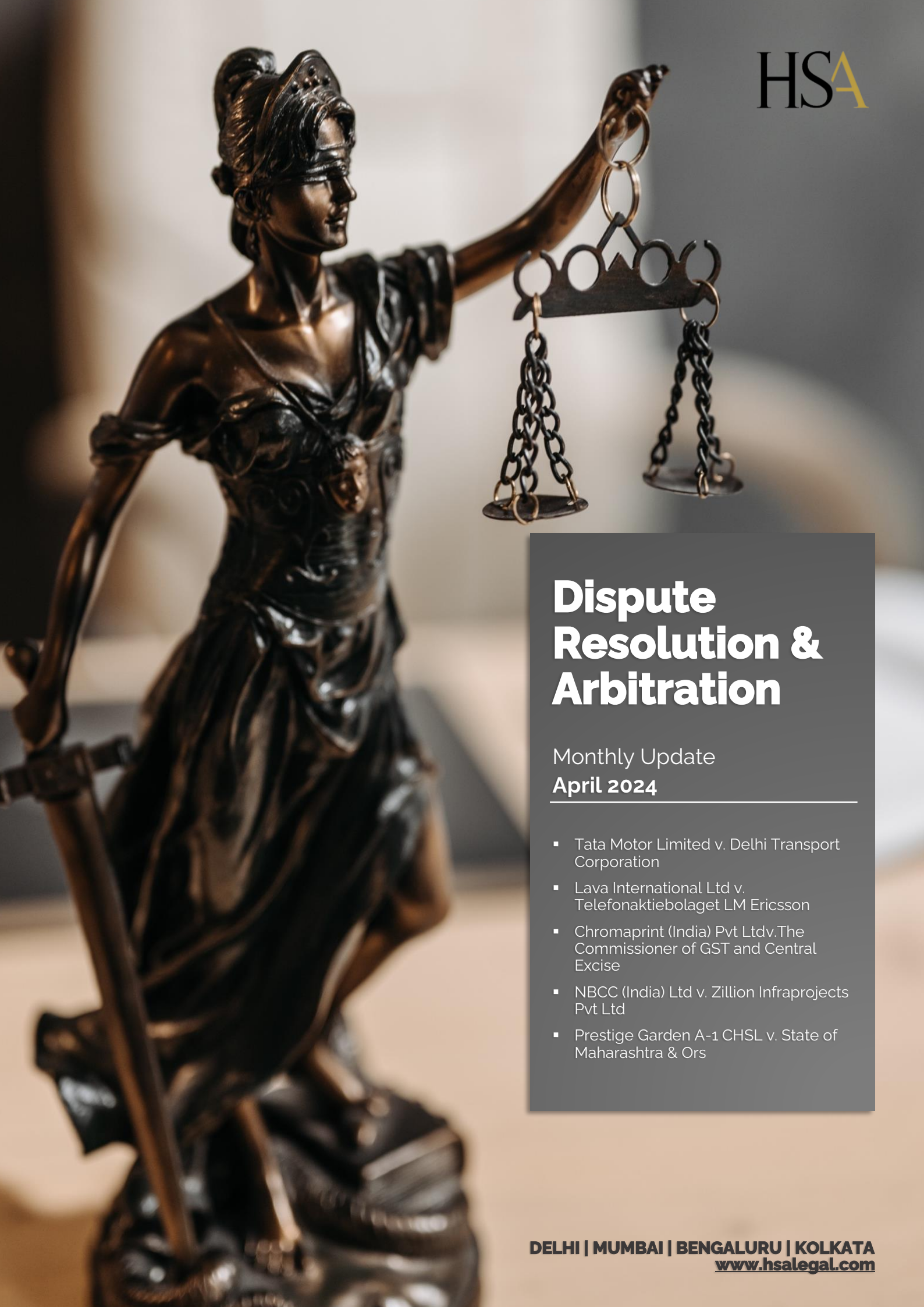

# Dispute Resolution & Arbitration

Monthly Update

**April 2024**

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- Lava International Ltd v. Telefonaktiebolaget LM Ericsson
- Chromaprint (India) Pvt Ltdv.The Commissioner of GST and Central Excise
