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Mere Use of “Arbitration” Doesn’t Create an Arbitration Agreement

ALCHEMIST HOSPITALS LTD. V. ICT HEALTH TECHNOLOGY

The Supreme Court held that **mere use of the word “arbitration” in a contract clause does not amount to a valid arbitration agreement under Section 7 of the Arbitration & Conciliation Act**. Since arbitration is a creature of contract, the parties must clearly intend to submit disputes to a **final and binding adjudication by a neutral third party**. A loosely worded clause lacking finality, neutrality, or binding effect cannot invoke Section 11(6) to appoint an arbitrator.

The appellant hospital had entered into a Software Implementation Agreement with the respondent tech company for the “HINAI Web” software. Complaining of delays and technical failures, the appellant invoked Clause 8.28, sought mediation between the companies’ Chairmen, and later requested the appointment of a sole arbitrator. The respondent argued that Clause 8.28 dealt only with internal negotiation/mediation, not arbitration. The High Court agreed and dismissed the Section 11(6) application.



Upholding the High Court, the Supreme Court found that Clause 8.28 lacked the essentials of an arbitration agreement. It only required good-faith negotiation and permitted parties to approach civil courts if disputes remained unresolved within 15 days. The designation of the companies’ own Chairmen as “arbitrators” also violated the requirement of neutrality. Relying on *Jagdish Chander v. Ramesh Chander*, the Court reiterated that mere reference to “arbitration” is not decisive without clear intent to arbitrate. The appeal was dismissed, with liberty to pursue remedies before the civil court, including a Section 14 Limitation Act claim.

Arbitration's Reputation vs Reality: Often Harder Than Civil Litigation

HINDUSTAN CONSTRUCTION COMPANY LTD. V. BIHAR RAJYA PUL NIRMAN NIGAM LIMITED AND OTHERS

The Supreme Court observed that arbitration, despite being celebrated in theory, often proves more troublesome in practice, at times becoming even more cumbersome than civil litigation. It reiterated that arbitration's true strength lies in freedom, flexibility, and party autonomy, but judicial intervention becomes necessary when parties attempt to evade or misuse the arbitral process. The Court noted that while legislative amendments aim to reduce interference, practical realities continue to undermine arbitration's efficiency.

The case involved a Civil Appeal challenging the Patna High Court's dismissal of a Section 11 request under the Arbitration & Conciliation Act. The appellant argued that the High Court erred in refusing the appointment of an arbitrator. The Supreme Court examined broader concerns in arbitration, remarking that parties often embrace arbitration during agreement-making but resist it when disputes arise, attempting either to escape arbitration or skew the process in their favour.



The Bench emphasised that arbitration is rooted in party autonomy and impartiality, allowing parties to structure the tribunal, appoint experts, and craft procedures suited to their dispute. However, it highlighted that parties frequently exploit procedural tactics applications before tribunals, High Courts, and even the Supreme Court to delay proceedings. The Court clarified the limits of judicial oversight and reiterated key statutory safeguards: Section 12(5) ensures impartiality, Section 4 regulates procedural objections, and Section 29A ensures timely progress. It also restated that a non-speaking dismissal of an SLP has no precedential value and does not amount to approval of the lower court's reasoning. Accordingly, the Court allowed the appeal.

No Review or Appeal Lies Against Order Appointing Arbitrator

HINDUSTAN CONSTRUCTION COMPANY V BIHAR RAJYA PUL NIRMAN NIGAM

The Supreme Court held that when parties jointly apply for an extension of time under Section 29A of the Arbitration and Conciliation Act, 1996, they effectively waive any challenge to the appointment or continuation of the arbitral tribunal. The Court made it clear that once parties participate fully in the proceedings, seek repeated extensions, and allow the tribunal to continue functioning, they cannot later turn around and question its appointment unless the objection concerns ineligibility under Section 12(5). Since no such ineligibility was claimed, the Patna High Court had no authority to recall its earlier Section 11 order. The Supreme Court therefore restored the arbitral process and directed that the matter proceed before a substitute arbitrator in accordance with the contract.

