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Judicial Endorsement of Arbitration in India: Evolving Jurisprudence Through Case Law

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1. INTRODUCTION

The last two decades have seen a growing trend towards Alternative Dispute Resolution (ADR). In an era where cross-border transactions and multi-jurisdictional disputes are on the rise, ADR provides a neutral forum that can accommodate parties from different legal systems and cultural backgrounds. ADR refers to methods of resolving disputes outside the traditional court system. Common ADR techniques include arbitration, mediation, and negotiation, offering quicker, cost-effective, and private solutions to conflicts. The incorporation of technology into ADR processes, such as online dispute resolution (ODR), further enhances accessibility, enabling parties to resolve disputes remotely and efficiently.

Arbitration, as an alternative dispute mechanism, has gained traction and has witnessed remarkable growth in the recent past. In this process, a neutral third party, known as the arbitrator, hears the evidence and arguments from both sides and issues a binding or non-binding decision. This method is often used in commercial contracts. Arbitration is similar to a private court trial, offering a structured yet efficient process. This article aims to provide a detailed timeline of the judicial interpretations that have shaped the evolving significance of the concept of arbitration in India.

In recent years, several noteworthy judgments have been rendered by the courts and tribunals in India about the importance of Arbitration in today's world. One of the early judgments where the court reinstated the significance of arbitration was the case of **Guru Nanak Foundation v. Rattan Singh & Others**[1]. The dispute arose between Guru Nanak Foundation and Rattan Singh over issues related to a contractual agreement. The particulars of the dispute revolved around breaches and obligations under a contract. The parties had entered into a contract containing an arbitration clause to resolve disputes. During the pendency of the arbitration proceeding, the appellant filed a petition with the Delhi High Court seeking the removal of Shri Nanda as arbitrator. This petition was dismissed on December 23, 1975. The appellant then filed a Special Leave Petition (SLP) questioning the petition's dismissal and to dispose of the same as expeditiously as possible. The SLP was granted, and the Court passed an order, wherein by the parties' mutual agreement, the second respondent was removed and the third respondent, Shri C.P. Malik was appointed as the sole arbitrator. Upon entering arbitration, Shri Malik asked the parties to file new pleadings, marking a fresh start for the proceedings. The first respondent then applied for the continuation of arbitration from where the second respondent had left it. The Court directed the third respondent to resume the arbitration proceedings from the point where the previous arbitrator left off with an instruction to conclude the proceedings within four months. Subsequently, the arbitrator made his award and notified the parties. The first respondent then requested that the award, along with pleadings and documents, be filed before the Supreme Court.

Therefore, through the rundown of facts, we understand how the arbitration process turned out to be lengthy, expensive, and inefficient in the present case. Multiple procedural issues arose, resulting in significant delays. Despite an arbitration clause aimed at resolving disputes amicably, the parties ended up in prolonged litigation, raising questions about the effectiveness of the arbitration system at the time.

[1] 1981 AIR 2075

Justice Desai criticized the arbitration process for failing to deliver on its promise of being a quick and efficient alternative to litigation. The judgment famously described the arbitration process as a "trap" and noted:

"The way in which the proceedings under the Act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep."

The judgment highlighted how excessive judicial interference in arbitration proceedings undermined the very purpose of arbitration. It called for a more restrained approach by courts to prevent unnecessary delays and expenses. The judgment underscored the urgent need for reform in the arbitration system to make it a truly effective alternative dispute resolution mechanism. The judgment played a pivotal role in shaping the Arbitration and Conciliation Act, 1996, which was designed to minimise court interference and enhance the efficiency of arbitration.

Yet another judgement that established a significant precedent in Indian arbitration law was the case of **Sundaram Finance Ltd. v. NEPC India Ltd. Sundaram Finance Ltd**[2] who had entered into a hire-purchase agreement with NEPC India Ltd. The agreement contained an arbitration clause that required disputes to be resolved through arbitration. A dispute arose regarding payment defaults under the agreement. Sundaram Finance Ltd. sought interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, before the dispute was formally referred to arbitration. NEPC India Ltd. challenged the maintainability of the application, arguing that the arbitration proceedings had not yet commenced and therefore, Section 9 was not applicable.

