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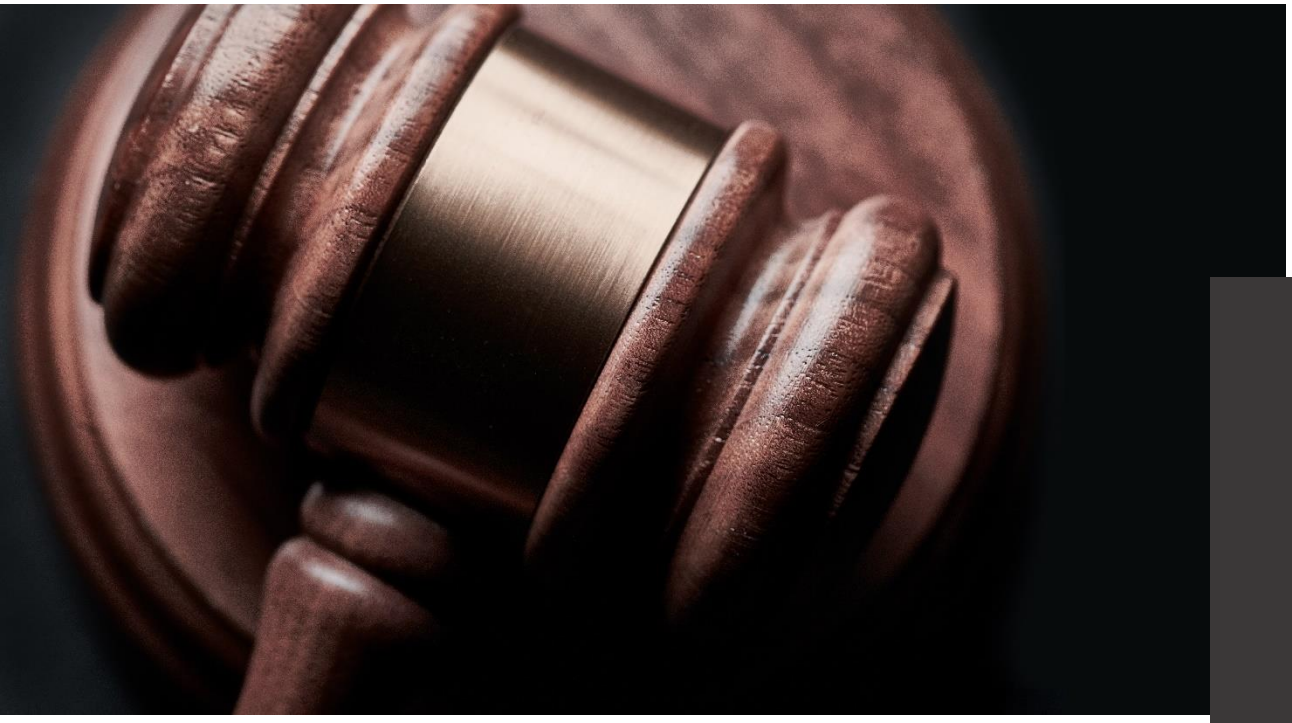
# Dispute Resolution and Arbitration

Monthly Update | February 2021

# DISPUTE RESOLUTION AND ARBITRATION UPDATE




## Contributors

**Faranaaz Kharbhari**
Counsel

**Manan Shukla**
Partner

**Pragya Ohri**
Partner

**Kshitiz Khera**
Associate Partner

**Rahul P Jain**
Associate Counsel

**Ishwar Ahuja**
Senior Associate

**Kanika Kumar**
Senior Associate

**Aasiya Khan**
Associate

**Aditi Soni**
Associate

**Jutishna Saikia**
Associate

**Khushboo Rupani**
Associate

**Mahafrin Mehta**
Associate


## Union of India v. Associated Construction Co.

Special Leave Petition No. 18079/2020

### Background facts

- Union of India entered into a contract with the Associated Construction Co. for the provision of OTM Accommodation for CASD at Delhi Cantt-10.
- Certain disputes arose during the execution of work between the parties and Arbitration was invoked as per the terms of the contract. Sole Arbitrator allowed both the claims by awarding a certain sum against the claim and by rendering simple interest of 12% per annum in the favor of the respondent.
- The said Award was challenged before learned Single Judge, who went on to dismiss the petition on the ground that the Sole Arbitrator had pronounced the award in consonance with the contract and the division bench also dismissed the appeal against single judge order on the ground of delay, following the judgment of SC in *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department*[1] wherein the period of limitation for appeals under Section 37 of the Arbitration and Conciliation Act, 1996 (**Act**) was held to be governed by Article 116 of the Schedule to the Limitation Act, 1963, which prescribes 90 days' for appeals to the HC under the CPC.
- Thus, Union of India filed a Special Leave Petition.

