

## LATEST JUDICIAL PRONOUNCEMENT IN ARBITRATION

| Sl. No | Ref. of Section.                   | Ref. of Case  | Judgement  |
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| 1      | Sec. 8 read with Section 37        | Sunair Hotels Ltd. & Others V/s Union of India and Another (2001)cla-bl Supp. (Snr.) 4 (Delhi)                | Where jurisdiction of CLB is challenged because of there being an arbitration agreement but without any formal request for reference to arbitration and such request is made only subsequently after having submitted the first statement on the substance of the dispute, the order of the CLB dismissing application for reference cannot be found fault with.                                 |
| 2      | Sec. 8 –                           | VH Patel & Co. & Others V/s Hirubhai Himabhai Patel & Others (2001) CLA-BL Supp. (Snr.) 4 (SC)                | So far as the power of arbitrator to dissolve partnership is concerned, law is clear that where there is a clause in the article of partnership or agreement or order referring to the difference between partners to arbitration. Therefore, arbitrator has power to decide whether or not the partnership shall be dissolved, and to award its dissolution.                                    |
| 3      | Sec. 8                             | Gopalakrishanan V/s Sivadas (2001) CLA-BL Supp. (Snr.) 5 (Ker)  | After 26 <sup>th</sup> January, 1966, when the Arbitration and Conciliation Act come into force, such an application shall not be maintainable and it is noOt open to the court to treat this application as a petition under section 8.   |
| 4      | Sec. 8 read with Sec. 11           | SRF Finance Ltd. V/s Friends Globe Travels & Others (2001) CLA-BL Supp. (Snr.) 5 (Ker)                        | An inference that the parties intended that their disputes should be deiced only by the named person(s) and not by any other person, cannotbe reasonably drawn where the arties convassing that the arbitration clause stood exhausted, did not know the named arbitrator.   |
| 5      | Sec. 11(6)                         | Guruman Construction Corpn V/s Municipal Corpn. Of Delhi (2001)CLA-BL Supp. (Snr.) 6 (Delhi)                  | There is no justification for not appointing an arbitrator on the ground that the plaintiff has not filed the arbitration agreement, when the respondent has not produced any precedent/authority mandating the rejection of petition merely because of non-filing of the copy of the arbitration agreement, the existence whereof is not disputed.  |
| 6      | Sec. 13                            | Bharat Heavy Electricals Ltd. V/s CN Garg & Others (2001)CLA-BL Supp (Snr) 6 (Delhi)                          | If both fail, the arbitrator is required to decide on the challenge to his functioning. He is expected to be a fair person, and if he finds that there is substance in the allegations, he is expected to dispassionately rule on such objection. Of course, the last resort is challenge under sub-section (5) of section 13 read with section 34 by the aggrieved party.                       |
| 7      | Section 14 and 15 read with Sec. 9 | Kifayatullah Haji Gulam Rasool & Others V/s Bilkish Ismail Mehsania & Others (2001)CLA-BL Supp (Snr) 7 (Bom.) | The interim orders passed by the court will continue to operate during the pendency of the arbitral proceeding.<br>Sec. 32 envisages termination of arbitral proceedings by the arbitral tribunal passing an order in the following situation s,<br>besides when the final award terminates these;<br><ul style="list-style-type: none"> <li>• When the claimant withdraws the claim;</li> </ul> |

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|    |   |   | <ul style="list-style-type: none"> <li>When the parties to the reference agree on the termination of proceedings . When arbitral tribunal finds that continuation of the arbitral proceedings has become unnecessary or impossible.</li> </ul> <p>When a request is made by the parties to terminate the arbitral proceedings and the arbitrator passes an order accepting the request.</p>                         |
