



ADR HOC

WEEKLY BULLETIN

ADR HIGHLIGHTS - JUNE 2021

EDITORIAL BOARD

Editor-in-Chief- Garima Sharma

Student Editorial Team:

Student Editor-in-Chief- Nikhil
Jaiswal

Siddhi Khambayat, JLU Bhopal

Nishi Rathore, JLU Bhopal

Dakshita Dubey, CNLU Patna

ABOUT ADR HOC

As the name suggested it is an organization formed for the promotion of Alternate Dispute Resolution in India. ADR is an extensive field having a variety of alternatives for individuals willing to resolve their disputes to choose from, ranging from Arbitration, Mediation, conciliation, negotiation, etc. It is becoming a widely accepted mode of dispute resolution. The organization aims to create awareness, facilitate extensive research and explore possible career options in the field of ADR. The organization regularly conducts national/international webinars, conferences, panel discussions with eminent industry experts, certificate courses and provides internships. We are a one-stop avenue for all the ADR aspirants.

UPCOMING EVENT

ADR HOC INTERNATIONAL SUMMIT,
2021

Date: August 7th-9th, 2021

Registration Link:

<https://forms.gle/fSUnUbbxAfuEgcHF7>

Connect with us



1. PROVISIONS OF THE LIMITATION ACT APPLICABLE TO ARBITRATION PROCEEDINGS INITIATED UNDER SECTION 18(3) MSMED ACT:

In a recently delivered judgment of M/s Silpi Industries etc. vs. Kerala State Road Transport Corporation & Anr¹, The bench comprising Justices Ashok Bhushan and R. Subhash Reddy observed that counter-claim is maintainable before the statutory authorities under The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. The MSMED Act is an important legislation which was enacted to assist the promotion and development, boost the competitiveness of micro, small and medium enterprises. Section 18 of the MSMED Act, provides the provision for settlement in case of dispute between the parties. A reading of Section 43 of the Arbitration and Conciliation Act, 1996 and Section 18 (3) of the MSMED Act, on its own clarifies that the Limitation Act, 1963 should apply to the arbitrations, as it applied to proceedings in court.

When the settlement with regard to the dispute between the parties was not arrived at under Section 18 of the MSMED Act, necessarily, the Micro and Small Enterprises Facilitation Council should take up the dispute for arbitration under Section 18(3) of the MSMED Act or it might refer to institution or Centre to provide Alternate Dispute Resolution services and provisions of Arbitration and Conciliation Act 1996 were made applicable the same way if there was an agreement between the parties under sub-section (1) of Section 7 of the 1996 Act. The Hon'ble Court held that in view of the express provision of applying the provisions of the Limitation Act, 1963 to arbitrations as per Section 43 of the Arbitration and Conciliation Act, 1996, the provisions of Limitation Act, will apply to the arbitrations covered by Section 18(3) of the 2006 MSMED Act.

2. BOMBAY HIGH COURT DECIDES THAT PRINCIPLES OF PUBLIC LAW OR ARTICLE 14 CANNOT BE APPLIED BY ARBITRAL TRIBUNAL AGAINST PUBLIC BODY

The Bombay High Court's Single Judge Bench led by Justice Gautam Patel under the Application of Section 34 of the Arbitration & Conciliation Act, in the case of Board of Control for Cricket in India v. Deccan Chronicle Holdings Ltd.² has decided in the favour of the Appellants. With Solicitor General, Tushar Mehta acting on behalf of BCCI contending that the Arbitrator's application of public law principles in the concerned Private Law Arbitration was not in accordance with law. The Court, agreeing to the line of argument, held that "No question could have arisen of a Private Dispute Resolution Tribunal invoking, for instance, Article 14 of the Constitution. Actions based on contract and seeking contractual remedies do not allow the introduction of broader questions of public law, such as those based on Article 14." Further it emphasized on Sections 28(2) and 28(3) of the Arbitration & Conciliation Act, and reiterated on the importance of an arbitrator making a decision following contractual obligations especially in a Commercial Arbitration, instead of their own understanding of what is fair and just.

3. ENGLISH HIGH COURT CONSIDERS RARE APPLICATION UNDER SECTION 32 ARBITRATION ACT 1996 TO DETERMINE PRELIMINARY POINT OF JURISDICTION

In the recent case Armada Ship Management (S) Pte Ltd v Schiste Oil and Gas Nigeria Ltd³, the English High Court took up a rare application made by the claimant under Section 32 Arbitration Act 1996(AA Act, 1996) to determine a preliminary point of jurisdiction in circumstances where the arbitration clause was unclear on how a sole arbitrator would be appointed. Section 32 of the AA Act, 1996 grants the court power to determine jurisdictional issues in two narrowly defined scenarios. It is intended to be an exceptional remedy and the courts have treated it as such. The Court found that the requirements of Section 32 had been met in principle in this case.

