DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

INDIA

CHAPTER PREPARED BY

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OF TRILEGAL

TRILEGAL

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

In India, arbitration is governed by the Arbitration and Conciliation Act, 1996[1] ("**the Act**") and is a fairly common mechanism for the resolution of disputes**.** Over time, legislation and case law[2] have evolved in a manner that favours a pro-arbitration approach and emphasizes party autonomy, within an ecosystem that supports both *ad hoc* and institutional arbitration. Several arbitral institutions have now emerged in India and can be used to resolve both domestic and foreign-seated arbitrations.

Key places of arbitration in the jurisdiction?	New Delhi, Mumbai, Bangalore, Hyderabad and Kolkata.
Civil law/common law environment? (if mixed or other, specify)	Common Law.
Confidentiality of arbitrations?	Section 42A of the Act mandates the arbitrator, the arbitral institution (if any) and the parties to maintain the confidentiality of all arbitral proceedings, except for the award in instances where its disclosure is necessary for the purpose of implementation and enforcement of the award.
Requirement to retain (local) counsel?	In international commercial arbitrations that are conducted in India, registered foreign lawyers can appear and provide legal expertise/advice in respect of foreign law for any entity that is multinational in nature i.e., has an address or principal office or head office in a foreign country.[3] Such registered foreign lawyers would not be able to advise Indian clients in India-seated arbitrations, and if Indian clients want to avail of the expertise of foreign lawyers, these lawyers will have to render this advice from their foreign offices on a fly-in and fly-out basis. Indian lawyers (who are not working for a Registered Foreign Law Firm) can appear before any court or arbitral tribunal in India. There is an express bar on foreign lawyers or law firms appearing before courts, tribunals or other statutory or regulatory authorities in India. So, for arbitration-related proceedings in a domestic court, only Indian lawyers would be permitted to appear.
Ability to present party employee witness testimony?	Yes.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Yes.

1 Available at: https://indiacode.nic.in/bitstream/123456789/1978/1/199626.pdf.

2 *PASL Wind Solutions Private Ltd v. GE Power Conversion India Private Litd,* 2021 SCC OnLine SC 331*; State Trading Corporation of India v. Jindal Steel and Power Ltd and Ors*. (Civil Appeal No 2747 of 2020)*; Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO),* (2012) 9 SCC 552.

3 Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022, available at: https://egazette.nic.in/WriteReadData/2023/244365.pdf.

Availability of interest as a remedy?	Under Section 31(7) of the Act, an arbitral tribunal may grant both pre-award interest and/or post-award interest. Indian courts have recognised the unfettered discretion enjoyed by arbitral tribunals in granting both of these types of interest.[4] The discretion for pre-award interest is only subject to any agreement that may be entered into between the parties. As for post-award interest, if the award is silent about this, the Act provides that the award-holder will be entitled to post-award interest at the rate of 2% above the current rate of interest prevalent on the date of the award.[5]
Ability to claim for reasonable costs incurred for the arbitration?	Yes, Part VIII of the Act details the bases for claiming costs incurred for the arbitration, as strengthened by Section 31A of the Arbitration and Conciliation (Amendment) Act, 2015 ("**2015 Amendment**"). The arbitral tribunal has discretion to award costs in relation to any arbitration proceeding under the Act, including as to: (a) Whether costs are payable by one party to another; (b) The amount of such costs; and (c) When such costs are to be paid Section 31A also specifies the general "loser-pays" rule by providing that the unsuccessful party can be ordered to pay the costs of the successful party. However, if the arbitral tribunal differs from this view, they may make a different order recording the reasons for the same in writing. Section 31A also provides pointers that an arbitral tribunal may consider when determining the costs i.e., (a) Conduct of all the parties; (b) Whether a party has succeeded partly in the case; (c) Whether a party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings; and (d) Whether any reasonable offer to settle the dispute was made by a party and refused by the other party. Section 31A further provides different types of costs that may be awarded, by passing an order stating that a party shall pay: (a) A proportion of another party's costs; (b) A stated amount in respect of another party's costs; (c) Costs from or until a certain date only; (d) Costs incurred before proceedings have begun; (e) Costs relating to particular steps in the proceedings; (f) Costs relating to only a distinct part of the proceedings; and (g) Interest on costs from or until a certain date. Finally, Section 31A clarifies that if the parties enter into any agreement that has the effect of requiring a party to pay the whole or part of the costs of arbitration, such agreement shall only be valid if it has been made *after* the dispute has arisen.

4 *Morgan Securities and Credits Pvt. Ltd v. Videocon Industries Ltd*, Civil Appeal No. 5437 of 2022.

5 Section 31(7)(b) of the Arbitration and Conciliation Act, 1996.

Restrictions regarding contingency fee arrangements and/or third-party funding?	The Bar Council of India does not permit advocates to charge their clients fees that are either subject to the outcome of a litigation or are a percentage or share of the awarded claims by the court. There is no separate law governing third-party funding in India but in general there is no embargo against it.
Party to the New York Convention?	Yes (signed on June 10, 1958, and ratified on July 13, 1960). Part II of the Act deals with foreign awards and Chapter 1 deals with New York Convention ("**NY Convention**") awards. There are two avenues available for enforcement of foreign awards in India, i.e., (1) the NY Convention and (2) the Geneva Convention. Under Section 44(b) of the Act, the Central Government has notified a list of reciprocal territories and declared them to be territories to which the NY Convention applies. Awards from such territories will be considered as "foreign awards" under Part II of the Act (provided other conditions under Section 44 are fulfilled).
Party to the ICSID Convention?	No.
Default time-limitation period for civil actions (including contractual)?	As per the Limitation Act, 1963, usually 3 years from the date when the cause of action arose, e.g., date of breach of contract or of tort.
Other key points to note?	Section 12 of the Act provides for disclosures to be made by an arbitrator when a person is approached to be appointed as an arbitrator. Based on these disclosures, if an arbitrator's relationship with parties, counsel or subject matter falls within certain categories as specified in Schedule V or Schedule VII of the Act, it would give rise to immediate disqualification or be a ground for challenge to the appointment of the arbitrator. Under Section 29A of the Act, an award is to be made by the arbitral tribunal within 12 months of the completion of pleadings (which are to be completed within 6 months) by parties, and parties may only extend this term for a further period not exceeding a period by 6 months. For recognition of a foreign award, the award must be "commercial" in nature and must have been made pursuant to an agreement to which the NY Convention applies. It must also have been made in a country which has also been declared to be a reciprocating territory by the Indian Government (see above).
World Bank, Enforcing Contracts: *Doing Business* score for 2020?	71 is the score for 2020, which is the last available score.
World Justice Project, Rule of Law Index: Civil Justice score for 2023?	0.49 is the score for 2023, which is the last available score.

ARBITRATION PRACTITIONER SUMMARY

The Act is closely modelled on the 1985 UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law ("**UNCITRAL Model Law**"). The Act has sought to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the UNCITRAL Model Law and Rules.

Part I of the Act governs arbitral proceedings seated in India, whereas Part II of the Act governs the recognition and enforcement of foreign-seated arbitral awards. As per Section 2(1)(f) an arbitration is an "international commercial arbitration" where:

1. the arbitration relates to a dispute arising out of legal relationships, whether contractual or not;
2. such dispute is "commercial" under Indian law[6]; and
3. at least one of the parties to the arbitration is: (i) an individual who is a national of, or habitually resident in a country other than India; or is (ii) a body corporate incorporated under the laws of any country other than India; or (iii) an association or body of individuals whose central management and control is exercised in any country other than India; or (iv) the Government of a foreign country.

India has made certain reservations regarding the applicability of the NY Convention. Under Section 44 of the Act, four ingredients are necessary for a foreign award to be enforced in India under the NY Convention:

1. the dispute must be a "commercial dispute" under the law in force in India;
2. it must be made in pursuance of an agreement in writing for arbitration;
3. it must be a dispute arising between "persons" (without regard to their nationality, residence or domicile); and
4. the arbitration must be conducted in a country which is a signatory to the NY Convention, and a territory where reciprocal provisions have been made such that the Indian Central Government has notified the territory in the Official Gazette.[7]

Date of arbitration law?	26 August 1996 (last amended on March 11, 2021, and deemed to have come into force on November 4, 2020).
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The Act (as most recently amended) is broadly based on the UNCITRAL Model Law 1985 and UNCITRAL Conciliation Rules, 1980. The key differences with the Model Law are as follows: a. Grounds for challenge to arbitrators have been detailed out and specified as per prevalent international standards to uphold independence and impartiality of arbitrators. b. A statutory framework has been provided for time bound completion of arbitration proceedings. c. Interim orders that can be passed by the courts or arbitral tribunals, as the case may be, relating to arbitral proceedings have been detailed out to enable protection of the value of the subject matter of dispute during the pendency of the arbitration proceedings.

6 "Commercial" is defined in Section 2(c) of the Commercial Courts Act, 2015 as disputes arising out of commercial transactions, such as ordinary transactions of merchants, bankers, financiers, etc. such as those relating to mercantile documents, joint venture agreements, shareholders agreements, agreements for sale of goods or provision of services.

7 *PASL Wind Solutions Private Ltd v. GE Power Conversion India Private Ltd*, (2021) 4 MLJ 59 (SC): LNIND 2021 SC 144.

	d. The grounds for challenge to arbitral awards have been clarified to convey that the scope of challenge is intended to be limited. This would enable finality to arbitral awards. The provision for *automatic* stay on the enforcement of arbitral awards upon filing of an application for setting aside an arbitral award, has been done away with and a provision has been included in the Act which states that a stay on the enforcement of an arbitral award may be granted upon imposition of conditions including deposit in case of monetary awards.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Under the Act, certain applications that can be filed such as for the appointment of arbitrators, jurisdictional challenges, annulment, recognition and enforcement of the award, have to be filed before the ordinary civil courts in India. Within these courts, matters that classify as "commercial" under the Commercial Courts Act, 2015 are assigned to specialised commercial benches, to ensure that they are handled by judges with relevant experience. The leading seats of arbitration, such as New Delhi, Mumbai, Bangalore, Hyderabad and Kolkata, have many experienced judges.
Availability of *ex parte* pre-arbitration interim measures?	Generally, *ex parte* interim injunctions are rare and are granted only in urgent and exceptional circumstances. Such an injunction may be granted only until the next date of hearing of the application with both sides in attendance, and not as an interim injunction until the completion of the matter.[8] In case of any court order for interim protection, arbitral proceedings must commence within a period of 90 days of such order (see Section 9 of the Act).
Courts' attitude towards the competence-competence principle?	Courts in India have generally tended to not interfere with the jurisdiction of the arbitral tribunal particularly in the recent past. The competence-competence principle is recognised statutorily in Section 16 of the Act which empowers the arbitral tribunal to rule on its own jurisdiction. This power of the arbitral tribunal includes the power to rule on any objections with respect to the existence and validity of the arbitration agreement.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	The issue of whether an arbitral tribunal may render a ruling on jurisdiction with reasons to follow in a *subsequent* award, has not been settled conclusively in Indian law so far. However, since a ruling of an arbitral tribunal *declining* jurisdiction is appealable under Section 37 of the Act, it would be prudent for the arbitral tribunal to provide reasons at the time of rendering the ruling since an order without reasoning may be set aside because it is unreasoned. Conversely, the arbitral tribunal may render a decision accepting jurisdiction with reasons deferred to a later stage since such a decision cannot be appealed under Section 37 and can only be challenged with the rest of the award under Section 34 of the Act.
Grounds for annulment of awards additional to those based on the	Yes, one such ground is provided in Section 34(2A) of the Act: for arbitral awards arising out of arbitrations other than international

[8] Order XXXIX, Code of Civil Procedure, 1908 (CPC).

criteria for the recognition and enforcement of awards under the New York Convention?	commercial arbitrations, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award, it may set aside the award.
Do annulment proceedings typically suspend enforcement proceedings?	There is no automatic stay on the execution of an award when a party files an application to challenge it. A party that files for annulment of an award must make a separate application for stay of the enforcement of the award. By an amendment in 2021, a new provision was introduced by which if a court finds *prima facie* that the arbitral agreement or the underlying contract or the making of the award was induced by fraud or corruption, the court has to automatically stay the award unconditionally.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	One of the grounds for refusing enforcement of a foreign award under Section 48 of the Act is if the award has been set aside or suspended by a court in the jurisdiction where the award was made. In the landmark judgment of *Vijay Karia v. Prysmian Cavi,* the Supreme Court held that certain grounds under Section 48 of the Act are "mandatory grounds", such as the ground pertaining to the invalidity of the arbitration agreement or grounds affecting the jurisdiction of the arbitration proceedings, while other grounds such as those linked to party interest alone, such as the inability of a party to present its case, have been classified as "discretionary".[9] Therefore, it is likely that if a foreign award has been set aside in the jurisdiction where the award was made, Indian courts would refuse enforcement as such a ground would be considered "mandatory" and not "discretionary".
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	No, it would not, subject to complying with the due process requirements as stated in the Act. Under Section 19 of the Act, parties are free to agree on a procedure to conduct the proceedings. When there is no agreed procedure, the tribunal may conduct the proceedings in the manner it considers appropriate.

