

National Workshop for High Court Justices on Commercial Law [P-1340]

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National Judicial Academy organized a workshop for High Court Justices on Commercial Law with the objective of discussing the nuanced issues faced by the High Courts while adjudicating multi-faceted and high value commercial disputes. The workshop provided a forum for discussion on contemporary themes including the issues involved in the exercise of jurisdiction under the Commercial Courts Act, 2015; interpretation of Construction and Infrastructure Contracts; Intellectual Property Rights; Arbitration and Conciliation; and Enforcement of Arbitral Awards. The discussions provided an indepth analysis of the emerging issues and key litigation areas in Commercial Law, and the best practices in tackling adjudicatory challenges.

Session 1 - Commercial Courts Act: Genesis, Benefits and Challenges

Speakers: Justice M. Sundar & Mr. Somasekhar Sundaresan

The session was commenced by dwelling on the first principles in commercial law providing an overview of the Commercial Courts Act, 2015 (CC Act). The objectives of the CC Act were highlighted, and it was noted that the legislation sought to ensure ease of doing business in India by ensuring timely and cost-effective adjudication of commercial disputes. The CC Act was stated to be a procedural legislation which amends the provisions of the Civil Procedure Code, 1908 in order to fast track commercial disputes. The jurisdiction of the Commercial Courts was dwelt upon with reference to Sections 6 & 7 of the CC Act. The terms 'commercial dispute' and 'specified value' were explained as twin tests to determine the jurisdiction of the commercial court, with IPR disputes being an exception to this rule. The determination of jurisdiction in trademark suits was discussed through a hypothetical fact scenario. The challenge in determination of jurisdiction in view of the first proviso to Section 7 was highlighted. Reference was made to *Vishal Pipes Ltd. v. Bhavya Pipe Industry* [2022 SCC OnLine Del 1730] in this context. It was stated that Section 2(1)(i) should be read with Section 12. Reference was made to Section 12(1)(d) of the CC Act to highlight challenges in determining jurisdiction in cases involving intangible rights and the possibility of forum shopping in such cases.

Pre-institution mediation and settlement was discussed with reference to Section 12A of the CC Act. The issue of whether Section 12A was mandatory or directory was dwelt upon. Reference was made to the judgment in *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, [(2022) 10 SCC 1] to emphasize that Section 12A is mandatory. Furthermore, in cases where the party approaches the court without resorting to pre-institution mediation the court may reject the petition under Order 7 Rule XI and the plaintiff is not entitled to refund of court fee. In such case, *res judicata* will not apply. The distinction between presentation and institution was drawn.

The term 'urgent interim relief' was dwelt upon and reference was made to the judgment in *K. Varathan v. Prakash Babu Nakundhi Reddy* [C.S. (Comm.Div.) No. 202 of 2022 order dated 13th October 2022]. Reference was also made to the judgment in *Mohamed Aboobacker Chank Lungi Pvt. Ltd., v. Revathy Textiles and others* [C.S (Comm. Div.) No.208 of 2022 order dated 27th September 2022]. The validity of mediation which exceeds the time frame of 3 months was discussed with reference to Rule 7(1)(ix) of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. Reference was made to the judgments in *Project Director, National Highways No. 45 E and 220 National Highways Authority of India v. M. Hakeem and Another*, [(2021) 9 SCC 1], and *McDermott International Inc. v. Burn Standard Co. Ltd.*, [(2006) 11 SCC 181].

Pre-institution mediation was highlighted as an important feature of the CC Act. The constitutional ramifications of the CC Act was emphasized referring to Article 19(1)(g) of the Constitution of India. It was stated that the CC Act with its threshold of 3 lakhs seeks to ensure expeditious adjudication of commercial disputes at the grass root level to ensure efficacious and timely resolution of disputes to ensure commercial viability of businesses. Timely adjudication as the ethos of the CC Act and its necessity were underscored. The 120 days' time limit for filing written statement under CC Act as a mandatory provision was dwelt upon. Sections 8 and 13 of the CC Act were discussed and reference was made to *Kandla Export Corporation and Ors. v. OCI Corporation and Ors.* [(2018) 14 SCC 715].