| 8  | Sec. 30   | Graphic Interiors V/s Commander Works Engineer & Others (2001)CLA-BL Supp (Snr) 3 (Bom)   | Where arbitration clause specifically provided and made it obligatory on the part of the arbitrator to indicate his findings along with the sums awarded separately on each individual item of dispute, but the arbitrator gave no reasons in support of the claim, while allowing the various claims, the award is liable to be quashed and remanded for reconsideration of the arbitrator.                        |
| 9  | Sec. 30(2) and 14(2) read with Article 119 of Limitation Act 1963 | Deo Narain Choudhury V/s Shree Narain Choudhury (2001)CLA-BL Supp (Snr) 3 (SC)  | All the authorities clearly lay down that the notice must be some act of the court. The proposition that a notice must be by the court is also confirmed by an authority of the Supreme Court in the case of Ch. Ramalinga Reddy V. Superintending Engineer (1999) 9 SCC 610. In this case, it has been held that mere intimation by an arbitration is not sufficient and it is the court which has to give notice. |
| 10 | Sec. 34 read with Sec. 21 of the Limitation Act, 1963             | Pushpa P Mulchandani & Others V/s Admiral Radhakrishnin Tahilani (Retd) & Others  | It follows that all grounds for setting aside have to be taken in the application and no amendment of the application is permissible and that too after the expiry of the limitation. Any amendment will tantamount to entertaining a fresh petition beyond the period of limitation prescribed in the Act itself.  |
| 11 | Sec. 34 read with Sec. 5  | Pappu Rice NMills, Jaitu V/s Punjab State C0-Operative Supply & Marketing Fedreation Ltd., Chandigarh & Others (2001)CLA-BL Supp (Snr) 8 (Punj. & Har.) | Where, rejecting challenge to its jurisdiction, the arbitral tribunal gives an award, the aggrieved party has the remedy of challenging the same under section 34.  |
| 12 | Sec. 36   | S S Fasteners V/S (2001)CLA-BL Supp (Snr) 8 (Punj. & Har.)  | No objection can be taken to the execution of decree on the ground that the award is contrary to the provisions of the Rent Act, particularly when it holds the petitioners to be licensees and does not hold that they have the relationship of landlord and tenant between them.  |
| 13 | Sec. 17   | Jaimal Shah V/s Ila Pandya (2001)CLA-BL Supp (Snr) 39 (Bom)   | The executing court can certainly decide whether the award was baseless and/or perverse and based on no material evidence at all. The award cannot escape the ordeal of these tests merely because it is an award under the Act and a decree has been granted in terms of the award.  |
| 14 | Sec. 30   | Union of India V/s Popular Builders   |   |

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|    |                              | (2001)CLA-BL Supp (Snr) 39 (SC)  |   |
| 15 | Sec. 10                      | Ethiopian Airlines V/s Stic Travels (P) Ltd. (2001)CLA-BL Supp (2) 25 (SC)   | Reference of a dispute to three arbitrators, of whom the third is to be the chairman, and for decisions to be made by the majority, the case will fall under sub-section (2) of Section 10. The chairman in that case heads the tribunal, unlike the umpire whose function comes into play when there is a dispute between the two arbitrators.   |
| 16 | Sec. 30                      | Indu Engineering & Textiles Ltd. V/s Delhi Development Authority (2001)CLA-BL Supp (2) (Snr) 26 (SC)               | Where arbitrator has allowed escalation in prices of goods supplied, even assuming that the arbitrator has committed mistake in as much as he had no material before him for accepting the claim of the contractor, it was not open to the court to interfere with it in view of the statutory limitation laid down in section 30.  |
| 17 | Sec. 31(4) read with Sec. 20 | Universal Petrochemicals Ltd. V/s Rajasthan State Electricity Board (2001)CLA-BL Supp (2)(Snr) 26 (Cal)            | If application under section 20, which is an application in the matter of reference, is filed in a particular High Court, being a court competent to entertain it, as part of the cause of action has arisen within the jurisdiction in the matter, notwithstanding any forum selection clause contained in the agreement.  |
