

MONTHLY LITIGATION NEWSLETTER

AUGUST 2024

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates on latest verdicts from the Supreme Court of India and various High Courts.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering Consultation, litigation, and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

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PART A: COURT RULINGS

1. [M/S Akshaya Private Limited Vs M/S SP Sai Technologies, Commercial Appeal No. 189 of 2024](#)

Issue: - Can enforcement of a settled dispute be done through arbitration?

Before the trial court, the Plaintiff (S P Sai Technologies) filed a suit for recovery against which the Defendant (Akshaya Private Limited) filed an application u/S 8 of the Arbitration Act challenging the jurisdiction on the ground that the matter must be referred to arbitration. The plaintiff objected to this application stating that the dispute was settled between the parties and the only issue remaining was enforcement of the settlement so no arbitrable dispute remains in the matter. The trial court dismissed defendant's application and agreed with the plaintiff that the enforcement of a settled dispute need not be through arbitration. Defendant filed an appeal titled M/S Akshaya Private Limited and M/S S P Sai Technologies before the High Court of Karnataka.

Hon'ble Ms. Justice Anu Sivaraman and Hon'ble Mr. Justice Anant Ramanath Hegde, heard the appeal and ruled that there was no evidence that the original arbitration agreement was canceled in settlement. The Hon'ble Court held that as long as a valid arbitration clause exists in a contract, disputes, including the enforcement of any claimed settlements arising from that contract, must be resolved through arbitration, unless there is clear evidence that the arbitration agreement has been canceled. The appeal was allowed.

Lexport Comment: - *The case underscores the binding nature of arbitration clauses, affirming that disputes, including those related to settlement enforcement, must be referred to arbitration unless there is explicit evidence that the arbitration agreement has been revoked.*

2. **EBIX Cash Pvt. Ltd vs State of Maharashtra and Ors., Writ Petition No.6707 of 2024**

Issue: - Whether the arbitration clause remains valid and enforceable even when the main contract is void?

This issue came before the Bombay High Court in the case of **EBIX Cash Pvt. Ltd vs State of Maharashtra and Ors.** In this case, ASCDCL's (Aurangabad Smart City Development Corporation Ltd) terminated the contract with EBIX for breaches related to technical issues with the EBIX (a virtual account that enables users to make transactions at merchants accepting EbixCash payments) system. The termination was done under clause 15.4.1(Termination for Service Provider Event of Default) of the RFP (Request for Proposal). The RFP had an arbitration clause for dispute resolution under clause 16.2. The High Court was of the view that the arbitration clause remains valid even if the main contract is void and thus held that the dispute between ASCDCL and the Petitioner Company is arbitrable under the RFP. The High Court found no grounds to entertain the Petitioner Company's writ petition, which was dismissed.

***Lexport Comment:** - The High Court's decision underscores the principle that an arbitration clause can remain effective even if the main contract is void, thereby validating the arbitrability of disputes related to the contract's termination.*

3. **Sri Parvez Adi Debara vs M/s. Innovation Builders, Civil Miscellaneous Appeal No. 289 of 2023**

Issue: - Whether arbitration is maintainable by legal heirs after death of the party to the arbitration agreement?

The Telangana High Court set aside the order of the lower court, which had rejected an application under Section 8 of the Arbitration and Conciliation Act, 1996. The appellant, Sri Parvez Adi Debara, claimed ownership of Flat No. 305 in Innovation Residency as the legal heir of his late uncle, Rashid H. Debara, and sought to invoke the arbitration clause contained in a 1988 agreement of sale. The respondent, M/s. Innovation Builders, contended that the appellant was in illegal possession of the flat. The lower court had denied the application on the basis that the appellant was not a party to the agreement. However, the High Court, relying on Section 40 of the Arbitration Act, held that arbitration agreements are not discharged by the death of a party and can be enforced by legal representatives. Accordingly, the Court allowed the appeal and directed that the dispute be referred to arbitration in accordance with the terms of the agreement.

***Lexport Comment:** - The Telangana High Court's decision reinforces the principle that arbitration agreements remain enforceable by legal heirs, ensuring continuity of dispute resolution mechanisms despite the death of a party.*

4. **Hindustan Alloys Pvt. Ltd. Vs. Maa Sheetla Ventures Limited, W.P.(C) 10561/2024, CM APPL. 43391-43392/2024**

Issue: - Whether parties can invoke relief under writ petition under section 226, 227 against any order of arbitration tribunal?

