

# 45 IMPORTANT ARBITRATION JUDGMENTS OF 2021

The year 2021 has been quite engrossing for the arbitration in India. 2021 was no exception to the trend of promoting arbitration as we witnessed a number of enthralling issues of domestic and international arbitration discussed and deciphered by the top courts of India. We cover forty-five such judgments in this edition of the Indian Arbitration Yearly Roundup 2021.



## 01 AMAZON.COM NV INVESTMENT HOLDING LLC V. FUTURE COUPONS PRIVATE LTD. & ORS.

(Civil Appeal 4492-97 of 2021)

### ISSUE -

Whether an award rendered by an emergency arbitrator under the SIAC rules can be held as enforceable in India as per Section 17(1) of the Arbitration and Conciliation Act, 1996?

### RATIO OF COURT -

Supreme Court, in this matter held that Section 17(1) contains application by party for interim relief, the provision is silent on the applicability of rules of arbitral institutions. The parties are liberated to choose institutional rules to resolve their dispute and this would also include power of emergency arbitrator to grant arbitral award.

The interim relief provided by emergency arbitrator would fall within the ambit of Section 17(1) and enforceable under Section 17(2). The court further opined that no appeal can be made under Section 37 against the enforcement proceedings under Section 17(2).

To get detailed copy of judgment click [here](#).

## 02 M/S NN GLOBAL MERCANTILE PVT. LTD. V. M/S INDO UNIQUE FLAME LTD. & ORS.

(CIVIL APPEAL NOS. 3802 - 3803 / 2020)

### ISSUE -

Whether the arbitration agreement be enforceable if the underlying contract has not stamped?

### RATIO OF COURT -

The Supreme Court in this case opined that the arbitration agreement is an independent agreement and is not subjected to be stamped. Non-payment of stamp duty on another commercial contract would not invalidate the arbitration agreement related to it.

To get detailed copy of judgment click [here](#).

## 03 HERO ELECTRIC VEHICLES PVT. LTD. & ANR. V. LECTRO E-MOBILITY PVT. LTD. & ANR.

(CS(COMM) 98/2020 and I.A. 3381/2020)

### ISSUE -

What is the scope of court's jurisdiction while examining an application under Section 8 of the Arbitration and Conciliation Act, 1996?

### RATIO OF COURT -

It was held that while the court entertains an application under Section 8, it must ensure that it exercises the same jurisdiction as that of arbitral tribunal while examining the arbitrability of dispute or the validity of the arbitration agreement.

To get detailed copy of judgment click [here](#).

## 04 INDUS BIOTECT PVT. LTD. V. KOTAK INDIA VENTURE

(ARBITRATION PETITION (CIVIL) NO. 48/2019)

### ISSUE -

Whether the application filed under Section 8 of the Arbitration and Conciliation Act would be maintainable if at the same time there is a pending petition under Section 7 of Insolvency and Bankruptcy?

### RATIO OF COURT -

The Supreme Court in this matter strictly held that if an application under Section 7 of Insolvency and Bankruptcy Code is already pending then no application under Section 8 of Arbitration and Conciliation Act, would be maintainable. However, the court clarified that if the application for petition under Section 7 is yet to be admitted and application under the Arbitration Act has been made then the adjudicating authority should first dispose off the application under Section 7 of Insolvency and Bankruptcy Code (IBC) and only after that it should look into the application under Section 8 of the Arbitration and Conciliation Act.

To get detailed copy of judgment click [here](#).

## 05 PASL WIND SOLUTIONS PVT. LTD. V. GE POWER CONVERSION INDIA PVT. LTD.

(CIVIL APPEAL NO. 1647 OF 2021)

### ISSUE -

Whether two domestic parties can opt for a foreign seated arbitration?

### RATIO OF COURT -

The Supreme Court in this matter upheld the principle of party autonomy in arbitration, the apex court affirmed that the parties would not only be independent to choose the procedural law but also the substantive law. After this judgment it became clear that the two domestic parties can opt for a foreign seated arbitration.

To get detailed copy of judgment click [here](#).

