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Dispute Resolution and Arbitration

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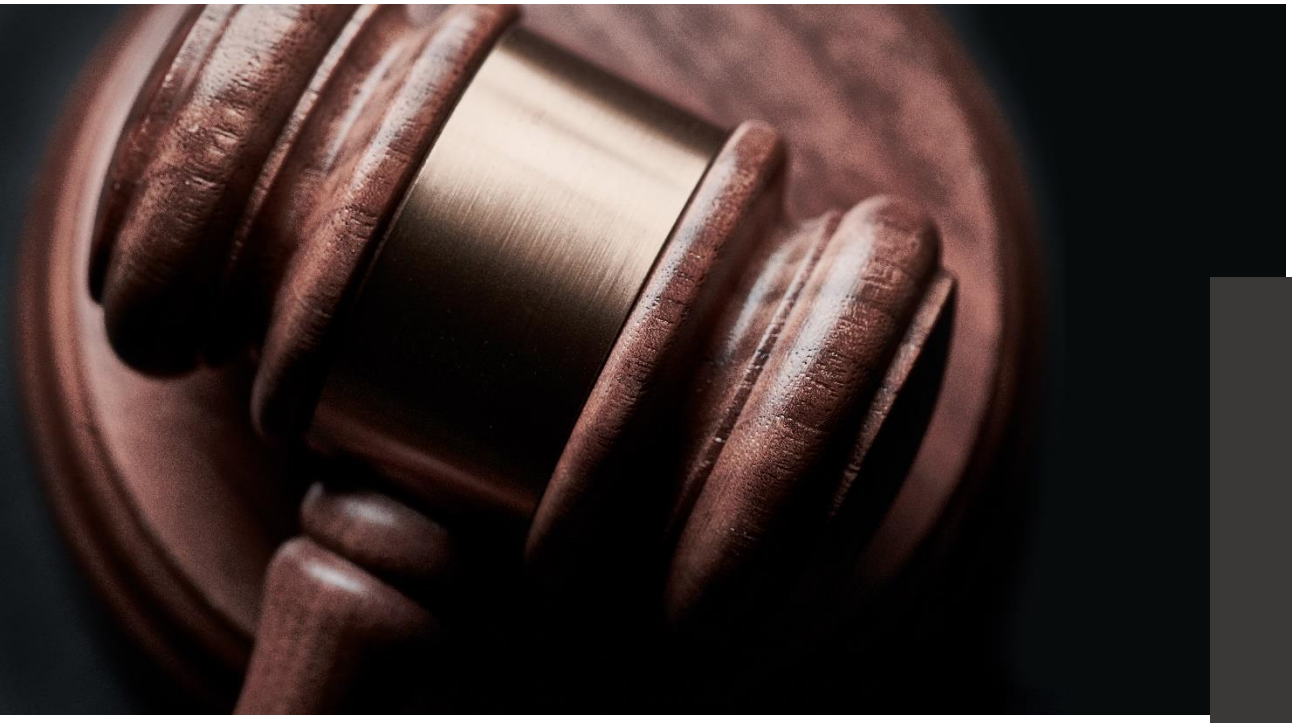
DISPUTE RESOLUTION AND ARBITRATION UPDATE



Contributors

Amrita Narayan
Partner

Faranaaz Kharbhari
Counsel

Pragya Ohri
Partner

Kshitiz Khera
Associate Partner

Rahul P Jain
Associate Counsel

Ishwar Ahuja
Senior Associate

Kanika Kumar
Senior Associate

Khushboo Rupani
Senior Associate

Mahafrin Mehta
Senior Associate

Aasiya Khan
Associate

Aditi Soni
Associate

Akriti Shikha
Associate

Shruti Vora & Ors v. SEBI

Appeal No. 308 of 2020 (along with 10 other batch appeals)

Background facts

- In November 2017, few articles were printed in newspapers wherein it was asserted that the Unpublished Price Sensitive Information (**UPSI**) of several companies were being circulated in certain WhatsApp groups before its official revelation by the respective companies.
- In this context, the Respondent initiated investigations and began search and seizure operations of 26 entities of a specific market chatter WhatsApp group. About 190 devices and records were taken hold of and many WhatsApp messages were recovered from the devices of the Appellants with the help of experts and examined. Out of those numerous messages, the messages of six companies namely, Bajaj Auto Ltd., Bata India Ltd., Ambuja Cements Ltd., Asian Paints Ltd., Wipro Ltd., and Mindtree Ltd. matched with the exact figure of the financial results.
- It is the case of the Respondent that within a day or two of the finalizations of the financial results, one liner WhatsApp messages were circulated which closely matched with the respective later published financial results of 12 companies. For instance, in Appeal No. 308 of 2020 the WhatsApp message was 'Wipro revenue 13700 PBIT 2323 PBT 2758'. Real figure of the financial results published later in details released the essence as revenue INR 13,764 Crore, Profit Before Interest and Tax (**PBIT**) INR 2,323.6 Crore and Profit Before Tax (**PBT**) as INR 2,758.9 Crore. Thus, the deviation between the figures given in the WhatsApp message and actual result was 0.47% regarding revenue, 0.03% in the case of PBIT and 0.03% in the case of PBT. Similar pattern was observed regarding the other WhatsApp messages regarding other companies for different quarterly periods.
- The matter was placed before the Securities and Exchange Board of India (**SEBI**), Mumbai, wherein the Adjudicating Officer held that the Appellants have violated the provisions of Section 12A(d) and 12A(e) of the SEBI Act, 1992 and Regulation 3(1) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (**PIT Regulations**) and imposed a penalty of INR 15 Lakh on the Appellants in each of the proceedings. (**Impugned Orders**)

- Aggrieved by the aforesaid Impugned Order, the Appellants preferred an appeal before the Securities Appellate Tribunal (**SAT**).

Issue at hand?

- Whether a 'forwarded as received' WhatsApp message circulated on a group regarding quarterly financial results of a Company closely matching with the vital statistics, shortly after the in-house finalization of the financial results by the Company and some time before the publication/disclosure of the same by the concerned Company, would amount to an Unpublished Price Sensitive Information under the provisions of PIT Regulations?

