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Dispute Resolution Yearbook
Navigating the Disputes Landscape in 2024

A Cyril Amarchand Mangaldas Thought Leadership Publication

Dispute Resolution Yearbook – Navigating the Disputes Landscape in 2024 published by Cyril Amarchand Mangaldas.

This Yearbook has been updated till January 31, 2025.

A Thought Leadership Publication

We now present this handbook to enable readers to have an overview of the systems and legal rules and regulations that are essential for business operations in India.

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Foreword

"With great power comes great responsibility."[1]

This adage, popularised by Marvel Comics, is perhaps the most befitting way to describe India right now. India's remarkable transformation from being a part of the 'Fragile Five' economies to emerging as one of the top five global economies in just a decade is a testament to its evolving capabilities. This extraordinary rise has been marked by rapid, consistent economic growth and political stability, underpinned by a steadfast focus on self-reliance through the *Atmanirbhar Bharat* and Make in India campaigns. As a result, India has solidified its position as a bright spot on the global economic landscape, enhancing its domestic, regional, and global influence.

One of the persistent challenges to foreign investment in India has been the perceived inefficiency of the judicial system, characterised by the slow pace and substantial backlog of cases across all levels of the judiciary. To address this, India has made a concerted effort to promote Alternative Dispute Resolution (**ADR**) mechanisms, with arbitration being the preferred dispute resolution mechanism for most commercial contracts. Over the past decade, the Government has amended the Arbitration & Conciliation Act, 1996, three times already, to cure lacunae and make the Indian arbitration regime more responsive to contemporary requirements. Giving a fillip to consensual resolution of disputes, the Mediation Act, 2023, — modelled along the lines of the United Nations Convention on International Settlement Agreements Resulting from Mediation[2], — plays an essential role in ensuring immediate enforceability of settlement agreements. A balanced and integrated approach, intertwining mediation and arbitration, is crucial to achieving faster, more amicable resolutions, regardless of the dispute's complexity or quantum.

The year 2024 has been particularly noteworthy for its significant developments in the country's commercial dispute resolution landscape. Notably, the historic reformation of India's criminal justice system took place, characterised by the introduction of new legislation, replacing the Indian Penal Code of 1860, the Code of Criminal Procedure of 1973, and the Indian Evidence Act of 1872. This initiative represents a bold move towards modernising the nation's legal framework.

[1] Kimble v. Marvel, 576 U.S. 446 (2015) and CBI v. Gopal Singh, CBI No. 28/2019, quoting from Spider-Man (1962).
[2] UN Convention on International Settlement Agreements Resulting from Mediation.

With this handbook, we aim to provide a snapshot of a year that has not only witnessed monumental reforms, but also solidified India's position as a key player in the global arena. This handbook aims to provide readers with a comprehensive update on key developments and landmark rulings of Indian courts in the field of dispute resolution during this transformative year. This handbook also explores the trends, reforms, and decisions that have had a profound impact on India's arbitration landscape, underscoring the country's commitment to becoming a global hub for efficient and cost-effective dispute resolution.

We hope this compilation serves as a valuable resource for understanding the strides made in 2024 and the implications for India's arbitration framework. Should you have any queries or wish to delve deeper into any of the topics discussed, we would be delighted to hear from you. Please feel free to reach out via email.

Cyril Shroff
Managing Partner

A

Proposed Key Amendments to The Arbitration Law of India and Recommendations of the Expert Committee on International Arbitration Centre at GIFT IFSC

In 2024, the winds of change hit the Indian arbitration regime – for the third time in a decade. An Expert Committee, led by Dr. T.K. Viswanathan (**Viswanathan Committee**), was established on June 12, 2023, to examine the working of the arbitration law and recommend reforms to the Arbitration & Conciliation Act, 1996 (**Arbitration Act**). In February 2024, the Viswanathan Committee Report recommended various amendments and proposed a draft amendment bill.

Thereafter, in October 2024, the Indian government published a draft bill, seeking to amend the Arbitration Act and invited public comments thereon (**Draft Bill**). Some of the key amendments proposed in the Draft Bill are discussed below:

1. Under Section 9 of the Arbitration Act, as it stands today, a party is entitled to approach a court to obtain interim relief before or during the arbitral proceedings or at any time after the making of the award, but before its enforcement. The Draft Bill proposes curtailing this right, to permit parties to seek interim relief from courts only before the constitution of the tribunal or after making of the award, i.e., after the tribunal is functus officio and before its enforcement. The proposed amendment takes away the right of parties to approach courts *during* the arbitral proceedings, relegating them to seeking relief before the tribunal, rather than adding to the burden of the court. In doing so, the Draft Bill proposes to omit the provision allowing a court to grant interim relief if it finds that circumstances exist which may not render the remedy provided by arbitral tribunal efficacious.

   Further, it is proposed that if a party approaches a court for interim relief before the commencement of arbitral proceedings, it must commence arbitration within 90 days from the date of its application (rather than as currently provided, from the date of the court's order), thereby expediting the timeframe in which an arbitration is to be commenced.

2. A welcome addition is the introduction of a new Section 9A, which gives specific recognition to emergency arbitrators appointed under the rules of an arbitral institution, and provides that an order passed by an emergency arbitrator would be enforced as if it were an interim order of the arbitral tribunal. Given that this provision is introduced in Part I of the Arbitration Act, it applies only to India-seated arbitrations. The procedure for enforcement of orders passed by emergency arbitrators in foreign-seated arbitrations will continue to remain ambiguous, for which we hope a clear and efficacious mechanism will also be introduced in the future.
3. Increasing the power of an arbitral tribunal, it is proposed that in exercise of its powers under Section 17, an arbitral tribunal shall be entitled to confirm, modify, or vacate, as the case may be, the ad-interim measures granted by a court or emergency arbitrator, subject to such conditions, if any, as it may deem appropriate, — after hearing the affected parties.

   The Draft Bill further proposes to specifically distinguish between "seat" and "venue" of arbitration in Section 20 of the Arbitration Act, by replacing the word "*place*" of arbitration with "*seat*" or "*venue*" of arbitration, as appropriate. Should this proposal be given effect to, the relevant provision will read that the parties are free to agree on the seat of arbitration, failing which the seat will be determined by the arbitral tribunal, and that the arbitral tribunal may meet at any venue it considers appropriate, unless otherwise agreed upon by the parties.
4. There is also an alternative (and rather unique) proposal, under which, in case of domestic arbitrations other than international commercial arbitrations[3], the seat of arbitration shall be the place where the contract/ arbitration agreement is executed or where the cause of action has arisen. Such a provision is over-prescriptive and could be challenged as being opposed to party autonomy and the ability of parties to dictate where they wish to seat their arbitration. The venue continues to be anywhere the tribunal considers appropriate, unless otherwise agreed by the parties.
5. With the aim of reducing the Courts' burden, the Draft Bill proposes to set up yet another tribunal — an appellate arbitral tribunal to decide a challenge to an arbitral award. The Draft Bill provides parties with the ability to opt for one or the other. Thus,

[3] Section 2 (1) (f) of the Arbitration Act defines "international commercial arbitration" as
"an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—
(i) an individual who is a national of, or habitually resident in, any country other than India; or
(ii) a body corporate which is incorporated in any country other than India; or
(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or
(iv) the Government of a foreign country"

the jurisdiction of the court is not denuded.

6. The proposed amendments to Section 34 allow for an award to be set aside in full or in part (on specific grounds) – which is currently missing from the Act. The Arbitration Act as it stands today, explicitly states that awards arising out of international commercial arbitrations may not be set aside on the grounds of being vitiated by patent illegality appearing on the face of it. However, the proposed Draft Bill proposes to remove this carve out, thus subjecting even awards rendered through international commercial arbitrations to the test of patent illegality on the face of the award.

Further, pursuant to the Government's announcement of setting up an international arbitration centre in the Gujarat International Financial Tec City (**GIFT City**) to assist in the expeditious resolution of disputes and encourage foreign investment in the city, the International Financial Services Centres Authority (**IFSCA**) constituted an expert committee in 2023 to draft institutional arbitral rules for the proposed centre. The expert committee submitted its report in July 2024, with guidelines and suggestions for setting up an autonomous Alternative Dispute Resolution Centre (**ADRC**) in GIFT City. The committee *inter alia* suggested a three-phase transition of the court system for ADRC. First, cases would lie before a special bench of Gujarat High Court, initially designated for hearing matters arising out of ADRC, which would then. progress to a separate High Court for all International Financial Services Centres (**IFSC**) in India, named as IFSC International Court (with all powers other than writ and criminal jurisdiction). Further, international judges would be allowed to sit in the IFSC International Court. This would require amendments to the Indian Constitution, likes of which have already been carried out in countries like Singapore and UAE.

These developments are steps in the right direction, particularly in the context of India's push to become a global hub for arbitrations, as also to increase its attractiveness in the eyes of foreign investors. It will be interesting to see how the Government finally implements these proposals.

B

The Government's Push for Mediation

The coming into effect of the Mediation Act, 2023 (**Mediation Act**)[4], proves that the Indian Government recognises the benefits of nudging disputing parties to attempt an amicable resolution of their disputes – potentially through mediation, before initiating any formal legal action. The Act, modelled along the lines of the United Nations Convention on International Settlement Agreements Resulting from Mediation[5], provides for a voluntary and stable legal framework through which parties could mediate their disputes, thereby avoiding contentious arbitration or litigation. Moreover, by providing that the settlement agreement can be enforced in the same manner as judgement or decree of court, the Act ensures efficacious execution without the need for lengthy proceedings for enforcement of a contract. This is not only commercially sensible for parties, but will also aid in reducing judicial backlog.

In this vein, the Ministry of Finance (through the Department of Expenditure) published an Office Memorandum, dated June 3, 2024, titled "Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement" (**Memorandum**), applicable to all government entities (including central public sector undertakings and public sector banks).[6]

The Memorandum encourages government bodies/ agencies to resolve disputes through formal mediation and/ or through negotiated amicable settlements and sets out the mechanism that may be adopted for it. This is sure to have a positive impact, insofar as the Indian government (through its various entities) is known to be one of the largest (if not the largest) litigants, and adoption of mediation would ostensibly lead to savings in terms of time and costs (as also man-hours spent in adversarial proceedings), which can then be better deployed elsewhere.

