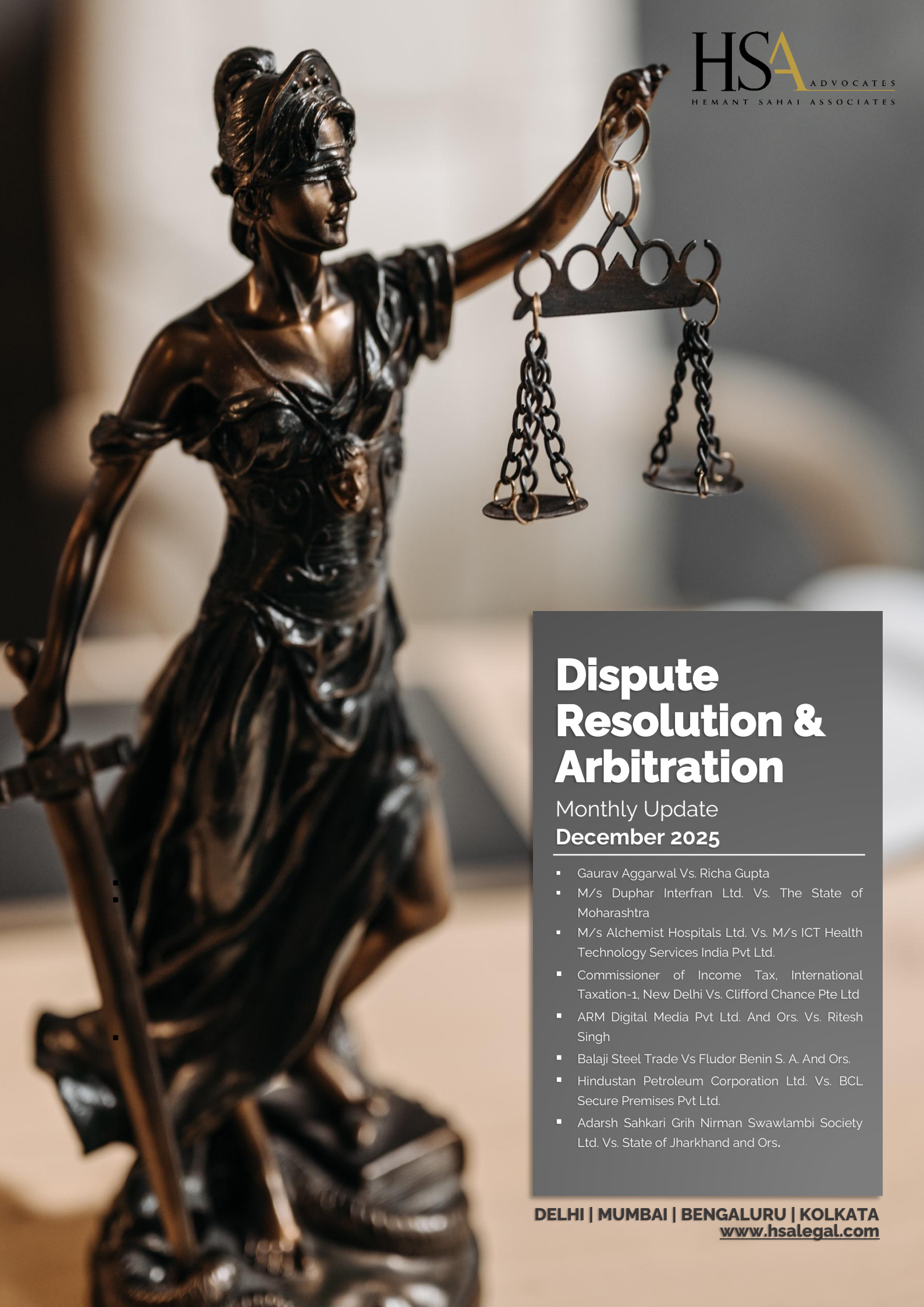

HSA ADVOCATES
HEMANT SAHAI ASSOCIATES

Dispute Resolution & Arbitration

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December 2025

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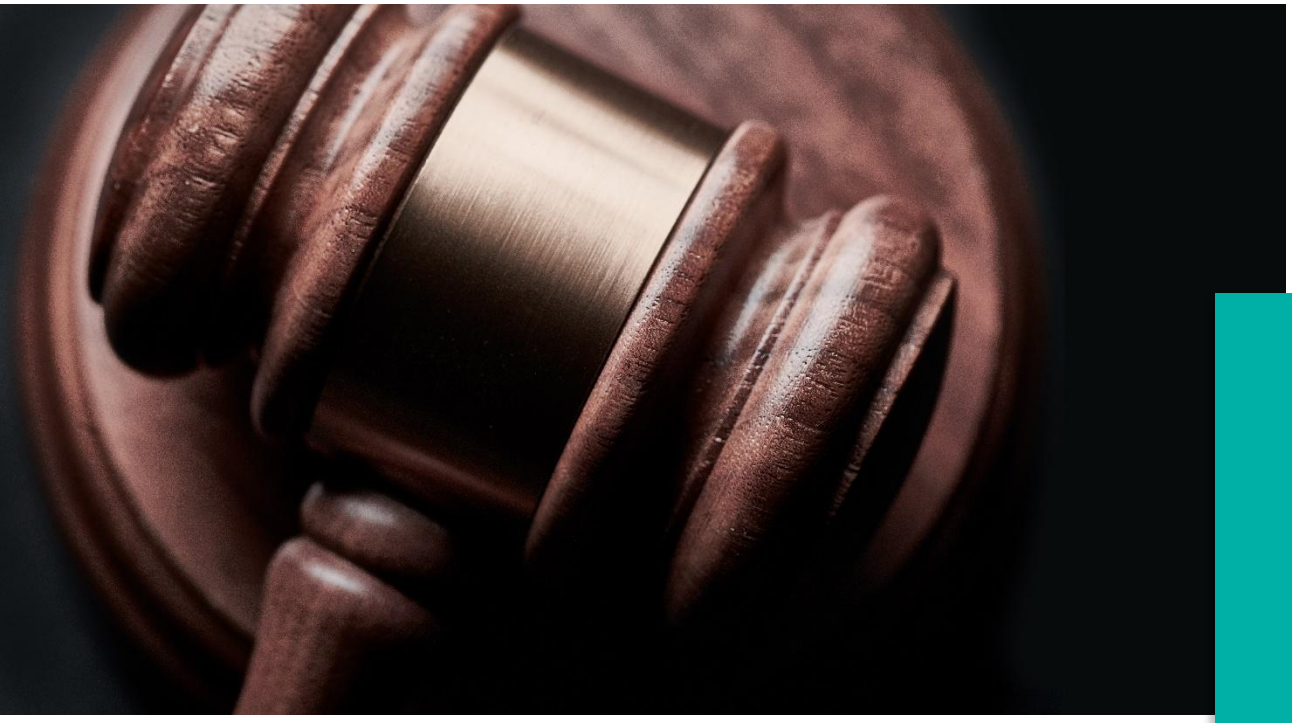
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Gaurav Aggarwal Vs. Richa Gupta

