NFRAL
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By the Editorial team

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APPOINTMENT OF ARBITRATORS

No purpose served, in facts, to refer the parties to pre-arbitral mechanism: Delhi High Court

16 September 2021 | PVR Limited v. Tirupati Buildings and Offices Private Limited | Arb P 543/2021| C Hari Shankar J | Delhi High Court | 2021 SCC OnLine Del 4446

While appointing an arbitrator, the Delhi High Court rejected the objection that the pre-arbitral mechanism was not followed. The agreement provided for an attempt to amicable resolution before commencing arbitration. However, notices and letters sent by petitioner were not answered. Hari Shankar J said, "no purpose whatsoever would be served in exploring the possibility of any amicable resolution at this stage. Needless to say, even after the appointment of the arbitrator, it would always be open to the parties to resolve the disputes amicably."

Read the decision here.

NFRAL Category Cloud: Appointment of Arbitrators | Pre Arbitral Mechanism | Pre Arbitral Procedure | Section 11 ACA |

What is an express agreement in writing under Section 12 (5) ACA? Delhi High Court

17 September 2021 | Larsen and Toubro Limited v. HLL Lifecare Limited | OMP (T) (Comm) 59/2021 | C Hari Shankar J | Delhi High Court | 2021 SCC OnLine Del 4465

HLL Lifecare, a government corporation, unilaterally appointed a retired Chief Engineer of the Public Works Department, Government of Maharashtra, as the sole arbitrator. Since such an arbitrator is ineligible under Section 12 (5) ACA read with the Seventh Schedule, the petitioner applied for appointment of an independent arbitrator. The application was resisted arguing that the ineligibility was waived because earlier both the parties had confirmed they had no objection to the tribunal. Then, later the petitioner consented for extension of six months for completion of the arbitral proceedings.

Held, neither of these considerations could operate as an express agreement in writing to waive Section 12 (5) ACA. Similar contentions were rejected in *JMC Projects (India) Ltd.* v. *Indure Pvt. Ltd., 2020 SCC OnLine Del 1950* (another Hari Shankar J's ruling). Accordingly, held, the arbitrator is *de jure* rendered incapable of continuing with the arbitral proceeding.

The argument that the arbitral proceedings are in an advanced stage, and there were laches " … unfortunately, is not available to the petitioner, in view of the statutory right conferred by Section 12(5) of the 1996 Act."

Read the decision here.

NFRAL Category Cloud: Appointment of Arbitrators | Bharat Broadband | De jure Ineligibility | Grounds for Challenge | Ineligibility of Arbitrator | Section 11 ACA | Section 12 (5) ACA | Section 12 ACA | Seventh Schedule | Waiver

Unilateral reference of arbitration to an institution and appointment of arbitrator by institution, both bad in view of Perkins: Calcutta High Court

21 September 2021 | Century Metals Recyling Limited and Another v. URGO Capital Limited and Others | AP 351 of 2021| Rajesh Bindal ACJ | Delhi High Court | 2021 SCC OnLine Cal 2506

The agreement provided that the dispute shall be decided by a sole arbitrator to be appointed by the lender. The lender unilaterally referred the dispute to Centre for Alternate Dispute Resolution Excellence (CADRE), which appointed the arbitrator. The petitioner applied for appointment of another arbitrator on *Perkins* grounds also stating that though it was not averse to an institutional arbitration, the forum

could not be chosen unilaterally by the respondent, an interested party.

Appointment, held, was hit by *Perkins* because "the respondent did not have any right even to refer the dispute to CADRE for appointment of an arbitrator for the reason that the respondent is a party interested in the outcome of the dispute. It will not matter if the dispute is referred to a sole arbitrator or an institution as it is charting the course for dispute resolution."

An argument relating to the power of an arbitral institution based on Section 11 (11) ACA was rejected because the sub-section is not notified.

Read the decision here.