9 *Vijay Karia and Ors., v. Prysmian Cavi E. Sistemi SRL & Ors.,* 2020 SCC OnLine SC 177.

Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	The Indian Government has recently released a draft scheme for the quick settlement of disputes in cases where a public or government body is a litigant. Under this scheme, where an arbitral award involving contractual disputes with the government or government undertakings is under challenge in a court, a voluntary settlement scheme with standardised terms will be introduced: . This will be done by offering graded settlement terms depending on the pendency level of the dispute. From the perspective of enforcement, under this draft scheme, where a court order or award is passed, the government will voluntarily pay 80% of the amount awarded by the court. In the case of an arbitral award and where the case may or may not be under appeal, the government will pay 60% of the amount awarded by the arbitral tribunal.
Is the validity of blockchain-based evidence recognised?	Under the Act, there is no express recognition of blockchain technology. In India, the Information Technology Act, 2000 ("**IT Act**") gives legal recognition to electronic communication and transactions carried out by electronic data interchange. However, the IT Act too does not recognise blockchain technology. That said, there is no embargo on the use of blockchain technology and owing to the principle of party autonomy, by mutual agreement parties may use blockchain-based evidence provided it does not go against any general law on contracts or evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	The recognition of an agreement or award recorded on blockchain may be better understood by a reference to recognition of electronic agreements under the general law of contracts and evidence. Under the law of evidence, all documents including electronic records are treated as documentary evidence. The IT Act defines electronic records to mean data, which can be an image or sound, which is stored, received or sent in an electronic form. As the Act does not expressly recognise blockchain technology, an arbitration agreement recorded on a blockchain can only arguably fall within the definition of an arbitration agreement under Section 7 of the Act (which defines an arbitration agreement) if it meets the criteria of the general law on electronic record and contracts. However, when a party makes an application to a court under Section 8 of the Act seeking reference of the dispute to arbitration, such an application must be accompanied by an original agreement or a certified copy. Whether an arbitration agreement recorded on a blockchain is considered an original for the purpose of Section 8 of the Act (by which a party may approach a court to refer the parties to arbitration) has not yet been tested before Indian courts.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	As above.

Other key points to note?	• An application made by a party to the court or to any person designated by the court, for the appointment of an arbitrator will have to be disposed of expeditiously, within 60 days from the date of the service of notice of such proceedings on the other party.[10] • The time limit for the completion of arbitration proceedings as provided under the Act, is 12 months from the date of the completion of the pleadings. This time limit can be extended by another 6 months by the consent of parties and for a further period of 6 months by the court if the parties show sufficient cause. However, international commercial arbitrations are exempted from this 12-month time limit. • A party may only file an application to challenge the arbitral award after issuing prior notice to the other party. An affidavit to that effect must accompany the challenge application.[11]

10 Section 11(13) of the Act.

11 Section 34(5) of the Act.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

The current Act seeks to consolidate and amend the law governing domestic arbitration, international commercial arbitration, the enforcement of foreign arbitral awards, and the definition of the law governing conciliation, while taking into account the UNCITRAL Model Law 1985 and UNCITRAL Conciliation Rules, 1980.[12] When the Indian legislature enacted the 1996 Act, it adopted the text of the Model Law with some additions and omissions. In the seminal case of *Bharat Aluminium Co. v. Kaiser Aluminium*,[13] it was argued that the changes made in the Act that deviated from the Model Law acted to distance the Act from some of the Model Law's underlying principles (such as the principle of territoriality). However, the Supreme Court disagreed, finding that the Act adopts the UNCITRAL Model Law in spirit and with its underlying principles, and despite some deviations, the broad perspective of the UNCITRAL Model Law has been maintained by the Act's provisions and judicial pronouncements.

1.1.1 If yes, what key modifications if any have been made to it?

Despite the Act being in line with the UNCITRAL Model Law, there is extensive court interference in India in arbitration proceedings, especially at the interim relief stage, owing to the reliance on domestic procedural laws such as the Civil Procedural Code, 1908 and the Specific Relief Act, 1963.

Section 9 of the Act, like Section 44 of the English Arbitration Act,[14] identifies situations in which interim relief can be granted, recognising the court's power to grant interim measures in aid of arbitration. The language of these provisions differs from that of the corresponding provisions at Article 9 of the UNCITRAL Model Law.[15] Thus, Indian law provides courts with an autonomous source of power to grant interim measures through the Act. Section 9 of the Act, further, does not specify the scope of the courts' power, the standards to be adopted, the procedures to be followed, or the procedure for enforcement of such orders. Furthermore, unlike Article 17G of the UNCITRAL Model Law,[16] Indian law does not provide for the express liability of the party that seeks an interim measure, for the costs and damages incurred by any party as a result of the interim measure granted that the arbitral tribunal later determines should not have been granted.

Section 8 of the Act departs from the UNCITRAL Model Law in as much as it does not permit a court to entertain any objection to the effect that the arbitration agreement is "*null and void, inoperative or incapable of being performed*". However, under Section 8 of the Act, the court may only look into whether a *prima facie* valid arbitration agreement exists. Therefore, for a domestic-seated arbitration, the scope of judicial interference under Section 8 is limited as compared to Section 8 of the UNCITRAL Model Law.

In contrast to Article 16 of the UNCITRAL Model Law,[17] under Section 16 of the Act, if the arbitral tribunal declares that it has jurisdiction, no interim court recourse is permitted. In such a case, the challenge is only permitted after the final award has been issued. Further, the Act does not contain an equivalent to Article 7 of the UNCITRAL Model Law,[18] which provides a detailed definition of electronic communication. Lastly,

12 Available at: https://legalaffairs.gov.in/sites/default/files/arbitration-and-mediation_0.pdf.

13 *Bharat Aluminium Co. v. Kaiser Aluminium*, (2012) 9 SCC 648: (2012) 4 SCC (Civ) 906.

14 Section 44 of the English Arbitration Act, 1996.

15 *Sundaram Finance Ltd v. NEPC India Ltd*, (1999) 2 SCC 479.

16 Article 17G of the UNCITRAL Model Law.

17 Article 16 of the UNCITRAL Model Law.

18 Article 7 of the UNCITRAL Model Law.

Section 36 of the Act does not include the modification to Article 36 of the UNCITRAL Model Law[19] that requires the filing of the original/copy of the arbitral award for its enforcement before a court. However, the requirement to file an original/copy of the award in order for it to be enforced is incorporated into Indian law through procedural rules of Indian courts.

1.2 When was the arbitration law last revised?

The 2021 Amendment to the Arbitration and Conciliation Act of 1996[20] ("**2021 Amendment**") introduced the latest amendment to the main Act in the last six years. The main changes are as follows:

i. The amendment provides for an automatic stay of execution of any arbitral award if the courts discover clear evidence that the award was influenced by fraud or corruption.

ii. Secondly, it omitted the Eighth Schedule from the main Act, which specified requirements as to the arbitrator's qualifications, experience, and the general norms to be followed.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

This issue was initially decided by the Supreme Court in *National Thermal Power Corporation v. Singer Company*[21] ("**NTPC**"). In this case, the law governing the contract was Indian law, while the seat of arbitration was in London. The issue that arose for determination was what law would govern the arbitration agreement when the same was not expressly mentioned in the contract, i.e., whether the arbitration agreement would be governed by the law governing the main contract or the law of the seat.

The Court held that in the absence of an unmistakeable intention to the contrary, where the proper law of the contract has been expressly chosen by the parties, it would govern the arbitration agreement. It considered the arbitration clause to be contained in and forming part of the main contract, and not existing as a separate agreement (see further on this Q 2.3 below). In addition, the Court also took into account the fact that the contract had in every respect "*the closest and most real connection*" with the Indian system of law and that it was by that law that the parties had expressly evinced their intention to be bound in all respects.

This approach as stated in *NTPC* has since been followed in several older Supreme Court cases. In *Sumitomo Heavy Industries Ltd v. ONGC*[22], the Supreme Court, without explaining the rationale, observed that since the proper law of the contract was Indian law, Indian law would govern the arbitration agreement in the contract. Also, in *Indtel Technical Services Pvt Ltd v. WS Atkins Rail Ltd*[23], relying on *NTPC*, the Supreme Court stated that, it is a "well-settled principle" that the law of the arbitration agreement would be the same as the proper law of the contract, in the absence of an express choice of law.

More recent decisions in India suggest a departure from the Supreme Court's above trend in relying on the law governing the main contract. In *Katra Holdings Ltd v. Corsair Investments Ltd*[24] ("**Katra**"), the Bombay High Court noted that since the arbitration agreement is a separate agreement in a contract, that separate agreement would not be governed by the proper law of contract. Similarly, in the case of *Archer Power Systems Private Ltd v. Kohli Ventures Ltd,*[25] the parties had provided for their contract to be governed by Indian law, and explicitly provided for the seat of arbitration to be London (hence they had agreed that the curial law for the

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19 Article 36 of the UNCITRAL Model Law.

20 The Arbitration and Conciliation (Amendment) Act, 2021, available at: https://legalaffairs.gov.in/sites/default/files/arbitration-and-conciliation%28amendment%29act-2021.pdf.

21 *National Thermal Power Corporation v. Singer Company and Ors*., 1993 AIR 998.

22 *Sumitomo Heavy Industries Ltd v. ONGC*, (1998) 1 SCC 305.

23 *Indtel Technical Services Pvt Ltd v. W.S. Atkins Rail Ltd*, (2008) 10 SCC 308.

24 *Katra Holdings Ltd v. Corsair Investments Ltd*, 2018 SCC OnLine Bom 4031.

25 *Archer Power Systems Private Ltd v. Kohli Ventures Ltd*, 2017 (4) CTC 449.

arbitration would be English law). However, the parties had not expressly provided for the proper law of the arbitration agreement. The High Court of Madras found that the proper law of the arbitration agreement (in the absence of any agreement to the contrary) would be the law of the seat of the arbitration, i.e., English law.

