

## GUEST POST

### **NEUTRALITY IN ARBITRATION PROCEEDINGS**

#### ***A Case Comment on Jaipur Zila Dugdh Utpadak Sahkari Sangh Limited & Ors V. M/S Ajay Sales & Suppliers***

*Aishwarya Sethi, Intern, Army Institute of Law*

In the recent times, there has been an evident incline in the number of disputes being referred to arbitration and other alternative dispute resolution methods owing to the benefits that come with such processes, the most prominent being the neutrality and impartiality of the arbitrator or the mediator.

The Hon'ble Supreme Court, in Jaipur Zila Dugdh Utpadak Sahkari Sangh Limited & Ors v. M/s Ajay Sales & Suppliers, reemphasized on the importance of the arbitrator being a neutral and impartial third party. While analyzing the effect of an arbitration clause which stated that the Chairman of one of the parties will be the arbitrator himself, the Court opined that the conditions for the eligibility of an arbitrator have to be read as a whole as impartiality and independence of an arbitrator are paramount.

**To read more, visit:** <https://www.jusip.in/neutrality-in-arbitration-proceedings/>



# TRIVIA

## ARE YOU QUALIFIED TO BE AN ARBITRATOR?

<b>GENERAL RULE</b>		The Arbitrator should be of sound mind and major (18 Years and above).
<b>NATIONALITY</b>	Section 11(1), Arbitration and Conciliation Act, 1996	The Arbitrator can be of any nationality in a Domestic Arbitration.
<b>INDEPENDENCE AND IMPARTIALITY</b>	International Commercial Arbitration- <b>TDM Manufacture (P) Ltd. v. UE Development India (P) Ltd, (2008) 14 SCC 217</b>	The Supreme Court held that in the matter of appointment of an arbitrator in an international commercial arbitration, the nationality of the arbitrator had to be kept in mind having regard to the nationality of the respective party.
<b>ARBITRATOR NAMED IN THE ARBITRATION AGREEMENT</b>	<b>UP Seeds &amp; Trai Development Corp Ltd v. Mishra &amp; Co., AIR 1997 All 206</b>	The following relations of the arbitrator with any of the parties cast a doubt on his independence and impartiality: 1. Employee 2. Consultant 3. Advisor 4. Business relations 5. Represents one of the parties 6. Represents the lawyer or law firm acting as counsel for one of the parties 7. Manager, director or part of the management or has similar controlling influence one of the parties 8. Involvement of the arbitrator's law firm 9. Close family relations with the party 10. Direct or indirect interest in the dispute.
<b>QUALIFICATION AS AGREED TO IN THE ARBITRATION AGREEMENT</b>	<b>PAU v. Associates Construction (2003) 3 RAJ 431 (P&amp;H)</b> <b>Larsen &amp; Turbo v. Fertilizer &amp; Chemicals Travancore Ltd, (2008) 1 SCC 252</b>	An agreement providing for reference to be made to the chairman of the corporation or his nominee has been held to be valid and not suffering from any vagueness. The appointed nominee was transferred and the preplacement by another nominee was held to be within the coverage of the agreement. When the agreement itself specifies the arbitrator, it is not open to the court to ignore such an arbitration clause and appoint another person as an arbitrator. The appointment of an arbitrator named in the agreement can be challenged when there is a reasonable apprehension of bias. However, a mere imagination would not be enough.
<b>QUALIFICATION AS AGREED TO IN THE ARBITRATION AGREEMENT</b>	Section 12(3)(b), Arbitration and Conciliation Act, 1996	The appointment of an arbitrator can be challenged if he does not possess the qualifications as agreed to by the parties.