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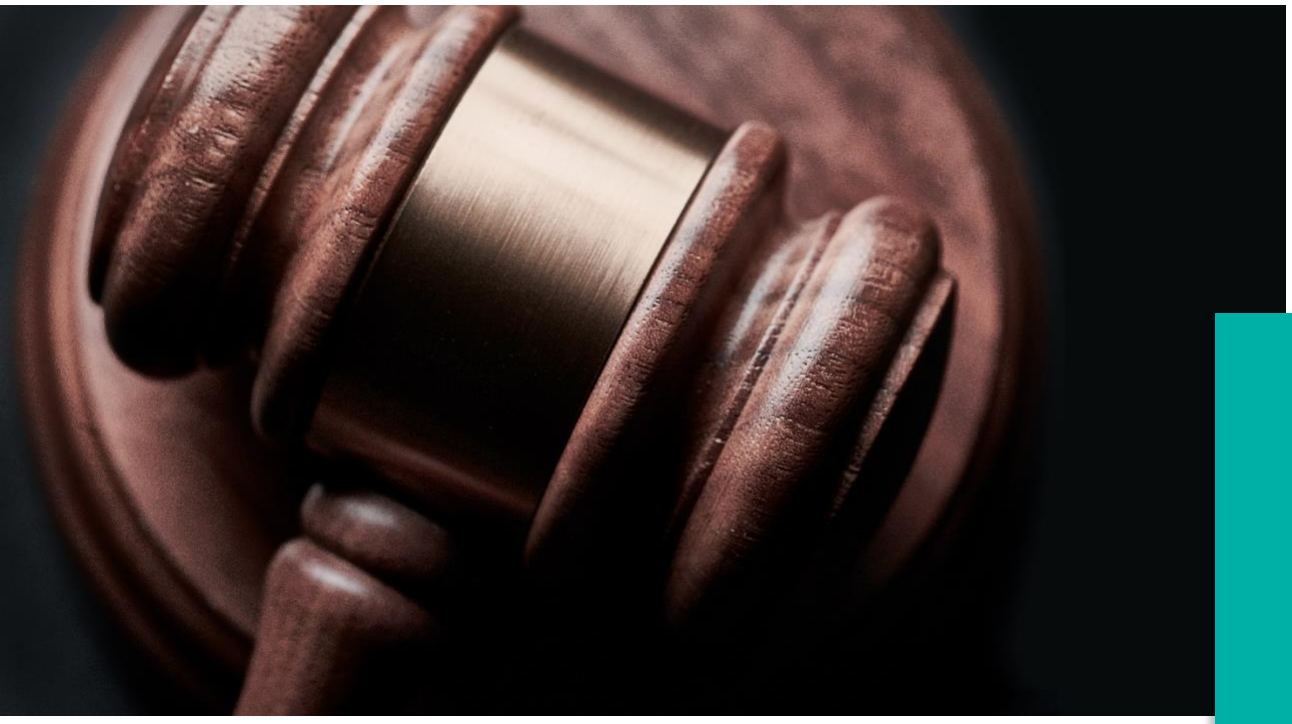
# DISPUTE RESOLUTION AND ARBITRATION UPDATE



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## Tata Motor Limited v. Delhi Transport Corporation