## 06 SPML INFRA LTD. V. NTPC LTD.

(ARB. P. 477/2020)

### ISSUE -

Whether the novation of contract would be examined by the arbitral tribunal, if any dispute arises out of it?

### RATIO OF COURT -

It was held that if the parties had entered into an arbitration agreement then the court must relegate the dispute of parties towards arbitration tribunal for adjudication.

To get detailed copy of judgment click [here](#).

## 07 SHAPOORJI PALLONJI AND CO. PVT. V. RATTAN INDIA POWER LTD. & ANR

(ARB. P. 716/2019 and I. A. No. 7836/2020)

### ISSUE -

Can a party which is not a signatory to arbitration contract be compelled to arbitrate?

### RATIO OF COURT -

In the present case the Delhi High Court held that the respondents of the present case were directly involved in the contract. Thus, they can be referred for arbitration even if the party is non-signatory to the arbitration agreement.

To get detailed copy of judgment click [here](#).

## 08 BHARAT SANCHAR NIGAM LTD. & ANR. V. M/S NORTEL NETWORKS INDIA PVT. LTD.

(Arising out of SLP (C) No. 1531-32/ 2021)

### ISSUE -

What is the time limit for filing an application under Section 11 of the Arbitration and Conciliation Act, 1996.

### RATIO OF COURT -

The Supreme Court in this case held that the time limit for the filing an application Section 11 would be governed by Section 137 of the Limitations Act i.e. three years from the right to apply accrues.

To get detailed copy of judgment click [here](#).

## 09 PRAVIN ELECTRICALS PVT. LTD. V. GALAXY INFRA AND ENGINEERING PVT. LTD.

(CIVIL APPEAL NO. 825 OF 2021)

### ISSUE -

Whether the Section 11 is limited to examining the existence of arbitration examination?

### RATIO OF COURT -

The apex court in this matter held that the proceedings under Section 11 of the Arbitration and Conciliation Act are preliminary and not mini trial. The court placed its reliance on the judgment of Vidya Drolia v. Durga Trading Corporation, where it was held that when it appears that prima facie review is inconclusive and there is need of detailed examination then the arbitral tribunal should do the final determination.

The court went on to held that phrase "existence of an arbitration agreement" under Section 11 would also include the aspect of validity of arbitration agreement.

To get detailed copy of judgment click [here](#).

## 10 SURENDRA KUMAR SINGHAL & ORS. V. ARUN KUMAR BHALOTIA

(CM(M) 1272/2019 & CM APPLs. 38560/2019, 38561/2019, 41024/2019)

### ISSUE -

Whether the objection with regard to jurisdiction under section 16 of the Act can be decided at the time of passing the award?

### RATIO OF COURT -

The Delhi High Court had a clear stance in this case where it was held that the arbitral tribunal should decide on the objections raised with respect to jurisdiction as a preliminary issue and at earliest. It was held that any objection of jurisdiction should be addressed before passing of final award.

To get detailed copy of judgment click [here](#).

## 11 ANIKET SA INVESTMENTS LLC V. JANAPRIYA ENGINEERS SYNDICATE PVT. LTD. AND ORS.

(COMMERCIAL APPEAL NO. 504 OF 2019)

### ISSUE -

Can concurrent jurisdiction arise with two courts under Section 2(1)(e) of the Act, where the cause of action accrues and the court of seat of arbitration?

### RATIO OF COURT -

The Bombay High Court in this case relied on the landmark judgment of BGS SMS Soma v. NHPC. The court made a firm point that no concurrent jurisdiction lies under Section 2(1)(e). The court stated that choice of seat is part of party autonomy and it carries with it effect of conferring jurisdiction to courts of the seat.

To get detailed copy of judgment click [here](#).

## 12 M/S INOX RENEWABLES LTD. V. JAYESH ELECTRICALS LTD.

(CIVIL APPEAL NO. 1556 OF 2021)

### ISSUE -

Whether seat of the arbitration can be changed by the consent of both the parties?

### RATIO OF COURT -

The court held that the seat of the arbitration can be changed upon the mutual consent of both the parties and once the seat is replaced, the courts of new seat would have exclusive jurisdiction of the arbitration.