| 18 | Sec. 8                       | Executive Director, Hindustan Petroleum Corpn. Ltd., V/s Sri Prabh Transport (2001)CLA-BL Supp (2) (Snr) 26 (Mad.) | (i) There must be an arbitration agreement; (ii) the party to that agreement must initiate legal proceedings against the other party; (iii) the subject matter of this proceedings should be a matter covered by the arbitration agreement; (iv) the party who applies under section 8 shall do so before submitting his first statement before the judicial authority and (v) the application shall be accompanied by the original agreement of duly certified copy thereof. |
| 19 | Sec. 8 (1)                   | Cotton Corpn. Of India Ltd. V/s Sharad Shetkari Soot Girni Niyamit (2000)CLA-BL Supp (Snr) 135 (Bom)               | Civil Judge was not the principal Civil Judge of original jurisdiction in the district and he was not competent to appoint the arbitrator are not tenable because the Civil; Judge was a “judicial authority” and appointment of arbitrator was by consent of the parties who were competent to vary the terms under the relevant clause of the arbitration agreement in this case.   |
| 20 | Sec. 8(2)                    | Jonsons Rubber Industries V/s General Manager Eastern Railways & Others (2000)CLA-BL Supp (Snr) 136 (Delhi)        | In fact, greater sanctity is bestowed on the pleadings of the parties, especially where these are also supported by the affidavits. Greater reliance should be placed on them rather than on documents which are yet to be admitted and/or proved.  |
| 21 | Sec. 9                       | A B N Amro Bank V/s Saswata Sen  | The incumbent on the petitioner not only to plead that an arbitration agreement exists but also to annex with the application   |

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|    |                                 | (2000)CLA-BL Supp (Snr) 136 (Cal)   | the said agreement in original or a copy thereof.   |
| 22 | Sec 9 read with Sec. 42         | NISSHO IWAI Corpn. V/s ]Veejay Inpex & Others (2000)CLA-BL Supp (Snr) 137 (Cal)                         | By filing an application under Sec. 9, the question is raised as to validity or existence of arbitration agreement, the question is to be adjudicated by the arbitrator himself and not by the civil court, since the jurisdiction of the civil court stands ousted by virtue of Sec. 42. |
| 23 | Sec. 8                          | Union of India & Others V/s Srinivasa Forest Cooperative Store (2000)CLA-BL Supp (Snr) 131 (AP)         | Where the designated arbitrator neglects or refuses to adjudicate upon or appoint his nominee as arbitrator in terms of the arbitration clause, a vacancy arises thereby giving the court, jurisdiction to appoint an arbitrator.   |
| 24 | Sec. 8 read with Sec. 9 and 13  | Raman Wasudev Walawalkar V/s Larsen & Toubro Ltd. & Antoher (2000)CLA-BL Supp (Snr) 131 (Bom)           | Whether a party can by conduct waive the objection or by acquiescence impliedly consent to appointment of a sole arbitrator.; The court replied to the queries in the negative since no valid notice under Sec. 8 was sent to the respondents in this case.                               |
| 25 | Sec. 8                          | India Cements Capital Finance Ltd. V/s Kwality Spinning Mills Ltd. (2000)CLA-BL Supp (Snr) 135 (Mad.)   | The suit matter will have to be referred to arbitration and a challenger of the genuineness of the agreement will not be a ground for avoiding such reference.  |
| 26 | Sec. 11                         | B W Ltd. V/s MTNL (2000)CLA-BL Supp (Snr) 137 (Delhi)   | In case of delay the court had the power to make appointment of arbitrator. More so, when it was found that the claim made by the company was false. It had no power as claimed and the dispute was arbitrable.   |