Therefore, while the thrust of the Memorandum is indeed admirable, the methodology adopted by the Government to promote mediation is a potential banana skin in India's aim to simultaneously also promote arbitration and make itself a global arbitration hub. The Memorandum seeks to limit the reference of disputes arising out of public procurement contracts to arbitration only in cases where the value of the dispute is less than INR 100 million, and specifically states that *"[a]rbitration as a method of dispute resolution should not be routinely or automatically included in procurement*

[4] Mediation Act 2023.pdf.
[5] UN Convention on International Settlement Agreements Resulting from Mediation.
[6] Guidelines_for_Arbitration_and_Mediation_in_Contracts_of_Domestic_Public_Procurement.pdf (doe.gov.in).

contracts/ tenders, especially in large contracts". In fact, the Memorandum even goes a step further and necessitates the respective Ministry or the concerned management's approval (with reasons in writing), for the inclusion of arbitration clauses in contracts, covering disputes of a value greater than INR 10 million.

State-run Oil and Natural Gas Corp. Ltd (**ONGC**) and Oil India Ltd. have since implemented the Memorandum in their public procurement contracts.[7]

One of the key factors affecting investment into India has been the perceived glacial speed at which the judicial system functions, as also the volume of pending cases at all levels of the judiciary. India has made a concerted push for the adoption of ADR in an attempt to remedy the situation, and mediation does indeed have a major role to play in this. However, mediation, as set out in the Memorandum, ought not to be at the cost of any other means of dispute resolution (specifically arbitration in this case). A more holistic approach ought to be encouraged, with the adoption of multi-tier dispute resolution mechanisms, to lead to a speedier, yet less acrimonious, means of resolving disputes, irrespective of the quantum in dispute.

[7] Pushed by finance ministry, ONGC to cut down on arbitration, use IIAC services | Company Business News (livemint.com).

C

Extent of Party Autonomy in Arbitrator Appointments

Party autonomy is the *cornerstone* of arbitration, and the primary reason why parties prefer arbitration over litigation in court. That said, this freedom is not unfettered as the Arbitration and Conciliation Act of 1996 (**Act**) and the judiciary have placed certain (reasonable) restrictions to strike a balance between party autonomy and the principles of fairness, justice, impartiality and equality.

On November 8, 2024, a five-judge bench of the Supreme Court of India (**SC**) in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)*[8] (***CORE II***) addressed the limits of party autonomy with respect to unilateral appointment of arbitrators. The SC ruled on a reference emanating from *Union of India v. Tantia Constructions Limited*[9], where a three-judge bench of the SC disagreed with the decision of a coordinate bench in *Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV)*[10] (***CORE I***).

The factual background to the SC's decision in CORE II is relevant to note. The Central Organisation for Railway Electrification (**Appellant**) entered into a works contract with ECI SPIC SMO MCML (JV) (***Respondent***), which provided for reference of disputes arising out of the contract to arbitration before a three-member tribunal. As per the General Conditions of Contract (**GCC**), the Respondent was required to choose two names from a list of four empanelled retired railway employees shared by the Appellant and the Appellant was required to appoint at least one of the arbitrators from the two suggested names as the Respondent's nominee. The Appellant was empowered to appoint the remaining two arbitrators (either from the panel or outside), including the presiding arbitrator, without consulting the Respondent.

Once disputes arose, the Appellant sent a list of four empanelled railway officers to the Respondent, as per the GCC for constitution of the tribunal and sought that the Respondent act in accordance with the contract. The Respondent instead approached the Allahabad High Court for appointment of a sole arbitrator under Section 11 of the Act, on the ground that the arbitration clause in the GCC did not provide for the appointment of a neutral tribunal. The High Court allowed the application and proceeded to appoint a sole arbitrator.

[8] 2024 SCC OnLine SC 3219.
[9] (2023) 12 SCC 330.
[10] (2020) 14 SCC 712.

On appeal in *CORE I*, the Supreme Court set aside the High Court's decision and upheld the validity of the arbitration clause on the basis that the right of the General Manager of the Appellant to constitute the tribunal is "*counter-balanced*" by the Respondent's power to choose any two of the four names proposed, of which the General Manager had to appoint at least one as the Respondent's nominee.

However, in a subsequent judgment in *Tantia*, the SC *prima facie* disagreed with the ruling in CORE I, and accordingly referred the issue to a larger bench.

The majority judgment in *CORE II reaffirmed the SC's decisions in TRF Limited v. Energo Engg. Projects Ltd.*[11] *and Perkins Eastman Architects DPC v. HSCC (India) Ltd.*[12], which held that an ineligible person in terms of Section 12(5) of the Act cannot unilaterally appoint an arbitrator or curate a panel of arbitrators.

In *CORE II*, the SC held that party autonomy cannot circumvent the mandatory provisions of the Act, including Sections 12(5) and 18, which enshrine principles of independence and impartiality of arbitrators, natural justice, and equal treatment of parties.

Unilateral appointment clauses granting one party disproportionate control, particularly those mandating selection from a panel curated by the appointing party, violate procedural equality and create a legitimate perception of bias. Accordingly, *CORE II* overruled the decisions in *Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd.*,[13] and *CORE I*, where one party was required to choose an arbitrator from a panel selected by the other. The Court invalidated such restrictive panel-based clauses typically used by public sector undertakings, stating that such clauses undermine the principles of fairness and independence.

Differing with the majority in *CORE II*, Justice Hrishikesh Roy and Justice P.S. Narasimha, emphasised on minimal judicial intervention under Section 5 of the Act and advocated for a case-by-case approach to determine the validity of arbitration clauses. They agreed that unilateral constitution of a panel of arbitrators is not inherently invalid under the Act, with Justice Roy cautioning against blanket nullification as it could "lead to many problems in day-to-day working of arbitral remedies", particularly in the case of insurance claims, credit card defaults, etc., involving large number of cases albeit of small sums.

[11] (2017) 8 SCC 377.
[12] (2020) 20 SCC 760.
[13] (2017) 1 SCR 798.

The decision in *CORE II* is expected to have far-reaching implications, particularly for government contracts, where panel-based appointment clauses are widely used. The parties will now be compelled to adopt a neutral and balanced mechanism for arbitrator appointment. However, *CORE II* only applies prospectively to three-member tribunals, ensuring that ongoing arbitrations remain unaffected.

For further material in this regard, refer to our article – "Revisiting Unilateral Arbitrator Appointments: The Supreme Court's New Stance on Fairness and Equality".

D

Rarest of Rare: The Supreme Court Exercises its Curative Power to set aside an Award

The Supreme Court (**SC**) exercised its curative power for the first time in a commercial matter in *Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express Private Limited*[14] in April 2024. Exercising this power, the Court upheld a ruling of the division bench of the Delhi High Court, which had partially set aside an arbitral award that directed Delhi Metro Rail Corporation (**DMRC**) to pay over INR 27 billion to a concessionaire. In doing so, the Court reversed its prior decisions rendered in special leave and review petitions filed by DMRC. The Court said that the award in question was "*perverse and patently illegal*",[15] the result of which was to saddle DMRC, a public enterprise, with an exorbitant liability.

The curative power is a part of the Supreme Court's inherent powers under Article 142 of the Constitution of India to prevent an abuse of process and to cure a gross miscarriage of justice. The Court developed this power in the landmark case of *Rupa Ashok Hurra v. Ashok Hurra*.[16] Exercised in the "*rarest of rare cases*",[17] the curative power emerged to exalt the Court's duty to do justice over the policy of certainty of judgment.

The decision, which has significant implications for arbitration jurisprudence and public finance, was also fiercely debated, with critics questioning whether such extraordinary powers should be invoked in commercial disputes. This marked a pivotal moment in the evolution of the Court's curative jurisdiction, highlighting its expanding role in balancing justice with economic and public interest considerations.

Brief Facts of the Case

At the heart of controversy is the Delhi Airport Metro Express Ltd., a metro rail project that connected the New Delhi Railway Station and the Indira Gandhi International Airport and other points within Delhi (**Metro Project**). It was conceptualised as a public-private partnership. DMRC entered into a concession agreement in 2008 with Delhi Airport

[14] (2024) 6 SCC 357
[15] Ibid at 45 and 67.
[16] (2002) 4 SCC 388.
[17] Ibid at 42.

Metro Express (P) Ptd. (**DAMEPL**) — a consortium of Reliance Infrastructure Ltd. and Construcciones Y Auxiliar de Ferrocarriles SA, Spain.

Disputes arose in July 2012, when DAMEPL stopped operations, citing DMRC's defects, which it said resulted in the metro lines being unsafe. In early October 2012, DAMEPL terminated the concession agreement, arguing that DMRC had not cured the alleged defects even after the contractual cure period had expired. By the end of October 2012, DAMEPL invoked arbitration.

In November 2012, the parties applied to the Commissioner of Metro Railway Safety (**CMRS**) for reopening the Metro Project for public carriage of passengers. After investigation, the CMRS provided its sanction for the reopening in January 2013, subject to certain restrictions on the metro rail's speed.

In June 2013, DAMEPL again halted operations and handed over the Metro Project to DMRC.

In August 2013, a three-member tribunal issued an unanimous award ruling that DAMEPL was entitled to over INR 27 billion from DMRC in the form of termination payments, expenses incurred, etc.

Proceedings before the Delhi High Court

Aggrieved by the award, DMRC approached the Delhi High Court (**DHC**) to set it aside under Section 34[18] of the Arbitration and Conciliation Act, 1996 (**A&C Act**). A single judge of the DHC dismissed the petition. On appeal under Section 37, a division bench[19] partially set aside the award on grounds that it was patently illegal (a ground singularly available to domestic arbitrations (and not international commercial arbitrations) seated in India).

Proceedings before the Supreme Court

Appealing against the division bench's decision, DAMEPL filed a special leave petition[20] before the SC, which set aside the division bench's decision, thus fully reinstating the award. DMRC's review petition was also dismissed.[21] DMRC then filed a curative petition in 2021.