Hon'ble Justices S. Saghir Ahmad, and D.P. Wadhwa upheld the maintainability of the Section 9 application. The Court held that Section 9 provides for interim measures of protection before, during, or after the arbitration proceedings. Even if arbitration proceedings have not formally commenced, Section 9 can be invoked if the matter is likely to be referred to arbitration. The court reinstated that the provision is intended to ensure that the arbitration process is effective and meaningful. It allows parties to protect their interests and avoid the frustration of the arbitral award by preserving the subject matter of the dispute. It underlined the role of the judiciary in supporting and facilitating arbitration, rather than obstructing it. This judgement was a milestone in the area of alternative dispute resolution as it solidified the role of courts in supporting arbitration without undermining its autonomy.

While the Sundaram Finance Ltd. v. NEPC India Ltd. case emphasizes the judiciary's support for arbitration by allowing interim relief under Section 9 even before formal arbitration proceedings commence. Similarly, in **National Insurance Company Ltd. v. Boghara Polyfab Pvt. Ltd**[3]., the Court further demonstrated its pro-arbitration stance by affirming that a party's conduct could imply consent to arbitration, even in the absence of a formal written agreement. In National Insurance Company Ltd. v. Boghara Polyfab Pvt. Ltd, disputes arose between the insurer and the insured regarding a claim settlement under an insurance policy. The insurer resisted arbitration, contending the absence of a valid arbitration agreement. The Supreme Court held that while a written arbitration clause is essential, the parties' conduct, such as engaging in arbitration proceedings without objection could imply consent to arbitration. This judgment reinforced the principle of *competence-competence*, affirming that the existence of an arbitration agreement is a jurisdictional issue to be determined by the court at the referral stage. It underscored the evolving pro-arbitration stance in India, reducing the scope for dilatory tactics and reinforcing party autonomy in dispute resolution.

An introduction of a new concept in Indian arbitration of '*conscious acceptance*' was brought in through the case of **M.R. Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd**[4]. In this case, the Supreme Court addressed the issue of whether an arbitration clause in a principal contract could be deemed incorporated into a subcontract merely by reference. The Court held that under Section 7(5) of the Arbitration and Conciliation Act, 1996, such incorporation requires a "conscious acceptance" of the arbitration clause, which was absent in this case. Mere reference to the principal contract was insufficient. This judgment clarified the *doctrine of incorporation* by reference to Indian arbitration, ensuring that arbitration clauses are not impliedly enforced without explicit agreement, thereby strengthening contractual autonomy and certainty in commercial transactions. The case highlighted the importance of precise and deliberate drafting of arbitration clauses to prevent disputes over their applicability.

While M.R. Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd. clarified the necessity of "conscious acceptance" for the incorporation of arbitration clauses, **Venture Global Engineering v. Satyam Computer Services Ltd**[5] addressed the limits of arbitral jurisdiction, particularly in cases involving serious allegations like fraud, and reinforced the role of courts in ensuring justice. A case that dealt with arbitrator's jurisdiction in cases involving fraudulent activities. In Venture Global Engineering v. Satyam Computer Services Ltd, a dispute arose when Satyam Computer Services sought to enforce a foreign arbitral award against Venture Global Engineering (VGE) under a joint venture agreement. VGE challenged the enforcement on the grounds of fraud, arguing that the award was obtained through fraudulent misrepresentation and should be set aside under Section 34 of the Arbitration and Conciliation Act, 1996. The Supreme Court held that while arbitral tribunals generally have jurisdiction over disputes involving fraud, serious allegations affecting public interest or requiring

[2] AIR 1999 SC
[3] 2009 1 SCC 267
[4] 2009 7 SCC 696
[5] AIR 2010 SC 3371

detailed evidence should be adjudicated by civil courts. The Court ruled that fraud can be a ground to challenge an arbitral award under Indian law, even if the arbitration was conducted internationally. This decision was significant as it reinforced the judiciary's pro-arbitration stance while recognizing the limits of arbitrability in cases of grave fraud. It established that courts have a role in scrutinizing arbitral awards tainted by fraud, ensuring that arbitration does not become a tool for injustice. The judgment struck a balance between enforcing arbitral awards and safeguarding public policy, shaping India's arbitration jurisprudence by clarifying the extent of judicial intervention in fraud-related disputes.

Another case which caught the attention was **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc**[6]. In this case, Bharat Aluminium Co. (hereinafter referred to as 'BALCO') and Kaiser Aluminium Technical Services Inc. entered into an agreement that contained an arbitration clause specifying that disputes would be resolved through arbitration seated outside India, governed by foreign law. A dispute arose between the parties, and the arbitration proceedings were initiated in London under the agreed terms. BALCO sought interim relief in Indian courts, relying on the provisions of Part I of the Arbitration and Conciliation Act, 1996, which at the time was interpreted to apply to both domestic and international arbitrations. The contention arose regarding whether Indian courts had jurisdiction to interfere in arbitrations seated outside India, particularly for granting interim reliefs under Part I of the Act.

