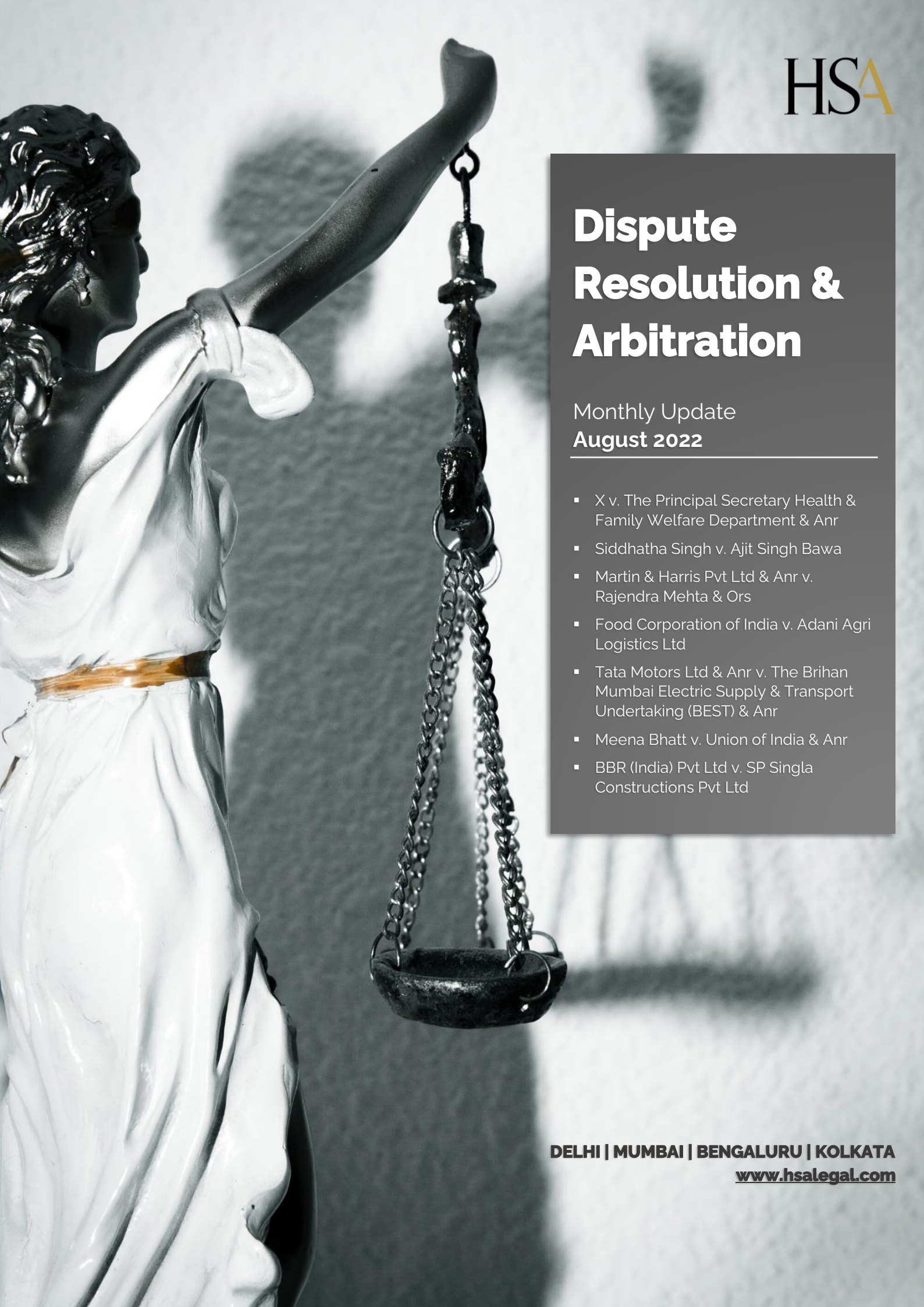

HSA

Dispute Resolution & Arbitration

Monthly Update
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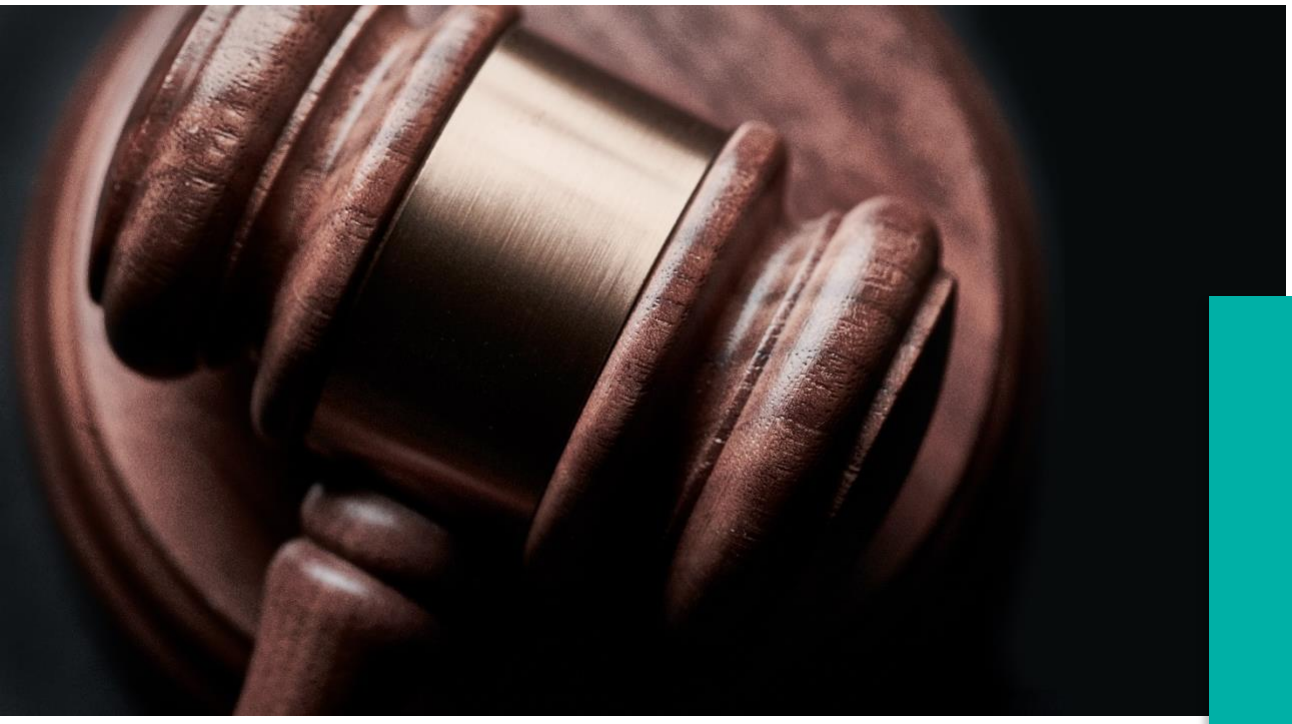
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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X v. The Principal Secretary Health & Family Welfare Department & Anr