Decision of the Court

- The Appellants contended that the messages mined by the Respondent were simply forwarded by the Appellants as they received them from some other sources evidently and thus, they cannot be sketched as the originator of the messages. The Appellants strongly refuted that merely streaming the information without any trading in the scrips of the concerned company, would not amount to infringement of PIT Regulations.
- The Appellants further drew the attention of the Tribunal on the Concept of Heard on Street (**HoS**) which is a customary routine within traders, market analyst, institutional investors etc. to share unsubstantiated information regarding the estimates ahead of the disclosure of the financial result. In this view, the Appellants also cited few reputed platforms such as Bloomberg, CNBC, Reuters where similar information is shared by way of articles and aired on the news channels.
- The Appellants strongly requested for consideration that the WhatsApp messages might have been issued from the brokerage houses, or from the evaluations found on the forum of Bloomberg and were in the public sphere. The Tribunal noted that the above contentions of the Appellants were dismissed on the baseless ground that the source of the message could not be detected due to severe technological constraints due to the end-to-end encryption of the WhatsApp messages and the messages were held to be unpublished price sensitive information by the Adjudicating Officer.
- At the outset, the Tribunal carefully perused the definitions of UPSI and 'insider' in the PIT Regulations and highlighted that a generally available information would not be an UPSI. Further, the Tribunal disagreed with the decision of the Adjudicating Officer in labelling the information as UPSI based on the two vague factors i.e. proximity of time and similarity between the information. The Tribunal enunciated the principles laid down in *Samir Arora v. SEBI*[1] where the Tribunal firmly held that there is a need for linkage between the potential source of the UPSI and the person allegedly in possession of the alleged UPSI. It was held that the Respondents defaulted in establishing any frame of references to demonstrate that the impugned messages were UPSI, that the Appellants were aware that it was UPSI and with the said awareness, they or any of them had slipped the said information to other parties.
- In light of the above, the Tribunal answered the aforesaid issue in the negative and set aside the impugned orders in all the appeals.

Our view

This decision erases the perplexity faced whilst determining whether a particular piece of information can be labelled as unpublished price sensitive information or not. The Tribunal's Order that the information can be stamped as an unpublished price sensitive information only when the person receiving the information had a fair idea that it was unpublished price sensitive information is remarkable, since it protects and carefully screens out the untainted individuals innocently sharing the messages, from the batch of whistle-blowers.

Indus Biotech Pvt Ltd v. Kotak India Venture (Offshore) Fund & Ors

Arbitration Petition (Civil) No. 48 of 2019 with C.A. No. 1070/ 2021 @ SLP No. 8120 of 2020

Background facts

- Indus Biotech Pvt Ltd (**Petitioner**) entered into a Share Subscription (**SS**) and Shareholders' Agreements (**SHA**) dated July 20 2007, July 12 2007, January 09 2008 and the Supplemental Agreements dated March 22 2013 and July 19 2017 with the Respondents. The Respondents subscribed to equity shares and Optionally Convertible Redeemable Preference Shares (**OCRPS**) in the Petitioner company.
- A decision was thereafter taken by the Petitioner company to make a Qualified Initial Public Offering (**QIPO**). However, according to Reg. 5(2) of SEBI (Issue of Capital and Disclosure Requirements), Regulations 2018 (**SEBI Regulations**), a company which has any outstanding convertible securities or any other right entitling any person with an option to receive equity shares of the issuer is not entitled to make a QIPO.
- Hence, it became necessary for the Respondents to convert their respective preference shares in the Petitioner Company into equity shares, and in that context, the Petitioner company proposed to convert the OCRPS by Respondents into equity shares.

[1] (2004) SCC Online SAT 90

- In the process of negotiation, dispute arose between the parties with regard to the calculation and conversion formula to be applied in converting the preference shares of the Respondents into equity shares. The Respondents claimed that they were entitled to 30% of the total paid up share capital in equity shares and on the other hand, the Petitioner company, by relying on the report of the auditors and valuer contended that the Respondents would be entitled to approximately 10% of the total paid up share capital.
- As per the Petitioner Company, the dispute herein arose with regards to the appropriate formula to be adopted to arrive at the actual percentage of the paid-up share capital which would be converted into equity shares and the refund if any thereafter. And since, the parties had not resolved the issue, the same was to be resolved through Arbitration.
- The Respondents contended that their subscription to the OCRPS was not in dispute and on redemption of the same, the Petitioner company is required to pay the amount of INR 367,08,56,503. It was their claim that since the same had not been paid by the Petitioner company, it amounted to a default, which gave them a cause of action to invoke the jurisdiction of the Adjudicating Authority for Corporate Insolvency Resolution Process (**CIRP**) under the Insolvency and Bankruptcy Code, 2016 (**IBC**).
- Subsequently, Respondent No. 2 being sister ventures of Respondent No. 1 Company (based in Mauritius) filed a petition under Section 7 of IBC before the NCLT thereby seeking appointment of a Resolution Professional. In the said petition, the Petitioner also filed a Miscellaneous Application under Section 8 of The Arbitration and Conciliation Act, 1996 (**Act**), to refer the parties to arbitration for settling the dispute. To this end, the Petitioner Company also filed an Arbitration Petition under Section 11 of the Act before the Supreme Court (**SC**) seeking appointment of arbitrator/s.
- The NCLT, Mumbai bench through its order dated June 09, 2020 observed that in a Section 7 petition, there has to be a judicial determination as to whether there has been a 'default' within the meaning of Section 3(12) of the IBC. The Tribunal noted that a default had not occurred in the instant case and that the dispute was purely contractual in nature. It allowed the application filed by the Petitioner Company under Section 8 of the Act and as a consequence, the petition filed by the Respondent No. 2 under Section 7 of the IBC was dismissed.
- As a result, Respondent No. 2 aggrieved by the said order, approached SC in the connected Special Leave Petition (**SLP**). Consequently, the Arbitration Petition and the SLP were clubbed together by the SC for consideration.

Issue at hand?

- Whether insolvency proceedings under the IBC are arbitrable and the same will have overriding effects over the Arbitration Act, 1996 or not?

Decision of the Court

- While answering the question of arbitrability in insolvency proceedings, SC at the very outset observed that the position of law that IBC shall override all other laws needs no elaboration and is incontrovertible.
- Court examined the *Booz Allen and Hamilton Inc.*[2] (**Booz Allen Case**) referred by the Respondents, but finally relied upon the exhaustive tests laid down in *Vidya Drolia*[3], in which it has been made clear that a dispute will be non-arbitrable when a proceeding is in rem and a proceeding under the IBC is considered to be in rem only after a petition is admitted. SC held that given the scope of the proceedings under IBC and a timeline for consideration to be made by NCLT, the process cannot be defeated by a corporate debtor by raising moonshine defence only to delay the process.
- SC stated that the reference to the triggering of a petition under Section 7 of IBC to consider the same as proceedings in rem, it is necessary that the Adjudicating Authority ought to have applied its mind, recorded a finding of default and admitted the petition. On admission, third party right is created in all creditors of the corporate debtors and will have erga omnes effect. Mere filing of petition and its pendency before admission, therefore, cannot be construed as triggering of a proceeding in rem. Hence, admission of the petition would decide status and nature of proceedings.
- It held that even if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority has a duty to examine material placed before it by the financial creditor, and the contentions put forth on the application filed under Section 7 of IBC.
- The SC pointed out that in a situation where the petition under Section 7 of IBC is yet to be admitted and, in such proceedings, if an application under Section 8 of the Act is filed, then NCLT is duty

[2] (2011) 5 SCC 532
[3] (2021) 2 SCC 1

Our view

The judgment provides clarity as to when CIRP proceedings could create third party rights. In our view, the Court took a progressive approach by expounding that the mere filing of a petition under IBC, cannot be construed as the triggering of a proceeding in rem. The observation of the Court is justifiable as in such circumstances, the outcome of the NCLT will ipso facto determine the fate of Section 8 Application under the Act. The decision of the Hon'ble Court is in congruence with the proposition that disputes become inarbitrable only when they create an erga omnes effect and not just by having pending IBC proceeding.

bound to first decide the application under Section 7 of the IBC by recording a satisfaction with regard to there being default or not, even if the application under Section 8 of Act is kept along for consideration.