Therefore, the position in India on this issue is far from being settled and there is a lot of variation between different courts on the approach to be taken to determine the law governing the arbitration agreement.

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

The Act uses the word "place" instead of "seat" or "venue" of arbitration. Section 20(1) states that the parties are free to agree on the place of arbitration. However, as per Section 20(2), in case there is no agreement amongst the parties on the place of arbitration, the arbitral tribunal will determine the place taking into consideration the circumstances of the case including the convenience of the parties. Section 20(3) allows the arbitral tribunal to meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties or for inspection of documents as provided under the Act.

Even though the terms "seat" and "venue" are not explicitly mentioned in the Act, Indian courts have adopted the following approaches:

1. The 2018 decision of the Supreme Court in *Union of India v. Hardy Exploration and Production (India) Inc.*[26] ("**Hardy Exploration**"). In this case, the arbitration agreement had provided the "venue" of arbitration proceedings as Kuala Lumpur. However, when disputes arose, one of the parties contended that the arbitration agreement only provided for "venue" and therefore Kuala Lumpur was not intended to be the "seat" of arbitration which ought to be New Delhi. The Supreme Court held that the parties had not chosen the seat of arbitration, and a mere mention of Kuala Lumpur as the venue could not imply that it had become the seat of arbitration. "Venue" could not be read as "seat" unless there were additional factors added to justify the treating of the venue as a seat.

2. The 2020 decision of the Supreme Court in *BGS SGS SOMA JV v. NHPC Ltd*[27] ("**BGS Soma**"). The Court held that a chosen venue for arbitration proceedings would become the seat of arbitration in the absence of any "*significant contrary indicia.*" If the arbitration agreement uses language such as stating that the arbitration proceedings "*shall be held*" at a particular venue as opposed to stating that the "*tribunal is to meet or have witnesses, experts or parties*" at a particular venue, it shall imply that the venue was intended to be the seat. The Court further held its earlier decision in *Hardy Exploration* was *per incuriam* for its failure to follow the principle espoused by the English case of *Roger Shashoua and Ors. v. Mukesh Sharma*[28] which had been adopted in the Indian context by the five-judge bench decision in *Bharat Aluminium Co. v. Kaiser Aluminium*. The "*Shashoua principle*" articulated that a particular place would be the seat of arbitration if parties had (a) chosen it as the venue (b) not designated any other place as the seat (c) chosen a supranational body of rules to govern the arbitration and (d) there were no contrary indicia.

3. 2020 decisions of the Supreme Court in *Mankastu Impex Private Ltd v. Airvisual Ltd*[29] ("**Mankastu Impex**"). In this case, the agreement stated that any disputes shall be resolved in Hong Kong, which would be the place of arbitration. However, the governing law of the contract was Indian law. In approaching the Supreme Court for the appointment of an arbitrator, the issue arose as to whether India (being the law of the contract) or Hong Kong (being the venue) would be the seat of arbitration.

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26 *Union of India v. Hardy Exploration and Production (India) Inc*, AIR 2018 SC 4871.

27 *BGS SGS Soma JV v. NHPC Ltd*, (2020) 4 SCC 234.

28 *Roger Shashoua and Ors. v. Mukesh Sharma*, [2009] EWHC 957 (Comm).

29 *Mankastu Impex Private Ltd v. Airvisual Ltd*, (2020) 5 SCC 399.

The Supreme Court held that merely the words "place of arbitration" could not decide the seat, and the intention of the parties had to be determined from their conduct and the terms of the contract. Ultimately, Hong Kong was held to be the seat because the agreement stated that disputes were to be administered in Hong Kong.

4. 2021 decision of the Delhi High Court in *Dholi Spintex Private Ltd v. Louis Dreyfus Company India Private Ltd*[30] ("**Dholi Spintex**"). The parties disagreed as to the seat of arbitration. The plaintiff contended that it should be New Delhi since Clause 7 of the contract designated the courts of New Delhi as having exclusive jurisdiction, and because the two parties were Indian and could not have decided on a foreign seat in the absence of any foreign element, as per the law at that time. The defendant, on the other hand, cited earlier judgments, especially *Mankastu Impex*, to contend that where parties had explicitly agreed for "*arbitration administered in Hong Kong*", it meant that parties had expressly agreed for Hong Kong to be the seat of arbitration. The Court held that by agreeing to conduct the arbitration through the International Cotton Association, the parties had agreed that the seat of arbitration would be London, and not Delhi. The implication of Clause 7 was merely that Indian law governed the substantive law of the contract and would be relevant only if by agreement both parties were to decide not to settle their disputes through arbitration but by approaching courts of law.

The decision in *Mankastu Impex* does not explicitly affirm *BGS Soma*, though it follows a similar approach in deciding the seat of arbitration. The decision in *Dholi Spintex* also follows *Mankastu Impex* and diverges from the approach in *Hardy Exploration.*

Following these, there have been several more recent decisions pronounced by various High Courts that have considered the venue of arbitration as the seat and given it an overriding effect over an exclusive jurisdiction clause that conferred exclusive jurisdiction on courts at a location different from the venue.[31] Equally there have been High Court decisions that have held that if parties provide for the exclusive jurisdiction on the courts at a different place (as opposed to the venue), this would serve as a contra-indication that the chosen place of arbitration was merely the venue and not the seat of arbitration.[32]

It is evident that the law on this issue is not settled and has a chequered history. For this reason, it is advisable that parties ensure that the words used in an arbitration agreement or dispute resolution clause capture their intentions correctly without leaving any scope for any contrary interpretation or ambiguity.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

The doctrine of separability dictates that an arbitration clause in a contract is a separate and distinct agreement independent of the underlying contract in which it is embedded, and that notwithstanding the invalidity or termination of the substantive underlying commercial contract, the arbitration agreement in said contract would remain valid and survive the main contract.[33]

A constitutional bench (five-judge) decision of the Supreme Court in *N. N. Global Mercantile Private Ltd v. Indo Unique Flame Ltd and Other*,[34] by a 3:2 majority set aside its previous three-judge bench decision and held

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30 *Dholi Spintex Private Ltd v. Louis Dreyfus Company India Private Ltd*, (2021) 2 RCR (Civil) 162.

31 *Ramandeep Singh Taneja v. Crown Realtech Private Ltd*, 2017 SCC OnLine Del 11966*; Global Credit Capital Ltd. v. Krrish Realty Nirman (P) Ltd,* 2018 SCC OnLine Del 9178; *Mukta Agriculture Ltd. v. Radhegovindkripa Developers (P) Ltd*, 2021 SCC OnLine Bom 12035.

32 *Kush Raj Bhatia v. DLF Power and Services Ltd.*, 2022 SCC OnLine Del 3309; *Meenakshi Nehra Bhat v. Wave Megacity Centre (P) Ltd.*, 2022 SCC OnLine Del 3744; *Cravants Media (P) Ltd v. Jharkhand State Coop. Milk Producers Federation Ltd*, 2021 SCC OnLine Del 5350.

33 *N. N. Global Merchantile v. Indo Unique Flame Ltd & Ors*., (2021) 4 SCC 379.

34 *N. N. Global Merchantile v. Indo Unique Flame Ltd & Ors*., (2023) 7 SCC 1.

that the arbitration agreement, being an independent agreement on its own (i.e., separable), is subject to the payment of stamp duty, and that an agreement which was unstamped was unenforceable in law. It would also not be appropriate to describe the non-stamping as a "curable defect". Therefore, parties would not be able to proceed with arbitration arising from an unstamped arbitration agreement. However, this judgment was in turn set aside by the 7-judge bench of the Supreme Court in a reference. [35]

The 7-judge bench upheld the principle of separability of the arbitration agreement by holding that the presumption of separability ensures the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Therefore, the court held that non-stamping or inadequate stamping of an agreement was a curable defect and did not render the arbitration clause within such an agreement as unenforceable.

2.4 What are formal requirements (if any) for an enforceable arbitration agreement?

Pursuant to Section 7 of the Act, an arbitration agreement must be in writing, and can take the form of an arbitration clause in a contract or a separate agreement. An arbitration agreement may be deemed to be in writing if it is contained in: (i) a document signed by the parties; (ii) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or (iii) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other side.

In addition, the arbitration agreement must satisfy the requirements of enforceability of contracts under the Indian Contract Act, 1872,[36] such as the capacity of the parties to contract (age, soundness of mind, etc), free consent, lawful consideration and lawful object of the contract, etc.

An arbitration agreement can cover future disputes, given the use of the words "*disputes which have arisen or which may arise*" under Section 7(1) of the Act.

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

This has been a highly debated and litigated question in India. Binding third parties to an arbitration agreement and impleading such third parties to an arbitration (where such parties are frequently, affiliates, subsidiaries or associate companies of the signatories) is largely governed by the "group of companies" doctrine.

The decision of the Supreme Court in *Chloro Controls India (P) Ltd, v. Severn Trent Water Purification Inc.*[37] was the first significant instance of the application of the "group of companies" doctrine. The Court laid down that only in cases where *"the circumstances demonstrate that the mutual intention of all the parties was to bind both the signatories and the non-signatory affiliates"* would a non-signatory be bound by the arbitration agreement. In the absence of prior consent, only in exceptional situations would non-parties be subjected to arbitration. Such exceptions would be judged on the touchstone of: "*direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction*", plus a determination as to whether allowing an exception would serve the ends of justice. According to the Court, a "*composite transaction*" is one where the performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having a bearing on the dispute.

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35 *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, 2023 SCC OnLine SC 1666

36 The Indian Contract Act, 1872, available at: https://indiacode.nic.in/bitstream/123456789/2187/3/A1872-9.pdf.

37 *Chloro Controls (I) P. Ltd v. Severn Trent Water Purification Inc. & Ors.,* Civil appeal no. 7134 of 2012.

The group of companies' doctrine was further referred to in the case of *Cheran Properties Ltd v. Kasturi and Sons Ltd,*[38] where the issue was whether a non-signatory could be bound by an arbitral award. Giving primacy to the "mutual intention" of the parties, the Supreme Court stated that "*[t]he group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories*."

The group of companies' doctrine was also invoked in the case of *MTNL v. Canara Bank*,[39] where the Supreme Court joined a non-signatory third-party to the arbitration proceedings because there was a clear intention of the parties to bind the non-signatory (being a subsidiary of one of the parties). Furthermore, the tripartite nature of the transaction meant that there could be a final resolution of the disputes only if all three parties were joined in the arbitration proceedings. Therefore, the Court also recognised the possibility that consent could be implicit or tacit, as evidenced through the parties' conduct, as one of the grounds for impleading third parties to arbitration proceedings.

Following the 2015 Amendment, the apex court further reaffirmed and developed the principle established in *Chloro Control* in several decisions.[40] In *Oil and Natural Gas Corporation Ltd v. Discovery Enterprises Ltd*,[41] the Supreme Court laid down the following factors to be considered in deciding whether a non-signatory may be bound by an arbitration agreement:

(i) The mutual intent of the parties;
(ii) The relationship of a non-signatory to a party which is a signatory to the agreement;
(iii) The commonality of the subject matter;
(iv) The composite nature of the transaction; and
(v) The performance of the contract.

On the issue of enforcement of an arbitral award that binds non-signatories, in the recent case of *Gemini Bay Transcription Private Ltd v. Integrated Sales Service Ltd*[42] ("**Gemini Bay**"), the Supreme Court refused to interfere, holding that such a foreign award could be enforced against the relevant third-party non-signatories under the Act.[43]

On the issue of enforcing an arbitral award against a third-party litigation-funding entity, the Delhi High Court in *SBS Holding Inc v. Anant Kumar Choudhary & Ors*,[44] citing *Gemini Bay*, held that the costs which are due to be paid by the parties to the award can be claimed against the litigation funding entity as well, due to the funding arrangement that existed between these parties. The court held that the defendants could not be left high and dry and be made to bear their own costs of defending a litigation which may not have been initiated had it not been for the funding received from the third party.