NFRAL Category Cloud: Appointment of Arbitrators | Independence and Impartiality of Arbitrator | Perkins | Sole Arbitrator | TRF | Unilateral Appointment of Arbitrator | Voestalpine | Institutional Arbitration

The judicial standard to decide an application for appointment under Section 11 ACA: Supreme Court of India

22 September 2021 | DLF Home Developers Limited v. Rajapura Homes Private Limited and another | Arbitration Petition (Civil) No. 17 of 2020 | DLF Home Developers Limited v. Begur Omr Homes Pvt. Ltd and another | Arbitration Petition (Civil) No. 16 of 2020 | NV Ramana CJ and Surya Kant J | Supreme Court of India | 2021 SCC OnLine SC 781

Ridgewood partnered with DLF in 2007. To the extent relevant here, the parties formed two joint venture companies. One was called Rajapura Homes and was supposed to develop residential projects in Bangalore. The other was Begur Omr Homes to develop residential protects in Kanchipuram (Tamil Nadu) as well as Bangalore.

The agreement gave the investor Ridgewood an exit mechanism via a put option (broadly, the party having the right (like Ridgewood) can "put" its shareholding on the table and the other party (like DLF) had to buy them on a specified price. Later, Ridgewood transferred its shareholding in the joint venture companies to its affiliates Resimmo and Clogs Holdings.

At some point, Resimmo and Clogs exercised the put option, but DLF was unable to provide the exit. The matter was settled. It was decided that DLF would transfer its shareholding in the joint venture companies to Ressimo. For this, the parties executed two share purchase agreements. As part of the settlement, the share purchase agreements further provided for execution of construction agreements under which DLF had to complete the construction of the Rajapura and Begur projects. On the conclusion of the construction obligations, DLF was to notify Resimmo. If Resimmo accepted the completion, it had to invest INR 75 crores more into the joint venture companies (DLF being the indirect beneficiary of that sum). The construction agreement provided for an arbitration in accordance with the ACA and New Delhi as the seat and venue.

There was third agreement at play. For the construction DLF was to get fee in accordance with the calculation set out under a fee computation agreement executed among the respondents.

Disputes arose when Resimmo did not accept DLF's notice of completion. DLF gave notice of arbitration under the construction agreements. Resimmo took the position that the dispute had arisen under the share purchase agreement.

DLF filed two separate petitions (for each joint venture company/construction agreement) to appoint one sole arbitrator under both the construction agreements.

In deciding, first, the court made some observations on the jurisdiction under Section 11 ACA:

(a) Despite the omission of Section 11(6-A) ACA, the legislative intent behind thereto continues to be a guiding force for the courts while examining an application under Section 11 of the Act. [*Ed.* This is an incorrect observation. The omission has not yet been brought into effect.]

(b) Such a review is not intended to usurp the jurisdiction of the arbitral tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the court to decline a prayer for reference if the dispute in question does not correlate to the said agreement.

Then the court examined under which provision the dispute was covered. For that it said, "the two groups of agreements will have to be read in harmony and reconciled." It concluded that the dispute was referable under the construction agreement because:

(a) Notwithstanding certain overlaps, their object and field of operation is different and distinct in nature.

(b) What would be the purpose of having a separate arbitration clause 11 under the RCMA/SCMA?

(c) Moreover, if on appreciation of the facts and law, the arbitrator finds that the 'real dispute' stems from the Share Purchase Agreements the arbitrator shall be free to wind up the proceedings with liberty to the Parties to seek redressal under the rules of SIAC.

Then turning briefly to the issue of joinder the court ruled as follows:

(a) The fact remains that the RCMA and SCMA, though interlinked and connected, are still two separate agreements and the genesis of the disputes lies in separate and distinct facts.

(b) Save where the parties have resolved to the contrary, it would be inappropriate to consolidate the proceedings originating out of two separate agreements.

(c) However, since the Fee Agreement provides that the "Fee" can only be calculated after taking into consideration various financial components of both the Rajapura Homes Projects and the Southern Homes Project, it would be necessary for the sake of avoiding wastage of time and resources, and to avoid any conflicting awards that the disputes are referred to a sole Arbitrator.

Finally, the court left it to the wisdom of the sole arbitrator to decide whether the disputes should be consolidated and adjudicated under one composite award or otherwise. The modalities and manner in which the two separate arbitral proceedings shall be conducted shall also be resolved by the sole arbitrator.

Read the decision here.

NFRAL Category Cloud: Appointment of Arbitrators | Section 11 ACA | Vidya Drolia | Who Decides Question | Section 11 - 6A ACA | Consolidation

INTERIM RELIEF BY COURT AND ARBITRAL TRIBUNAL

Scope of Section 9 (3) ACA summarised and matter sent to the arbitral tribunal: Delhi High Court

14 September 2021 | Cyfuture India Private Limited v. Futuretimes Technology India Private Limited | OMP (I) (COMM.) 103/2021 | C Hari Shankar J | Delhi High Court | 2021 SCC OnLine SC 4464

Section 9 (3) ACA provides that once the tribunal has been constituted, the Court shall not entertain an application for interim relief unless it finds that circumstances exist which may not render the remedy under Section 17 ACA (tribunal's power to give interim relief) efficacious.

