

Dispute Resolution & ADR

Monthly Newsletter
March 2025

www.foxandmandal.co.in

BENGALURU | KOLKATA | MUMBAI | NEW DELHI



FOX & MANDAL
SOLICITORS & ADVOCATES
ESTD. 1896



TABLE OF CONTENTS

- 2025 Arbitration Rules of the Singapore International Arbitration Centre
Salient aspects of the 7th edition of Arbitration Rules issued by SIAC in 2025
- Inextricably linked disputes can be adjudicated along with the main ‘commercial dispute’ under the Commercial Courts Act, 2015
Manisha Gupta v. Rajinder Kumar
- Parties cannot agree to modify the definition section of the Arbitration and Conciliation Act, 1996
Suresh Shah v. Tata Consultancy Services Ltd
- Clean slate principle applies to conditional approval of a resolution plan pending challenge
Bhushan Power & Steel Ltd v. Union of India
- Merely specifying a power of attorney as irrevocable does not prevent its revocation
MS Ananthamurthy v. J Manjula
- Conviction by Court is not essential for forfeiture of gratuity
Western Coal Fields Ltd v. Manohar Govinda Fulzele

2025 Arbitration Rules of the Singapore International Arbitration Centre (SIAC)

Salient aspects of the 7th edition of Arbitration Rules issued by SIAC in 2025:

Streamlined Procedure and Expedited Procedure

- Introduction of a Streamlined Procedure for disputes below Singapore Dollar (SGD) 1 million where parties would not be allowed to produce documents or witnesses, and the award would be rendered within 90 days (Rule 13).
- The threshold for Expedited Procedure (award rendered within 6 months) has been enhanced to SGD 10 million (Rule 14).
- **Impact:** Faster resolution of disputes, lower costs, and more predictable timelines, which will benefit businesses with smaller claims or those with a need for rapid resolution.

Preliminary determination (Rule 46)

- Tribunals can now make binding decisions on key issues, legal or factual, provided it saves time and costs. The decision has to be made within 90 days.
- **Impact:** Encourages efficiency, reduces unnecessary litigation expenses, and enables parties to leverage the early disposal of important issues.

Enhancements to emergency arbitration procedure

- Emergency arbitrators can now be appointed before filing a Notice of Arbitration, and protective preliminary orders can be granted within 24 hours (Rule 12).
- **Impact:** Stronger enforcement of urgent relief, which will be helpful for businesses facing potential asset dissipation or contract breaches, particularly in light of the Supreme Court's ruling in the matter of *Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd*¹ recognising emergency arbitral awards.

Coordinated proceedings (Rule 17)

- Allows coordinated management of multiple related arbitrations.
- **Impact:** Reduces conflicting outcomes, enhances efficiency, and lowers costs for companies with multi-contract disputes.

Disclosure of third-party funding (Rule 38)

- Parties must disclose if they have a third-party funder and its details.
- **Impact:** Increases transparency, reduces conflicts of interest, and ensures fair proceedings.

Information Security measures (Rule 61)

- The parties may propose measures to protect the information shared, stored, or processed during arbitration. Once approved, the Tribunal may impose sanctions or costs on the party not complying with such measures.
- **Impact:** Enhances data protection, mitigating risks of confidentiality breaches.

Security for costs and claims (Rules 48 & 49)

- Tribunals have been explicitly empowered to order parties to furnish security to ensure unhindered enforcement of awards.
- **Impact:** Protects businesses from financial risk when dealing with unreliable counterparties.

Extended timeline for award submission (Rule 53.2)

- Tribunals are now required to submit the draft award to the SIAC Secretariat within 90 days (instead of 45 days) from the date of completion of arguments.
- **Impact:** Allows tribunals more time to ensure well-reasoned awards while maintaining efficiency.

¹ (2022) 1 SCC 209

Inextricably linked disputes can be adjudicated along with the main ‘commercial dispute’ under the Commercial Courts Act, 2015

Manisha Gupta v. Rajinder Kumar

Delhi High Court | 2025 SCC OnLine Del 43

The Delhi High Court allowed ancillary disputes beyond the definition of ‘commercial dispute’ under Section 2(1)(c) of the Commercial Courts Act, 2015 (**Act**) to be included in a commercial suit if intrinsically linked to the principal dispute. Although the Supreme Court, in **Ambalal Sarabhai Enterprises Ltd v. KS Infraspace LLP**,² held that the term ‘commercial dispute’ must be strictly construed to only cover transactions that are explicitly mentioned under its definition – in line with the purpose of the Act to facilitate the expeditious resolution of a class of litigation – the Delhi High Court’s ruling carves out an exception. Since the principal dispute in the instant matter (partnership dispute) was explicitly covered under the Act and the interconnected transactions were essential to its resolution, such transactions, though not independently ‘commercial disputes’, would also be covered under the Act. Without diluting the Act’s purpose, this decision prevents fragmentation and avoids conflicting outcomes that could arise if the interlinked disputes were adjudicated separately, ultimately streamlining commercial dispute resolution in line with the objective of the Act.