Discussions were undertaken on the right of appeal with reference to the proviso to Section 13 (1A). Discussions were also undertaken on imposition of costs with reference to Section 35 of the Civil Procedure Code, 1908. Emphasis was placed on the need to adopt case management hearing by commercial courts. The increasing incidence of petitions under Articles 226 & 227 against interim orders of arbitrators was highlighted as an issue and in this context the

judgments in *CCE v. Dunlop India Ltd.*, [(1985) 1 SCC 260] and *United Bank of India v. Satyawati Tondon*, [(2010) 8 SCC 110] were cited to emphasize on the need for self-imposed restraint. Further, Sections 5 and 35 of the Arbitration and Conciliation Act, 1996 (1996 Act) were referred to underscore the need for finality in arbitration. Reference was also made to the judgment in *SsangYong Engg. & Construction Co. Ltd. v. NHAI*, [(2019) 15 SCC 131], *East India Commercial Co. Ltd. v Collector of Customs*, [AIR 1962 SC 1893], and *BSG SGS SOMA JV v. NHPC Limited.*, [(2020) 4 SCC 234]. It was stated that the part of a claim or a specific question which will be determinative of the claim can be summarily dealt with under Order 13A CPC. Discussions were undertaken on the validity of the minority view of the arbitrator, and the operation of limitation where the minority view is given later without assigning reasons for the separate award. In this context Section 31(2) of the 1996 Act was referred.

Session 2 - Interpretation of Construction and Infrastructure Contracts

Speakers: Mr. Mohit Saraf & Mr. Atul Sharma

The session commenced by tracing the economic growth of the construction and infrastructure industry and it was stated that the disputes relating to construction contracts is expected to double in 5 years. The concept and mechanism of project finance was explained. It was stated that delay is a major factor which impacts project finance including delay in enforcement of rights under contracts, delay in construction and execution of projects, delay/default in payment. It was stated that the 2018 amendments to the Specific Relief Act, 1963 has sought to tackle this delay. The regulatory framework for Public Private Partnership (PPP) was discussed in detail. The contractual framework for execution of construction and infrastructure contracts was explained. Reference was made to the judgment in *Nabha Power Ltd. v. PSPCL* [(2018) 11 SCC 508] to emphasize on the need to read contracts as per its explicit terms. Implied terms can be read into the contract only when the five condition test is satisfied *viz.* reasonableness and equitable; necessity to give business efficiency to the contract; the officious bystander test; capable of clear expression; and must not contradict any express term of the contract. In this context, it was emphasized that the contract should be enforced till the end unless it is rendered impossible by the doctrine of frustration or impossibility of performance. Reasonableness in contract law would relate to damages. It was cautioned that the courts should not look into the implied terms of contract and the question of reasonableness under it is

absolutely necessary.

The operation of *force majeure* was discussed and the term ‘unforeseeable’ was dwelt upon. It was stated that the concept of *force majeure* has origins in civil law. It was underscored that force majeure clauses should be strictly worded and strictly interpreted. It was stated that force majeure clause should be interpreted narrowly (*Halliburton Offshore Services Inc. v. Vedanta Limited and Ors* [(2020) SCC OnLine Del 542]. Covid -19 pandemic as a *force majeure* event was dwelt upon. Discussion on force majeure was undertaken referring to the judgments in *Energy Watchdog v. CERC* [(2017) 14 SCC 80], and *DDA v. Kenneth Builders & Developers Ltd.* [(2016) 13 SCC 561]. Time as essence of contract was discussed and reference was made to the judgments in *Hind Construction Contractors v. State of Maharashtra* [AIR 1979 SC 720], *Welspun Specialty Solutions Limited v. ONGC*, [(2021) SCC OnLine SC 1053], *Kailash Nath Associates v. Delhi Development Authority*, [(2015) 4 SCC 136] and *State of Gujarat v. Kothari & Associates*, [(2016) 14 SCC 761]. Computation of costs in construction contracts was discussed. Delay claims and the assessment of types of delays was explained. Contractor attributable delays, employer attributable delay and concurrent delays were explained.