[18] 2018 SCC OnLine Del 7549, order passed on March 6, 2018.
[19] 2019 SCC OnLine Del 6562, order passed on January 15, 2019.
[20] (2022) 1 SCC 131, order dated September 9, 2021.
[21] Review Petition (C) Nos .1158-1159/2021, Order Dated November 23, 2021.

The Court reiterated the current position of law on patent illegality. In particular, an award is patently illegal if it is *"found to be so perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or that, the view of the arbitrator is not even a possible view."*[22] While ordinarily a tribunal's 'interpretation' will not be interfered with merely because an alternative view exists, the Court said its interpretation of the contract *"cannot be unreasonable, such that no person of ordinary prudence would take it... If the interpretation of the terms of the contract as adopted by the Tribunal was not even a possible view, the award is perverse."*[23]

On the facts of this case, the SC found that the award in question was patently illegal, and that the prior benches hearing the special leave petition and review petition had committed a "*fundamental error*".[24] The SC said that the contract allowed DAMEPL to terminate it if a material adverse effect occurred and "*DMRC has **failed to cure** such breach or **take effective steps for curing** such breach*" (our emphasis). The SC said, by ruling that certain defects remained after the cure period, the tribunal had failed to appreciate the individual import of the two phrases 'failed to cure' and 'failure to take effective steps to cure'. The SC said such an interpretation frustrates the clause. While the SC clarified that the tribunal could have still arrived at the conclusion that DMRC's steps taken during the cure period, were not effective, such a finding or discussion was "*conspicuously absent*".[25]

The SC also ruled that the tribunal had overlooked vital evidence, namely the report of the CMRS, which allowed the Metro Project to recommence, subject to certain

[22] Ibid at 39.
[23] Ibid at 46.
[24] Ibid at 45.
[25] Ibid at 50.

restrictions on speed. By ignoring this report, the SC ruled that the tribunal had decided on the issue of termination — which DAMEPL premised on safety — without considering that the CMRS report was, under the Metro Railways (Operations and Maintenance) Act, 2002, a critical piece of evidence that spoke to the safety of the project. Under this Act, the SC said that the issue of the metro line's fitness fell within the CMRS, which was the final authority on a metro line's safety.

Consequently, the SC agreed with the DHC's division bench that the award was patently illegal, thus warranting interference. It allowed the curative petition and restored the parties to the position in which they were when the division bench pronounced its judgment.

To caution against the exercise of curative power becoming a matter of course, the SC noted that the curative jurisdiction should not be used as a matter of ordinary course and "*should not be used to open the floodgates and create a fourth or fifth stage of court intervention in an arbitral award, under this Court's review jurisdiction or curative jurisdiction, respectively*"[26]. The SC further concluded its judgment with a reminder that this particular case resulted in a "*grave miscarriage of justice*" as the "*process of arbitration has been perverted by the Arbitral Tribunal to provide an undeserved windfall to DAMEPL*".[27]

In conclusion, it is important to note that this judgement arose in the context of a domestic arbitration, where the Supreme Court exercised its extraordinary curative jurisdiction under Article 142 to remedy what it perceived as a grave injustice. However, it is crucial to note that patent illegality as a ground for setting aside an arbitral award is confined to domestic arbitrations and does not apply to international commercial arbitrations, as clarified under Section 34 of the A&C Act. This intervention was an exception rather than the rule, justified only due to special circumstances, and should not be seen as a precedent for routine interference in arbitral awards.

[26] Ibid at 70.
[27] Ibid at 71.

E

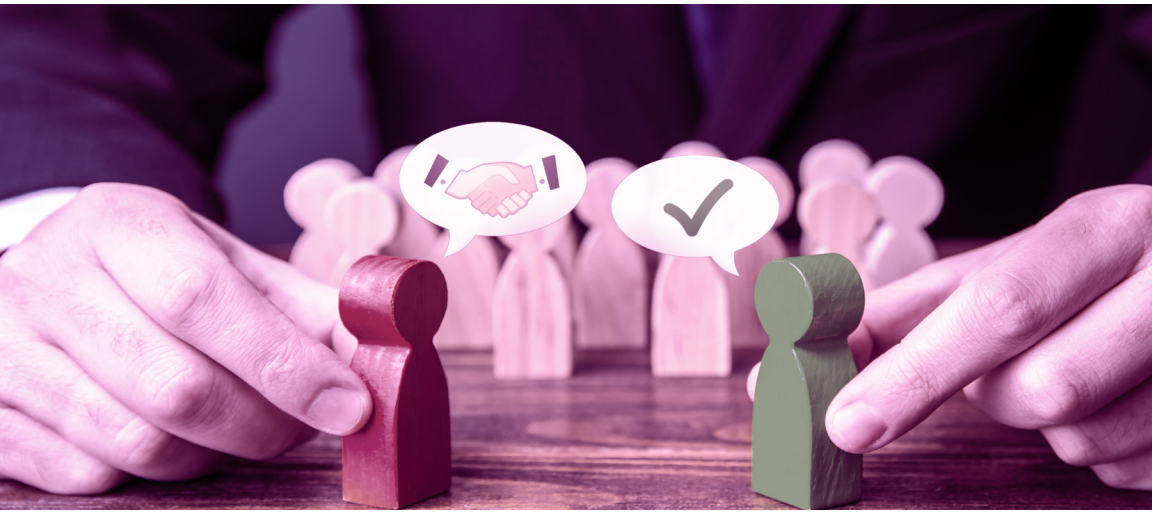
Post Cox & Kings: An Arbitral Tribubal can join Non-Singatories to an Arbitration

The "group of companies" doctrine was created as an exception to the general principle in arbitration that only signatories to an arbitration agreement can be parties to the arbitration. This doctrine recognises that a set of separate firms may be linked together in formal or informal structures under the control of a parent company, such that these firms have consented to an arbitration agreement even though they are not formal parties to that agreement. Being based on the theory of consent rather than alter-ego, cases for joinder on this ground differ from the principle of lifting the corporate veil.

The group of companies doctrine is not a global practice. It has, however, been developed substantially under Indian law. In *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*,[28] the Supreme Court of India (**SC**) said that a non-signatory could be subject to arbitration in exceptional cases , if there is (i) a direct relationship between the signatory and the non-signatory; (ii) a direct commonality of the subject matter and the underlying agreement is a composite transaction; (iii) the transaction is of a composite nature where performance of the mother agreement may not be feasible without the aid, execution and performance of supplementary or ancillary agreements; and (iv) if a composite reference would serve the ends of justice. The SC said that in cases of composite transactions involving multi-party agreements, non-signatories may be implicated because of their legal relationship and involvement in the performance of contractual obligations. In order to address these situations, it held that the group of companies doctrine could be applied to systematically evaluate the facts and circumstances and determine a "*clear intention of the parties to bind both, the signatory as well as the non-signatory parties*"[29] to the arbitration agreement.

Subsequently, in *Cox and Kings Limited v. SAP India (P) Limited*[30], the SC was asked to determine the validity of the group of companies doctrine in Indian arbitration jurisprudence. The doctrine was challenged on the ground that it interferes with

[28] *(2013) 1 SCC 641.*
[29] *Ibid at 67.*
[30] *Cox & Kings Ltd. v. SAP India (P) Ltd., 2023 SCC OnLine SC 1634. The decision was rendered following a division bench's reference of the scope of the group of companies doctrine to a larger bench in Cox & Kings Ltd. v. SAP India (P) Ltd., 2022 SCC OnLine SC 570.*



established legal principles such as party autonomy, privity of contract, and separate legal personality. In 2023, the Court re-interpreted the contours of the group of companies doctrine. The SC affirmed the doctrine. It ruled that "*modern commercial reality*"[31] suggested that there may be situations where a company, which has signed the contract containing an arbitration clause, is not the one that has negotiated it or will be performing it. In such cases, emphasis on formal consent would lead to the exclusion of non-signatories, leading to multiplicity of proceedings. Calling for the need to adopt a "*modern approach to consent*", the SC said that the conduct of a non-signatory could be an indicator of their consent to be bound by the arbitration agreement. It ruled that the group of companies doctrine has an independent existence as a principle of law, stemming from a reading of Section 2(1)(h) of the Arbitration Act — which defined 'party' to an arbitration agreement — and Section 7 — which outlines the requirements of an arbitration agreement.

Building on the foundations laid down in Cox and Kings

Cox and Kings did not specifically address whether an arbitral tribunal had the power to join a non-signatory. This was an important question because there existed some jurisprudence from High Courts that a tribunal could not, because there was no legislative provision empowering it to do so[32]. In *Cox and Kings*, the SC expressly

[31] *Ibid at 92.*
[32] *Arupri Logistics Pvt. Ltd v. Shri Vilas Gupta & Ors, 2023 SCC OnLine Del 4297. Also refer to: "Consent is King: Delhi HC Holds that Arbitral Tribunal Lacks Authority to Implead Third Parties".*

approved the referral court's power to *prima facie* determine that an arbitration agreement exists and that the non-signatory is a veritable party to it. It, however, said that the referral court should then leave it to the tribunal to decide whether its jurisdiction properly extends to the non-signatory, on the basis of the facts and law.

The confirmation that even arbitral tribunals could join non-signatories to arbitration came from the Bombay High Court in March 2024, in *Cardinal Energy & Infra Structure Private Ltd. v. Subramanya Construction & Development Co. Ltd.*[33], which involved an application under Section 34 of the Act, challenging the validity of an "interim award" impleading a non-signatory to the arbitration agreement, viz. Cardinal Energy, to the arbitration. Cardinal Energy argued that the arbitral tribunal did not have the power to implead it since it was not a party to previous proceedings under Section 11 of the Arbitration Act for the appointment of an arbitrator, and that the Section 11 court (referral court) did not provide this power to the arbitrator so appointed.

The Bombay High Court rejected Cardinal's challenge. It ruled that an arbitral tribunal is not precluded from impleading a non-signatory to an arbitration. The Court did not consider that a Section 11 court had to provide a tribunal with the express power to decide questions of impleading/ joinder. It held that a tribunal under Section 16 of the Arbitration Act has the power to determine issues of jurisdiction, which would include determining whether it has jurisdiction over a non-signatory.