Supreme Court of India | Petition(s) for Special Leave to Appeal (C) No(s) 12612/2022

Background facts

- The Special Leave Petition revolves around permission to terminate the ongoing and unwanted pregnancy of the Petitioner.
- X (**Petitioner**) is a permanent resident of Manipur and is currently residing in Delhi. The Petitioner averred that she was in a consensual relationship and, in the month of June 2022 she learnt that she was pregnant. An ultrasound scan conducted on July 05, 2022 revealed that she was pregnant with a term of 22 weeks.
- Pursuant to this, she decided to terminate the pregnancy and filed a Writ Petition before the Hon'ble High Court of Delhi (**HC**) seeking permission to terminate her pregnancy. The Petitioner submitted that she was not in the financial position to raise a child, and that the pregnancy arose out of a consensual relationship, which had failed and thus no longer existed.
- In the Writ Petition filed before the HC, the Petitioner had prayed for the following reliefs:
  - Permission for terminating the pregnancy
  - To restrain the Respondents form taking any coercive action or institute any criminal proceedings against the Petitioner or any registered medical practitioner who oversaw the termination of the pregnancy
  - Direct the Respondent to include 'unmarried woman' within the ambit of Rule 3B of the Medical Termination of Pregnancy Rules, 2003
- The Division Bench of HC vide Order dated July 15, 2022 issued notice restricted only to Prayer C of the Petition, and no notice was issued with reference to prayer A or B of the said Petition, making them effectively 'stand rejected'. The HC held that since the Petitioner is an unmarried woman whose pregnancy arose out of a consensual relationship, her case is clearly not covered by any of the clauses of Rule 3B of the Medical Termination of Pregnancy Rules, 2003 (**MPT Rules**) and, as a consequence, Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 (**MPT Act**) is not applicable. Thus, the HC denied the reliefs sought by the Petitioner.

- Aggrieved by the Order dated July 15, 2022, the Petitioner filed a Special Leave Petition before the Hon'ble Supreme Court of India (**SC**).

Issue at hand?

- Whether an unmarried woman falls within the ambit of Rule 3B of the MPT Rules for termination of pregnancy under Section 3(2)(b) of the MTP Act, for a period up to 24 weeks?

Decision of the Court

- At the outset, SC examined Section 3 of the MPT Act along with Rule 3B of the MPT Rules and then observed that the HC had taken an unduly restrictive view in interpreting provisions of the MPT Act. The SC expressed their belief that expressions in Rule 3B of MPT Rules, such as, 'change of marital status', should be given a purposive rather than a restrictive interpretation, and to that affect, the words of a statute must be read harmoniously with the scheme of the Act and the intent of the legislature.
- SC opined that the Parliament by amending the MTP Act through Act 8 of 2021 intended to include unmarried women and single women within the ambit of the MPT Act. This is evident from the replacement of the phrase 'married woman' with 'any woman' and the phrase 'husband' with 'partner' in Explanation I of Section 3(2) of the MPT Act. By such interpretation of the statute while keeping the intention of the legislature in mind, the SC found that the parliamentary intent is clearly not to confine the beneficial provisions of the MTP Act only to a situation involving a matrimonial relationship.
- Upon comparison of the MPT Act, before and after it was amended, SC emphasized that the phrase 'married woman or her husband' was replaced with 'any woman or her partner', and therefore concluded that there is no basis to deny unmarried women the right to medically terminate the pregnancy, when the same choice is available to other categories of women.
- By placing reliance upon several cases such as, ***Suchita Srivastava v. Chandigarh Administration***[1], ***Justice KS Puttaswamy (Retd) & Anr v. Union of India & Ors***[2], ***High Court on its Own Motion v. State of Maharashtra***[3] and ***S Khusboo v. Kanniammal***[4], SC noted that the judiciary has time and again recognized that a woman's right to reproductive choice is an inseparable part of her personal liberty under Article 21 of the Constitution of India.
- Upon hearing the parties, SC was inclined to entertain the Special Leave Petition and was of the view that allowing the Petitioner to suffer an unwanted pregnancy would be contrary to the intent of the law enacted by Parliament. SC further held that the distinction between a married and unmarried woman does not bear a nexus to the basic purpose and object which is sought to be achieved by Parliament, which is conveyed specifically by the provisions of Explanation 1 to Section 3 of the MPT Act i.e., where a situation involves an unwanted pregnancy caused as a result of the failure of any device or method used by a woman or her partner for the purpose of limiting the number of children or preventing pregnancy.
- In view of the above, SC passed an ad-interim Order directing the All-India Institute of Medical Sciences, Delhi to constitute a Medical Board during the course of July 22, 2022 and, in the event that the Medical Board concludes that the foetus can be aborted without danger to the life of the Petitioner, a team of doctors at the All India Institute of Medical Sciences shall carry out the abortion. SC further directed that such report must be furnished to the SC within a period of one week after compliance of the present Order. Thus, the SC listed the Special Leave Petition on August 02, 2022 for consideration of the said Report.

