

INDIAN ARBITRATION LAW: KEY JUDGMENTS AND UPDATES FOR THE YEAR 2022



Arbitration as a preferred method of alternative dispute resolution for commercial disputes has been gaining ground due to its efficiency, and relative expediency. The Arbitration and Conciliation Act, 1996 (**Arbitration Act**) is modelled on lines of the United Nations Commission on International Trade Law (**UNCITRAL**) framework of laws with the idea to modernize Indian arbitration law and bring it in line with the global best practices.

In 2022, several noteworthy judgments have been rendered by the Supreme Court of India (**SC**) and various High Courts (**HC**) discussing the legal position and applicability of provisions of the Arbitration Act. In the past year, the judiciary played a key role in maximising the objectives of the Arbitration Act, that is, efficient settlement of disputes with minimum court intervention and making India an arbitration-friendly jurisdiction.

The key judgments and updates on arbitration law for the year 2022 in India are summarised below:

1. Courts have the discretion regarding remitting a matter to the arbitral tribunal while deciding on a challenge to the arbitral award. (*read our detailed views [here](#)*)

In *I-pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.* (decided on 03 January 2022), the SC held that an award cannot be remitted to the arbitrator if the award lacks findings on contentious issues raised by a party or if the award ignores the material evidence on record. The SC observed that the provisions of the Arbitration Act allow remitting the award for reconsideration before the same arbitral tribunal. However, only when the arbitral tribunal has rendered findings on the issue under consideration. The purpose of remitting the award is to fill in gaps in the reasoning of the award rendered. The SC opined that the intention is a 'curative alternative' to not set aside the award by providing additional reasons without changing the conclusion of the award.

2. Insufficiency of stamp duty is not a fetter to appointment of arbitrator by the Court. (*read our detailed views [here](#)*)

In *Intercontinental Hotels Group (India) Pvt. Ltd. & Anr. v. Waterline Hotels Pvt. Ltd.* (decided on 25 January 2022), the SC held that a court hearing a petition for appointment of an arbitrator

under the Arbitration Act cannot determine the issue of sufficiency of stamp duty payable on any agreement. It was held that such a question is to be decided during the arbitration proceedings by the arbitral tribunal itself.

3. High Courts should exercise judicial restraint while deciding matters related to tender process for foreign-funded projects. (read our detailed views [here](#))

In *National High Speed Rail Corporation Ltd. v. Montecarlo Ltd & Anr.* (decided on 31 January 2022), the SC observed that HCs should exercise judicial restraint in matters relating to tender process of foreign-funded contracts of national importance. In doing so, it quashed the HC's order directing NHRCL to reconsider the bid submitted by Montecarlo after the former rejected it.

4. An award is patently illegal if the arbitral tribunal fails to act in terms of the contract. (read our detailed views [here](#))

In *Indian Oil Corporation v. Shree Ganesh Petroleum Rajgurunagar* (decided on 01 February 2022), the SC opined that an arbitral tribunal appointed in furtherance of a contract cannot travel beyond the same. It was held that neither the arbitral tribunal nor the court can alter the terms and conditions of a valid contract executed between the parties. Therefore, an award passed ignoring the terms of a contract would be against public policy and liable to be set aside.

5. Consent decree cannot be modified unless mistake is patent or obvious. (read our detailed views [here](#))

In *Ajanta LLP v. Casio Keisanki Kabushiki Kaisha d/b/a Casio Computer Co. Ltd.* (decided on 04 February 2022), the SC held that a consent decree cannot be modified or altered unless there is a patent mistake, or if consent is vitiated by fraud or misrepresentation.

6. Application for interim injunction can be filed at post-award stage for protection of an arbitral award. (read our detailed views [here](#))

In *Zostel Hospitality Pvt. Ltd. v. Oravel Stays Pvt. Ltd.* (decided on 14 February 2022), the Delhi HC held that post-award interim reliefs can be granted under an application for interim protection under Section 9 of the Arbitration Act to protect the 'fruits' of an arbitral award.





7. Claims under a contract not addressed in previous arbitration can be agitated in a further/fresh arbitration. (read our detailed views [here](#))

In *M/s Orissa Concrete and Allied Industries Ltd. v. Union of India* (decided on 05 April 2022), the Delhi HC held that a distinct dispute arising under an arbitration agreement cannot be barred merely because the same has been invoked before, especially when claims under the contract were not addressed in the previous arbitration.