To get detailed copy of judgment click [here](#).

### 13 **DAKSHIN HARYANA BIJLI VITARAN NIGAM V. M/S NAVIGANT TECHNOLOGIES PVT. LTD.**

(CIVIL APPEAL NO. 791 OF 2021)

#### **ISSUE -**

Whether the limitation period for filing application under Section 34 would commence from the date on which the award was circulated or on the date on which it was signed?

#### **RATIO OF COURT -**

The Supreme Court in the present case held that the 90 days limitation period for filing petition under Section 34 would commence from the date of receipt of signed copy of arbitral award by the parties.

To get detailed copy of judgment click [here](#).

### 14 **JAGDISH KISHANCHAND VALECHA V. SREI EQUIPMENT FINANCE LTD.**

(AP/103/2021)

#### **ISSUE -**

Whether after setting aside of arbitral award under Section 34, can a new arbitrator be appointed?

#### **RATIO OF COURT -**

The Calcutta High Court clearly stated in the matter that the arbitration regime of India upholds party autonomy at all levels and thus party's autonomy to choose further course of action should also be protected under it. Thus, the court affirmed that once the arbitration award has been set aside, the parties to the dispute can appoint new arbitrator for the fresh determination of the dispute.

To get detailed copy of judgment click [here](#).

### 15 **MEGHA ENTERPRISES AND ORS. V. HALDIRAM SNACKS PVT. LTD.**

(O.M.P. (COMM) 79/2021)

#### **ISSUE -**

Whether the court can interfere in the enforcement of an arbitral award if it finds out that the tribunal erred in the evaluation of the evidence presented by the parties.

#### **RATIO OF COURT -**

In this case the Delhi High Court held that courts cannot interfere merely because the arbitral tribunal failed to correctly evaluate the evidence presented by the parties. The court went on state that while hearing the petition under Section 34 the court cannot re-appreciate the evidences.

To get detailed copy of judgment click [here](#).

## 16 MOHINI ELECTRICALS LTD. V. DELHI JAL BOARD

OMP (ENF.) (COMM.) 2/2020

### ISSUE -

Whether stamp duty is to be mandatorily paid at the time of passing of an arbitral award?

### RATIO OF COURT -

The Delhi High Court in this matter held that arbitrator is not conferred with the power of directing the parties to pay stamp duty within a specified period of time and also that the parties are not obligated to pay the stamp duty at the time of pronouncement and signing of the arbitral award.

To get detailed copy of judgment click [here](#).

## 17 BHAVEN CONSTRUCTIONS V. EXECUTIVE ENGINEER SADRAR SAROVAR NARMADA NIGAM LTD. ANR.

(CIVIL APPEAL NO. 14665 OF 2015)

### ISSUE -

Whether High Court can invoke the powers conferred to it under Article 227 of the Constitution to interject arbitral process?

### RATIO OF COURT -

Supreme Court in this matter held that in order to invoke the inherent jurisdiction of High Court under Article 227 the party must show that there are exceptional circumstance or bad faith on the part of other party. The apex court appraised the broad scope of Article 227 by stating that this provision can be used by court to interfere in arbitral process as well.

To get detailed copy of judgment click [here](#).

## 18 GOVT. OF MAHARASHTRA V. M/S BORSE BROTHERS ENGINEERS AND CONTRACTORS PVT. LTD.

(CIVIL APPEAL NO. 995 OF 2021)

### ISSUE -

Whether delay in filing an appeal under Section 37 of the Arbitration and Conciliation Act, be condoned?

### RATIO OF COURT -

The Supreme Court in this case held that the delay in filing appeal under Section 37 can only be condoned in exceptional circumstances, where the appellant acted bona fide and not negligently.

To get detailed copy of judgment click [here](#).

## 19 TATA CAPITAL FINANCE LTD. V. SHRI CHAND CONSTRUCTION AND APARTMENT PVT. LTD.

(FAO(OS) 40/2020 and CM No. 15441/2020)

### ISSUE -

Whether a clause enabling a contracting party to abandon the arbitration proceedings in the middle, be valid in the eyes of law?