Therefore, in certain situations, courts have not shied away from enforcement of an arbitral award against third-party non-signatories.

More recently, in the case of *Cox and Kings v. SAP India (P) Ltd*,[45] on account of a difference in opinion between the judges, the Supreme Court made a reference to a five-judge bench of judges for an examination of this

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38 *Cheran Properties Ltd v. Kasturi & Sons Ltd & Ors*., Civil Appeal Nos. 10025-10026 of 2017.

39 *MTNL v. Canara Bank and Others*., (2020) 12 SCC 767.

40 *Ameet Lalchand Shah & Ors. v. Rishabh Enterprises and Anr*., Civil Appeal No. 4690 of 2018 (Arising out of SLP (C) No. 16789 of 2017); *MTNL v. Canara Bank and Others*., (2020) 12 SCC 767; *Duro Felguera v. Gangavaram Port Ltd*., (2017) 9 SCC 729.

41 *Oil and Natural Gas Corporation Ltd v. Discovery Enterprises Pvt. Ltd and another*, Civil Appeal No. 2042 of 2022.

43 *Gemini Bay Transcription Private Ltd v. Integrated Sales Service Ltd*, Civil Appeal No. 8343-8344 of 2018 and 8345-8346 of 2018, Supreme Court.

43 *Gemini Bay Transcription Private Ltd v. Integrated Sales Service Ltd*, Civil Appeal No. 8343-8344 of 2018 and 8345-8346 of 2018, Supreme Court.

44 *SBS Holding Inc v. Anant Kumar Choudhary & Ors*., O.M.P (I) (COMM.) 71/2023, Delhi High Court.

45 *Cox and Kings Ltd v. SAP India Private Ltd and Anr*. 2023 INSC 1051.

doctrine and for a determination of the following question, amongst others: "*Whether the 'Group of Companies' doctrine as expounded by the Chloro Control Case (supra) and subsequent judgments is valid in law?*"

The five-judge bench decided[46] that the "Group of Companies" doctrine was valid and that it should be retained in Indian arbitration jurisprudence. However, the Supreme Court clarified that the application of the doctrine could not be justified on the basis of the principles of alter ego and piercing of the corporate veil, but rather on the identification of the true intention of parties. The judgment particularly asserted that the "*…approach of this Court in Chloro Controls (supra) to the extent that it traced the group of companies' doctrine to the phrase "claiming through or under" is erroneous and against the well-established principles of contract law and corporate law.*"

2.6 Are there restrictions to arbitrability?

Under Indian law, certain disputes are treated as non-arbitrable. The concept of non-arbitrability is rooted in different types of legal reasoning. Some reasons relate to the subject matter of the dispute. Matrimonial and testamentary matters are considered non-arbitrable as they are reserved for determination by public courts. Further, statutory tenancy and rent control matters as well as insolvency matters are non-arbitrable subjects as there are special courts and tribunals which are granted exclusive jurisdiction to adjudicate those matters. Finally, certain matters are considered to be matters *in rem* and hence are suited to adjudication by public courts and tribunals as opposed to matters which are *in personam*. A right *in rem* is exercisable against the world at large and not against a specific set of individuals. Since a right *in rem* is exercisable against the world at large, it cannot be adjudicated as a private dispute between parties through arbitration.

In the landmark decision of *Vidya Drolia v. Durga Trading Corporation*[47] ("**Vidya Drolia**"), the Supreme Court laid down a four-fold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable. i.e., in the following four scenarios:

> "(*1) when the cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem;*
> *(2) when cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;*
> *(3) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and*
> *(4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s). "*

The Court also clarified that these tests are not meant to be watertight compartments, and there is a possibility that they may overlap. However, applying such tests in a holistic and pragmatic manner, it would be possible to ascertain with a great amount of certainty whether a dispute or subject matter is non-arbitrable. Thus the Supreme Court in *Deccan Paper Mills v. Regency Mahavir Properties*[48] held that a relief under the Specific Relief Act is an action *in personam* and is arbitrable. This principle was again followed most recently by a two-judge bench of the Supreme Court in *Sushma Shivkumar Daga & Ors. v. Madhurkumar Ramkrishnaji Bajaj & Ors*.[49]

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46 *Cox and Kings Ltd v. SAP India Pvt. Ltd and Anr*., 2023 SCC OnLine 1634

47 Vidya Drolia and Ors. v. Durga Trading Corporation, (2019) 20 SCC 406.

48 *Deccan Paper Mills v. Regency Mahavir Properties*, (2021) 4 SCC 786.

49 *Sushma Shivkumar Daga & Ors. v. Madhurkumar Ramkrishnaji Bajaj & Ors*., 2023 SCC OnLine 1683.

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law, etc.)?

The well-recognised examples of non-arbitrable disputes in India as affirmed by *Vidya Drolia* are as follows:[50] (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes (therefore, landlord-tenant disputes governed by the Transfer of Property Act, 1988, are arbitrable as they are not actions *in rem* but pertain to subordinate rights *in personam* that arise from rights *in rem*. Such disputes would not affect third-party rights or have any "*erga omnes*" effect requiring adjudication by a court of law. An award that decides landlord-tenant disputes can be executed and enforced like a decree of the civil court. These disputes do not pertain to inalienable and sovereign functions of the State and are not barred from arbitration by the provisions of the Transfer of Property Act);[51] (vii) grant and issue of patents, registration of trademark and copyright; (viii) anti-trust/competition laws; and (ix) claims over which the Debt Recovery Tribunal has jurisdiction.[52]

In India, the law recognises that there are offshoot disputes from non-arbitrable disputes which are arbitrable if they do not fall under any of the non-arbitrability criteria set out above, such as certain landlord-tenant disputes as seen above. In a dispute involving a leave and license agreement where the dispute is not governed by a special statute, then such a dispute is also arbitrable.

As for the arbitrability of allegations of fraud, they would be non-arbitrable only in situations where the alleged fraud vitiates and invalidates the arbitration agreement itself and affects rights *in rem*.[53] The law on arbitrability of fraud was affirmed in *M/s. N.N. Global Mercantile Pvt. Ltd*,[54] where a three-judge bench held that: "*The civil aspect of fraud is considered to be arbitrable... the only exception being... that the arbitration agreement itself is vitiated by fraud... or the fraud goes to the validity of the underlying contract, and impeaches the arbitration clause itself*."

2.6.2 Do these restrictions relate to specific persons (*i.e.,* State entities, consumers etc.)?

No, such restrictions are not applicable to specific persons. Consumer disputes are arbitrable. In *Emaar MGF Land Ltd v. Aftab Singh*,[55] the Supreme Court held that while proceedings under the Consumer Protection Act, 1986 are special remedy proceedings, recourse to arbitration is not barred in case the aggrieved consumer in question is party to an arbitration agreement and decides to opt for arbitration as the dispute resolution mechanism. Therefore, in case the aggrieved consumer who is a party to an arbitration agreement does not opt for the additional/special remedy available to them by virtue of being able to approach the consumer forums under the Consumer Protection Act, 1986, it would be permissible for them to proceed with the dispute in arbitration. It is only when the aggrieved consumer has decided to opt for redressal before the consumer forums that such forums can refuse to relegate the parties to arbitration.

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50 *Vidya Drolia and Ors. v. Durga Trading Corporation*, (2019) 20 SCC 406.

51 *Vidya Drolia and Ors. v. Durga Trading Corporation*, (2019) 20 SCC 406.

52 *Vidya Drolia and Ors. v. Durga Trading Corporation*, (2019) 20 SCC 406.

53 *Vidya Drolia and Ors. v. Durga Trading Corporation*, (2019) 20 SCC 406.

54 *N. N. Global Mercantile v. M/S Indo Unique Flame Ltd & Ors*., (2021) 4 SCC 379.

55 *Emaar MGF Land Ltd v. Aftab Singh*, 2018 SCC OnLine SC 2771.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

As per Section 8 of the Act, a court seized of a dispute which is the subject of an arbitration agreement, shall, if the respondent raises an objection to this effect prior to filing its first statement on the substance of the dispute, treat the matter as inadmissible and refer the matter to arbitration; unless the court finds that *prima facie* no valid arbitration agreement exists.

This "prima facie" standard for determining if a valid arbitration agreement exists was introduced by way of the 2015 Amendment with the intention of restricting the scope of judicial intervention at the pre-arbitral stage, leaving the final decision on the existence and validity of the arbitration agreement to the arbitral tribunal under its competence-competence jurisdiction.

The Supreme Court has since clarified that: *"The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the referral court to look into* ***prima facie*** *existence of a valid arbitration agreement, Section 11 confines the court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the referral courts under the said provisions is intended to be different."*[56]

Finally, while an application/objection of a respondent under Section 8(1) is pending before a court, there is no bar on an arbitral proceeding pursuant to Section 8(3) of the Act, which may accordingly be commenced or continued, and an award made by the arbitral tribunal.

3.1.1 If the place of the arbitration is inside of the jurisdiction?

The answer in 3.1 above applies.

3.1.2 If the place of the arbitration is outside of the jurisdiction?

If the place of arbitration is outside India, Section 45 from Part II of the Act would apply to determine if the dispute should be referred to arbitration. The scope of inquiry is confined to the question of whether the arbitration agreement is "*prima facie…null and void, inoperative or incapable of being performed*", and does not concern the legality and validity of the substantive contract.[57] The phrase "prima facie" in Section 45 was inserted pursuant to the Arbitration and Conciliation (Amendment) Act, 2019 ("**2019 Amendment**").

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

In India it is not a usual practice for arbitrators to pass injunctions prohibiting parties from initiating court proceedings, and there is therefore limited available authority to consider a court practice in this regard.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

An anti-suit injunction is an injunction ordering a party in a suit or proceeding before it, either not to commence or not to take any further steps in proceedings before courts in another jurisdiction.

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56 *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, 2023 SCC OnLine SC 1666, para. 161 (emphasis added).

57 *Sasan Power Ltd v. North American Coal Corporation India Private Ltd*, Civil Appeal No. 8299 of 2016, Supreme Court.

The landmark judgement on anti-suit injunctions in India is that of *Modi Entertainment Network v. WSG Cricket PTE Ltd*[58] ("**Modi Entertainment**"), which outlined the principles for the grant of an anti-suit injunction. In exercising its discretion to grant an anti-suit injunction, the court must be satisfied that:

a. the defendant, against whom an injunction is sought, is amenable to the personal jurisdiction of the court;
b. if the injunction is declined, the ends of justice will be defeated and injustice perpetuated; and
c. the principle of comity i.e., respect for the court in which the commencement or the continuance of action/proceeding is sought to be restrained must be borne in mind. For this reason, the power must be exercised sparingly.

With regard to anti-arbitration injunctions, one of the initial cases in India where a court granted such a remedy was the 2014 case of *The Board of Trustees of the Port of Kolkata v. Louis Dreyfus Armatures SAS & Ors*.[59] The respondent had issued a notification of claim to the petitioner under the India-France Bilateral Investment Treaty ("**BIT**"), despite the petitioner not being named as a party in the investment arbitration. Aggrieved by this, the petitioner sought an anti-arbitration injunction before the Calcutta High Court on the ground of it not being a party to the arbitration clause in the India-France BIT.