### Issue at hand?

- What shall be the suitable period of limitation applicable to an appeal filed under section 37 of the Act?

[1] (2008) 7 SCC 169

### Decision of the Court

- The SC, while placing reliance on the judgements passed in *Union of India v. Varindera Constructions Ltd*[2] and *N.V. International v State of Assam & Ors*[3], concluded that the limitation period required for filing an appeal under Section 37 should be the same as under Section 34 i.e., 120 days.
- It was expressed by the Court that because an application under Section 34 should be filed within a maximum period of 120 days, an appeal being a continuation of the original proceedings under Section 37 should also be filed within the same period i.e., 120 days. The 120 days' period for an application under Section 34 resulted from adding a 30 days' grace period if reasonable cause for delay is shown on top of the statutory limitation of 90 days provided under Article 116 of the Limitation Act. The Hon'ble Court also ruled that if the appellant fails to make an application within 120 days from the day its petition was either accepted or dismissed under Section 34, the delay shall not be condoned as it would be against the objective of the Act which is to promote speedy resolution of disputes.

**Our View**

It is pertinent to note that the Arbitration & Conciliation Act, 1996, does not state any period of limitation for appealing under Section 37, let alone an extension for the same, which results the Courts being vulnerable and uncertain. However, it is a good time to set free the dubiety while handling the appeals falling within the purview of Section 37 and welcome the upcoming decision of the Supreme Court in this regard so that one of the avowed objects of ADR mechanism i.e the expeditious resolution of disputes, can be easily favoured, without an iota of doubt.

## Anglo American Metallurgical Coal v. MMTC Ltd

2020 SCC OnLine SC 1030

### Background facts

- Anglo American Metallurgical Coal (**AAMC**), an Australian company and MMTC had entered into a Long-Term Agreement (**LTA**) in March 2007 for the supply of certain quantities of specific mentioned cooking coal to MMTC.
- Disputes arose between the parties in relation to the shipments or stems that were to be covered by the fifth delivery period which ranged from July 01,2008 to June 30, 2009 (Fifth Delivery Period). Both the parties mutually extended the period to the September 30, 2009.
- Emails and letters were exchanged between both the parties from August 2008 till December 2009 which were properly examined by the panel of arbitrators while passing an international arbitral award at New Delhi on the May 12, 2014. The award was a Majority Award in favor of AAMC. The award held that the AAMC was able to supply the contracted quantity of coal for the said Fifth Delivery Period, at the contractual price and it was MMTC who was unwilling to lift the coal due to a slump in the market.
- The said Majority Award was challenged under section 34 of the Arbitration & Conciliation Act, 1996 for setting aside of arbitral award wherein the Ld. Single Judge of the Delhi High Court upheld the Majority Award vide judgement dated July 10, 2015.
- On appeal preferred by MMTC under Section 37 of the Arbitration & Conciliation Act, 1996, the Divisional Bench of the Delhi High Court allowed the appeal and set aside the judgement of the Single Judge and the Majority Award vide its Impugned Judgement dated March 02, 2020.

### Issue at hand?

- Maintainability of the application preferred by MMTC under section 34 of the Arbitration & Conciliation Act 1996?

### Decision of the Court

- The Apex Court relied on the Majority Award which held that AAMC were able to supply the contracted quantity of coal for the Fifth Delivery Period at the said price and that it was MMTC who were unwilling to lift the coal owing to a slump in the market. MMTC were aware of the fact that mere commercial difficulty in performing a contract would not amount to frustration of the contract and hence they decided to attack AAMC on the ground that it was AAMC who were unable to supply the contracted quantity in the Fifth Delivery Period. The Apex Court further held the findings by the Divisional Bench of the High Court was flawed for the following reasons:
  - The finding of the High Court that there was no evidence that the Respondent demanded stems of coal at a reduced rate with regard to the contractual rate was flawed since the High Court ignored at least three different exchanges between the parties, being MMTC's letters dated November 20, 2008, November 27, 2009 and December 03, 2009.
  - The finding of the High Court that no evidence had been led to show that the Appellant had availability of the balance quantity of 454,034 metric tonnes of coal for supply to the Respondent during the Fifth Delivery Period was flawed since the High Court completely failed to appreciate the evidence by way of an Additional Affidavit dated September 03, 2013 of the

**Our View**

The Apex Court has drawn a balanced perspective on scope of interference in an award passed by an arbitral tribunal under Section 34 of the Act and an examination of the Court's restriction to such scope in appeal under Section 37. However, the Apex Court has also considered and impressively given detailed instances of examination of facts by a Court under Section 34 of the Act so as to restrict the same within the permissible limits of interference on grounds stated in Section 34(2)(b)(ii) of the Act, thereby creating a balance view on settled legal principles as applicable.