**Delhi High Court | Arb. A. (Comm.) 9/2023**

### Background facts

- Delhi Transport Corporation (**DTC**) entered into a contract with Tata Motors Limited (**TML**) on October 18, 2018 for the purchase of 650 AC and 975 non-AC low-floor CNG-fueled buses to be operated in Delhi. The contract included maintenance obligations on TML's part against Annual Maintenance Charges (**AMC**) payable by DTC.
- Disputes arose between DTC and TML concerning Clauses 24.4 and 46.16 of the General Conditions of Contract (GCC). DTC alleged that TML failed to meet the guaranteed minimum average fuel efficiency target measured as Kilometers operated per Kilogram of CNG fuel consumed (**KMPKG**) under Clause 24.4, making TML liable to pay penalties recoverable from AMC dues under Clause 46 of the GCC.
- DTC calculated the KMPKG penalty amount based on meterage recorded in drivers' memos used for AMC calculations. TML disputed this calculation method, asserting that KMPKG penalties should be based solely on 'kilometers operated' as per Clause 24.4 and not on the drivers' memo meterage used for AMC. DTC raised demands for KMPKG penalties for the periods 2011-12 and 2012-13, intending to deduct these amounts from TML's AMC dues. TML responded by invoking arbitration and obtaining interim orders (April 5, 2013 and June 15, 2013) from the Arbitral Tribunal, staying DTC's recovery efforts.
- The Arbitration Tribunal eventually issued the First Arbitral Award on August 16, 2017. The majority of the tribunal ruled against DTC, declaring their method of calculating KMPKG penalties and recovering them from AMC dues illegal. Following the First Arbitral Award, DTC filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (**Act**) while TML pursued enforcement through OMP (ENF.)(COMM.) 137/2018. Court orders directed DTC to deposit specific amounts in the registry, permitting TML to withdraw these amounts upon furnishing affidavits of undertaking and bank guarantees.
- During these proceedings, DTC issued an Office Memorandum on February 5, 2021, demanding INR127 crores from TML for the period 2009-2020, excluding the periods covered by the First Arbitral Award. TML filed a post-award Section 9 petition (OMP(I)(COMM.) 62/2021) to prevent DTC from recovering this amount from AMC dues, citing violations of the First Arbitral Award and

contractual provisions. DTC deducted significant sums (totaling INR 19,11,60,900) from TML's AMC dues in February 2021, but later agreed not to make further deductions pending a hearing on February 18, 2021.

- DTC was directed to deposit the deducted amount and subsequently withdrew appeals in exchange for TML's withdrawal of the Section 9 petition. Meanwhile, DTC initiated fresh recovery actions, demanding INR 17,86,43,616 as KMPKG penalty for 2021-2022, pursuant to the Office Memorandum of February 5, 2021. DTC invoked arbitration for INR127 crores claimed in the Office Memorandum. TML filed Section 17 applications to stay demands, which were granted by the Arbitration Tribunal without challenge from DTC.
- The Arbitration Tribunal issued orders (November 9, 2022 and February 6, 2023) to stay DTC's penalty demands and directed TML to provide bank guarantees to secure disputed amounts. TML filed another Section 17 application to stay DTC's INR 127 crores claim, seeking a similar stay on recovery efforts. The Arbitration Tribunal, in its order dated March 17, 2023, restrained DTC from recovering INR78,04,39,450 (net of amounts already deducted) and directed TML to furnish a bank guarantee.
- Aggrieved by the order, the parties have now challenged the order dated March 17, 2023 in these appeals.

## Issues at hand?

- Whether Appellant's withdrawal of its Section 9 petition operates as res judicata, barring it from seeking relief under Section 17 of the Act?
- Whether Respondent is correct in its contention that Appellant conceded to Respondent's right to recover the KMPKG penalty from the AMC dues by allowing Respondent to withhold a certain sum?
- Whether the mutual arrangement between Appellant and Respondent regarding the withholding of a specific sum by Respondent implies a permanent understanding on the issue of KMPKG penalty recoveries?