The types of infrastructure development contracts – Engineering, Procurement and Construction contracts, PPP were discussed. Step down provisions in construction contracts was discussed. The interpretation of concession agreements which involve the government as the concessioning authority and the factoring of such concessions in cases of breach was dwelt upon. The need for inclusion of experts for technical aspects of the contract in the process of arbitration was emphasized upon. ‘Hottubing’ method in arbitration for inclusion of expert witnesses was discussed. It was underscored that the arbitral tribunal can test whether the claim is barred by limitation even in cases where the issue has not been raised by the parties. If the limitation had been erroneously decided, it would be a ground to set aside the award under Section 34 of the 1996 Act.

Session 3 – Intellectual Property Rights: Infringement & Enforcement

Speaker: Justice Prathiba M. Singh

The session commenced referring to Rule 1.1 of the Civil Procedure Rules of UK which states that the overriding objective of the CPC is to enable the court to deal with cases justly and at

proportionate cost. Dealing with cases justly was quoted to include ensuring that the parties are on equal footing, saving expense, proportionate dealing with the case, ensuring that the case is dealt with fairly and expeditiously, and allocation of proportionate share of the court's resources to the case. The discussions were undertaken on the issue of jurisdiction and valuation in trademark infringement cases and patent cases based on hypothetical problems. Reference was made to the judgment in *Vishal Pipes Ltd. v. Bhavya Pipe Industry* [2022 SCC OnLine Del 1730] to highlight the potential issue in valuation which may be used to avoid the jurisdiction of the Commercial Court.

Discussions were undertaken on internet based IPR disputes and the nuanced challenges posed in such disputes. The civil and criminal remedies in IPR cases were briefly touched upon. The modern forms of injunctions such as Mareva Injunction, Anton Piller Order, John Doe Order, Dynamic Injunctions, Geo Blocking and Global Injunction were discussed. Reference was made to the judgments in *Eros International Media Ltd. v. Bharat Sanchar Nigam Limited* [2016 SCC OnLine Bom 10458] and *UTV Software Communications Ltd. v. 1337x.to* [2019 SCC OnLine Del 8002]. It was noted that in the *UTV Software* case, the court applied the principle of proportionality - 'fair balance' between the Plaintiff's right to intellectual property and the Defendant's right to trade and freedom of expression. It was observed that blocking websites may be antithetical to an open internet but may sometimes be essential to curb illegalities. Thus, putting limits on illegal content online does not violate the principles of 'Open internet'. The mechanism to determine whether a website is rogue was pointed out. Reference was made to the judgment in *HT Media & Anr v. Hindustantimes.tech & Anr*, [CS(COMM) No. 352/2022, Delhi High Court, Order dated 24th May 2022], and *Warner Brothers Entertainment v. http.otorrents.com & Ors.* [CS(COMM) No. 367/2019, Delhi High Court, Order dated 1st June 2022]. It was noted that wide injunctions ought not be granted and reference was made to the judgment in *Snapdeal Private Limited v. GoDaddycom LLC*, [2022 SCC OnLine Del 2044].

Disclosure of information in infringement cases by the intermediary was discussed referring to the judgment in *Neetu Singh & Anr. v. Telegram FZ LLC*, [CS(Comm) 282/2020, Delhi High Court, order dated 30th August 2022]. Discussions were also undertaken on the issue of fraudulent criminal activities being undertaken in the name of well-known brands through the medium of domain names which are registered by unknown persons. Reference was made to the case - *Dabur India Limited v. Ashok Kumar & Ors* [CS(COMM) No. 135/2022, Delhi High

Court, order dated 2nd June 2022]. Challenges in enforcement of geo blocking and global injunctions was dwelt upon and reference was made to the judgment in *Swami Ramdev & Anr. v. Facebook, Inc. & Ors.* [CS(OS) No. 27/2019, Delhi High Court decision dated October 23rd, 2019]. Damages and compensatory reliefs was discussed and reference was made to the judgment in *Hindustan Unilever Limited v. Reckitt Benckiser India Limited*, [2014 (57) PTC 495 [Del] [DB], and *Rookes v. Barnard* [1964] UKHL 1.