## IMPORTANT UPDATE

**Supreme Court: Complaints for Refund under Real Estate (Regulation and Development) Act, 2016 may be decided by the Real Estate Regulatory Authority instead of Adjudication Officer and the Act to have retroactive application**

The Supreme Court in *M/s Newtech Promoters & Developers Pvt Ltd Vs State of UP & Ors. Civil Appeal no(s). 6745 6749 of 2021*, decided on 11 Nov 2021 held that the Real Estate (Regulation and Development) Act, 2016 was retroactively applicable on the projects that were ongoing at the time of commencement of the Act. The court clarified that the Act is not only applicable to projects already completed but also to ones which are not completed or, in cases in which a completion certificate has not been granted at the commencement of the Act. The appeal was preferred to the Supreme Court by the Developer who was aggrieved by the order of RERA which had directed the promoters/-real estate developer to refund the principal amount along with interest to the home buyers and allottees. The Court also answered the question whether the power to direct return/refund to the allottee under Section 12, 14, 18 and 19 is vested exclusively with the Adjudication Officer under Section 71 of the Act or not. The Court, keeping a holistic view of the scheme of the Act, observed that refund claims can be most conveniently and effectively be dealt with by the RERA Authority instead of the Adjudication Officer.

## INTELLECTUAL PROPERTY RIGHTS



**Madras High Court grants permanent injunction in favour of Bharatmatrimony:**

In the suit filed for infringement of Plaintiff's registered trademark, the Madras High Court granted a permanent injunction in favour of **BharatMatrimony** in the case of *Matrimony.com Limited v. Silicon Valley Infomedia*

*(P) Ltd., CS (Comm. Div) No. 223 of 2019*, maintaining that the defendant adopted the identical trade mark in its domain name 'www.bharatmatrimony.org'. Previously, this Court had granted interim injunction being prima facie satisfied about the alleged trademark infringement by defendant. The Court also noted that the Plaintiff was the

prior user of the registered trade mark "BHARATMATRIMONY".



The Madras High Court, thus, in view of Section 29(3), Trade Marks Act, held that "here it is a case where the identical mark for identical service is adopted by the defendant and no justification has come forward from the defendant, despite affording opportunity".



Therefore, it was held that where an identical mark was used for identical services, the Court shall presume infringement.

### **Supreme Court: Madras High Court rewrote words of Copyright Rules, 2013**

The Supreme Court in ***Saregama India Limited Vs Next Radio Limited, Civil Appeal Nos 5985-5987 of 2021***, recently held that the Madras High Court exceeded its power by re-writing Rule 29(4), Copyright Rules, 2013 through an interim order. The Madras High Court was faced with the question of validity of Rule 29(4), Copyright Rules, 2013 which deals with “*Notice for communication to the Public of Literary and musical works and sound recordings*”.

Radio Broadcasters in compliance with Rule 29 were required to give an advance notice to copyright owner as well as make an advance payment as per Royalty Calculation rates from February, 2021. These calculation rates for royalties were determined by Intellectual Property Appellate Board (IPAB). The Madras High Court, accordingly, held vide its interim order that the Rule seemed to be “*unworkable*” in its opera-

tion. Thus, while maintaining the requirement of prior notice under Section 31D, Copyright Act, 1957, the Court had re-fashioned the Rule by stating that quantum of royalties may be furnished within 15 days of the broadcast or performance.

In view of the above, the interim order was challenged before the Supreme Court. The Supreme Court held that the interim order in effect instituted a regime of its own. Thus, since the High Court could not have added words to a statute, the Supreme Court set aside the interim order of the Madras High Court.

### **New Patents (Amendment) Rules, 2021 notified by Department of Promotion of Industry and Internal Trade**

The Department of Promotion of Industry and Internal Trade (DPIIT) has recently notified the New Patents (Amendment) Rules, 2021. The Rules have been introduced with view to push the Mission Aatmanirbhar Bharat forward. The most significant change brought in the Amendment is that there shall be an 80% reduction of fee for Patent Filing and prosecution for Educational Institutions.

### **Indian Performing Rights Society launches a three Month Campaign “License Liya Kya” for awareness on Music Licensing**

The Indian Performing Rights Society (IPRS), a copyright society representing authors, composers and publishers of music has launched a three month long campaign called “License Kiya Kya” starting at the end of September, 2021. The objective behind the Campaign is to highlight the benefits of music licensing and ease of procurement of the same through a Copyright Society. The Campaign will also see many awareness building initiatives to highlight importance of music licensing. The Campaign wishes to create awareness primarily towards Fair Pay and Fair Play in the music industry.