[2] (2020) 2 SCC 111
[3] (2020) 2 SCC 109

Marketing Manager of AAMC, response to questions in cross examination before the Arbitral Tribunal on the September 23, 2013 together with two letters exchanged between the parties on September 21, 2009 and September 25, 2009 respectively.

- The finding that there is no evidence to prove the market price of coal at the time of breach and that therefore, quantum of damages could not be fixed was flawed.

- The Court also explained the concept of 'patent ambiguity' and concluded that there was no mention of the price at which coal was to be supplied in three mails and these mails must be read as part of the correspondence between the parties, which would make the so called admissions.

## NHAI & Anr v. S.D.M - cum-Land Acquisition Collector, Pathankot & Ors

MANU/PH/1507/2020

### Background facts

- A notification dated the April 03, 2008 under Section 3A of the NHAI Act, 1956 (**Act**) was issued for acquiring land in the village of Fangrian, Pathankot. It was followed by a notification dated the March 31, 2009 under Section 3D of the said act. An order dated the April 13, 2010 was passed under Section 3G (1) of the NHAI Act mentioning the payable compensation at INR 20 lakhs per acre and INR 10 lakhs per acre. The Respondents were paid a sum of INR 44,34,949.
- The said Respondents subsequently filed an application on April 29, 2011 under Section 3G (5) of the Act before the Ld. Arbitrator seeking compensation. The Respondents indicated that the land was located in a different rectangle. The said application for enhancement was decided by a Ld. Arbitrator in favor of the Respondents and compensation was increased along with interest. However, the Ld. Arbitrator missed mentioning the error of wrong rectangle in his award dated June 19, 2013.
- The NHAI filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) against the award dated June 19, 2013 on November 29, 2013 in the court of Additional District Judge, Jalandhar. The said objections were waived away by the ADJ vide his order dated August 16, 2016.
- Following the dismissal of the said objections of NHAI, Respondents 3 to 23 filed for an execution petition on the May 31, 2017 before the learned District Judge, Jalandhar. The same mistake of mentioning the land situated in wrong rectangle was committed again. Calculations were provided by the SDM-cum-Land Acquisition Collector, Pathankot to the Executing Court, where the net amount payable by NHAI was calculated at INR 6,24,25,159 on the basis of mentioning the wrong rectangle.
- No objections were raised by the Respondent 3 to 23 about a mistake being committed. On the basis of the previous calculation, NHAI deposited the said money with interest to the competent authority. The execution petition was further disposed of by the competent court on May 02, 2018. In the above order, again there was no mention of the mistake committed regarding the wrong rectangle. With an intent to defend the said mistake, Respondent 3-23 contended that it was only after the execution order was passed that such mistake came to their knowledge. Resultantly, an application was filed under Section 152 of the Code of Civil Procedure 1908 (**CPC**) before the Ld. Arbitrator seeking amendment of the Award dated June 19, 2013 to the extent of correcting the said mistake.
- Replying back, NHAI objected to the maintainability of the said application on the ground that the said application had to be moved within 30 days from the date of award but was filed after 5 years, However, by an order dated the August 28, 2019, the Ld. Arbitrator did not accept the said objections by NHAI and allowed the application directing for corrections to be made wherever required. Post such correction, the Respondents 3 to 23 filed another execution application before the competent court with fresh calculation sheets determining a compensation of INR 16,54,09,000 and further amount was calculated at INR 10,07,60,775. The Competent Court furthermore directed NHAI to disclose details of properties and at the same time, fixed the next date of hearing.
- The Ld. Single Judge observed that the mistake was made at a stage of filing the said application and dismissed the said application.
- NHAI pointed out that the rectification application was filed only under Section 152 of CPC where it should have been Section 33 of the Arbitration Act and further submitted that any rectification was required to be done within a time period of 30 days of the receipt of the Award and therefore the procedure adopted was impermissible in law. The counsels for the Respondents claimed that the mistake made was because of them and their clients had nothing to do with the same and hence should not suffer on that count.

- The NHAI filed the present appeal against an order dated December 02, 2019 passed by a learned Single Judge dismissing NHAI's writ petition challenging order dated August 28, 2019 passed by the Commissioner of Jalandhar Division exercising powers under section 33 of the Arbitration Act read with Section 152 of CPC.

### Issues at hand?

- Whether the Respondents 3-23 could be permitted to resort to an application for rectification of error in the Award before the Ld. Arbitrator after the order of the Executing Court?
- Whether the application is maintainable under Section 33 of the Arbitration Act beyond the stipulated period of 30 days?