The Supreme Court overruled its earlier decisions in **Bhatia International v. Bulk Trading S.A**[7]. and **Venture Global Engineering v. Satyam Computer Services Ltd**[8], which had allowed Part I of the Act to apply to foreign-seated arbitrations. The Court held that Part I of the Arbitration and Conciliation Act, 1996, applies only to arbitrations seated in India. Arbitrations seated outside India are governed by the arbitration law of the seat of arbitration (foreign jurisdiction). Indian courts cannot grant interim reliefs for arbitrations seated outside India under Section 9 or entertain challenges to awards under Section 34. The judgment emphasized the '*territoriality principle*' enshrined in the UNCITRAL Model Law on International Commercial Arbitration, which the Indian Act is based on. The seat of arbitration determines the procedural law applicable to the arbitration proceedings. To avoid disrupting ongoing arbitrations, the Court applied its decision prospectively, making it applicable only to arbitration agreements entered into after 6 September 2012. The judgment provided certainty regarding the jurisdiction of Indian courts in foreign-seated arbitrations, aligning Indian arbitration law with international standards. By limiting judicial interference, the judgment made India a more attractive destination for international commercial transactions and arbitration.

An year after the BALCO judgement, in **Shri Lal Mahal Ltd. v. Progetto Grano Spa**[9], a dispute arose from a contractual agreement between an Indian and an Italian company, leading to an arbitral award in London under the GAFTA Rules. Shri Lal Mahal Ltd. sought to resist enforcement in India, invoking the "public policy" exception under Section 48 of the Arbitration and Conciliation Act, 1996. The Supreme Court ruled that the scope of public policy in enforcing foreign awards is narrow, limited to fundamental principles of law, justice, and morality, and does not extend to mere errors in law or fact. The judgment clarified that Indian courts have limited grounds to refuse enforcement of foreign arbitral awards, reinforcing India's pro-arbitration stance. By restricting judicial interference, this decision aligned Indian arbitration law with international standards under the New York Convention, promoting India as an arbitration-friendly jurisdiction for international commercial disputes.

Further, in the case of **Enercon (India) Ltd. & Ors. v. Enercon GmbH & Anr**[10], a dispute arose between the Indian subsidiary of Enercon and its German parent company regarding the enforcement of an arbitration clause in their agreements. The dispute centered on the validity of the arbitration agreement, as Enercon India argued that the contract was incomplete and, therefore, unenforceable. The Supreme Court of India upheld the validity of the arbitration agreement and ruled that technical defects in the drafting of the contract could not invalidate a clear intention to arbitrate. The judgment reinforced the principle of *competence-competence*, affirming that the arbitral tribunal has the first right to decide on its jurisdiction. This decision was a landmark in Indian arbitration jurisprudence as it is yet another case that reaffirmed India's pro-arbitration stance by limiting judicial interference in international commercial arbitration. The Court provided guidelines on the scope of interim reliefs in foreign-seated arbitrations, striking a balance between judicial support and non-intervention. By recognizing the enforceability of arbitration clauses despite minor procedural defects, the ruling enhanced contractual certainty and party autonomy. This case played a pivotal role in positioning India as an arbitration-friendly jurisdiction, aligning it with global best practices and boosting investor confidence in India's dispute resolution framework.

In the same year as Enercon judgement was made, there were few other notable judgments by the Indian courts. In the case of **Ameet Lalchand Shah v. Rishabh Enterprises**[11] (2018), a dispute arose from multiple agreements related to a solar power project, where one party sought to invoke arbitration. The key issue was whether non-signatories to the arbitration agreement could be bound by it and whether the designation of a "seat" in the arbitration clause determined the curial law governing the proceedings. The Supreme Court held that arbitration agreements must be read harmoniously across

[6] 2012 9 SCC 552
[7] 2002 4 SCC 105
[8] AIR 2010 SC 3371
[9] 2014 2 SCC 433
[10] AIR 2014 SC 3152
[11] AIR 2018 SC 3041

interconnected contracts and that non-signatories with a direct role in the transaction could be bound by the arbitration clause under the "group of companies" doctrine. The Court also reaffirmed that the designation of a seat in an arbitration agreement has significant legal implications, as it determines the governing procedural law and the court with supervisory jurisdiction.

