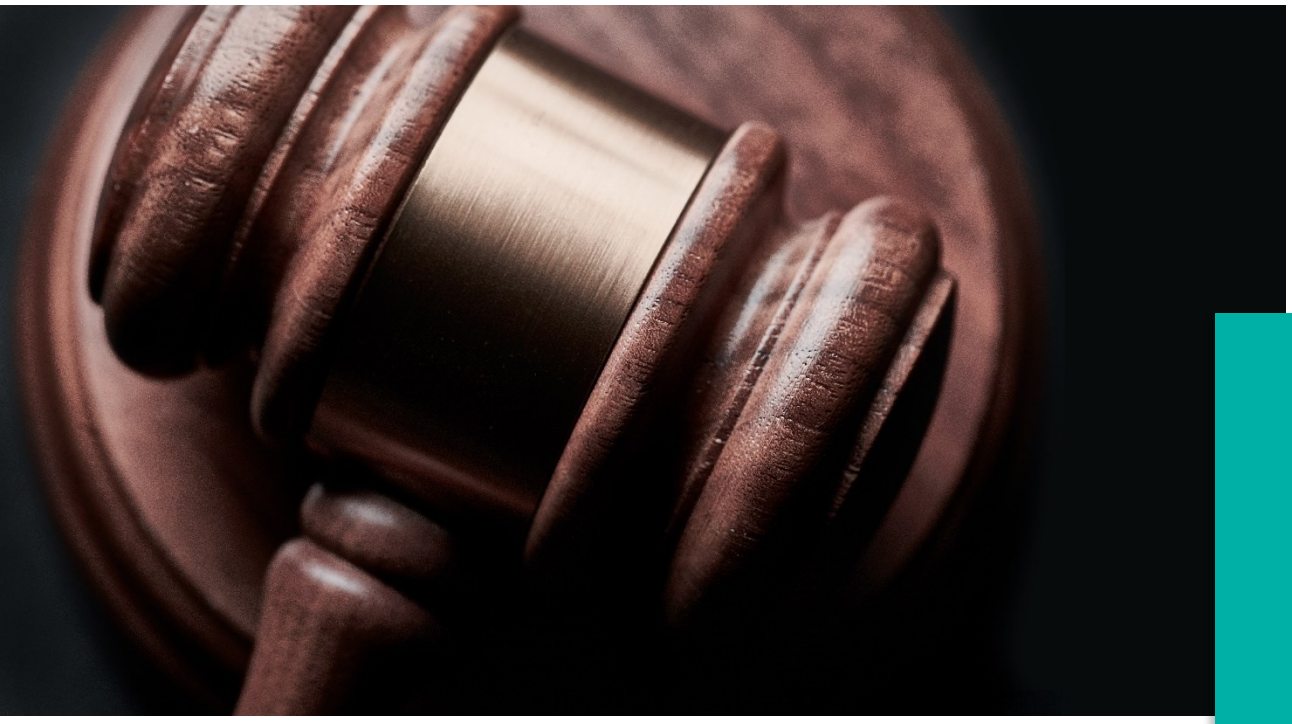
Dispute Resolution & Arbitration

Monthly Update

December 2024

- Maharashtra Real Estate Appellate Tribunal
  Maharashtra Chamber of Housing Industry, Raigad versus City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) along with City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) Vs CREDAI Maharashtra Chambers of Housing Industry, Raigad.
- Kali Charan and Others Versus State of U.P and Others with a batch of Appeals Arising out of Land Acquisition Proceedings Initiated by the State of Uttar Pradesh through Yamuna Expressway Industrial Development Authority (YEIDA).
- In The High Court of Delhi at New Delhi
  Shri KR Anand (Petitioner) Vs New Delhi Municipal Council (Respondent).
- International Seaport Dredging Pvt Ltd . Kamarajar Port Limited
- In The Supreme Court of India
  Punjab State Civil Supplies Corporation Ltd. & Anr. (Appellants) Vs M/s Sanman Rice Mills & Ors. (Respondent)
- Before the Hon'ble High Court of Judicature at Bombay
  Gulshan Townplanners LLP. (Petitioner) Vs. Gulshan Co-operative Housing Society Ltd and Anr. (Respondents)
- In The High Court of Delhi at New Delhi
  Delhivery Limited (Petitioner) Vs Sterne India Private Limited (Respondent)

DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Maharashtra Real Estate Appellate Tribunal

Maharashtra Chamber of Housing Industry, Raigad versus City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) along with City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) versus CREDAI Maharashtra Chambers of Housing Industry, Raigad.