FAO(OS) 136/2025

Introduction

- In a significant judgment that notably impacts real estate transactions and arbitration involving immovable property in Uttar Pradesh, the Delhi High Court upheld an arbitral award terminating proceedings under Section 32(2)(c) of the Arbitration and Conciliation Act, 1996. The crux of the ruling lies in the finding that an *unregistered and unstamped Agreement to Sell (ATS)* relating to immovable property in Uttar Pradesh is *legally unenforceable*, incapable of being acted upon, and inadmissible even for limited purposes such as maintaining arbitral proceedings.
- This decision is rooted in the unique statutory architecture created by the *U.P. Civil Laws (Reforms and Amendment) Act, 1976,* which fundamentally departs from the central regime by making *registration a mandatory condition for the very existence of a contract for sale*. The Court reaffirmed that in Uttar Pradesh, *no enforceable contractual relationship arises* from an unregistered ATS, and therefore, an arbitral tribunal cannot continue proceedings based on such an instrument.

Background facts

- The Respondent held sub-leasehold rights in a residential flat in Jaypee Greens, Noida, under a Sub-Lease Deed executed in 2021. On 05.01.2024, the parties executed an ATS for transfer of these sub-leasehold rights for a consideration of ₹5 crores, of which the Appellant paid ₹50,000 as token money. The ATS required the Respondent to obtain prior permission from Jaypee Infratech Limited [JIL] and Yamuna Expressway Industrial Development Authority [YEIDA]; a mandatory step under local regulations.
- Shortly thereafter, the Respondent issued a termination notice alleging that the Appellant had breached the terms by failing to cooperate in obtaining the required permissions. The Appellant disputed this allegation and invoked arbitration seeking specific performance of the ATS.
- During arbitration, the Respondent raised a threshold objection: the ATS *was neither registered nor stamped*, as mandated under UP law. This objection went to the root of the contract's existence. The Sole Arbitrator upheld this challenge and terminated the proceedings under Section 32(2)(c), holding that the ATS was legally unenforceable.

- The Appellant's petition under *Section 34* was dismissed by the Single Judge, leading to the present intra-court appeal before the Division Bench.

Issue(s) at hand

- Whether the ATS dated 05.01.2024, being unregistered and unstamped, could constitute a valid and enforceable contract for sale under the UP legal framework?
- Whether an arbitral tribunal has power under Section 32(2)(c) to terminate proceedings when the foundational contract is legally inadmissible?
- Whether the Single Judge correctly applied the statutory amendments and upheld the arbitral award?

Findings of the Court

- Compulsory Registration Under UP Amendments
  - The Court held that the UP-Amendment Act of 1976 fundamentally alters the legal landscape. Under the amended Section 54 of the Transfer of Property Act, all contracts for sale of immovable property in UP must be registered. Corresponding amendments to Sections 17 and 49 of the Registration Act expand the mandatory registration requirement and bar unregistered contracts from being admitted in evidence or used to enforce any right including specific performance or arbitral relief.
- Unregistered ATS Creates No Enforceable Contract
  - The ATS, being neither registered nor stamped, never became a legally enforceable contract. Registration was not a procedural formality but an essential condition of validity. Consequently, the ATS was inadmissible for any purpose, including sustaining arbitration. The Appellant's argument that the ATS involved only sub-leasehold rights was rejected, as the UP amendments apply to all forms of immovable property interests.
- Termination Under Section 32(2)(c) Was Justified
  - Since the foundational contract itself was legally non-existent, it had become *impossible for the Tribunal to continue proceedings.* Section 32(2)(c) of the Arbitration Act empowers termination in such circumstances. The defect was not merely inadequate stamping - a curable defect but *non-registration*, which is incurable and renders the document void for legal purposes.
  - The Court found no error or perversity in the Arbitrator's reasoning. Given the narrow scope of interference under Section 34, the Single Judge rightly upheld the termination of proceedings.

HSA
Viewpoint

The Delhi High Court's decision in *Gaurav Aggarwal v. Richa Gupta* reinforces that Uttar Pradesh has a strict statutory requirement that every Agreement to Sell (ATS) relating to immovable property must be registered. Unlike other states, where an unregistered ATS may still be used for limited purposes, the UP amendments make registration a condition for the contract itself to be valid. Therefore, an unregistered ATS creates no enforceable rights and cannot be relied upon in arbitration or court proceedings.

The Court emphasized that parties dealing with UP property must ensure proper registration at the outset, because an unregistered agreement, whether for freehold, leasehold, or sub-leasehold rights has no legal effect. This places a higher burden of due diligence on buyers, sellers, and real estate practitioners, who must verify compliance with the UP-specific statutory framework before acting on any ATS.

The ruling also clarifies the position for arbitration. Although the arbitration clause survives on its own, the tribunal cannot continue if the underlying contract is legally inadmissible. Since the ATS in this case was both unregistered and unstamped, it could not be considered for granting any relief. As a result, the arbitral tribunal correctly terminated the proceedings under Section 32(2)(c), as it had become impossible to adjudicate the claim.

Lastly, the Court drew a clear line between stamping issues and registration requirements. While insufficient stamping may be cured, non-registration under UP law is not curable, making the contract void for any legal purpose. The decision ultimately promotes cleaner, compliant real estate transactions and prevents parties from using arbitration to enforce agreements that are invalid from the start.

