

This Fortnight in Arbitration

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(1)

Revaluation of evidence not permissible even if the court has a different view (Delhi High Court)

01 March 2021 | Indraprastha Gas Limited (IGL) v. M/s Pawan Casting | Vibhu Bakhru J | 2021 SCC OnLine Del 3050

The parties had some dispute concerning an agreement for the supply of piped natural gas. IGL initiated arbitration on claims that the respondent stole gas from the IGL's pipeline. The arbitrator rejected the claims.

It was argued in the set-aside application that the finding was perverse and based on assumptions. Bakhru J disagreed. He reproduced the reasons "as articulated by the Arbitral Tribunal" and said it was evident that IGL had failed to prove its case. He also briefly discussed IGL's main arguments revolving around the photographic evidence and found it impossible to say that the tribunal's finding on those photos was incorrect.

Bakhru J concluded that perhaps on reappraisal, "this Court may not have concurred with the decision of the Arbitral Tribunal", but it is well settled that an examination under [Section 34 ACA](#) does not entail revaluation of evidence like an appellate court.

Access the court's decision [here](#).

Categories: [Section 34 ACA](#) | [Application for Setting Aside Arbitral Award](#) | [Patent Illegality](#) | [Reappraisal of Evidence](#) | [Revaluation of Evidence](#) | [Merits Based Review](#) | [Plausible View](#) | [Review on the Merits of the Dispute](#)

(2)

Choosing foreign law or foreign "seat/venue" is not "agreement to the contrary" under Section 9 ACA (Madras High Court)

02 June 2021 | Aapico Investment Pte. Limited v. Manickam Mahalingam | PT Asha J | 2021 SCC OnLine Mad 2037

A deed of personal guarantee provided that: (i) it would be governed by the laws of England and Wales, (ii) any dispute shall be resolved by arbitration under the rules of the Singapore

International Arbitration Centre ("SIAC"), (iii) the place of arbitration shall be Singapore.

The petitioner's application under [Section 9 ACA](#) was resisted on the assertion that there was an implied agreement not to apply [Section 9 ACA](#): hence, the Indian courts did not have jurisdiction. Rejecting the submission, PT Asha J ruled that:

- (a) Because of the Proviso to [Section 2\(2\) ACA](#), some other provisions, that is, [Sections 9, 27, 37 \(1\) \(a\) and 37 \(3\) of ACA](#), apply even to foreign seated arbitration.
- (b) An agreement to the contrary should be "specific". For example, general terms concerning the laws governing the contract, or the arbitration agreement, or the seat/venue are not contrary agreements.

Access the judgment [here](#).

Categories: [Section 9 ACA](#) | [Interim Measures by Court](#) | [Section 2 \(2\) ACA](#) | [Scope of Part I | Part I | Agreement to the Contrary](#) | [Jurisdiction | Jurisdiction in Foreign Seated Arbitration](#)

(3)

Award set aside for breaches of natural justice and collegiality (Madras High Court)

02 June 2021 | R Venkataramaiah v. Southern Railway | N Sathish Kumar J | 2021 SCC OnLine Mad 2036

An arbitral tribunal was reconstituted after it had conducted 17 sittings. One member was replaced. The reconstituted tribunal met just once in the 18th sitting and passed an award that same day.

Setting the award aside, the court held, following precedent, that the principle of collegiality was violated because the new tribunal did not deliberate. "An award made by a majority of arbitrators ... without consulting the others is not a valid award, even when the reference authorises ... a majority award."

The court also found that the parties were not allowed to make submissions, either oral or

written, and the tribunal also ignored vital documents and evidence.

Access the decision [here](#).

Categories: [Section 34 ACA](#) | [Section 24 ACA](#) | [Hearings and Written Proceedings](#) | [Natural Justice](#) | [Collegiality](#) | [Fair Hearing](#)

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Arbitrator appointed rejecting pleas concerning fraud, pre-arbitral steps, stamping (Delhi High Court)

04 June 2021 | IMZ Corporate Pvt. Ltd. v. MSD Telematics Pvt. Ltd. | Sanjeev Narula J | 2021 SCC OnLine Del 3016

Four objections to an application for appointing an arbitrator were rejected by Narula J.

On the argument that the agreement was forged and fabricated and a criminal court had observed as such while deciding an application for anticipatory bail, Narula J said they were “prima facie observations” in a context. Thus, the mere allegation of fraud was not enough unless the document *ex facie* appeared fabricated.

He found that argument on non-compliance of the pre-arbitral mechanism inconsistent with the plea of fraud and irreconcilable with the fact that parties had initiated criminal cases against each other. Thus, the pre-arbitral negotiation would be an “empty formality.”

On the objection of insufficiency of stamp duty, he said that the matter is settled by *NN Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.*, 2021 SCC OnLine SC 13 (until the 5-judge bench reconsiders the decision). Accordingly, an arbitration agreement survives independently of the underlying contract.

Lastly, Narula J also said that the contractual disputes did not become inarbitrable merely because a petition had been filed in the NCLT on the grounds of oppression and mismanagement.

Access the judgment [here](#).

