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ARBITRATION PLAYBOOK

LATEST JUDGMENTS IMPACTING THE ARBITRATION LANDSCAPE IN INDIA

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FOREWORD

The 'F&M Arbitration Playbook' presents a carefully curated selection of recent judicial decisions that have significantly shaped the arbitration ecosystem in India, spanning the full arbitration lifecycle from contract formation and tribunal constitution to interim measures, and post-award challenges.

The compiled decisions reflect the Indian judiciary's evolving approach toward arbitration, marked by a strong emphasis on party autonomy, procedural fairness, and neutrality of arbitral tribunals, alongside a consistent commitment to minimal and principled judicial interference.

The compendium is designed to serve as a ready reference guide for both lawyers and non-legal readers who are engaged in, or contemplating arbitration proceedings in India.

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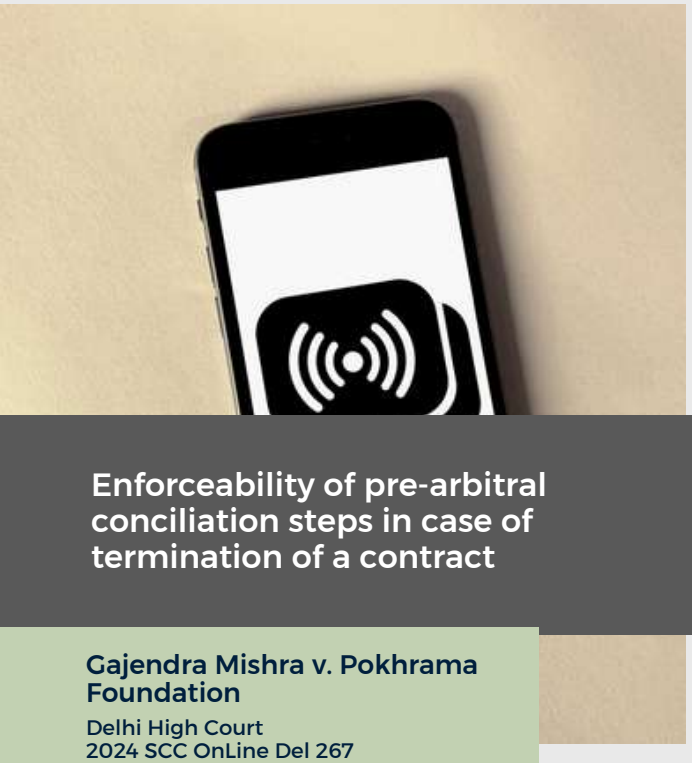
Arbitration agreements



Enforceability of pre-arbitral conciliation steps in case of termination of a contract

Gajendra Mishra v. Pokhrama Foundation
Delhi High Court
2024 SCC OnLine Del 267

The Delhi High Court held that a party terminating a contract without performing pre-arbitral procedures could not later require the other party to complete those steps. Contract termination extinguishes the obligation to follow contract-based conciliation mechanisms.

Key takeaways

- Drafting clear termination and dispute resolution provisions that address post-termination obligations can prevent procedural ambiguities and potential litigation.
- Legal strategies should balance between contract termination benefits and potential waiver of procedural safeguards to mitigate risks effectively.

WhatsApp and email communication may constitute a valid arbitration agreement

Belvedere Resources DMCC v. OCL Iron and Steel Ltd
Supreme Court of India
2025 SCC OnLine Del 4652

Binding arbitration agreements may arise from clear digital communications and conduct, even without a concluded and signed contract.

WhatsApp and email exchanges capturing the parties' intent to arbitrate through factors such as assurance to sign the final contract containing an arbitration clause and acknowledgement of the counterparty's contractual performance, would constitute a valid and binding arbitration agreement.

Key takeaways

- The intent to arbitrate may be inferred from communications and conduct (reassurances to sign, participation in execution steps, or silence during performance), even without a signed contract.
- Parties should determine their preferred dispute-resolution mechanism at the outset of negotiations, as the forum for resolving disputes may become legally fixed well before contract execution.
- An express condition limiting recourse to arbitration until formal contract execution may be stipulated.

Arbitration agreements

Test to determine the governing law in an international arbitration agreement

Disortho SAS v. Meril Life Sciences Pvt Ltd

Supreme Court of India
2025 SCC OnLine SC 570

The Supreme Court formulated a 3-fold test for determining the law governing an arbitration clause in a contract containing inconsistent and unclear dispute resolution clauses:

- Start with any express choice of law.
- If the above is absent, consider the law implied by the main contract (lex contractus), which would be a strong indicator of the applicable law when the arbitration clause is part of the substantive contract.
- If still unclear, identify the system with the closest connection to the dispute.