## Decision of the Court

- At the outset, the Delhi High Court (HC) held that the withdrawal of the OMP(I)(COMM.) 62/2021 by Appellant was not unconditional and does not operate as res judicata. The mutual arrangement between the parties did not imply a permanent understanding on the issue of KMPKG penalty recoveries.
- Thereafter, the HC distinguished the present case from the ***Kanchan Kapoor v. Swaran Kumar***[1] cited by the Respondent, noting that there was no similarity of facts and that there was no decree or adjudication against Appellant regarding the KMPKG penalty in OMP(I)(COMM.)62/2021.
- Further, the HC observed that the Appellant had no reason to concede to the deductions permanently, as it already had an Arbitral Award in its favor, and there were two unchallenged orders under Section 17 restraining the Respondent from making recoveries.
- The HC concluded that the Respondent's reliance on the judgments of ***Arcelor Mittal Nippon Steel India Ltd v. Essar Bulk Terminal Ltd***[2] and ***Kirtikumar Futarmal Jain v. Valencia Corporation***[3] was misplaced, as those cases did not apply to the current situation where Appellant had not been barred from seeking relief under Section 17 after withdrawing its Section 9 petition.
- The HC also referenced the case of ***HM Kamaluddin Ansari & Co. v. Union of India***[4] in its analysis but found Respondent's reliance on it to be out of context, as the Arbitral Tribunal did not reject Appellant's prayer for a refund of the withheld amount due to lack of powers under Section 17, but rather on the merits of the case.
- The Court held that TML's claim for an interim mandatory injunction under Section 17 was rightly rejected by the Arbitration Tribunal which concluded that it did not possess the powers to grant such injunctions under Section 17, and despite this conclusion, it refused to grant the injunction based on the merits of TML's case.
- Additionally, the Arbitration Tribunal declined to reverse the recoveries made by DTC (presumably the opposite party) from TML, citing that it did not wish to disrupt the ongoing process. The recoveries made by DTC on various dates were not contested by TML effectively, as TML did not file a counterclaim in response to these deductions within the stipulated timeframes. TML's failure to pursue arbitration proceedings promptly after the deductions in February 2021 weakened its position to seek recovery through an interim mandatory injunction under Section 17. The

HSA
### Viewpoint

The case involving Tata Motors Ltd and Delhi Transport Corporation presents a complex interplay of contractual obligations, arbitral proceedings, and the application of legal principles such as res judicata. The HC's findings indicate a careful consideration of the specific circumstances of the case, distinguishing it from the precedents cited by Delhi Transport Corporation. The HC's decision to not apply the doctrine of res judicata to Tata Motors Ltd's withdrawal of its Section 9 petition suggests a nuanced understanding of the differences between the reliefs sought under Section 9 and Section 17 of the Arbitration and Conciliation Act. Furthermore, the HC's interpretation that the mutual arrangement between Tata Motors Ltd and Delhi Transport Corporation did not constitute a permanent understanding on the KMPKG penalty recoveries reflects an analysis of the parties' intentions and the temporary nature of their mutual agreement. This decision of the Delhi High Court is a crucial and significant development in the jurisprudence of arbitration law in India.

[1] 2014 SCC OnLine Del 6552
[2] (2022) 1 SCC 712
[3] 2019 SCC OnLine Guj 3972
[4] (1983) 4 SCC 417

Arbitration Tribunal correctly reasoned that such relief would exceed the scope of Section 17 and would not be appropriate given TML's actions and inactions in the arbitration process.

- Therefore, the HC upheld the Arbitration Tribunal's decision to deny TML's request for an interim mandatory injunction and to not reverse the recoveries made by DTC, considering TML's failure to assert its claims effectively during the arbitration proceedings.