Thus, post *Cox and Kings*, there has been a more explicit recognition of a tribunal's power to implead a non-signatory, but with a few more questions that deserve attention.

For further material on joinder of non-signatories, refer to our article – "SC rules on applicability of doctrine of 'group of companies' in arbitration jurisprudence".

[33] *2024 SCC OnLine Bom 964.*

F

Clarifying the Clock: Supreme Court on Extending Arbitral Tribunal Mandates U/S 29A of The Act, 1996

The stage for filing of an application under Section 29A of the Arbitration and Conciliation Act, 1996[34] (**Act**), seeking extension of arbitral tribunal's mandate has received a much-needed clarification from the Supreme Court (**SC**) in *Rohan Builders (India) Private Limited v. Berger Paints India Limited*[35] (**Rohan Builders II**).

In 2015[36] and 2019[37] amendments to the Act, strict timelines were imposed for completion of arbitration proceedings. Presently, the Act requires parties to purely domestic proceedings, to complete pleadings within six months from the constitution of the arbitral tribunal and an award to be made within 12 months from the date of completion of the pleadings. As per Section 29A (3) of the Act, this timeline may be extended by another six months, with the joint consent of the parties. The Act also provisions for further delays and gives parties the right to make an application under Section 29A (5) of the Act to a court to further extend the mandate of the arbitral tribunal. The court may extend the mandate of a tribunal before or after the expiry of the mandate. Even though the court's power to extend the mandate of the arbitral tribunal post expiry of the specified period remained clear, the controversy subsisted in relation to whether an application for extension under Section 29A (5) can be filed *after* the mandate of the tribunal had expired.

Since the 2019 amendment, various High Courts (**HC**) decided on the appropriate stage for filing an application under Section 29A (5) of the Act. The Delhi[38], Bombay[39], Kerala[40], Madras[41], Jammu and Kashmir and Ladakh[42] and Calcutta[43] HCs ruled that the application can be filed after expiry of the time period mentioned in Section 29A of the Act, while

[34] *The Arbitration and Conciliation Act, 1996, Act No. 26 of 1996.*
[35] *Rohan Builders v. Berger Paints, 2024 SCC OnLine SC 2494.*
[36] *The Arbitration and Conciliation (Amendment) Act, 2016, Act No. 3 of 2016.*
[37] *The Arbitration and Conciliation (Amendment) Act, 2019, Act No. 33 of 2019.*
[38] *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd., 2023:DHC:8078.*
[39] *Nikhil H. Malkan v. Standard Chartered Investment and Loans (India) Limited, 2023:BHC-OS:14063.*
[40] *Hiran Valiiyakkil Lal v. Vineeth M.V., 2023 SCC OnLine Ker 5151.*
[41] *G.N. Pandian v. S. Vasudevan, 2020 SCC OnLine Mad 737.*
[42] *H.P. Singh v. G.M. Northern Railways, 2023 SCC OnLine J&K 1255.*
[43] *Ashok Kumar Gupta v. M.D. Creations, 2024 SCC OnLine Cal 6909.*

some other HCs, including Madras[44], Patna[45], Calcutta (decided *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*[46] (**Rohan Builders I**)) took a contrary view. This ultimately led to a Special Leave Petition being filed in the SC, which was decided on *Rohan Builders II*.

The Calcutta HC in *Rohan Builders* I held that the mandate of the tribunal stands terminated post expiry of the statutory period. According to the HC, an application for extension under Section 29A (5) of the Act cannot be filed post expiry of the statutory timelines. The Court further relied on the legislature's choice to not incorporate the recommendations of the 176th Report of the Law Commission of India[47], which suggested the usage of the term "*suspend*" instead of "*terminate*" in Section 29A (4). The HC opined that this conscious choice reflected the legislature's intent to put an end to the mandate of the arbitral tribunal once the statutory period has lapsed.

Differing from the reasoning of the Calcutta HC, the SC in *Rohan Builders II* emphasised on the importance of a contextual reading of the term "*terminate*" in Section 29A (4) of the Act. The SC held that the language of Section 29A of the Act, makes the termination of the mandate of a tribunal conditional on non-filing of an application for extension. The court reasoned that the legislature had used the word "*terminate*" instead of "*suspend*", given that the usage of "*suspend*" would likely lead to unintended ramifications arising out of an indefinite suspension of the proceedings, if an application under Section 29A was not filed by either party. It was held that the restrictive interpretation taken in *Rohan Builders I* would impose a limitation period on the filing of the application even when the legislature did not intend for the provision to have such an effect.

The SC through its decision in *Rohan Builders II* has provided relief to litigants wishing to restart/ continue proceedings, which have run afoul of the timelines stipulated in Section 29A of the Act. This move has ensured that litigants do not have to rush to the court at the eleventh hour to ensure survival of their arbitration proceedings. Parties may seek extension of the mandate of the arbitral tribunal from the relevant court even after expiry of the timelines set in Section 29A of the Act, as long as "*sufficient cause*" is shown. In its subsequent ruling in *Ajay Protech Pvt. Ltd. v. General Manager*,[48] the

[44] *Suryadev Alloys and Power Pvt. Ltd. v. Shri Govindraja Textiles Pvt. Ltd., 2020 SCC OnLine Mad 7858.*
[45] *South Bihar Power Distribution Company Limited v. Bhagalpur Electricity Distribution Company Private Limited, 2023 SCC OnLine Pat 1658.*
[46] *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd, 2023 SCC OnLine Cal 2645.*
[47] *Paragraph 2.42, 176th Report on Arbitration and Conciliation (Amendment) Bill, 2001, Law Commission of India.*
[48] *Ajay Protech Pvt. Ltd. v. General Manager, 2024 SCC OnLine SC 3381.*

SC has also clarified that the meaning of "*sufficient cause*" must take colour from the underlying purpose of the arbitration process and should be interpreted in the context of effective dispute resolution, which further ensures that parties are not permitted to endlessly prolong proceedings.

For further material in this regard, refer to our article – "Rohan Builders Judgment: A Watershed Moment in Indian Arbitration Law" and "After Sunset: Courts on post Rohan Builders".

G

Determining Accord and Satisfaction: Supreme Court's Guidance on Section 11 Applications

The Supreme Court (**SC**) in *SBI General Insurance Co Ltd. v. Krish Spinning*[49] (**Krish Spinning**) discussed the scope of courts' review under Section 11 of the Arbitration and Conciliation Act, 1996[50] (**Act**), in relation to a settlement agreement. The dispute in Krish Spinning arose out of an insurance contract between the parties. Parties entered into a settlement agreement, which provided for payment of compensation by the appellant to the respondent. The respondent subsequently invoked arbitration and filed an application under Section 11 of the Act for appointment of the tribunal. The appellant contended that there were no arbitrable disputes between the parties as the insurance contract had been discharged by "*accord and satisfaction*" through the settlement agreement. One of the issues before the SC was the extent of judicial scrutiny of the claims for discharge of contract by "*accord and satisfaction*" at the stage of arbitrator appointment under Section 11 of the Act.

A discharge of contract by "*accord and satisfaction*" refers to the contract being discharged by reason of performance of certain substituted obligations. The agreement by which the original obligations are discharged is the "*accord*" and the discharge of substituted obligation is the "*satisfaction*".[51]

Section 11 of the Act gives power to the courts to appoint arbitrators if the parties fail to make an appointment. There are split decisions in case of settlement agreements: (i) where the SC has held that all claims raised at the stage of appointment and relating to the discharge of the contract by "*accord and satisfaction*" should be determined by the arbitrator.[52] (ii) where the SC has held that the appointing court could scrutinise the claims and satisfy itself about whether the claims are *prima facie* bona fide and genuine,[53] which is an exercise of a judicial power. In *Krish Spinning*, the SC discussed the jurisprudence relating to the nature of this power over the last two decades, culminating

[49] *SBI General Insurance Co Ltd. v. Krish Spinning*, 2024 SCC OnLine SC 1754.
[50] *The Arbitration and Conciliation Act, 1996*, Act No. 26 of 1996.
[51] *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.*, (2009) 1 SCC 267.
[52] *Jayesh Engineering Works v. New India Assurance Co. Ltd.*, (2000) 10 SCC 178, *Damodar Valley Corporation v. K.K. Kar*, (1974) 1 SCC 141.
[53] *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.*, (2009) 1 SCC 267, *Union of India v. Master Construction Co.*, (2011) 12 SCC 349.

in the current position of its non-judicial nature and limited scrutiny by the court at the stage of appointment, which was codified by insertion of Section 11 (6-A), vide the 2015 amendments to the Act.[54]

Post the insertion of Section 11 (6-A) of the Act, the scope for judicial scrutiny is limited to the existence of the arbitration agreement. Certain exceptions have arisen as a result of judicial rulings, such as where it is manifest that the claims are *ex-facie* time barred and deadwood.[55] This exception was fine-tuned in the context of discharge of contract by "*accord and satisfaction*" in NTPC v. SPML, by formulation of the "*eye of the needle*" test.[56] As per the test, the appointing court should reject appointment of the tribunal only in exceptional cases, limited to instances where the claims appear to be *ex-facie* frivolous and devoid of merit. This test was held to be necessary for the protection of parties from being forced to arbitrate for frivolous or vexatious claims. Thus, the position of the SC prior to *Krish Spinning* stood in favour of appointment of arbitrators for disputes in relation to discharge of contract by "*accord and satisfaction*", unless the claims are ex-facie frivolous and devoid of merit.

The SC in *Krish Spinning*, however, highlighted that disputes in relation to "*accord and satisfaction*" involve mixed questions of law and fact, and the exclusive jurisdiction to decide such questions vests with the arbitral tribunal. It further held that questions relating to "*accord and satisfaction*" generally do not relate to existence of the arbitration agreement, which is the limited scope of review by the appointing court, post insertion of Section 11 (6-A) of the Act. The SC also held that the "*eye of the needle*" test as expounded in NTPC v. SPML is not in line with the modern principles of arbitration, which gives primacy to party autonomy and judicial non-interference.