| 27 | Section 11 (2) and (6)          | Mukesh Kumar Agrawal V/s Raj Kumar Agarawal (2000)CLA-BL Supp (Snr) 138 (MP)                            | He Chief Justice or his designate cannot have any jurisdiction under Sec.11 to appoint an arbitrator on request by other arties. In fact even an application under Sec. 11 cannot be moved unless order f appointment of arbitrator is set aside.   |
| 28 | Sec. 11 (6) read with Sec. 2(e) | Union of India & Others V/s P Jeevanandam (2000)CLA-BL Supp (Snr) 138 (AP)                              | Arbitrator can fix his remuneration with the consent of both the parties. Such fixation cannot be questioned. Any contention by a party that he had not given consent was not tenable when there was nothing on record to support such contention.  |
| 29 | Sec. 12                         | G. Vijayaraghavan V/s Managing Director, Central Warehousing Corpn. And Another (2000)CLA-BL Supp (Snr) | Being on the panel of arbitrators is not ipso facto sufficient to impugn the impartiality and the objectivity of the person appointed as sole arbitrator by the appointing authority as p0er arbitration agreement.   |

|    |                              | 139 (Delhi)   |  |
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| 30 | Sec. 28                      | Jagdish R Vora V/s<br>Asit C. Mehta<br>(2000)CLA-BL Supp (Snr)<br>132 (Bom)   | There is no inconsistency in the provisions of Sec. 28(2) and the provisions of the bye-law Nos. 254 and 261 of the Bombay Stock Exchange which confer some limited power on the Board and chairman of the Stock Exchange to extend time for making award in case of Arbitration between its members under its bye-laws. This power does not lie with the arbitrator. And all the same the court has the necessary power under Sec. 28(2). |
| 31 | Sec. 30                      | Khatri & Khatri V/s<br>City & Industrial<br>Development Corpn. Of<br>Maharashtra Ltd.<br>(2000)CLA-BL Supp (Snr)<br>133 (Bom)       | Even if the award is based on mixed items, the court cannot go into the mental process of the arbitrator. This cannot, therefore, afford any ground for setting aside of the award.  |
| 32 | Sec. 30                      | Oil & Natural Gas<br>Commission V/s<br>Mcdermott International<br>Inc.<br>(2000)CLA-BL Supp (Snr)<br>133 (Bom)                      | It directed refund of amount deposited by ONGC in court under order 24,<br>rule 1 of the Code of Civil Procedure, 1908 on the basis of arbitral award together with 12 percent interest, when the award was set aside under Sec.30.  |
| 33 | Sec. 30                      | Yashwant N Shah V/s<br>Unit Trust of India, Stock<br>Holding Corpn. Of India<br>and Another<br>(2000)CLA-BL Supp (Snr)<br>134 (Bom) | Where the arbitration clause specifically provides and makes it obligatory on the part of arbitrator to indicate his findings along with the sums awarded separately on each individual item of dispute, the breach of that mandate by not giving reasons must result in quashing and setting aside of the award.  |
| 34 | Sec. 30 read<br>with Sec. 34 | Kishore Textiles Mills<br>V/s<br>Union of India<br>(2000)CLA-BL Supp (Snr)<br>139 (Bom)   | The award is to be set aside and the proceedings are to be remitted to the arbitrator where the award does not give reasons for rejecting certain items of counter-claim and goes against the principles of natural justice and mandate of Sec.30.-  |
| 35 | Sec. 33                      | Union of India and<br>Another V/s<br>Shyam Charan Agarwala<br>& Sons<br>(2000)CLA-BL Supp (Snr)<br>135 (Bom)                        | The award cannot be interfered with merely because there could be other possible view or more correct view. It can only be interfered with where the arbitrator has proceeded illegally or the award is based on wrong proposition of law.   |
| 36 | Sec. 34                      | Union of India V/s<br>India Proofing & General<br>Industries<br>(2000)CLA-BL Supp (Snr)<br>139 (Bom.)                               | Where arbitrator gives award after considering evidence on record rejecting the claim of the Government, which fails to produce any cogent evidence of prevailing rate at the time of breach of contract, the award is not improper. The court cannot reassess or decide adequacy of the evidence to set aside the award.  |