# Lava International Ltd v. Telefonaktiebolaget LM Ericsson

**Delhi High Court | CS(COMM) 65 of 2016, decided on 28-03-2024**

## Background facts

- Lava International Ltd (**Appellant**), an Indian company, was engaged in selling electronic telecommunication devices, whereas Ericsson (**Respondent**) was into the business of designing, manufacturing, and setting up telecommunications equipment and networks.
- The Respondent possessed an extensive array of patents on a global scale, a significant portion of which were identified as Standard Essential Patents (**SEPs**). These patents were utilized in conforming to multiple standards established by reputable bodies such as the European Telecommunication Standards Institute (**ETSI**) and other Standard Setting Organizations (SSOs).
- The Respondent had filed a suit against the Appellant, alleging infringement of eight SEPs panning various technological domains, including Adaptive Multi-Rate (**AMR**) speech codec, Enhanced Data Rates for GSM Evolution (**EDGE**), and features in 3G. The Appellant maintained that the Respondent had implemented these patents in its devices and had been offered Fair, Reasonable, and Non-Discriminatory (**FRAND**) terms for licensing, which the Respondent failed to accept or negotiate.
- In return, the Appellant filed the present cross-suit before the Delhi High Court (**HC**), wherein it was claimed that the SEPs held by the Respondent were neither valid in terms of the Patents Act, 1970 ( **Act**), nor were they essential, therefore making them unenforceable.

## Issues at hand?

- Whether the counter claim filed by the Appellant, challenging the validity of the SEPs was admissible or not?
- Whether the SEPs held by the Respondent were valid in light of the contentions raised by the Appellant, regarding non-patentable subject matter, lack of novelty, and alleged misrepresentation during patent procurement?

## Decision of the Court

- The validity of the ownership of the SEPs was central to the suit, and the Respondent substantiated its claim of valid ownership with certified copies of the Patent Certificates issued by the Office of the Controller General of Patents, Designs and Trademarks, which were not contested by the Appellant.
- Accordingly, the Court was of the view that the Respondent had sufficiently established its valid ownership over the SEPs. However, at the same time, the Court held that on a bare perusal of the framework of the Act, it was clear that the counter claim filed by the Appellant was not barred, and therefore was admissible.
- Subsequently, the Appellant challenged the validity of the SEPs owned by the Respondent on the following grounds:
  - Inventions in the SEPs, as claimed by the Respondent, were algorithms and would not be patentable under the Act.
  - Inventions in the SEPs, were not novel in nature and did not have any inventive step, both of which are essential conditions for the grant of a patent under the Act.
  - Specifications of the suit patents did not sufficiently or fairly describe the invention.
  - Respondent had obtained the said SEPs by making misrepresentations to the Patents office.
- The Court embarked on a comprehensive analysis of the patents in question, wherein it scrutinized each ground raised by the Appellant to challenge their validity, applying established legal tests to assess subject matter, novelty, inventive step, and compliance with patent law requirements. The Court, after analyzing each of the relevant aspects, held that seven of the eight SEPs held by the Respondent complied with the requirements under the Act and, therefore, were valid in nature.
- The first SEP held by the Respondent was struck down and deemed invalid by the High Court on grounds of non-patentable subject matter and lack of novelty.

HSA
**Viewpoint**

The Delhi High Court has underscored and highlighted the importance of adhering to FRAND terms, which is essential in fostering fair competition in the market and the commercial use of patents given on license. The Delhi High Court has appropriately assessed the validity of the SEPs, in accordance with the scheme of the Patents Act, 1970, and in doing so has outrightly clarified various confusing aspects pertaining to the validity of such SEPs. The present judgement is a welcome step towards promoting growth in the field of telecommunication technologies in India.

- Furthermore, the Court also delved into the nature of SEPs infringement, evaluating whether the Appellant's devices indeed utilized the Respondent's patented technologies without proper licensing. In doing so, the Court relied on the FRAND terms and found the Appellant to be an Unwilling Licensee for its failure to inter alia negotiate with the Respondent in good faith, consistently delaying licensing negotiations, and failing to respond to offers or present any counteroffer.
- Accordingly, the Court held the Appellant responsible for infringing the SEPs of the Respondent and awarded the Appellant damages to the tune of INR 244,07,63,990 with 5% interest, along with actual costs.
- In awarding the damages in favor of the Appellant, the Court also held that the Appellant had rightly claimed damages based on the amount of royalties it would have earned, calculated on FRAND rates.