HSA
Viewpoint

The SC by way of this Order has interpreted the provisions of MPT Act with a bird's-eye view by looking at the intent of the legislature behind the MPT Act and held that there is no legal basis to differentiate between married and unmarried women for the applicability of the beneficial provisions of the MPT Act. The present Order has laid down a benchmark which upholds the rights of women in general irrespective of their marital status, with regards to their own choice/ decision of terminating/aborting their pregnancy if they are of the opinion that they are unable to provide financially, physically, emotionally, or otherwise for the well-being and health of the child. The SC has held that it is imperative to consider the well-being of the women who is pregnant while deciding if the foetus is to be aborted or not. It is remarkable to note that the SC vide this Order has empowered women across the nation to have the right to take decisions to terminate their pregnancy and not be penalized for the same under the Constitution of India and MPT Act.

Siddhatha Singh v. Ajit Singh Bawa

High Court of Delhi | 2022 SCC OnLine Del 2007

Background facts

- The landlord (**Respondent**) had given the suit premises on lease to the Tenants (**Appellant**) vide a registered Lease Deed dated December 18, 2010 (**Lease Deed**) for a period of 15 years, commencing from May 15, 2010 to May 14, 2025 to carry out authorized commercial activity like running a spa or any other activity.
- During the subsistence of the aforesaid Lease Deed, a lockdown on account of Covid-19 was imposed from March, 2020 for the ensuing months, resulting in non-payment of rent. Due to

[1] (2009) 9 SCC 1
[2] (2017) 10 SCC 1
[3] 2017 Cri LJ 218 (Bom HC); (2016) SCC OnLine Bom 8426
[4] (2010) 5 SCC 600

this non-payment, the Respondent issued various legal notice(s) for payment of rent, even offering a suspension of payment for two months on compassionate grounds.

- The Appellant did not reply to the legal notices but continued to stay and occupy the premises without exercising his right to terminate the Lease Deed, till termination of the Lease Deed by Respondent. Thereafter, the Appellant replied to the landlord's termination notice denying his liability by taking the pleas of Force Majeure as per Clause 14 of the Lease Deed. This led to the institution of a Suit by the Respondent against the Appellant before the learned Trial Court.
- During pendency of the said Suit, the Respondent filed an Order XIII A application pleading that in terms of Clause 7 of the Lease Deed, the Appellant was permitted to use the premises in question for carrying on authorized commercial activity like running a spa or any other activity deemed fit or proper by it during the period of lockdown in dispute, and further, that in terms of Clause 2 of the same Lease Deed, the premises was never rendered 'unfit for use' during the period of lockdown in dispute. The Trial Court held that as the Appellant had failed to establish any ground of defence and he had no real prospects to defend the claim(s) of the Respondent and thus allowed the Order XIII A Application vide its Impugned Judgment.
- The Appellant-tenant, aggrieved by the Impugned Judgment dated February 19, 2022, passed by the Trial Court in favor of the Respondent, has filed the present Appeal.

Issue at hand?

- Whether the judgement passed by the Trial Court on the Application under Order XIII A Civil Procedure Code, 1908 (**CPC**) r/w Section 151, CPC read with Section 3 Commercial Courts Act, 2015 in favor of the landlord for default of payment of rent by tenant due to Covid-19?

Decision of the Court

- The High Court noted that upon careful analysis, it emerges that the provision of Order XIII A, CPC has been specifically introduced by the legislature so as to adjudicate and decide the issue(s) at the threshold itself without proceeding to the unnecessary rigors of a prolongated trial and to save time, effort and money by making it more convenient and expeditious for all concerned, be it the Court(s) and/ or the parties involved.
- In addition, an Order XIII A Application can be allowed, and a Court can proceed to pass a summary judgment if a party has a real prospect of succeeding and/or defending in the claim, and there is no real purpose of proceeding to trial, i.e., recording oral evidence.
- The HC further noted that the Appellant is merely trying to reagitate the same issues in the form of grounds which have all been heard, taken note of and decided by the Trial Court in the impugned judgment, by simply giving a different flavor to them.
- The HC observed that there clearly exists a relationship of Respondent-landlord and the Appellant-tenant and they are bound by terms of Lease Deed. Since the Appellant neither chose to exercise his right to terminate the Deed nor chose to vacate the said premises until termination, thus, there is no such clause in the Deed to claim non-payment of rent. Thus, the Appellant was well and truly liable to pay the lease rentals as per the Lease Deed along with interest thereon for the period in issue.
- On the issue of the subject premises being unfit for use due to Covid-19 and the then prevailing lockdown, the HC held that temporary non-use of premises during the lock down period cannot be construed as rendering either the stipulated term of the Lease Deed void or giving any benefit to the tenant to claim suspension of rent on the ground of mere non-use thereof.
- In light of the above, the HC while upholding the judgement and decree passed by the Trial Court and dismissing the Appeal held that the Appellant was clearly guilty of breach of the Lease Deed and as the Respondent was denied the receipt of its legitimate dues and had to suffer losses during that period. The Appellant was well and truly liable to pay the lease rentals as per the Lease Deed along with interest thereon for the period in issue.