### RATIO OF COURT -

The Delhi High Court held that any arbitration agreement or clause which confers unequal power to one party to unilaterally abandon the arbitration proceedings, would be invalid in the eyes of law. Such agreement lacks the very essence of arbitration agreement i.e., mutuality.

The court further held that allowing such agreements would lead to multiplicity of proceedings and conflicting decisions.

To get detailed copy of judgment click [here](#).

## 20 ARUN SHRIVASTAVA V. M/S LARSEN & TURBOLTD.

(CM(M) 1520/2018)

### ISSUE -

Whether a writ petition is maintainable against the order under Section 8 of the Act directing parties to refer the dispute to arbitration?

### RATIO OF COURT -

Delhi High Court held that no petition under Article 227 can be filed against the order made under Section 8 directing parties to arbitrate. The court went on to discuss the legislative intent behind the provision which had no mention of appeal against the order made under Section 8. Thus, if there is a valid arbitration agreement then the court must refer the parties to arbitration and the arbitral tribunal shall adjudicate upon all the intricacies related to it.

To get detailed copy of judgment click [here](#).

## 21 ARCELOR MITTAL NIPON STEEL INDIA LTD. V. ESSAR BULK TERMINAL LIMITED

(SLP(C) No. 13129/2021)

### ISSUE -

Whether the bar under Section 9(3) would be apply to an application which the court is already entertaining?

### RATIO OF COURT -

The Supreme Court in the present matter held that the bar under Section 9(3) would not apply if the court is already considering the application. The court stated that the purpose of provision in question is not to send an already decided matter back to arbitral tribunal for consideration.

To get detailed copy of judgment click [here](#).



## 22 QUIPPA INFRASTRUCTURE V. A2Z INFRASERVICE LTD.

(APO 29 of 2021)

### ISSUE -

What should be inferred from the phrase “constitution of arbitral tribunal”?

### RATIO OF COURT -

The Calcutta High Court adjudicated the matter and stated that the phrase “constitution of arbitral tribunal” should be given wider interpretation and would also include assumption of jurisdiction by arbitral tribunal, after the commencement of the arbitral proceedings as per Section 21.

To get detailed copy of judgment click [here](#).

## 23 DLF LTD. V. LEIGHTON INDIA CONTRACTORS PVT. LTD.

(FAO(OS) (COMM) 63/2020)

### ISSUE -

Whether the court can also determine substantial issues while deciding on an application under Section 9 of the Act?

### RATIO OF COURT -

The Delhi High Court clearly stated that the purpose of Section 9 is to preserve the subject matter of the dispute till the arbitral tribunal is constituted and it cannot act any further than that. The determination of substantial issues is to be left to the arbitral tribunal.

To get detailed copy of judgment click [here](#).

## 24 PATIL RAIL INFRASTRUCTURE PVT. LTD. V. MINISTRY OF RAILWAY

(ARB.P. 327/2021)

### ISSUE -

If the party fails to appoint the arbitrator prior to filing of petition under Section 11 then whether his right to appoint gets forfeited?

### RATIO OF COURT -

The Delhi High Court in this case placed reliance on judgment of apex court in the matter of Datar Switchgears v. Tata Finance Ltd. and held that a party would forfeit its right to appoint an arbitrator once it files a petition under Section 11 of the Act.

## 25 SAGAR CONSTRUCTION V. GOVT. (NCT) OF DELHI

(ARB.P. 327/2021)

### ISSUE -

Can party's right to invoke arbitration be restricted to a lesser period than provided in the Arbitration Act?

### RATIO OF COURT -

The Delhi High Court held that right of a party to invoke arbitration cannot be restricted to a lesser period as prescribed in the Arbitration Act. The Act prescribes a time limit of three year, from the date cause of action arises, to invoke arbitration and such period cannot be lessened through any means. Relying on Supreme Court's judgment in National Insurance Co v. Sujir Ganesh Nayak, it was held that restricting limitation period would be violative of Section 28 of Indian Contract Act.

To get detailed copy of judgment click [here](#).