## ARBITRATION, MEDIATION AND CONCILIATION



**The Supreme Court reiterated that an Arbitrator has substantial discretion in awarding interest under Section 31(7)(c) of the Arbitration and Conciliation Act:**

The Hon'ble Apex Court recently analyzed the provision under Section 31(7)(c) of the Arbitration and Conciliation Act in the case of ***Punjab State Civil Supplies Corporation Limited v. Ganpati Rice Mills, SLP(C) No. 36655/2016***, involving an issue regarding the rate of interest on the arbitral award for payment of money. In the said case, the Arbitrator had granted interest at the rate of 18% per annum from 01. 01. 2003 till the date of realization. On consideration of the objections under Section 34 of the Arbitration and Conciliation Act, filed by the respondents, the rate of interest was reduced to 12% per annum. In the first appeal before the High Court, the

rate of interest was reduced to 9% per annum.

Thereafter, in this Special Leave Petition wherein no reason and grounds had been put forth seeking reduction of the rate of interest, the Supreme Court observed that Section 31 (7) of the Arbitration Act, 1996 grants substantial discretion to the Arbitrator in awarding interest and, the Court accordingly, restored the rate of interest as awarded originally.

**Supreme Court : Pre-deposit of 75% of arbitration award amount under Section 19 of the MSME Act, 2006 is mandatory**

Supreme Court recently held in an application to set aside the arbitral award filed under Section 34 of the Arbitration & Conciliation Act, 1996 read with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, that the

appellate court would not have any discretion to deviate from the pre-condition of deposit of 75% of the awarded amount.

In the case of ***Gujarat State Disaster Management Authority v. Aska Equipments Limited, Civil Appeal No. 6252 of 2021***, a dispute had originally arisen between the parties regarding payment of goods which was taken by the appellant, concerning proceedings under Section 18 of the MSME Act, 2006. An Order was thereafter passed in favour of the respondent and the appellant was directed to pay a sum of Rs. 105,053,387/-. The petitioner, accordingly, preferred an appeal before the Supreme Court. It was held that considering the language used in Section 19 of the MSME Act, 2006 and the object and purpose of providing deposit of 75% of the awarded amount as a pre-deposit while prefer-



ring the application for setting aside the award, the requirement of deposit of 75% of the awarded amount as a pre-deposit is mandatory. However, the court allowed for instalments if satisfied in case of undue hardship.

### **Supreme Court : Arbitrator cannot grant pendent lite interest if the contract expressly bars the same**

The Supreme Court in **Garg Builders v. Bharat Heavy Electricals Ltd., Civil Appeal No. 6216 of 2021**, held that when there is an express statutory provision enabling the parties to contract out of receiving interest and they have done so

without any vitiation of free consent, it is not open for the Arbitrator to grant pendent lite interest. The parties had entered into a contract for the construction of boundary wall, containing the clause that no interest shall be payable by BHEL on Earnest Money Deposit, Security Deposit or on any money due to the contractor.

The dispute arose between the parties, and the appellant claimed pendent lite and future interest at the rate of 24% on the value of the award. The Arbitrator awarded pendent lite and future interest at the rate of 10% p.a., concluding that there is no

prohibition in the contract about payment of interest for the *pendent lite* and future period.

The Supreme Court observed that the provisions of the statute give paramount importance to the contract entered into between the parties. Furthermore, Section 31(7)(a) provides that if the contract prohibits *pendent lite* interest, an Arbitrator cannot award interest for the said period, since the clause barring interest categorically used the expression “any money due to the contractor” by the employer which includes the amount awarded by the arbitrator.

## COMPETITION LAW



### **CCI issues order against six firms guilty of bid-rigging and cartelization:**

Final orders issued against Six firms for acting in contravention of Section 3(1) of the Competition Act, 2002 read with Section 3(3)(d), for

indulging in bid-rigging and cartelisation in tenders floated by Food Corporation of India, by the Competition Commission of India in **Food Corporation of India v. Shivalik Agro Poly Products Ltd. & Ors., RC No. 07 of 2018**. The firms indulged

in cartelization of the supply of Low-Density Poly Ethylene covers (LDPE) to the Food Corporation of India by means of directly or indirectly determining prices, allocating tenders, coordinating bid prices and manipulating the bidding

process.