In *Arcelor Mittal Nippon Steel India Ltd.* v. *Essar Bulk Terminal Ltd.* 2021 SCC OnLine SC 718, the Supreme Court examined this provision and in particular the meaning of "entertained" vis-à-vis the power of the Section 9 court and the power of the tribunal. It approved C Hari Shankar J's ruling in *Avantha Holdings Limited* v. *Vistra ITCL India Limited*, 2020 SCC OnLine Del 1717 (except the finding on pre-arbitral stage jurisdiction).

Now, following *Arcelor,* in a case where the court had earlier made an ad-interim order, the matter was sent to the tribunal because the tribunal stood subsequently constituted. *Arcelor's r*uling was summarized as follows:-

(a) The proscription under Section 9 (3) ACA applies only before an application under Section 9(1) has been "entertained." The expression "entertained" has to be understood as "taken up for consideration". Once the application has been taken up for consideration, such as where arguments are in progress or judgment reserved, Section 9 (3) ACA has no application.

(b) Where the bar applies, the Court has to examine whether the Section 17 ACA remedy would be efficacious. There is no absolute prohibition on deciding the Section 9 ACA application, even where the arbitral tribunal stands constituted.

(c) Where the arbitral tribunal stands constituted, however, the approach of the Court has to be circumspect. Unless there is some impediment in approaching the arbitral tribunal under Section 17, or where the remedy under Section 17 is rendered inefficacious for some clear and apparent reason, the prayer for interim relief ought, appropriately, to be relegated to the arbitral tribunal.

Hari Shankar J noted that the tribunal was constituted before the court took up the application for consideration on merits. "No ground, which would indicate the Section 17 remedy to be inefficacious, has been made out, or even urged, by the petitioner." Since there was an ad interim order in the petitioner's favour, there was no likelihood of prejudice. The tribunal was directed to decide the petition as application under Section 17 ACA. of the 1996 Act.

To expedite matters, it was directed that the petitioner would not be required to re-file the petition; the the registry was directed to return the petitions along with the records, so that they could be presented before the arbitrator. The ad interim order was continued until an order made by the tribunal.

Read the decision here.

NFRAL Category Cloud: Interim Measures by Court | Section 9 (3) ACA | Section 9 ACA | Interim Measures Ordered by Arbitral Tribunal | Section 17 ACA | Avantha Holdings | Arcelor Mittal | Entertain

What is a contract determinable in its nature and can the Section 9 court make an order despite termination: Delhi High Court

24 September 2021 | Golden Tobacco Limited v. Golden Tobie Pvt. Ltd. | OMP (I) (COMM.) 182/2021 | Vibhu Bakhru J | Delhi High Court | 2021 SCC OnLine SC 4506

The court had before it a petition relating to some cigarette brands of mass appeal most of us consumed at least in student life: Panama, Golden Gold Flake, Golden Classic, Taj Chhap and Chancellor. These brands were licensed to the respondent in perpetuity subject to payment periodically of royalty (Trademark License Agreement). The agreement could be terminated for breaches which were not cured even after a notice had been given.

Some disputes arose and the petitioner applied for an injunction against the respondent from manufacturing, selling and supplying the cigarettes under those brand names.

The respondent opposed the petition on several grounds. In rejoinder, the petitioner's case was that under Section 14(d) of the Specific Relief Act, 1963 a contract which is in its nature determinable cannot be enforced and denying an injunction in the case would amount to specifically enforcing the Trademark License Agreement, which was a determinable contract.

What is an agreement determinable by nature and whether the Trademark License Agreement was such an agreement? The court considered this the "main question." In answer, relying on some cases from other High Courts, the court ruled as follows and also gave some illustrative examples:

(a) The question whether an agreement is in its nature determinable is required to be understood in the context of the nature of that agreement. There are certain agreements that can be terminated by either party at will or without any cause. Those are determinable.

(b) Some other agreements that require service of a personal nature which by its very nature cannot be compelled are also clearly determinable.