Key takeaways

- Instead of vague clauses regarding the applicable laws, ideally the parties should distinctly specify the law governing different facets where they so intend i.e. the arbitration procedure, arbitration agreement, arbitration-related Court processes such as appointment, interim relief, and challenges; and the substantive law of the contract.
- Drafting dispute resolution clauses to harmonise substantive and procedural aspects of dispute resolution minimises ambiguity and legal conflicts.

Whether the venue could be regarded as the seat of arbitration?

Arif Azim Co Ltd v. Micromax Informatics FZE

Supreme Court
2024 SCC OnLine SC 3212

The Supreme Court set out 3 factors to determine the seat of arbitration:

- The agreement must designate a single place.
- Proceedings must be anchored to that place without flexibility.
- There should be no contrary indication negating it as the seat.

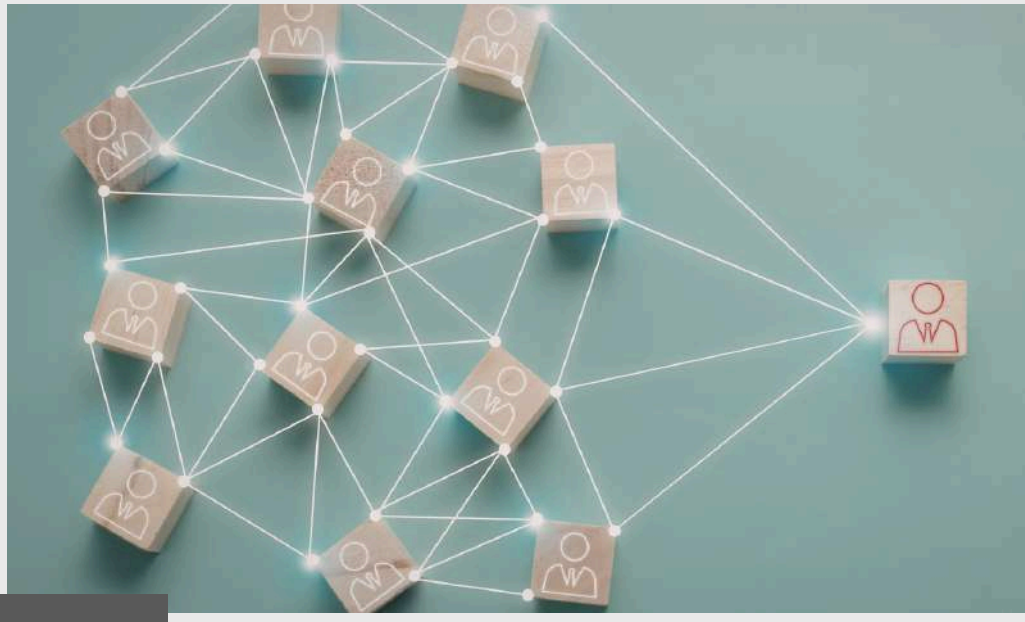
Thus, if an agreement specifies a place and subjects the contract to its governing law, that place will be the seat, even if termed a 'venue'. Where multiple places are designated, Courts may decline jurisdiction based on factors such as the nature of the agreement, the dispute, and the parties' intentions.

Key takeaways

- Parties should draft arbitration clauses with precision, clearly specifying one legal seat to ensure certainty and minimise future challenges.
- Referring to multiple locations or creating ambiguity in the clause can trigger expensive jurisdictional disputes and delay resolution, especially in cross-border contracts.
- A single place named as the 'venue' may be viewed as the legal seat, thereby conferring exclusive supervisory jurisdiction on its Courts.

02

Constitution of the arbitral tribunal



Validity of a sole arbitrator appointed unilaterally due to the counterparty's inaction

St Frosso Shipping Corporation v. Eastern Multitrans Logistics Pvt Ltd

Telangana High Court
2025 SCC OnLine TS 390

A clause providing for the claimant's nominee to act as sole arbitrator if the counterparty fails to appoint its arbitrator within a stipulated timeframe is valid. Such a mechanism is not unilateral but a default safeguard against delay.

Since the clause provided both parties an equal opportunity to participate in the appointment process, the claimant's nominee acting as sole arbitrator was valid in view of the respondent's failure to avail such an opportunity. These self-executing clauses align with international practice and are not contrary to Indian public policy.