However, the very same question came up before the constitutional bench of SC in **Cox and Kings Ltd. v. SAP India Pvt. Ltd**[12] where Court answered the pertinent issue of applicability of Doctrine of 'Group of Companies' under Arbitration Act 1996. Court highlighted that a significant evolution took place through the **Chloro Controls India Ltd v. Severn Trent Water Purification Inc**[13] and since then discussions on this doctrine can be classified into Pre- Cloro Controls and Post Chloro Controls. In Pre- Cloro Controls, SC interpreted 'parties' as limited only to signatories to arbitration agreement. However, Post Chloro Controls judgement in place and after the 2015 amendment, many decisions[14] discussed 'Group of Companies' doctrine to join non-signatories to arbitration agreement. In the latest Cox and Kings Ltd judgement, apex court clarified that '*Group of Companies*' doctrine is significantly different and an independent doctrine and that '*Lifting the Corporate Veil'* doctrine can't be the basis for the application of the former doctrine. By affirming to the general legal proposition that even non-signatories can be bound by an arbitration agreement, court pointed out that by *competence-competence* concept the arbitral tribunal has the competency to decide whether non-signatories should be made a party to the suit and that court must refrain from interference in the referral stage. It clarified that tribunal must do this based on the doctrine of 'Group of Companies' as well as fact and circumstances of each case with due regards to natural justice principle.

In **Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd**[15] SC clarified that designation of 'seat' of arbitration in an arbitration agreement is akin to an exclusive jurisdiction clause. Even if the cause of action or party's location are outside the seat, the court of designated 'seat' shall have exclusive jurisdiction. Thus the judgement reinforces the principle that parties can choose their seat of arbitration and thus streamline arbitral proceeding to avoid jurisdictional disputes. This judgment reinforced the autonomy of parties in designating a seat of arbitration, minimizing judicial interference, and promoting efficient dispute resolution. By endorsing a broad interpretation of arbitration agreements and recognizing the importance of seat selection, the ruling strengthened India's arbitration framework, aligning it with international best practices and enhancing India's appeal as a pro-arbitration jurisdiction.

In **PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd**[16] we had two Indian companies who decided to choose a foreign seat of arbitration. SC upholded party autonomy and allowed selection of foreign seat even in the absence of any foreign element in the agreement. Court even clarified that such an award qualifies as a foreign award under Indian law. Thus the decision became a significant step in promoting international arbitration in India. It aligns India with international practices and New York Convention, which governs recognition and enforcement of foreign arbitral awards.

Another remarkable judgement was the case of **BCCI v. Kochi Cricket Pvt. Ltd**[17], the dispute arose when Kochi Cricket Pvt. Ltd., a franchisee of the Indian Premier League (IPL), sought enforcement of an arbitral award against the Board of Control for Cricket in India (BCCI). BCCI challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996, arguing that amendments introduced by the 2015 Arbitration Act, particularly regarding automatic stays on awards should not apply retrospectively. The Supreme Court held that the 2015 amendments, which removed the automatic stay on arbitral awards upon challenge, applied to pending proceedings as well. It emphasized the principle of party autonomy and clarified that, unless expressly barred by statute, arbitration remains a viable dispute resolution mechanism, even in sectors such as sports governance.

This ruling significantly advanced Indian arbitration jurisprudence by reinforcing the pro-arbitration approach of the judiciary. By disallowing the automatic stay, the decision curtailed procedural delays and strengthened the enforceability of arbitral awards, aligning Indian law with global best practices. It also had broader implications beyond sports contracts, reaffirming that arbitration should be the preferred mechanism for resolving commercial disputes unless explicitly excluded by law. The judgment provided clarity on the retrospective application of arbitration amendments and furthered India's goal of becoming an arbitration-friendly jurisdiction. By ensuring the swift execution of awards, the case contributed to the efficiency and credibility of India's arbitration regime, fostering greater confidence among international and domestic investors in the country's dispute resolution framework.