Appeal No. U-18 Of 2019 in Complaint No. SC10000474 A/W Appeal No. U-27 Of 2019 in Complaint No. 10000474

Background facts

- Maharashtra Chamber of Housing Industry had filed a complaint before Maharashtra Real Estate Appellate Tribunal alleging that CIDCO has failed to register themselves as Promoter under Section 3 of RERA, 2016 after launching several schemes.
- Further, CIDCO had launched several schemes with regards to the allotment, disposal and sale of land plots to Maharashtra Chamber of Housing Industry members through advertisements, marketing and tenders.
- The Authority dismissed the complaint through an Order dated June 3, 2019. It ruled that CIDCO's sale transactions involved immovable property lacking necessary development permissions from the Competent Planning Authority. Consequently, these transactions do not qualify as sales for plotted development under the definition of a Real Estate Project.
- Further, in Paragraph 8 of the Order, the Authority clarified that if the Complainant's building projects on the CIDCO-purchased plots require essential infrastructure (such as roads or utilities) to be provided by CIDCO, then the Complainant or their members may designate CIDCO as a promoter (landowner) during MahaRERA project registration.
- Aggrieved by the Authority's Order dated 03.06.2016, both parties filed Appeals before the Tribunal seeking to quash, set aside or modify the impugned Order.

Issue(s) at hand

- Whether CIDCO falls under the definition of a Promoter for town development activities.
- Whether those town development activities are required to be registered under RERA.
- Whether the provisions of RERA apply to CIDCO which is a statutory government organization given its functions under the MRTP Act, 1966.

Arguments of the Parties

- Arguments by the Appellant- MCHI

  The Counsel for the Appellants stated that considering the provisions under Section 2(b)- for advertisement, Section 2(d)-of Allottees, Section 2(s)- Development, Section 2(t)-for Development works, Section 2(zg)-Person, Section 2(zn)- for Real Estate project and Section 2(zk) of the Act, development activities under the said scheme are real estate project, CIDCO fulfils all the criterion of the promoter of Real Estate project under the said schemes for sale/disposal of the planned land plots in accordance with the procedure prescribed in Navi Mumbai Land Disposal (Amendment) Regulation, 2008 for development of City of Navi Mumbai over the land acquired/ placed at its disposal by the Government. Thus, CIDCO being a "promoter", is compulsorily required to register itself as a promoter before the MahaRERA under the Act prior to commencement of the auctions of the subdivided plots.

  Further, argued that Members of the MCHI are in the business of the real estate constructions and developments, who get allotment of these plots after becoming successful bidders in the said tenders floated by CIDCO under the said scheme. Thus, members of MCHI are allottees under Section 2(d) of the Act. Accordingly, the said schemes of CIDCO are real estate project development activities under the provisions of the Act and therefore, the members of the MCHI have rights of the allottees under the Act inter alia under Section 19 and CIDCO is a promoter.

  Subsequently the counsel submitted that, whereas Section 3 of the Act specifically mandates prior registration before the promoter advertise, market, sell and invite person for the purchase of plots. However, CIDCO despite being promoter, has been routinely marketing/ tendering the subdivided plots of lands without registration, has failed to fulfil its obligations including for the removal of the encroachment/ encumbrances without carrying out final demarcations of the tendered plots in the scheme booklet(s). These deficiencies are causing inordinate delay, harassment to allottees and consequent delay in completion of the project construction undertaken by the allottees.

  Further CIDCO, despite being promoter has not been complying with the preamble/objectives of the Act to carry out the sale of plots in an efficient and transparent manner, transparencies of the contractual conditions are not being maintained besides not establishing symmetry of information between the promoter and the purchasers, Therefore, the interest of the allottees/real-estate consumers and of its members of MCHI are not being protected. This is despite the fact that the provisions of the Act do not exclude the public Authorities.

- Arguments by the Respondents-CIDCO

  MahaRERA has correctly held in para 7 of the impugned order that buyers of the said plots are real estate developers, who have to seek approvals from the Competent Planning Authority before development of the said plots and thereafter, such proposed building construction/ project development works have to be registered with MahaRERA under the Act. Accordingly, buyers of the CIDCO plots will be promoters of those plots. Participants of the tender(s) of the plots are required to comply with the terms and conditions of the tenders. Therefore, the conclusions recorded in para 7 of the impugned order do not require any interference in the captioned appeals.

  Further, argued that "Real Estate project" defined under Section 2(zn), and the "Development" under Section 2 (s) respectively under the Act do not cover the disposal of plots and these plots are not being developed by CIDCO but are merely disposed of by selling these plots to 3'd parties by public tendering process. Therefore, only the 3'd party purchasers are required to register the said plots if these are intended to be developed by constructing apartments/buildings thereon, Section 2(zn) and 2(s) of the Act do not cover the disposal of plots as real-estate project and development respectively, which are not personally developed by CIDCO itself and are merely sold to 3'd parties by public tender.

  Subsequently the counsel submitted that, the aims and objectives of the Act are to ensure the sale of such plots in an efficient and transparent manner to protect the interests of the real estate consumers. But, neither CIDCO nor MCHI members are the real-estate consumers qua disposal of such plots. Therefore, CIDCO is not promoter under Section 2(zk) of the Act.

  In addition to the aforesaid, the counsel submitted that the Lands are disposed of under the NMDLR by tendering process on the conditions inter alia "as is where is basis" on lease terms and the prospective bidders are required to visit/ inspect the status of the proposed plots including existing infrastructures thereon before putting their bids. Tender conditions stipulate for compliance of the provisions of the Act by the successful bidders (members of the MCHI) including for registration as

promoter of the proposed real estate project. Therefore, CIDCO is not bound to be registered for such real estate project as promoter nor as promoter (land development).