## Chromaprint (India) Pvt Ltdv.The Commissioner of GST and Central Excise

**Customs, Excise and Service Tax Appellate Tribunal, Chennai | Excise Appeal No. 41994 of 2014**

### Background facts

- Chromaprint (India) Pvt Ltd (**Appellant**) is engaged in the production of printed labels and printed cartons for corrugated boxes as classified under Tariff Heading 48211020 and 48191010 of the Central Excise Tariff Act, 1985 (**Act**).
- As per the Central Excise Department (**Department**) the Appellant manufactured and cleared printed labels and printed cartons without assessing or paying the duty involved in the manufacturing of these printed labels and printed cartons.
- The Department held that the Appellant has violated the provisions of Rules 4,6,8,10,11 and 12 of the Central Excise Rules, 2002 (**Rules**) by clearing the printed labels and printed cartons without paying the proper duty or issuing proper invoices for clearing printed labels and printed cartons during the period from January 2007 to March 2011.
- In view of the same the Department issued a show cause notice to the Appellant instructing them to pay the relevant Excise Duty of INR 24,66,681 along with interest and penalties.
- The suppliers who supplied raw material to the Appellant were also issued show cause notices.
- Thereafter the Adjudicating Authority after following the due process of law held that the duty along with interest and penalty imposed on the Appellant was valid as the Appellant undertook the activity of manufacturing.
- Being aggrieved by the decision of the Adjudicating Authority, the Appellant filed an appeal before the Commissioner of GST and Central Excise (**Respondent**). However, the Respondent upheld the decision of the Adjudicating Authority.
- Being aggrieved by the said order the Appellant filed the present Appeal.

### Issue at hand?

- Whether the activity of printing undertaken by the Appellant amounts to 'manufacture' or not?

### Decision of the Tribunal

- At the outset, the Tribunal held that the Department has not provided the provisions to explain that the activity of printing undertaken by the Appellant shall amount to manufacture of finished products in the show cause notice. The same is also not dealt with in the Order-in-Original.
- The Tribunal further held that the Department assumed that the activity of printing undertaken by the Plaintiff shall constitute manufacturing merely because the goods fall under the tariff heading of 482110. Additionally, the Tribunal held that classification of goods cannot be a ground for holding that an activity amounts to 'manufacture'.
- The Tribunal relied on the judgement in the case of ***Matchwell v. CCE Ahmedabad***[5] where it was held that merely because the goods are classifiable under a particular tariff heading, it cannot be said that the activity undertaken by the appellant in the nature of printing of images on paper would amount to 'manufacture'.

HSA
**Viewpoint**

This decision reaffirms the principle that the activity of printing on cartons and labels does not amount to manufacture if it does not actually change the characteristics of the product resulting in a fundamentally totally different product. The significance of the judgment is that it removes all ambiguities and makes it clear that no Excise Duty is chargeable on activity of printing if it does not result in producing a fundamentally different product and such an activity of printing cannot be categorized as manufacturing except as provided by law.

[5] 2020 (371) ELT 840

- The Tribunal further relied on the judgments in the cases of ***HBD Packaging (P) Ltd v. CCE, Noida***[6] and ***Fitrite Packers v. CCE Mumbai***[7] whereby it was held that process of printing on GI papers and cartons undertaken does not amount to 'manufacture' since the basic character of the earlier product did not change by such printing.
- The Tribunal finally relied on the judgement in the case of ***ITC Ltd v. CCE Chennai***[8] whereby it was held that printing on packages does not amount to 'manufacture'.
- Hence in view of the above the Tribunal held that the activity of printing done by Appellant does not amount to 'manufacture' and hence the Excise Duty along with interest and penalty demanded from the Appellant cannot sustain. In view of the same the Tribunal set aside the impugned order.