Key takeaways

- Mechanisms allowing one party to appoint a sole arbitrator by default are valid if the other party fails to act within the agreed timeframe, provided both sides were initially given an equal opportunity to participate in the appointment process.
- From a drafting perspective, parties should consider incorporating such self-executing default mechanisms in arbitration clauses to minimise delay and avoid procedural deadlock.

Constitution of the arbitral tribunal

Appointment of arbitrators from a panel unilaterally selected by the counterparty

Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)

Supreme Court of India
2024 SCC OnLine SC 3219

In furtherance of the principle that unilateral appointments of sole arbitrators are invalid, an arbitration clause requiring a party to choose arbitrators exclusively from a panel unilaterally curated by the opposing party is unfair. It undermines the principles of equality and neutrality, as any advantage in constituting the arbitral tribunal to one party must be balanced by an equal right afforded to the other party.

Key takeaways

- Unilateral appointment clauses cannot override principles of neutrality and equal treatment, particularly in public sector or government contracts.
- Both parties are entitled to a real and fair opportunity to participate in the selection.
- Procedural fairness in arbitrator appointments directly impacts enforceability and reduces annulment risks post-award.

Consent of a non-signatory for the appointment of arbitrators

Yves Saint Laurent v. Brompton Lifestyle Brands Pvt Ltd

Delhi High Court
2024 SCC OnLine Del 6519

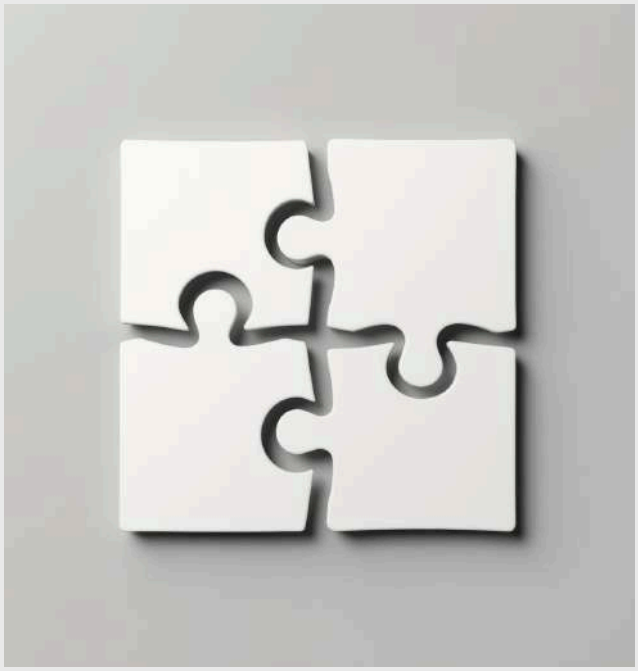
An arbitral tribunal may be constituted without the consent of non-signatories, as only parties to the arbitration agreement need to participate in the appointment process. Since the question of whether a non-signatory should be impleaded is left to the tribunal's determination, it naturally arises after its constitution.

Key takeaways

- Parties should draft arbitration clauses with precision, clearly specifying one legal seat to ensure certainty and minimise future challenges.
- Referring to multiple locations or creating ambiguity in the clause can trigger expensive jurisdictional disputes and delay resolution, especially in cross-border contracts.
- A single place named as the 'venue' may be viewed as the legal seat, thereby conferring exclusive supervisory jurisdiction on its Courts.

03

Involvement of non-signatories



Whether a non-signatory may be considered a veritable party?

Ajay Madhusudan Patel v. Jyotrindra S Patel
Supreme Court of India
2024 SCC OnLine SC 2597

Participation of a non-signatory in performing the underlying contract can indicate an intention to be bound by the arbitration agreement, particularly where the involvement is positive, direct, and substantial rather than incidental. Other relevant factors include mutual intent, relationship with a signatory, commonality of subject matter, and the composite nature of transactions.

At the stage of appointing arbitrators, Courts exercise limited jurisdiction and should avoid conducting a 'mini-trial' on disputed facts, leaving such determinations to the arbitral tribunal.

Key takeaways

- Businesses should clearly document roles and intentions of all participants in a transaction to minimise future disputes over who is bound by the arbitration agreement.
- Non-signatory affiliates and related entities may be bound by the arbitration agreement if their conduct in negotiating or performing the contract shows intent to be part of the agreement.
- At the stage of appointment of arbitrators or reference, Courts undertake only a prima facie review of non-signatory involvement, leaving detailed fact-finding to the arbitral tribunal, thus avoiding prolonged 'mini-trials'.