M/s Duphar Interfran Ltd. Vs. The State of Maharashtra

2025:BHC-OS:21861-DB

Background facts

- Duphar Interfran Ltd., a Mumbai based pharmaceutical company, owned the registered trademark "Crocin" under the Trade Marks Act. By a Brand Acquisition Agreement, dated 18 Jan 1996, executed in London, Duphar sold the Crocin trademark to SKB Plc i.e. a UK entity. SKB applied to the Indian Registrar of Trademarks on 19 Jan 1996 to record the transfer of ownership.
- The Maharashtra Sales Tax authorities treated this assignment as a "local sale" within Maharashtra. On 31 Aug 1998 the Commissioner of Sales Tax issued a ruling holding the trademark transfer to be a taxable sale liable to 4% under Schedule C-I-26 of the Bombay Sales Tax Act, 1959. Subsequently, an assessment imposed a tax demand of Rs.99.68 lakh on Duphar on this basis.
- Duphar appealed through the statutory channels, but the Deputy Commissioner and later the Maharashtra Sales Tax Tribunal upheld the tax levy. In the Tribunal's Impugned Judgment, the sale of the Crocin trademark was held to be a sale within Maharashtra, and thus taxable under the Bombay Sales Tax Act. Against this, Duphar filed the present Sales Tax Reference before the Bombay High Court.

Issue(s) at hand?

- Whether the sale of the said trademark has taken place within the State of Maharashtra or is deemed to have taken place during export outside India, under the canopy of Section 5(1) of the Central Sales Tax Act, 1956 ("CST").

Findings of the Court

- The Bombay High Court held that the trademark assignment constituted an export of goods and not a local sale. The Court reasoned that the agreement was a true transfer of ownership as it gave SKB full rights in the trademark and left Duphar with no remaining interest in the same.
- The Court explicitly applied the principle of *mobilia sequuntur personam as applied in Mahyco Monsanto v. Union of India*[1]. It noted that once an intangible asset like a trademark is assigned, the transferee acquires the complete right title and interest in the property i.e. the trademark in this case, and the transferor has no subsisting rights.
- Since SKB is a foreign entity, the High Court treated the trademark's situs as moving outside India upon assignment. The Court distinguished this from mere licensing, emphasizing that this was a full sale of the trademark as *goods*.
- The Revenue contended that because the trademark was registered in India, the sale remained within the State. The Court rejected this. It observed that the place of registration is not decisive once ownership of the asset passes abroad. The Agreement's assignment clause made the UK entity the owner, and subsequent mutation of the Indian registration was procedural.
- The High Court answered the reference in favour of Duphar. It held that the Brand Acquisition Agreement is an Agreement to Sale and such sale is not a sale within the State of Maharashtra, but shall be deemed to have taken place in the course of export of the said trademark outside India, as contemplated under Section 5(1) of the CST Act. In short, the transfer was an export sale of an intangible good, precluding any Maharashtra tax.

HSA
Viewpoint

The ruling reaffirms the principle of *mobilia sequuntur personam*, applying it to intellectual property. The Court's analysis ensures that contractual assignments of intangibles to overseas parties are treated as export of goods, maintaining consistency with prior jurisprudence on the subject matter.

The case clarifies that Section 5(1) CST can apply even if the "*goods*" are intangible and do not physically cross the border. Since the export is effectively affected by the assignment and the change of ownership, the technical requirements such as transfer of title documents, etc. are satisfied. Thus, the sellers of the Indian trademarks or other IP rights to foreign assignees can regard such transactions as export of goods for CST purposes.

The judgment aligns with modern interpretations of IP law and reinforces the constitutional bar under Article 286(1)(b) on State taxation of export sales.

[1] 2016 SCC OnLine Bom 5274

M/s Alchemist Hospitals Ltd. Vs. M/s ICT Health Technology Services India Pvt Ltd.

2025 SCC OnLine SC 2354

Background facts

- M/s Alchemist Hospitals Ltd ("Appellant"), a private healthcare institution entered into a Software Implementation Agreement dated November 1st 2018 ("Agreement") with M/s ICT Health Technology Services India Pvt. Ltd. ("Respondent").
- Under the Agreement, the Respondent undertook to implement its proprietary hospital-management product known as "HINAI Web Software" across the Appellant's facilities.
- The Agreement contained Clause 8.28, titled as "Arbitration". The said clause provided for a three-tier dispute resolution mechanism for resolving disputes arising out of or relating to this Agreement.
- In view of the said Agreement, the Respondent started implementing the HINAI Web Software in November 2018. However, the Appellant alleged that there were procedural delays and technical failures on part of the Respondent.
- Thereafter, the Appellant once again on the assurances given by the Respondent permitted them to implement the HINAI Web Software. Accordingly, the HINAI Web Software went live on January 1st 2020.
- Once again, the Appellant alleged that there were numerous operational issues due to which the system was rolled back on April 1st 2020.
- On the same day i.e. April 1st 2020, the Appellant addressed an email to the Respondent invoking Clause 8.28 of the Agreement and requesting a mediation meeting between the Chairmen of the two companies for resolving the issues.
- On April 3rd 2020, the Respondent replied to the email received by the Appellant asking for their cooperation.
- In view thereof, the Appellant issued a notice dated June 29th 2020 ("Notice") upon the Respondent for appointment of a Sole Arbitrator for resolving the disputes that had arisen.
- The Respondent acknowledging the receipt of the Notice vide email dated August 25th 2020, requested one last trial of the project instead of proceeding with arbitration.
- Constrained by this response, the Appellant approached the Punjab and Haryana High Court, for appointment of a Sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Act").
- The Punjab and Haryana High Court dismissed the application filed under Section 11 of the Act, holding that Clause 8.28 was not a valid arbitration agreement as it merely contemplated internal negotiation and mediation without creating a binding arbitral process.
- Aggrieved by the order of the Punjab and Haryana High Court, the Appellant filed the present proceeding.

Issue(s) at hand?

- Whether Clause 8.28 of the Agreement can be considered to be a valid arbitration agreement under the Act?