The Court laid down the following factors to be considered when deciding whether to grant an anti-arbitration injunction: (i) whether a valid arbitration agreement exists between the parties or whether the arbitration agreement is null and void, inoperative or incapable of being performed; and (ii) whether the continuation of the foreign arbitration proceeding might be oppressive or vexatious or unconscionable.

The Court found that the arbitration agreement was only enforceable against India and not the petitioner, and this was an exceptional circumstance where continuation of the foreign arbitration proceeding was oppressive and unconscionable. Therefore, this was a fit case for the grant of an anti-arbitration injunction.

In the 2020 case of *Balasore Alloys Ltd v. Medima LLC*,[60] the Calcutta High Court issued a detailed judgment discussing the power of Indian courts to award anti-arbitration injunctions against foreign-seated arbitrations, as well as the extent and limitations of that power. In light of the observations noted above in *Modi Entertainment*, the Calcutta High Court concluded that the plaintiff had failed to meet its burden of demonstrating that the ICC in London, the alternate forum in this case, was either a *forum non-conveniens* or that the proceedings initiated before it by the respondent were oppressive or vexatious in nature. Therefore, an anti-arbitration injunction was not granted.

Conversely in the case of *Bina Modi v. Lalit Modi*[61] ("**Bina Modi**"), a Division Bench of the Delhi High Court issued an anti-arbitration injunction in a situation where the subject matter of the dispute was *prima facie* non-arbitrable as per Indian law (the arbitration was to be decided as per the rules of ICC, Singapore). Relatedly, the court held in this case, as it had done previously in *McDonald's India Private Ltd v. Vikram Bakshi*,[62] that the principles governing anti-arbitration injunctions could not be the same as those governing anti-suit injunctions due to the principles of party autonomy in arbitration and competence-competence.

More recently, the Bombay High Court in *Anupam Mittal v. People Interactive (India) Pvt. Ltd & Ors*.[63] refused to enforce an anti-suit permanent injunction obtained by the respondents from the High Court of Singapore against the petitioner who wanted to bring an oppression and mismanagement action in the Indian National Company Law Tribunal ("**NCLT**") against the Respondents. The Bombay High Court set aside the anti-suit permanent injunction on the twin grounds that the plaintiff would be left remediless if the injunction were

58 *Modi Entertainment Network v. WSG Cricket PTE Ltd*, (2003) 4 SCC 341.

59 *The Board of Trustees of the Port of Kolkata v. Louis Dreyfus Armatures SAS & Ors*., 2014 SCC OnLine Cal 17695.

60 *Balasore Alloys Ltd v. Medima LLC,* (2020) 9 SCC 136.

61 *Bina Modi & Ors., v. Lalit Modi & Ors*., (2020) 268 DLT 548.

62 *McDonald's India Private Ltd v. Vikram Bakshi*, 2016 (4) ArbLR 250.

63 *Anupam Mittal v. People Interactive (India) Pvt. Ltd & Ors*., 2023 SCC OnLine Bom 1925

allowed to subsist and that the grievance against oppression and mismanagement is non-arbitrable in India, and courts in India would accordingly not enforce a foreign award on this subject matter.

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

Yes, parties can represent themselves, or they can engage foreign lawyers to act as their authorised representatives, subject to certain limitations.

In *Bar Council of India v. A.K. Balaji & Ors.*,[64] the Supreme Court had held that foreign lawyers can only visit India on a temporary period on a 'fly in fly out' basis (which should not amount to the practice of law) for the purpose of giving legal advice to their clients in India regarding their own system of law or other foreign law, and on diverse international legal issues. The Court also held that if rules of institutional arbitration applied or the matter was covered by provisions of the Act, then foreign lawyers may not be debarred from conducting proceedings in international commercial arbitration, provided that the foreign lawyers were governed by the general code of conduct applicable to the Indian legal profession.

The Bar Council of India, by way of a notification dated March 13, 2023, has notified the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India 2022 ("**Foreign Law Firms Rules**"), and has since further opened up the law practice in India to foreign lawyers in international arbitration cases and non-litigious matters (such as transactional/corporate work). The Bar Council of India does not permit foreign lawyers or foreign law firms to appear before any courts or tribunals or statutory authorities. However, they are now permitted to provide legal expertise/advice and appear as a lawyer for any person, firm, company etc. who/which has an address or principal office in a foreign country, in any international arbitration case which is conducted in India and in which foreign law may or may not be involved.

The Foreign Law Firms Rules also provide that a foreign lawyer or a foreign law firm shall not be entitled to practice law in India unless he/it is registered with the Bar Council of India. This prohibition will not apply if the foreign lawyer/law firm's practice is on a 'fly in and fly out basis' and is for the purpose of giving legal advice to the client in India regarding foreign law and diverse international legal issues. Another proviso to this clause is that the foreign lawyer or foreign law firm ought not to maintain an office in India for the purpose of their practice and their presence in India also cannot exceed 60 days in any period of 12 months.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of gravity such as to justify this outcome?

Under Section 12 of the Act, the arbitrator has a duty to disclose in writing certain circumstances such as the direct or indirect existence of any past or present relationship with or interest in any of the parties or in the subject matter of the dispute, which is likely to give rise to justifiable doubts as to his or her independence or impartiality and/or which will affect the arbitrator's ability to devote time to the arbitration so as to complete it in twelve months.

Relatedly, an arbitrator's appointment may be challenged only if circumstances give rise to justifiable doubts as to his/her impartiality or independence,[65] or if s/he does not possess the qualifications agreed to by the parties.[66] The Fifth Schedule of the Act provides the grounds to determine whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.[67] The Seventh Schedule

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64 *Bar Council of India v. A.K. Balaji & Ors.*, (2018) 5 SCC 379.

65 Section 12(3) of the Act.

66 Section 12(3) of the Act.

67 Explanation 1 to Section 12(b) of the Act.

of the Act provides the categories which would determine ineligibility. The Fifth and Seventh Schedules of the Act are based on the IBA Guidelines on Conflict of Interest.[68]

Any person whose relationship with the parties or counsel or the subject matter of the dispute falls within the Seventh Schedule would be ineligible to be appointed as an arbitrator,[69] unless the parties have waived the cause of ineligibility or the application of the schedule by an express agreement between them in writing concluded after the dispute has arisen.

In *HRD Corporation v. Gail India Ltd*, the Supreme Court observed that when a challenge is based on the circumstances identified under the Fifth Schedule, the issue of whether justifiable doubts exist as to the arbitrator's independence and impartiality should be separately determined based on the facts of the case. Conversely, the occurrence of a circumstance provided under the Seventh Schedule in and of itself renders a person ineligible to be appointed as arbitrator. The Court held that a challenge based on the grounds mentioned in the Seventh Schedule can be made directly to the Court.[70]

Section 13 of the Act outlines the procedure for challenging an arbitrator's appointment unless another procedure is agreed upon by the parties. The arbitral tribunal decides any challenge, and if unsuccessful, the aggrieved party can seek to set aside the award under Section 34. Challenges enumerated in the Fifth Schedule, which raise doubts about the arbitrator's independence and impartiality, are also decided as per Section 13.[71]

Nonetheless, Section 14 of the Act allows parties to approach the courts with circumstances for which the mandate of the arbitrator ought to terminate, namely (i) in case he (or she) becomes *de jure* or *de facto* unable to perform his (or her) functions or for other reasons fails to act without undue delay, and (ii) he (or she) withdraws from his (or her) office or the parties agree to the termination of his mandate.

Additionally, courts have given a lot of importance to the independence of an arbitrator, and in furtherance of this objective have held clauses that grant power to appoint an arbitrator *unilaterally* to one party of the arbitration agreement as invalid, as found in the Supreme Court decision in *Perkins Eastman Architects DC & Anr. v. HSCC (India) Ltd* ("**Perkins**").[72] This is different from the case where parties have an arbitration agreement under which the appointing party gives an option to the other party to choose from a panel of arbitrators: the courts have found such agreements to be valid.[73]

Recently, the Calcutta High Court in *McLeod Russel India Ltd & Anr. v. Aditya Birla Finance Ltd & Ors*.[74] ("**McLeod Russel**") held that under certain circumstances a party can unilaterally appoint an arbitrator. The Court held that a unilateral appointment of an arbitrator is not inherently illegal unless the unilaterally appointed arbitrator's relationship is covered under the Seventh Schedule of the Act. Further, in any case, the Court further clarified that the petitioner had communicated a waiver under the proviso to Section 12(5) of the Act since it participated in the proceedings for a significant amount of time before challenging the arbitrator's appointment. The continued participation and filing of pleadings amounted to an express waiver of such disqualification under the proviso to Section 12(5) of the Act.

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68 The Law Commission of India 246th Report dated 5 August 2014, available at: https://lawcommissionofindia.nic.in/reports/report246.pdf, para 59; *HRD Corporation (Marcus Oil and Chemical Division) v. Gail (India) Ltd,* (2018) 12 SCC 471, Para 20.

69 Section 12(5) of the Act.

70 *HRD Corporation (Marcus Oil and Chemical Division) v. Gail (India) Ltd*, (2018) 12 SCC 471.

71 *HRD Corporation (Marcus Oil and Chemical Division) v. Gail (India) Ltd*, (2018) 12 SCC 471.

72 *Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd*, 2019 (6) ArbLR132 (SC); *Central Organisation for Railways Electrification v. M/s ECI-SPIC-SMO-MCML (JV) A Joint Venture Company*, (2020) 14 SCC 712.

73 *Central Organization for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) a Joint Venture Company*, (2020) 14 SCC 712.

74 *McLeod Russel India Ltd & Anr. v. Aditya Birla Finance Ltd & Ors*., Calcutta HC A.P. No. 106 of 2020

While *McLeod Russel* distinguishes *Perkins* on the basis of this express waiver, the Calcutta High Court has more recently passed a judgment in *SREI Equipment Finance Ltd v. Sadhan Mahal*[75] ("**SREI**"), where it has denied the enforcement of an arbitral award where the arbitrator was unilaterally appointed. It has held that in such a situation, the arbitral proceedings and the award itself stand vitiated as the arbitrator lacked the inherent jurisdiction to adjudicate the disputes between the parties. The award would not be a valid arbitral award as the ineligibility of the arbitrator went to the root of their jurisdiction. In SREI, the court distinguished its own judgment in *McLeod Russel* on the ground that in the latter case there was an express waiver by the party that did not have the power to unilaterally appoint the arbitrator.

While Perkins, being a judgment of the Supreme Court, is the leading authority in India on the issue of unilateral appointment of arbitrators, High Courts have interpreted it in varying ways, as seen in the recent developments discussed above. Due to the conflicting judgments on this topic, the Supreme Court in *Union of India v. Tantia Constructions*[76] has referred the issue to a larger bench. However, as of October 2023, the Constitution Bench constituted to hear the reference had deferred hearing the matter, after the Attorney General had submitted that the Government had constituted an expert committee to consider the provisions of the Act and the issues before the Constitution Bench would also come up before the expert committee. As a result, the issue of unilateral appointment of arbitrators likely will be taken up by the expert committee which will submit a report on various issues, including on appointment of arbitrators.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Under Section 11 of the Act, when there is no agreement between the parties on an appointment procedure, courts may intervene in the following cases.

In case of an ad hoc arbitration with three arbitrators:

(i) if a party to the arbitration agreement fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or
(ii) if the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment.

In either of these two scenarios, the necessary arbitrators will be appointed on an application of a party, either by the arbitral institution designated by the Supreme Court (in case of an international commercial arbitration), or by the High Court or the arbitral institution designated by the High Court (in other types of arbitration). Although the Act allows parties to apply to a person or an arbitral institution to appoint arbitrators, such person or arbitral institutions must first have been designated by the courts to exercise this power.

