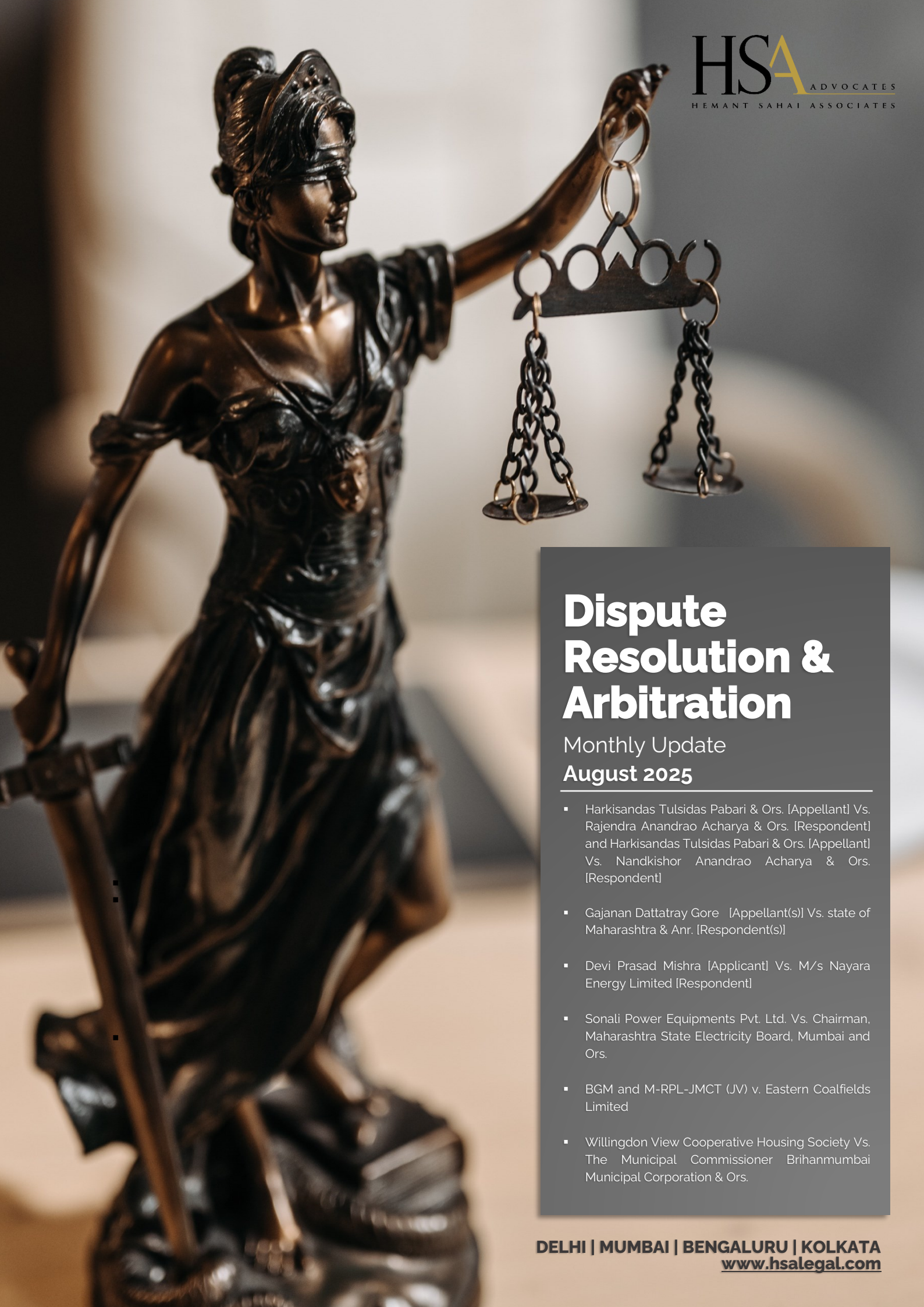

HSA ADVOCATES
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Dispute Resolution & Arbitration