- SC held that since conclusion by NCLT was that there is no default, dismissal of petition under Section 7 of IBC at this stage was justified, and therefore allowed the application under Section 8 of Act.
- The Apex Court observed that the parties would be left with no remedy if the process of arbitration is not initiated and accordingly allowed the Arbitration Petition for appointment of arbitrator/s.

TCS Ltd v. Cyrus Investments Pvt Ltd & Ors

Civil Appeal Nos. 440-441 of 2020

Background facts

- Cyrus Investments Pvt Ltd and Sterling Investment Corp Pvt Ltd, (**Respondents**) belonging to the Shapoorji Pallonji Group (**SP Group**), acquired 48 preference shares and 40 equity shares of the paid-up share capital of Tata Sons, (**Appellants**) from one Mrs. Sawhney. From June 25, 1980 to December 15, 2004, Shri Pallonji S. Mistry, father of Mr. Cyrus Pallonji Mistry (**CPM**), was a Non-Executive Director on the Board of Tata Sons. Thereafter, on August 10, 2006 CPM was appointed as a Non-Executive Director on the Board. By a Resolution of the Board of Directors of Tata Sons dated March 16, 2012, CPM was appointed as Executive Deputy Chairman for a period of five years from April 01, 2012 to March 31, 2017, subject however to the approval of the shareholders at a General Meeting. The General Meeting gave its approval on August 01, 2012. By a Resolution dated December 18, 2012, the Board of Directors of Tata Sons redesignated CPM as its Executive Chairman with effect from December 29, 2012, even while designating Mr. Tata as Chairman Emeritus.
- On October 24, 2016, a resolution was passed whereby the Board of Directors of Tata Sons Ltd ousted CPM as Executive Chairman before his tenure could terminate officially. On October 25, 2016, CPM wrote a mail alleging total lack of corporate governance and failure on part of directors to discharge their fiduciary duties. The said mail which was although labelled as 'confidential' landed up with the media creating a 'sensation'. Tata Sons issued a press statement dated November 10, 2016 followed by the removal of CPM as director from various Tata group companies during the period December 20, 2012 to December 16, 2016. CPM was removed from Directorship of those companies.
- On December 20, 2016 Respondents filed a company petition before NCLT under Section 241 and 242 of the Companies Act, 2013 (**Act**), on the grounds of unfair prejudice, oppression, and mismanagement. However, the Respondents together had only around 2% of the total issued share capital of Tata Sons which is far below the minimum qualification prescribed under Section 244(1)(a) to invoke Section 241 and 242. Therefore, the Respondents filed a miscellaneous application under Section 244(1) seeking waiver of the requirement of Section 244(1)(a) along with an application for stay of an Extraordinary General Meeting (**EGM**) of Tata Sons, in which a proposal for removing CPM as a Director of Tata Sons had been moved. NCLT refused stay, as a consequence of which EGM proceeded as scheduled and CPM was removed from the Directorship of Tata Sons, by a Resolution dated February 16, 2017.
- NCLT initially dismissed the petition under Section 241-242 of Act being not maintainable as persons held just around 2% of issued share capital and subsequently dismissed the petition for waiver.
- Respondents filed appeals before NCLAT challenging both the Orders which were allowed vide order dated September 21, 2017 and matter was remanded back to NCLT for disposal on merits. Thereafter, NCLT heard the company petition on merits and dismissed the same vide its order dated July 09, 2018. The said order was reversed by NCLAT on December 18, 2019.
- Aggrieved by the order of NCLAT, Appellants filed appeals in the SC. The Respondents have also filed an appeal in SC to seek more reliefs besides what has been granted by NCLAT.

Issues at hand?

- Whether the formation of opinion by NCLAT that the company's affairs have been or are being conducted in a manner prejudicial and oppressive to some members and that the facts otherwise justify the winding up of the company on just and equitable ground, is in tune with the well settled principles and parameters, especially in the light of the fact that the findings of NCLT on facts were not individually and specifically overturned by NCLAT?
- Whether the reliefs granted, and the directions issued by NCLAT, including the reinstatement of CPM into the Board of Tata Sons and other Tata companies, are in consonance with the pleadings made, the reliefs sought and the powers available under Section 242(2)?
- Whether NCLAT could have, in law, muted the power of the company under Article 75 of the Articles of Association (**AoA**) by injuncting the company from exercising the rights under the Article?

- Whether the characterization by the Tribunal, of the affirmative voting rights available u/art. e 121 to the Directors nominated by the Trusts in terms of art. 104B, as oppressive and prejudicial, is justified?
- Whether the re-conversion of Tata Sons from a public company into a private company, required the necessary approval Under Section 14 of the Companies Act, 2013 or at least an action Under Section 43-A (4) of the Companies Act, 1956 during the period from 2000 (when Act 53 of 2000 came into force) to 2013 (when the 2013 Act was enacted) as held by NCLAT?