In an ad hoc arbitration with a sole arbitrator, if the parties fail to agree on an arbitrator within 30 days from receipt of a request by one party to another party, one party can apply to the court under Section 11 of the Act, and the appointment shall be made: in an international commercial arbitration, by the arbitral institution designated by the Supreme Court; or, in other types of arbitration, by the High Court.

Parties can likewise apply to the courts where there is an appointment procedure agreed by the parties and:

i. a party fails to act as required under the procedure; or
ii. the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
iii. a person, including an institution, fails to perform any function entrusted to him/her or it under the procedure.

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75 *SREI Equipment Finance Ltd v. Sadhan Mahal*, EC 137 of 2023, Calcutta High Court.

76 *Union of India v. Tantia Constructions*, Petition for Special Leave to Appeal (C) No. 10722/2022.

To illustrate, the Supreme Court in the case of *Walter Bau AG, Legal Successor of the Original Contractor, Dyckerhoff & Widmann A.G. V. Municipal Corporation of Greater Mumbai*[77] held that the appointment of an arbitrator by the Municipal Corporation of Greater Mumbai ("**MCGM**") beyond the 30 day period from the date of receipt of the notice from other party was contrary to the agreed procedure contemplated in the arbitration agreement and therefore invalid.

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Interim relief may be granted by the court to a party either before or during the arbitral proceedings, or at any time after the making of the arbitral award but before it is enforced. Under Section 9(3) of the Act, once the arbitral tribunal has been constituted, a court shall not entertain an application for interim relief unless the court finds that circumstances exist which demonstrate that the power of arbitral tribunal to order interim measures under Section 17 of the Act is not efficacious. Sections 9 and 17 of the Act are broadly based on Articles 9 and 17 of the UNCITRAL Model Law, save that, under Section 9, a court may also grant interim relief after an award has been issued, before it is enforced.

The Supreme Court in *ArcelorMittal Nippon Steel (India) Ltd v. Essar Bulk Terminal Ltd*[78] stated that in the event that the court passes an order granting an interim relief under Section 9 (1) of the Act, the arbitral proceedings must commence within 90 days from the date of such order being passed.

4.4.1 If so, are they willing to consider *ex-parte* requests?

In most situations, *ex parte* applications for interim measures are not granted in favour of a party. However, this may not be the case in the event that the other side has repeatedly failed to appear before the court despite the issuance of notices to that effect. In such a situation, courts may permit *ex-parte* requests.

Conversely, *ex-parte ad-interim* injunctions (granted before the contesting party files its reply to the application for interim measures) may be granted by the court in the event of urgent and exceptional circumstances.

In the case of *M/s. East India Udyog Ltd v. Maytas Infra Ltd & Anr*.,[79] the court held that an application for interim measures under Section 9 of the Act would stand on the same footing as the proceedings under Section 141 of the Civil Procedure Code. In other words, when a Section 9 application is filed, while the application is pending, if an *ex-parte ad-interim* order is necessary, the court may pass such *ex-parte* order based on the facts and circumstances of the case and in accordance with the provisions of Order XXXIX of the Civil Procedure Code.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

The law regulates the following aspects of arbitral proceedings:[80]

(i) equal treatment of parties;
(ii) determination of rules of procedure;
(iii) place of arbitration;
(iv) commencement of arbitral proceedings;
(v) language;
(vi) statement of claim and defence;
(vii) hearings and written proceedings;

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77 *Walter Bau AG, Legal Successor of the Original Contractor, Dyckerhoff & Widmann A.G. V. Municipal Corporation of Greater Mumbai,* (2015) 3 SCC 800.

78 *ArcelorMittal Nippon Steel (India) Ltd v. Essar Bulk Terminal Ltd*, (2022) 1 SCC 712.

79 M/s. *East India Udyog Ltd v. Maytas Infra Ltd & Anr.,* 2015 SCC Online Hyd 214.

80 Chapter V of the Act.

(viii) default of a party;
(ix) expert appointed by arbitral tribunal; and
(x) court assistance in taking evidence.

Some instances of mandatory rules which cannot be derogated from are: (1) Section 8 of the Act: Power to refer parties to arbitration where there is an arbitration agreement, (2) Section 12(1): Disclosure of the arbitrator regarding his impartiality and independence, (3) Section 12(5): Disqualification of arbitrator if he falls within the categories specified in Schedule VII, (4) Section 18: Equal treatment of parties and full opportunity of hearing, (5) Section 34(3): Limitation period for a Section 34 application.

These mandatory rules cannot be derogated from even in the event of an institutional arbitration. If the rules of the institutional arbitration contravene these mandatory rules, then to the extent of the conflict, the mandatory rules under the Act would prevail.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Section 42A was introduced and incorporated into the Act by the 2019 Amendment. The Section relates to confidentiality of arbitrations and provides that the arbitrator, arbitral institution and the parties to an arbitration shall maintain the confidentiality of all arbitral proceedings, except for an award where its disclosure is necessary for the purposes of its implementation and enforcement.

As per the language of the Section, the only exception to confidentiality is when the disclosure of the arbitral record is necessary for the limited purpose of the implementation and enforcement of award.

4.5.2 Does it regulate the length of arbitration proceedings?

After the 2015 Amendment, Section 29A was introduced which requires the award to be made within 12 months from the date of completion of pleadings. Section 23 states that the pleadings (being the statement of claim and defence) shall be completed within a period of 6 months from the date of the appointment of the arbitrator.

The abovementioned period mentioned under Section 29A may be extended by another 6 months by consent of the parties. If an award is not made within the extended period, the mandate of the arbitrator(s) shall terminate unless the court has, prior to or after the expiry of the period so specified, extended the period. The provision to Section 29A (4) states that if the delay is caused by the arbitrator, the Court has the right to reduce the arbitrator's fee by up to 5% a month.

Section 29A(1) makes clear that the time limit mandated under Section 29A does not apply to international commercial arbitration. The Act indicates only that the award in case of an international commercial arbitration should be made as expeditiously as possible, and that there should be an endeavour made towards disposing of the matter within 12 months from the completion of pleadings under Section 23.[81]

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

Section 20 of the Act deals with the determination of the place of arbitration. Following the principle of party autonomy, parties are free to agree on the place of arbitration. Failing any agreement, the arbitral tribunal may meet at any place it considers appropriate for an oral hearing, for hearing witnesses, experts or the parties, for consultation among its members or for inspection of property or documents, even if a party objects but subject to the requirements of due process.[82]

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81 *Tata Sons Pvt. Ltd (Formerly Tata Sons Ltd.) v. Siva Industries and Holdings Ltd & Ors.*, (2023) 5 SCC 421.

82 Section 20(3) of the Act.

Under Section 24 of the Act, unless otherwise agreed by the parties or requested by a party, the arbitral tribunal shall decide whether oral hearings ought to be held for the presentation of evidence or for oral argument, or whether the proceedings can be conducted on the basis of documents or other materials.[83] Section 19(3) of the Act empowers the arbitral tribunal to determine the procedure for conducting the arbitration proceedings in the absence of any agreement between the parties.

The Act is silent on remote/virtual hearings, but in cases where there is no agreement between the parties and one party requests for virtual hearings while the other party objects, the arbitral tribunal can direct that the proceedings will be held remotely pursuant to its powers under Section 19(3) read with Section 24 of the Act.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Under Section 17 of the Act, the arbitral tribunal may issue interim measures and it shall have the same powers to do so as a court under Section 9 of the Act. As noted above, if a party is able to prove the existence of circumstances that make a relief granted by an arbitral tribunal inefficacious, it may seek interim relief from a court even during arbitral proceedings.

The Bombay High Court in its judgment in *Shakti International Pvt. Ltd v. Excel Metal Processors Pvt. Ltd*[84] distinguished between an arbitral tribunal and the court and held that the arbitral tribunal may have the same powers as the court to make orders, but it is not the court itself. Based on this distinction, the court held that an arbitral tribunal does not have powers to appoint the Court Receiver of Bombay High Court.

Finally, subject to any orders made in an appeal under Section 37, Section 17(2) deems any order issued by the arbitral tribunal under this Section to be an order of the court and enforceable under the Code of Civil Procedure.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The law empowers an arbitral tribunal to determine questions of admissibility of evidence, to take evidence and to freely assess such evidence.[85]

Section 19 of the Act states that the arbitral tribunal is not bound by the CPC, or the Indian Evidence Act, 1872, and that the parties are free to agree on the procedure to be followed by the arbitral tribunal in the conduct of its proceedings.[86] It is a settled position of law that an arbitral tribunal is not required to comply with the technical rules of evidence that the courts are required to comply with.[87]

In *Rishabhkumar and Ors. v. Secretary to the Government of India, Ministry of Road Transport and Highways and Ors.*,[88] the Bombay High Court held the following in relation to the determination of the procedure to be followed in arbitration proceedings:

1. If there is no agreement between the parties to the arbitration with respect to the procedure to be followed by the arbitral tribunal or whether oral hearings for the presentation of evidence should be held, then the arbitral tribunal may conduct the arbitration in the manner it deems fit and appropriate.

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83 Section 24 of the Act.

84 *Shakti International Pvt. Ltd v. Excel Metal Processors Pvt. Ltd*, Court Receiver's Report No. 476 of 2016.

85 Section 19(4) of the Act.

86 Section 19(1) and 19(2) of the Act.

87 *NPCC Ltd v. Jyothi Sarup Mittal Engineers, Contractors and Builders*, 2007 (93) DRJ 379 para. 20.

88 *Rishabhkumar and Ors. v. Secretary to the Government of India, Ministry of Road Transport and Highways and Ors*, 2021 SCC Online Bom 4561.

2. The arbitral tribunal's decision to conduct the proceedings in the way it deems appropriate cannot be later objected to if the opportunity to object was not taken advantage of at an appropriate stage.
3. If these procedural objections are not addressed before the arbitrator at the right time, they will be deemed to have been waived under Section 4 of the Act.

4.5.6 Does it make it mandatory to hold a hearing?

Under Section 24 of the Act, unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings if requested by a party.[89]

However, if parties agree in writing at any stage either before or at the time of appointment of the arbitral tribunal to have their disputes resolved by fast-track procedure under the Act as introduced under the 2015 amendment, the arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing.[90]

4.5.7 Does it prescribe principles governing the awarding of interest?

Under the Act, the power of the arbitrator to award interest for the pre-award *pendete lite,* and post-award periods, is conferred by the statute. Section 31(7)(a) empowers the arbitral tribunal to award interest, at such rates as it deems reasonable, on the whole or any part of the amount awarded, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made, i.e. the pre-award period.[91]

The Supreme Court in *Morgan Securities and Credits Pvt. Ltd v. Videocon Industries Ltd*,[92] held that it is the discretion of the arbitrator to grant post-award interest could only be restricted by an express provision to that effect and there was no such restriction in Section 31(7)(b) of the Act.

The court interpreted the language "*unless the award otherwise directs*" in Section 31(7)(b) as qualifying exclusively the interest rate: unless the arbitrator decides on a different rate, in accordance with Section 31(7)(b), the award holder is entitled to post-award interest at a rate of 18%.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Section 31A on the allocation of costs was introduced by way of the 2015 Amendment. It provides that costs follow the event, but that an arbitral tribunal may decide differently provided this is recorded in writing. In exercising its discretion, the arbitral tribunal is to have regard to the conduct of the parties, whether a party has succeeded (partly) in the case, whether a party made a frivolous counterclaim leading to delay in disposal of the arbitration and whether a reasonable offer to settle the dispute was made by a party and refused by another.