Findings of the Court

The Tribunal examined three key issues related to CIDCO's role and obligations under the Real Estate (Regulation and Development) Act, 2016 (RERA).

Issue 1: CIDCO's Role as a Promoter

- The Tribunal referred to Sections 2(t) and 2(zn) of RERA, which define "development work" and "real estate project." Based on these provisions, the Tribunal concluded that CIDCO's activities, including transforming raw land into planned layout plots, fall under the definition of "real estate projects." Therefore, CIDCO is considered a promoter (town development) for its development activities.

Issue 2: Registration Requirements under RERA

- The Tribunal observed that Section 3 of RERA mandates that no promoter, including CIDCO, can advertise, market, sell, or invite people to purchase any plot in a real estate project without first registering the project with MahaRERA. Consequently, CIDCO must register its projects with MahaRERA before selling, advertising, or marketing any land exceeding 500 square meters.

Issue 3: Conflict between RERA and MRTP

- The Tribunal clarified that the objectives and reasons behind RERA and the Maharashtra Regional and Town Planning (MRTP) Act, 1966, do not conflict with each other. In case of any conflict, RERA, being a central legislation, would prevail over MRTP, which is a state legislation. Section 89 of RERA reinforces this position, stating that RERA's provisions will take precedence over any conflicting laws, including MRTP. This means that RERA applies to CIDCO, a statutory government organization, and its provisions have overriding authority in case of any conflict with other laws.

HSA
Viewpoint

We observe that, The Tribunal correctly interpreted Sections 2(t) and 2(zn) of RERA, establishing that CIDCO's land development and plot sales activities qualify as "real estate projects." Thus, CIDCO is rightfully considered a promoter (town development) under RERA.

It is clear that, the Tribunal's ruling that CIDCO must register its projects with MahaRERA before advertising, marketing, or selling plots exceeding 500 square meters, as mandated by Section 3 of RERA.

Furthermore, we agree that RERA and the Maharashtra Regional and Town Planning (MRTP) Act, 1966, do not conflict, and in case of any conflict, RERA's provisions will prevail.

Kali Charan and Others Versus State of U.P and Others with a batch of Appeals Arising out of Land Acquisition Proceedings Initiated by the State of Uttar Pradesh through Yamuna Expressway Industrial Development Authority (YEIDA).

2024 SCC OnLine SC 3472

Background facts

- Purpose of Acquisition

  The State of Uttar Pradesh initiated land acquisition in District Gautam Budh Nagar under the Yamuna Expressway Industrial Development Authority (YEIDA) for planned development.

  A policy for "Planned Development along the Taj Expressway" (dated 29-12-2007) was implemented to develop a **Special Development Zone (SDZ)**, which included areas for roads, open spaces, commercial, institutional, residential, and recreational purposes.

- Land in Question

  The acquired land, designated as **'Abadi Bhoomi,'** was being used by landowners for dwelling and rearing cattle, holding personal and social value.

- Process of Acquisition

  A notification under **Section 4(1)** of the Land Acquisition Act was issued on **26-02-2009**.

  The **urgency provisions (Sections 17(1) and 17(4))** were invoked, allowing the acquisition without hearing objections under **Section 5-A**.

  The final notification under **Section 6** was issued on **19-02-2010**.

- Objections by Landowners

  Landowners opposed the acquisition, citing the social and personal significance of their land.

  Representations were made to the Chief Executive Officer of YEIDA, which were ignored, leading to the continuation of the acquisition process.

- Litigation History

  Multiple writ petitions were filed in the Allahabad High Court challenging:

  - Invocation of urgency provisions under Sections 17(1) and 17(4).
  - Violation of their right to be heard under Section 5-A.

  The High Court delivered **divergent rulings**

  - In Kamal Sharma v. State of U.P[1]., the Court upheld the acquisition.
  - In Shyoraj Singh v. State of U.P[2]., the acquisition was quashed.

  Dissatisfied with these rulings, landowners and YEIDA approached the Supreme Court

Issue(s) at hand?

- Was the acquisition part of an **Integrated Development Plan** for the Yamuna Expressway?
- Was the invocation of **urgency provisions (Sections 17(1) and 17(4)) justified,** and was it legal to dispense with the hearing under Section 5-A?
- Which **High Court ruling** sets the correct legal precedent: Kamal Sharma (**upholding acquisition**) or Shyoraj Singh (**quashing acquisition**)?
- Should the **compensation** granted by the High Court in Kamal Sharma be further enhanced?

Findings of the Court

- Integrated Development Plan
  - The Court held that the acquisition was **part of a comprehensive development plan** for the Yamuna Expressway.
  - It relied on the precedent set in *Nand Kishore Gupta v. State of U.P.* (2010)[3], affirming that such acquisitions serve the **public interest** by promoting regional development
- Justification of Urgency Provisions (Sections 17(1) and 17(4))

[1] *Writ-C No. 26767 of 2010 - Allahabad High Court*

[2] *Writ-C No. 30747 of 2010 -Allahabad High Court*

[3] *10 SCC 282*

- The urgency provisions were invoked legally and justifiably, as the acquisition was for planned development.
- Dispensing with the enquiry under Section 5-A was found appropriate, aligning with the objectives of rapid development