Decision of the Court

- At the outset, SC juxtaposed the legislative history of oppression, mismanagement, and unfair prejudice in England and India. SC derived that as per the 2013 Act, firstly, the conduct of the company's affairs in a manner that warrants interference can be 'past or present and continuous', secondly, conduct prejudicial to any member or prejudicial to public interest or prejudicial to the interest of the company are all counted along with oppression and thirdly, the focus is on whether the winding up will unfairly prejudice complaining members and not on the interests of company or any part of its members. The court further held that at the stage of granting relief in an application under Section 241 of the Act, the final question that the Court should ask itself is as to whether the order to be passed will bring to an end the matters complained of.
- SC observed that NCLT dealt with every one of the allegations of oppression and mismanagement and recorded reasoned findings. But NCLAT, despite being a final court of facts, did not deal with the allegations one by one nor did the NCLAT render any opinion on the correctness or otherwise of the order passed by NCLT.
- Apex court while dissecting NCLAT order held that none of the NCLT's findings except the one relating to removal of CPM was specifically and individually overturned by NCLAT. It observed that if findings of the NCLT, are not specifically modified or set aside by NCLAT it should be said to have reached finality, unless the parties aggrieved by such non-interference by NCLAT have approached the SC. Therefore, since the SP Group's appeal was limited to the failure of NCLAT to grant certain reliefs only the impugned order against other allegations were held to have reached finality.
- In view of the first issue, SC firmly held that the Tribunal is not a labor Court or an administrative Tribunal to focus entirely on the manner of removal of a person from Directorship and cannot grant relief under Section 242 unless the removal was oppressive or prejudicial. SC while relying on the case of *Lau v. chu*[4] held that for winding up order to be passed under Section 241 a company's members may have fallen out on one of two situations namely functional dead lock and or an irretrievable breakdown in trust and confidence between the member have taken place. These tests were not me with in the present case.,
- SC after careful perusal of the Articles 105(a), 118, 121B and 122(b) and held the contentions of Respondents unreasonable. SC observed that NCLAT failed to consider the most fundamental question that whether it would be fair to wind up the principal investment holding Company and thereby sanction those charitable Trusts to starve to death, owing to uncharitable allegations of oppressive and prejudicial conduct. Thus, SC disagreed with NCLAT and answered first issue in negative.
- While deciding the second issue, SC focused its attention on the language of Sections 241 and 242(1) and concluded that NCLAT has lapsed in its judgement by exercising the power of reinstatement not been conferred by the legislature. In this context, the SC placed reliance on Executive Committee of Vaish College[5] wherein the grounds on which contract of personal services is enforceable is explicitly specified. The court noted that NCLAT appears to have granted the relief of reinstatement gratis without any foundation in pleadings, without any prayer and without any basis in law, SC answered the second issue in negative and thus, in favor of Appellants.
- To answer the third issue, SC glimpsed through the Article 75 of AoA and pointed out that the Respondents did not make a grievance out of Article 75 on the ground that it had been misused in the past yet NCLAT nullified Article 75 merely based on likelihood of misuse in future. SC observed that NCLAT neutralized Article 75 merely on the basis of likelihood of misuse. Section 241(1)(a) which provides for a remedy, only in respect of past and present conduct or past and present continuous conduct and NCLAT's action to stretch Section 241(1)(a) to cover the likelihood of a future bad conduct, was held to be impermissible in law. Thus, third issue was answered in negative.
- While dealing with the fourth issue, SC browsed through the Article 121 dealing with affirmative voting rights which was unconventionally prayed to be struck down by the Respondents. SC reasoned that if these special voting rights are incorporated in the AoA and are not in contravention of any of the provisions of the Act, the same cannot be pounced on. SC while dealing with the claim

Our view

In reversing the order of NCLAT, the judgment lays down various touchstones and guidelines for the forums and courts to follow while adjudicating. The court cemented the position that the Tribunals and courts should not interfere with the internal decisions taken by the companies pertaining to the appointment and removal of its Directors The decision showcases the history of few crucial aspects of Companies' legislation and throws light on the ambit and powers granted to Tribunal/company court under oppression and mismanagement provisions in Indi and the UK.

[4] [2020] 1 WLR 4656
[5] *1976 AIR 888*

of Respondents for proportionate representation, drew an analogy between the provisions of 1956 Act and 2013 Act and deduced that the right to claim proportionate representation is available only to a small shareholder holding 0.04% and not to minority shareholders like Respondents holding 18.37%. Therefore, the fourth question of law was also slanted in favor of the Appellants.

- While deciding as to the validity of conversion from Public to Private Ltd the court tracked the concept of deemed public companies as dealt in Section 43A which was inserted by Act 65 of 1960 and Section 3(1)(iii)(d) by Act 53 of 2000. SC held that one has to refer to Section 2(68) of the Act while deciding if a company is a private company or not. Therefore, the SC observed that since AoA of the Appellants fulfil the specifications of Section 2(68) of the 2013 Act, it continues to be a private company. Thus, the SC answered the fifth issue in favor of the Appellants.
- Hence, all the appeals of the Appellants were allowed and the order of NCLAT was set aside.

Secunderabad Cantonment Board v. B. Ramachandraiah & Sons

Civil Appeal Nos. 900-902of 2021 arising out of SLP (C) No 27960-62 of 2019

Background facts

- Secunderabad Cantonment Board (**Appellant**), circulated a Notice Inviting Tender (**NIT**) for an annual term contract pursuant to which three agreements, to be governed by the Arbitration and Conciliation Act, 1996 (**Act**), were entered into with Ramachandraiah & Sons (**Respondent**).
- After 6 months of receiving the final payments, in 2004, the Respondent vide letters placed demands for reimbursement owing to the variation in prices of material, labor and fuel. In 2006, the Respondent requested for the appointment of an arbitrator and on January 13, 2007 Respondent chose to rescind the contract and have an Arbitrator appointed within 30 days i.e, before February 12, 2007. Appellant succinctly replied to this letter that the matter is under consideration.
- Later, in 2010, the Respondent issued legal notice insisting for the appointment of an Arbitrator for adjudication of the dispute and that in the event the Appointing authority continues to abdicate his right to appoint an Arbitrator, the Respondent is left with no option but to seek appointment of Arbitrator by the Chief Justice of High Court of Andhra Pradesh (**HC**). The Appellant in its reply contended that the Respondent has no legal right in hoisting the dispute after terminating the contract way back in the year 2002, secondly, the claim to appoint an Arbitrator cannot be assented as there are no arbitral issues prevailing between them and lastly, the claim raised by the Respondent is unquestioningly barred under law of limitation.
- By way of rejoinder to the aforesaid reply notice, Respondent issued a 'clarification notice' followed by three letters, reiterating the earlier requests for the appointment of an arbitrator. This was rejected by the Appellant vide a letter dated November 10, 2010, whereby informing the Respondent that the President of the Secunderabad Cantonment Board had rejected the application for appointment of an arbitrator as all payments were settled and nothing remained unresolved.
- After three years of absence, Respondent filed applications under Section 11 of Arbitration and Conciliation Act, 1956 (**Act**) on November 06, 2013 in the High Court of Telangana whereby the learned Single Judge held that the Section 11 applications were well-timed as they were filed within three years from the letter dated November 10, 2010 issued by the Appellant rejecting the request to appoint an arbitrator. As a result, the Section 11 applications were allowed, and Shri Y.V. Ramakrishna was appointed as an arbitrator to adjudicate disputes between the parties arising out of three agreements. The question of bar of limitation of the claims made was left open to be considered and decided by the arbitrator.
- The arbitrator endorsed the order of High Court by which the Section 11 applications were allowed.
- Aggrieved by this, the Appellant filed an appeal in the SC.

Issues at hand?

- What is the period of limitation for filing an application under Section 11 of the Act?
- Whether the Court may refuse to make the reference under Section 11 where the claims are ex facie time-barred?
- What will be the applicability of Article 137 of the Limitation Act to the applications under Section 11 of the Arbitration Act?