An agreement between the parties that has the effect of making one of the parties pay whole or part of the costs of the arbitration, shall only be valid if such agreement is made after the dispute in question has arisen.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

The doctrine of arbitral immunity was incorporated in the Act by the 2019 Amendment leading to the addition of Section 42-B which states that no suit or legal proceedings can lie against an arbitrator for anything done by him (or her) in good faith or intended to be so done as per the Act.

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89 Section 24 of the Act.

90 Section 29B(3)(a) of the Act.

91 *McDermott International Inc. v. Burn Standard Co.*, (2006) 11 SCC 181.

92 *Morgan Securities and Credits Pvt. Ltd. v. Videocon Industries Ltd*, (2023) 1 SCC 602.

Immunity is also granted to judges in India which shields them from being held financially or otherwise liable in civil court for actions taken in accordance with their decisions. This immunity is crucial for guaranteeing judicial independence and impartiality. This rationale similarly applies to the granting of immunity to arbitrators.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Yes, under Section 27 of the Act, when parties are issued process to give evidence and if those persons fail to attend in accordance with such process, refuse to give evidence, or are guilty of any contempt, they are subject to the same penalties and punishments as they would face if those offences were committed in suits before the court. The contempt may be civil contempt as well as criminal contempt. The Supreme Court in its judgment in *Alka Chandewar v. Shamshul Israr Khan*[93] observed that Section 27(5) applies to 'persons failing to attend in accordance with process' and also the separate category from 'any other default'. It observed that this Section is not confined merely to failure to attend in accordance with court process but also to any other default during the conduct of the arbitral proceedings. Thus, parties to an arbitration may face contempt proceedings (which may be criminal) in case there is a violation or disobedience of an order passed by the arbitrator. The parties and the arbitrator may also face charges of bribery or corruption, in the event any such act is committed by them.

It is also often observed that, parties tend to initiate criminal proceedings where an ongoing arbitration is taking place. The rationale for this is that criminal proceedings are often found to be an attractive pressure tactic, and the initiation of criminal proceedings is routinely used as a ploy by the parties to compel certain demands of the party.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

In line with the principle of party autonomy, Section 31(3) of the Act provides that parties are free to agree that the award will not give reasons on which it is based.[94] Further, under the Act, if the award is an arbitral award on agreed terms as provided under Section 30 of the Act, i.e., based on settlement between parties, in that case too, the award will not provide reasons.[95] The settlement between the parties is what forms the terms of the award.

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

Under the Act, Section 34 provides for grounds of annulment or setting aside of an arbitral award. This is a provision that cannot be derogated from and cannot be waived.

Under Section 4 of the Act, parties can only waive their right to object to those provisions which can be derogated from, (i.e., which may be done away with or removed) or waive the right to object any requirement under the arbitration agreement. However, the right to seek annulment of an award is a statutory right and parties cannot contract out of it as this would be in violation of Section 28 of the Indian Contract Act, 1872.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

In terms of atypical requirements that apply to rendering of a valid award, a look at stamping statutes is relevant. The stamping statutes in different states provide for different rates of stamp duty to be paid on an

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93 *Alka Chandewar v. Shamshul Israr Khan*, Civil Appeal No. 8720 of 2017 (Arising out of S.L.P.(Civil) No.3576 of 2016).

94 Section 31(3)(a) of the Act.

95 Section 31(3)(b) of the Act.

award. An award which is to be enforced in Mumbai (or Maharashtra) requires to be stamped for an amount of Rs. 500,[96] while in Delhi the stamp duty on an award is approximately 0.1% of the value of the property to which the award relates.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

Under the Act, it is not possible to appeal an award and the only recourse is to set it aside on the limited grounds available under the Act.[97] The court does not have powers to modify the award,[98] but can remand the matter back to the arbitral tribunal.[99]

Finally, following the principle of party autonomy, contracting parties are allowed to take the award to an appellate arbitral tribunal if the arbitration clause allows for a two-tier arbitration.[100]

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Enforcement of domestic awards:[101]

1) *Time for enforcement of domestic award:* A party can seek enforcement of a domestic award under Section 36 of the Act after the time for seeking annulment of the award has expired. The time for making an annulment application is three months from the date of receipt of the award. Thus, enforcement of an award can be initiated after the end of three months from the date of receipt of the award.[102] Once the three-month period is complete, the party has to file for enforcement within 12 years. If an award grants a mandatory injunction, the action for enforcement has to be filed within three years.[103]
2) *Award to be enforced as a decree:* Under the Act, an arbitral award is to be enforced in the same manner as a decree of a civil court and the general law of civil procedure applies. The party seeking enforcement can file for enforcement before a civil court which has original jurisdiction, which includes the High Court. The enforcement application should set out the important facts, points of reference framed by the arbitral tribunal and the tribunal's determination on those points. The relief granted should be specifically mentioned. The application for enforcement of the award is to be accompanied by either the original award or a duly authenticated copy of it. At the time of seeking enforcement, the award should be stamped with the legally applicable stamp duty.
3) Note that the court to which the enforcement application is made may order that the enforcement be transferred to another court in case the property under the award or the person against whom it is being executed are present outside the jurisdiction of that court.

Recognition of foreign awards:

1) Under the Act, foreign awards enjoy recognition if they are awards made on disputes based on a written agreement for arbitration to which the New York Convention or Geneva Convention applies. Further, for an award to be recognised as a foreign award, it must also be made in a country which

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96 Article 12 of Schedule I of Maharashtra Stamp Act, 1958.

97 Section 34 of the Act.

98 *National Highways Authority of India v. M. Hakeem & Anr*, C.A. No. 2756/2021.

99 *Mutha Constructions v Strategic Brand Solutions (I) Pvt Ltd*, Special Leave Petition (Civil) No. 1105 of 2022.

100 *Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd*, (2017) 2 SCC 228.

101 An award rendered under Part I of the Act, is considered as a domestic award (Sections 2(2) and 2(6) of the Act).

102 Article 136 and Article 135 of the Limitation Act, 1963. Sections 34 and 36 of the Act.

103 Article 136 and Article 135 of the Limitation Act, 1963.

the Indian Government has recognised (based on the principle of reciprocity) as a country to which the New York Convention or Geneva Convention applies.[104]

2) *Conditions for enforcement of NY Convention Awards:* Under Section 48 of the Act, the court may refuse enforcement of a foreign award if a party shows the existence of the following conditions:
   (a) Party suffered some incapacity or the agreement is not valid under the law to which parties have subjected it;
   (b) Party against whom award is enforced was not given proper notice or arbitrator's appointment or of arbitral proceedings;
   (c) Award deals with a dispute beyond the reference of the arbitration;
   (d) Composition of arbitral tribunal was not in accordance with agreement;
   (e) The award was annulled at the seat;
   (f) Subject matter of award is not capable of settlement by arbitration or enforcement would be contrary to the public policy of India.

4) *Conditions for enforcement of Geneva Convention Awards:* For enforcement of a foreign award made under the Geneva Convention, the following conditions should be met:

   (a) Award made on submission to arbitration which is valid under the law applicable to it;
   (b) Subject matter of award is capable of settlement by arbitration in India;
   (c) The award and constitution of the arbitral tribunal has been made in conformity to the law governing arbitration procedure;
   (d) Award has become final and is not open to opposition or appeal;
   (e) Enforcement of the award should not be contrary to public policy in India.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

Under the Act, there is no automatic stay on the execution of an award when a party files an application to challenge it.[105] A party that files for annulment of an award must specifically make a separate application for stay of the enforcement of the award. The court hearing the application may grant a stay of the award on conditions it deems fit, providing reasons for the grant of the stay.

When the court grants a stay and imposes the condition of the deposit of an amount, it is to be guided by (rather than has to comply with[106]) the provisions of the CPC.

Under the Act, a court granting a stay of an arbitral award for payment of money shall be guided by the following considerations: (i) party applying for stay may suffer substantial loss without the stay; (ii) application for stay has been made without unreasonable delay; and (iii) applicant applying for stay has given security for due performance of the decree or order.[107]

By the 2021 Amendment, a new provision was introduced by which if a court *prima facie* finds that the arbitral agreement or the underlying contract or the making of the award was induced by fraud or corruption, it has to automatically stay the award unconditionally.[108] The amendment is an exception to the rule that there is no automatic stay on the award if an application for annulment is filed.

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104 Part II, Chapter I and II of the Arbitration and Conciliation Act, 1996; https://www.indiacode.nic.in/bitstream/123456789/1978/1/A1996-26.pdf

105 Section 36 of the Act.

106 *Pam Developments Pvt. Ltd v. State of West Bengal*, (2019) 8 SCC 112.

107 First proviso to sub-Section (3) of Section 36 of the Act.

108 Second proviso to sub-Section (3) of Section 36 of the Act.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Under the Act, the enforcement of foreign awards may be refused if certain conditions are shown to exist.**109** One such condition is if the award was annulled by a court in the jurisdiction in which it was made. Hence, when a foreign award is annulled at the seat, it would necessarily not be enforced by Indian courts.

5.8 Are foreign awards readily enforceable in practice?

In India, the pro-arbitration trend is increasingly visible in the regime which is also becoming pro-enforcement of foreign awards. Courts which are deciding challenges to enforcement of foreign awards are favouring a narrower reading of the conditions or grounds to challenge enforcement.

In *Cruz City I Mauritius Holdings v. Unitech Ltd*, the court rejected the challenge to the foreign award enforcement, reasoning that the ground of public policy is to be interpreted narrowly.[110]

In *Vijay Karia v. Prysmian Cavi E Sistemi Srl*, the court affirmed its pro-enforcement position while deciding on the due process objection taken by parties that they were not able to present their case before the arbitral tribunal.[111]

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws or regulations relating to, or restrictions?

In the recent 2023 case of *Tomorrow Sale Agency Pvt. Ltd v. SBS Holdings Inc. and Ors.*[112] **("SBS Holdings")**, a division bench of the Delhi High Court set aside its own order passed by a single judge in the case of *SBS Holding v. Anant Kumar Choudhary,*[113] and held that a litigation-funding entity cannot be made party to the arbitration agreement under which the funded arbitration was initiated. The court further stated that an award passed as a result of such funded arbitration proceedings cannot be enforced against such litigation-funding entity under Section 36 of the Act, as it is not a party to the arbitration.

The decision of the court in SBS Holdings can be seen as a landmark for the acceptance of third-party funding (**"TPF"**) in Indian jurisprudence. The court in recognising the importance of TPF also opined that TPF is essential to ensure access to justice, for it allows a person having a valid claim to pursue the same and is not restricted for doing so for the want of funds. The court further added that third-party funders need to be fully aware of their exposure, and hence, cannot be subject to liability which they have neither undertaken nor are aware of.

Currently in India, contracts of champerty are not *per se* illegal, except in cases where the lawyer representing the claimant is a party to the agreement, because a lawyer is prohibited from having any financial interest in the claim amount or from charging fees that are contingent on the outcome of the litigation.114 Such contingency fee agreements by lawyers are expressly barred under BCI Rules, which govern the conduct of lawyers in India. The BCI Rules further prohibit practices akin to champerty or maintenance, under which an

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109 Section 48 of the Act.

110 *Cruz City I Mauritius Holdings v. Unitech Ltd*; (2017) 239 DLT 649.

111 *Vijay Karia and Ors., v. Prysmian Cavi E. Sistemi SRL & Ors.,* 2020 SCC OnLine SC 177.