- High Court Rulings – Correct Precedent
  - The Supreme Court upheld the view taken by the Allahabad High Court in *Kamal Sharma v. State of U.P.*, which relied on *Nand Kishore Gupta v. State of Uttar Pradesh (2010) 10 SCC 282*, as laying down the correct proposition of law. It held that the judgment in *Shyoraj Singh v. State of U.P.*, which relied on *Radhy Shyam v. State of U.P.*[4] *(2011) 5 SCC 553*, was legally incorrect and passed **per incuriam** for overlooking earlier binding precedents. The Court appreciated the High Court's thorough analysis of the factual and legal matrix in *Kamal Sharma*, including its equitable approach of affirming the acquisition while ensuring additional compensation for the landowners. This acknowledgment reinforced the High Court's fairness in balancing public interest with individual rights, and the Supreme Court fully endorsed its findings and reasoning.
  - It was noted that *Kamal Sharma* was based on a thorough analysis of the records and ensured fairness by granting additional compensation.
- Compensation
  - The High Court in *Kamal Sharma* awarded an additional compensation of **64.7%** as a "No Litigation Bonus" under a Government Order (dated 04-11-2015).
  - The Supreme Court found this compensation adequate and did not direct further enhancement.
  - However, the Court clarified that parties may still challenge issues regarding the **non-issuance of the final award** separately.

HSA
Viewpoint

The Supreme Court's judgment strikes a careful balance between the State's developmental imperatives and the landowners' rights, upholding the invocation of urgency provisions under Sections 17(1) and 17(4) of the Land Acquisition Act, 1894, as justified in the context of a critical infrastructure project like the Yamuna Expressway. By validating the acquisition as part of an integrated development plan, the Court emphasized the public interest in fostering regional growth while addressing individual grievances through enhanced compensation. The 64.7% "No Litigation Bonus" reflects a fair attempt to mitigate the socio-economic impact on affected landowners, ensuring equitable treatment across the board. However, the judgment underscores the need for judicious use of urgency provisions, transparency in the acquisition process, and innovative compensation mechanisms to address the non-monetary value of land. By aligning with precedents like Nand Kishore Gupta, the Court ensures consistency in its reasoning, but it also highlights the delicate balance between collective welfare and individual property rights, reinforcing the importance of fairness and equity in land acquisition processes.

[4] (2011) 5 SCC 553

In The High Court of Delhi at New Delhi
Shri KR Anand (Petitioner) Vs New Delhi Municipal Council (Respondent)

Arbitration Petition No. 1776 of 2024

Background facts

- New Delhi Municipal Council ("Respondent") issued a notice inviting tender for construction of park and ride and holding facilities at the Safdarjung Airport for the Commonwealth Games which were held in 2010.
- Shri KR Anand ("Petitioner") and respondent entered into an Agreement ("agreement") on December 4th 2009 for construction of park and ride and holding facilities at the Safdarjung Airport for the Commonwealth Games.
- As per the agreement the project was to be completed in two phases for a consideration of Rs. 32,40,73,665/-. The said agreement also contained an arbitration clause for resolving disputes arising out of the agreement.
- Dispute arose between the parties on account of alleged outstanding monetary entitlement of the Petitioner pursuant to which the Petitioner sent a demand notice on May 28th 2013 setting out its claims. The said demand notice also mentioned that if the dues of the Petitioner were not settled in the next 15 days the matter would be referred to Superintending Engineer in terms of the arbitration clause in the agreement.
- The aforesaid demand notice was followed up by letters dated June 17th 2013 and July 27th 2013 calling upon the concerned Superintending Engineer for settling the disputes.
- However, only after a period of 10 years the Petitioner seeks for appointment of Arbitral Tribunal for settling the disputes.
- In view of the same the Petitioner filed a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 ("Act") for appointment of Sole Arbitrator.

Issue at hand?

- Whether an Arbitrator can be appointed under Section 11 of the Act after a delayed period of 10 years?

Findings of the Court

- The Hon'ble court relied on the judgement in the case of ***SBI General Insurance Co. Ltd. v. Krish Spinning***[1], wherein it was held that the scope of a petition for appointment of Sole Arbitrator under Section 11 of the Act is only limited to ascertaining the existence of an arbitration agreement and all other issues can be raised before the Sole Arbitrator.
- The Hon'ble court clarified that objections regarding limitation or jurisdiction, including whether the claims are time-barred, must be raised before the arbitrator, as these issues require detailed examination and are beyond the scope of the court at this stage.
- The Hon'ble Court placed great reliance on the judgement in the case of ***Perkins Eastman Architects DPC v. HSCC (INDIA) Limited***[2] ***and TRF Limited v. Energo Engineering Projects Limited***[3] ***and Bharat Broadband Network Limited v. United Telecoms Limited***[4] wherein it was held that if the existence of the arbitration agreement is apparent from a perusal of the Agreement between the parties, there is no impediment to appointing a Sole Arbitrator for adjudicating the disputes between the parties.
- The Hon'ble Court further clarified that The respondent shall be entitled to raise appropriate objections as regards limitation/jurisdiction, if any, before the learned sole arbitrator which shall be duly considered and decided by the learned sole arbitrator before adjudication of the claim/s on merits.
- In view of the above the Hon'ble Court appointed a Sole Arbitrator to adjudicate the disputes between the parties and disposed the present petition.