Involvement of non-signatories

Application of the group of companies doctrine to implead non-signatory affiliates

Cox & Kings Ltd v. SAP India Pvt Ltd

Supreme Court of India
(2024) 4 SCC 1

The term 'parties' under Section 2(1)(h) of the Arbitration and Conciliation Act, 1996 includes both signatories and non-signatories. Under the group of companies doctrine, a non-signatory affiliate or a sister or parent company can be a party to an arbitration agreement based on factors such as mutual intention of the parties to bind the non-signatory, which can be inferred from conduct and participation in contract negotiation or performance, relationship to the signatory, commonality of the subject matter, composite nature of the transaction, and performance of the contract.

Key takeaways

- The group of companies doctrine aligns with commercial realities where group entities function as a single economic unit. Contracts with group companies should clearly specify the role of each entity involved and those that are intended to be bound.
- A non-signatory not intending to be bound by the agreement despite participating in its negotiation or performance should clearly communicate such intention at the appropriate stage.

Impleadment of an LLP in a dispute between its partners

Kartik Radia v. BDO India LLP

Bombay High Court
2025 SCC OnLine Bom 445

Every partner acts as an agent of the LLP, and the LLP is liable for the acts of its partners. Where the dispute involves allegations of misconduct of the former partner, the LLP's impleadment is necessary to adjudicate any injury to it.

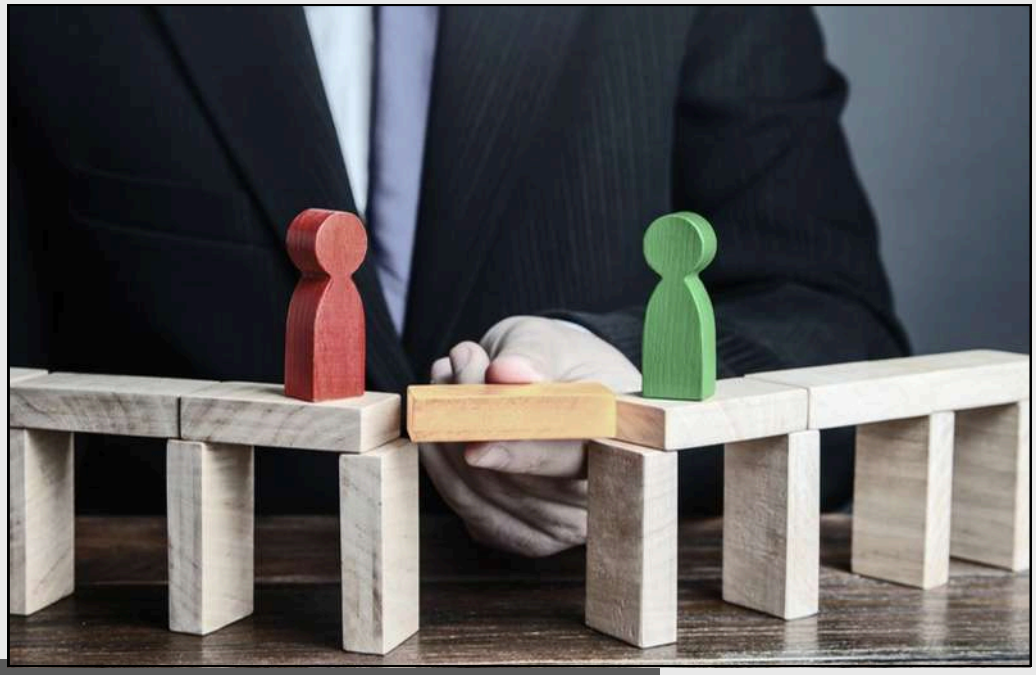
A reference to arbitration would be required even in the absence of an arbitration agreement, as Item 14 of the First Schedule to the LLP Act, 2008, provides that all partnership disputes are to be referred to arbitration.

Key takeaways

- Non-signatories can be bound to arbitrate when statutory provisions or commercial relationships justify it - an LLP would be a necessary party to the arbitration where the disputes and allegations concern its operations and affairs.
- Disputes between partners of an LLP would by default be arbitrable under the statue unless the specifically excluded by the LLP agreement.
- Given the nature of liability in an LLP, businesses must ensure clear internal governance structures and role definitions to prevent individual acts from exposing the LLP to operational or reputational risks.