112 *Tomorrow Sales Agency Pvt. Ltd. v. SBS Holdings Inc. and Ors*., 2023 SCC OnLine Del 3191.

113 *SBS Holding Inc v. Anant Kumar Choudhary & Ors.*, O.M.P (I) (COMM.) 71/2023, Delhi High Court.

114 Rule 20 in Part VI, Chapter II of the BCI Rules. Bar Council of India vs. A.K Balaji & Ors., (2018) 5 SCC 379.

advocate is prohibited from buying or trafficking in or stipulating or agreeing to receive any share or interest in an actionable claim.[115]

Under the CPC, a litigation-funder cannot become a party to the proceedings unless it can show that it is a "proper" or a "necessary" party.[116] In an arbitration, an opposite party can object to the joinder of any party on the ground that it is not a party to the arbitration agreement.

However, amendments to the CPC brought in by amending Order 25 Rule 1 by certain states such as Maharashtra, Karnataka, Gujarat and Madhya Pradesh, specifically provide the courts with the power to secure costs for litigation by asking the financer to become a party to the suit and deposit the cost in court.

Currently, there exists no regulatory framework for TPF in India. It is neither expressly permitted nor prohibited under Indian law. TPF agreements where one of the parties to the agreement is an advocate, or where the agreement is extortionate and unconscionable, and hence contrary to public policy would be void.[117] What this means is that despite there being no express regulations governing TPF in India, it would be legal to enter into a TPF agreement provided it is not extortionate or unconscionable. However, the determination of whether an agreement is indeed "*extortionate and unconscionable*" is left to the courts.[118]

Furthermore, with a rise in global trade and consequently disputes with Indian parties and in view of the cost involved in arbitration, Indian parties are now increasingly agreeable to having their dispute resolution funded through TPF.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

Under the Act, there is no express recognition of blockchain technology. In India, the Information Technology Act, 2000 (IT Act) gives legal recognition to electronic communication and transactions carried out by electronic data interchange.[119] However, the IT Act too does not recognise blockchain technology. That said, there is no embargo on the use of blockchain technology and owing to the principle of party autonomy, by mutual agreement parties may use blockchain-based evidence provided it does not go against any general law on contracts or evidence.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

The recognition of an agreement or award recorded on blockchain may be better understood by a reference to recognition of electronic agreements under the general law of contracts and evidence. Under the general law of contracts, a valid contract is one which is made by free consent of parties that are competent to contract, and such contract is made for lawful consideration and for a lawful object.[120] Under the law of evidence, all documents including electronic records are treated as documentary evidence. The Information Technology Act, 2000 defines electronic record to mean data, which could be image or sound, which is stored, received or sent in an electronic form.

As the Act does not expressly recognise blockchain technology, an arbitration agreement recorded on a blockchain can arguably fall within the definition of an arbitration agreement under Section 7 of the Act only if it meets the criteria of the general law on electronic record and contracts. However, this has not been

115 Rule 21 in Part VI, Chapter II of the BCI Rules.

116 Order I, Rule 1 and 3, Code of Civil Procedure, 1908 (CPC).

117 This arises out of Section 23 of the Indian Contract Act, 1872.

118 *Suganchand v. Balchand*; 1956 SCC OnLine Raj 127; *Nuthaki Veukataswami v. Katta Nagireddy*, 1962 SCC OnLine AP 100.

119 The Information Technology Act, 2000 available at: https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf.

120 Section 10 of the Indian Contract Act, 1872.

tested. However, when a party makes an application to a court under Section 8 of the Act seeking reference of the dispute to arbitration, such an application shall be accompanied by an original agreement or a certified copy. That said, the legal position on whether an arbitration agreement recorded on a blockchain is considered as valid for the purpose of Section 8 of the Act has not yet been tested.

An arbitral award to be recognised or enforced or annulled in India requires the petition to be filed along with an original/certified copy of the arbitral award.[121] The legal position on whether an award recorded on a blockchain is recognised as valid is not tested.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

Yes, a court would consider a blockchain arbitration agreement and/or award as original for the purposes of recognition and enforcement. This may be better understood by making a reference to recognition of electronic records under the Information Technology Act, 2000 and the Indian Evidence Act, 1872 as stated above.

Under the Indian Evidence Act, 1872, an electronic record is treated as original when it is contained in the computer in which the original record is first stored.[122] A copy of the original electronic record is treated as original if it is certified to meet certain conditions under the evidence law.[123]

In the absence of any law on how a blockchain agreement or award is treated as original, the law on how an electronic record is treated as original may be applied to such blockchain agreement or award. However, the legal position on whether a blockchain agreement or award may be treated as original for the purposes of recognition and enforcement, by applying the standards for electronic records remains untested to date.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Under the Act, the award is to be signed by the arbitrators or majority of arbitrators. There are no particulars about the nature of signature on the award.[124]

However, the Information Technology Act, 2000 states that in any law (such as the Act) that provides for authentication of a document by a signature, the signature requirement would be satisfied if the document is authenticated by means of an electronic signature in a manner prescribed by the Government.[125]

Looking to the relevant provisions of the Information Technology Act, 2000, an award passed under the Act would be considered authenticated only if it contains an electronic signature as specified in the Information Technology Act, 2000.[126] Inserting the image of a signature is not considered an electronic signature and such an award would not be valid for recognition and enforcement of the award.

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121 *Atul Singh v Sunil Kumar Singh,* (2008) 2 SCC 602; *United India Insurance Co Ltd v M.D. Pahochiya*, 2002 SCC OnLine Guj 17; *India Lease Development Ltd v Thimmakka*, 2002 SCC OnLine Kar 247.

122 *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors*.; (2020) 7 SCC 1.

123 *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors*.; (2020) 7 SCC 1.

124 Section 31 of the Act.

125 Section 5 of the Information Technology Act, 2000.

126 Section 2(ta) of the Information Technology Act, 2000 defines: ”electronic signature” as: ”electronic signature means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature.”

8. Is there likely to be any significant reform of the arbitration law in the near future?

The Government of India, Ministry of Law & Justice in June 2023, constituted an expert committee chaired by Dr. T.K. Vishwanathan, former law secretary to examine the working of arbitration law in the country and recommend reforms to the Arbitration and Conciliation Act, 1996. The committee has also invited comments and suggestions from all stakeholders, including arbitrators, judges, senior counsels, advocates, domestic and international law firms. The expert committee published its report recommending an overhaul of the arbitration law in India on February 7, 2024 and made extensive suggestions to amend the Act and improve its functioning. It remains to be seen to what extent these suggestions would be incorporated into the law by the legislature.

The 2019 Amendment had brought in amendments to promote institutional arbitration in India. The amendment act had added Sections 43A to 43M to the Act. These Sections set out the constitution of the Arbitration Council of India ("**ACI**") , its duties, and responsibilities. The 2019 Amendment was notified in August 2019 but the ACI is yet to be constituted. Once constituted it will be the duty of ACI to take all measures to promote alternate dispute resolution mechanism and frame policies, guidelines and regulations in relation to conduct of arbitration in India.

9. Compatibility of the Delos Rules with local arbitration law

There are some differences between the Act, and the Delos rules. Certain prominent differences include:

- Article 16.1 of the Delos Rules in like manner to the Rules of other institutions stipulates that by submitting their dispute to arbitration under these rules, parties agree to comply with any award without delay and waive their right to any form of recourse, to the extent that such a waiver is legally valid. However, in India, parties cannot, by agreement, waive the court's power to set aside an arbitral award under Section 34 of the Act. Therefore, such a waiver in India, if agreed to by parties, would not be legally valid.

- Article 10 of the Delos Rules allows for the consolidation of two or more arbitral proceedings pending under these rules into a single arbitration. However, in India, the consolidation of arbitral proceedings although permitted, has not been explicitly addressed in the Act.

- Similarly, the rules governing joinder of an additional party to the arbitral proceeding is provided in Article 9 of the Delos rules, but is not addressed in the Act.

10. Further Reading

- Press Information Bureau Press Release, '*Constitution of high-level committee to review Institutionalization of Arbitration Mechanism in India*', 29.12.2016; and '*Report of the High-Level Committee to Review the Institutionalization of Arbitration Mechanism in India*', dated 30.07.2017: https://legalaffairs.gov.in/Sectiondivision/report-high-level-committee-review-institutionalisation-arbitration-mechanism-india

- '*Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act, 1996 to make it alternative in the letter and spirit*' by Shri T.K. Viswanathan, et all dated February 7, 2024: https://www.livelaw.in/pdf_upload/report-of-the-expert-committee-members-on-arbitration-law-2-526205.pdf

- Commentary on the Law of Arbitration, Indu Malhotra, Fourth Edition.

- Law of Arbitration and Conciliation, Justice R.S. Bachawat, Sixth Edition.

- Law Relating to Arbitration and Conciliation, Dr. P.C. Markanda, Eleventh Edition.

- Commentary on the Arbitration and Conciliation Act, Justice S.B. Malik, Eighth Edition.
- Enforcing Arbitral Awards in India, Nakul Dewan and a Team of Expert Contributors.
- Supreme Court on Arbitration and Contracts, Justice R.S. Jindal, C.S.P. Sastry, Aruneshwar Gupta, Second Edition.

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e.* with offices and a case team?	1. Mumbai Centre for International Arbitration, Mumbai, Maharashtra- India ("**MCIA**"): https://mcia.org.in/ 2. Delhi International Arbitration Centre, Delhi- India ("**DIAC**") recently renamed to India International Arbitration Centre: https://dhcdiac.nic.in/ 3. Indian Dispute Resolution Centre ("**IDRC**"): https://theidrc.com/ 4. Indian Council of Arbitration ("**ICA**"): https://www.icaindia.co.in/ 5. Construction Industry Arbitration Council ("**CIAC**"), New Delhi: http://www.ciac.in/ 6. International Centre for Alternative Dispute Resolution ("**ICADR**"), New Delhi: https://www.ic-adr.org/ 7. International Arbitration and Mediation Centre ("**IAMC**"), Hyderabad: https://iamch.org.in/ 8. Indian Institute of Arbitration and Mediation ("**IIAM**"): https://www.arbitrationindia.com/ 9. Hyderabad Arbitration Centre ("**HAC**"): https://hac.org.in/ 10. Nani Palkhivala Arbitration Centre ("**NPAC**"): http://www.nparbitration.net/
Main arbitration hearing facilities for in-person hearings?	MCIA, 20th Floor, Express Towers, Nariman Point, Mumbai, 400021 DIAC, Delhi High Court Campus, Shershah Road, New Delhi, 110503 NPAC, New No. 22, Karpagambal Nagar, Mylapore, Chennai-600004 HAC, 4th Floor, Imperial Square, HUDA Techno Enclave, HITEC City, Hyderabad, Telangana 500081
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Judgments of Indian courts are reported in reporting services such as All India Reporter ("**AIR**"), Supreme Court Cases ("**SCC**"), etc. Recently, there has been an endeavour by the Supreme Court to have live transcription of its proceedings, and a live transcription service provided by TERES (a company named Technology Enabled Resolution) using Natural Language Processing (NLP) and Artificial Intelligence (AI) has been launched on a trial basis in the courtroom of the Chief Justice of India. The official transcript of the proceedings has also been published. Live transcription of proceedings will be expanded eventually to other courts well.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Each court has provisions for translation through means of official translation services. Besides these official translation services, there are also local translation services that are available. However, these would not generate official translation copies.
Other leading arbitral bodies with offices in the jurisdiction?	Singapore International Arbitration Centre ("**SIAC**"): https://www.siac.org.sg/