HSA
Viewpoint

The HC's decision justifiably secures the rights and interests of the landlords against tenants by holding that temporary non-use of premises during the lockdown period cannot be construed as rendering either the stipulated terms of the Lease Deed void or giving benefit to the tenants to claim suspension of rent on the ground of mere non-use thereof. The precedent sets up a premise that whenever there is a Lease Deed which clearly stipulates the terms and conditions, the same has to be duly followed by both the parties and the tenants cannot merely take the garb of the Covid -19 pandemic to absolve themselves from paying rent.

Martin & Harris Pvt Ltd & Anr v. Rajendra Mehta & Ors

Supreme Court of India I Civil Appeal No 4646-47 of 2022 (arising out of Special Leave Petition (C) Nos 20243-44 of 2019)

Background facts

- In the present case, Rajendra Mehta & others (**Respondents/Original Plaintiffs**) are the landlords of Martin & Harris Pvt Ltd & Anr (**Appellants**). In 2002, the Respondents filed a Suit under Section 6 of the Rajasthan Premises (Control and Eviction) Act, 1950 (**Old Act**) against the Appellants for determination of the standard rent, which was eventually fixed by the Hon'ble Trial Court vide Order dated August 12, 2009 to the tune of INR 45,000 per month.

- During the pendency of the abovementioned Suit, the Respondents filed a Suit under Section 13 of the Old Act against the Appellants for eviction, repossession, and compensation of rent. On June 03, 2016, the Suit was decreed by Senior Civil Judge No 7, Jaipur, in favor of the Respondents.
- Aggrieved by this, the Appellants filed an Appeal before Additional District Judge No 10, Jaipur, which was subsequently dismissed vide judgment dated January 10, 2017. Discontented by this, the Appellants challenged these two judgments by preferring a Second Appeal before the Hon'ble Rajasthan High Court. Vide order dated October 14, 2017, the High Court was pleased to grant a stay on ejectment, which was extended from time to time.
- By an application filed before the High Court, the Respondents prayed for mesne profit due to continuation of stay on eviction decree. Vide an Order dated May 18, 2018, the Appellants were directed to pay the mesne profit @ INR 2,50,000 per month from the date of filing of the Application till disposal of the Appeal.
- Dissatisfied by this, a Special Leave Petition was filed by the Appellants before the Hon'ble Supreme Court of India on the ground that the mesne profit, as determined by the High Court, was in excess of the amount as stipulated in Section 20 of the Rajasthan Rent Control Act, 2001 (**New Act**), according to which the maximum amount of mesne profit may be payable three times of the standard rent in case the premises is let out for commercial purposes. After noting the submissions made before it, the Petition was dismissed as withdrawn with liberty to approach the High Court in Review.
- Accordingly, the Appellants filed a Review Petition before the High Court, which was subsequently dismissed vide Order dated April 01, 2019.
- As a result, the Appellants filed the present Appeals against the Orders dated May 18,2018 and April 01, 2019 before the Supreme Court.

Issues at hand?

- Whether the High Court was justified in dismissing the Review Petition vide Order dated April 01, 2019?
- Whether the direction passed by the High Court vide Order dated May 18, 2018 to pay mesne profits@ INR 2,50,000 per month¬ was just, equitable, and reasonable?

Decision of the Court

- At the outset, the Supreme Court discussed the findings of the High Court in Review Petition, wherein it was conclusively determined that the present case should be governed by the Old Act and the argument of the Appellant pitched on Section 20 of the Old Act did not hold water. Moreover, the Court took note of the fact that the High Court, while dismissing the Petition, had observed that in a Review Petition the Court could not sit as an Appellate Court over the Order under review until an error apparent on the face of the record had been shown.
- Thereafter, the Supreme Court touched upon the issue which stemmed from Section 20 of the New Act, on the pretext of which the Appellant contended that the direction passed by the High Court on May 18, 2018 to pay mesne profits@ INR 2,50,000 per month was contrary to the said provisions. In this regard, the Court deemed it crucial to consider Section 32 of the New Act, wherein the repeal and savings of the Old Act has been specified. Pursuant to which the Supreme Court firmly opined that 'the suit or proceedings, if any, pending on the date of notification issued by the State Government for applicability of the New Act, such proceedings would continue under the Old Act and New Act has no application'.
- Under the aforesaid premised reasons, the Supreme Court remarked that the reasoning given while rejecting the Review Petition by the High Court in the Order dated April 01, 2019 was absolutely in harmony with the essence of Section 32 of the New Act.
- The Court recapitulated the principles laid down by it in ***Marshall Sons & Co (I) Ltd v. Sahi Oretrans (P) Ltd & Anr***[5], wherein it was summarized that once a decree for possession had been passed and the execution was delayed, due to which the decree holder was deprived from realizing the fruits of decree, it was incumbent upon the Appellate Court to pass appropriate orders fixing reasonable mesne profits which may be equivalent to the market rent required to be paid by a person who was holding over the property.
- At this juncture, the Supreme Court was inclined to point out the view taken by it in ***Atma Ram Properties (P) Ltd v. Federal Motors (P) Ltd***[6] and the ***State of Maharashtra v. Super Max International Pvt Ltd & Anr***[7] wherein it was strongly expressed that on passing the decree for

HSA
Viewpoint

By categorically asserting that the landlords are entitled to mesne profits from tenants when execution of decree of eviction is stayed, the Supreme Court has laid emphasis on securing the rights of the landlords, being the decree-holders, and has attempted to refrain the tenants who are in wrongful possession from drawing delight in delay of execution proceedings. Further, the Supreme Court has put to rest the host of the controversies surrounding the application of Section 20 of the New Act to the proceedings pending under the Old Act, before its enactment.