### Decision of the Court

- It was seen that the Respondents had ample time to be aware of the error committed apart from numerous opportunities to have noticed the same. The Respondents, however, instead of rectifying the error chose to continue with the same. As such, the Respondents' defense was without any merit.
- The Court held that the period of limitation of 30 days for filing a rectification application under Section 33 of the Arbitration Act starts running from the date of receipt of the Award and not form the date of knowledge of error in the Award.
- The Court further held that the error was not a mere technical error. The said error resulted in the extra payment of around INR 10 crores by NHAI to the Respondents.
- The Ld. Court further held that the time limit for maintaining an application under Section 33 of the Arbitration Act is mandatory and not merely directory. The time limit could be exceeded only where 'another period of time has been agreed upon by the parties'.
- In view of the foregoing, the HC set aside the impugned order dated December 02, 2019 of the Ld. Single Judge and the order dated August 28, 2019 of the Ld. Arbitrator.

#### Our View

HC has reiterated the position on the limitation period envisaged under Section 33 of the Arbitration Act as mandatory and not merely directory unless otherwise agreed by the parties. The High Court, however, has also considered the conduct of the Parties thereby leaving scope for a party to argue for condonation of delay in the specified time period, being considered "mandatory", for factual reasons which may be considered to be reasonable by the court.

## Knowledge Podium Systems v. SM Professional Services

CS(COMM) 377/2020

### Background facts

- The SM Professional Services had leased a property to the Knowledge Podium System (**KPS**) on certain conditions, pursuant to which KPS deposited an interest-free refundable deposit of INR 1.9 crores.
- After it became commercially unviable for KPS to retain the rented premises, it initiated negotiations with SM Professional Services for reduction of rentals and maintenance with effect from April 2019. However, even before KPS could formally terminate the agreement and remove its movables, SM Professional Services took possession of the premises.
- The present suit is filed by KPS for recovery of the remaining interest-free refundable security deposit and movables. SM Professional Services moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 (**Act**) for referring the dispute to arbitration while KPS contended that there was a novation of lease deed which stood superseded and novated in view of the fresh agreement of 2018, which did not contain any arbitration agreement.

### Issue at hand?

- Whether the High Court (**HC**) should refer the dispute to arbitration under Section 8 of the Act or not, depending upon the validity of the arbitration agreement on prima facie basis?

### Decision of the Court

- The HC observed that the order was passed by a single-judge who observed that 'A novation takes place only when there is a complete substitution of a new contract in place of the old. Do the facts of the present case warrant a conclusion that there was a novation of contract? But when in doubt, the court must refer the matter to arbitration. The court should refer the matter if the validity of the arbitration agreement cannot be determined on a prima facie basis.'
- HC opined that it could not be prima facie said that there was a completely new contract and that the old, registered lease deed had been novated. Stating that the issue would require deeper consideration and was best left to the arbitral tribunal, the HC decided to allow the application under Section 8.

#### Our View

HC rightly applied the principle enunciated in *Vidya Drolia & Ors v. Durga Trading Corp* while deliberating on whether to refer the dispute to arbitration and stressed on the interpretation of Section 62 of Indian Contract Act which contains the principle of 'novation of contract'. In our view, the HC has accurately referred to the stringent conditions that provide for rejection of a Section 8 application only when a party has made out a prima facie case of non-existence of valid arbitration agreement. Since the objections raised by Plaintiff in this matter were in a quagmire of uncertainty and it was clear that the principal contract was not novated, the arbitration agreement survived.

- HC also laid emphasis on Section 8 and the Supreme Court's decision in *Vidya Drolia & Ors v. Durga Trading Corporation*[4], and stated that for rejection of a Section 8 application, a party must make out a prima facie case of non-existence of valid arbitration agreement.
- HC accordingly appointed former Delhi HC Judge Justice GS Sistani as the sole arbitrator to adjudicate the dispute between the parties.