SUMMARY OF FACTS

Metal Industries, a partnership firm, was dissolved upon the death of one of its partners, Gopal Krishan Gupta.

Without settling accounts with Gopal’s legal heir (his daughter, Manisha Gupta), the surviving partner, Rajinder Kumar (**Defendant 1**) set up a new firm on the same premises appropriating the inventory and funds from the dissolved firm, Metal Industries.

Manisha alleged unauthorised dealings with Metal Industries’ assets and funds by Defendant 1, aided by other Defendants, including relatives, employees/accountants, debtors, and creditors (**Defendants 2 to 17**) of Metal Industries.

In this regard, Manisha Gupta filed a suit under the Act seeking rendition of accounts, injunction, partition, and recovery concerning her late father’s 50% share in the dissolved firm.

The maintainability of the Suit was opposed by Defendants 2 to 17 (non-partners) since their respective transactions with Metal Industries were not covered by the definition of ‘commercial dispute’ under Section 2(1)(c) of the Act.

DECISION OF THE COURT

The Court noted that though the dispute between Manisha and the surviving partner (Defendant 1) was admittedly covered by Section 2(1)(c) of the Act, the transactions between Metal Industries and the other Defendants were not.

Since the transaction between the creditors and the firm was commercial in nature as per Explanation II to Section 34 of the Code of Civil Procedure, 1908, despite not being covered by the definition of ‘commercial dispute’ under Section 2(1)(c) of the Act, the Suit was held maintainable against them.

Further, since the other Defendants also had direct privity with the partnership, having dealt with its funds and assets post-dissolution of Metal Industries, the legal heirs of the deceased partner have an undisputed right to seek verification of these transactions as they directly impact their share in the firm’s assets.

Separating these claims into multiple proceedings would be inefficient, as the transactions were interconnected and required a comprehensive adjudication for the matter to be effectively resolved.

² (2020) 15 SCC 585

Parties cannot agree to modify the definition section of the Arbitration and Conciliation Act, 1996

Suresh Shah v. Tata Consultancy Services Ltd

Delhi High Court | 2024 SCC OnLine Del 8552

This decision reinforces clarity and consistency in arbitration law by affirming that the definition section of the Arbitration and Conciliation Act, 1996 (**Act**) is non-derogable. By upholding the statutory classification, the Court ensures predictability in jurisdictional matters, preventing parties from inadvertently or strategically altering the nature of arbitration through inaction or consent. For businesses and practitioners, this ruling highlights the importance of recognising International Commercial Arbitration (**ICA**) status at the outset and ensuring procedural compliance. Parties engaged in cross-border contracts should be mindful of their rights under the Act and assert them in a timely manner to avoid unintended legal consequences.

SUMMARY OF FACTS

A dispute arose between Suresh Shah, a Kenyan national, and Tata Consultancy Services Ltd (**TCS**), leading to arbitration proceedings.

Despite Suresh Shah's non-Indian nationality, he did not object to the appointment of an arbitrator by the Delhi High Court under Section 11(6) of the Act, instead of the Supreme Court, which has jurisdiction in the case of an ICA.