[5] (1999) 2 SCC 325
[6] (2005) 1 SCC 705
[7] (2009) 9 SCC 772

eviction by a competent Court, the tenant was liable to pay mesne profit or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises in the present and earn the profit if the tenant would have vacated the premises.

- On the above foundation, the Supreme Court arrived at the conclusion that the direction to pay mesne profits or compensation issued by the High Court on May 18, 2018 was in line with the law laid down by this Court, which was just, equitable, and reasonable.
- Furthermore, the Supreme Court validated the Order passed by the High Court, based on its accurate reasoning about area of the tenanted premises and the location of the property, which itself emanated from the material brought on record which was neither perverse nor illegal.
- In light of the peculiarity of the facts and circumstances of this case, the Supreme Court concluded that the Order fixing the mesne profit and the Order passed on the Review Petition, were just and proper, which do not warrant any interference.

Food Corporation of India v. Adani Agri Logistics Ltd

High Court of Delhi | OMP (COMM) 82/2022 and IA Nos 1929/2022, 1931/2022

Background facts

- The impugned award was rendered in the context of the disputes that have arisen between the parties in connection with two separate Service Agreements dated June 28, 2005 between Food Corporation of India and a JV of Adani Exports Ltd and Adani Ports Ltd. i.e. Adani Agri Logistics Ltd. (**Adani**). The agreements were for handling, storage and transportation of food grains.
- Adani was selected pursuant to global tender floated by RITES on behalf of FCI/Government of India. In terms of the Agreements having a 25-year term from the date of commissioning of the facilitates in respect of the Circuits, out of which two Circuits were to be completed within 36 months from the date of execution of the respective Agreements, for which FCI was to pay the storage-cum-handling charges (**SCH charges**).
- Although complete facilities were not commissioned by Adani within the prescribed period, Adani developed certain depots, which were capable of being used for storage purposes. It proposed that FCI use the said depots on payment of certain usage charges, which FCI agreed. By a letter dated May 09, 2007, FCI confirmed that the depots had been operationalized in the year 2007 and therefore, 20-year guarantee period had begun in the year 2007.
- Moreover, it was agreed by the parties that for the year 2007, the charges would be paid on actual utilization basis and the commitment for payment for full capacity would commence on commissioning of the complete facilities. In terms of the Agreements, the SCH charges were subject to variation in proportion to the Wholesale Price Index (**WPI**). The Charges were to be increased every year based upon 70% of the inflation rate determined on the basis of WPI recommended by the Government of India by taking previous year's WPI Index as the base.
- FCI paid the charges for storing food grains at the facilities established by Adani on actual utilization basis and did not increase the rates commensurate with the increase in WPI. Adani claims that it is entitled to escalation based on WPI from the 2008 by taking WPI for the 2007 as the base.
- A Supplementary Agreement was executed between the parties and the Agreements stood modified to a certain extent. These changes included fixing of the SCH Charges for the base depot and field depots until the required number of wagons – in terms of the Agreements – were purchased. By a letter from FCI dated November 19, 2013, the SCH Charges were restored to the original agreed value with effect from September 28, 2013. One of the disputes between the parties is whether WPI based escalation is applicable with effect from September 28, 2013 or an earlier date.
- On January 10, 2014, Adani sent a letter to FCI stating that it would be willing to accept September 28, 2013 as the Operations Date if the 20-year period for the duration of the Agreements would also be reckoned from that date. FCI did not agree to the said proposition and responded that the 20-year guarantee period commenced on May 11, 2007. In view of the dispute, Adani invoked the dispute resolution mechanism.

Issue at hand?

- Whether the Arbitrator can alter/interpret the express terms of the agreement between the parties?

Decision of the Court

- The Court referred to the many correspondences and the agreements between the parties while forming the view that the impugned award is vitiated by patent illegality on the face of the it. There is no ambiguity in the contract between the parties and the Arbitral Tribunal's observation that the commencement of the Service Period was not relevant in the context of the exchange of communication and the Supplementary Agreement, is manifestly erroneous.
- The conclusion of the Arbitral Tribunal runs in teeth of the express language of the letters exchanged as well as the Supplementary Agreement. The Court is of the view that this would amount to rewriting the contract between the parties, which admittedly the Arbitral Tribunal cannot do. It is not open for the Arbitral Tribunal to rework the bargain struck between the parties, especially since there is no ambiguity in the understanding.
- One of the reasons that may have persuaded the Arbitral Tribunal to hold that the 20-year period will commence from September 28, 2013 is that two different dates were not possible – one to calculate the escalation in SCH charges and the other for calculating the Service Period. The Court did not accept this rationale and Court decided that the parties are at liberty to choose different dates for different purposes as per their commercial wisdom.
- The Court observed that the Arbitral Tribunal had attempted to work out an equitable bargain between the parties which is impermissible. It is not open for the Arbitral Tribunal to re-write the contract between the parties on any notion of equity. Notwithstanding that the Arbitral Tribunal finds the agreement entered into between the parties as inequitable, it is not open for the Arbitral Tribunal to re-write the same
- The Court is therefore of the view that the Impugned Award is contrary to the contract between the parties and, therefore, to that extent was liable to be set aside.
- The Petition was therefore disposed in view of the above observations.