HSA
Viewpoint

This decision reaffirms and makes it clear that the scope of proceeding under Section 11 (6) of the Act is limited to asserting whether there exists a valid arbitration agreement between the parties. The decision further clarifies that the Court shall not find any obstacle in appointing a Sole Arbitrator if the arbitration agreement is apparent from the perusal of the agreement entered between the parties. The significance of this decision is that it removes all ambiguities and makes it clear that objection with regards to limitation and other aspect have to be raised before the Sole Arbitrator and the same cannot be considered in a proceeding under Section 11 of the Act.

[1] MANU/SC/0719/2024
[2] MANU/SC/1628/2019
[3] MANU/SC/0755/2017
[4] MANU/SC/0543/2019

International Seaport Dredging Pvt Ltd v. Kamarajar Port Limited

2024 INSC 827

Background facts

- Kamarajar Port Limited (**"Respondent"**) issued a Letter of Award to International Seaport Dredging Pvt. Ltd. (**"Appellant"**) for executing Capital Dredging Phase-III at Kamarajar Port, valued at approximately INR 274 crores. Both the parties entered into a contract on August 12, 2015, encompassing extensive capital dredging activities, which were to be completed by April 11, 2017.
- However, disputes arose between both the parties and the Appellant invoked the arbitration agreement. On March 7, 2024, the three-member arbitral tribunal issued an award in favour of the Appellant, directing the Respondent to pay INR 21,07,66,621 with interest at 9% per annum from November 15, 2017, escalating to 12% until payment. Further, the tribunal awarded costs of INR 3,20,86,405, later increased by INR 12 lakhs under Section 33 of the Arbitration and Conciliation Act, 1996 (**"A & C Act"**).
- The Respondent being dissatisfied with the arbitral award invoked Section 34 of the A & C Act and challenged the award on substantive grounds. On September 9, 2024, the Madras High Court conditionally granted a stay, directing the Respondent to furnish a bank guarantee equivalent to the principal sum of INR 21,07,66,621 within eight weeks.
- The Appellant challenged the High Court's decision before the Hon'ble Supreme Court of India ("**SC**"), arguing that the arbitral award is akin to a money decree under Section 36 of the A & C Act and should remain enforceable unless a stay is appropriately granted.
- The Respondent defended the High Court's decision, asserting its position as a statutory body rather than a "fly-by-night operator," thereby justifying the adequacy of a bank guarantee as security for the stay. It contended that Sections 34 and 36 of the A & C Act read with Order XLI Rule 5 of the Code of Civil Procedure (**"CPC"**), empower courts with discretion to determine the type of security required.

Issue at hand?

- Whether the High Court was justified in directing the respondent to furnish a bank guarantee for the principal amount alone, instead of requiring the deposit of the entire awarded amount, as a condition for granting a stay on the execution of the arbitral award under Section 36 of the Arbitration and Conciliation Act, 1996?

Findings of the Court

- At the outset, SC examined Section 36(2) of the A & C Act, which provides that filing an application under Section 34 to set aside an arbitral award does not automatically render the award unenforceable unless the court grants a stay in accordance with Section 36(3). Further, SC noted that the 2015 amendment to the Act introduced two provisos to Section 36(3). The first mandates that, in cases involving monetary awards, courts must consider the provisions for granting a stay of a money decree under the Civil Procedure Code. The second allows the court to grant an unconditional stay in certain circumstances.
- The SC then noted that the High Court, while directing the Respondent to furnish a bank guarantee, addressed only one claim related to the refund of cess under the Building and Other Construction Workers Welfare Cess Act, 1996, ignoring the remaining claims of approx. INR 18 crores. It granted a stay on the award, conditioned on the Respondent furnishing a bank guarantee for the principal amount of INR 21,07,66,621, but refrained from issuing orders regarding interest and costs, citing the Respondent's status as a statutory body. The SC emphasized that arbitration law must apply equally to all parties, regardless of their nature.
- The SC then referred to the case of ***Pam Developments Pvt. Ltd. v. State of West Bengal***[1] and observed that the phrase "having regard to" the provisions of the CPC in Section 36 of the A & C Act is directory, not mandatory. The CPC serves as a guiding factor but must align with the Arbitration Act, which is a self-contained statute. The SC stressed that arbitration aims for quick dispute resolution, and granting automatic stays against the government would defeat this purpose. Therefore, the government should not receive special treatment under Section 34, and all parties must be treated equally as per Section 18 of the Arbitration Act.
- Further, SC observed that the High Court erred in not considering the entirety of the arbitral award in favour of the Appellant, which included claims beyond the issue of cess. Additionally, the High Court improperly based its decision to grant a stay on the Respondent's status as a statutory

[1] (2019) 8 SCC 112

authority. The A & C Act, being a self-contained code, does not distinguish between governmental and private entities.