| 37 | Sec. 34                      | Rajendra J. Joshi V/s<br>Dilip J. Joshi & Others<br>(2000)CLA-BL Supp (Snr)   | The arbitrator has no authority to direct retirement of a partner who has sought dissolution, accounts and payment to him, of his share in the firm. His award containing such direction has to be   |

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|    |  | 140 (Bom.)   | set aside.   |
| 38 | Sec. 34 read with Sec. 3 and 18 of Limitation Act 1963     | Poise Securities & Exchange Ltd.<br>V/s<br>D V Lonkar & Others<br>(2000)CLA-BL Supp (Snr)<br>140 (Bom.)  | The award was set aside as the reference was not tenable.  |
| 39 | Sec. 34  | K S Krishnan V/s<br>S. Ravidhandra & Another<br>(2000)CLA-BL Supp (Snr)<br>88 (Kar.)                     | While the opposite party files an application for stay of suit without stating dispute which it seeks to refer to arbitration, that application is not maintainable and the suit cannot be stayed, even assuming that there is an arbitration clause in the agreement between the parties.   |
| 40 | Sec. 7   | TATA ELXSI Ltd. V/s<br>Anand Joshi<br>(2000)CLA-BL Supp (Snr)<br>88 (Kar.)                               | Where claim of existence of arbitration agreement is made only by one party, while the other party chooses not to respond, the silence of other party cannot be construed as consent to treat the agreement as arbitration agreement.  |
| 41 | Sec. 9   | Larsen & Toubro Ltd.<br>V/s<br>Mukerian Papers Ltd.<br>(2000)CLA-BL Supp (Snr)<br>91 (Cal.)              | It is not possible to accept that there would be irretrievable injustice if the bank guarantee is allowed to be realized, because the party invoking the bank guarantee is a sick company, which if it succeeds before the arbitrator, will not be able to realize its claim from the party. |
| 42 | Sec. 9 and 42 read with Sec.5                              | NISSHO IWAI CORPN.<br>V/s<br>Veejay Impex & Others<br>(2000)CLA-BL Supp (Snr)<br>91 (Cal.)               | Since the jurisdiction of the High Court stood expressly ousted by Sec. 42 read with Sec. 5, the prayer for leave to institute suit in the High Court under Clause 12 of the Letters Patent could not arise at all.  |
| 43 | Sec. 11 read with Sec. 69 (3) of the Partnership Act, 1832 | Mohd. Monirul Hasan & Others V/s<br>Mohd. Iftikar Ahmed & Others<br>(2000)CLA-BL Supp (Snr)<br>92 (Gau.) | The procedure involved in dealing with a matter relating to appointment of an arbitrator cannot be said to be devoid of the character of a proceeding merely because sub-section (4) of the Sec. 11 provides that a request is to be made for appointment of an arbitrator.,                 |
| 44 | Sec. 44  | Dominant Offset (P) Ltd.<br>V/s<br>Adamovske Strojirny & Others<br>(2000)CLA-BL Supp (Snr)<br>93 (Delhi) | The arbitrator rejected the case of the party that a particular date was the effective date and declined to grant injunction. The appeal was against that order and the High Court treated it as an application under Sec. 34 to set aside the award.  |
| 45 | Sec. 34  | Khaleel Ahmed Dakhani<br>V/s<br>(2000)CLA-BL Supp (Snr)<br>94 (SC)                                       | The court in the other city should not assume jurisdiction ignoring the arbitration agreement which has a specific that only courts in Bangalore would have jurisdiction to entertain any claim for enforcement of the award.  |

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| 46 | Sec. 11 read with Sec. 3 of the Limitation Act, 1963         | Pressteels & Fabrications (P) Ltd. V/s Chief Engineer, Electricity (Projects) (2000)CLA-BL Supp (Snr) 47 (AP)                     | If the documents and material are not placed before the High Court or the same are disputed, the question of limitation should be left to be decided by the arbitrator.  |