A three-judge bench of the SC in *Krish Spinning* has essentially done away with the "*eye of the needle*" test. Through the SC's decision in *Krish Spinning*, the judicial position stands clarified that the appointing court, while deciding an application under Section 11 of the Act, does not have the power to delve into questions relating to discharge of the contract by "*accord and satisfaction*". Any such question may only be decided by the arbitral tribunal.

This stance of the SC in *Krish Spinning* is clearly pro-arbitration, as it furthers the principles of *kompetenz-kompetenz* and minimal judicial interference.

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[54] *The Arbitration and Conciliation (Amendment) Act, 2016, Act No. 3 of 2016.*
[55] *Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.*
[56] *NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385.*

H

Enforcement of Awards in Foreign Currency – The Supreme Court Rules on the Exchange Rate Controversy

In cross-border transactions, parties are cognizant of the inherent risks posed by frequent exchange rate fluctuations. To mitigate such risks, they usually incorporate contractual mechanisms or one party assumes such risk. However, in the context of litigation, these fluctuations present a heightened challenge, as parties often fail to include provisions that address or minimise the impact of such currency variations.

In a post-COVID world, where there is also periodic regional unrest, foreign currency fluctuations are the norm. The volatility is such that between the time that an award in foreign currency is rendered and the time that it is ultimately enforced/ paid in India, the fluctuation can be so dramatic that it can greatly enrich one party at the unwitting cost of another. In an ideal scenario, the contract between the parties, or the arbitral award itself, should specify the relevant date for conversion, but if it is left ambiguous, disputes commonly arise.

The consequences of such fluctuation have been argued before Indian courts in several cases – particularly in relation to the date on which the conversion from a foreign currency into Indian Rupees (**INR**) is to be calculated. The consensus that appears to have emerged is that the date on which either a challenge to an award (in a domestic arbitration) or objections to enforcement of an award (in a foreign-seated arbitration) are rejected should be the relevant date for conversion of the award amount from foreign currency to INR.

The Supreme Court of India (**SC**) in *DLF Ltd. & Another v. Koncar Generators and Motors Pvt. Ltd.*[57] articulated clear principles for the "correct and appropriate date" to determine the foreign exchange conversion rate for an award expressed in foreign currency. An added consideration is that in relation to domestic awards, a party challenging the award (typically the award debtor) is required to deposit (all or part of) the award amount in Court, as a pre-condition to an order for a stay against enforcement of the award pending the challenge.

[57] *2024 SCC OnLine SC 1907.*

In this case, a foreign award of approximately 1.09 million euros (plus interest and additional costs) was rendered in favour of Koncar Generators and Motors (the Respondent, a Croatian company), against DLF (the award debtor). Koncar approached the learned Civil Judge (Senior Division), Gurgaon, for enforcement and execution of the award, which was then transferred to the Court of learned Additional District Judge, Gurgaon (**Executing Court**). DLF opposed the enforcement and applied for stay on enforcement of the award, which was granted, subject to DLF depositing about INR 80 million with the Executing Court (in two tranches of INR 75 million + INR 5 million). DLF's objections to enforcement of the award were dismissed by the Executing Court, as well as in appeal by the Punjab and Haryana High Court (**HC**) in 2014.

In 2017, in the process of enforcing the award, the Executing Court determined that the relevant date for conversion of the award amount into INR was July 1, 2014, since the award attained finality after dismissal of all objections on that date. In a revision petition against this order, the HC agreed with the Executing Court and held that under Section 49 of the Arbitration and Conciliation Act, 1996 (**Act**), a foreign arbitral award shall be deemed to be a decree only when all objections are satisfied, and the the award becomes enforceable. Therefore, the exchange rate on the date on which all pending proceedings against the award are disposed of, such that the award can be executed, will be applicable when converting the award amount and the interest accrued thereon into INR.

In 2018, DLF filed a Special Leave Petition in the SC, seeking special leave to appeal against the order of the HC. It argued that the award amount ought to be converted as on the date of its deposit, i.e., when it leaves the control of the award debtor, and that this amount ought not to be converted again, at the prevailing exchange rate, when the award attains finality. The SC was tasked with determining (i) the correct and appropriate date for converting the award amount expressed in foreign currency to Indian rupees, and (ii) the date of such conversion when the award debtor had already deposited some amount with the court during the pendency of proceedings opposing the enforcement of the award. While Koncar argued that the relevant date would be the date of deposit, DLF contended that the appropriate date would be when the objections to the award were finally disposed of.

The SC relied on earlier decisions of the Court in Forasol v. Oil and Natural Gas Commission (***ONGC***)[58] (**Forasol**) and *Renusagar Power Co. Ltd. v. General Electric Co. Ltd.*[59] (**Renusagar**).

[58] *1984 Supp SCC 263.*
[59] *1994 Supp (1) SCC 644.*

The SC affirmed the ruling in *Forasol*, in which the SC analysed multiple milestones that may be considered as the correct date to determine the exchange rate and ultimately held that the appropriate date would be when all remedies stood exhausted, all objections to the enforcement of the award were rejected, the award became final and was deemed to be a decree under Section 49 of the Act. This was decided bearing in mind that currency exchange rates fluctuate continuously, and the rate as on the date of the decree would be most appropriate since that is when the amount payable by the award creditor is crystallised.

The SC then drew a parallel with the facts of *Renusagar*, where the award amount (expressed in USD) was deposited by the award debtor with the Court (in INR) during the pendency of the enforcement proceedings and was permitted to be withdrawn by the award holder upon furnishing a bank guarantee as security. However, the award holder in that case contended that it was unable to utilise the withdrawn amount as it did not receive permission from the Reserve Bank of India to convert the amount into USD. In *Renusagar*, the SC stated that the date for conversion of the amounts deposited would be the date of deposit, and as for the date to determine the conversion rate applicable for the remaining portion of the award amount, it would be the date of its judgement, i.e., when the award attained finality (thus affirming *Forasol*).

The Court noted that Koncar had been permitted to withdraw INR 75 million deposited by DLF in 2010, but had not done so, and had also not sought appropriate directions/ relief to receive and utilise the deposited amount. The award debtor (DLF), having parted with the money on the date of deposit for the potential benefit of the award holder (Koncar), the principle in *Renusagar*, would apply and the date of conversion would be the date on which DLF deposited INR 75 million in court. Further, it would only be just and equitable that Koncar's inaction does not affect the conversion date.

As the Court had not granted Koncar leave to withdraw the second deposit of INR 5 million and directed that it was only to be disbursed to the successful party after final adjudication of the matter, Koncar could not have benefited from this deposit at the relevant time. Accordingly, the date for conversion of this amount was held to be the date of completion of the proceedings, i.e., when the award attained finality and became enforceable.

While speedy disposal of objection proceedings against foreign arbitral awards is of foremost importance to minimise the risks associated with currency volatility, the SC took an even-handed approach towards conversion dates such that it does not unduly affect either the award debtor or the award holder. Crystallising the conversion rate at the time of deposit locks in the value at a specific point in time for interim deposits, whereas fixing a conversion rate upon the decree attaining finality keeps the possibility of fluctuations in exchange rates open, depending on the extent of post-award proceedings pursued by the parties and the time taken by courts to adjudicate them.

This judgement provides useful guidance for enforcement of foreign arbitral awards in India that are expressed in a foreign currency and are required to be converted into INR during enforcement. The SC in *Forasol* and *Renusugar* had already commented on the issue of the relevant date for the conversion of a foreign currency-expressed award into INR, and the apex court here further clarified its stance through the nuances of partial payments and the award holder's ability to withdraw funds.

I

International Investment Agreements Signed by India in 2024

Post the publication of the Model India Bilateral Investment Treaty, 2016[60] (**Model BIT**), and the termination of most subsisting Bilateral Investment Treaties (**BITs**) between India and other countries, India has been steadily executing multiple International Investment Agreements (**IIA**) with other states and entities. Some of these agreements are purely investment agreements, whereas the others are comprehensive trade partnerships that have a chapter dedicated to investments and investor protection.

In 2024, India executed IIAs with United Arab Emirates (**India - UAE BIT**)[61], European Free Trade Association (**India - EFTA TEPA**)[62] and Uzbekistan (**India - Uzbekistan BI**). While agreements executed with UAE and Uzbekistan were BITs, the agreement with EFTA was in the form of a Trade and Economic Partnership Agreement. The relevance of these IIAs in the international context is discussed below, along with an analysis of the IIAs in relation to the Model India BIT.

India - UAE BIT

As the BIT was executed post the publication of the Model BIT, the treaty provisions are influenced by the Model BIT. This is apparent from the close-ended enterprise-based definition of "investment", signalling a departure from the erstwhile broad asset-based definition in the Model India BIT, 2003[63]. Further, the definition of investment[64] has incorporated the *Salini*[65] criteria, i.e., commitment of capital, expectation of gain and assumption of risk from the Model BIT. On the other hand, inclusion of foreign portfolio investments is a departure from the explicit exclusion of it in the Model BIT. Claims to money and debt securities, issued by government or government-owned enterprises, have been excluded from the definition of investments.[66]

In line with the past investment disputes to which India was a party[67], a broad exception for taxation matters is included in the treaty, borrowed verbatim from the Model BIT.[68]

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[60] *Model India BIT, 2016*.
[61] *Agreement between the Government of the Republic of India and Government of the United Arab Emirates on the promotion and protection of investments, 2022* (***India – UAE BIT***).
[62] *Trade and Economic Partnership Agreement between the Government of the Republic of India and the Governments of EFTA States, 2024* (***India-EFTA TEPA***).
[63] *Model India BIT, 2003*.
[64] *Article 1.4 of the India-UAE BIT*.
[65] *Salini v. Morocco*, *Decision on Jurisdiction, July 31, 2001, Case No. Arb/00/4.*
[66] *Article 1.4 of the India-UAE BIT*.
[67] *Vodafone v. Government of India*, *Cairn Energy v. Republic of India*.
[68] *Article 2.4 (ii) of India-UAE BIT*.