## Joginder & Anr v. State of Haryana & Ors

Special Leave Petition (Civil)No. 1829 of 2021

### Background facts

- The Petitioners are the residents of Village Sarsad, Tehsil Gohana, District Sonepat who had encroached upon the Panchayat Land and constructed houses.
- In the year 2000, the Government of Haryana framed a policy regarding sale of Panchayat Land in unauthorized possession inside and outside the Abadi Deh. The Government of Haryana also amended the Punjab Village Common Lands (Regulation) Rules, 1964 (**1964 Rules**) and issued a notification dated August 01, 2001 in this regard. Thereafter, in the year 2008, Rule 12(4) was incorporated in the 1964 Rules in terms of the notification dated January 03, 2008, which authorizes the Gram Panchayat to sell its non-cultivable land in Shamlat Deh to the inhabitants of the village who have constructed their houses on or before March 31, 2000, subject to fulfilment of the conditions mentioned thereunder.
- Thus, as per Rule 12(4) of the 1964 Rules, the construction of the house on the Panchayat Land must have been put on or before March 31, 2000. It must be a non-cultivable land, must not result in any obstruction to the traffic and passer-by and the illegal occupation/constructed area shall be up to a maximum of 200 square yards and then only the same can be regularized/sold.
- Thereafter, the Petitioners submitted an application before the Competent Authority along with the resolution of the concerned Panchayat and requested to sell the lands occupied by them illegally and unauthorizedly, in exercise of powers under Rule 12, more particularly Rule 12(4) of the 1964 Rules. After giving an opportunity of personal hearing, the Competent Authority, on perusal of the record and the site report, which was verified by visiting the relevant place and having found that the petitioners are in illegal occupation of the area admeasuring more than 200 square yards, i.e, 757.37 square yards in case of the Petitioner No. 1 and 239.48 square yards in case of the Petitioner No. 2, rejected the said application. The Order passed by the Competent Authority rejecting the application of the Petitioners came to be challenged by the Petitioners before the Punjab and Haryana HC by way of a Writ Petition.
- By a Judgment and Order, the Division Bench of the HC dismissed the said Writ Petition. While dismissing the Writ Petition, the HC has also considered the decision in the case of *Jagpal Singh v. State of Punjab*[5] by which the SC directed all the State Governments that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of the villagers of the village.
- Aggrieved by the impugned Order, the Petitioners have preferred an Appeal before the Hon'ble Supreme Court by way of the present Special Leave Petition.

### Issue at hand?

- Whether regularization of the illegal occupation of the Government Land/Panchayat Land can be claimed by illegal occupants?

### Decision of the Court

- At the outset, the Petitioners submitted that the Competent Authority and HC have misinterpreted the 1964 Rules and only in case where the constructed area is more than 200 square yards does the bar under Rule 12(4) of the 1964 Rules apply. Therefore, even if the total area of the unauthorized occupation is more than 200 square yards, i.e., constructed area plus the open space area, the same is required to be regularized in exercise of powers under Rule 12(4).
- It was further submitted that Rule 12(4) does not specify or limit any area with regard to houses constructed and it only creates a limit of 25% open space of the constructed area up to a maximum of 200 square yards. It is submitted that therefore the cases of the petitioners squarely fall within Rule 12(4) of the 1964 Rules.

### Our View

By way of the present Order, the SC has made it clear they are unwilling to give unauthorized and illegal occupants any kind of leeway. If there is a method to regularize the unauthorized occupation, the terms and conditions thereof must be complied with. The entitlement to regularization automatically goes away if the conditions stipulated for the same are not complied with. Additionally, such illegal occupants cannot claim such regularization as a matter of right.

[4] CA No. 2402 of 2019
[5] (2011) 11 SCC 396

- Lastly, the Petitioner submitted that the HC has erred in relying upon the SC's decision in *Jagpal Singh* and that in the said judgment the SC did not consider Rule 12(4).
- At the outset the SC remarked that it is apparent that the illegal occupation of the Panchayat Land can be regularized provided the area of the illegal occupation is up to a maximum of 200 square yards. It includes the constructed area, open space up to 25% of the constructed area or appurtenant area. Therefore, on a fair reading of Rule 12(4), in case of an illegal occupation of the area up to a maximum of 200 square yards including the constructed area, appurtenant area and open space area can be regularized and sold at not less than collector rate (floor rate or market rate, whichever is higher). The idea behind keeping the cap of 200 square yards may be that the small area of the lands occupied illegally can be regularized/sold.
- The SC stated that if the submission on behalf of the Petitioners was accepted, in that case, it may happen that somebody has put up a construction on 195 square yards and is in illegal occupation of 500 square yards area, in that case, though he has encroached upon the total area of about 700 square yards, he shall be entitled to purchase the land under Rule 12(4) of the 1964 Rules, which is not the intention of Rule 12(4). Therefore, the SC held that the Competent Authority as well as the HC both were justified in taking the view that as the respective petitioners are in illegal occupation of the area more than the required area up to a maximum of 200 square yards, they are not entitled to the benefit of Rule 12(4).
- Further, the SC held that persons in illegal occupation of the Government Land/Panchayat Land cannot, as a matter of right, claim regularization. Regularization of the illegal occupation of the Government Land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If the said conditions are not fulfilled, such illegal occupants are not entitled to regularization.
- The SC relied upon its decision in the matter of *State of Odisha v. Bichitrananda Das*[6], whereby it was held that an applicant who seeks the benefit of the policy must comply with its terms. Since, in the present case, one of the conditions mentioned in Rule 12(4) is not satisfied, the Petitioners are not entitled to the benefit thereunder.
- With regards to its decision in the matter of *Jagpal Singh*, whereby the SC had come down heavily upon such trespassers who have illegally encroached upon on the Gram Panchayat Land by using muscle /money powers and in collusion with the officials and even with the Gram Panchayat. In the said decision, the SC had observed that "*such kind of blatant illegalities must not be condoned*". It was further observed that *"even if there is a construction the same is required to be removed and the possession of the land must be handed back to the Gram Panchayat*". It was further observed that "*regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village*".
- In light of the aforesaid, the SLP was dismissed.