HSA
Viewpoint

The Court has rightly observed that the Arbitral Award in question completely defeats the purpose of the parties entering into an agreement on mutually agreeable commercial terms and conditions, as the Award goes beyond the scope of the Agreement, albeit for the reason that the Arbitrator finds it unfair. An Arbitrator cannot venture beyond the written understanding of the parties and give its own interpretation, as the same would-be illegal and arbitrary, even if the Arbitral Tribunal considers the agreement as inequitable.

Tata Motors Ltd & Anr v. The Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & Anr

Bombay High Court | WP (L) No 15548 of 2022

Background facts

- In the instant case, on February 26, 2022, Brihan Mumbai Electric Supply & Transport Undertaking (**BEST/ Respondent No. 1**) issued e-tender notice inviting to bid for operation of stage carriage services for public transport of 1400 (+ 50% variation) single-decker (**SD**) air conditioned (**AC**) electric buses with driver.
- In response to the above, several bidders including Tata Motors Ltd (**Petitioner No. 1**) and Evey Trans Pvt Ltd (**Respondent No. 2**) submitted their technical and financial bid.
- Accordingly, the Respondent No.1 rejected the tender of Petitioner No.1 on the ground that its technical bid was not in tune with the key requirement of the tender that the electric vehicle offered should run 200 kms in a single charge in actual conditions for the relevant gross vehicle weight with AC without any interruption.
- Subsequently, Respondent No. 1 accepted the bid of the Respondent No. 2, in furtherance of which a contract was awarded to Respondent No. 2.
- Aggrieved by this, Petitioner No. 1 filed a Writ Petition in the Hon'ble Bombay High Court (**High Court**) against the Respondents, on the ground that the aforementioned decision of Respondent No. 1 was influenced by conscious prejudice and bias.

Issues at hand?

- Whether Respondent No. 1 was justified in holding Petitioner No. 1's technical bid non-responsive?
- Whether the decision of Respondent No. 1 to award the contract to Respondent No. 2 was fair?

Decision of the Court

- At the outset, the High Court noted that as per Clause 3.5 (e) and Clause 12 of Section 2 of Schedule-IX, the foremost requirement of the tender issued by Respondent No. 1 was that the electric vehicles manufacturers had to provide the vehicles which could run 200 kms in single charge for SD AC buses in actual conditions for relevant gross vehicle weight with AC. Further, the High Court evaluated the letter dated March 11, 2022 whereby Petitioner No. 1 requested Respondent No. 1 to amend Clause 3.5(e) viz. bus shall cover 200 Kms per day with 75 minutes of opportunity charging time during the day operations and suggested that range testing

conditions should be as per AIS 040 / FAME-II, i.e., the standard conditions such as maintaining the standard speed, climate and other things. Thereafter, the High Court took into consideration that although the minutes of the pre-bid meeting did not record that the amendment suggested by the Petitioner to Clause 3.5(e) was accepted, the Petitioner by filling Annexure-F, which dealt with Schedule of Departures from Technical Specifications, specifically revealed that Petitioner No. 1 shall meet the operating range requirement of 200 km @ 80% SOC in single charge 'as certified as per AIS 040'.

- With that in mind, the High Court observed that 200 Kms road range as per the AIS 040 certification may not include the traffic conditions on the road, the temperature, traffic jam, opening of the doors of the AC buses at every stop and hence, it was by virtue of this that Respondent No. 1 had unambiguously stipulated in the tender that that the buses should run 200 Kms in a single charge 'in actual conditions'.
- Moreover, the High Court remarked that Petitioner No. 1 was cognizant of the gulf difference between the actual conditions and the standard conditions as per the AIS 040 norm, and hence had filled in Annexure-F, whereby it accepted the deviation from the conditions of the tender. As a result, the High Court answered the first issue in affirmative by advancing that Petitioner No. 1 was rightly disqualified for drifting away from the key requirements stipulated in the tender.
- With reference to the second issue at hand, the Bombay High Court noted the double dealing of the Respondent No.2 as on one hand it agreed to comply with Clause 3.5(e) and Clause 12 of Section 2 of Schedule IX and made a declaration in Annexure-F that there were no deviation from the tender document, whilst on the other hand, in Annexure-Y, which was a letter issued by the Original Equipment Manufacturer (OEM) to Respondent No. 2 along with its bid, it was stated that Respondent No. 2 would require one hour charging time for running 200 Kms distance. In this regard, the High Court firmly opined that the same was not in harmony with the key requirement of the tender document.
- The High Court expressed that it was a settled legal position that in matters of tenders, this Court has narrow scope of interference, however, if the decision-making process reflected clear arbitrariness and unreasonableness, then this Court would be duty bound to exercise its jurisdiction under Article 226 of the Constitution of India. On the foundation of the above principle, the Court proceeded to determine whether Respondent No. 2's acceptance of the bid by Respondent No. 1 satisfied fairness in action.
- Consequently, the High Court took in account that although after the opening of technical bid, no bidder was allowed to revise/correct or add any technical bid, Respondent No. 1 entertained a letter containing the revised Annexure-Y, issued by the Respondent No. 2 thereto, as the results of the bidding process were declared within two hours from the receipt of the letter. Consequently, the High Court arrived at the conclusion that the decision of acceptance of tender of Respondent No. 2 and set aside the same, with liberty to Respondent No. 1 to proceed with fresh tender process if it so desired. Therefore, the High Court answered the second issue in negative and disposed of the Writ Petition.