Findings of the Court

- At the outset, the Hon'ble Court analysed Section 7 of the Act and prescribed three essential requirements for a valid arbitration agreement: (i) that there must be an agreement between the parties to refer their present or future disputes to arbitration; (ii) such disputes must arise out of a defined legal relationship, whether contractual or otherwise; and (iii), the agreement must be in writing. The Hon'ble Court further held that Section 7 or any other provision of the Act does not require an arbitration agreement to be in any particular form, so long as the statutory requirements prescribed under Section 7 of the Act are duly satisfied.
- The Hon'ble Court relied on the judgment in the case of K.K. Modi v. K.N. Modi[1], wherein it was held that certain essential attributes must be present for a clause to qualify as an arbitration agreement. The Hon'ble Court held, for a clause to qualify as an arbitration agreement it must fulfil the following requirements: (i) it must reflect the parties' intention to submit their disputes to a private tribunal whose decision will be final and binding, (ii) the jurisdiction of the tribunal

HSA
Viewpoint

The Hon'ble Court has correctly reaffirmed that a valid arbitration agreement must be founded on clear and conscious consent to submit disputes to a binding adjudicatory process. The judgment clarifies that merely using the term "arbitration" or structuring a multi-tier dispute-resolution mechanism does not satisfy the requirements under Section 7 of the Act, unless the clause reflects an intention to refer disputes to a neutral decision-maker whose determination will be final and binding.

The Court held that Chairman-level discussions are, in substance, an internal negotiation/mediation mechanism and cannot be treated as arbitration. By refusing to allow ambiguous drafting or subsequent correspondence to create an arbitration agreement where none existed, the Court reinforces contractual certainty.

This judgement removes all ambiguity and makes it clear that substance prevails over terminology and that arbitration cannot be manufactured by labels or afterthought.

[1] (1998) 3 SCC 573

arises from the consent of the parties' or law, and (iii) the Tribunal is empowered to determine substantive rights of the parties' in an impartial and judicial manner. The Hon'ble Court further observed that the agreement must contemplate an enforceable decision on a formulated dispute and should indicate a process involving hearing both parties and deciding the dispute according to law, with the wording of the clause being consistent with an intent to arbitrate.

- The Hon'ble Court further relied on the judgment in the cases of Jagdish Chander v. Ramesh Chander[2] and Mahanadi Coalfields Ltd. v. IVRCL AMR Joint Venture[3] wherein it was held that the mere use of the word "arbitration" is not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing.
- The Hon'ble Court held that the mere presence or repeated use of the word "arbitration" in a contractual clause cannot by itself create a valid arbitration agreement under Section 7 of the Act. The Hon'ble Court held that the law requires a clear and binding intention on the part of the parties to submit their disputes to a private adjudicatory forum whose decision will be final and enforceable. After examining Clause 8.28 of the Agreement the Hon'ble Court concluded that such an intention was absent. The Hon'ble Court held that the clause only sets out a process of negotiation followed by a form of mediation conducted by the respective Chairmen of the parties, and it expressly allowed the complaining party to approach the civil courts if the process did not succeed. Since the clause lacked finality and did not reflect any commitment to arbitrate, the Hon'ble Court held that it did not amount to an arbitration agreement.
- The Hon'ble Court further held that the judgement in the cases of Powertech World Wide Ltd. v. Delvin International General Trading LLC[4] and Visa International Ltd. v. Continental Resources (USA) Ltd[5]., does not apply to the facts of the present case. The Hon'ble Court held that in those cases, the respondents had not denied the existence of the arbitration agreement or the binding nature of the arbitration clause but had merely raised procedural objections. However, in the present case there existed no valid arbitration agreement, hence subsequent correspondence cannot cure the absence of a foundational agreement under Section 7 of the Act, nor can it alter the original intention of the parties as reflected in the clause.
- Accordingly, the Hon'ble Court upheld the decision of the High Court and dismissed the present appeal.

[2](2007) 5 SCC 719
[3](2022) 20 SCC 636
[4](2012) 1 SCC 361
[5](2009) 2 SCC 55

Commissioner of Income Tax, International Taxation-1, New Delhi Vs. Clifford Chance Pte Ltd.

2025:DHC:10838-DB

Background facts

- Clifford Chance PTE LTD ("Respondent") is a Singapore-based non-resident, is engaged in the business of legal advisory services across jurisdiction including India.
- The Respondent had filed returns of income in India declaring NIL taxable income for the assessment year ("A.Y.") 2020-2021 and 2021-2022.
- Thereafter, the Assessing Officer ("AO") passed draft assessment orders proposing additions of Rs 15.55 crore for AY 2020–2021 and Rs 7.97 crore for AY 2021–2022, primarily on the ground that the Respondent constituted a Service Permanent Establishment (PE) in India under Article 5(6)(a) of the India–Singapore Double Taxation Avoidance Agreement ("DTAA").
- Aggrieved by the same, the Respondent filed its objections before the Dispute Resolution Panel ("DRP"). However, the DRP rejected the objections of the Respondent.
- In pursuance to the same, the AO passed the final assessment orders on July 28th 2023 and October 29th 2023 for the AY 2020–2021 and AY 2021-2022 respectively.
- The Respondent filed appeal against the final assessment orders before the Income Tax Appellate Tribunal ("Tribunal").
- The ITAT allowed the said appeals filed by the Respondent and set aside the additions made by the AO.
- Aggrieved by the order of the Tribunal the Appellant has filed the present appeal.

Issue(s) at hand?

- Whether on the facts and in the circumstances of the case, and in law, the Tribunal erred in holding that the Respondent does not have a service permanent establishment in India?
- Whether on the facts and in the circumstances of the case, and in law, the Tribunal erred in holding that the Respondent does not have a virtual service permanent establishment in India?

Findings of the Court

- The Hon'ble Court held that, under Article 5(6)(a) of the DTAA, a permanent establishment of a non-resident company in India is constituted when its employees actually render services while residing in India for an aggregate period exceeding 90 days in a fiscal year.
- The Hon'ble Court observed that while computing the 90 days threshold, only those days on which actual services were rendered to Indian clients should be considered. The Hon'ble Court further observed that the vacation days (the days on which the employees were on leave, while residing in India), business development days and the overlapping working days of multiple employees of the non-resident Indian company must be excluded while computing the 90 days threshold for constituting a permanent establishment of that non-resident company.
- In view of the above, the Hon'ble Court upheld the finding of the Tribunal that no permanent establishment of the Respondent was constituted in AY 2020-2021, as actual services rendered by the employees of the Respondent fell below the prescribed threshold of 90 days.
- The Hon'ble Court held that Article 5(6)(a) of the DTAA mandates the actual furnishing of services within India through employees or other personnel who are physically present in India. The Hon'ble Court further held that the expression "within a Contracting State" in Article 5(6)(a) of the DTAA carries a clear territorial connotation and necessarily requires a physical footprint in India. Accordingly, services rendered virtually from outside India, without the physical presence of employees in India, cannot be regarded as services furnished "within" India so as to constitute a permanent establishment.
- The Hon'ble Court also rejected the contention that a "virtual service permanent establishment" exists under the DTAA. It held that such a concept finds no mention in the treaty, and courts cannot read into the DTAA concepts that are conspicuously absent. While acknowledging the challenges posed by digitalisation and virtual services, the Hon'ble Court clarified that taxability must strictly follow the existing treaty language.
- The Hon'ble Court further held that the judgments in the cases of ABB FZ-LLC v. DCIT[1], Verizon Communications Singapore Pte Ltd. v. ITO[22] and Hyatt International Southwest Asia Ltd. v. ADIT[3],