Decision of the Court

- With respect to the first issue SC carefully inspected recent judgement relied on by Appellant in *Geo Miller & Co (P) Ltd v. Rajasthan Vidyut Utpadan Nigam Ltd*[6] which lays down as to when time begins to run for the purpose of filing an application under Section 11 of the Act. SC opined that the period of limitation for an application for appointment of arbitrator under Section 11 commences on the date on which the 'cause of arbitration' emerged i.e., from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned.
- Considering the second issue, SC analyzed the judgement laid down by it in *Duro Felguera SA v. Gangavaram Port Ltd*[7] which juxtaposed the manner of interpretation before and after the Arbitration and Conciliation (Amendment) Act, 2015, concluding that in an application under Section 11(6A), the Court should only investigate the existence of arbitration agreement, before making reference instead of focusing on accord and satisfaction. SC held that only when Court is determined that no valid arbitration agreement exists, or that the subject matter is not arbitrable, that reference may be refused. SC solidified the principles laid down by it in *Mayavti Trading Pvt. Ltd. v. Pradyuat Deb Burman*[8] that the Court can interfere only when it is manifest that the assertions are ex facie time barred and dead, or there is no persisting dispute.
- As far as the third issue is concerned, SC referred to *Bharat Sanchar Nigam Ltd & Anr v. Nortel Networks India Pvt Ltd*[9] wherein it was held that the limitation for ascertaining the underlying essential disputes is undoubtedly distinct from that of filing an application for appointment of an arbitrator. SC after carefully examining multiple judgements, drew the conclusion that when no Arbitrator was chosen, the cause of action for appointment of an Arbitrator arose to the Respondent and time began to run on and from December 12, 2007. Thus, as per Section 9 of Limitation Act, any dismissal by Appellant would not extend the period of limitation which has already begun running.
- Therefore, SC set aside the order of High Court in stating that because the applications under Section 11 of the Arbitration Act were filed on November 06, 2013, they were within the limitation period of three years starting from November 10, 2010. SC further advanced that the claim made by Respondent was also ex facie time barred. In this context, SC highlighted the fact that the claim made on merits is also hopelessly time barred as the Appellant replied to the legal notice of Respondent in February 2010, a period of three years having elapsed by February 2013. For all the above-mentioned reasons, the appeals were allowed.

Our view

SC's decision in reversing High Court's order that defaulted in allowing applications under Section 11 of Arbitration Act which were evidently time barred, strengthens roots of Limitation Act, and sets a binding precedent for the Courts, at referral stage, exercising prima facie test to filter and thrash ex facie worthless, trivial, and deceitful litigation. SC's judgement is cardinal in throwing light on implementation of limited jurisdiction which guarantees speedy disposal of cases at referral stage. SC while commenting on issue has established a precedent for future cases on such subject and issues and also have clarified how to deal with such subject by High Courts.

Madan Mohan Singh v. Ved Prakash Arya

Civil Appeal Nos. 814-815 of 2021 arising out of SLP (C) No 11009-11010 of 2019

Background facts

- Appellant was leased Booth No. 186 in Chandigarh for cattle poultry feed and for no other purposes and also consisting of explicit terms and conditions. The Appellant entered in a partnership deed with the Respondent (original Defendant) in 1976, for carrying out the business of cycle repairing etc. However, the Respondent dissolved the partnership in 1979 and thereafter, according to the Appellant, the Respondent became an employee in the Booth. The Estate Officer, Chandigarh issued an order in the year 1982 terminating the hire purchase agreement of the Booth on the ground that the premises are being used for cycle repairing and not for the purpose for which it was granted. Consequently, the Estate Officer demanded eviction from Booth No. 186 by passing an order under Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
- An appeal was filed by the Respondent before the Additional District Judge, Chandigarh which was subsequently dismissed. The Respondent filed an Appeal challenging the order of the Estate Officer where the Chief Administrator of Chandigarh Administration, held that the premises be restored to hirer-the Appellant and the Respondent was observed as a servant of the hirer.
- Respondent filed Civil Writ Petition in Punjab and Haryana High Court (**HC**) challenging the order of eviction under Public Premises Act which was dismissed as infructuous by HC noticing that the order of resumption has been revoked.
- Appellant filed Civil Suit impleading that possession of Booth No. 186 was given to the Respondent in pursuance of partnership deed and thus, after the restoration of the Booth by Chief Administrator, Appellant became owner of the property and it was further pleaded that the Respondent after dissolution of the partnership has been allowed to use the premises as an

[6] (2020) 14 SCC 643
[7] Arbitration Petition No. 30 OF 2016
[8] (2019) 8 SCC 714
[9] Civil Appeal Nos. 843-844 of 2021

employee. The trial court held the Respondent to be a tenant and observed that the said partnership deed was executed only to avoid the prohibition in hire purchase agreement.

- Appellant filed the First Appeal. Appellate Court allowed the appeal granting the decree of mandatory injunction to the Appellant and held that Respondent was not the tenant. Pursuant to this, Second Appeal in which the order of the First Appellate Court was set aside.
- Thus, Regular Second Appeals were filed by the Appellant and Respondent in HC of Punjab and Haryana whereby the appeal filed by the Respondent, has been allowed, and the appeal filed by the Appellant had been dismissed.
- Aggrieved by the aforesaid judgments, the Appellant has filed appeals in the SC.

Issues at hand?

- Whether the Respondent is a tenant or merely a servant of the premises?

Decision of the Court

- At the outset, SC perused the relevant conditions laid down in the Allotment Letter and the order given by the Chief Administrator wherein the Respondent was concluded to be a servant of the hirer. SC held that the other findings of Administrator based on evidence cannot be brushed aside as against the record, because HC while referring to the order of Chief Administrator has narrowed its focus only on default of Appellate Court in deciding that Respondent had taken a stand that he was merely a servant, which was against the record.
- SC analyzed the order of the trial court which concluded that the Respondent is a tenant solely on account of no submission of tenancy documents by the Respondent. SC to gauge the effectiveness of the order, referred to the principle laid down by it in *C.M. Beena & Anr v. P.N. Ramachandra Rao*[10] that conduct of the parties before and after creation of relationship is relevant for finding out their intention. Consequently, SC held that when there is no evidence of taking premises on rent and it is acknowledged by Respondent that he had not retained any records of accounts of payment of rent, there is no ground for holding that relationship of landlord and tenant is confirmed. Thus, SC strongly endorsed conclusion of First Appellate Court that the decisions of the trial court are based on assumptions and thus, Respondent is not the tenant of the premises.
- SC placed Clause 12 of the Allotment Letter at the centre which prohibits hirer from subletting the premises or any part thereof and allows an upper hand to the Chief Administrator whose decision will be binding on the parties. SC held that the order of the Chief Administrator in holding that the Respondent is a servant of the hirer was final and the Respondent cannot challenge the same.
- Furthermore, SC held that Regular Second Appeal filed by Appellant seeking relief for permanent and mandatory injunction and restraining the defendant from using the Booth No. 186 for cycle repairs, justifies being decreed. Thus, SC set aside the order of HC in deciding Second Regular Appeals and restored the decisions of First Appellate Court.
- SC concluded that the Appellant to be immediately put in custody of the premises of Booth No. 186 and Appellant at its own discretion to take appropriate proceedings to recover the damages and mesne profit from the Respondent. The appeals were allowed with costs.