8. An arbitral award would be void if it is passed by a tribunal after the expiry of its mandate. (read our detailed views [here](#))

In *Roop Singh Bhatti & Ors. v. M/s Shriram City Union Finance Limited* (decided on 08 April 2022), the Telangana HC held that the provisions of Section 29A of the Arbitration Act are cast in mandatory terms. Therefore, the mandate of an arbitrator terminates under Section 29A(4) of the Arbitration Act after the expiry of the prescribed period thereby making the arbitrator functus-officio and award passed by him a nullity.

9. Orders relating to a tribunal's own jurisdiction cannot be termed as interim order and shall be challenged under Section 34 only after the remaining issues are decided. (read our detailed views [here](#))

In *Board of Trustees for the Syama Prasad Mookerjee Port, Kolkata v. Marinecraft Engineers Private Limited* (decided on 17 May 2022), the Calcutta HC held that the order passed by Micro Small and Medium Enterprise Facilitation Council relates to the Council's own jurisdiction and is not termed as an interim or final award. Accordingly, such an order cannot be challenged under Section 34 of the Arbitration Act.

10. An arbitral tribunal cannot re-write the terms of a commercial contract. (read our detailed views [here](#))

In *Union of India, Ministry of Railways, Railway Board & Anr. v. Jindal Rail Infrastructure* (decided on 23 May 2022), the Delhi HC observed that a commercial contract between parties cannot be avoided on the ground that one of the parties subsequently finds it commercially unviable to perform. The Court held that an arbitral tribunal cannot re-open a bargain that was struck between the parties on account of a plea of commercial difficulty by one of the parties.

11. Close relationships for the purpose of determining independence and impartiality of an arbitrator is limited to blood relations. (read our detailed views [here](#))

In *Himanshu Shekhar v. Prabhat Shekhar* (decided on 31 May 2022), the Delhi HC observed that close family relations are limited to a spouse, sibling, child, parent, or a life partner i.e., relations by birth, marriage, or adoption. Therefore, the arbitrator, being the father-in-law of one of the parties' daughters is not a close relative and therefore, qualified to act as an arbitrator in the matter.

12. The standards provided under the Code of Civil Procedure for granting interim reliefs is not applicable under the Arbitration Act. (read our detailed views [here](#))

In *Essar House Pvt. Ltd. v. Arcellor Mittal Nippon Steel India Ltd.* (decided on 14 September 2022), the SC held that the rigors of Code of Civil Procedure, 1908 applicable for grant of interim measures will not apply for grant of interim measures under Arbitration Act.

13. Parties may challenge arbitral award under Section 34 of the Arbitration Act on the grounds that the arbitrator was ineligible. (read our detailed views [here](#))

In *Naresh Kanayalal Rajwani v. Kotak Mahindra Bank Limited* (decided on 23 November 2022), the Bombay HC held that the question of ineligibility of an arbitrator to conduct arbitral proceedings goes to the root of the award. Therefore, mere participation in the proceedings will not preclude a party from challenging the award on the grounds of ineligibility of the arbitrator. Accordingly, an arbitral award passed by an illegible arbitrator is liable to be set aside.

14. An arbitration clause contained in a tax invoice amounts to a valid arbitration agreement. (read our detailed views [here](#))

In *Bennett Coleman & Co. Ltd v. MAD (India) Pvt. Ltd.* (decided on 22 December 2022), the Bombay HC held that an arbitration clause printed at the back of a tax invoice is a valid arbitration agreement. It was observed that any document in writing exchanged between the parties recording the agreement and where there is no denial of such correspondence will squarely fall within Section 7 of the Arbitration Act and amount to an arbitration clause.

Our thoughts

Arbitration landscape in India is undergoing a major reform, with both the Indian Government as well as the judiciary focused on making India a hub for dispute resolution. With an aim to uphold the objects of the Arbitration Act, the HCs have refused to travel beyond the arbitration agreement entered between parties. Moreover, the decision of the SC referring the dispute to arbitration where the agreement was insufficiently stamped is in keeping with objectives of arbitration law of minimal court intervention. It can be seen that the courts have adopted “*when in doubt, do refer*” approach while presented with the question of appointment of arbitrator. Moreover, by recognizing that the Arbitration Act is a complete code and does not attract strict applicability of civil procedural laws, the courts have reassured the parties of a flexible procedure. If the courts continue to interpret the provisions in a purposive manner, arbitration as a dispute resolution mechanism will continue to grow and establish itself as a significant method of resolving commercial disputes!

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