HSA
Viewpoint

The judgment reaffirms the legal position that Courts cannot read into DTAA concepts that are conspicuously absent and must interpret tax treaty provisions strictly ***a verbis legis non est recedendum*** i.e. from the words of law, there must be no departure.

The judgment removes all ambiguities by unequivocally holding that a permanent establishment of a non-resident company in India under Article 5(6)(a) of the DTAA can arise only where the employees of such non-resident company actually render services while physically residing in India for an aggregate period exceeding 90 days in a fiscal year.

The judgment further clarifies that, for the purpose of computing the said 90 days threshold, days spent by employees on leave while residing in India, business development days, and overlapping working days of multiple employees of the non-resident company are to be excluded. The judgement further holds that services rendered virtually by employees while residing outside India cannot be taken into account for constituting a permanent establishment under Article 5(6)(a) of the DTAA.

[1](2017) 166 ITD 329 (Bang)
[2](2014) 361 ITR 575 (Madras)
[3] 2025 SCC OnLine SC 1506

were not applicable to the present case, as they arose from different factual matrices and treaty frameworks and could not be used to dilute the express requirement of physical presence under Article 5(6) of the DTAA.

- In view of the above, the Hon'ble Court upheld the order passed by the Tribunal and accordingly dismissed the appeal.

ARM Digital Media Pvt. Ltd. And Ors. Vs Ritesh Singh

2025:DHC:10726

Background of the Disputes

- On 8th September 2016, the Plaintiff No. 1 (private limited company) and the Defendant executed a Share Subscription-cum-Shareholders' Agreement ("SSSA") which provided that parties were also required to sign an employment-cum-non-solicitation, non-disclosure agreement.
- Consequently, the Plaintiff No. 1 and Defendant also executed an Employment Agreement on 8th September 2016 ("Employment Agreement"). The Defendant had originally served as the Managing Director and later as a non-executive director in Plaintiff No. 1.
- Pursuant to resignation, the Defendant joined Insite Digital Private Limited, which is a competing entity and therefore the Defendant allegedly violated non-compete, confidentiality, and non-solicitation obligations under Employment Agreement and Articles of Association of the Plaintiff.
- The Defendant also lodged investor complaints with Registrar of Companies, which later formed part of oppression and mismanagement petitions filed before National Company Law Tribunal.
- The Plaintiff filed the captioned commercial suit for alleged breach of Employment Agreement and fiduciary duties by the Defendant. According to the Plaintiff, although the disputes overlap with the above pending proceedings, the Defendant's actions during and post-employment have resulted in financial loss and reputational harm.
- The Defendant filed an interim application Order VII Rule 11(d) of Code of Civil Procedure, 1908 ("CPC") seeking rejection of the plaint on the ground that the suit is barred by law.

Issue(s) at hand?

- Whether the dispute constitutes a commercial dispute under section 2(1)(c)(xii) of Commercial Courts Act, 2015 ("CC Act")?
- Whether the jurisdiction of Civil court is expressly ousted under section 430 of the Companies Act, 2013 ("Companies Act")?

Findings of the Court

- Order VII Rule 11 has been analysed in a plethora of cases and the established principle is that while considering a challenge under Order VII Rule 11, reference can be made only to the plaint not to the written statement or any other defence. The plaint must be read 'as-is' without any modifications. When the suit sems to be an abuse of court's process, the Court is obligated to reject such a plaint.
- The statutory definition of commercial disputes under section 2(1)(c) is inclusive and expansive and is concerned with the mercantile dealings arising out of contracts and other enumerated relationships. The Hon'ble Court then discussed the judicial interpretation of the definition considering several judgments such as Meena Vohra v. Master Hosts (P) Ltd.[1], Ekanek Networks Pvt. Ltd. v. Aditya Mertia[2], and Rachit Malhotra v. One97 Communications Ltd[3].
- While discussing Meena Vohra case, the Hon'ble Court reiterated that though scope of commercial disputes is extremely broad it is not unbridled, it must be understood to mean disputes relating to business, commerce, trade, industry or commercial cooperation i.e. dealings foundationally commercial in character. It is not enough that parties are commercial, the dispute must also have a commercial character.
- Further, relying on the Ekanek Networks case, the Hon'ble Court iterated that the simple inclusion of ancillary business-related clauses such as confidentiality, intellectual property assignment, or noncompete is not enough to transform an employment contract into a commercial arrangement which employment contract is essentially a contract of personal service. The CC Act is enacted to ensure efficient disposal of genuine mercantile and commercial disputes and including regular employer-employee disputes within the scope would defeat the objective of the statute and clog the courts.
- Even in the Rachit Malhotra case an attempt was made by the parties to portray an ESOP scheme akin to a shareholders agreement and invoke the jurisdiction of commercial courts. Such interpretation was expressly refused by the court because even if the dispute had elements of shareholding, the main character was employment and therefore the same could not be synthetically stretched to a commercial dispute.

HSA
Viewpoint

The Hon'ble Court has held that to determine whether the dispute is indeed commercial, the point to consider is whether the relationship at issue arises from a commercial or business-oriented engagement, rather than only from the fact that one of the parties is a commercial entity.

The statutory definition of commercial disputes under section 2(1)(c) is inclusive and expansive and is concerned with the mercantile dealings arising out of contracts and other enumerated relationships.

It is important to ascertain whether the dealing has a commercial thread such as is it concerned with transactions involving trade, business operations, commercial obligations or mercantile dealings. It categorically stated that a contract of personal service does not become a commercial relationship or arrangement merely by inclusion of business-related terms.