Our view

SC's decision that the Courts must examine the circumstances and intention of the parties clearly before drawing any inference about the agreement of tenancy is remarkable as it erases the future ambiguity pertaining to tenancy and blocks the door from parties entering with false claims as tenants. SC's decision also solidifies the role played by the Chief Administrator while passing judgements.

Neena Aneja & Anr v. Jai Prakash Associates Ltd

Civil Appeal Nos. 3766-3767 of 2020

Background facts

- The Appellants were allotted a residential unit in a real-estate project described as KRESCENT Homes by Jaypee Greens (**Respondent**), upon making the advance payment in November 2011. The possession was intended to be delivered within a period of 42 months from execution of agreement of the provisional allotment letter. Appellants have affirmed that between December 2011 till date, they have paid an amount of INR 53.84 Lakh out of total consideration of INR 56.45 Lakh.
- On June 18, 2020, Appellants instituted a consumer complaint under the provisions of the erstwhile legislation, the Consumer Protection Act 1986, before National Consumer Disputes Redressal Commission (**NCDRC**) for seeking refund with interest of 18% from Respondents. NCDRC by its order dated July 30, 2020 dismissed consumer case on the ground that after enforcement of Consumer Protection Act, 2019, its pecuniary jurisdiction has been enhanced from INR 1 Crore to INR 10 Crore and thus, claim of INR 2.19 Crore is below enhanced pecuniary jurisdiction of NCDRC.
- Appellants filed a review petition which was subsequently dismissed by NCDRC on October 05, 2020.

[10] 2004 (3) SCC 595

- Aggrieved by this, Appellants filed an appeal in SC.

Issues at hand?

- Whether a complaint which was filed and registered under the Act of 1986, before the enforcement of 2019 Act, shall be entertained under the provisions of the erstwhile legislation?
- Whether the pending legal proceedings are required to be transferred to the newly created forum by virtue of the repeal?

Decision of the Court

- SC perused Section 21 of the Act of 1986 provided for jurisdiction of the NCDRC and Section 107(3) of 2019 Act which indicates that the matters mentioned in Section 107 (2) deals with the repeal and savings provision wherein full effect is given to the provisions of Section 6 of General Clauses Act, implying that nothing in repeal of earlier legislation will affect pending proceedings which may carry on as if new legislation has not been staged. Therefore, SC carefully glimpsed through the language of Section 6 of the General Clauses Act and gathered that as per Clause (c) and Clause (e) of Section 6, right which has accrued on date of institution of consumer complaint under Act of 1986 is preserved and the enforcement of right through the instrument of a legal proceeding or remedy will not be affected by repeal. However, SC clarified that this cannot be interpreted to blanket the legal proceedings from the effects of repeal.
- SC to obtain clarity, referred to multiple judgements which considered the impact of a change in procedural law to pending proceedings before a particular forum. SC by keeping same judgements as frame of reference, drew conclusion that as per general principle, a change of forum lies in the realm of procedure and the amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute.
- After careful examination, SC derived that the recurring idea in the new legislation is to shelter the vulnerable consumers from market exploitation which is sought to be strengthened by procedural interventions and thus serious hardship would be caused to the consumers even financially if cases which have been already instituted before the NCDRC were required to be transferred to the SCDRCs because of the alteration of pecuniary limits by the 2019 Act.
- SC relied on the decision of NCDRC in *Southfield Paints and Chemicals Pvt.Ltd v. New India Assurance Co Ltd*[11] and *Premier Automobiles Ltd v. Dr. Manoj Ramachandran*[12] where it was held that the amendments enhancing the pecuniary jurisdiction are prospective in nature. SC answered the contentions raised by Respondent about Section 34 of the Act of 2019 that mere use of the word 'entertain' in defining the jurisdiction is not sufficient to counteract the legislative intention and deliberately not provide for a provision for transfer of pending proceedings in the Act of 2019.
- Thus, SC concluded that the proceedings filed before the commencement of the Act of 2019 on July 20, 2020 would continue before the fora corresponding to those under the Act of 1986 (the National Commission, State Commissions and District Commissions) and not be transferred in terms of the pecuniary jurisdiction set for the fora established under the Act of 2019. SC set aside the impugned order of the NCDRC dated July 30, 2020 and review order dated October 05, 2020 and held that National Commission shall continue hearing consumer case instituted by Appellants. SC also directed Respondent to bear costs of the Appellant quantified at INR 2 Lakh, payable within four weeks.

Our view

SC's judgement that litigation initiated before the enforcement of 2019 Act, would continue before the fora corresponding to those under the Act of 1986 and not be transferred in terms of the pecuniary jurisdiction set for the fora established under the Act of 2019 is commendable in protecting the interests of consumers and rescues them from the financial distress likely to occur from the transfer. SC's judgement also aligns with the objects of the legislation and is in conformity with the precedents referred during the proceeding.

Amway India Enterprises Pvt Ltd v. Ravindranath Rao Sindhia & Anr

Civil Appeal No. 810 of 2021 (Arising out of SLP (Civil) No.15982 of 2020

Background facts

- Amway India Enterprises Pvt Ltd (**Appellant**) filed an appeal against Ravindranath Rao Sindhia & Anr (**Respondent**) before SC vide aforementioned Civil Appeal, challenging the petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) by the Respondents in the Delhi High Court (**HC**) judgment regarding the appointment of a sole arbitrator.
- Respondents had been appointed as a distributor for the Appellant for undertaking sale, distribution and marketing of its products in India. The dispute was due to resultant conflicts between the parties surrounding the subject matter of the terms and conditions of a distributorship. Consequent thereto, Respondent filed an Arbitration Petition before the HC under Section 11(6) of the Arbitration Act, 1956 (**Act**).

[11] Consumer Case No. 286 of 2000 (NCDRC)
[12] Revision Petitions Nos 400 to 402 of 1993 (NCDRC)

- HC held that since the central management and control of this association is exercised only in India under Section 2(1)(f)(iii), the dispute would not fall within the purview of an International Commercial Arbitration, as a result of which the HC at New Delhi had the jurisdiction under Section 11(6) to appoint a sole arbitrator. Appellant subsequently filed an appeal challenging the judgement, wherein, SC allowed the appeal and set aside Delhi HC order and held that the dispute is to be covered under ambit of International Commercial Arbitration in terms of Arbitration Act.

Issues at hand?

- Whether a sole proprietorship will fall under International Commercial Arbitration if the Proprietor is a foreign resident?
- Whether the dispute was covered under the ambit of International Commercial Arbitration? And if so, whether the dispute was maintainable before the jurisdiction of the Delhi HC?