The Hon'ble Delhi High Court noted that while writ petitions under Articles 226 and 227 can be filed against orders from quasi-judicial bodies like Arbitral Tribunals, judicial review is limited and should be cautious, reserved for exceptional cases. Article 226 is not a remedy for every grievance and should be

used sparingly, particularly when an effective statutory remedy is available, to avoid undermining the arbitration process. The High Court found that Respondent did not demonstrate exceptional circumstances or bad faith justifying Article 227's invocation. Consequently, it was premature to intervene in the arbitral process.

***Lexport Comment:** - The Delhi High Court underscored that judicial review under Articles 226 and 227 should be applied with discretion and only in exceptional circumstances, to prevent undue interference with the arbitral process.*

5. M/s BPL Limited vs M/s Morgan Securities & Credits Pvt. Ltd., FAO(OS)(COMM) No. 46/2019, CM APPL. 9205/2019, CM APPL. 38801/2022

Issue: - What is the scope of the Court's review under Section 37 of the Arbitration Act, and on what grounds can an award be challenged under Section 34?

The Division Bench of the Hon'ble Delhi High Court reiterated that, while hearing an arbitration appeal under Section 37 of the Arbitration Act, the court's role is limited to determining whether the exercise of power under Section 34 exceeded its scope. The High Court emphasized that courts cannot conduct an independent assessment of the award's merits in such cases. The bench further clarified that under Section 34, an award may be against the public policy of India if it patently violates a statutory provision, fails to adopt a judicial approach, violates principles of natural justice, is unreasonable or perverse, or is contrary to the interests of India, justice, or morality.

***Lexport Comment:** - The judicial order highlights the Delhi High Court's restricted jurisdiction in arbitration appeals under Section 37, concentrating only on procedural and jurisdictional matters rather than the merits of the award. Additionally, it specifies the grounds on which an award may be declared against public policy under Section 34.*

6. M/S Plus91 Security Solutions Vs. NEC Corporation India Private Limited (Erstwhile NEC Technologies Private Limited), FAO (OS)(COMM) 36/2024

Issue: - What was the basis for the Hon'ble Delhi High Court's decision to uphold the Single Judge's ruling to set aside the arbitral award, and how did the Court interpret the MOU's terms regarding liability limitations and obligations?

The Division Bench of the Delhi High Court held that Clause 10's liability limitation must be interpreted within the MOU's context, which did not favor either party for specific projects. The Single Judge found that the MOU only recorded an intent to enter future project-specific agreements. The High Court agreed, noting the Arbitral Tribunal misread the MOU as obliging NEC to issue purchase orders, and held the award for loss of profit was patently illegal. It emphasized honoring the original bargain excluding indirect losses and reiterated that tribunals must respect contractual terms, including those barring specific damages or interest. Thus, the High Court upheld the Single Judge's decision to set aside the award for patent illegality.

***Lexport Comment:** - The Delhi High Court's ruling highlights the necessity of interpreting liability limitations within the contractual context and reaffirms that arbitral awards must adhere strictly to the agreement's terms, rejecting any obligations or damages that deviate from those terms.*

7. Onyeka Samuel Vs State of Himachal Pradesh [Slp(CrI) No. 010931 / 2024]

Issue: - Whether the High Court was correct in denying bail solely on the ground that the accused is a foreign national, despite the charge sheet being filed, the contraband being below commercial quantity, and co-accused having been granted bail?

The Supreme Court expressed reservations about the Himachal Pradesh High Court's view that bail can be denied solely because the accused is a foreign national. However, the Court dismissed the special leave petition but allowed the petitioner to file for bail again if the trial is delayed or circumstances change. The foreign national argued that the charge sheet had been filed, the contraband was below commercial quantity, and co-accused had been granted bail. The High Court, however, distinguished the petitioner's case due to the charge under Section 14 of the Foreigner's Act, noting that the law applies only to non-citizens and inherently involves different considerations for bail.

***Lexport Comment:** - The denial of bail solely based on foreign nationality raises concerns about equal treatment under the law, despite the specific considerations under Section 14 of the Foreigner's Act.*

END OF THE NEWSLETTER