The dispute arose out of claims between Hindustan Construction Company and Bihar Rajya Pul Nirman Nigam Ltd (BRPNL) relating to delays in a bridge construction project. The Patna High Court appointed a sole arbitrator under Section 11. Both parties then actively participated in the arbitration, attended over seventy hearings, and jointly filed multiple applications under Section 29A seeking extensions of time for the tribunal to complete the proceedings. After final arguments had already commenced,



BRPNL filed a review petition before the High Court challenging the original Section 11 appointment order. Accepting this challenge, the High Court recalled its earlier order and effectively halted the arbitration, prompting the appeal before the Supreme Court.

This judgment reinforces the principle that arbitration must be conducted with finality, consistency, and minimal judicial interference. Parties cannot approbate and reprobate participating in proceedings when convenient, and later raising technical objections to derail the process. The ruling strengthens the enforceability of Section 29A and clarifies that joint applications for extension operate as a binding waiver of challenges to the tribunal's appointment. Going forward, parties must raise eligibility objections promptly, and High Courts are expected to exercise caution in reopening Section 11 orders. The decision will likely reduce attempts to derail arbitrations mid-stream and ensure smoother, uninterrupted proceedings.

Unconditional Stay on Execution Of Award Only In Exceptional Cases: Supreme Court

(POPULAR CATERERS V. AMEET MEHTA & OTHERS)

The Supreme Court held that an unconditional stay of an arbitral award under Section 36(3) of the Arbitration and Conciliation Act can be granted only in situations expressly recognised in the statute, namely, where the arbitration agreement, the contract, or the award itself appears to have been induced by fraud or corruption. Outside of that, an unconditional stay is permissible only in exceptional circumstances such as an award that is patently illegal, egregiously perverse, or facially untenable. The Court ruled that the Bombay High Court erred in granting an unconditional stay without satisfying these statutory thresholds. Consequently, while the stay would continue, it would do so only on the condition that the respondents deposit the principal amount, not unconditionally.

Popular Caterers and the respondents entered into a 2017 MoU involving food services for events at a Mumbai hotel, requiring the appellant to pay a security deposit of ₹8 crore. After regulatory restrictions halted hotel events, disputes arose, and the appellant invoked arbitration. The arbitrator awarded the appellant ₹4 crore plus interest. The respondents challenged the award under Section 34 and simultaneously sought an unconditional stay of its execution, which the Bombay High Court granted in January 2025



Popular Caterers appealed this order. The Supreme Court examined the stay granted under Section 36(3) in light of its earlier ruling in *Lifestyle Equities v. Amazon Technologies Inc.*, which had clarified when unconditional stays may be granted.

This ruling reinforces India's post-2015 shift away from automatic stays of arbitral awards and strengthens the principle that awards remain enforceable unless very narrow statutory conditions are satisfied. Courts must now strictly apply the framework of Section 36(3) and grant unconditional stays only in cases involving fraud, corruption, or rare and clearly demonstrated exceptional circumstances. Practically, award debtors will face a higher threshold for avoiding deposits or security, while award holders gain stronger protection against attempts to delay enforcement. The judgment will guide High Courts to adopt a disciplined approach, ensuring that the stay power remains discretionary and sparingly used, thereby supporting faster and more reliable enforcement of arbitral awards in India.

Indian Courts Have No Jurisdiction To Appoint Arbitrator For Foreign-Seated Arbitration: Supreme Court

(BALAJI STEEL TRADE V. FLUDOR BENIN S.A.)