- The SC emphasized that decisions regarding the reliability of a party should not depend on subjective factors such as the size or reputation of the entity. It is inappropriate for courts to apply such standards when determining conditions for granting a stay on an arbitral award. Furthermore, the form of security required should not vary based on whether the party is a government entity or a private one. All parties must be treated equally under the Arbitration Act, except where specifically provided by law.
- SC then placed reliance on ***Toyo Engineering Corpn. v. Indian Oil Corpn. Ltd***[2] wherein it was held that the discretion to grant a stay on enforcing arbitral awards should not be based on the involvement of public corporations or the size of the amounts involved. The SC emphasized that these factors are irrelevant and that the principles under Order XLI Rule 5 of CPC must apply consistently, regardless of the party's status.
- In view of the above and after considering the guiding principles under Order XLI Rule 5 of the CPC, the SC found the High Court's order to be insufficient and accordingly modified it. The SC directed the Respondent to deposit 75% of the decretal amount, inclusive of interest. The stay on enforcement of the arbitral award remained and was conditional upon the respondent's compliance with this deposit requirement. Consequently, the High Court's impugned judgment was modified, and the appeal was allowed.

HSA
Viewpoint

This judgment upholds the principle of equality in arbitration, ensuring that government entities are not granted preferential treatment. In delivering this decision, the Hon'ble Supreme Court highlighted that the conditions for granting a stay on the enforcement of an arbitral award must strictly adhere to the statutory provisions of the Arbitration and Conciliation Act, 1996. The Supreme Court further clarified that while the Civil Procedure Code may provide relevant guidance, it cannot supersede the comprehensive framework of the Arbitration Act. This decision emphasizes that under arbitration law, all parties be it governmental or private are to be treated equally. This approach is a welcome one and the Hon'ble Supreme Court judiciously acted in modifying the High Court's judgement.

[2] 2021 SCC OnLine SC 3455

In The Supreme Court of India

Punjab State Civil Supplies Corporation Ltd. & Anr. (Appellants) Vs M/s Sanman Rice Mills & Ors. (Respondent)

2024 INSC 742

Background facts

- This case revolves around a contractual dispute between the two parties related to milling services. Punjab State Civil Supplies Corporation Ltd.(**"PUNSUP"**), a government corporation responsible for the procurement, storage, and supply of food grains in Punjab, entered into a milling services agreement with Sanman Rice Mills.
- According to the terms of the agreement, PUNSUP was to supply paddy to Sanman rice mills and return the processed rice to PUNSUP within the stipulated timeframe.
- Pursuant to the agreement, PUNSUP supplied paddy to Sanman Rice Mills with the understanding that the milled rice would be returned in predetermined quantities, accounting for a permissible margin for wastage and quality maintenance.
- Sanman Rice Mills failed to deliver the processed rice in the stipulated quantity, resulting in a substantial deficit. PUNSUP contended that this deficit constituted a breach of the contractual obligations, asserting that Sanman Rice Mills had not performed its milling duties, as agreed and was consequently liable for the value corresponding to the rice shortfall.
- As per the arbitration clause in the agreement, PUNSUP proceeded with arbitration proceedings to recover the damages incurred. The arbitrator sided with PUNSUP and directed the respondent to pay damages for the rice shortfall i.e., Rs.2,67,66,804/- (along with an interest rate of 12% per annum), as compensation.
- Aggrieved by the arbitral award, Sanman Rice Mills sought its annulment under Section 34 of the Arbitration and Conciliation Act, 1996 (**"Arbitration Act"**), which permits a party to apply for setting aside an award on grounds such as contravention of public policy, procedural irregularities, or manifest illegality.
- The primary focus of this challenge was whether the arbitral award adhered to public policy standards and whether the arbitrator's interpretation of the contractual provisions was accurate.

Issue at hand?

- Whether the Appellate Court exercising its powers under Section 34 of the Arbitration and Conciliation Act, 1996 justified in setting aside the arbitral award?

Findings of the Court

- The Supreme Court (**"SC"**) reiterated that Section 34 of the Arbitration Act's judicial scope is confined to procedural irregularity, violation of public policy, or illegality.
- SC affirmed that the arbitral award dated 08.11.2012 was lawful and could not be overturned by the court under Section 34, merely because the court had a different interpretation of the terms of the contract, from that of the arbitrator. It opined that the arbitrator had discharged due diligence in ascertaining the arbitral award.
- The SC observed that the Appellate Court's power under Section 37 is circumscribed by the same limitations as Section 34 of the Arbitration Act. The Court concluded that the Appellate Court erred in setting aside the award as it failed to substantiate any grounds as material misinterpretation of the contract or breach of natural justice.
- The Court referred to its earlier decision in ***Bharat Coking Coal Ltd. v. L.K. Ahuja***[1], where it was held that courts should respect the arbitrator's findings unless the award is entirely unreasonable or perverse. The arbitrator's conclusions should stand if they represent a reasonable interpretation of the facts and contract, even if alternative interpretations might exist.
- The Supreme Court also referred to ***Dyna Technology Private Limited v. Crompton Greaves Limited***[2], wherein the SC has emphasized the limited scope for challenging an arbitral award under Section 34 of the Arbitration Act. The judgment held that courts should refrain from interfering with arbitral awards unless the award is so perverse that it fundamentally undermines the matter

[1] AIRONLINE 2004 SC 590

[2] AIRONLINE 2019 SC 1928

and lacks any sustainable alternative interpretation. Section 34 is not intended to provide appellate jurisdiction but is designed to uphold the finality of arbitral awards and respect the parties' autonomy in choosing alternative dispute resolution.