## Balwant Singh v. Sudarshan Kumar

Civil Appeal Nos. 231-232 OF 2021

### Background facts

- The NRI landlords (**Appellants**) moved to the Rent Controller claiming that they want to start the business of sale, purchase, and manufacture of furniture and for the proposed business, the property already in possession of the landlord is insufficient. Rent Controller allowed their petition.
- The landlords sought immediate recovery of possession of the rented premises, in the urban area of Khanna, by invoking the provisions of Section 13B read with Section 18A of the East Punjab Urban Rent Restriction Act, 1949, therein for which the eviction proceedings were initiated against the tenants (**Respondents**).
- The tenants filed an application seeking leave to contest under Section 18A (5) and contended that the space available with the landlord would be adequate for the proposed furniture business and there is no need to seek eviction of the respondents from their respective shops. Allowing the revision petition filed by tenants, the Punjab and Haryana HC set aside the eviction order.
- In this case, landlord challenged the judgment dated March 6, 2020 of the HC whereunder the tenants were granted leave to contest the eviction proceedings, overturning the decision of the Rent Controller.

[6] (2020) 12 SCC 649

### Issue at hand?

- Whether the earlier judgement of the HC in granting the leave to contest the eviction proceedings to the tenants/respondents valid or not?

### Decision of the Court

- SC observed that 'On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the concerned vacant shops under possession of the landlords were duly disclosed, but the case of the landlord is that the premises under their possession is insufficient for the proposed furniture business.'
- Further the special procedure for NRI landlord was deliberately designed by the Legislature to speedily secure possession of tenanted premises for bona fide need of the NRI landlords and such legislative intent to confer the right of summary eviction as a one-time measure cannot be frustrated without strong reason.
- In view of the foregoing, the SC set aside the impugned judgment and order of the HC and stated that the tenants have failed to make out any case to contest the applications of the NRI landlords.

## CRSC Research and Design Institute Group Co Ltd v. Dedicated Freight Corridor Corp of India Ltd & Ors

2020 SCC OnLine Del 1526

### Background facts

- The said appeal was filed under Section 37(1)(b) of the Arbitration & Conciliation Act, 1996 wherein the Appellant impugned the judgement dated September 30, 2020 of the Single Judge dismissing OMP(I)(COMM) No. 184/2020 filed by the Appellant, seeking interim measure of restraining invocation/encashment of four Advance Payment Bank Guarantees of a total value of approximately INR 38.06 crores and one Performance Bank Guarantee for INR 23.55 crores issued by the Respondent No.2 and Respondent No.3 respectively in favor of the Respondent No.1 on the basis of a contract dated October 03, 2016.
- During the pendency of the OMP before the Single Judge, Respondent No. 1 had made a statement that the bank guarantees will not be encashed. No one appeared on behalf of the Respondent No. 1 on the date of hearing of the urgent appeal. After dismissal of the OMP, the Bank guarantees were invoked but the monies were not released by the Respondents No. 2 & 3 in favor of the Respondent No. 1. The Court restrained the Respondents No. 2 & 3 from releasing the monies in favor of Respondent No. 1, if not already released, vide its order dated the October 01, 2020. The appeal for the same was therefore listed on various dates while the interim arrangement continued.
- The Appellant during its arguments did not draw attention to the bank guarantees. The commercial division of the said court in this said case, was approached by way of a petition under section 9 of the Arbitration and Conciliation Act 1996, for interim measures. The Appellant, without controverting that the bank guarantees were absolute and unconditional, contended that since the said guarantees were pursuant to a contract, it was essential to peruse the terms of the contract. The Appellant further stated that the Respondent No.1 had not acted in terms of the contract in the matter of invocation of the said guarantees and thus a case of fraud was made out.
- The Respondents, however, argued that the contract was terminated and the bank guarantees encashed only on grounds of delay on the part of the Appellant in executing the works under the contract despite been given multiple extensions of time for completion of the contract. It was further argued that the decision of termination of contract was made public even before the contract was actually terminated.
- Respondent No. 1, while controverting each of the Appellant's averments on merits, drew attention to earlier notices that were issued by the Respondent No.1 to the Appellant complaining about delay. The Appellant contended the fear of Respondent No. 1 could be assuaged by keeping the bank guarantees alive till the arbitral award is pronounced.