The Supreme Court reaffirmed that Indian courts have no jurisdiction to appoint an arbitrator for a foreign-seated arbitration, regardless of the parties' nationality or domicile. Once parties choose a foreign juridical seat and foreign curial law, Part I of the Arbitration and Conciliation Act, 1996, stands excluded by operation of law. The Court held that the Buyer and Seller Agreement (BSA) and its Addendum were the "mother agreement," containing a deliberate and binding choice of Benin as the juridical seat and Benin law as the governing and procedural law. Subsequent agreements, Sales Contracts, or HSSAs were merely ancillary and could not override the dispute resolution clause in the BSA. The Court found that the Section 11 petition was legally misconceived and that the petitioner could not invoke the Group of Companies Doctrine to draw Indian courts into a foreign-seated arbitration. The petition under Section 11(6) was accordingly dismissed. Balaji Steel Trade and Fludor Benin S.A. entered into a Collaboration Agreement, followed by a Buyer and Seller Agreement (BSA) governing a five-year arrangement for cottonseed cake transactions. The BSA, later modified by an Addendum, clearly identified Benin as the seat of arbitration and Benin law as the governing law. Disputes emerged regarding supply quantities, payments, and the petitioner's exclusive purchase rights. Benin courts appointed an arbitrator, and the arbitration in Benin proceeded to a final award. Meanwhile, the petitioner filed an anti-arbitration injunction suit before the Delhi High Court, which was dismissed. Despite the foreign-seated arbitration being concluded, the petitioner applied Section 11(6) and 11(12)(a) of the Act seeking appointment of an arbitrator in India, arguing that subsequent Sales Contracts and HSSAs contained separate dispute-resolution clauses. The Supreme Court rejected this, holding that the BSA prevailed and governed the relationship.



This judgment strengthens the principle that Indian courts cannot interfere with, supplement, or reconstitute arbitral tribunals for foreign-seated arbitrations. Parties must therefore exercise caution and clarity in drafting arbitration clauses, as their initial choice of seat and governing law will bind them throughout the dispute cycle. It also restricts attempts to "anchor" foreign arbitrations into Indian jurisdiction through creative reliance on later agreements or corporate group structures.

Trademarks Registry Accepts India's First "Smell" Mark: The Controller General of Patents, Designs and Trade Marks

The Controller General of Patents, Designs and Trade Marks ('CGPDTM') accepted for the first time in India's history an olfactory (smell) trademark: specifically, a "floral fragrance/smell reminiscent of roses as applied to tyres." It held that a smell when properly defined and represented can satisfy the statutory requirements of a trademark under the Trade Marks Act, 1999: (i) being "capable of being represented graphically" and (ii) "capable of distinguishing goods of one person from those of others. The application was filed by Sumitomo Rubber Industries Ltd. for tyres (Class 12). The mark sought was described simply as "floral fragrance/smell reminiscent of roses as applied to tyres." Since Indian law did not have a prior category for "smell marks," the application was initially met with objections under Sections 2(1)(zb) (graphical representation) and 9(1)(a) (distinctiveness) of the Act. To overcome these objections, Sumitomo, with legal assistance, submitted a novel, scientific graphical representation created by a team from the Indian Institute of Information Technology, Allahabad (IIIT-Allahabad). The representation plotted the "rose-like scent" in a seven-dimensional vector space, each dimension corresponding to one of seven "fundamental smells" (floral, fruity, woody, nutty, pungent, sweet, minty). This vector graph aimed to precisely delineate the smell's composition.



The applicant argued that the rose scent is arbitrary and inherently distinctive when applied to tyres a product not ordinarily associated with floral fragrance and thus capable of functioning as a source identifier. Sumitomo also relied on its prior registration of the same smell mark in the United Kingdom (UK registration 1996) to support distinctiveness and global acceptance of olfactory marks. After careful examination, the CGPDTM concluded that the seven-dimensional vector graph was "clear, precise, self-contained, intelligible, and durable," meeting the statutory requirement of graphical representation under Section 2(1)(zb). On the question of distinctiveness, the Registry found the rose smell to be arbitrary and inherently distinctive with respect to tyres. Since there is no natural connection between a floral scent and tyres, the scent acts as a source identifier: a consumer who smells a rose fragrance coming from tyres would (according to the Registry) unmistakably link it to Sumitomo. Consequently, the application was accepted and ordered to be advertised as an "olfactory trademark" (smell mark) under the Trade Marks Act.