(c) There may be agreements where the right to terminate the contract is reserved for a specified party or parties. In such cases, the contracts are determinable but only at the instance of the said party and that party cannot be compelled to specifically perform the contract.

(d) However, an agreement, which pertains to transfer of rights in property, cannot be considered as a determinable contract if it does not provide for termination by a party without cause.

It ruled that the agreement in question was not determinable.

The court also examined another of the petitioner's contention, namely, because the agreement had been terminated, it could not be specifically enforced (and denial of injunction would be specifically enforcing it). Rejecting, the court ruled:

(a) The sweep of Section 9 ACA is not narrow. The court has wide powers (including) to grant such interim measures of protection as may appear just and convenient. The court has the same power for making orders as it has for the purpose of and in relation to any proceeding before it.

(b) The subject matter of disputes in the present case are not only the rights of the petitioner but also that of the respondent. The right to use the brands in perpetuity is a valuable right and it could not be contended that the court lacks the jurisdiction to pass interim orders of protection for preserving such right.

Noting further that GTL could not insist on interim orders of protection without establishing the ingredients of injunction, the court examined the facts and found that GTL did not have a *prima facie* case, and the termination appeared improper. The petition was rejected reserving all rights and contentions of the parties for the arbitration.

Read the decision here.

NFRAL Category Cloud: Interim Measures by Court | Section 9 ACA | Interim Measures Ordered by Arbitral Tribunal | Section 17 ACA | Determinable Contract | Termination of Contract

Can the Section 9 court grant interim measures: Delhi High Court

29 September 2021 | Dimeco v. Central Organisation for Modernization of Workshops | OMP (I) (COMM.) 325/2021 | Vibhu Bakhru J | Delhi High Court | 2021 SCC OnLine SC 4582

While denying a petition under Section 9 ACA, Bakhru J has referred briefly to a few authorities on the purpose of interim relief. The petition was rejected because the court found that no prejudice was caused if the respondent disposed the "Cut to Length" machine it had been supplied earlier by the petitioner under a contract.

The dispute was that, according to the petitioner, full payment had not been made for the machine and though the respondent failed to properly maintain the machine, it sent a rejection memo threatening to recover the payment already made.

The court said that the petitioner may have a monetary claim against the respondents and/or require to defend a monetary claim that the respondents may prefer but it would not be prejudiced in any manner by the respondents' disposing the machine in question.

The court referred to *Cotton Corporation of India Limited* v. *United Industrial Bank Limited* (1983) 4 SCC 625, *Ashwani Minda* v. *U Shin Ltd.*, (2020) 3 Arb LR 204, *Raffles Design* v. *Educomp Professional Education Ltd.*, (2016) 234 DLT 349, *Adhunik Steels Ltd.* v. *Orissa Manganese and Minerals (P) Ltd.*, (2007) 7 SCC 125 and *Fourie* v. *Le Roux* [2007] 1 WLR 320.

Read the decision here.

NFRAL Category Cloud: Interim Measures by Court | Section 9 ACA | Interim Measures Ordered by Arbitral Tribunal | Section 17 ACA | Scope of Section 9 ACA

SEAT OF ARBITRATION

Venue held equal to seat: Delhi High Court

23 September 2021 | SP Singal Constructions Pvt. Ltd. v. Construction and Design Services | Arb. P. 450 of 2021 | Suresh Kumar Kait J | High Court of Delhi | 2021 SCC OnLine Del 4454

The agreement provided that "arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [Lucknow)."

Was the seat of arbitration New Delhi because arbitration was to be conducted in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, or was it Lucknow in the light of agreement that the venue of such arbitration shall be Lucknow?

The Petitioner argued that "venue" does not include the "seat" of the arbitration and since the arbitration had to be conducted in terms of Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, the seat of the arbitration was New Delhi.

Kait J said that the Supreme Court held in *BGS SGS SOMA JV* v. *NHPC*, (2020) 4 SCC 234 that "choice of venue is also a choice of the seat of arbitration." He also ruled that Para 17.1 of the CADR Rules that made a provision for the seat of the arbitration would come into play with regard to procedure to be followed, only after the arbitration commences before the appropriate jurisdiction of law, which in this case is "Lucknow". Para 17 of the CADR Rules provide that the "place of arbitration shall be New Delhi or such other place where any of the Regional Offices of ICADR is situated as the parties may agree" and failing any agreement whatever the tribunal determined.

