

April 2023 – 5th Edition

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Arbitration and Conciliation Act, 1996

Arbitrator's order rejecting an application for impleadment of a non-signatory party does not constitute an 'interim award'

A Division Bench of the Delhi High Court (“**Delhi HC**”) in *Goyal MG Gases Pvt. Ltd. v. Panama Infrastructure Developers Pvt. Ltd.*¹ held that the arbitrator's order rejecting an application for impleadment of a non-signatory party in the arbitration proceedings does not constitute an 'interim award' under the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) and can therefore not be challenged under Section 34 of the Arbitration Act (as an application for setting aside arbitral award).

As a result of this judgment, parties would have to wait till passing of a final award for challenging the arbitrator's rejection of an application for impleadment of third parties. This could result in considerable delay in finally deciding the dispute if, after passing of the final award, the court ultimately decides that the third-party ought to have been impleaded in the arbitration proceedings.

While in this case, it was not possible for Goyal Mg Gases Pvt. Ltd. (“**Appellant**”) to implead the non-signatories at the time of initiation of the arbitration proceedings (since the Appellant was not aware of the subsequent sale), where possible it would be desirable to implead the non-signatories while initiating the arbitration itself. This is because an order allowing an application (filed under Section 16 of the Arbitration Act) for deletion of a non-signatory from arbitration (on the ground that the arbitrator does not have jurisdiction) can still be challenged under Section 37(2)(a) of the Arbitration Act before passing of the final award.

For a detailed analysis, please refer to the [JSA Prism of April 12, 2023](#).

Bombay High Court upholds the validity of an arbitral award passed in a consolidated arbitral proceeding.

The Bombay High Court (“**Bombay HC**”) in *BST Textile Mills Private Limited v. Cotton Corporation of India Limited*² *inter alia* held that an arbitral award passed in a consolidated arbitral proceeding concerning disputes arising out of different contracts cannot be set aside under Section 34 of the Arbitration Act on grounds of being opposed to the fundamental policy of India. It was also held that an arbitral award passed in such consolidated arbitral proceedings cannot be set aside on grounds that the arbitrator lacked jurisdiction to consolidate disputes arising out of different contracts and / or for lack of prior consent of the parties for such consolidation of disputes.

The present judgment of the Bombay HC may be referred to in the future to avoid multiplicity of proceedings where disputes arise out of identical contracts and identical arbitration agreements therein. However, while allowing consolidation of disputes in an arbitration proceeding, the present judgment does not delineate the criteria or grounds based on which disputes amenable to arbitration could be allowed to be consolidated and placed for adjudication before one single arbitral tribunal. In our view, limited court interference under Section 34 of the Arbitration Act in arbitration proceedings involving consolidation of disputes could have been ensured by way of this judgment if the Bombay HC had laid down the contours for allowing such consolidation of disputes.

For a detailed analysis, please refer to the [JSA Prism of April 24, 2023](#).

¹ 2023:DHC:2276-DB

² 2023 SCC OnLine Bom 318

Consumer Protection Act, 1986

Complaints involving highly disputed questions of facts, tortious acts or criminality cannot be adjudicated by consumer commissions established under the Consumer Protection Act, 1986

A 2 (two) judge bench of the Supreme Court of India (“**Supreme Court**”) in its recent judgment ‘*The Chairman & Managing Director, City Union Bank Ltd & Anr v. R Chandramohan*³’ has held that complaints involving highly disputed questions of facts, tortious acts or criminality cannot be adjudicated by the consumer commissions under the Consumer Protection Act, 1986 (“**CP Act**”).

The Supreme Court has reiterated the settled position that the proceedings before consumer commissions, being summary in nature, cannot permit examination of highly disputed factual questions or cases involving tortious acts or criminality under the CP Act. In reasserting this position, the Supreme Court has explained the scope of ‘deficiency in service’ under Section 2(1)(g) of the CP Act and demarcated the matters which fall outside the jurisdiction of consumer commissions and those which must be left to be adjudicated by forums such as civil or criminal courts.

For a detailed analysis, please refer to the [JSA Prism of April 3, 2023](#).

Supreme Court holds that the definition of “consumer” under the Consumer Protection Act, 1986 includes a commercial entity consuming goods or services for non-business purposes

The Supreme Court has in its recent decision of *National Insurance Co. Ltd. v. Harsolia Motors & Ors.*⁴ held that the definition of “consumer” under Section 2 (1)(d) of the CP Act includes a commercial entity provided that the goods purchased, or services availed are not linked to any profit generating activity. The Supreme Court further clarified the scope of the restrictive term “for any commercial purpose” appearing in Section 2 (1)(d) of the CP Act.