## 26 DLF HOME DEVELOPERS LTD. V. RAJPURA HOMES PVT. LTD.

(ARBITRATION PETITION (CIVIL) NO. 16 OF 2020)

### ISSUE -

Whether the court while exercising its jurisdiction under Section 11 of the Act, can determine whether arbitration agreement correlates with the dispute?

### RATIO OF COURT -

In the present case the Supreme Court widened the scope of examination of the arbitration agreement when it is at pre-arbitral stage. The court went on to state that the courts while appointing the arbitrators should not act mechanically and refer the parties to arbitration but should also check whether the arbitration agreement correlates with the dispute at hand.

If the court finds out that there is no correlation between the arbitration agreement and the dispute then it should decline the reference of the dispute to arbitration. This would not interfere with the power and scope of arbitrator but instead would streamline the process of arbitration.

To get detailed copy of judgment click [here](#).

## 27 AIRONE CHARTERS PVT. LTD. V. JETSETGO AVIATION SERVICES PVT. LTD.

(ARB.P. 245/2020)

### ISSUE -

Whether a party invoking arbitration can bifurcate the claims, like filing few claims at one stage and other claims at later stages.

### RATIO OF COURT -

The Delhi High Court made a clear statement that bifurcated claims cannot be made by the party. The party invoking the arbitration should specify all the claims in the notice to the other party. However, if the arbitration agreement permits then the party can bring up different claims through different proceedings.

To get detailed copy of judgment click [here](#).

## 28 M.P. HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD V. K.P. DWIVEDI

(Civil Appeal No. 6768/2021)

### ISSUE -

Whether an issue which has been already been raised before the arbitrator appointed by the HC can be raised again by the party before the arbitral tribunal under Special Statute?

### RATIO OF COURT -

The Supreme Court had a clear stand in this case that an issue already raised voluntarily by the party in front of an arbitrator appointed by the High Court cannot be re-agitated before a tribunal constituted under special statute.

Once the party has participated in the arbitral proceedings in front of court appointed arbitrator without any objection, doctrine of 'Issue Estoppel' would apply and party would be barred from raising the same dispute again.

To get detailed copy of judgment click [here](#).

## 29 BCC DEVELOPERS AND PROMOTERS LTD. V. DMRC

(ARB.P. 813/2021)

### ISSUE -

Whether the panel of arbitrators who had been previously employed by the respondent be hit by Section 12 of the Act.

### RATIO OF COURT -

The Delhi High Court relied on the case of Central Organization for Railway Electrification and held that merely because the arbitrators are ex-employee of the respondent would not make them ineligible to adjudicate the matter.

To get detailed copy of judgment click [here](#).

## 30 S.P. SINGLA CONSTRUCTIONS PVT. LTD. V. CONSTRUCTIONS AND DESIGN SERVICES, UTTAR PRADESH JAL NIGAM

(ARB.P. 450/2021)

### ISSUE -

Whether the rules of arbitral institutions could determine the 'Seat' of the arbitration?

### RATIO OF COURT -

The Delhi High Court held that rules of arbitral institutions would not determine 'Seat' of the arbitration. Determination of the 'Seat' is part of party autonomy and would be chosen in accordance to the parties and as per arbitration agreement. Rules of arbitral institutes are of procedural nature and come into play after commencement of arbitration.

To get detailed copy of judgment click [here](#).

### 31 UNION OF INDIA V. OM VAJRAKAYA CONSTRUCTION COMPANY

(O.M.P. (COMM) 299/2021)

#### ISSUE -

Whether the parties can limit the power of court through a prior agreement between the parties?

#### RATIO OF COURT -

The Delhi High Court held that court's power to award cost cannot be fettered unlike arbitral tribunal's power to order interest. Any agreement prohibiting court's power to award cost would be invalid, however it would be valid if the agreement is made post dispute have arisen.

To get detailed copy of judgment click [here](#).

### 32 UNION OF INDIA V. MANRAJ ENTERPRISE

(CIVIL APPEAL NO. 6592 OF 2021)

#### ISSUE -

Whether the arbitrator could award interest even if the parties have made an agreement to its contrary?