# NBCC (India) Ltd v. Zillion Infraprojects Pvt Ltd

**Supreme Court of India I 2024 SCC Online Sc 323**

## Background facts

- NBCC (India) Ltd, (**Appellant**) a government undertaking engaged in construction projects issued an invitation for tender for a construction of a weir across the Damodar River in Jharkhand, pursuant to a contract between Damodar Valley Corporation and NBCC (India) Ltd
- Zillion Infraprojects Pvt Ltd, (**Respondent**) a private company submitted its bid and was awarded the contract for the construction of the weir and a Letter of Intent (LOI) was entered into.
- Over the course of time, disputes arose between the parties and Zillion Infraprojects Ltd, initiated arbitration proceedings seeking appointment of an arbitrator, however, NBCC (India) Ltd failed to reply to Zillion's notice invoking arbitration. This prompted Zillion Infraprojects Ltd to file an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) before the High Court of Delhi.
- The High Court of Delhi appointed a former judge as a sole arbitrator to adjudicate the dispute by way of an interim order and confirmed the appointment of the arbitrator vide a final judgment.
- Aggrieved by the orders of the High Court appointing the arbitrator, the NBCC appealed against the same before the Supreme Court.

## Issue at hand?

- In a two-contract case, whether a general reference in the second contract to the terms and conditions of the first contract would make the arbitration clause in the first contract applicable to the second contract?

## Decision of the Court

- The Court reiterated the law laid down in ***M.R. Engineers & Contractors Private Limited*** [9] wherein it was held that arbitration clause from one contract can be incorporated into another contract (where such reference is made) only when there is a specific reference to the arbitration clause and not be general reference.
- Further, the Court upon reading Section 7(5) of the Arbitration Act was of the view that when parties make reference to another contract containing the arbitration clause, a conscious acceptance of the arbitration clause from another document needs to be shown to make it a part of their own contract. In order to incorporate an arbitration clause from another document, existence of a clear intention to incorporate the arbitration clause is necessary.
- The Court observed that under Clause 1.0 of the LOI, certain tender documents mentioned in the LOI formed part of the tender. Clause 2.0 of the LOI clarified that all terms and conditions contained in the tender issued by DVC to NBCC shall mutatis mutandis apply, except if they are expressly modified by NBCC. Clause 7.0 of the LOI provided for redressal of disputes shall only be done through civil courts of Delhi and Clause 10.0 of the LOI shall form a part of the Agreement. Court concluded the case was one of 'reference' and not 'incorporation'. The Court concluded that the intention of the parties was amply clear in view of Clause 2.0 and Clause 7.0 of the LOI.
- The Court concluded the case to be one of incorporation and not of reference. The Court observed that a general reference would not result in incorporation of the arbitration clause.
- The Supreme Court quashed the High Court orders and allowed the appeal with no costs.

HSA
**Viewpoint**

This decision clarifies that where there is merely a general reference made in the second contract to the terms and conditions provided in the first contract containing the arbitration clause, the arbitration clause would not be applicable in the absence of a specific reference to the said clause. The Court has given prime importance to the intention of the parties and thereby signifies the importance of having well-structured arbitration clauses where if any reference is being made, the intent of the parties must be clear by making a specific reference to the said arbitration clause.