Criminal remedies in IPR disputes was dwelt upon and reference was made to the judgment in *Knit Pro International v. The State of NCT* [(2022) 3 SCR 90]. The injunctive reliefs in standard essential patents was discussed referring to the judgment in *Intex v. Ericsson* [2023 DHC 2243 DB]. Confidentiality clubs constituted for the preservation and exchange of confidential information in IPR disputes was highlighted. Discussions were undertaken on the provisions of the Delhi High Court Intellectual Property Rights Division Rules, 2022. The types of cases before the IPR Division in the Delhi High court were pointed out. The territorial jurisdiction in IPR disputes was briefly touched upon and reference was made to the judgment in *Dr. Reddys Lab Ltd. v. Controller of Patents* [2022/DHC/004746, decision dated 10th November 2022]. Specified value was discussed and reference was made to the judgment in *K. Srimannarayana Murthy and Ors. v. V. Agastya Sagar and Ors.* [MANU/TL/0020/2022]. Arbitrability of IPR disputes was dwelt upon and it was debated whether IPR rights can be arbitrated. In this context reference was made to the judgment in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, [(2011) 5 SCC 532]. It was opined that in cases where the IPR disputes relate to rights *in rem* then the said dispute cannot be arbitrable. Disputes relating to royalty, licensing etc. may be arbitrable as they relate to rights *in personam*. Reference was made to the judgment in *Lifestyle Equities CV v. QD Seatoman Designs Pvt. Ltd.* [2017 (8) MLJ 385], *Eros International Media Limited v. Telex Links India Pvt. Ltd.*, [(2016) 6 Bom CR 321], *Indian Performing Right Society Ltd. v. Entertainment Network (India) Ltd.*, [2016 SCC OnLine Bom 5893]. On the issue of interim relief in IPR disputes, reference was made to the judgment in *Chandra Kishore Chaurasia v. R A Perfumery Works Private Limited* [FAO (COMM) No. 128/2021]. The judgment in *Bolt Technology OU v. Ujoy Technology (P) Ltd.*, [2022 SCC Online Del 2639] was also referred to with regard to the requirements of Section 12A of the CC Act and the interpretation of its fulfillment in factual situations.

Session 4 - Arbitration and Conciliation Act: Towards a Model Dispute Resolution

Speakers: Justice M. Sundar & Mr. Jayant K. Mehta

The session commenced with a brief discussion on the notification of authorities for pre-institution mediation under Section 12A(2) of the CC Act as well as the notification of the rules, and the Notification No.S.O.3232(E), dated 03.07.2018 and the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 were referred. Discussions were undertaken on Section 12A (5) of the CC Act to emphasize that the mediation under the CC Act has the status of an arbitral award and can be enforced as a decree. The mediation award cannot be challenged under Section 34 of the 1996 Act as the award is a consent award. The mandatory nature of pre-institution mediation was emphasized citing the judgment in *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, [(2022) 10 SCC 1]. Challenge to pre-institution mediation awards and the grounds for challenge were discussed. Objections taken during execution proceedings were also dwelt upon.