Monthly Update

August 2025

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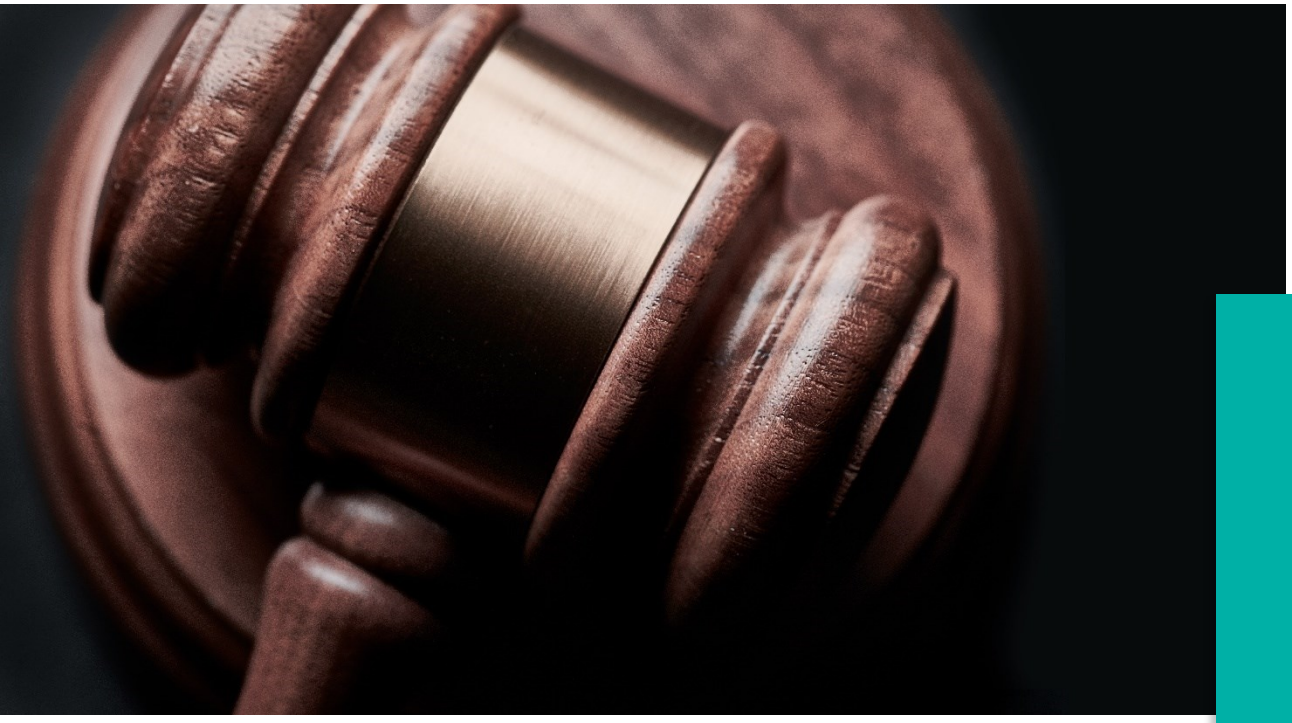
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Harkisandas Tulsidas Pabari & Ors. [Appellant] Vs. Rajendra Anandrao Acharya & Ors. [Respondent] & Harkisandas Tulsidas Pabari & Ors. [Appellant] Vs. Nandkishor Anandrao Acharya & Ors. [Respondent]

MANU/MH/4314/2025: 2025 BOMHC 1299

Background facts

- On July 20, 1994, Harkisandas Tulsidas Pabari, the Appellant, and others entered into a Memorandum of Understanding (MoU) with Rajendra Anandrao Acharya and Nandkishor Anandrao Acharya, the Respondents, for the sale of undivided shares in a property at Girgaon for ₹18 lakhs.
- On the same day, Rajendra and Nandkishor executed a General Power of Attorney in favour of Harkisandas and others, authorising them to develop the property and deal with tenants.
- Between 1994 and 1996, Harkisandas and others paid ₹7.5 lakhs to Rajendra and Nandkishor and began negotiating with tenants, securing consent from two of them.
- On November 04, 1996, Rajendra terminated the MoU citing non-payment of the second instalment and other alleged breaches; Harkisandas and others disputed this.
- On July 01, 1997, Harkisandas referred the dispute to arbitration, and later, on April 01, 1998, an award was passed in their favour.
- On September 28, 1998, the Bombay High Court set aside the award due to lack of a fair hearing.
- Harkisandas and others approached the same arbitrator, without a fresh notice under Section 21. Rajendra and Nandkishor objected to this, but however, the arbitrator proceeded.
- On September 21, 2005, the arbitrator again passed an award granting specific performance to Harkisandas and others.
- Rajendra and Nandkishor challenged the second award. On October 11, 2006, a Single Judge set it aside and imposed costs.
- Harkisandas and others filed the present appeals under Section 37 of the Arbitration and Conciliation Act, 1996.