Read the decision here.

NFRAL Category Cloud: Place of Arbitration | Seat | Seat of Arbitration | Section 20 ACA | Venue | Venue of Arbitration

TIME LIMITATION

Limitation would not run from the date signed copy of award is received if party does not take steps to procure a signed copy: Himachal Pradesh High Court

20 September 2021 | Himachal Pradesh State Electricity Board Limited v. Shyam Indus Power Solution Pvt. Ltd. | Original Misc. Petition (Main) No. 63 of 2019 | Sandeep Sharma, J | High Court of Himachal Pradesh | 2021 SCC OnLine HP 7311

An arbitral award made on 16 January 2019, but a signed copy made available only on 01 August 2019.

A set aside application was filed on 21 October 2019. The plea that the limitation began when the signed copy was received was rejected on the ground that: (i) a signed copy was in fact received by an Assistant Executive Engineer on behalf of the applicant board (ii) even if not, nothing prevented the applicant to apply for a signed copy when it was made aware of the award by respondent's letter of 05 February 2019 (iii) There is no dispute that limitation runs from the date when a signed copy is received under Section 31 (5) ACA, but that principle would not apply when despite knowing that the award was passed, no steps to procure a signed copy was made.

Read the decision here.

NFRAL Category Cloud: Application for Setting Aside Arbitral Award | Condonation of Delay | Limitation | Limitation for Setting Aside | Limitation Under Section 34 ACA | Section 34 (3) ACA

SETTING ASIDE ARBITRAL AWARD

Interim award set aside: Jammu, Kashmir and Ladakh High Court

16 September 2021 | Union of India v. Gee Kay Engineering Industries | Civil Appeal No. 5627 of 20219 | Sanjay Dhar J | High Court of Jammu and Kashmir and Ladakh | 2021 SCC OnLine J&K 678

The respondent, a defense equipment supplier, was the claimant in the arbitration. It applied to the tribunal for release of Rs. 5,50,00,000/- against the "outstanding payment" of Rs. 16,80,00,000/- as interim relief, for paying to its lenders. The tribunal allowed the application.

The court set that interim award aside holding that:

(a) An interim award is not one in respect of which a final award can be made, but it may be a final award on the matters covered thereby but made at an interim stage [citing *IFFCO Ltd.* v. *Bhadra Products*, (2018) 2 SCC 534].

(b) An interim award under Section 31(6) ACA can be made only if an admission or acknowledgement of the liability is clear, unambiguous and definite and does not require any evidence to prove such admission at the stage of trial, and not if there are serious disputed questions that requires detailed evidence [citing Bombay High Court's *Sphere International* v. *Ecopack India Paper Cup Pvt. Ltd.*, 2020 (1) R.A.J. 90]

(c) The tribunal considered aspects like prima facie case, balance of convenience and irreparable loss, but did not give any finding as to whether there is any admission of claim. Simply because the respondent was reeling under the burden of loan and interest did not mean that an interim award could be passed.

Read the decision here.

NFRAL Category Cloud: Section 31 (6) ACA | Interim Award | Scope of Interim Award

Awards remitted to the tribunal where the petitioner did not have notice of the proceedings: Calcutta High Court

23 September 2021 | KC Cottrell India Private Limited v. Mechno Services | AP/240/2021 | Moushumi Bhattacharya J| Calcutta | 2021 SCC OnLine Cal 2548

In a set aside application the arbitral award was remitted to the tribunal following the law laid down in *Kinnari Mullick* v. *Ghanshyam Das Damani* (2018) 11 SCC 328.

All ingredients of Section 34 (4) ACA were found present. First, the application to remit was made during the pendency of an application for setting aside of the award. Second, the application was in writing. Third and most important, the application was in in the nature of an opportunity to the tribunal to resume the proceedings but only to eliminate the grounds taken in the application for setting aside of the award under Section 34 ACA.

In this case, the grievance was non-service of notice of the proceedings and the absence of an opportunity to the petitioner to participate in such proceedings. This ground, the court said, could be found in Section 34(2) (iii) ACA [*sic* Section 32 (a) (2) (iii)].

The contention that sending the matter back to the tribunal would result in hearing of the matter de novo was considered an insufficient ground to reject the application.

Read the decision here.