The BIT does not stipulate fair and equitable treatment (**FET**), instead lists out grounds like denial of justice and fundamental breach of due process, which are generally included in FET.[69] The Full Protection and Security (**FPS**) provision, while similar to Model BIT insofar as it is limited to physical security of investors, differs from the Model BIT in stipulating that the standard is limited to that mandated under customary international law, concerning the minimum standard of treatment of aliens.[70]

The substantive protections majorly track with the provisions set out in the Model BIT. Provisions relating to National Treatment, Transfers and Subrogation are identical to the Model BIT provisions.[71] Even the provision dealing with compensation for losses[72] is identical to the Model BIT, except for the exclusion of natural disasters from its coverage.

The dispute resolution mechanism of the India-UAE BIT is identical to the Model BIT, except for minor changes. Under the India-UAE BIT, a claim may be submitted to arbitration before a lapse of five years from the date on which the investor ought to have acquired knowledge of the measure and its subsequent loss and damage (**Knowledge Date**) or after 12 months from the date of exhaustion of local remedies. The BIT stipulates that local remedies shall be deemed to have been exhausted if no resolution has been reached by pursuing such remedies for a period of three years from the Knowledge Date.[73] The other condition precedents include waiver of the right to initiate or continue proceedings before domestic fora. Lastly, the India-UAE BIT mandates that a written notice of intention to submit a claim to arbitration should be transmitted at least 90 days before submission of the claim to arbitration.[74] Once these conditions are met, a claim for arbitration can be submitted under either the International Centre for Settlement of Investment Disputes (**ICSID**) Convention or Additional Facility Rules of ICSID Convention or United Nations Commission on International Trade Law (**UNCITRAL**) Rules.[75]

Article 28 states that arbitrations submitted under the BIT shall be considered to arise out of a commercial relationship.[76] This clause is a significant addition, considering India's commerciality reservation to the New York Convention and the judicial disagreement on the enforcement of investor-state awards.[77]

In line with the Model BIT, there is no umbrella clause in the treaty and requires contractual claims to be resolved in accordance with the dispute resolution provisions

[69] *Article 4.1 of India-UAE BIT.*
[70] *Article 4.2 of the India-UAE BIT.*
[71] *Articles 5, 7 and 9 respectively of the India-UAE BIT.*
[72] *Article 8 of the India-UAE BIT.*
[73] *Article 17.1 of the India-UAE BIT.*
[74] *Articles 17.4 of the India-UAE BIT.*
[75] *Article 18 of the India-UAE BIT, International Centre for Settlement of Investment Disputes (**ICSID**) Convention, 1965, ICSID Additional Facility Rules, 2022, United Nations Commission on International Trade Law Arbitration Rules, 2021 respectively.*
[76] *Article 28 of the India-UAE BIT.*
[77] *How the new India-UAE BIT benefits enforcement in India - Global Arbitration Review.*

in the relevant contract.[78] Lastly, in case of termination, the India-UAE BIT provides for protection of investments made before the date of its termination for a period of ten years thereafter, by way of a sunset clause.[79]

India-EFTA TEPA

Chapter 7 of the TEPA discusses investment promotion and cooperation.[80] The EFTA states have undertaken to increase Foreign Direct Investment (**FDI**) in India by USD 50 billion within 10 years from the entry into force of the TEPA and an additional USD 50 billion in the succeeding five years.[81] Further, the TEPA is aimed at generating one million jobs in India within 15 years.[82] The TEPA, however, does not contain a mechanism for dispute resolution of investor-state disputes, since it is specifically clarified in the TEPA that no party shall have recourse to the dispute settlement procedure stipulated under Chapter 12 for disputes in connection with Chapter 7 (Investment Promotion and Cooperation).

India-Uzbekistan BIT

The India-Uzbekistan BIT, which was signed as recently as September 27, 2024, has not come into force yet, and the text of this BIT is not yet publicly available. The Indian government's press release states that the substantive protections include right against expropriation and the treaty further provides for transparency, transfers, and compensation for losses.[83] A more detailed analysis of the provisions can only be done once the text of the treaty is made publicly available.

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[78] *Article 14.3 of the India-UAE BIT.*
[79] *Article 39.3 of the India-UAE BIT.*
[80] *Chapter 7 of the India – EFTA TEPA, 2024.*
[81] *Article 7.1 (3)(a) of the India – EFTA TEPA, 2024.*
[82] *Article 7.1 (3)(b) of the India – EFTA TEPA, 2024.*
[83] *India and Republic of Uzbekistan sign Bilateral Investment Treaty in Tashkent, Press Information Bureau.*

Conclusion

Keeping in mind both the influx and outflux of FDI to and from India, the government has been renegotiating BITs whilst bolstering international cooperation and investment promotion. India is in the process of negotiating IIAs with Oman[84], the United Kingdom[85], Russia[86], and multiple other countries. The Prime Minister's office had asked the Ministry of Commerce to look into the Model BIT and suggest modifications.[87] Governments of a few countries had urged India to tweak the Model BIT to include certain carve outs to facilitate swift negotiation.[88] While this review is ostensibly still underway, the recent IIAs show India's flexibility towards making certain accommodations and non-insistence on strict adherence to the Model BIT. This middle path approach is likely to ensure the execution of more IIAs in the coming years, which is likely to further bolster India's reputation as an attractive destination for foreign investment.

[84] *India-Oman free trade pact talks at advanced stage*, Business Standard.
[85] *UK delegation visits India for proposed trade agreement talks*, The Indian Express.
[86] *India, Russia aim for speedy conclusion of bilateral investment treaty*, Hindustan Times.
[87] *PMO asks commerce min to examine model text of bilateral investment treaty*, Business Standard.
[88] *Free trade & investment deals hit model BIT hurdle*, Times of India.

J

Key Reforms in the Indian Legislative Space

Three new statutes, namely the Bharatiya Nyaya Sanhita, 2023 (**BNS**)[89], Bharatiya Nagarik Suraksha Sanhita, 2023 (**BNSS**)[90] and Bharatiya Sakshya Adhiniyam, 2023 (**BSA**)[91] (collectively the **Acts**) came into effect on July 1, 2024. These laws replaced the erstwhile Indian Penal Code, 1860 (**IPC**)[92], Code of Criminal Procedure, 1973 (**CrPC**)[93] and Indian Evidence Act, 1872 (**IEA**)[94], respectively. Several wide-ranging changes have been effected through these new legislations. For the sake of brevity, this article is limited to changes that touch upon or concern companies, commercial law, and key management personnel. For further material on the new Acts, refer to our articles – "CAM Client Alert - The Bharatiya Nyaya Sanhita, 2023", "CAM Client Alert, The Bharatiya Nagarik Suraksha Sanhita, 2023", and "CAM Client Alert, Bharatiya Sakshya Adhniyam, 2023".

The Bharatiya Nyaya Sanhita, 2023

Much like its predecessor (the IPC), the BNS deals with offences and their punishments. Certain new offences have been introduced for the first time in this legislation whereas others have been modified.

The major changes effected through the new legislation are (i) introduction of organised crime as an offence, (ii) changes in the definition of moveable property, (iii) changes in the provisions relating to abetment, (iv) incorporation of electronic communication as a means to commit certain offences, and (v) changes in provisions relating to forgery.

First, the offence of organised crime has been introduced into a central criminal legislation for the first time, which is relevant in cases of financial and white-collar crimes. The BNS has a non-exhaustive definition of the offence as entailing any continuing unlawful activity and includes economic offences within its purview. Economic offences include criminal breach of trust, forgery, counterfeiting of currency notes and any other scheme to defraud several persons or an act to defraud a bank or financial institution or any other organisation for obtaining monetary benefits. Apart

[89] *The Bharatiya Nyaya Sanhita, 2023* ("**BNS**"), Act No. 45 of 2023.
[90] *The Bharatiya Nagarik Suraksha Sanhita, 2023* ("**BNSS**"), Act No. 46 of 2023.
[91] *The Bharatiya Sakshya Adhiniyam, 2023* ("**BSA**"), Act No. 47 of 2023.
[92] *The Indian Penal Code, 1860* ("**IPC**"), Act No. 45 of 1860.
[93] *The Criminal Procedure Code, 1973* ("**CrPC**"), Act No. 2 of 1974.
[94] *The Indian Evidence Act, 1872* ("**IEA**"), Act No. 1 of 1872.

from economic offences, another change effected through the BNS to stay on top of modern developments is the addition of cybercrimes. However, while cybercrimes have been included in the BNS, the legislation curiously fails to define cybercrimes.[95] Chapter IX and Section 43 of the Information Technology Act, 2000 (**IT Act**), deals with certain cybercrimes and it is likely that the meaning of cybercrimes in BNS would be interpreted in light of these provisions.[96]

Second, the scope of moveable property has been expanded compared to the erstwhile definition under the IPC[97], which was limited to corporeal (i.e., tangible) property. The BNS defines moveable property to include property of every description while only excluding land and things attached to the earth.[98] The new definition allows for inclusion of intangibles such as intellectual property, under the ambit of "property", and potentially makes offences against such property punishable under the BNS.

Third, to accommodate technological developments, given the high degree of interconnectedness of the world, the scope of 'abetment' has been expanded to include abetment of an offence from a place outside India. The IPC dealt with abetment in India of offences outside India.[99] The BNS has a similar provision[100], along with a new provision penalising abetment outside India of an offence committed in India.[101] This addition expands the extra-territorial jurisdiction of the BNS and accommodates abetment of offences through the internet. Under this section, intermediaries wholly based outside India may also be held accountable, unless they are exempt from such liability under the IT Act.[102]

Fourth, the statute has recognised "*electronic communicatio*n" as a means for commission of certain offences. The BNS penalises usage of "*electronic communication*" for commission of acts endangering the sovereignty, unity and integrity of India, promotion of enmity between different groups and making imputations or assertions that are prejudicial to national integration.[103] This provision appears to be quite ambiguous as some terms used therein have been left vague, and thus the liability of intermediaries hosting such speech remains unclear. The implications of these provisions may be relevant to even overseas entities as their actions/ inactions may lead to liability, despite not being situated within India.[104]

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[95] *Sections 111 and 112 of the BNS.*
[96] *Section 43 and Chapter IX of the IT Act.*
[97] *Section 22 of the IPC.*
[98] *Section 2(21) of the BNS.*
[99] *Section 108A of the IPC.*
[100] *Section 47 of the BNS.*
[101] *Section 48 of the BNS.*
[102] *Section 79, Information Technology Act, 2000 ("**IT Act**"), Act No. 21 of 2000.*
[103] *Section 152 and 197 of the BNS.*
[104] *Section 337 of the BNS.*

Fifth, the ambit of forgery of a record of a court or of public register has been expanded to include forgery of an identity document issued by the government, including Aadhaar details or similar identity cards.