Issue(s) at hand

- Whether the learned arbitrator was legally authorised to recommence proceedings post-setting aside of the initial award.
- Whether there was proper compliance with Section 21 of the Arbitration and Conciliation Act, 1996, requiring fresh notice to the Respondents.
- Whether the MoU constituted a concluded and specifically enforceable contract, or was uncertain and incapable of execution.

Findings of the Court

- The Court first held, that the arbitrator lacked authority to resume proceedings after the earlier award dated April 01, 1998 was set aside by the Bombay High Court on September 28, 1998. It clarified that the earlier order did not amount to a remand, and any fresh arbitration required compliance with statutory procedure.
- It was held that Section 21 of the Arbitration and Conciliation Act, 1996 was not complied with, as no fresh notice was served by Harkisandas Tulsidas Pabari and others on Rajendra and Nandkishor Acharya before re-commencing arbitration, a mandatory pre-condition when initiating arbitration proceedings afresh.
- The Court emphasized that Section 43(4) of the Arbitration Act applies only when arbitration is commenced afresh, further reinforcing that the proceedings could not have been resumed by the same arbitrator without proper procedure.
- The Court heavily relied on the Hon'ble Apex Court's directions in *Milkfood Ltd. v. GMC Ice Cream (P) Ltd.*,[1] but distinguished it, noting that in the present case, the arbitrator resumed proceedings without notice and without mutual consent, violating the basic requirements under Sections 21 and 11.
- It further upheld the Single Judge's conclusion that the Memorandum of Understanding (MoU) dated July 20, 1994, did not constitute a concluded and enforceable contract, as key obligations, like demolition vs. additional floors and tenant consent were left uncertain.
- The Court held that the specific performance granted by the arbitrator was not legally executable, since it was contingent upon tenant cooperation, a third-party factor outside the parties' control, rendering the award impractical and speculative.
- This affirms that the arbitrator had excluded vital contractual terms (especially Clauses 3 and 5 of the MoU) from consideration, which rendered the award perverse and unsustainable under Section 34 of the Arbitration Act.
- The Court reiterated that scope under Section 37 is even narrower than under Section 34, and found that the Single Judge had acted well within jurisdiction, not as an appellate court, but by identifying jurisdictional and legal infirmities in the award.
- Accordingly, the Court dismissed the appeals and refused to interfere with the order setting aside the award.

HSA
Viewpoint

The Bombay High Court has firmly reinforced the importance of procedural propriety and jurisdictional rigor in arbitration. This ruling upholds that an award made without proper reconstitution of the tribunal and non-compliance with Section 21 is legally unsustainable. Further, the Court's interpretation of the MoU underscores the requirement of clarity and enforceability in contracts sought to be specifically performed. By ensuring that parties cannot circumvent due process even after remand, the judgment safeguards the integrity of arbitral procedure while staying within the strict confines of Sections 34 and 37 of the Arbitration Act.

[1](2004) 7 SCC 288

In The Supreme Court of India

Gajanan Dattatray Gore [Appellant(s)] Vs. State of Maharashtra & Anr. [Respondent(s)]

2025 SCC OnLine SC 1571

Background facts

- On August 27, 2023, a Crime No. 652 was registered at Satara Police City Station against Gajanan Dattatray Gore (Appellant) under Sections 406, 408, 420, 467, 468, 471, 504 and 506 read with 34 of Indian Penal Code, 1860, alleging that he had siphoned off Rs. 1,60,00,000 from his employer's legitimate funds, following which he was arrested on August 17, 2023.
- When the trial court denied his bail application, the Appellant approached the Hon'ble Bombay High Court vide Criminal Bail Application No. 445/2024, following which on March 22, 2024, he voluntarily filed an affidavit-cum-undertaking, promising to (a) deposit Rs. 25,00,000 within 5 months (b) not to use the name "I can Institute" (c) not to use institute's logo for personal or business purposes.
- On April 01, 2024, the Hon'ble Bombay High Court granted bail on the compliance of said conditions, (a) Bond of Rs. 25,00,000 and deposit it with trial court (b) monthly reporting to the investigation officer (c) not tampering with the evidence. With due consideration, the Appellant was released on bail, noting that he was under custody for 7 months.
- However, the Appellant failed to deposit the bond of Rs. 25,00,000 with the trial court and subsequently filed an Interim Application No. 3016 on August 06, 2024, seeking relaxation of deposit conditions, which he later withdrew on June 23, 2025.
- Meanwhile, the original complainant also filed an Interim Application No. 4524/2024 seeking cancellation of Appellant's bail due to breach of undertaking. Subsequently, the High Court cancelled Appellant's bail on account of alleged violation of bail condition. The court also directed the Appellant to surrender before the Court of Judicial Magistrate First Class, Satara within 4 weeks.
- Appellant, aggrieved by the order of Hon'ble Bombay High Court, filed a Criminal Appeal No. 3219/2025 before the Hon'ble Supreme Court of India, challenging the cancellation of his bail.