### Issue at hand?

- Whether interim measure of restraining invocation of bank guarantee can be allowed?

### Our View

This judgment clarifies the law with regard to the protection available to the NRI landlords under Section 13B within the East Punjab Urban Rent Restriction Act, 1949. This decision will prevent frivolous proceedings/arguments on the nature of relationships between the landlord and tenants in the eviction proceedings. The judgement is thus a welcome move securing and balancing the privileges of the landlords and tenants keeping in mind the Legislature, which provides measures to swiftly secure possession of tenanted premises for bona fide need of the NRI landlords and such legislative purpose to confer the right of summary eviction, as a onetime measure cannot be thwarted, without strong justifiable grounds.

### Decision of the Court

- The HC disagreed to the contentions of the Appellant for the interim measure of interference with unconditional bank guarantees. The Court further stated that no question of a prima facie view arises and the enquiry is confined to nature of obtaining bank guarantees,
- The HC further held that the Appellant delayed the realization of the monies under the bank guarantees by the Respondent No. 1 by filing a Section 9 petition and the said Appeal. The Court dismissed the Appeal thereby directing the Appellant to pay the Respondent No.1 the amount mentioned in the bank guarantees along with interest of 11% per annum within a period of 60 days failing which the interest rate will be increased to 14% per annum.

**Our View**

This judgment fortifies the already settled principle of law of least interference by Courts in cases of bank guarantees when no prima facie case is brought out nor the fact of fraud merely pleaded is of any consequence.

## Padia Timber Company Pvt Ltd v. The Board of Trustees of Visakhapatnam Port Trust through its Secretary

Civil Appeal No. 7469 of 2008

### Background facts

- In this case, the Respondent authorities floated a tender for supply of wooden sleepers. The Appellant submitted an offer with a specific condition that the inspection of sleepers would have to be conducted only at Appellant's depot and therefore deposed INR 75000 as earnest deposit.
- The tender was extended, the Appellant resubmitted the offer with exact same counter proposal that the inspection will be done at Appellant depot, however, if the Respondent insists for the inspection at their site then the Appellant would charge 25% above the quoted price.
- After few correspondence exchange, the Respondent informed the Appellant that they had accepted the offer for the supply of wooden sleepers at the rate quoted by the applicants and they had also agreed to the inspection of sleepers at Appellant's depot, however, the Respondent imposed the further condition that the Appellant would have to transport the wooden sleepers to the General Stores of the Respondent by road, at the cost of the Appellant and the final inspection would be made at the General Stores of the Respondent.
- Thereafter, the Appellant wrote to the Respondent stating that they do not accept the offer and also were not willing to sell the sleepers at the earlier quoted prices and further communicated the request to get back their earnest money. The very same day the Respondent sent a letter of intent cum purchase order for some sleepers. The Respondent claimed that they validly accepted the terms of initial offer and therefore there was a concluded contract according to the terms of which, they can forfeit the earnest money.
- The Respondent after 10 months purchased the sleepers from other manufactures and claimed the extra cost incurred from the Appellant as a consequence of breach of contract.
- The matter went to the court of Additional Subordinate Judge, Visakhapatnam wherein it was held placing reliance on Section 4 of the Indian Contract Act that there was concluded contract between the parties as the Respondent's acceptance was completed when they dispatched intent cum purchase order against the offer of the Appellant. Therefore, the Appellant breached the contract. The Appellant went in appeal to the High Court which upheld the judgment of the district court and held that there was a concluded contract between the parties.
- This appeal was filed against a common judgement and order passed by the HC of Hyderabad confirming a Judgment and order of the Additional Senior Civil Judge, Visakhapatnam allowing the suit filed by the Respondent against the Appellant for damages, and dismissing the suit filed by the Appellant for refund of earnest deposit.

### Issue at hand?

- Whether the acceptance of a conditional offer with a further condition results in a concluded contract, irrespective of whether the offeror accepts the further condition proposed by the acceptor?

### Decision of the Court

- SC in the present case was of the opinion that the district court and the HC of Hyderabad relied on Section 4 of the Indian Contract Act but completely overlooked Section 7 of the Indian Contract Act. The Court reiterated that it is a cardinal principal of law that the offer and the acceptance must be absolute so much so that there can be no room of doubt whatsoever. The Court further opined that 'offer and acceptance must be based or founded on three components, that is, certainty, commitment and communication'.