Decision of the Court

- SC held that the consortium was an association of persons falling under Section 2(1)(f)(iii), where central management and control of Respondent was exercised outside India, therefore, it would constitute to be an International Commercial Arbitration. Furthermore, Court held that the domestic consortium argument advanced by Respondents in view of *Larsen and Toubro judgment*,[13] would not be applicable as factual circumstances are dissimilar. Therefore, basis the prevailing factual matrix, Section 2(1)(f)(iii) of the Act would be attracted in the present case.
- SC further held that in contrast, Respondents have themselves applied to become distributors of Amway products in India as a sole proprietorship concern under relevant forms read with Code of Ethics issued by Appellant. SC Court relied on the decision held in *Ashok Transport Agency v. Awadhesh Kumar*[14] and substantiated its finding that Apex Court had clearly held that a sole proprietary concern is equated with the proprietor of the business.
- SC held that in terms of Section 2(1)(f) of the Act, the transaction between the parties wherein, at least one of whom is either a foreign national, or habitually resident in, any country other than India, arbitration becomes an International Commercial Arbitration. On the basis of this factual finding, SC ruled that the Delhi HC had no jurisdiction to appoint an arbitrator in the facts of this case.
- Furthermore, SC also rejected an appeal raised by Respondents for exercise of its powers under Article 142 of Constitution of India to appoint an arbitrator. SC held that the Respondents would have to now follow the procedure of Section 11(6) read with Section 11(9) of Arbitration Act in order to appoint an arbitrator.
- Therefore, since the dispute on account of the proprietor's residence, exercise of control and central management existed outside India; it constituted to be an International Commercial Arbitration and the fact that Section 2(1)(f) is applicable in the present case, Delhi HC was held to have no jurisdiction to appoint an arbitrator as per the facts of this case.

P.B. Jagtyani & Co & Anr v. Gaurav Agencies & Anr

ILR (2006) 2 Del 739

Background facts

- Petitioners had placed orders in writing for purchase of poplin cloth which were accepted by the Respondent No. 1 and thereafter the goods were supplied, and the bills were raised.
- The accounts for the purchases which were made on July 16, 1997 and August 05, 1997 were settled between the parties on September 08, 1997.
- Thereafter they again entered into an arrangement with Respondent No. 1 for supply of 70,000 meters of 50s poplin cloth.
- Against the 70,000 meters quantity of the cloth agreed to be sold and delivered by Respondent No. 1, only 45251.50 meters of cloth was supplied by Respondent No. 1 to Petitioners by December 06, 1997 while the entire supply was to be made by November 15, 1997.
- On account of non-supply of balance quantity of the poplin cloth and in respect of the price of the cloth, which was supplied, disputes arose between the parties which were referred to the Arbitration by Delhi Hindustani Mercantile Association (Registered) Delhi (**Association**).
- The Sole Arbitrator passed an award for INR 23,09,303 and 18% interest per annum from September 01, 1998 till realization of the amount by the Respondent No. 1.

Our view

SC has determined and laid down prominent guidelines with regard to International Commercial Arbitration, specifically dealing with the jurisdiction of the High Courts in the appointment of an arbitrator and also answered the contentious issue regarding the status of a sole proprietorship, in case the proprietor is a foreign resident *vis-à-vis*, International Commercial Arbitration under the Arbitration Act.

In a nutshell, SC held that in a proprietorship, if the sole proprietor were a foreign resident, it would directly fall under the ambit of International Commercial Arbitration and not a domestic arbitration since it would attract the provisions of Section 2(1)(f) of the Arbitration Act. The impact of the judgment would result in proprietorships having central management and control outside India, to engage in international commercial arbitrations directly without approaching the HC due to their lack of jurisdiction in these disputes, thereby streamlining the procedure for efficient dispute resolution.

[13] Larsen & Toubro Ltd. – SCOMI Engineering Bhd v. MMRDA (2019) 2 SCC 271
[14] (1998) 5 SCC 567

- Hence, the present petition by the Petitioners challenging the Award.
- Contentions Raised by the Counsel Appearing on Behalf of the Petitioners:
  - Since the Respondent No. 1 had agreed to the new terms and conditions and had confirmed the order, the terms and conditions which were agreed to be in writing in the order dated September 19, 1997 were different from earlier orders.
  - Despite receiving the cloth from the mill, Respondent No. 1 did not sell the cloth to the Petitioners and committed breach of agreement for supply of 70,000 meters of poplin cloth to the Petitioners by November 15, 1997.
  - The Award is bad in law as there was no arbitration agreement between the parties and the arbitrator had no authority to enter upon reference and adjudicate upon the specific issues/disputes/claims on merit.
  - The Respondent No. 2 (Sole Arbitrator) ignored the material documents from which the rights and liabilities of the parties could emerge, and the award suffered from non-application of mind.
  - The Petitioners are not the members of the Association, and, not bound by the rules and regulations of the said association.
  - The Respondent No. 2, being a panel member of the Association has vested interest.
  - The Arbitrator failed to frame the issues with respect to the loss suffered by the Petitioner on account of non-supply of goods by the Respondent No. 1 and that he did not consider the fact of non-production of original GR receipts maintained by the Respondent No. 1.
  - There was no agreement for payment of interest and consequently award interest at @ 18% on the amount allegedly due from the Petitioners to the Respondent No. 1 is without notice which is also contrary to the statutory provisions of Interest Act.
  - No reasons were given and the Arbitrator also failed to give findings on all the issues.
  - There is patent error of law which vitiates the award and therefore award is liable to be set aside.
- Contentions raised by the Counsel appearing on behalf of the Respondents:
  - There had been a running account between the Petitioners and the Respondent No. 1.
  - The goods were sold subject to the agreed terms and conditions printed on the sales bills of the Respondent No. 1.
  - The allegations of Petitioners that the terms and conditions for supply of 70000 meters were different and were restricted to confirmation order dated September 19, 1997 was not admitted.
  - Petitioners refused to take goods after December 06, 1997 and also failed the make the payment and consequently Petitioners are liable to pay the price of goods sold and delivered to them and they are also liable to be pay interest as the amounts due from them were demanded and they failed to pay the amounts due.

Issues at hand?

- Whether a valid arbitration agreement between the parties?
- Whether there is any patent error of law which vitiates the award and whether the award is liable to be set aside?

Decision of the Court

- The bills covered under the claims as also the receipts given by Petitioners were subject to the rules of Delhi Hindustani Mercantile Association printed thereon, based on which the Sole Arbitrator inferred that there is an arbitration clause for adjudication of disputes under rules of said association.
- The receipts of the goods for 70000 meters of poplin cloth shows that the goods were sold and delivered subject to the rules of Delhi Hindustani Mercantile Association.
- The ledger account of the Petitioners in the account books of Respondent No.1 is not denied by the Petitioners. This ledger account is for the period of April 01, 1997 to March 31, 1998 and shows sales made by the Petitioner and the amount received.
- The printed terms and conditions incorporated in the bill for supply of a part of 70,000 meters of poplin, supplied on November 27, 1997 and December 06, 1997 had not been refuted.
- No documents had been produced by the Petitioners to show that they did not agree to the terms and conditions which were printed on the invoices issued by the Respondent No. 1.