Issue(s) at hand?

- Whether court should decide bail application on merits and not on the basis of the considerations of financial undertaking?
- Whether imposing extraneous financial deposits as bail conditions violates the principle - "Excessive bail is no bail"?

Findings of the Court

- At the outset, the Hon'ble Supreme Court (herein referred 'the court') established the binding principle, that courts shall not grant bail merely based on undertaking by the accused to deposit bail bond money. The court held that applications have to be scrutinised strictly based on the merits of the case in accordance with the law.
- The Hon'ble court subsequently established, that "Criminal Courts, exercising jurisdiction to grant bail is not expected to act as a recovery agency to realise the dues of the complainant", emphasizing that criminal proceeding should not be used for the purpose of civil recovery.
- The court further deprecated the malicious pattern used by accused persons to file affidavits and undertakings to deposit specific amounts, then conveniently resile from such undertakings, highlighting how courts are being systematically misled.
- Citing Kundan Singh v. The Superintendent of CGST and Central Excise[1] which deprecates the practice of "approbating and reprobating", where parties benefit from the promises and then deny them. The court emphasized that voluntary undertaking forecloses merit-based consideration of bail application.
- The court acknowledged that "Excessive bail is no bail, and onerous conditions ought not to be imposed", but clarified that the principle cannot be invoked when conditions are voluntarily undertaken.
- The court also observed a growing practice of "Litigants taking the court for a ride" emphasizing that courts must protect their institutional credibility from manipulation and abuse of judicial process.

HSA
Viewpoint

The judgment, in our view, rightly reiterated on the merits of bail application and that the courts must not grant bail merely based on undertaking to deposit bail bonds. Bail must strictly be granted on the merits of the case, not on the strength of voluntary monetary assurance that can be manipulated or withdrawn enforcing the principle of "Equality before law".

The court further reinforced the necessary boundary between criminal and civil nature of proceeding, cautioning against converting a criminal court into a recovery forum for civil claims, thus maintaining the doctrinal purity of legal remedies. The court's growing concern over abuse of legal remedies is valid and this judgement sends a strong message that such abuse will not go unchecked.

In furtherance to that, it also brings much needed caution on 'Voluntary affidavits'. While the judiciary welcomes undertaking to ensure compliance, it cannot be used to abuse the judicial system. The court rightly pointed out that approbation followed by reprobation cannot be a valid defence, especially when it disrupts the administration of justice.

[1] 2025(6) TMI 1792

- The court, while imposing fine to the appellant, ordered him to surrender himself, and thereafter he can approach the court with a fresh bail application which is to be strictly decided as per the merits of the case

Devi Prasad Mishra [Applicant] Vs. M/s Nayara Energy Limited [Respondent]

Civil Misc Arbitration Application 2 of 2024 (Allahabad High Court)

Background facts

- A franchisee agreement ("Agreement") was executed on January 18, 2018, between Essar Oil Ltd. and Devi Prasad Mishra ("Applicant") for establishing a petrol pump.
- In accordance with the Agreement, the Applicant invested a sum of Rs. 1,50,00,000/- for the establishment of the petrol pump.
- The Agreement contained a dispute resolution clause for resolving any dispute that may arise in respect of the Agreement through Arbitration.
- After executing the Agreement, Essar Oil Ltd. established a local company, namely, M/s. Nayara Energy Ltd. ("Respondent"), to which it transferred its petrol pump business. Accordingly, the Respondent took over the management and operations of Essar Oil Ltd.
- On August 18, 2023, the Respondent unilaterally terminated the Agreement with the Applicant. The Applicant contended that the termination was against the terms contained in the Agreement.
- Subsequently, the Applicant invoked the dispute resolution clause provided in the Agreement and sent a letter dated September 18, 2023 to the Respondent, whereby it called upon the Respondent to resolve the dispute amicably and further suggested the name of a Former Judge of the Allahabad High Court to be appointed as Sole Arbitrator in case the dispute could not be amicably settled.
- Since the Respondent did not revert to the letter sent by the Applicant invoking arbitration, the Applicant filed the present application for the appointment of a Sole Arbitrator.