Discussions were undertaken on the Arbitration and Conciliation Amendments of 2019 and 2021. It was pointed out that the amendment of 2021 is a conditional legislation which will be notified by the Central Government. It was pointed out that 5 sections of the amendment have not been notified including Section 3 which amends Section 11. Reference was made to the judgments in *Mayavati Trading (P) Ltd. v. Pradyut Deb Burman*, [(2019) 8 SCC 714] and *Vidya Drolia v. Durga Trading Corpn.*, [(2021) 2 SCC 1]. The grounds for challenge under Section 34 of the 1996 Act were discussed. With regard to non-speaking award, reference was made to *Dyna Technologies Private Limited. v. Crompton Greaves Limited*, [(2019) 20 SCC 1] to state that the arbitral award can be set aside on the grounds of inadequate reasoning. Discussions were undertaken on the judgment in *Jaycee Housing Pvt. Ltd. and Ors. v. Registrar (General), Orissa High Court, Cuttack and Ors.* [AIR 2022 SC 5239], *PASL Wind Solutions (P) Ltd. v. GE Power Conversion (India) (P) Ltd.*, [(2021) 7 SCC 1]. The selection of seat and curial law was dwelt upon. The evolution of the jurisprudence of the term ‘public policy’ was elaborated upon and reference was made to the judgments in *Renusagar Power Co. Ltd. v. General Electric Co.*, [1994 Supp (1) SCC 644], *ONGC v. Saw Pipes*, [(2003) 5 SCC 705], *ONGC Ltd. v. Western Geco International Ltd.*, [(2014) 9 SCC 263], *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, [(2011) 5 SCC 532], *Associate Builders v. Delhi Development Authority*, [(2015) 3 SCC 49], *Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd.*, [(2017) 2 SCC 228], *Board of Control for Cricket in India v. Kochi Cricket (P) Ltd.*, [(2018) 6 SCC 287], *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*, [(2018) 9 SCC 472],

SsangYong Engg. & Construction Co. Ltd. v. NHAI, [(2019) 15 SCC 131], *Canara Nidhi Limited v. M. Shashikala & Ors.* [2019 SCC OnLine SC 1244], *Hindustan Construction Company Ltd. v. Union of India*, [2019 SCC OnLine SC 1520], *BSG SGS SOMA JV v. NHPC Limited.*, [(2020) 4 SCC 234], and *Vijay Karia and others v. Prysmian Cavi E Sistemi SRL and Others*, [(2020) 11 SCC 1]. Reference was also made to the UK judgment in *Enka Insaat ve Sanayi AS v. OOO Insurance Company Chubb*, [(2020) UKSC 38] on the issue of correct approach to determining the proper law of an arbitration agreement and the relevance of the choice of law by the parties.

Discussions were undertaken on the Arbitral Tribunal and Arbitration Council of India, and it was noted that the provisions relating to the constitution of the Arbitral Tribunal have not been notified yet. Reference was made to the Arbitration Amendment Act of 2019 to examine the composition and constitution of the Arbitration Council of India, and it was stated that the government has an overarching presence in the selection of the members of the Arbitration Council of India. The challenge posed due to this involvement in selection of the members of the Arbitration Council of India in cases where the arbitration involves the government as a party was dwelt upon. The process of removal of the members was discussed. Discussions were undertaken on the relaxation of time limits and completion of written submission under Section 23 of the 1996 Act. It was pointed out that extension of time is subject to the discretion of the judge. It was noted that parties can be coerced into paying higher fees to the arbitral tribunal and that this issue is not raised before the court. It was underscored that the courts must be vigilant to ensure that the parties are charged a reasonable fee.

Session 5 - Recognition & Enforcement of Arbitral Awards

Speakers: Mr. Jayant K. Mehta & Mr. Tejas Karia

Discussions were commenced on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) by tracing the historical evolution of international law and Indian law on arbitration. It was noted that the Foreign Awards (Recognition and Enforcement) Act, 1961 (1961 Act) provided that ‘public policy of India’ was a ground for refusal of enforcement of a foreign award, and a similar provision was contained in the Arbitration Act, 1940 (1940 Act) for setting aside an award. Reference was made to the judgment in *Renusagar Power Co. Ltd. v. General Electric Co.*, [1994 Supp (1)

SCC 644] on the interpretation of ‘public policy’ and it was stated that the term ‘public policy’ in the 1940 Act was of wider amplitude than the term as used in the 1961 Act. The Supreme Court carved out by way of illustration the three principles to elucidate on the term ‘public policy’ under the 1961 Act i.e. fundamental policy of Indian law, interests of India, and justice or morality.