#### RATIO OF COURT -

Supreme Court held that if the parties have expressly prohibited the grant of interest then arbitral tribunal cannot award the same. The arbitrator is element of the contract and thus he has to abide to the terms of the contract and cannot act contrary to it.

To get detailed copy of judgment click [here](#).

### 33 NATIONAL HIGHWAY AUTHORITY OF INDIA V. M HAKEEM

(SLP (CIVIL) NO.13020 OF 2020)

#### ISSUE -

Whether the court can modify an arbitral award under Section 34 of the Act?

#### RATIO OF COURT -

The Supreme Court made it clear that the court is only empowered to affirm or set aside the arbitral award under Section 34. The courts do not have any power to modify the award u/s 34.

To get detailed copy of judgment click [here](#).

### 34 DELHI AIRPORT METRO EXPRESS PVT. LTD. V. DELHI METRO RAIL CORPORATION LTD.

(Civil Appeal No. 5628 of 2021)

#### ISSUE -

Whether the court can put its view forth against that of arbitrator, in case both are possible?

#### RATIO OF COURT -

Supreme Court held that the arbitration agreement is within the jurisdiction of the arbitral tribunal and court cannot impose its view above tribunal's. In case of erroneous application of law or contravention with substantive law would not lead to 'patent illegality' if it does not go to the root of the matter.

Only in extreme circumstances where the tribunal has acted so erroneously that such view is not possible, or the award is made on issue not submitted for arbitration, court can set aside the arbitral award.

To get detailed copy of judgment click [here](#).

### 35 RATNAM SUDESH IYER V. JACKIE KAKUBHAI SHROFF

(CIVIL APPEAL NO. 6112 OF 2021)

#### ISSUE -

Whether the parties through their agreement make the 2015 amendment to Arbitration Act apply retrospectively?

#### RATIO OF COURT -

Supreme Court held that the content of a contract cannot override the legislative intent of the amendment to apply is prospectively. The court relied on few of its precedents to state that the provisions of the 2015 amendment would only apply to the matters in which the proceedings commenced post passing of the amendment.

To get detailed copy of judgment click [here](#).

### 36 GUJARAT STATE DISASTER MANAGEMENT AUTHORITY V. M/S ASKA EQUIPMENTS LTD.

(CIVIL APPEAL NO. 6252/2021)

#### ISSUE -

Whether the requirement of pre depositing 75% of the awarded amount is mandatory as per Section 19 of MSMED Act?

#### RATIO OF COURT -

The Supreme Court held that the condition of pre-deposit of 75% of the awarded amount is a sine qua non for filing an application under Section 34 of the Arbitration and Conciliation Act. However, the Supreme Court allowed for payment of pre-deposit in installment if it apprehends that lumpsum deposit of amount might cause undue hardship to the appellants.

To get detailed copy of judgment click [here](#).

### 37 PSA SICAL TERMINALS PVT. LTD. V. THE BOARD OF TRUSTEES OF V.O. CHIDAMBARAM PORT TRUST

(CIVIL APPEAL NOS. 3699-3700 OF 2018)

#### ISSUE -

Whether the arbitrator can substitute the terms of the contract by exercising his power ex debito justitiae?

#### RATIO OF COURT -

The Supreme Court in this matter held that arbitrators are the element of arbitration agreement and thus cannot exercise the power ex debito justitiae. The arbitrator cannot amend the contract as that would make the parties to abide by something which they didn't agree to, this would also further breach the fundamental principle of justice.

To get detailed copy of judgment click [here](#).

### 38 BCCI V. DECCAN CHRONICLES HOLDING

(COMM ARBITRATION PETITION (L) NO. 4466 OF 2020)

#### ISSUE -

Whether the arbitrator can amend the contract?

#### RATIO OF COURT -

The Bombay High Court held that the role of arbitrator is to resolve the dispute as per the terms of the contract and not transgress the contents of the contract and decide the dispute in a manner not agreed by the parties. This would amount to principle of party autonomy which is held with high regard in arbitration.

To get detailed copy of judgment click [here](#).

### 39 WELSPUN SPECIALTY SOLUTIONS LTD. V. OIL AND NATURAL GAS CORPORATION LTD

(CIVIL APPEAL NO. 6834 OF 2021)

#### ISSUE -

When would 'time' be the essence of arbitration contract?