HSA
Viewpoint

The Bombay High Court, by setting aside the decision of acceptance of Respondent No. 2's bid, has refused to keep its eyes shut on discovery of proven unfairness which had crept in the tender process and has, in essence, strengthened the legal position that the writ jurisdiction in the matters relating to tenders/contracts should necessarily be exercised in the as the yardstick of 'arbitrariness/unfairness'. By stepping in and exercising its writ jurisdiction under Article 226 of the Constitution of India, the High Court has ensured that the rule of law is not reduced to mere ropes of sand.

Meena Bhatt v. Union of India & Anr

Bombay High Court | Writ Petition No 325 of 2009

Background facts

- In the present matter, the Petitioner is the widow of Late Mr. Anand Bhatt, who expired in or around November 2008. Mr. Bhatt was a practicing advocate and partner of a prominent law firm in Mumbai. He was a victim of the terrorist attack on November 26, 2008 at the Oberoi Hotel in Mumbai.
- After the demise of Mr. Bhatt, the Petitioner came across a file relating to the Orders passed by Respondent No. 2. On legal advice, the Petitioner decided to approach the Bombay High Court (**HC**) regarding 9 orders dated July 5, 2008; August 12, 2008; September 02, 2008; September 05, 2008; September 15, 2008; September 23, 2008; and September 30, 2008 passed by Respondent No. 2, by which Orders, penalty had been imposed on one TPI India Ltd. (**TPI**), its directors and ex-directors (**Impugned Orders**).
- Prior to March 10 ,1999, Mr. Bhatt was an independent non-executive director of TPI and had nothing to do with the day-to-day management and business of TPI. On March 10, 1999, Mr. Bhatt resigned as independent director of TPI. In furtherance of the aforesaid, Mr. Bhatt's resignation letter dated March 10, 1999 and Form 32 dated April 29, 1999 were filed with the Registrar of Companies by TPI.
- It is pertinent to note that TPI was declared a sick industrial company under the provisions of the Sick Industrial Companies (Special Provisions Act), 1955 (**SICA**) by the Board of Industrial and Financial Reconstruction (**BIFR**), New Delhi.

- TPI was issued Advance Import licences under which it was permitted to import certain raw material with respect to which it was required to pay import duty. The advance licence facility was granted to TPI on its undertaking to export finished products of a certain value within a certain period from the date of import. TPI defaulted in its export obligation under the advance licences issued to it by Respondent No. 2 by not submitting the required documentation. As a result, Respondent No. 2 passed the Impugned Adjudication Orders holding TPI as defaulter under Foreign Trade (Development and Regulation) Act, 1992.
- Respondent No. 2 addressed several demand notices and show-causes to TPI, which were also forwarded by it to the incorrect residential address of Mr. Bhatt on the premise that he continued to be the director of TPI. However, no notice was addressed to Mr. Bhatt and only TPI was asked to show cause.

Issue at hand?

- Whether in the facts and circumstances of the present case, the impugned ex-parte orders were liable to be quashed and set aside?

Decision of the Court

- At the outset, the HC perused the Impugned Orders and observed that TPI failed to respond to the various demand notices as well as the show cause notices. Additionally, various other lapses on part of TPI were also noted by the HC. The HC further noted that TPI was the accused person primarily and there was nothing in the Impugned Orders as to what was the role of each director and how Mr. Bhatt was a directing mind or will of TPI.
- The HC further delved into the aspect of vicarious liability and the fact that there has to be a specific act attributed to a director or the person allegedly in control of the management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.
- From a perusal of the Impugned Orders, the HC held that it was clear that the entire charge undisputedly, is levelled against TPI for not fulfilling the advance licence obligations. Nowhere was it stated that Mr. Bhatt was in control and management of TPI as a director or that he was personally responsible for the acts committed by or on behalf of the company and no notice was admittedly issued to him. That being the case, there was a clear violation of the principles of natural justice.
- The HC further held that prejudice has been actually caused to Mr. Bhatt. This was so because the show-cause-notice was not issued in the name of Mr. Bhatt or even to his correct address. Even show cause-notice issued to TPI did not contain specific allegation against Mr. Bhatt to which he could reply. No opportunity as such was given to Mr. Bhatt to represent against the proposed imposition of penalty. Mr. Bhatt was not heard before the Impugned Orders were passed whereby penalty was imposed upon him. Therefore, the HC held that the proceedings against Mr. Bhat were void ab initio.
- With regards to the prejudice caused to Mr. Bhatt, the HC placed reliance of the decision of the High Court of Gujarat in the matter of ***Om Vir Singh v. Union of India***[8] and held that the Impugned Orders imposing penalty could not be sustained.
- In terms of the aforesaid, the HC quashed and set aside the Impugned Orders.

HSA
Viewpoint

One of the foremost principles of natural justice is the opportunity to be heard. In the absence of being given an opportunity to be heard and defend oneself, any proceedings and orders passed against a person will have to be rendered void ab initio. This is yet another instance where the revenue department has shown its highhandedness. In furtherance to a catena of judgments, this Order also clearly puts forth the established position that non-executive/ independent directors who are not in control of the day-to-day business activities of a company cannot and ought not to be blamed for any fraud or irregularity, especially when they have no knowledge whatsoever of the same.

BBR (India) Pvt Ltd v. SP Singla Constructions Pvt Ltd

Supreme Court of India | Civil Appeal No 4130-4131 of 2022

Background facts

- BBR (India) Pvt Ltd (**Appellant**) and SP Singla Constructions Pvt Ltd (**Respondent**) had entered into a contract dated June 30, 2011 wherein the Appellant was required to supply, install and undertake stressing of cable strays for constructing a cable-stay bridge over the river Ravi at Basouli, Jammu and Kashmir.
- The Letter of Intent issued under the contract contained an arbitration clause for the resolution of disputes by a Sole Arbitrator. The contract and letter of intent were executed at Panchkula, Haryana. Further, the arbitration clause was silent regarding the seat and venue of arbitration.
- As disputes arose between the parties, the matter was referred to arbitration, and Mr Justice (Retd) NC Jain was appointed as the Sole Arbitrator for adjudicating the arbitral proceedings in Panchkula, Haryana. On May 29, 2015, the Sole Arbitrator recused himself from the position of an Arbitrator due to personal reasons.