Discussions were undertaken on Part II of the 1996 Act. Section 48 - conditions for enforcement of foreign awards was discussed and it was emphasized that the provision in Section 48(1) by the use of the term ‘may’ vests a discretion in the judge. Discussion was also undertaken on the provision of Section 48(2) and it was opined that the term ‘may’ in Section 48(2) should be read as ‘shall’ and hence it would be mandatory. The Explanation 1 to Section 48(2) was examined and contrasted to the judgment in *Renusagar* and it was noted that ‘interests of India’ is not included in the Explanation to Section 48(2). Accordingly, it would be relevant to note that the interpretation of the term ‘public policy’ in *Renusagar* would have to be read in light of the provisions of the 1996 Act. Reference was also made to the judgments in *ONGC v Saw Pipes*, [(2003) 5 SCC 705], and *Venture Global Engg. v. Satyam Computer Services Ltd.*, [(2008) 4 SCC 190], *Phulchand Exports Ltd v. Ooo Patriot* [(2011) 10 SCC 300]. In *Shri Lal Mahal Ltd. v. Progetto Grano SpA*, [(2014) 2 SCC 433] it was held that public policy as defined in *ONGC Saw Pipes* relates to a domestic award; while the term public policy in relation to a foreign award was narrower and it would relate to the expression as interpreted in *Renusagar*. The amendments to Section 34 and 48 were dwelt upon. Discussions were undertaken on Section 34(2)(b) and contrasted with the provisions of Section 48(2). It was pondered as to whether while adjudicating over an objection under Section 48 in case of a foreign award, can the court employ the expression ‘public policy of India’ as interpreted in relation to Section 34 in light of the precedents in this regard? The concept of *lex arbitri* was discussed to highlight the determination of the law that is applicable to the arbitration and the award when drafted. It was stated that the interpretation of ‘public policy’ is a test of judicial conscience to ensure that the award is in consonance with the law and the notions of morality and justice.

Discussions were undertaken on the enforcement of domestic awards referring to Section 36 of the 1996 Act. Reference was made to the judgments in *Hindustan Construction Company v. Union of Indi*, [2019 SCC OnLine 1520] and *Patil Automation (P) Ltd v Rakheja Engineers*, [(2022) 10 SCC 1]. The concepts of ‘seat’ and ‘venue’ were explained and the powers of the

court where the seat is located was touched upon. The time period for enforcement of award was discussed. Reference was made to *Chopra Fabricators & Manufacturers (P) Ltd. v. Bharat Pumps & Compressors Ltd.*, [(2023) 2 SCC 481] on the issue of pendency in disposition of execution petitions. Enforcement of awards and the jurisdiction of courts was discussed referring to the judgments in *Sundaram Finance Limited v. Abdul Samad & Anr.*, [2018 SCC OnLine SC 121], *Gujarat JHM Hotels v. Rajasthali Resorts* [2023 SCC OnLine Del 161], *Jaycee Housing (P) Ltd. v. High Court of Orissa*, [(2023) 1 SCC 549], and *PASL Wind Solutions Pvt Ltd. v. GE Power Conversion India Ltd*, [2021 SCC OnLine SC 331]. Enforcement of foreign awards and the proper court for enforcement was discussed at length. The procedural requirement under Section 47 was stated to be curable rather than a fatal defect and reference was made to the judgment in *PEC Ltd. v. Austbulk Shipping Sdn. Bhd.*, [(2019) 11 SCC 620]. The limitation period for enforcement of domestic arbitral awards was discussed referring to the judgements in *Umesh Goel v. Himachal Pradesh Cooperative*, [(2016) 11 SCC 313] wherein it was held that arbitral awards being deemed to be decrees, the limitation period for execution of a decree would apply. The limitation period for enforcement of foreign awards was discussed and reference was made to *Government of India v. Vedanta Limited*, [2020 SCC OnLine 749] wherein the Supreme Court held that the period limitation for enforcement of foreign award would be 3 years as per the residual clause of Article 137 of the Schedule to the Limitation Act.