The Bharatiya Nagarik Suraksha Sanhita, 2023

The BNSS replaced the CrPC as the law governing the procedure for investigation and trial of criminal offences. The BNSS has introduced a host of changes that include inter alia (i) the ability to register First Information Reports (**FIRs**) *via* electronic means; (ii) Empowering Magistrates to attach property identified as 'proceeds of crime'[105], and (iii) providing specific timelines to complete an investigation, file a final report and for trial of the offence.[106] This includes *inter alia*, introducing a time period of a fortnight for a police officer to forward the daily diary report to the Magistrate[107] and casts an obligation on the Police to inform the victim or informant of the progress of the investigation (including via electronic communication) within a period of 90 days.[108] Some of the other key changes in the BNSS are discussed below.

First, the BNSS allows all trials, inquiries, and proceedings, including issuance, service and execution of summons and warrant; examination of complainant and witnesses; recording of evidence in inquiries and trials; and all appellate proceedings or any other proceeding to be conducted electronically.[109] The use of technology for conducting proceedings through audio-video electronic means within the BNSS is an attempt on the part of the legislature to streamline processes and expedite procedures in order to reduce timelines required for the completion of investigation and trial.

Second, the introduction of Zero FIR — wherein even if the offence is committed outside the limits of a particular police station, an FIR may be filed in that police station — is a positive addition. Along with a Zero FIR, the BNSS now also prescribes a provision for lodging an FIR through electronic means (i.e., an "e-FIR").[110] This is a welcome use of technology as it makes the reporting of crimes location-agnostic, leading to time and cost efficiency.

Of course, data security and the possibility of data breaches, are some concerns that will have to be addressed to adopt these changes effectively. Due to an increased use of technology, these concerns were also raised in the 247th Report of the Rajya Sabha's Parliamentary Standing Committee on Home Affairs on the erstwhile Bharatiya Nagarik Suraksha Sanhita Bill, 2023 (**Report**).[111] As recommended in the Report, the adoption

[105] *Section 107 of The Bharatiya Nagarik Suraksha Sanhita, 2023 ("**BNSS**").*
[106] *CAM Client Alert, The Bharatiya Nagarik Suraksha Sanhita, 2023, Part 2.*
[107] *Section 174(1) of the BNSS.*
[108] *Section 193 of the BNSS.*
[109] *Section 530 of the BNSS.*
[110] *Section 173 of the BNSS Primacy to Suraksha: Understanding the BNSS, 2023.*

of electronic means for communication and trials ought to only be implemented after setting up safeguards for secure usage and authentication of electronically available data. However, presently, the BNSS does not seem to account for any such additional safeguards.

Third, through the BNSS, a police officer can now make an application to the Court or Judicial Magistrate with the approval of the Superintendent or Commissioner of Police for attachment of certain properties.[113] Such an attachment is for properties that are derived or obtained, directly or indirectly, by any person as a result of criminal activity, including crime involving currency transfers or the value of any such property[114]. Whereas, under the Prevention of Money-Laundering Act, 2002 (**PMLA**), '*proceeds of crime*'[115] is limited to property derived or obtained, directly, or indirectly by any person as a result of criminal activities relating to a scheduled offence as specified within the PMLA. Thus, under the BNSS, the scope for attachment of property as proceeds of crime is expansive, to include any offences or where property is derived from *any* 'criminal activity'.[116]

The Bharatiya Sakshya Adhiniyam, 2023

The BSA has replaced the IEA as the law governing the recording of evidence in India and incorporates provisions that accommodate peculiarities of the modern world, including

[111] *247th Report, Rajya Sabha's Parliamentary Standing Committee on Home Affairs.*
[112] *CAM Client Alert, The Bharatiya Nagarik Suraksha Sanhita, 2023, Part 2.*
[113] *Section 107 of the BNSS.*
[114] *Section 111 of the BNSS.*
[115] *Section 2(u) of the PMLA.*
[116] *See 'proceeds of crime' under Section 111 (c) of the BNSS which is akin to the definition of the term under the Prevention of Money Laundering Act, 2002.*

digital evidence and electronic modes of communication.[117] There are five specific changes in relation to electronic evidence that are discussed below.

First, the definition of 'document' under the BSA has been expanded to include electronic and digital records.[118] The illustrations in the legislation state that electronic records on computers, laptops or smartphones, websites, messages, or any similar device are included in the definition of documents. Moreover, BSA expands the definition of evidence to include documentary evidence in the form of electronic or digital records produced for inspection of the Court.[119] These additions have been made in furtherance of the existing framework under the IT Act,[120] which already defines an electronic record, and grants it legal recognition.[121]

Second, the scope of primary evidence has been expanded while retaining the previous definition by providing explanations. Explanations 4 to 7 of Section 57 of the BSA state that primary evidence would now also include electronic records created or stored simultaneously, stored in multiple automated storages, stored recording of videos and electronic records produced from proper custody.[122] In contrast with the IEA, the scope of secondary evidence has also been broadened to include (i) oral accounts by a person who has seen the document, (ii) oral/ written admissions, and (iii) evidence of a person who has examined the document and is skilled in examination of such documents.[123]

Third, the BSA states that electronic evidence stored in a computer output is admissible as evidence, in any proceedings, without further proof or production of the originals, as long as the requirements set out under Section 63 of the BSA are met.[124] It is further stated that when the function of creation, storage or processing of information has been performed by means of multiple computers or communication devices through an intermediary, all such computers shall be treated as a single computer.[125] This would make documents produced by intermediaries admissible as long as they are accompanied by a certificate verifying the authenticity of the documents.[126]

Fourth, the BSA has significantly altered the manner in which electronic evidence is to be adduced before and considered by a court. A significant change in the BSA, which would impact the admissibility of electronic evidence in commercial disputes, is the stipulation of a prescribed format for the certificate for verification of electronic records. The IEA was earlier amended to provide for a mode of verification of the authenticity

[117] *CAM Client Alert, Bharatiya Sakshya Adhniyam, 2023, Part-3.*
[118] *Section 2(d) of the BSA.*
[119] *Section 2(e) of the BSA.*
[120] *Section 2(2) of the BSA*
[121] *Sections 2(t) and 4 of the IT Act.*
[122] *Explanations 4 to 7 of Section 57 of the BSA.*
[123] *Section 58 of the BSA.*
[124] *Section 63(1) of the BSA.*
[125] *Section 63(3) of the BSA.*
[126] *Section 63(4) of the BSA.*

of electronic documents.[127] As there was no format stipulated, the requisites of the certificate under the IEA were relatively less demanding as the requirements were to identify the electronic record, describe the manner of production and giving particulars of the device. Unlike the IEA, the BSA[128] has a stipulated format for the certificate mentioned in the Schedule to the BSA[129], which has to be complied with. The BSA has a two-fold requirement for the certificate to be filled by a person in charge of the computer and an expert. This certificate also requires mention of technical details like hash value of the documents and the algorithm through which the value was obtained. These changes may impact the compliance requirements for admissibility of electronic evidence in commercial disputes.

Section 63(4) of the BSA is silent on who is an 'expert'. However, while interpreting the provision, the Madras High Court has held that 'expert' would be the relevant Examiner of Electronic Evidence as per the IT Act.[130] As per the Ministry of Electronics and Information Technology, such experts have only been notified in Delhi, Gujarat, Himachal Pradesh, West Bengal, Kerala, Karnataka, Telangana and Tamil Nadu.[131] Experts are yet to be notified in 21 out of the 28 states, and six out of the seven Union Territories. Most states in the country do not have an Examiner of Electronic Evidence appointed under the IT Act, which makes compliance with these requirements virtually impossible in such states.

Further, Section 63(4) of the BSA stipulates the production of the certificate at each instance when an electronic record is submitted for admission. This requirement may make compliance more onerous, especially in light of the lack of proper mechanism in most states, along with the requirement to produce hash value and other requisite details at each instance.

Fifth, with the growing importance of international instruments, the BSA provides for Courts to take judicial notice of international treaties, agreements and conventions,[132] underscoring the importance of international law in the context of domestic proceedings.

Conclusion

The Acts go a long way in modernising the Indian legal framework, and are aimed at speedy resolution, streamlining procedures, and addressing the needs of the digital era we live in. Nonetheless, it remains to be seen how these monumental changes play out in the real world, especially given the possibility of various issues cropping up in terms of implementation and interpretation of the Acts.

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[127] *Section 65B(4) of the IEA.*
[128] *Section 63(4) of the BSA.*
[129] *Schedule to the BSA.*
[130] *R v. B, 2024 SCC OnLine Mad 60834.*
[131] *Notification of Forensic labs as 'Examiner of Electronic Evidence' under Section 79A of the Information Technology Act 2000 | Ministry of Electronics and Information Technology, Government of India (meity.gov.in).*
[132] *Section 52 of the BSA.*

K

A New Levy of Stamp Duty On Arbitral Awards - The Maharashtra Stamp (Amendment) Bill, 2024

The Governor of Maharashtra promulgated the Maharashtra Stamp (Amendment) Ordinance, 2024[133] (**Ordinance**), with immediate effect on October 14, 2024. The Ordinance sought to "*bring simplicity and uniformity in levy of stamp duty and to increase the Government revenue*." It introduced substantial amendments to the Maharashtra Stamp Act, 1958. Of particular interest is its revisions to the methodology for computing stamp duty on arbitral awards.