Thus, it has clarified and settled that though the definition of commercial disputes has a wide ambit it is not boundless. Having discussed and relying on several judgments of other High Courts, the precedent ensures a harmonious interpretation of the provisions of CC Act.

[1]2025 SCC OnLine Del 1758
[2]2024 SCC OnLine Del 8302
[3] 2018 SCC OnLine Del 12410

- The SSSA executed by Parties had no bearing on the present case as the dispute squarely arose out of the Employment Agreement. The Employment Agreement is devoid of any commercial element, it is only a private arrangement between the parties.
- As far as the objection regarding exclusion of jurisdiction of the Hon'ble Court due to Companies Act was concerned, the Hon'ble Court held the same was unsustainable. The reasoning for the same is that National Company Law Tribunal does not have the authority to decide breaches of employment contracts, enforce personal service obligations or grant consequential reliefs. Even if for sake of argument some of the reliefs sought overlapped with the Tribunal's jurisdiction, a plaint cannot be rejected in part. Accordingly, the Hon'ble Court dismissed the Interim Application.

Balaji Steel Trade Vs Fludor Benin S. A. and Ors.

MANU/SC/1566/2025

Background of the Disputes

- A Buyer and Seller Agreement ('BSA') was executed between Petitioner (Indian Partnership firm) and Respondent No. 1 (incorporated under the laws of Benin) on 06.06.2019 and its Addendum was executed on 09.01.2021. Subsequently, ancillary documents such as Sales Contracts were also executed with Respondent No. 2 and High Seas Sales Contracts ('HSSA') were executed with Respondent No. 3.
- Disputes arose between the Parties in 2022, the Petitioner then terminated the BSA on 06.09.2022.
- Vide notices dated 12.04.2023 and 31.05.2023, Respondent No. 1 invoked arbitration against the Petitioner and sought arbitration in Benin.
- The Petitioner opposed arbitration in Benin and invoked arbitration as per section 21 of the Arbitration and Conciliation Act, 1996 ('Act'), referring disputes under BSA, Sales Contract and HSSAs against all Respondents.
- Respondent No. 1 however proceeded with Benin arbitration and proceedings continued ('Benin Arbitration Proceedings').
- On 10.08.2023, the Petitioner filed an anti-arbitration injunction suit before the Delhi High Court to restrain the Benin arbitration ('Anti-arbitration injunction suit').
- During the pendency of all of the above proceedings, the Petitioner filed the subject petition on 23.08.2023 under section Section 11(6) r/w Section 11(12)(a) of the Act, praying for appointment of sole arbitrator to adjudicate and decide upon dispute that has arisen between the parties owing to the alleged breach of BSA and for a composite reference to arbitration also including Respondent Nos. 2 and 3. All Respondents were apparently owned and controlled by the same entity.
- On 21.05.2024, a final award was passed in Benin Arbitration Proceedings.
- On 08.11.2024, the Anti-arbitration injunction suit was dismissed by the Delhi High Court.

Issue(s) at hand?

- Whether in the present Petition this Court, in exercise of jurisdiction Under Section 11(6) read with Section 11(12)(a) of the 1996 Act, can at all entertain a request for appointment of an arbitrator in respect of a dispute which, as contended by Respondent, is an international commercial arbitration?
- Whether the decision and findings of the Delhi High Court in the Anti-arbitration injunction suit have any bearings on the present petition?

Findings of the Court

- On account of Respondent No. 1 being a company incorporated under the laws of Benin, section 2(1)(f) of the Act would apply and it would be an international commercial arbitration. Consequently, as per section 2(2) of the Act applied and Part I of the Act stood barred as the parties had opted for a foreign seat. The Hon'ble Court reiterated that the seat has juridical implication, and it ascertains which courts will have supervisory jurisdiction over the arbitral proceedings.
- The Hon'ble Court held that the BSA alongwith the Addendum are the foremost understanding between the two parties and the arbitration clause provided in the BSA definitively provides that arbitration will be in Benin and governing law is also Benin. Relying on BGS SGS SOMA JV v. NHC Ltd.[1], it was said that where there are no contrary indicators to suggest otherwise, expressly naming a 'venue' and omitting any separate 'seat' designation means that the stated venue is in fact the juridical seat of the arbitration. Accordingly, the seat had to be Benin in this case as well.
- As far as the other agreements were concerned i.e. Sales Contract and HSSAs, there was no clear and unequivocal understanding that those amounted to novation or supersession so their arbitration seat being in India was of no consequence. The BSA continued to be the "mother" contract and it governed the long term commercial relationship of the Parties. The Sales Contract or the HSSAs were restricted to specific transactions only. The disputes arose out of breach of

[1] 2019:INSC:1349

obligations under BSA not Sales Contracts or HSSAs. Therefore, the arbitration clause in BSA would supersede the clauses in other contracts.

- In the above factual and legal scenario, with reference to the judgments of BALCO[2], BGS SGS SOMA JV and PASL Wind Solutions[3]; the Hon'ble Court decided that it did not have any authority or jurisdiction to appoint an arbitrator for a foreign seated arbitration.
- Further, the Benin Arbitration proceedings had already resulted in a final award. The Petitioner could not now use the Section 11 proceedings to again aggravate the disputes which were determined previously in the arbitration. Further, once the final award had been passed, the Petitioner could not launch a parallel arbitral process in India for the same matter. Such parallel trial would be negate the finality of arbitral proceedings and undercut the arbitral principles such as komptenz-kompetenz and supervisory jurisdiction of seat courts.
- As far as the Anti-arbitration injunction suit was concerned, the Hon'ble Court took cognizance of the fact that even though the petitions filed before it and before the Delhi High Court were under different provisions, i.e. section 11 and 45 of the Act, the findings and reasoning of the Delhi High Court on the interpretation of BSA and HSSAs had a direct impact on the present case. The Delhi High Court was pleased to hold that the BSA and Addendum were the principal and operative contracts between Petitioner and Respondent No. 1 and the arbitration clause contained therein was obliging on the parties, the Sales Contract or HSSA could not override the same, nor do those contracts create a composite dispute capable of a single arbitration in India. As the jurisdictional facts had already been determined by the Delhi High Court as a competent court, these issues were now barred by issue estoppel. These findings were coherent and authoritative factual foundation against which the subject Petition had to be examined.
- The subject Petition was unmaintainable, as it was barred both in law and due to estoppel arising from the Petitioner's preceding litigation conduct.