However, the Court also held that the procedure under Section 32 was not suitable in a situation where Section 72 was engaged. Section 72 of the AA Act, 1996 provides for continuing rights of challenge to ‘a person alleged to be a party to arbitral proceedings but who takes no part in the proceedings’, engaged. The court concluded that in a case where rights under Section 72 are engaged, this will prevent another party from using the Section 32 procedure to obtain a judgment on jurisdiction. The application of this threshold further emphasizes the narrow scope of Section 32, as well as reiterating the significant importance of the Section 72 rights. Though the application was rejected, the Court had noted that had Section 72 not been engaged, it would have granted the application since it found the claimant’s submission appropriate. This judgment might help dissuade any future challenges in respect of the validity of the appointment of arbitrator.

4. SINGAPORE EXTENDS THIRD-PARTY FUNDING FRAMEWORK TO DOMESTIC ARBITRATIONS AND SICC PROCEEDINGS

From 28 June 2021, Singapore will now allow Third Party Funding (TPF) of domestic arbitration proceedings, proceedings in the Singapore International Commercial Court (SICC) as well as related mediation proceedings. TPF refers to funding of legal proceedings by an entity unconnected to a dispute in return for financial gain, such as a share of the damages awarded or a share of the settlement sum. Further amendments have also been made in relation to the rules governing SICC proceedings. These rules have been amended to clarify that the costs of any third-party funding contract will not be recoverable as part of the costs of SICC proceedings. Prior to this, Singapore only allowed third-party funding for international arbitration proceedings and related court and mediation proceedings.

By introducing these new changes, the Ministry of Law is demonstrating its eagerness to respond to the needs of international commercial parties who wish to consider Singapore for the resolution of their disputes, whether in litigation, arbitration or mediation. This change comes in the context of the Covid-19 pandemic which may result in a spike in disputes and companies facing insolvency risks. Funding options such as the TPF will allow litigants to pursue creditable claims in permitted proceedings, rather than having to forgo their legal rights due to financial limitations. With these new developments, the SICC is likely to be more sought out by parties. Parties who wish to have their international commercial disputes decided in the Singapore Courts may now specify SICC as the dispute resolution forum so as to avail themselves of the option of third-party funding.

5. ENGLISH HIGH COURT RESOLVES PRIMA FACIE CONFLICT BETWEEN DISPUTE RESOLUTION CLAUSES IN FAVOUR OF ARBITRATION AGREEMENT

In the case of *Melford Capital Holdings LLP and others v Digby*⁴, the defendant (Mr Digby) was disputing his expulsion as a partner from the first and second claimants (Holdings and MCP). The claimants had obtained court orders preventing Mr Digby from using confidential information or calling an investors’ meeting, and Mr Digby brought counterclaims in those proceedings. Related arbitration proceedings were also ongoing as were claims before the Guernsey Courts. The English High Court (the Court) resolved a prima facie conflict between two dispute resolution clauses in an agreement (one that provided for the exclusive jurisdiction of the English courts and the other providing for arbitration) in favor of the arbitration clause. The agreement in question contained an exclusive jurisdiction clause in favor of the English Courts but also provided that any dispute arising out of the said agreement would be resolved through arbitration.

The Court held that there was no conflict between these provisions and that no “judicial manipulation” was required “to give effect to what the parties must have intended”, finding that the arbitration agreement should be given effect and that the exclusive jurisdiction clause meant that the English Courts should retain supervisory jurisdiction over the arbitration. The Court also held that Mr Digby’s counterclaim fell within the scope of the arbitration agreement and therefore granted the stay under Section 9 of the AA Act, 1996. The decision of the Court illustrates the desire of English courts to uphold arbitration as the chosen means of resolving disputes among commercial parties who are likely to intend their disputes be resolved in the same forum. As this case showcases, ambiguity or conflicting choices of dispute resolution options can lead to further disputes, higher costs and delay.

REFERENCES

- (1) C.A.Nos.1570-1578 of 2021.
 - (2) Arbitration Petition (L) NO. 1352 OF 2012
 - (3) [2021] EWHC 1094 (Comm).
 - (4) [2021] EWHC 872 (Ch).
-

The teams at ADR Hoc Bulletin have been working with great enthusiasm to bridge the gap between Alternative Dispute Resolution and our readers.

We at ADR HOC try to cater to our readers with aspects that add to their knowledge and answer the queries of the curious minds.

Therefore, we invite our readers to provide us with suggestions to help us make their reading experience better. Please provide your valuable feedback in the form linked below:

<https://forms.gle/8J9GLWA8kWzfchHi8>

Thank you for Reading!!

We look forward to your valuable comments & suggestions



+91-9669674398



adrhocbulletin@gmail.com