NFRAL Category Cloud: Kinnari Mullick | Remand of Award | Remission of Award | Section 34 (4) ACA | Application for Setting Aside Arbitral Award | Inability to Present Case | Proper Notice | Section 34 (2) (a) (iii) ACA | Section 34 ACA

ARBITRATION APPEALS

There is no rule that the award must refer to every document: Madras High Court

20 September 2021 | Anand Citi Centre Holdings (P) Ltd. v. Consolidated Construction Consortium Limited | OSA No. 143 of 2021| Sanjib Banerjee CJ and PD Audikesavalu J | Madras High Court | 2021 SCC OnLine Mad 5222

In an appeal against the set-aside court upholding the award, the appellant complained that key documents were not referred to in the arbitral award and the set-aside court did not consider such aspect to be a serious ground of challenge.

The Madras High Court ruled that there is no rule that every document that is carried to an arbitral reference must be expressly referred to in the award. Further, it is only when the award appears to be completely flawed in the sense that it shocks the conscience of the court or when the methodology adopted for assessment is found to be opposed to public policy and egregiously unjust or unfair that an arbitration court would be excited to delve any deeper into the award or annul the same.

It found that the arbitrator's approach was right and set-aside court adhered to the command of Section 34 ACA.

Read the decision here.

NFRAL Category Cloud: Application for Setting Aside Arbitral Award | Duty to Give Reasons | Form and Contents of Arbitral Award | Grounds for Setting Aside Arbitral Award | Implied Reasoning | Reasoned Award | Reasoned or Speaking Award | Section 34 ACA | Setting Aside Arbitral Award | Standard for Setting Aside Arbitral Award

For certain claim arbitrator appointed by appellate court with parties' consent while disposing appeal against set-aside court's order: Delhi High Court

27 September 2021 | United India Insurance Co. Ltd. v. Worldfa Exports Pvt. Ltd. | FAO(OS) (COMM) 110/2021 | Rajiv Shakdher and Talwant Singh JJ | Delhi High Court | 2021 SCC OnLine Del 4502

In an appeal against the set-aside court's order, it appears to be common ground that there was "ambiguity" regarding one head of the claim (grant of interest) and that could not be "set right in appeal" given the law laid down in *Project Director, National Highways No. 45E and 220 National Highways Authority of India* v. *M. Hakeem*, 2021 SCC OnLine SC 473.

A party suggested that if both sides agree to a fresh arbitration, the new tribunal could decide the claim. "To hasten the proceedings", the court suggested and appointed AK Sikri as the arbitrator.

Read the decision here.

NFRAL Category Cloud: Application for Setting Aside Arbitral Award | Section 34 ACA | Section 11 ACA | Appointment of Arbitrator

Scope of appeal under Section 37 ACA from the tribunal's order under Section 17 ACA: Madras High Court

27 September 2021 | Olympia Opaline Flat Owners Association (OOOA) v. Olympia Infratech| C.M.A. Nos. 2382 & 2383 of 2021 | Abdul Quddhose J | Madras High Court | 2021 SCC OnLine Mad 5310

The dispute between flat owners' association and the developer. The association applied to the tribunal under Section 17 ACA for appointment of surveyor and engineer. The application was rejected.

The rejection was upheld by the appellate court:

(a) The scope of appeals against and order of the tribunal is similar as against the

order made in a set-aside petition. For instance, the Supreme Court in *National Highways Authority of India* v. *Gwalior-Jhansi Expressway Limited* reported in (2018) 8 SCC 243 while considering an order passed under Section 17 ACA referred to the fundamental policy of the Indian law that is a ground to apply for setting aside.

(b) From this it can be inferred that the Courts while dealing with the appeals arising out of interim orders passed by the Arbitral tribunal cannot totally ignore Section 34 ACA, where the scope for interference is very limited.

(c) The tribunal exercised its discretion rightly because the request for appointing surveyor was fled three years after the association was handed over the possession. The burden to prove deficiency is on the association. They cannot collect evidence in such manner years after repairs had been carried out to remove the deficiency.

(d) The power of the Arbitral Tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

The court did not examine the question if the appeal was maintainable given that the tribunal treated the appellant's application as under Section 27 ACA.

Read the decision here.

NFRAL Category Cloud: Appealable Orders | Arbitration Appeals | Scope of Section 37 (2) (b) ACA | Section 37 (2) (a) ACA | Section 37 ACA

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