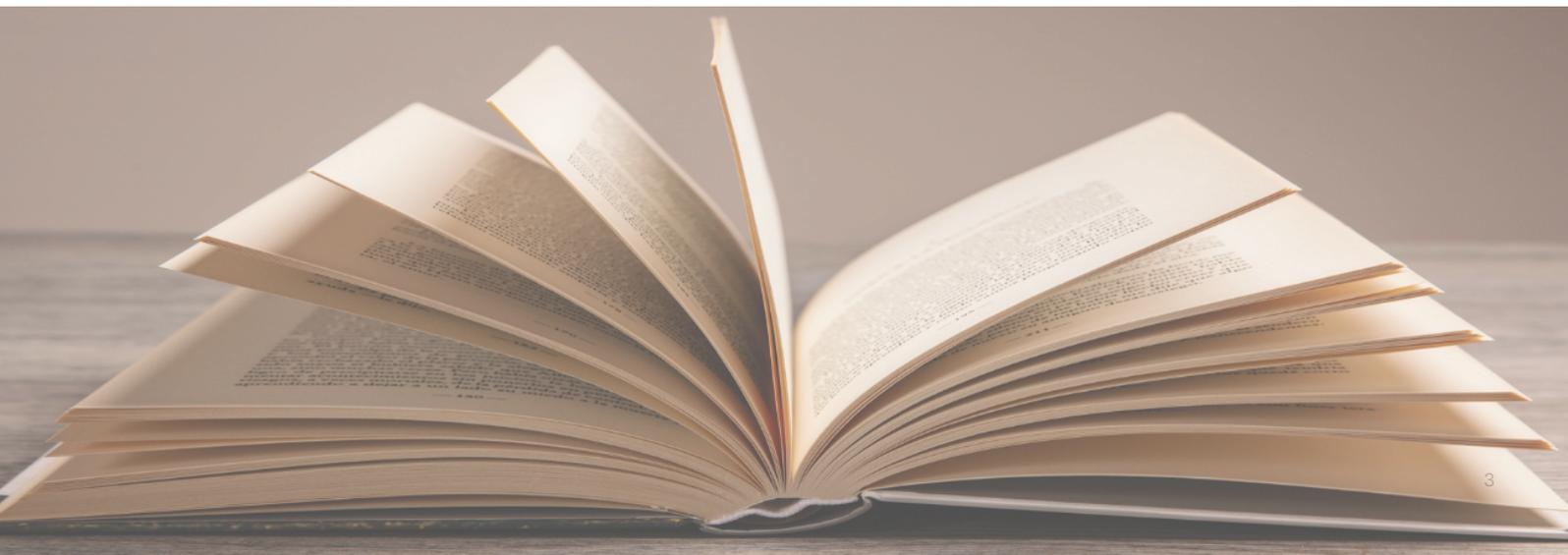
After an arbitral award was passed in favour of Suresh Shah, TCS challenged the award before the Delhi High Court on the ground of patent illegality under Section 34(2A) of the Act (a ground only available for domestic awards) based on the argument that by not opposing the appointment of the arbitrator by the Delhi High Court, Suresh Shah had accepted the arbitration as domestic.

Suresh Shah opposed this characterisation contending that the nature of arbitration was ICA, crystallising the issue of whether parties could, by express or implied consent, modify the definition-provisions under the Act.

DECISION OF THE COURT

The Court held that while the Act grants flexibility to the parties under the framework of party autonomy, the definition section forms part of the basic structure of the Act and is non-derogable. As such, the definition of ICA under Section 2(1)(f) could not be modified by the parties by express or implied agreement.

Since Suresh Shah is a Kenyan national and the dispute inherently qualifies as ICA, therefore, his failure to object earlier did not alter its classification or convert it into a domestic arbitration.



Clean slate principle applies to conditional approval of a resolution plan pending challenge

Bhushan Power & Steel Ltd v. Union of India

Delhi High Court | 2025 SCC OnLine Del 651

While reaffirming the clean slate principle under Section 32A of the Insolvency and Bankruptcy Code, 2016 (**Code**) (the Successful Resolution Applicant should not be burdened by the prior criminal offences of the Corporate Debtor), the Delhi High Court extended its application to cases where the resolution plan has received only a conditional approval from the Adjudicating Authority, pending final approval and/or ongoing challenges. This ruling reinforces the intent of Section 32A, which prioritises the revival of the Corporate Debtor and its debt restructuring while ensuring that individuals responsible for financial misconduct (the erstwhile management) do not evade justice using the corporate veil. By quashing the pending criminal proceedings against the Corporate Debtor, despite pending challenges to the resolution plan, the Court rightly upheld the balance between creditor interests and the principles of justice, as the initiation of Corporate Insolvency Resolution Processes (**CIRP**), unless withdrawn with the approval of the CoC under Section 12A, inevitably leads to either a resolution with a change in management or liquidation, both events triggering Section 32A.

SUMMARY OF FACTS

During the CIRP of Bhushan Power & Steel Ltd (**BPSL**), the Central Bureau of Investigation (**CBI**) registered a First Information Report (**FIR**) against BPSL and its former management in respect of the offences of cheating, forgery, and corruption.

On the basis of this FIR, the Enforcement Directorate (**ED**) registered an Enforcement Case Information Report (**ECIR**) under the Prevention of Money Laundering Act, 2002 (**PMLA**).

Subsequently, a resolution plan submitted by JSW Steel Ltd (**JSW**) was conditionally approved under Section 31 of the Code. Various stakeholders had challenged this approval order before the Supreme Court.