04

Grant of interim relief



Power of Courts to grant anti-suit injunction

Honasa Consumer Ltd v. RSM General Trading LLC

Delhi High Court
2024 SCC OnLine Del 5631

Indian Courts may grant anti-suit and anti-enforcement injunctions as interim measures to protect arbitration proceedings seated in India when foreign actions threaten to derail them. Such injunctions restrain parties from pursuing or enforcing foreign proceedings that undermine the arbitration agreement.

The doctrine of comity of Courts demands caution, as such injunctions, though directed at parties, effectively interfere with foreign Court jurisdiction, and therefore, must be exercised with caution. However, it does not preclude relief where facts justify intervention to secure the ends of justice and the foreign Court acts beyond its jurisdiction.

Key takeaways

- Prompt actions to invoke the arbitration agreement and safeguard such proceedings from being defeated minimise the risk of conflicting rulings and abuse of the legal process.
- Anti-suit injunctions serve as a strategic tool to safeguard India-seated arbitration and the integrity of cross-border arbitration agreements by restraining parallel foreign proceedings that could undermine or delay the arbitral process.
- Courts should exercise caution, balancing comity of Courts with the need to prevent injustice when asked to interdict foreign proceedings.

Grant of interim relief

Grant of interim relief based on a foreign emergency award

Ebix Cash World Money Ltd v. Ashok Kumar Goel
Bombay High Court
2025 SCCOnLine Bom 698

Although a foreign emergency award is not directly enforceable in India, Courts may accept a well-reasoned emergency award that remains unchallenged on merits or procedural fairness, after due application of mind, and pass appropriate interim measures on that basis.

Party autonomy, which is the bedrock of arbitration, extends to an agreement to be bound by institutional rules, including emergency procedures, thereby preventing a party from subsequently disputing the emergency award's validity.

Key takeaways

- Indian Courts can grant interim reliefs in aid of emergency awards. Emergency awards can be persuasive evidence in Indian interim relief proceedings.
- Accepting the institutional rules that provide for emergency arbitration and participation in the emergency proceedings may prevent parties from objecting to the enforcement of the award.

Anti-arbitration injunctions in foreign-seated arbitrations

Engineering Projects (India) Ltd v. MSA Global LLP
Delhi High Court
2025 SCC OnLine Del 5072

Foreign-seated arbitration proceedings were stayed after a co-arbitrator failed to disclose prior involvement with the counterparty. While anti-arbitration injunctions in foreign-seated matters are granted only in exceptional cases – where proceedings are vexatious, oppressive, or an abuse of process – non-disclosure deprived the party of the chance to object timely, undermined impartiality, and eroded confidence in the process.

Neutrality of the arbitral tribunal, which is central to fair adjudication, cannot yield to minimal judicial interference.

Key takeaways

- Anti-arbitration injunction is reserved for clear cases of abuse or procedural unfairness.
- Transparent disclosures and good-faith conduct are vital to preserve confidence and avoid disruption.
- Remedial measures before the Courts should be promptly initiated to preserve the integrity of the arbitral process.

05
Awards and challenges

Validity of jurisdictional objections raised at a belated stage

Gayatri Project Ltd v. Madhya Pradesh Road Development Corporation Ltd

Suprme Court of India
2025 SCCOnLine SC 1136

An arbitral award cannot be annulled for lack of jurisdiction if a timely objection was not raised before the arbitral tribunal. A party which fails to raise such objections within the prescribed timelines cannot later challenge the award on that basis.

Key takeaways

- All objections, including those relating to jurisdiction, must be raised at the earliest opportunity.
- Belated objections at the stage of challenge to an adverse award or its enforcement may be viewed as an afterthought and considered to have been waived.

Challenges to a foreign award due to arbitrator bias

Avitel Post Studioz Ltd v. HSBC PI Holdings (Mauritius) Ltd

Supreme Court of India
2024 SCC OnLine SC 345

Challenges to the enforcement of foreign arbitral awards on grounds of arbitrator bias are permitted only in exceptional cases where the most fundamental notions of morality or justice are violated.

The threshold for proving bias is far higher than in ordinary judicial review, and 'public policy' is construed narrowly in relation to foreign awards. As a result, the scope to oppose enforcement is limited compared to domestic awards, and judicial scrutiny remains strictly restricted.