- The court clarified that challenges to arbitral awards under Section 34 are confined to specific grounds, like violation of public policy. Section 37 limits the appellate court's jurisdiction to reviewing the decision made under Section 34. The appellate court is not empowered to delve into the merits of the arbitral award or reevaluate the evidence as if it were a regular appeal. Instead, its role is supervisory, akin to the civil court's revisionary powers, ensuring that the Section 34 court acted within its statutory boundaries.
- Section 34 proceedings are summary in nature, unlike a full civil trial, and Section 37 proceedings are similarly concise. This procedural limitation underscores the importance of respecting arbitral finality unless there is a compelling legal reason to intervene.
- The SC concluded that the appellate court had overstepped its jurisdiction by setting aside the Section 34 order without adequate legal grounds, effectively attempting to reassess the arbitral award's merits. The SC set aside the appellate court's order, restoring the arbitral award dated 08.11.2012.

HSA
Viewpoint

This decision reaffirms the principle that arbitral awards are not subject to annulment simply due to a differing opinion by an appellate court regarding the merits of the case. Judicial interference is warranted only when the award is manifestly perverse or in direct contravention of the governing statute, the parties' agreement, public policy or substantive law. Accordingly, the Supreme Court overturned the appellate judgment, thereby reinstating the enforceability of the arbitral award. This reinforces the fundamental tenet that arbitration should provide a final and binding resolution, with judicial review being reserved exclusively for situations involving significant legal violations.

Before The Hon'ble High Court of Judicature at Bombay Gulshan Townplanners LLP. (Petitioner) Vs. Gulshan Co-operative Housing Society Ltd and Anr. (Respondents)

Commercial Arbitration Petition (L) No. 34078 of 2023

Background facts

- The dispute in the present case arose between Gulshan Townplanners LLP ("**Petitioner**"), a developer, which had entered into a Redevelopment Agreement ("**RDA**") and a Supplementary Agreement ("**SA**") in 2022, with the Gulshan Cooperative Housing Society Ltd. ("**Society**"), consisting of eleven members. The above-mentioned two agreements were duly signed by all eleven members of the Society, being desirous of initiating a redevelopment of the Society.
- In the plot of land, pertaining to the dispute in the present case, two structures (apartment buildings) in the name of "A-wing" and "B-wing" were constructed more than 30 years ago. While the flats in A-wing were owned by the individual flat-owners, being the eleven members of the Society, the entirety of B-wing was owned and managed by one Mr. Baiju Mahendra Doshi ("**Respondent No. 2**"), who had acquired the said B-wing in the year of 1993. It is pertinent to note that Respondent No. 2, neither signed the agreements nor is a member of the Society.
- Respondent No.2 continued his independent ownership of B-wing, wand the said B-wing has also been independently assessed for property tax since 2001, moreover B-wing had separate and independent water and electricity connects, the bills of which were paid by Respondent No. 2. In 2006, the eleven members of A-wing registered and formed the Society, however Respondent No. 2 never applied to become a member of the said Society, neither was he deemed to be a member of the same.
- In 2018, the Society resolved to undergo redevelopment but faced non-cooperation from Respondent No. 2, as he did not consent to the same. Thereafter, the Society in 2019 applied for a unilateral deemed conveyance in respect of the entire property in 2020, which was granted by the competent authority. However, the grant of the said deemed conveyance was contested by the Respondent No. 2 through a Writ Petition before the Hon'ble High Court of Bombay ("**Hon'ble Court**"). Pursuant thereto, the Society made repeated attempts to secure Respondent No. 2's consent for redevelopment to no avail, which resulted in the dispute escalating between the parties. The Petitioner, in light of the arbitration clause in the RDA, preferred present Petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("**Act**"), before the Hon'ble Court.

Issue at hand?

- Whether the Petitioner can seek relief under Section 9 of the Act against Respondent No. 2, who is neither a member of the Society nor a signatory to the arbitration agreement contained in the RDA?

Findings of the Court

- The main contention advanced by the counsel for the Petitioner was that in light of the grant of the deemed conveyance in favour of the society, there was no doubt that the Society was the rightful owner of the said land, as well as the A-wing and B-wing constructed upon the said land. Furthermore, it was submitted that although Respondent No. 2 claimed ownership of 'B' Wing, along with rights to the land beneath it, no legal steps had been taken by Respondent No. 2 in furtherance thereof.
- The Hon'ble Court, at the outset, noted that, in order for a party to seek reliefs Section 9 of the Act against another party, an arbitration agreement must necessarily exist between the disputing parties. The Hon'ble Court observed that from the facts of the present Petition, it is evident that Respondent No. 2 was not a party to the RDA, under the arbitration clause of which the Petitioner had sought reliefs under Section 9 of the Act. Accordingly, the Hon'ble Court emphasized that Section 9 of the Act cannot be invoked to impose obligations on third parties, who are not a party to the arbitration agreement under which Section 9 proceedings are initiated.
- Additionally, the Hon'ble Court also emphasized that a Petition under Section 9 of the Act requires a clear intention to initiate arbitration proceedings. In this instant case however, no such intention seemed to exist, as there was no dispute between the Petitioner and any member of the Society. Therefore, the Hon'ble Court held that it was clear that as no arbitration was intended, the Petitioner cannot seek interim relief under Section 9 of the Act.
- The Hon'ble Court observed that as the Respondent No. 2 was never a member of the Society, and had not signed the RDA itself, therefore the Respondent did not have any obligations under the RDA. Furthermore, the Hon'ble Court noted that the B-wing structure owned and maintained by the Respondent No. 2 had been treated as distinct from the Society, with independent utility