| 47 | Sec. 7 and 8   | Bank Bandhu Co-operative Group Society V/s Manasvi Construction Engineers & Contractors (2000)CLA-BL Supp (Snr) 48 (Punj. & Har.) | Once the existence of arbitration agreement is proved between the parties, the parties are bound by the arbitration clause.  |
| 48 | Sec. 8(1) read with Sec. 69 (3) of the Partnership Act, 1832 | Col. H.C. Chopra & Another V/s V.C. Mehra (2000)CLA-BL Supp (Snr) 48 (Delhi)  | Partners of an unregistered partnership firm cannot seek a reference to arbitration by application in a suit for rendition of accounts and dissolution of partnership. Sec. 69 (3) of the Partnership Act clearly bars "a right arising from a contract", and arbitration clause would fall in it.                                     |
| 49 | Sec. 9   | Alfa Laval (India) Pvt. Ltd., V/s J.K. Corpn. Ltd. And Another (2000)CLA-BL Supp (Snr) 48 (Delhi)                                 | If petitioner has no prima facie case for interim injunction, and there is no irreparable injury to the petitioner, which cannot be compensated by damages at a later stage if the petitioner's stand is vindicated, the court is likely to hold the petitioner not entitled to interim injunction.                                    |
| 50 | Sec. 9   | Steel Authority of India Ltd. V/s Feegrade & Co. (P) Ltd. (2000)CLA-BL Supp (Snr) 49 (Delhi)                                      | The arbitration proceedings cannot be stayed on the ground that the question of quality of the relevant Cess Act stands referred to a larger Bench of the Supreme Court, which may not uphold the validity of Act, when the judgment of the Division Bench of the Supreme Court upholding the validity of the Act has not been stayed. |
| 51 | Sec. 9   | Bharat Heavy Electricals Ltd. V/s Indian Overseas Bank and Another (2000)CLA-BL Supp (Snr) 49 (Delhi)                             | A restraint order against encashment can be granted only in prima facie fraud or irretrievable injustice of egregious nature is established.   |
| 52 | Sec. 9   | Anil Constructions V/s Vidarbha Irrigation Development Corpn. And Another (2000)CLA-BL Supp (Snr) 49 (Bom.)                       | The party cannot avail of the provisions for restraining the other party from approaching the arbitral tribunal.   |
| 53 | Sec. 9   | Olex Focas (P) Ltd. And Another V/s   | The High Court is competent to grant interim relief of interim injunction in appropriate cases, otherwise the award will be  |

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|    |                        | Skodaexport Co. Ltd.<br>And Another<br>(2000)CLA-BL Supp (Snr)<br>50 (Delhi)  | reduced to paper award only.   |
| 54 | Sec. 9                 | Alpic Finance Ltd. V/s<br>Allied Resins & Chemicals<br>Ltd. & Another<br>(2000)CLA-BL Supp (Snr)<br>50 (Cal.)         | For filing an application under Sec. 9 for interim order of court, the existence of arbitration agreement between the parties is a must, but existence of dispute between the parties is no condition precedent for making such application. |
| 55 | Sec. 17                | Jose & Mani<br>Constructions (P) Ltd.<br>V/s<br>Wheel & Axle Plant<br>(2000)CLA-BL Supp (Snr)<br>50 (Kar.)            | If the petitioner signs a no-claim certificate under the specific clause in the agreement, a petition for appointment of arbitrator by him will be considered as misconceived. He is debarred from demanding a reference to arbitration.     |
| 56 | Sec. 11                | Bhjarat Hydro Powr<br>Corpn. Ltd.<br>V/s<br>Assam State Electricity<br>Board.<br>(2000)CLA-BL Supp (Snr)<br>51 (Gau.) | The arbitration clause in the MOU cannot be invoked for appointment of arbitrator. The court will not appoint an arbitrator, and the dispute will be settled under the status by alternative by alternative forum provided.                  |
| 57 | Sec. 11<br>Sub-Sec.(6) | Nirman Sindia<br>V/s<br>Indal Electromelts Ltd.<br>(2000) CLA-BL Supp.<br>(Snr) 51 (ker)                              | The order of the Court will not preclude the applicant from enforcing the arbitration clause after compliance of the prerequisites for enforcing the arbitration clause provided in the agreement.   |