Issue(s) at hand?

- Whether this Hon'ble Court has the jurisdiction to entertain the present Application?

Findings of the Court

- At the outset, the Hon'ble Court held that there is no dispute between the parties regarding the existence of an arbitration clause within the Agreement. The Hon'ble Court also held that it is an undisputed fact that the Applicant had invoked arbitration and the Respondent failed to respond to the same.
- The Hon'ble Court further examined Clauses 21 and 22 of the Agreement and observed that the parties had expressly agreed that the arbitration proceeding will be held in Mumbai, and that the arbitration proceeding would be governed by the laws of the country and would be subject to the exclusive jurisdiction of courts at Mumbai only.
- The Hon'ble court further relied on the judgment in cases of *B.G.S.S.G.S Soma JV Vs NHPC Ltd*[1] and *Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd*.[2] and applied the principles laid down in these cases. Accordingly, the Hon'ble Court held that where an arbitration agreement mentions only one place and there is no contrary indicium, that place must be construed as the seat of arbitration, even if the place is referred to as the "venue."
- The Hon'ble Court further held, that the judgement relied upon by the Applicant in cases of *Faith Constructions vs N.W.G.E.L. Church*[3] and *Aarka sports Management Pvt. Ltd vs. Kalsi Buildcon Pvt. Ltd.*[4] are not in consonance with the judgement of the Supreme Court of India in the case *B.G.S.S.G.S Soma JV Vs NHPC Ltd. (supra).*
- The Hon'ble Court concluded that only the courts at Mumbai would have jurisdiction over the present arbitration-related proceedings. Accordingly, the Hon'ble Court held that it lacked the territorial jurisdiction to try the present application and dismissed the present application with liberty to the Applicant to approach the competent court at Mumbai.

HSA
Viewpoint

The judgment rendered by the Hon'ble Court reaffirms and clarifies several key principles of arbitration law. Firstly, it holds that when an arbitration clause expressly designates only one location for arbitration proceedings and there is no contradictory indicator, such a venue will be construed as the "seat" of arbitration. Secondly, the Hon'ble Court also emphasized that once a place is chosen as the seat of arbitration, only the courts at that place have the authority to handle matters related to the arbitration. This means other courts, even where part of the dispute may have happened, do not have jurisdiction.

[1](2020) 4 SCC 234
[2](2017) 7 SCC 678
[3]2025 SCC OnLine Delhi 1746
[4] 2020 SCC OnLine Delhi 2077

Sonali Power Equipments Pvt. Ltd. Vs. Chairman, Maharashtra State Electricity Board, Mumbai and Ors.

2025 SCC Online SC 1467

Background facts

- The dispute arose from transactions executed between Sonali Power Equipments Pvt. Ltd. ("Appellant"/ "SPEPL"), a registered Micro or Small Enterprise under the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act"), and the Maharashtra State Electricity Board ("Respondent"/ "MSEB").
- Pursuant to a contractual arrangement, the Appellant/SPEPL supplied electrical equipment to Respondent/MSEB between 1999 and 2001. However, the Respondent/MSEB failed to make full payment, leading to accrual of outstanding dues.
- On October 30, 2014, the Appellant/SPEPL invoked Section 18(1) of the MSMED Act and approached the Micro and Small Enterprises Facilitation Council ("MSEFC"), Mumbai, seeking recovery of outstanding dues along with interest. Section 18(1) of the of the MSMED Act permits a registered supplier to refer disputes concerning delayed payments to the MSEFC. In view thereof, conciliation proceedings were initiated under Section 18(2) of the MSMED Act, to be conducted in accordance with Part III of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). However, the conciliation proceedings failed, and on February 24, 2015, in accordance with Section 18(3) of the MSMED Act, the matter was referred to arbitration by the MSEFC.
- During the arbitral proceedings which were conducted by the MSEFC, the Respondent/MSEB raised a preliminary objection contending that the Appellant/SPEPL's claim was barred by limitation under the Limitation Act, 1963. The Appellant/SPEPL argued that limitation did not apply to proceedings under Section 18 of the MSMED Act, particularly in conciliation, and that the right to recover dues remained unaffected by the passage of time. On November 9, 2016, the Arbitral Tribunal rendered an award in favour of the Appellant/SPEPL. However, the Respondent/MSEB challenged the award under Section 34 of the Arbitration Act, before the Principal District Judge, Bhandara, who, by judgment dated October 26, 2017, set aside the award on the ground that the claim was time-barred.
- The Appellant/SPEPL challenged the District Court's decision by filing Commercial Appeal Nos. 1 to 9 of 2018 before the High Court of Bombay, Nagpur Bench. By order dated October 20, 2023, the Hon'ble High Court held that the provisions of the Limitation Act, 1963 are applicable to both conciliation under Section 18(2) of the MSMED Act and arbitration under Section 18(3) of the MSMED Act. Accordingly, the Hon'ble High Court upheld the District Court's finding that the claims were time-barred and the arbitral award was unsustainable.
- Aggrieved by the concurrent findings, the Appellant/SPEPL filed Special Leave Petitions (SLP (C) Nos. 6912–6920 of 2024) before the Hon'ble Supreme Court.