### **CCI passes order against PMP Infratech Pvt Ltd and Rati Engineering for Bid-Rigging of Tender**

The Competition Commission of India passed a final order against two firms i.e., PMP Infratech Pvt Ltd and Rati Engineering, for indulging in practices leading to bid-rigging of a tender floated by GAIL in

2017-18 for the restoration of well sites located in Ahmedabad and Anand areas of Gujarat.

It was held by the CCI that both the bids were submitted from the same IP address from the premises of PMP Infratech Private Ltd.'s office at Ahmedabad, in a one-day gap, in contravention of Section 3(3)(d) read with Section 3(1) of the Competition Act, 2002 which prohibits anti-com-

petitive agreements, including bid-rigging. Therefore, a penalty of Rs 25 lakh and Rs 2.5 lakh was levelled on PMP Infratech and Rati Engineering respectively. The court also imposed penalty of Rs 1 lakh and Rs 50,000 on the respective individuals who managed and controlled the firms, has been imposed along with a cease & desist order.

## INSOLVENCY AND BANKRUPTCY



### **NCLT Delhi : Initiation of CIRP of the corporate debtor on account of acknowledgment of debt**

The National Company Law Tribunal, New Delhi Bench, admitted the application to initiate the process of Corporate Insolvency Resolution Process (CIRP) of the corporate debtor in the case of **CSII India Pvt. Ltd. v. Telexcell Information Systems Limited, IB- 411 (ND)/ 2020**, considering the fact that the corporate debtor through emails has acknowledged the debt.

The Corporate Debtor had approached the Operational Creditor for supply of image scanner manufactured by the Operational Creditor who then had to send various reminders for the payment of the goods purchased therein, followed by a demand notice. The Operational Creditor submitted that since the Corporate Debtor has acknowledged the debt, therefore the petition under Section 9 of the Insolvency & Bankruptcy Code should be allowed and the Corporate Insol-

cy Resolution Process should be initiated against the Corporate Debtor.

Accepting the same, the Tribunal declared a moratorium and appointed an Insolvency Resolution Professional to take charge of the Corporate Debtor and also stated that the supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period.

### **Supreme Court : Sections**



**61(1) and (2) of the Insolvency & Bankruptcy Code consciously omit the words “order is made available to the aggrieved party”**

The Hon'ble Supreme Court in the case of V. Nagarajan v. SKS Ispat and Power Ltd., Civil Appeal No. 3327 of 2020, recently held that in contradistinction to Section 421(3) of the Companies Act, Sections 61(1) and (2) of the Insolvency &

Bankruptcy Code consciously omit the requirement of limitation being computed from when the “order is made available to the aggrieved party”.

The Court provided that the omission of the words “from the date on which the order is made available” for the purposes of computation of limitation in Section 61(2) of the IBC, is a consistent signal of the intention of the legislature

to nudge the parties to be proactive and facilitate a timely resolution. In the case, an appeal under Section 62 was dismissed since the period of limitation for filing an appeal under Section 61(1) against the order of the NCLT expired in view of the 30-day period prescribed under Section 61(2) and scope for condonation of delay expired in view of the outer limit of 15 days prescribed under the proviso to Section 61(2).

**DISCLAIMER**

This Newsletter is for informational purposes only. The information and/or observations contained in this newsletter do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this newsletter do not necessarily constitute the final opinion of JusIP and should you have any queries, please feel free to contact us at [info@jusip.in](mailto:info@jusip.in).



**Corporate Office:**

Chamber No. 2 & 3, Hotel Shivalikview  
Sector 17-E, Chandigarh 160 017

Ph.: +91 172 4015405  
Mob: +91 99141-31579

[info@jusip.in](mailto:info@jusip.in)  
[www.jusip.in](http://www.jusip.in)

New Delhi | Mumbai | Bengaluru | Chennai