Despite such conditional approval, the ED passed an order provisionally attaching BPSL's assets as 'proceeds of crime', which was stayed by an interim order of the National Company Law Appellate Tribunal (**NCLAT**), directing the release of such assets.

The ED thereafter filed a prosecution complaint against BPSL and its former officials in relation to bank fraud of INR 47,204 crore.

Meanwhile, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 introduced Section 32A of the Code, which provides that once the resolution plan has been approved, the Corporate Debtor (**BPSL**) shall not be prosecuted for an offence committed prior to the commencement of CIRP; however, no such protection extends to the erstwhile management of the Corporate Debtor.

BPSL approached the Delhi High Court seeking quashing of all CBI and ED prosecutions against it.

DECISION OF THE COURT

The Delhi High Court ruled in favour of BPSL and held that Section 32A of the Code provides complete immunity to a Corporate Debtor from prosecution of offences committed prior to the commencement of CIRP as long as new management (**JSW**) takes over. Consequently, the High Court quashed the ECIR and all proceedings against BPSL.

However, this protection was subject to the final outcome of the challenge to the approved resolution plan.

Further, the High Court clarified that while the Corporate Debtor itself was absolved of criminal liability, its former promoters, directors, and key managerial personnel could still be prosecuted under the PMLA, thereby emphasising the intent of Section 32A to encourage resolution and restructuring of stressed companies while ensuring that individuals responsible for financial crimes do not escape justice.

Merely specifying a power of attorney as irrevocable does not prevent its revocation

MS Ananthamurthy v. J Manjula

Supreme Court of India | 2025 SCC OnLine SC 448

The Supreme Court has ruled that merely designating a General Power of Attorney (GPA) as ‘irrevocable’ does not, in itself, render it irrevocable. GPA-holders should note that such labelling in GPAs does not guarantee the protection of their rights, and additional steps must be taken to secure enforceability, which becomes particularly crucial in financial arrangements, contractual negotiations, property transfers, litigation representation and other similar situations. Furthermore, the clarification that a right to remuneration or commission does not constitute an enforceable interest in the subject matter of the agency is important for property developers who may mistakenly believe that a GPA grants them enforceable ownership rights. The Court also held that a GPA executed alongside an Agreement to Sell does not automatically confer an interest in the property, and to protect their interests, developers must ensure that property transfers are formalised through proper registration. In the event of a dispute, seeking specific performance of the Agreement to Sell, along with obtaining a timely injunction against the transfer of the property to *bona fide* third-party purchasers, is essential to prevent the frustration of their remedy.

SUMMARY OF FACTS

The original owner of the property, Muniyappa, executed a GPA as well as an Agreement to Sell in favour of Saraswathi.

The GPA, stated to be ‘irrevocable’, authorised Saraswathi to manage, transfer, construct upon, and represent the owner in respect of the property.

After the original owner’s death, Saraswathi transferred the property to her son relying upon the GPA, whereas the original owner’s legal heirs sold the property to a third party.

Upon realising the conflicting ownership claims, Saraswathi’s right to transfer the property was challenged based on the contention that the GPA had terminated upon the original owner’s death as it had not conferred any interest on Saraswathi as per Section 201 of the Contract Act, 1872.

Saraswathi, on the other hand, claimed that since the GPA and the Agreement were executed on the same day in favour of the same person, they should be read together and construed harmoniously as conferring an interest on Saraswathi in the subject matter of the agency, making it irrevocable as per Section 202.

DECISION OF THE COURT

The Supreme Court held that the GPA did not confer upon Saraswathi any interest in the subject matter of the agency and hence, had terminated on the death of the original owner.

While discouraging the practice of transferring immovable property without a registered sale deed, the Court observed that even on a joint reading of the GPA and the Agreement to Sell, no interest could have been conferred on Saraswathi without registration, which is mandatory for the transfer of immovable property above INR 100.

An agent’s right to remuneration/commission does not qualify as an interest in the subject matter of the agency. Further merely stating the GPA to be ‘irrevocable’ without the creation of an interest does not prevent its termination under Section 201 on the death of the principal. The agency is irrevocable only if the GPA is executed to effectuate security or to secure an interest of the agent.