- The Court placed reliance on *Haridwar Singh v. Bagun Sumbrui and Ors*[7] wherein it was held that an acceptance with a variation is no acceptance. It is, in effect and substance, simply a counter proposal which must be accepted fully by the original proposer before a contract is made. The Court further relied on *Union of India v. Bhim Sen Walaiti Ram* wherein it was held that in cases of conditional acceptance, offer can be withdrawn at any moment until absolute acceptance has taken place. Also, in the *Jawahar Lal Burman v. Union of India*, the Court held that the contract was not concluded when the acceptor through his letter of acceptance intended to make substantial variation to the contract and it was not accepted by the proposer.
- In the instant case, SC held that when the acceptor puts in a new condition while accepting the contract already signed by the proposer, the contract is not complete until the proposer accepts that condition. In the present case, acceptance by the Respondent was not absolute and unconditional as they agreed to inspection at the depot of the Appellant but imposed a further condition that the goods would be finally inspected at the showroom of the Respondent. This condition was not accepted by the Appellant. Hence, in there was no concluded contract in effect. Hence, the Court very correctly reestablished that an acceptance must be absolute and conditional acceptance is as good as a counteroffer which needs to be duly accepted by the original proposer for a valid and concluded contract.
- SC in the present case further held that Appellant was entitled to refund of earnest money deposited with the Respondent and directed that the earnest money shall be refunded within four weeks with interest @ 6% per annum from the date of institution of suit till the date of refund thereof.

## NTPC Ltd v. AMR INDIA Ltd

MANU/DE/1952/2020

### Background facts

- The Petitioner, through a letter of award dated February 20, 2013 awarded the work of Site Levelling & Infrastructures Package for NTPC Lara Project in favor of AMR India Ltd (**Respondent**). Owing to various breaches as alleged by the Petitioner, the contract was terminated by a letter dated December 12, 2016. Subsequently, the dispute resolution clause (Clause 7 under the GCC), was invoked by the Respondent on January 02, 2017.
- The Respondent requested the Petitioner for appointment of a sole arbitrator as provided under Section 29B of the Arbitration and Conciliation Act, 1996 (**Act**) as against Clause 7 of the GCC which mandated for constitution of an arbitral tribunal consisting of three arbitrators. A sole arbitrator, from the list of approved arbitrators maintained by the Petitioner, was appointed by the Chairman and Managing Director of Petitioner for adjudicating the disputes, stipulating that the same be conducted in terms of the 'Fast Track Procedure' under Section 29B of the Act and that the fees be governed as per NTPC Schedule of fees for Arbitrators fixed by Circular No. 689, dated April 04, 2014.
- The arbitration could not be completed in 6 months (Section 29-B) and time was extended several times. The arbitrator, during a hearing observed that the arbitration was no longer a fast-track arbitration, issued a procedural order and revised his fee from that set by NTPC's circular to the fee structure mentioned in the 4th Schedule of invoking Section 31(8) and Section 38 of the Act. Therefore, NTPC challenged the arbitrator's order before the court stating that the arbitrator is de-jure unable to perform his functions as an arbitrator. Accordingly, the mandate of the learned arbitrator was sought to be terminated by NTPC before the HC of Delhi.

### Issue at hand?

- Whether the arbitrator has become de jure unable to perform his functions having revised his fee from the agreed fee under the NTPC Schedule of fees for arbitrators?

### Decision of the Court

- The Court relied on the case of *National Highways Authority v. Gayatri Jhansi Roadways Ltd*[8] and held that the petition is prima facie not maintainable and is also without merit since the Supreme Court has conclusively held in para 12 of National Highways that once the parties have agreed for payment of fee to the arbitrator even though in terms of certain circulars, the arbitrator could not have sought for payment of fee under the Fourth Schedule of the Act.

### Our View

The court has rightly noted that an arbitrator ought to perform its functions as an arbitrator in accordance with his terms of appointment.

[7] 1972 AIR 1242
[8] 2019(5)ArbLR235(SC)

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# AT A GLANCE

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www.hsalegal.com

mail@hsalegal.com

HSA Advocates

## PAN INDIA PRESENCE


### New Delhi

81/1 Adchini
Sri Aurobindo Marg
New Delhi – 110 017

**Phone:** (+91) (11) 6638 7000

**Email:** newdelhi@hsalegal.com

### Mumbai

Construction House, 5th Floor
Ballard Estate
Mumbai – 400 001

**Phone:** (+91) (22) 4340 0400

**Email:** mumbai@hsalegal.com

### Bengaluru

Aswan, Ground Floor, 15/6
Primrose Road
Bengaluru – 560 001

**Phone:** (+91) (80) 4631 7000

**Email:** bengaluru@hsalegal.com

### Kolkata

No. 14 S/P, Block C,
Chowringhee Mansions
Kolkata – 700 016

**Phone:** (+91) (33) 4035 0000

**Email:** kolkata@hsalegal.com