Issue(s) at hand?

- Whether the Limitation Act applies to conciliation proceedings under Section 18 of the MSMED Act, and even if not, whether time-barred debts can be referred to conciliation?
- Whether the Limitation Act applies to arbitration proceedings under Section 18 of the MSMED Act, and whether time-barred debts can be referred to arbitration?

Findings of the Court

- The Hon'ble Supreme Court Bench, comprising Justice P.S. Narasimha and Hon'ble Justice Joymalya Bagchi, upon considering the statutory provisions of the MSMED Act, the Arbitration Act, and the Limitation Act, as well as the binding precedents, held that the Limitation Act does not apply to conciliation proceedings under Section 18(2) of the MSMED Act. It was held that even a time-barred claim can be referred to conciliation, as the expiry of the limitation period does not extinguish the underlying right to recover dues, which can still form the basis of a settlement agreement reached through the conciliatory process.
- The Hon'ble Supreme Court further held, that the Limitation Act is applicable to arbitration proceedings under Section 18(3) of the MSMED Act. The Hon'ble Court clarified that the application of the Arbitration Act to such arbitration is guided by Section 18(3) and other provisions of the MSMED Act, which is a special enactment, and not by Section 2(4) of the Arbitration Act, which forms part of a general law. This view is consistent with the decision in Silpi Industries v. Kerala State Road Transport Corporation, (2021) 4 SCC 795. The Court further observed that any extension of the limitation period based on disclosures under Section 22 of the MSMED Act must be examined on the facts and circumstances of each case.

- The Hon'ble Bench partly allowed the appeals arising out of SLP (C) Nos. 6912-6920 of 2024 and set aside the impugned order dated October 20, 2023, passed in Commercial Appeal Nos. 1 to 9 of 2018 by the High Court of Bombay at Nagpur, to the extent it held that the Limitation Act applies to conciliation proceedings under the MSMED Act. The Hon'ble Supreme Court upheld the High Court's finding that the Limitation Act is applicable to arbitration proceedings under the MSMED Act.

HSA
Viewpoint

The Hon'ble Supreme Court has correctly recognised that conciliation, as envisaged under Section 18(2) of the MSMED Act, is a non-adjudicatory, voluntary, and non-coercive process, distinguishable from "suits or applications" within the meaning of the Limitation Act, 1963. This aligns with the established understanding of conciliation as an Alternative Dispute Resolution ("**ADR**") mechanism, designed to facilitate mutual settlement between parties rather than impose a binding determination.

On the question of applicability of limitation to arbitration under Section 18(3), the Hon'ble Supreme Court has correctly applied the ruling in *Silpi Industries v. KSRTC*, (2021) 4 SCC 795. Arbitration, though statutorily triggered in this context, remains an adjudicatory mechanism where rights and liabilities are determined. Hence, adherence to the Limitation Act ensures finality, fairness, and prevents stale claims from being adjudicated.

BGM and M-RPL-JMCT (JV) Vs. Eastern Coalfields Limited

2025 INSC 874

Background facts

- A contract for transportation and handling of goods was entered into between BGM & M-RPL-JMCT JV ("Appellant") and Eastern Coalfields Limited ("Respondent").
- Clause 13 of the General Terms and Conditions (attached to an e-tender notice) provided a multi-stage dispute resolution mechanism, including internal remedies. For the purpose of this case we are concerned with the below stated operative portion of Clause 13:

  "For parties other than Govt. Agencies, the redressal of the dispute may be sought through ARBITRATION AND CONCILIATION ACT, 1996…"
- The Appellant, relying on the above part of Clause 13, invoked arbitration and filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Act") for appointment of an Arbitrator before Calcutta High Court. This application was dismissed by the Calcutta High Court on the grounds that Clause 13 was not a binding arbitration agreement between the parties.
- While rejecting the application, the High Court laid emphasis on use of the word "*may*" before "*be sought*" in the operative part of Clause 13, and held that where the word "*may*" is used there is no clear intention of the parties to refer the dispute between them to arbitration and therefore, the prayer to appoint an Arbitrator is unsustainable.
- Being aggrieved with the decision of the High Court, the Appellant has thus appealed against the decision.

