

Session 4

Key highlights of Arbitration and Conciliation Act in light of recent amendments, landmark judgements

Key highlights – in light of recent amendments:

- Scope of challenge to a award restricted by codification.
- Time frame fixed for pre Arbitration Section 9.
- Term ‘Chief Justice’ replaced by Supreme Court / High Court.
- Section 17 giving power to Arbitral Tribunal to make interim orders vastly expanded and it is almost similar to section 9.
- Time line fixed for arbitration (Statement of claim and defence) by insertion in Section 23.
- Scope of section 11 vastly restricted.
- Fraud and corruption added as proviso to section 36 qua arbitration agreement and award made as a ground for grant of unconditional stay pending section 34 challenge.
- Accreditation of arbitrators qua Eighth Schedule done away and left to regulations. Interestingly, Section 43J itself is not kicked in. In other words, Section 43J brought in by Act 33 of 2019 never saw the light of the day.

Section 8 :

What Court should look at in a Section 8 application

1.P.Anand Gajapathi Raju V. PVG Raju and Others – (2000) 4 SCC 539

[Para 5 – illustrates 4 prerequisite conditions which needs to be satisfied before exercise of powers under Section 8 by courts]

2.Pravin Electricals Ltd v. Galaxy Infra and Engg. Ltd., - (2021) 5 SCC 671

[Para 12 – Court to confine itself to the prima facie examination of existence of arbitration agreement and leave all other preliminary issues to Arbitral Tribunal to decide]

Whether Original Agreement has to be filed in a Section 8 application

Bharat Sewa Sansthan v. U.P.Electronics Corporation Ltd., - (2007) 7 SCC 737

[Para 24 - photocopy of an agreement can be taken into record for ascertaining the existence of an arbitration agreement]

Section 9 :

M/s.Cholamandalam Investment and Finance Company
Limited Vs.Harkhabhai Amarshibhai Vaghadiya

Arb.Appln.Nos.40, 41, 42, 43, 44, 49, 50, 51, 52, 53, 59,
61, 62 and 63 of 2022, dated 16.02.2022

[Madras High Court]

Section 9(3) :

Arcelor Mittal Nippon Steel India Limited Vs. Essar Bulk Terminal Limited [(2022) 1 SCC 712]

[Paras 64 and 86] – When remedy under section 17 is efficacious, Arbitral Tribunal has power to grant interim relief; Once AT is constituted, the Court would not entertain an application for interim measure.

M/s.The Waterbase Limited Vs. M/s.Rising Tide and others
O.A.No.219 of 2022 and Arb.Appln.No.89 of 2022, dated
26.04.2022 [Madras High Court] (efficacious).

Section 11 :

- Duro Felguera, S.A. Vs. Gangavaram Port Limited (2017) 9 SCC 729.
– Court to see whether arbitration agreement exists?
- Mayavati Trading (P) Ltd. v. Pradyut Deb Burman, (2019) 8 SCC 714.
- confine to the examination of the *existence* of an arbitration agreement.
- Bharat Sanchar Nigam Limited Vs. Nortel Networks India Private Limited (2021) 5 SCC 738. – Limitation for filing Section 11 application governed by Article 137 of the First Schedule of Limitation Act, 1963.
- N.N.Global Mercantile Pvt. Ltd. Vs. Indo Unique Flame Ltd. (2021) 4 SCC 379 – Non payment of stamp duty on the substantive contract would not invalidate even the main contract. It is a deficiency which is curable on payment of requisite stamp duty.
- Radha Meditech Vs. Cook India Medical Devices Pvt. Ltd. [**2022 (5) CTC 125**] Arb.O.P.(Comm.Div) No.299 of 2021, dated 01.08.2022
The term 'ex facie' explained.

Dyna Technologies Private Limited. Vs. Crompton Greaves Limited (2019) 20 SCC 1

Sub Section (3) of Section 31 of A and C Act was explained.