HSA
Viewpoint

The judgment of the Apex Court rightly reinforces that an Indian Court does not have jurisdiction to appoint an arbitrator in a foreign seated arbitration. Further, by engaging in relevant factual inquiry and analysing the different proceedings adopted by the Petitioner including interalia the issues of interpretation and novation of contracts, the Hon'ble Court forbade the use of parallel proceedings and abuse of the judicial process to reagitate the same issues.

[2] 2012:INSC:379
[3] 2021:INSC:264

Hindustan Petroleum Corporation Ltd. Vs. BCL Secure Premises Pvt. Ltd.

2025 SCC OnLine SC 2746

Background facts

- In the instant case, the Appellant has approached the Court, challenging the judgment and order dated 07.04.2025 passed by the Hon'ble Bombay High Court ('Impugned Order') which allowed a Section 11 petition under the Arbitration and Conciliation Act, 1966 by the Respondent ('Act').
- The Appellant floated a tender for *inter alia* design and installation of Tank Truck Locking System. The tender contained a specific clause that the contractor shall not be entitled to sublet, transfer or assign the work without the written consent of the owner.
- On 20.08.2013, the Appellant thereon issued a purchase order in favour of M/s AGC Networks Ltd ('AGC'), which was duly accepted by AGC. Vide an agreement dated 15.01.2014 the performance of AGC obligations was to be undertaken by the Respondent. The payment was to be on back-to-back basis.
- AGC performed their obligations unsatisfactorily. Accordingly, the Appellants issued a notice on 08.09.2016 and a show cause notice dated 02.02.2017 to AGC.
- On 14.06.2018, Respondent notified the Appellant that they had undertaken the task as a sub-vendor of AGC and were entitled to receive 94% of the payment due. However, the Appellant contended that they had no contract with the Respondent.
- The Respondent initiated several proceedings against AGC for recovery of dues including a civil suit, petition under section 9 of the Act and three rounds of proceedings before Micro, Small and Medium Enterprises Facilitation Council, Haryana. Notably, the Appellant was not a party to any of the proceedings or claims mentioned above.
- Pursuant to these disputes, on 31.03.2023 AGC and Respondent executed a Settlement Cum Assignment Agreement to assign receivables of AGC against Appellant to Respondent.
- Accordingly, the Respondent on 28.08.2024 invoked arbitration proceedings against the Appellant and the Section 11 Petition which was admitted by the Hon'ble Court. It however directed the Tribunal to deal with the preliminary issues of a valid arbitration agreement between Appellant and Respondent under appropriate Section 16 proceedings.
- The Appellant aggrieved by the aforementioned order, approached the Hon'ble Supreme Court.

Issue(s) at hand?

- Whether the High Court, on facts, was justified in referring the parties to arbitration by allowing the Section 11(4) petition filed by the Respondent?

Findings of the Court

- The Hon'ble Supreme Court referred to the settled principle under *Cox and Kings Limited vs. Sap India Private Limited and Another*[1] to explain the powers of the court whilst hearing a Section 11 petition, particularly joining non-signatories to arbitration. The Apex Court stated that the inquiry regarding existence of an arbitration agreement and whether the non-signatory is a veritable party is a preliminary inquiry in nature. If prima facie there is an existence of both, the petition may be allowed and the issues be left open before the Arbitral Tribunal who is best suited to conduct the detailed factual inquiry.
- However, the referral court is not entirely deprived of its jurisdiction from examining such questions under a Section 11 petition. As held in the case of *IN Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*[2], the scope of referral court may be limited under Section 11(6-A), nonetheless, they are obliged to 'inspect and scrutinize' the agreement.
- More importantly, also referring to *ASF Buildtech Private Limited vs. Shapoorji Pallonj and Company Private Limited,*[3] the Apex Court was also pleased to decide that if after conducting such preliminary examination, the referral court opines that the non-signatory is not a veritable party and is not connected to the agreement, they cannot refer such party to arbitration. Such referral would defeat the purpose of arbitration and principles of consent for arbitration. Therefore, only genuine non-signatories who appear to be connected to the agreement are to be referred to the Tribunal not a 'complete stranger'.

[1](2024) 4 SCC 1
[2]2023 SCC OnLine SC 1666
[3]2025) 9 SCC 76

- The Hon'ble Court further held that the Respondent was unable to establish that there was any privity of contract between the Appellant and the Respondent or that it was a 'veritable party' in
- any case. The Settlement Agreement dated 31.10.2023 also did not prove that there was an arbitration agreement between the concerned parties.
- It was also observed that both the Appellant and the Respondent were operating on a 'separate orbit' and no intention was shown to even bind Respondent to the original agreement between Respondent and AGC. Affirming the ratio in *Cox and Kings* and it was restated *"a mere legal or commercial connection is not sufficient for a non-signatory to claim through or under a signatory party".*
- In view of the above, Hon'ble Supreme Court, allowed the appeal and set aside the order dated 07.04.2025 passed by the Hon'ble Bombay High Court.

HSA
Viewpoint

The judgment of the Hon'ble Supreme Court is a step in the right direction to ensure that group companies' doctrine is not abused by any parties or that only veritable parties and not strangers are adjoined to an arbitration.

It is important that such clarifications are issued because there can be significant time and cost implications and needless litigation if unrelated and not consenting parties are added to an arbitration proceeding.

This precedent seeks to ensure that where parties operated in 'separate orbits' or there was no intention to bind them, they should not be added to an arbitration proceeding. The Hon'ble Court upholds the sanctity of the principle of 'privity of contract' as well.

Understandably, courts do not want to overstep their jurisdiction, and arbitral tribunal must have the final jurisdiction to determine issues regarding arbitration agreement and veritable parties.

The Hon'ble Supreme Court however has aptly clarified the scope of powers of the referral court under section 11 of the Act and their manifest duty to conduct the necessary inquiry to verify the existence of arbitration agreement that binds the veritable parties before appointing an arbitrator and referring such parties to arbitration.

Adarsh Sahkari Grih Nirman Swawlambi Society Ltd. Vs. State of Jharkhand and Ors.