Issue(s) at hand?

- Issue 1: Whether the question of existence of an arbitration agreement should be left for the arbitral tribunal to decide?
- Issue 2: Whether clause 13 would constitute an arbitration agreement between the parties as contemplated under Section 7 of the Act?

Findings of the Court

- While dealing with the first issue, the Court emphasized that under Section 11(6A) of the Act, the role of the court at the pre-arbitral stage is to conduct a *prima facie* examination of the existence of an arbitration agreement only.
- In this regard, reliance was placed on *In Re: Interplay Between Arbitration Agreements Under The Arbitration And Conciliation Act 1996 and The Indian Stamp Act 189*9, *2023 INSC 1066*, which has settled the law as below:
  - The Court must examine whether the underlying contract prima facie contains an arbitration agreement; and
  - The court to whom the matter is referred to in the first instance is not required to conduct a trial by allowing the parties to adduce evidence. The determination of existence and validity of an arbitration agreement based on evidence is to be left to the arbitral tribunal.
- In the present case, however, the Court held that since the Appellant is relying on just a single clause in the underlying agreement, hence, a *prima facie* inquiry into the existence of an arbitration agreement without the need to adduce any evidence was possible.
- Issue 2:
  - The Court held that the Clause 13 in the tender document does not amount to a binding arbitration agreement under Section 7 of the Act. The Apex Court observed, that the clause stated that parties "*may seek redressal through arbitration,*" which the Court has interpreted as permissive rather than mandatory. The Apex Court highlighted that for an agreement to qualify under Section 7, there must be a *clear, unambiguous, and binding* obligation to refer the disputes to arbitration.
  - The Court held that the use of the word "*may*", rather than "*shall*" or "*will*", reflected that arbitration was only an option, not an agreed-upon method of dispute resolution. In this regard, the Hon'ble Supreme Court relied on the judgements of *Jagdish Chander v. Ramesh Chander* and *Mahanadi Coalfields Ltd. v. IVRCL AMR JV* and reaffirmed that the use of the word "*may*" in dispute resolution clauses generally does not create a binding obligation to arbitrate. Furthermore, to establish an arbitration agreement, there must be mutual consent to resolve disputes through arbitration as the exclusive forum.

- In view thereof, the Hon'ble Court held that the mere use of the word '*arbitration*' in a clause, especially when it is optional, does not amount to being an arbitration agreement.
- This finding of the Hon'ble Court was also supported by the Court observing that in order to refer disputes to Arbitration, the same requires mutual agreement that it shall be the sole or binding mode of dispute resolution. In this case, the Court observed that the clause gave discretion to allow matters to be referred to arbitration but did not compel it.

HSA
Viewpoint

The judgment of the Hon'ble Supreme Court reinforces the high threshold for enforceable arbitration agreements in India while also reaffirming the limited role of judicial interference at the stage of appointment of arbitrator (Section 11 of the Act).

The decision of the Supreme Court also highlights the importance of precise and good drafting to clearly mandate arbitration, especially in government or PSU contracts.

The decision aligns with prior precedent and clarifies that permissive wording cannot oblige arbitration, protecting against unintended binding commitments.

Willingdon View Cooperative Housing Society Vs. The Municipal Commissioner Brihanmumbai Municipal Corporation & Ors.

SLP(C) No. 020175 - / 2025 Registered on 25-07-2025

Introduction

- In a significant ruling that reinforces the judiciary's unyielding stance against unauthorized real estate development, the Supreme Court of India has upheld a Bombay High Court order directing the immediate vacation of 18 illegally occupied floors in a South Mumbai luxury high-rise. The apex court lauded the High Court's "bold and lucid" judgment, emphatically stating that pleas of hardship cannot override the fundamental principle of the rule of law, a decision that will have far-reaching implications for real estate law, urban planning, and municipal governance across the country.