#### RATIO OF COURT -

The Supreme Court held that mere explicit clause would not make 'time' essence of the arbitration contract, for the whole contract should be read and immediate circumstances should be taken into consideration. A clause granting time extension would be rendered ineffective if invoked without paying damages.

To get detailed copy of judgment click [here](#).

#### **40 KANODIA INFRATECH LTD. V. DALMIA CEMENT (BHARAT) LTD.**

(O.M.P. (COMM) 297/2021)

##### **ISSUE -**

Whether the unilateral appointment of arbitrator can be challenged for the first time while making an application under Section 34 of the Arbitration and Conciliation Act?

##### **RATIO OF COURT -**

The Delhi High Court made a clear statement in the present case by stating that if a party actively participates in the arbitral proceedings and does not raise any objection to it at earliest possible opportunity under various provisions then it would be deprived from challenging the same under Section 34 of the Act.

To get detailed copy of judgment click [here](#).

#### **41 JHARKHAND URJA VIKAS NIGAM LTD. V. THE STATE OF RAJASTHAN**

(CIVIL APPEAL NO.2899 OF 2021)

##### **ISSUE -**

Whether an arbitral award could be passed by Facilitation Council without conducting the arbitral proceedings?

##### **RATIO OF COURT -**

The Supreme Court held that MSMED Act when read with Arbitration Act, upon the failure of the conciliation proceedings, the Facilitation Council is only empowered to refer the dispute to the arbitration and cannot pass an award. The apex court said that there is a difference between facilitation and arbitration. Passing of an award by the Facilitation Council would amount to patent illegality.

To get detailed copy of judgment click [here](#).

#### **42 TOYO ENGINEERING CORPORATION V. INDIAN OIL CORPORATION LTD.**

(SLP (C) No. 11766-11767/2020)

##### **ISSUE -**

While hearing the enforcement petition u/s 36 of Arbitration Act, would the court be bound by the principles of CPC, 1908?

##### **RATIO OF COURT -**

The Supreme Court held that the court cannot be bound by all the principles of CPC while it hears enforcement petition. The court would consider the principles mentioned under O. 41 R. 5 of CPC.

To get detailed copy of judgment click [here](#).

### **43 PUNJAB STATE CIVIL SUPPLIES CORPORATIONS LTD. V. RAMESH KUMAR & CO.**

(Civil Appeal No 6832/2021 )

#### **ISSUE -**

Whether the high court while hearing an appeal under Section 34 of the Arbitration Act, decree a claim?

#### **RATIO OF COURT -**

The apex court in this case held that while exercising its jurisdiction under Section 37 against an order under Section 34 is different from the first appellate jurisdiction of civil suit. While determining an arbitration appeal, the court should only determine the validity of order under Section 34.

### **44 STATE OF CHATTISGARH V. M/S SAL UDYOG PVT. LTD.**

(CIVIL APPEAL NO. 4353 OF 2010)

#### **ISSUE -**

Whether new grounds of challenge can be raised in an appeal under Section 37 of the Arbitration Act?

#### **RATIO OF COURT -**

The apex court held that parties are not barred from raising new grounds of challenge in appeals. The ground of patent illegality is also available under Section 37 of the Act and it can be raised for the first time in appeal.

To get detailed copy of judgment click [here](#).

### **45 GEMINI BAY TRANSCRIPTION PVT. LTD. V. INTEGRATED SALES SERVICE LTD.**

(CIVIL APPEAL NOS.8343-8344 OF 2018)

#### **ISSUE -**

Whether a non-signatory to the arbitration agreement be bound by the arbitral award?

#### **RATIO OF COURT -**

The Supreme Court held that a non-signatory who has been acting as an alter-ego of signatory of arbitration agreement would be bounded by the arbitral award. The court also emphasized on the use of word 'persons' instead of 'parties' under Section 46.

Party who applies for enforcement of arbitral award is not bound to produce any evidence that the non-signatory is the person claiming to be an alter-ego of signatory

To get detailed copy of judgment click [here](#).



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