Challenges in executing foreign arbitral awards was discussed. Delay was stated to be the main challenge in the execution of foreign award. This is because foreign awards are not dealt as a separate category and are listed along with all arbitral awards for execution. The second challenge faced is on account of the fact that there is no provision of appeal against an order of enforcement of foreign award except on the grounds set out in Section 50. Reference was made to the judgments in *Kandla Export Corporation v. M/s OCI Corporation*, [(2018) 14 SCC 715] and *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, [(2020) 11 SCC 1]. Resistance by non-signatory to the enforcement of the foreign award was stated to be another challenge faced in execution of foreign arbitral awards and the judgment in *Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd.*, [(2022) 1 SCC 753]. Reference was also made to the judgment in *Goyal MG Gases (P) Ltd. v. Panama Infrastructure Developers (P) Ltd.*, [2023 SCC OnLine Del 1894] to highlight that an order rejecting impleadment of non-signatory is not an award. Suggestions to streamline execution process as laid down in *Shubh Karan Bubna v. Sita Saran Bubna*, [(2009) 9 SCC 689] were highlighted.

The requirements for enforcement of foreign judgments from non-reciprocating territories was discussed referring to Sections 13 and 44A of the Civil Procedure Code, 1908. Enforcement of awards that are annulled at the seat of arbitration was dwelt upon referring to Section 48(1)(e) and Section 48(3) of the 1996 Act. As per Section 48(3), the court has the discretion to adjourn the proceedings provided the party gives a security. The mechanism of ‘double control’ where the court enforcing the award acts as the second controller of the award was dwelt upon. The detachment theory was also touched upon as a mechanism for enforcement of the award and it was explained that as per this theory the award and its enforcement is detached from the law applicable to the seat and is an international floating document which can be enforced wherever the assets are. The internationalist approach was explained to be a view taken by the French courts to the effect that an award would be of transnational nature and would be enforceable if the award is not contrary to the public policy of the country in which it is being enforced. The territorial approach was dwelt upon which states that the validity of the award can only be determined by the jurisdictional court at the seat of the arbitration and if the award is annulled by such court, the same cannot be enforced. The conflict of law approach was stated to be a middle ground position as it stated that the annulment of the award should be respected except in cases where there are reasons to think that it lacked the procedural integrity or offends public policy of the enforcing state.

Emergency arbitration was discussed and it was stated that the law has not been amended to include emergency arbitration and hence, emergency arbitration is not expressly mentioned in the 1996 Act. The judgment in *Amazon.com NV Investment Holdings LLC v. Future Retail Limited & Ors.*, [2021 SCC OnLine SC 557] was cited wherein it was held that an emergency arbitration that was seated in India is as good as an arbitral tribunal and the orders of an India-seated emergency arbitrator are enforceable. The issue of enforceability of foreign seated emergency arbitration was highlighted. It was stated that in such cases a Section 9 petition may be filed and the arbitration award may be converted into a Section 9 order. Reference was made to the judgments in *Raffles Design International India Private Limited & Anr. v. Educomp Professional Education Limited & Ors.*, [2016 SCC OnLine Del 5521], and *Shanghai Electric Group Co. Ltd. v. Reliance Infrastructure Ltd.*, [2022 SCC OnLine Del 2112]. Discussions were undertaken on the applicability of stamp duty to the arbitration agreement and it was mentioned that the issue has been referred to the larger bench in *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*, [(2021) SCC OnLine 13]. Further, the applicability of stamp duty on domestic awards was discussed and it was stated that stamp duty is only applicable at

the time of enforcement of the award and not the time of challenging the award. Stamp duty is not required in case of foreign awards. The judgments in *M. Anasuya Devi v. M. Manik Reddy*, [(2003) 8 SCC 565] and *Shriram EPC Ltd. v. Rioglass Solar SA*, [(2018) 18 SCC 313] were discussed in this context.