Facts of the Case

- The case centred on a 34-storey tower in the affluent Tardeo area, where residents had occupied floors 17 to 34 for over a decade without a valid Occupancy Certificate (OC). The Supreme Court bench, comprising Justices J.B. Pardiwala and R. Mahadevan, dismissed a Special Leave Petition filed by the society, refusing to interfere with the High Court's directive. "We appreciate the concern expressed by the High Court," the Supreme Court bench noted, adding, "We also appreciate the courage and conviction exhibited by the High Court in taking stern steps against such unauthorised constructions. Sympathy towards the occupiers of such flats on the ground of hardship and difficulties at the end of the Court would be thoroughly misplaced. At the end of the day, the rule of law must prevail." This unequivocal statement serves as a stern warning to developers, homebuyers, and civic officials, signaling a judicial intolerance for the widespread issue of illegal constructions that flout safety norms and statutory requirements.

Background

- The legal battle escalated after the Bombay High Court, on July 15, delivered a scathing order based on a batch of petitions. These included a writ petition filed by Sunil B. Jhaveri (HUF), a society member who challenged the gross illegalities, and petitions from other members seeking to regularize the unauthorized construction. The High Court bench of Justices Girish Kulkarni and Arif Doctor found that the top 18 floors of the building, named Wellingdon Heights, were occupied since at least 2011 without the crucial Occupancy Certificate. More alarmingly, the entire 34-storey structure lacked a final Fire No-Objection Certificate (NOC), presenting a grave risk to the lives of not only the occupants but also the surrounding community.
- The Brihanmumbai Municipal Corporation (BMC) had informed the court that it had issued at least eight notices since 2011, including demolition orders, but the occupants, described by the High Court as belonging to the "elite class of society," had managed to stonewall any enforcement action. In its judgment, the High Court did not mince words, labeling the occupants "a selfish lot" who acted with "open eyes" against building regulations. The court observed: “It appears that the persons who are occupying the 34-storey building are least bothered about their own lives. If this be so, how can they be bothered about anybody else, in the event of any untoward incident of any nature taking place? Such an approach, which is wholly contrary to law, cannot be countenanced.
- ”The High Court rejected an "audacious" plea from the society for a one-year stay to regularize the illegalities, instead ordering the residents of floors 17 to 34 to vacate their premises within two weeks, a deadline that prompted the appeal to the Supreme Court.

Findings of the Court

- While dismissing the society's appeal, the Supreme Court provided a minor procedural relief, granting the occupants liberty to approach the High Court to request more time to vacate. However, the apex court's primary focus was on ensuring compliance and accountability. It directed the High Court to “ensure that all its directions are scrupulously complied with.” Crucially, the Supreme Court added a directive with potentially systemic consequences: “Necessary legal action shall also be taken against the wrongdoers and erring officials if any.” This opens the door for investigations into the role of municipal officials and developers who may have been complicit or negligent, allowing such a flagrant violation to persist for over a decade. This aspect of the order moves beyond just penalizing the end-users and targets the root of the problem within the development and regulatory ecosystem.

HSA
Viewpoint

The judgment in this case stands as a landmark moment in the judicial enforcement of urban development laws. Its implications are manifold:

For Homebuyers: The ruling is a stark reminder of the paramount importance of due diligence. An Occupancy Certificate is not a mere formality but a non-negotiable legal prerequisite for lawful habitation. The courts have now made it clear that investing in and occupying a property without an OC is a risk that will find no sympathy in the judicial system.

For Developers: The era of building beyond sanctioned plans and hoping for post-facto regularization is facing increasing judicial scrutiny. This judgment signals that courts are prepared to support stern municipal action, including eviction and demolition, to uphold the integrity of building codes. The “build first, seek permission later” model is becoming untenable.

For Municipal Corporations: The Supreme Court's backing provides a significant boost to civic bodies like the BMC, empowering them to take decisive action against powerful and litigious violators. The directive to pursue “erring officials” also puts pressure on these corporations to clean up their own houses and ensure accountability for officials who turn a blind eye to illegalities.

For the Judiciary: The Supreme Court's praise for the "bold" High Court judgment encourages lower courts to take a firm stand on matters of public safety and statutory compliance, even when faced with pleas of financial hardship from affluent litigants. It reaffirms the judiciary's role as the ultimate guardian of the rule of law, especially in the context of urban governance where violations are rampant.

While the issue of the first 16 floors, which have an OC but are part of a building without an overall Fire NOC, remains to be heard by the High Court, this definitive order from the highest court on the unauthorized floors has set a clear and unambiguous precedent.

HSA
AT A GLANCE

FULL-SERVICE CAPABILITIES

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