- The Petitioners had rather given the receipt dated November 05, 1997 which categorically stipulated that the goods were accepted by the Petitioners subject to the arbitration of Delhi Hindustani Mercantile Association.
- Hence, the objection of Petitioners that there was no Arbitration Agreement and there was no valid and subsisting Arbitration Agreement between Respondent No. 1 and the Petitioners for supply of 70,000 meters of poplin cloth is not sustainable.
- The Court held that an arbitration agreement should be in writing i.e. its terms should be reduced to writing and will be binding on the parties even if the agreement is not signed but is established by another written contemporaneous document.
- The Court also took note of dictum laid down in *Krishan Chander Ramesh Chander and Bros v. Sohan Lal*[15] which was on similar facts and wherein it was held that since both sale contract and rules of the Association were in writing, there exists a valid Arbitration Agreement in terms of Section 2(a). Notwithstanding the fact that buyer is a non-member of Association, it has incorporated the arbitration Clause into the contract and thereby entered into an Arbitration Agreement by its voluntary act of making the contract between parties subject to rules and regulations of Association.
- Under Section 7 of the Arbitration and Conciliation Act, 1996 an Arbitration Agreement should be in writing by way of a document signed by the parties or by exchange of letters, telex, telegrams or other means of telecommunications.
- The Court while placing reliance on *Punjab Pen House v. Samrat Bicycle Ltd*[16] and *Luda Ram Ved Parkash v. Maharani of India and Anr*[17] held that the present facts and circumstances, indisputably show that the goods were sold on the basis of the bills which contained printed clause that they were being sold subject to the rules and regulations of the said Association. The rules and regulations of the said Association contained an arbitration clause and also detailed as to how the reference is to be made and that the arbitration agreement shall be legal and binding on the parties.
- The Court underlined that the Law does not require that an Arbitration Agreement must be signed by the parties before the same could be considered binding. The Arbitrator has considered all these aspects and have reached a finding that there was an arbitration agreement between the parties and, therefore, no infirmity or patent error can be inferred from the finding of the Arbitrator.
- The objection of the Petitioners that there was no adjudication of their counter claim on the ground that the Petitioners were not the members of the Association, is not correct as Petitioners did not raise counter claim before the arbitrator for adjudication but merely reserved their rights to raise their counter claim.
- The Court also categorically held that merely because the Respondent No. 2 is one of the panel members of the Association does not make him have vested interest. The objection is not sustainable and the arbitral award could be set aside on this ground.
- Further, the Court held that the findings of the Arbitrator are not manifestly perverse or have been arrived at on the basis of wrong application of law. The Court is not empowered to substitute its own opinion with that of the Arbitrator while, in the present case, findings of the Court are also the same as that of Arbitrator and consequently no interference is called for.
- On Petitioner's objection that the principles of natural justice were not complied with, the Court held the same to be unsustainable since Petitioners had filed reply to the claim petition filed by Respondent No. 1 and were given an opportunity to lead evidence and produce documents and never objected that they were not given opportunity to file reply or to substantiate pleas taken by them.
- On Petitioner's objection that no reasons were given by the Arbitrator is contrary to the award since a perusal of the same points out that the award was based on the reasons and no perversity or apparent illegality is discernible so as to interfere with the award.
- Finally, the Court held that there was a valid arbitration agreement between the parties and the Ld. Arbitrator dealt with the disputes which were contemplated and which were raised before him and the award does not contain decisions on matters beyond the scope of the submissions to the arbitrator. Since the arbitration was according to the procedure of Delhi Hindustani Mercantile Association (Registered), Delhi, the composition of the arbitral tribunal was also in accordance with the agreement and arbitral award is not in conflict with public policy of India with no perversity or apparent illegality found with the award. Hence the petition challenging the award was dismissed.

Our view

The judgment furthers the settled legal position of existence of an arbitration agreement by consent and act of the parties in furtherance thereto, despite the absence of a signed Arbitration Agreement between the Parties. The judgment is also important since it lends credence to such consenting party to be bound by the rules of an institution/association of which only one of the parties is a member with the appointed arbitrator being a panel member of such association having no impact to challenge credence on account of 'vested interest in the subject matter of the dispute. As such, the grounds of challenge taken by the Petitioner in the present case have been rejected, thereby furthering the principle of minimal interference of courts in the arbitration mechanism to settle disputes between parties as a binding precedent.

[15] 1983(23) DLT 9(SN)
[16] AIR 1992 Delhi 1
[17] AIR 1989 DELHI 169

Mehra Bal Chikitsalaya Evam Navjat Shishu I.C.U. v. Manoj Upadhyay & Ors

SLP (C) No. 4127/2021

Background facts

- A Writ Petition was filed under Article 226 of the Constitution of India (**Writ Petition**) before the Madhya Pradesh High Court (**HC**) assailing the legality and validity of the order of the M.P. State Consumer Disputes Redressal Commission, Bhopal (**State Commission**).
- Vide order dated January 08, 2020, the State Commission dismissed the revision petition of the Petitioners thereby upholding the order of the District Consumer Disputes Redressal Forum, Gwalior (**Forum**) dated November 05, 2019 passed in pending Complaint Case No. 32/2015.
- Vide its order dated November 05, 2019, Forum had dismissed three interlocutory applications namely:
  - Summoning of case-diary in which Petitioner No. 2 is an accused.
  - Summoning of copy of medical report of a team of doctors constituted under the guidelines of the Apex Court decision in the case of *Jacob Mathew v. State of Punjab & Anr*[18], tendering opinion regarding medical negligence alleged against Petitioners in the consumer complaint; and
  - Summoning to cross-examine Dr. D.D. Sharma.
- Thus, the Petitioners approached the HC against the order of the State Commission.
- The Registry raised an objection and opined that in view of the SC judgment in *Cicily Kallarackal v. Vehicle Factory*[19] (**Cicily Kallarackal**) no writ petition lies against the order of the State Commission. However, HC proceeded to consider the matter on merits. HC Court observed that window of interference available to the HC under Article 226 in matters of this nature where orders of statutorily created tribunals are under challenge, is extremely limited and dismissed the Writ Petition.
- Aggrieved with the order of the HC, Petitioners filed a SLP challenging the order of dismissal of HC.

Issue at hand?

- Whether a Writ Petition under Article 226 is maintainable against orders passed by the State Consumer Commission?

Decision of the Court

- SC observed the following:
  - HC after having held the Writ Petition to be maintainable dismissed the Writ Petition on merits. Despite the attention of the High Court having been drawn to Cicily Kallarackal.
  - SC held that the Writ Petition itself was not maintainable in view of Cicily Kallarackal, while dismissing the SLP.
  - In Cicily it was observed that the order of the National Consumer Commission is incapable of being questioned under the writ jurisdiction of the HC, as a statutory appeal in terms of Section 27 A(1)(c) of the Consumer Protection Act, 1986 lies to the SC. It was also observed and held that once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India.

[18] (2005) 6 SCC 1
[19] (2012) 8 SCC 524

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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