Subsequent thereto, on December 15, 2024, the Maharashtra Government repealed the Ordinance and replaced it with Bill No. XXXI OF 2024, the Maharashtra Stamp (Amendment) Bill, 2024[134] (**Bill**), to further amend the Maharashtra Stamp Act, 1958. The Bill was passed by both houses of the Maharashtra Legislature in December 2024.[135] The Bill is yet to receive the Governor's assent after which it will become an Act.

Prior to the proposed amendment, stamp duty on arbitral awards was fixed at a nominal amount of INR 500 (approximately USD 5.77[136]) for arbitral awards (not being an award directing partition), irrespective of the monetary value of the award. The proposed amendment seeks to introduce an ad valorem basis for computing stamp duty, determined basis the monetary value of the award.

Accordingly, the revised stamp duty rates, as proposed in the Bill, are as under:

a. for awards relating to movable property:
   - 0.75% of the award amount, when the award does not exceed INR 5 Million (equivalent to approximately USD 58,186);
   - INR 37,500 (approximately USD 436) + 0.5% of the total award amount, when the award exceeds INR 5 Million, but does not exceed INR 50 Million (equivalent to approximately USD 581,860); and

[133] *Maharashtra Stamp (Amendment) Ordinance, 2024, Government of Maharashtra (October 14, 2024), http://mls.org.in/ordinance/2024/Ordinance%20%2012%20English.pdf.*
[134] *Maharashtra Stamp (Amendment) Act, 2024 Bill, Government of Maharashtra (December 15, 2024), HB 2400 (L. A. BILL XXXI) (Eng).pmd.*
[135] *Times of India, Council okays Maharashtra Stamp (Amendment) bill; stamp paper to be now Rs500 minimum | Nagpur News - Times of India (December 21, 2024).*
[136] *The USD rate is calculated as on January 31, 2025, at a conversion rate of INR 1 = USD 86.63.*

- INR 2,62,500 (approximately USD 3,000) + 0.25% of the total award amount, when the award exceeds INR 50 Million (equivalent to approximately USD 581,860).

b. for awards related to immovable property:

- rates applicable to a conveyance under Article 25(b) of the Maharashtra Stamp Act, which varies between 4% and 5% of the market value of the property, depending on its location.

Although this change is aimed at generating more state revenue, the increased rate of duty may dissuade parties from designating Mumbai as the seat of arbitration, choosing to opt for jurisdictions with lower stamp duty instead. By contrast, other states such as Delhi, Tamil Nadu, and Gujarat continue to levy nominal rates of stamp duty on arbitral awards, irrespective of their monetary value. For example, in Delhi, the stamp duty is approximately 0.1% of the property's value to which the award relates, while in states like Tamil Nadu, West Bengal, Andhra Pradesh, Telangana, and Gujarat, it remains capped at modest fixed amounts ranging from INR 100 (equivalent to USD 1.2) to INR 300 (equivalent to USD 3.5), regardless of the award's size. Further, the changes ought not to cover awards for damages or other actionable claims if unrelated to moveable or immovable property.[137]

[137] *Shaneen Parikh and Sanskriti Sidhana, Maharashtra Government Increases Stamp Duty payable on Arbitral Awards, October 25, 2024 - Maharashtra government increases stamp duty payable on Arbitral Awards.*

L

SIAC Rules 2025 come into force

The Singapore International Arbitration Centre (**SIAC**) arbitration rules (**2025 Rules**)[138] came into force on January 1, 2025. It applies to any arbitration commenced on or after January 1, 2025, unless otherwise agreed upon by the parties.

Some revisions provide more clarity or account for global best practices that have developed in arbitration proceedings. Some revisions are new, and targeted towards increased party autonomy, powers of the arbitral tribunal, and efficiency, coupled with expediency, in the arbitral process.

Some key features of the 2025 Rules are set out below:

Emergency Arbitration and Urgent Interim Relief

SIAC introduced provisions for emergency arbitration in 2010.1[139] The 2025 Rules improve on the existing scope of relief and powers of the emergency arbitrator, compared to the provisions of the 2016 edition of the Rules (**2016 Rules**). Firstly, under the 2016 Rules, parties were required to file their notice of arbitration, along with any application for emergency relief. Under the 2025 Rules, the notice is not a pre-condition and a party may apply for emergency relief even before filing the notice of arbitration, provided the notice of arbitration is filed within seven days thereof. This simple addition means that in urgent circumstances, a party will be able to move quickly to obtain interim relief, saving the time that would have otherwise been taken to prepare and issue the notice of arbitration. Since, particularly in India parties approach a court for urgent relief prior to the constitution of the Tribunal, they would benefit from this provision as it exempts (for a period of seven days), the filing of the notice of arbitration, which would have to set out several more details of the case and claim.

The 2025 Rules also empower an emergency arbitrator (**EA**) to grant urgent relief on an ex parte basis (something that is not ordinarily permitted from a private arbitral tribunal) for a short period of time. A party may submit (without notice to the counterparty) an application for a protective preliminary order (**PPO**), along with the emergency relief application, seeking a direction against the counterparty to refrain from frustrating the purpose of the emergency relief requested. Once the President

[138] *SIAC-Rules-2025-English-1-Jan-2025.pdf.*
[139] *Emergency Arbitration - Singapore International Arbitration Centre.*

determines that SIAC shall accept such a PPO application, the EA is required to adjudicate it within 24 hours of appointment. The applicant must then ensure the delivery of the EA's order and a copy of all the case papers to the counterparty within 12 hours thereof. The EA is then required to provide an opportunity to the counterparty to present its case at the earliest and decide promptly on any objection to the PPO. Therefore, the ex parte order is for a limited time and may be granted in appropriate cases, while maintaining the standards of fairness, equal treatment of parties, natural justice, etc. PPOs under the 2025 Rules are similar to ex parte ad interim orders that courts in India pass in certain circumstances. However, the Indian Arbitration and Conciliation Act, 1996 (**Arbitration Act**), mandatorily requires arbitral tribunals to give equal treatment to parties and afford them a full opportunity to present their case, as well as sufficient notice of hearings.

Increased Expediency of Arbitration Proceedings

The 2025 Rules build on the 2016 provisions for "Expedited Procedure". For instance, the upper threshold of disputes for which parties may adopt the Expedited Procedure has been raised to SGD 10 million (~INR 625 million) in the 2025 Rules from SGD 6 million (~INR 375 million) under the 2016 Rules. Additionally, if the "circumstances so warrant", disputes exceeding the prescribed value may also be subject to these provisions, thus broadening its purview beyond the test of "exceptional urgency", which existed in the 2016 Rules.

In an arbitration conducted under the Expedited Procedure provisions, the 2025 Rules allow the arbitrator to disallow document production requests entirely, restrict the

length and scope of written submissions and written witness evidence, and also conduct proceedings virtually, unless determined otherwise.

The newly introduced "Streamlined Procedure" enables the award to be ordinarily issued within 3 (three) months. It applies by default to disputes valued at under SGD 1 million (~ INR 62.5 million), but SIAC may, on a party's request, decide against its application. One key incentive for parties to opt for the Streamlined Procedure is the capping of fees at 50% of the usual fees payable to SIAC and the arbitrator (unless determined otherwise by the Registrar of SIAC).

Under the provisions for Streamlined Procedure, the arbitrator can dispense with written witness evidence and hearings altogether.

Where an arbitration is being administered under the Expedited Procedure or Streamlined Procedure, the 2025 Rules stipulate that the disputes will be referred to a sole arbitrator (even if the arbitration agreement provides for a three-member tribunal), to enable adherence to the compressed timelines. For the same reason, awards made pursuant to the Expedited Procedure and the Streamlined Procedure shall specify reasons only in summary form.

Co-ordinated proceedings in lieu of consolidation

The 2025 Rules introduce the new Rule 17, which permits parties to apply for coordination of multiple proceedings, where the same tribunal has been constituted in the arbitrations and a common question of law or fact arises.

Through such a mechanism, a party may apply for the arbitrations to "be coordinated", while remaining separate proceedings, i.e., they are not consolidated, but provide a means for parties to streamline multiple arbitrations. For this, the tribunal has the power to direct that the arbitrations be conducted concurrently or sequentially, heard together, or that any of the arbitrations be suspended, pending a determination in any of the other arbitrations.

Provisions in respect of third-party funding arrangements

Through Rule 38, the 2025 Rules also require parties to disclose the existence of any third-party funding agreement and the identity and contact details of the third-party funder[140] in its Notice or Response, or as soon as practicable upon concluding a third-party funding agreement.

[140] *Defined in Rule 2.1 of the 2025 Rules as "any person, either legal or natural, who is not a party to the arbitration proceedings but who has a Direct Economic Interest in the outcome of the arbitration proceedings".*

Under the 2025 Rules, the tribunal is empowered to order such disclosure and may also consider any third-party funding agreement in apportioning costs.

Rule 38 also stipulates that after the constitution of the tribunal, a party shall not enter into a third-party funding arrangement, which may give rise to a conflict of interest with any member of the tribunal, failing which the tribunal is empowered to direct the party to withdraw from such an arrangement.

Conclusion

The 2025 Rules therefore, are a welcome change as they aim to enable procedural efficiency without compromising on fairness and transparency. The amended Rules codify and build on best practices already being followed by SIAC, as well as the inherent powers already available to arbitral tribunals under the 2016 Rules.

For further material on the 2025 Rules, refer to our article – "Some Key Features of the SIAC rules 2025 and their implications for India-related Arbitrations"

Conclusion

The initiatives discussed in this handbook, when viewed against the backdrop of India's ambition of becoming a global arbitration hub and an attractive destination for foreign investment, signify meaningful progress. These efforts not only enhance India's standing in the international arbitration community, but also reinforce its commitment to fostering an investor-friendly environment.

The year 2024 was transformative for the Indian arbitration landscape, and showcased the Indian Government's keen focus on enforcement of arbitral awards and positioning India as a cost-effective, pro-arbitration jurisdiction. The updates discussed in this handbook invite deeper reflection. These developments represent a significant stride toward aligning India's dispute resolution framework with global best practices.

As India continues on this path, these developments are worth monitoring closely, as they hold the potential to shape the future of dispute resolution in the country.

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