Selection Criteria Cannot Be Changed After Interview

(J&K SERVICE SELECTION BOARD & ANR. VERSUS SUDESH KUMAR & ORS)

The Supreme Court upheld the High Court's ruling and held that the Jammu and Kashmir Services Selection Board could not alter the evaluation criteria after candidates had already completed the interview and other selection stages. The Court reiterated that any post-process change in weightage or qualification assessment is impermissible and violates principles of fairness, certainty, and transparency. Relying on earlier precedents such as K. Manjusree and Tej Prakash Pathak, the Court confirmed that modifying selection parameters midway or at the end of the recruitment exercise undermines legitimate expectations of candidates and cannot be sustained. The appeal filed by the Board was dismissed..

The dispute arose from a recruitment notification issued by the Jammu and Kashmir Services Selection Board for 38 Forester posts, requiring a minimum 10+2 (Science) qualification. During evaluation, the Board initially assigned 25 marks to candidates holding a B.Sc. in Forestry. After interviews were complete, the Board changed the weightage by distinguishing between three-year and four-year forestry degrees, reducing the benefit for three-year degree holders. Aggrieved candidates challenged this change before the High Court, arguing that altering the criteria after interviews was arbitrary and unfair. The High Court agreed,



The judgment reinforces that recruitment bodies cannot rewrite or reinterpret evaluation norms once candidates have participated under an existing framework. It strengthens the broader principle that selection criteria must remain consistent from notification to final selection, protecting candidates from procedural uncertainty and shifting benchmarks. Going forward, public authorities will be expected to exercise greater discipline in preparing recruitment rules, ensuring that all criteria academic weightage, skill assessment, and interview marks, are clearly defined at the outset to avoid litigation and maintain trust in the process. This ruling will serve as a guiding precedent for similar disputes involving post-hoc alterations by state selection boards and public service commissions.

Dispute Relating To Employment Agreement Cannot Be Treated As A Commercial Dispute Under THE Commercial Courts Act

(ARM DIGITAL MEDIA PVT. LTD. & ORS. V. RITESH SINGH)

The Delhi High Court ruled that disputes arising from an employment agreement do not qualify as commercial disputes under Section 2(1)(c) of the Commercial Courts Act, 2015. The Court clarified that employment contracts, including those involving senior executives or directors, remain contracts of personal service, even if they contain business-related clauses such as confidentiality, IP assignment, or non-compete obligations. It further held that such disputes fall outside the jurisdiction of the NCLT and are not barred by Section 430 of the Companies Act. As long as any one relief is maintainable before a civil court, the plaint cannot be rejected and must proceed to trial.

The plaintiff-company sued its former Managing Director for alleged breaches of an Employment Agreement dated 8 September 2016 and violations of statutory fiduciary duties under Section 166 of the Companies Act. The allegations included self-approved salary increases, failure to ensure statutory and secretarial compliance, misuse of confidential information after resignation, joining a competitor, and soliciting clients. The defendant argued that the dispute was a "commercial dispute" requiring institution before the Commercial Court, that pre-institution mediation under Section 12A was mandatory, and that Section 430 of the Companies Act barred the suit altogether. The



High Court examined the nature of the agreement and the allegations and found they stemmed entirely from the defendant's role as an employee and director, not from any commercial or shareholder arrangement.

This decision reinforces that employment-related conflicts, even those involving senior management, fiduciary obligations, or restrictive covenants, remain outside the scope of the Commercial Courts Act. Companies cannot recharacterize employment disputes as commercial disputes to shift them into the commercial courts framework. It also clarifies that the NCLT cannot adjudicate breaches of employment contracts or personal service obligations, ensuring that such claims must continue before civil courts. The ruling offers clearer boundaries between employment relationships and commercial arrangements, helping organizations draft employment documents with a better understanding of how courts will classify them.

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