Three facets of the matter was adumbrated and they are:

- Proper;
- Intelligible; and
- Adequate

Section 34 :

- **14 Reels Entertainment Private Limited, Hyderabad Vs. Eros International Media Limited, Chennai [2020 SCC OnLine Mad 18730 : AIR 2021 (NOC 416) 151, dated 04.09.2020 in O.P.No.298 of 2020.**
- **O.S.A.No.223 of 2020 dated 25.01.2021 [Madras High Court]**
- **SLP(C)No.4982 of 2021, dated 06.08.2021 dismissing the SLP.**

Section 34 – Public Policy

- 07.10.1993 - Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644 (para 46) Public policy must be construed narrowly.
- 17.04.2003 - ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 para 31) Patent illegality was added as sub-sect of public policy.
- 04.09.2014 - ONGC Ltd. v. Western Geco International Ltd. (2014) 9 SCC 263 – (Paras 35, 38 and 39 - the three distinct juristic doctrines culled out - (a) judicial approach, (b) natural justice principle and (c) irrationality / perversity.
- 25.11.2014 - Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49 – Explains ‘public policy of India’ in light of Renusagar and Western Geco cases.
- 15.12.2016 - Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd., (2017) 2 SCC 228 – Principles laid down in Western Geco and Associate Builders were reiterated in this case which is post 23.10.2015
- 08.05.2019 - Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 , It clarified ‘public policy’ in relation to Associate Builders case.

Section 34(5) is directory and not mandatory

State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank
Samiti (2018) 9 SCC 472

Arbitrability of disputes :

1) *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*,

(2011) 5 SCC 532 – Six categories which are not arbitrable are adumbrated.

- **Six Categories in *Booz Allen* :**

- (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences;
- (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;
- (iii) guardianship matters;
- (iv) insolvency and winding-up matters;
- (v) testamentary matters (grant of probate, letters of administration and succession certificate); and
- (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes

(2) *Vimal Kishor Shah v. Jayesh Dinesh Shah*, (2016) 8 SCC 788 – Trust deed added

(3) *A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386 – disputes relating to criminal offences are not arbitrable.

(4) *Himangni Enterprises v. Kamaljeet Singh Ahluwalia*, (2017) 10 SCC 706 – disputes relating to lease agreement are not arbitrable.

(5) *Lifestyle Equities CV PrinsBernhardplein, 1097JB, The Netherlands v. QDSeatoman Designs Pvt. Ltd. and others*, 2017-5-L.W. 500 = (2017) 8 MLJ 385.

(6) *Vidya Drolia and Others v. Durga Trading Corporation*, (2019) 20 SCC 406 : 2019 SCC OnLine SC 358 – doubting the correctness of *Himangni*, referred to Larger Bench.

(7) *Vidya Drolia and others v. Durga Trading Corporation*, final order (2021) 2 SCC 1 – Landlord tenant dispute covered under rent control legislation not arbitrable.

(8) *Suresh Shah v. Hipad Technology India Private Limited*, 2020 SCC OnLine SC 1038 – Reiterates principles discussed in *Vidya Drolia*

Enforcement of Foreign awards :

- Badat and Co. Vs. East India Trading Co, [AIR 1964 SC 538].
- Renusagar Power Co. Ltd. Vs. General Electric Co. [1994 Supp (1) SCC 644].
- Bharat Aluminium Co. Vs. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552 [Balco case].
- Shri Lal Mahal Ltd. Vs. Progetto Grano Spa (2014) 2 SCC 433.

- Shriram EPC Ltd. Vs. Rioglass Solar Sa (2018) 18 SCC 313
- Government of India Vs. Vedanta Ltd. (2020) 10 SCC 1
- National Agricultural Cooperative Marketing Federation of India Vs. Alimenta S.A. (2020) SCC OnLine SC 381
- Vijay Karia Vs. Prysmian Cavi E Sistemi SRL (2020) 11 SCC 1
- Mahanagar Telephone Nigam Limited Vs. Canara Bank and others (2020) 12 SCC 767.

- PASL Wind Solutions Private Limited Vs. GE Power Conversion India Private Limited (2021) 7 SCC 1
- Amazon.com NV Investment Holdings LLC Vs. Future Retail Limited and others (2022) 1 SCC 209
- Gemini Bay Transcription Private Limited Vs. Integrated Sales Service Limited and another (2022) 1 SCC 753