Conviction by Court is not essential for the forfeiture of gratuity

Western Coal Fields Ltd v. Manohar Govinda Fulzele

Supreme Court of India | 2025 SCC OnLine SC 345

The Supreme Court held that for the forfeiture of gratuity of an employee whose services are being terminated for an act that constitutes an offence involving ‘moral turpitude’, conviction by a Court of law/initiation of criminal proceedings is not necessary. This judgment strikes a measured balance between safeguarding employees’ statutory right to gratuity and ensuring employers can enforce proportionate penalties for serious misconduct. By clarifying that a criminal conviction is not mandatory, it reinforces the employer’s ability to protect legitimate interests and maintain workplace integrity. At the same time, the Court’s direction to limit forfeiture (in cases of an insignificant wrongdoing) underscores the principle of proportionality. Employers should therefore ensure robust disciplinary processes that give the employee a fair opportunity to respond (including a specific show-cause notice on moral turpitude and the extent of forfeiture).

SUMMARY OF FACTS

The service of an employee of Western Coal Fields Ltd (WCF) was terminated after 22 years when it was revealed that he had produced a fraudulent/forged birth certificate to obtain the job.

Similarly, the services of two employees (bus conductors) of the Maharashtra State Road Transport Corporation (MSRTC) were terminated after they were found to have indulged in misappropriation of fares collected from passengers.

The said employees were denied gratuity at the time of termination.

Aggrieved, the employees contested the forfeiture of gratuity as they had not been convicted by a Court of law for an offence involving moral turpitude. The 3 sets of challenges were clubbed before the Supreme Court.

DECISION OF THE COURT

The Supreme Court held that Section 4(6) of the Payment of Gratuity Act, 1972 which lists the exceptions to the payment of gratuity, does not call for conviction by a Court of law, including in case of termination under Section 4(6)(b) for an act which constitutes an offence involving moral turpitude, since ‘offence’ (as defined in the General Clauses Act, 1897) means any act or omission that is punishable by law.

The standard of proof required in a criminal proceeding (beyond reasonable doubt) is much higher than that required in a disciplinary proceeding (preponderance of probabilities), and the disciplinary authority is only required to decide whether the misconduct could, in normal circumstances, constitute an offence involving moral turpitude as well as, depending on the gravity of the misconduct, the portion of gratuity which is to be forfeited. There is also a requirement to issue a show-cause notice to the employee enabling him to present his case on both issues.

For the WCF case, the suppression of material information (birth certificate) invalidated the appointment, thereby justifying the complete forfeiture of the employee’s gratuity. In contrast, for the MSRTC case, the alleged misappropriation was minimal and the forfeiture, in the instant case, was limited to 25% of the payable gratuity.



CONTRIBUTORS

Ashutosh Gupta | Partner
ashutosh.gupta@foxandmandal.co.in

Kunal Mimani | Partner
kunal.mimani@foxandmandal.co.in

Parag Chaturvedi | Associate Partner
parag.chaturvedi@foxandmandal.co.in

Prashant Alai | Senior Associate
prashant.alai@foxandmandal.co.in

Abhinav Jain | Associate
abhinav.jain@foxandmandal.co.in

Afshaa Hakim | Associate
afshaa.hakim@foxandmandal.co.in

Shraddha Chirania | Associate
shraddha.chirania@foxandmandal.co.in

Tanika Rampal | Assistant Manager
tanika.tampal@foxandmandal.co.in

Kartikey Bhatt | Partner
kartikey.bhatt@foxandmandal.co.in

Kunal Vajani | Jt. Managing Partner
kunal.vajani@foxandmandal.co.in

Shubhang Tandon | Senior Associate
shubhang.tandon@foxandmandal.co.in

Abhinav Rana | Associate
abhinav.rana@foxandmandal.co.in

Akshay Luthra | Associate
akshay.luthra@foxandmandal.co.in

Tanish Arora | Associate
tanish.arora@foxandmandal.co.in

OUR OFFICES

BENGALURU

G 102, Embassy One Pinnacle
8 Bellary Road, Bengaluru 560 032
Email: bengaluru@foxandmandal.co.in

MUMBAI

105, Arcadia Building, 195 NCPA Marg
Nariman Point, Mumbai 400 021
Email: mumbai@foxandmandal.co.in

KOLKATA

7th Floor, 206 AJC Bose Road
Kolkata 700 017
Email: calcutta@foxandmandal.co.in

NEW DELHI

Fox & Mandal House
D 394, Defence Colony, New Delhi 110 024
Email: newdelhi@foxandmandal.co.in

KOLKATA

12, Old Post Office Street
Kolkata 700 001
Email: calcutta@foxandmandal.co.in

Copyright © Fox & Mandal 2025. All rights reserved.

This document is for general guidance only and does not constitute definitive legal advice. Fox & Mandal shall not be liable for any losses incurred by any person from use of this publication or its contents.