[6] 2012 (284) ELT 727
[7] 2006 (2030 ELT 452
[8] 2004 (166) ELT 426
[9] 2009) 7 SCC 696

# Prestige Garden A-1 CHSL v. State of Maharashtra & Ors

**Bombay High Court | Writ Petition No. 7668 of 2023**

## Background facts

- The issue arose with the predecessor in title of Respondent No.10, who owned expansive lands, bearing final plot nos. 410 and 412 of TPS I Thane, admeasuring over 21,210.51 square meters. Recognizing the potential for development, Respondent No.10 entrusted the development rights to Respondent No. 15, who then further delegated development rights to Respondent No. 3.
- The Respondent No. 3, thereafter, constructed a building by virtue of the development rights assigned by Respondent No.15, which later on formed as a Society. As part of a larger vision, Respondent No. 15 initiated the construction of multiple structures on different sections of the land, which was a multi-building layout.
- Subsequently, the Respondent No. 3, entered into individual agreements with the flat purchasers, under Section 4 of the Maharashtra Ownership Flats Act, 1963 (MOFA), in A-1 Wing of the proposed building known as 'Prestige Garden'. The Agreement described the portion of the larger land as Property No. I being developed by Respondent No. 15 and Property No II developed by Respondent No. 3.
- The Petitioner (Society) was constructed on final plot No. 412, situated at the Eastern Express Highway Village, Panchpakadi, District - Thane.
- The Society, which was constructed on Property No II, envisioned as a multi-faceted structure which consisted of ground floors, stilt area, and covered stilt parking, 12 floors, offering not just residential abodes but also open space parking area having 57 Flats and 7 shops.
- In November 2019, the Petitioner took legal action under Section 11(3) MOFA. Their aim was to secure a certificate of unilateral conveyance for a parcel of land admeasuring 1490.89 sq. metres, along with the building established upon it. The foundation of their claim rested upon an Architect's certificate, that contained Plot Area Statement of Society, FSI Statement and Tenement Statement issued on October 16, 2018.
- However, it was contended by the Respondents that the Society was registered in the year 2010 and there was failure to convey the land and the building for about 8 years and the land is to be contended to the Society after the full development of the larger land.
- The Competent Authority passed an order dated December 18, 2019, and observed that the respondents had not fulfilled their obligation under Rule 9 of MOFA by not transferring their title within 4 months of the society's registration date. However, since the entire layout has not been developed, it will be appropriate to transfer the land after the entire layout has been developed.
- The Petitioner received a certificate from the Competent Authority, which resulted in the registration of a Deed of Unilateral Deemed Conveyance on October 13, 2020, conveying 3461.43 square meters of land.
- However, by a communication dated May 27, 2021, the Respondents pointed out an error in the conveyance. This led to the District Deputy Registrar instructing the Petitioner to execute a Deed of Rectification, aligning with the Competent Authority's order to convey only the constructed area.
- Accordingly, on August 4, 2021, the Petitioner executed the Deed of Rectification, and amended the conveyed property description.
- Later, on February 8, 2023, the Petition was filed by the Petitioner and contested, the Competent Authority's order of December 18, 2019, the Deed of Unilateral Deemed Conveyance, and the Deed of Rectification.

## Issues at hand?

- Whether Order dated December 18, 2019 as well as the certificate of deemed conveyance issued by the competent authority can be quashed?
- Whether the Deed of Unilateral Deemed Conveyance dated October 13, 2020 and Deed of Rectification dated August 4, 2021 is valid?

## Decision of the Court

- The Bombay High Court observed that the interpretation of Sub Section (4) Section 11 of MOFA, does not imply any power to the Competent Authority to deliver only the constructed structure. It was held that the Competent Authority could not have restricted the issuance of the certificate of deemed conveyance only to the constructed structure, neglecting the broader obligation of the Promoter.

HSA
### Viewpoint

The judgement delimits the scope of the Competent Authority's powers, emphasizing that it must enforce the unilateral execution of conveyance deeds for both the land and the building, and not just the constructed area. The Court's reference to Clause 13 of the Model Agreement and Rule 9 of MOFA highlights the importance of contractual obligations and regulatory frameworks in property transactions. Further analysis may be needed to understand how these provisions interact with MOFA and the Court's interpretation. The Court explained the need to determine the Petitioner's entitlement to the land and building, implying that the petitioner may have legitimate claims to ownership rights. Overall, the judgement provides guidance on conveyance issues under MOFA, and the necessity to address any concerns related to conveyance of land and ensure consistent application of the law.

- The Court also found it necessary to quash the impugned order, issued by the Competent Authority dated December 18, 2019, along with the Certificate of Deemed Conveyance dated December 18, 2019.
- Additionally, the Deed of Unilateral Deemed Conveyance dated October 13, 2020, and the Deed of Rectification dated August 4, 2021, were also set aside and declared Null.
- The Application No.120 of 2019 was remanded to the Competent Authority for fresh consideration, and directed them to determine the entitlement of the Petitioner (Society) to both the land and the building. Parties involved are granted liberty to present necessary submissions for this determination.

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# AT A GLANCE

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