Categories: [Section 11 ACA](#) | [Appointment of Arbitrators](#) | [Fraud](#) | [Forgery](#) | [Arbitrability of Fraud](#) | [Pre Arbitral Mechanism](#) | [Pre Arbitral Procedure](#) | [Empty Formality](#) | [Stamping of Agreement](#) | [Unstamped Agreement](#) | [Stamping of](#)

[Main Agreement](#) | [Arbitrability of Oppression and Mismanagement](#) | [Global Mercantile](#)

(5)

Allegation of siphoning money arbitrable (Telangana High Court)

07 June 2021 | Weiss Technik India Private Limited v. Bollupalli Madhavilatha | P Naveen Rao J | MANU/TL/0403/2021

In an application for the appointment of an arbitrator, the respondent asserted that serious allegations of fraud were involved and the matter was not arbitrable. The allegations arose from the terms of employment of the respondent. They related to abuse of authority vested in her as Head of Administration and Finance, siphoning monies, engaging in another business without intimation and consent of the employer, manipulating and forging expenses vouchers.

Following *Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.*, 2021 SCC OnLine SC 13 and others, the court held that the matter was arbitrable.

Access the judgment [here](#).

Categories: [Section 11 ACA](#) | [Appointment of Arbitrators](#) | [Arbitrability](#) | [Nonarbitrability](#) | [Arbitrability of Fraud](#) | [Global Mercantile](#) | [Vidya Drolia](#) | [Fraud](#) | [Forgery](#) |

(6)

Arbitrator appointed when Section 8 ACA application pending in another court (Telangana High Court)

07 June 2021 | Sri Subba Reddy Badwelu v. Sri Aditya-Vamsiram Homes LLP & another | Arbitration Application No. 91 of 2020 | P Naveen Rao J

The parties agreed that there was an arbitrable dispute except for one property sold to a third party. A suit by the applicant was also pending in which the second respondent had applied to refer the matter to arbitration. An application undee

[Section 9 ACA](#) against the second respondent was pending too.

Referring to *Vidya Drolia v. Durga Trading Corporation*, 2020 SCC OnLine SC 1018, the court said that it would only consider the arbitrator's appointment. Because "when third party interests are involved, whether arbitral proceedings can commence also requires detailed consideration and cannot be gone into in summary proceedings."

Access the judgment [here](#).

Category: [Section 11 ACA | Appointment of Arbitrators](#) | [Section 8 ACA | Power to Refer Parties to Arbitration](#) | [Arbitrability | Nonarbitrability](#) | [Arbitrability of Fraud](#) | [Global Mercantile](#) | [Vidya Drolia](#)

(7)

The arrest of a ship in Section 9 et al. (Delhi High Court)

7 June 2021| *Thar Camps Pvt. Ltd. v. M/s Indus River Cruises Pvt. Ltd* | Hari Shankar J | 2021 SCC OnLine Del 3150

The respondent Indus was looking after the Indian river cruising business of the Pandaw group. Two different companies had leased three vessels to Indus. Indus, in turn, had an agreement with the petitioner Thar for operating and managing the ship ("VOMA"). A dispute arose from VOMA, and Thar brought a petition to secure the amount in dispute. Since the remaining respondents were outside India, Thar asserted that the only way to secure the amount was a restraint against the removal of the vessels, which in its view was the subject matter of the arbitration agreement.

Held, citing cases on the meaning of subject-matter and subject-matter of the suit, that the subject matter of the arbitration agreement was not the vessels but the services provided by the petitioner on those vessels. Thus, [Section 9 \(1\) \(ii\) \(a\) ACA](#), which deals with the preservation of goods that is the subject matter of the arbitration agreement, did not apply. But, [Section 9 \(1\) \(ii\) \(b\) ACA](#) that provides for securing the amount in dispute in the arbitration applied.

Further, the claim of securing the amount was predicated on (i) a possible termination of

VOMA, (ii) and the argument that the respondent would be liable to pay for terminating during the lock-in period. Rejecting the submission, held, the agreement did not specify a consequence of termination, and the court cannot rewrite the contract.

The court also referred to cases analysing the difference between "debt" and "damages". It said the observations made in those cases applied, i.e., debt is an existing obligation to pay, and damages require adjudication and are payable on the fiat of a court. It held that if the petitioner proves wrongful termination, it would be entitled to damages on proof of loss.

Further, [Section 9 \(ii\) \(b\) ACA](#) cannot be construed to read into it "in rem" jurisdiction.

Usually, in [Section 9 ACA](#), orders against third parties are not made. Still, they can be made to restrain the third party to exercise an independent right vis-à-vis one of the parties to an arbitration agreement. Here, an order to arrest a ship owned by the non-signatories who had an independent right to repossess could not be made.

Lastly, the argument that Paul Strachan (the founder) was the moving spirit behind all the respondents was held a triable issue for arbitration. The court said that the corporate veil is not flimsy, and to lift or pierce it is an intricate exercise neither easily undertaken or accomplished.

Access the judgment [here](#).

Categories: [Section 9 ACA](#) | [Section 9 \(1\) \(ii\) \(b\) ACA](#) | [Section 9 \(1\) \(ii\) \(a\) ACA](#) | [Securing Amount in Dispute](#) | [Subject Matter of Arbitration Agreement](#) | [Subject Matter](#) | [Debt](#) | [Damages](#) | [Corporate Veil](#) | [Lifting or Piercing Corporate Veil](#) | [Interim Measures Against Non-Signatory](#) | [Arrest of Ship](#) | [Admiralty Jurisdiction](#)

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