Key takeaways

- Parties should thoroughly vet arbitrators before appointments to minimise risks of bias and challenges that could delay enforcement.
- Arbitrators must disclose any potential conflicts proactively and clearly to maintain trust and avoid future disputes over impartiality.

Awards and challenges

Foreign exchange rate conversion date for a foreign award

DLF Ltd v. Koncar Generators and Motors Ltd
Supreme Court of India
2024 SCC OnLine SC 19017

A foreign arbitral award becomes binding and enforceable once objections are finally dismissed, after which it is deemed a decree of the Court. The applicable exchange rate for converting the award into Indian rupees is the date when objections are disposed.

However, if the award debtor deposits part of the award during the challenge, that sum is converted at the rate on the date of deposit, irrespective of any withdrawal by the award holder.

No interest is payable on amounts already deposited.

Key takeaways

- Award debtors benefit from depositing sums during the challenge, as the exchange rate is locked on the deposit date and no further interest accrues on that amount.
- The date of objection dismissal may override contractual provisions on currency conversion.

Power of Courts to modify arbitral awards

Engineering Projects (India) Ltd v. MSA Global LLP
Delhi High Court
2025 SCC OnLine Del 5072

A Court under Section 34 of the Arbitration and Conciliation Act, 1996 has limited powers to modify an arbitral award in the following cases:

- Correcting clerical, computational, or manifest errors without reviewing merits.
- Where an invalid part of the award can be severed.
- Adjusting post-award interest for compelling reasons such as party-induced delays, statutory breaches, unforeseen events, execution obstructions, or fluctuating rates.
- Supreme Court exercises its extraordinary jurisdiction under Article 142 only to end disputes, guided by fundamental and specific public policy considerations – to preserve the award if the identified defect can be cured; not to rewrite awards or modify the award on merits.

Key takeaways

- Courts have limited powers to modify arbitral awards, confined to correcting evident errors or making essential adjustments to preserve fairness.
- Exercise of such power does not entail a review of the award on merits.
- Post-award interest may be varied by Courts only in exceptional circumstances.

Awards and challenges

Third-party challenge to an arbitral award

Assets Care & Reconstruction Enterprise Ltd v. Domus Greens Pvt Ltd

Delhi High Court
2024 SCCOnLine Del 4455

Interim award: An interim order restraining the alienation of a project, granted on the basis of an unregistered charge, was set aside in light of a third party's conflicting registered charge. Interim measures cannot override or prejudice the rights of third parties, especially where such rights are protected through statutory registration.

Mukesh Udeshi v. Jindal Steel Power Ltd

Delhi High Court
2024 SCCOnLine Del 4564

Final award: A third party's challenge to an award under the .IN Domain Name Dispute Resolution Policy, directing transfer of the domain name to the complainant, was set aside. Only parties to the arbitration can challenge an arbitral award, and a non-party, even if claiming to be the beneficial owner of the disputed subject matter, has no locus to do so.

Key takeaways

- Statutory protections like registered charges will be upheld over tribunal orders in arbitral disputes between other parties.
- Beneficial interest alone does not provide a right to intervene or challenge an award.

Primacy of the arbitrator's interpretation of contractual terms

National Highways Authority of India v. Hindustan Construction Company Ltd

Supreme Court of India
(2024) 6 SCC 908

The interpretation of contractual terms primarily falls within the arbitrator's domain. Where two plausible interpretations of a contract exist, the tribunal's choice of one interpretation over the other cannot be a ground for setting aside the award.

Errors of fact or judgment are not subject to correction, as the arbitrator is the ultimate authority to assess the quantity and quality of evidence.

Judicial interference is unwarranted unless the arbitrator's interpretation is so unreasonable that no fair-minded or reasonable person could have arrived at the same conclusion.

Key takeaways

- Contract interpretation rests exclusively within the domain of arbitrators, reinforcing the finality of their decisions.
- Parties should draft precise, unambiguous contracts to avoid conflicting interpretations, which can lead to lengthy disputes.
- Awards must contain clear and reasoned interpretations to withstand judicial scrutiny and reduce the risk of annulment.

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The evolving policy and regulatory ecosystem necessitates careful navigation by businesses as well as their promoters and senior management - with a proven track record of effectively leveraging our full-service capabilities to address attendant legal challenges, our specialist teams combine relevant subject-matter, sectoral and jurisdictional knowledge to craft pragmatic, commercially viable and legally enforceable solutions for addressing critical issues along the entire business life cycle.

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

KOLKATA HO
12, Old Post Office Street
Kolkata 700 001

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

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

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