This decision restricts the scope of the term “for any commercial purpose” under Section 2 (1)(d) of the CP Act and expands the definition of a consumer. This judgment is likely to have an effect on the way fresh matters instituted under the Consumer Protection Act, 2019 are decided. The definition of a ‘consumer’ under Section 2 (1)(d) of the old CP Act is similar to the definition of a ‘consumer’ under Section 2 (7) of the Consumer Protection Act, 2019 and also includes the exclusionary term “for any commercial purpose”. Given this position, there could be an exponential increase in consumer complaints instituted by corporates under consumer protection law.

For a detailed analysis, please refer to the [JSA Prism of April 21, 2023](#).

Indian Penal Code, 1860

Breach of contract by a party does not give rise to a criminal case for cheating.

A two-judge bench of the Hon’ble Supreme Court of India in the case of *Sarabjit Kaur v. State of Punjab and Another*⁵, held that a breach of contract will not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. The Supreme Court also held that criminal courts are not meant to be used for settling scores or pressurizing parties to settle civil disputes.

More often than not, litigants are seen resorting to filing criminal complaints with the oblique motive of trying to pressurize / coerce / compel the counterparty to succumb to their demands. This is an increasing trend in family disputes, despite the parties knowing fully well that the disputes / differences are purely civil in nature. This decision is a step in the right direction, as law enforcement authorities would be circumspect in entertaining dressed up criminal complaints.

³ Civil Appeal No. 7289 of 2009

⁴ 2023 SCC OnLine SC 409

⁵ 2023 SCC OnLine SC 210

For a detailed analysis, please refer to the [JSA Prism of April 3, 2023](#).

Insolvency and Bankruptcy Code, 2016

Supreme Court holds that an application for withdrawal of corporate insolvency resolution process under IBC can be allowed even prior to the constitution of the committee of creditors

A 2 (two) judge bench of the Supreme Court in its recent judgment *Abhishek Singh v. Huhtamaki PPL Ltd. and Anr.*⁶ has *inter alia* held that an application for withdrawal of the corporate insolvency resolution process under Section 12A of the Insolvency and Bankruptcy Code, 2016 (“IBC”) can be allowed by the adjudicating authority even before the constitution of the committee of creditors (“CoC”) in terms of Regulation 30A of the IBBI Regulation (Insolvency Resolution Process for Corporate Persons), 2018 (“IBBI Regulations”).

By this judgment, the Supreme Court has clarified the contours of Section 12A of the IBC and Regulation 30A of the IBBI Regulations. In doing so, the Supreme Court has not only filled the void appearing in Section 12A of the IBC by clarifying that withdrawal applications can be filed even prior to the formation of the CoC but has also acknowledged the binding nature of Regulation 30A of the IBBI Regulations, which are subordinate to the IBC.

For a detailed analysis, please refer to the [JSA Prism of April 5, 2023](#).

Maharashtra Stamp Act, 1958

Bombay High Court clarifies the position regarding payment of stamp duty on Permanent Alternate Accommodation Agreements when stamp duty has already been paid on the Development Agreement

A division bench of the Bombay HC in its recent judgment of *Adityaraj Builders v. State of Maharashtra & Ors*⁷ *inter alia* held that once requisite stamp duty has been paid on a development agreement entered into between a developer and co-operative housing society, the ancillary Permanent Alternate Accommodation Agreements executed between the developer and the individual members of the co-operative housing society, are not liable to be separately assessed and stamped beyond the requirement under Section 4(1) of the Maharashtra Stamp Act, 1958.

The judgment has far reaching implications on redevelopment projects in the State of Maharashtra and particularly, the city of Mumbai in which large scale redevelopment projects are currently being undertaken. This judgment is likely to bring relief to both developers and individual members in societies that are in the process of undergoing redevelopment.

For a detailed analysis, please refer to the [JSA Prism of March 10, 2023](#).

Registration Act, 1908

An unregistered agreement to sell property is admissible in evidence in a suit for specific performance.

A 2 (two) judge bench of the Supreme Court has in *R. Hemalatha v. Kashthuri*⁸ held that an agreement to sell property which is not registered under the provisions of the Registration Act, 1908 can be admitted as evidence in a suit seeking specific performance of such agreement.

⁶ 2023 SCC OnLine SC 349

⁷ Writ Petition No. 4575 of 2022

⁸ 2023 SCC OnLine 381

While this judgment was delivered in the context of a state amendment which required an agreement for sale of property to be registered, the Supreme Court has clarified the broader proposition that an unregistered agreement for sale of property may be admitted in evidence.

For a detailed analysis, please refer to the [JSA Prism of April 28, 2023](#).



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11 Ranked Lawyers



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