2025 SCC Online SC 2716, Judgment dated 05.12.2025

Background facts

- Adarsh Sahkari Grih Nirman Swawlambi Society Ltd. ("Appellant/Adarsh Society") is a cooperative society registered under Section 5 of the Jharkhand Self-Supporting Cooperative Societies Act, 1996 ("Jharkhand Cooperative Societies Act"), working with the aim and object of providing housing and utilities to its members.
- Section 9 of the Indian Stamp Act, 1899, empowers the government to reduce, remit or compound stamp duties on various instruments. Section 9A was inserted by the Indian Stamp (Bihar Amendment) Act, 1988, exempting payment of stamp duty on instruments relating to the transfer of premises by Cooperative Societies to their members.
- In 2009, when the Principal Secretary to the Department of Registration ("Respondent No. 2") issued the Memo No. 494, dated 20.02.2009 ("Impugned Memo"), calling upon the District Sub-Registrars to ensure that exemption under Section 9A will be given only when there is a recommendation of the Assistant Registrar, Cooperative Society.
- The Impugned Memo issued by the Principal Secretary adversely affected Appellant/Adarsh Society's freedom to transfer property with expedition and efficiency, and therefore the Appellant/Adarsh Society approached the Hon'ble High Court by filing a writ petition under Article 226 of the Constitution of India, *inter alia* raising the ground that by mandating approval by the Assistant Registrar before registration of a transfer, a new tier has been created as a hurdle, which is *ultra vires* the Stamp Act. Further, the Impugned Memo directly impacts the independence and self-reliance envisaged for co-operative societies under the Jharkhand Cooperative Societies Act.
- The Appellant/Adarsh Society also submitted that the Assistant Registrar has no authority whatsoever to grant or reject approval to transfers by a co-operative society to its members pursuant to an executive instruction that is contrary to and restrictive of powers of the registering authority under central legislation, *i.e.*, the Registration Act, 1908. Further, Respondent No. 2 has passed the Impugned Memo without providing the co-operative societies an opportunity of hearing, thereby violating the principles of natural justice.
- The Single and the Division Benches of the Hon'ble High Court refused to exercise judicial review as it was of the opinion that the Impugned Memo is not in contravention of the Stamp Act, 1899 in particular. Rather, the requirement under the Impugned Memo is necessary to ensure that only validly registered cooperative societies get the benefit.
- Further, it was held that under Section 34 of the Registration Act, 1899 the registering authority has powers to make inquiries as to the executants and their representatives, as well as in relation to proper stamping and verification of the document presented for registration. However, this power does not extend to the examination of the validity of registration of a cooperative society or the satisfaction of conditions for availing of stamp duty exemption under Section 9A of the Stamp Act. The impugned executive instruction is intended towards simplifying the process and for the benefit of the co-operative societies.
- The Appellant filed a Civil Appeal before the Hon'ble Supreme Court, challenging the findings of the Hon'ble Division Bench.

Issue(s) at hand?

- Whether the Memo dated 20.02.2009 issued by the Principal Secretary, Department of Registration, Government of Jharkhand, mandating a recommendation from the Assistant Registrar, Cooperative Society as a pre-condition for grant of stamp duty exemption under Section 9A of the Indian Stamp Act, 1899 (as amended), is legal and valid?
- Whether an executive instruction can impose additional conditions not contemplated under Section 9A of the Indian Stamp Act, 1899 and the Registration Act, 1908, thereby restricting a statutory exemption granted to registered cooperative societies?

Findings of the Court

- The Hon'ble Supreme Court comprising a bench of Hon'ble Mr. Justice P.S. Narasimha and Hon'ble Mr. Justice A.S. Chandurkar allowed the appeal and set aside the Impugned Memo dated 20.02.2009 issued by the Principal Secretary, Department of Registration on the ground of illegality. The Hon'ble Supreme Court held that the Hon'ble High Court erred in concluding that the Impugned Memo simplified the process or benefited cooperative societies.
- The requirement of recommendation by the Assistant Registrar, Cooperative Society, as a precondition for registering an instrument transferring premises of a cooperative society in favour

HSA
Viewpoint

The Judgment of Hon'ble Supreme Court is a reaffirmation that simplicity in public transactions is good governance. Constitutional courts uphold this virtue to strengthen the rule of law and ensure access to justice. In administrative law, simplicity means laws, regulations, and procedures should be clear, straightforward, and easy to understand, allowing for effortless compliance. Administrative procedures should avoid complexity, redundant requirements, and unnecessary burdens, which waste time, expense, and disturb peace of mind. The Hon'ble Court's reasoning is persuasive as Section 5(7) of the Jharkhand Self-Supporting Cooperative Societies Act, 1996, treats the registration certificate as conclusive proof, making any additional recommendation from the Assistant Registrar unnecessary. This Judgment reinforces that executive convenience cannot override statutory mandates. Even well-intentioned administrative safeguards must operate strictly within the four corners of the law.

of its members without stamp duty to prevent fake cooperative societies from claiming the benefit of Section 9A is, in the opinion of the Hon'ble Bench, an irrelevant consideration leading to illegality in action.

- A cooperative society in Jharkhand, registered under Section 5, acquires the status of a body corporate under Section 65 of the Jharkhand Cooperative Societies Act. Such a cooperative society will be entitled to display its name at its office, issue notices, official publications, business letters, bills of exchange, etc, in its own name.
- The effect of being a body corporate is, in fact, evident from Section 5(7) of the Jharkhand Cooperative Societies Act, which declares that *"where a cooperative society is registered, the certificate of registration signed and sealed by the Registrar shall be conclusive evidence"*. A cumulative reading of Chapter II of the Jharkhand Cooperative Societies Act, under which any cooperative society in Jharkhand is registered, is that the certificate of registration is conclusive evidence of the existence of the cooperative society. The State and its instrumentalities are bound by this certification, and no further question should arise about the existence or authenticity of the cooperative society. The certificate is a recognition and a declaration of the State that the cooperative society is continuing on statutorily maintained roll.
- The certificate granted by the Registrar, Cooperative Society, which certificate would necessarily be enclosed with the instrument presented for registration by the cooperative society for registration, the further requirement of a recommendation by the Assistant Registrar, Cooperative Society is superfluous. This requirement, in the opinion of the Hon'ble Bench, is disruptive of ease of transaction, without any value addition to the integrity of the transaction. Such a question would not arise in the teeth of the statutory declaration under Section 5(7) of the Jharkhand Cooperative Societies Act, wherein a certification of the cooperative society by the Registrar, Cooperative Society, is a conclusive proof.

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