connections, tax assessments, and separate entrances. Consequently, the deemed conveyance obtained by the Society did not automatically entitle it to redevelop B-Wing without addressing Respondent No. 2's claims through appropriate legal proceedings, which were outside the scope of Section 9 of the Act.

- In light of the facts of the instant Petition, the Hon'ble Court opined that the Petitioner, by way of initiating the present proceedings, had attempted to misuse Section 9 of the Act. Therefore, the Hon'ble Court dismissed the Petition under Section 9 of the Act, and also imposed costs of INR 5,00,000 on the Petitioner.

HSA
Viewpoint

In our opinion, this judgment reinforces the principle that the provisions of the Act cannot be extended to bind non signatory third parties. The Hon'ble Bombay High Court's decision underscores the importance of privity of contract and the necessity of pursuing appropriate legal remedies against third parties. This judgment also highlights that the reliefs cannot be sought against a party, through an arbitration agreement under Section 9 of the Act, when there exists no intention to enter into arbitration at all.

In The High Court of Delhi at New Delhi
Delhivery Limited (Petitioner) Vs Sterne India Private Limited (Respondent)

Arbitration Petition No. 992 of 2024

Background facts

- Delhivery Limited ("Petitioner") and the Sterne India Private Limited ("Respondent") entered into a Delivery Services Agreement ("Agreement") on November 23rd 2020.
- Clause 19 of the said Agreement contained an arbitration clause which stated if the parties failed to resolve any disputes arising out or with respect to the said Agreement amicably within 15 days from the date on which the dispute was notified, such dispute would be referred to arbitration. The clause also stated that courts at New Delhi will have exclusive jurisdiction over the matters arising under the Agreement and the venue and seat of Arbitration shall be in Gurgaon.
- Disputes arose between the parties due to non-payment of the outstanding monetary dues payable to the Petitioner under the Agreement.
- Since the disputes could not be settled amicably, the Petitioner sent a notice dated April 10th 2024 to the Respondent for appointment of a Sole Arbitrator thereby invoking arbitration.
- However, since both the parties could not agree upon the appointment of a Sole Arbitrator, the Petitioner filed the present petition.

Issue at hand?

- Whether courts having exclusive jurisdiction would have the jurisdiction to appoint a Sole Arbitrator if the seat and venue of arbitration is in a completely different jurisdiction?

Findings of the Court

- At the outset, the Hon'ble Court analysed the arbitration clause in the Agreement and observed that the choice of seat of the arbitration is not unequivocal and Gurgaon has been referred to as the venue and seat of arbitration.
- The Hon'ble Court further observed that the exclusive jurisdiction provided in the arbitration clause, in the light of the peculiar language of the said clause, is not in the nature of a generic stipulation; rather, it is preferable to the conduct of arbitration proceedings.
- The Hon'ble Court thereby held that granting exclusive jurisdiction to a specific court for arbitration matters indicate a clear "contrary indicium" of intent. It establishes that the designated court having exclusive jurisdiction would be the juridical seat of arbitration.
- The Hon'ble court further relied on the judgements in the case of ***Hunch Circle Private Limited v. Futuretimes Technology India Pvt. Ltd***[1] and ***Virgo Softech Ltd. v. National Institute of Electronics and Information Technology***[2] wherein it was held that court having exclusive jurisdiction will have the jurisdiction for appointment of an Arbitrator under Section 11of the Arbitration and Conciliation Act, 1996 ("Act").
- The Hon'ble Court further placed reliance on the judgement in the case of ***SBI General Insurance Co. Ltd. v. Krish Spinning***[3] wherein it was held that the scope of examination under Section 11 of the Act is limited to determining the *existence* of an arbitration agreement. As the existence of an arbitration agreement is admitted in the present case, the Court does not have any difficulty to constitute an arbitral tribunal.
- In view of the above the Hon'ble Court appointed Justice (Retd.) Vinay Kumar Jain as the Sole Arbitrator to adjudicate the disputes between the parties and disposed this petition.

HSA
Viewpoint

This decision sets aside all ambiguities and clarifies that courts having exclusive jurisdiction over an arbitral proceeding do have the power to appoint an Arbitrator under Section 11 of the Act even if the venue or seat of the arbitration is in a different jurisdiction as may be provided in the Arbitration Agreement. This ruling also reinforces the principle that the scope of examination under Section 11 of the Act is limited to the extent of determining whether there exists a valid Arbitration Agreement.

[1] Arb. P. 1019/2021
[2] 2018 SCC OnLine Del 12722
[3] 2024 SCC OnLine 1754

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