[8] 2016 (340) ELT 277

- Thereafter, Mr Justice (Retd) TS Doabia was appointed as a new Sole Arbitrator and he stated that the venue of the proceedings would be New Delhi. Hearings were held, witnesses were cross-examined, and arguments were addressed by the parties in New Delhi. Thereafter, the award was signed and pronounced in New Delhi on January 29, 2016, whereby the Respondent was awarded a sum of INR 3,35,86,577 with an interest rate of 15% per annum.
- Thereafter, two proceedings were initiated. The Respondent filed an Application for interim orders under Section 9 of the Arbitration and Conciliation Act, 1996 (**Act**) before the Additional District Judge, Panchkula and the Appellant filed a petition under Section 34 of the Act before the Hon'ble High Court of Delhi.
- The Application filed by the Respondent was dismissed vide an order dated December 14, 2016, on the ground of lack of territorial jurisdiction and it was held that the jurisdiction to entertain the application vests with the High Court of Delhi. However, the said order was set aside by the High Court of Punjab and Haryana vide its order dated October 14, 2019, with a finding that the High Court of Delhi does not have the jurisdiction to entertain the objections under Section 34 of the Act.
- Therefore, the present Appeal was filed by the Appellant being aggrieved by the decision of the High Court of Punjab and Haryana.

Issue at hand?

- Whether conducting the arbitration proceedings in Delhi, owing to the appointment of a new arbitrator, would shift the 'jurisdictional seat of arbitration' from Panchkula in Haryana, the place fixed by the first Arbitrator for the arbitration proceedings?

Decision of the Court

- The Supreme Court, in terms of the pleadings /submissions as advanced by the parties, observed as under:
  - The Court, relying on the findings in the judgments of ***Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc***[9] and ***BGS SGS Soma JV v. NHPC***[10] Ltd observed that:
    - The Courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. The 'seat of arbitration' need not be the place where any cause of action has arisen, in the sense that the 'seat of arbitration' may be different from the place where obligations are/had to be performed under the contract. In such circumstances, both Courts should have jurisdiction, viz., the Courts within whose jurisdiction 'the subject matter of the suit' is situated and the Courts within whose jurisdiction the dispute resolution forum.
    - The moment the parties through an agreement designate the 'seat of arbitration', it becomes akin to an exclusive jurisdiction clause. It would then vest the Courts at 'the seat' with an exclusive jurisdiction to regulate arbitration proceedings arising out of the agreement between the parties.
    - The place where the arbitral tribunal hold the arbitration proceedings would, by default, be the 'venue of arbitration' and consequently the 'seat of arbitration'.
  - In view of the facts of the present case, it was further observed that:
    - *'23. ……In the context of the present case and noticing the first order passed by the arbitral tribunal on 5th August 2014 stipulating that the place of the proceedings would be Panchkula in Haryana and in the absence of other significant indica on application of Section 20(2) of the Act, the city of Panchkula in Haryana would be the jurisdictional 'seat' of arbitration. As 'the seat' was fixed vide the order dated 5th August 2014, the courts in Delhi would not have jurisdiction.'*
    - *'25. ……'The seat' once fixed by the arbitral tribunal under Section 20(2), should remain static and fixed, whereas the 'venue' of arbitration can change and move from 'the seat' to a new location. The venue is not constant and stationary and can move and change in terms of sub-section (3) to Section 20 of the Act. It is important to highlight that change of venue does not result in a change or relocation of the 'seat of arbitration.'*
    - *'26. ……The place of jurisdiction or 'the seat' must be certain and static and not vague or changeable, as the parties should not be in doubt as to the jurisdiction of the courts for availing of judicial remedies. Further there would be a risk of parties rushing to the courts to get first hearing or conflicting decisions that the law does not contemplate and is to be avoided.'*

HSA
Viewpoint

The Supreme Court has cogently dealt with the issue and has correctly analyzed the findings of its earlier landmark decisions on the issue of 'seat of arbitration'. The captioned matter is a step forward in ensuring that the seat of arbitration and jurisdiction of the Court under Section 2 of the Act should remain static and not vague, which is imperative to avoid ambiguity and ensuring speedy disposal of arbitral matters.

[9] (2012) 9 SCC 552
[10] (2020) 4 SCC 224

- *'29. ……the Section 42 is meant to avoid conflicts of jurisdiction of courts by placing the supervisory jurisdiction over all arbitration proceedings in connection with the arbitration proceedings with one court exclusively. The aforesaid observation supports our reasoning that once the jurisdictional 'seat' of arbitration is fixed in terms of sub-section (2) of Section 20 of the Act, then, without the express mutual consent of the parties to the arbitration, 'the seat' cannot be changed. Therefore, the appointment of a new arbitrator who holds the arbitration proceedings at a different location would not change the jurisdictional 'seat' already fixed by the earlier or first arbitrator. The place of arbitration in such an event should be treated as a venue where arbitration proceedings are held.'*

- In view of the aforesaid observations and findings of the Supreme Court held that the Courts in Delhi do not have the jurisdiction as the 'seat of arbitration' is Panchkula, Haryana and thus dismissed the present appeals due to lack of merit.

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