Ssangyong Engineering & Construction Co. Ltd. v. NHAI[18] clarifies the scope of 'public policy' ground for setting aside an award as per the 2015 amendment in Arbitration Act 1996. It illuminated that the impact of broad interpretation given by

[12] 2024 SCC SC I634
[13] 2013 1 SCC 641
[14] Cheran Properties v. Kasturi and Sons Ltd (2018) 16 SCC 413; Ameet Lalchand Shah v. Rishabh Enterprises (2018) 15 SCC 678; Reckitt Benckiser (India) Private Limited v. Reynders Label Printing India Private Limited (2019) 7 SCC 62; Mahanagar Telephone Nigam Ltd v. Canara Bank (2020) 12 SCC 767; and Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises (2022) 8 SCC 42.
[15] AIR 2017 SC 2105
[16] AIR 2021 SC 2501
[17] 2018 6 SCC 287
[18] AIR 2019 SC 5041

SC in **ONGC Ltd v. Whestern Geco International Ltd**[19] and **Associate Builders v. DDA**[20] to the term 'fundamental policy of Indian law' has resulted in an exploitation by refusing enforcement of foreign awards. Court explicated that this was changed by the 2015 amendment and since then S.34 doesn't allow such a broad interpretation which will hinder enforcement of foreign awards .

Another significant case is **Vidya Drolia & Ors v. Durga Trading Corporation**[21], which clarified regarding arbitrability of disputes in India. The judgement went a head and gave a four-fold test to determine non- arbitrability focusing on whether disputes involve actions in rem, affect third party rights, relate to sovereign functions, or are expressly made non-arbitrable by a statue. It overruled and reaffirmed that most landlord-tenant disputes are arbitrable unless considered inherently non-arbitrable. It also clarified that fraud in itself doesn't automatically make a dispute non-arbitrable. Court has very carefully sticked around with the limited judicial interference and highlighted that courts should only refuse to refer a dispute to arbitration of it's a clear case of non-arbitrability.

Amazon.com NV Investment Holdings LLC v. Future Retail Ltd[22] case revolved around complex issues of enforceability of emergency arbitration award under Indian law. It affirmed that emergency arbitrator's order is an order under S. 17(1) of Arbitration Act and so enforceable in India. It further affirmed the validity of *Group of companies* doctrine in arbitration. Thus, it's a perfect example of cross-border transactions involving multiple parties and agreements.

In **N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd**[23] **a** full seven judge bench held that a unstamped arbitration agreement is not void ab initio by overruling a five judge judgement on the same.

The case of **Haryana Space Application Centre v. Pan India Consultants Pvt. Ltd** is a perfect example where court reinforces judiciay's role in overseeing arbitration proceedings and ensure fair dispute resolutions. SC here suo moto took cognizance of the fact that the Principal Secretary to Govt of Haryana was nominated as arbitrator which is contrary to S. 12(5) read with schedule 7. Court appointed a substitute arbitrator to ensure that the arbitration process happened fairly.

Recently in the case of **Central Organisation for Railway Electrification vs M/s ECI SPIC SMO MCML (JV) A Joint Venture Company**[24] (2024), the Supreme Court dealt with a dispute between partners of a construction firm arising from alleged mismanagement, exclusion from business affairs, and non-disclosure of financial information. Here, SC gave a very significant decision on issues of law related to an arbitration agreement between government authorities and private parties. Courts clearly pointed out that unilateral appointment of arbitral tribunals are invalid. It held that clauses that mandated unilateral appointment of arbitral tribunals are invalid.

It was determined that *"*Every action of a public authority or a person acting in the public interest or any act that gives rise to a public element must be based on principles of fairness and non-arbitrariness…Further, a unilateral appointment clause is inherently exclusionary and violates the principle of equal treatment of parties and procedural equality. Unilateral appointment clauses in a public-private contract fail to provide the minimum level of integrity required in authorities performing quasi-judicial functions such as arbitral tribunals…"[25]

The court reemphasised that 'counter-balancing' as referred in **Perkins**[26] will work only where arbitrators are appointed with party autonomy genuinely and not when the panellist are already prepared by one of the party like in **Voestalpine**[27] and CORE case.

Even albeit taking all precautions and mechanisms to make the statute beneficial and effective, still when we have claimants approaching the courts by writ petitions, SC in **Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd**[28] had to still categorically elucidate on the limited scope of HC intervention in arbitration matters under 226 and 227 of Indian Constitution. Apex court emphasised that constitutional powers are to be exercised sparingly and only in exceptional circumstances like when the party is left out without a remedy under the Arbitration Act.

In **UHL Power Company Ltd. v. State of Himachal Pradesh**[29]by overruling **S L Arora**[30] judgement upholding the power of arbitrator to grant interest on interest ie compound interest on the sum directed to be paid under arbitral award, thereby recognised arbitration as an effective ADR mechanism.

The future of ADR lies in its ability to adapt and innovate, ensuring justice is both swift and equitable for all stakeholders. The above mentioned judgements signify how our Indian judiciary has been progressively and tirelessly tried enough to

[19] AIR 2015 SC 363
[20] 2014 AIR SCW 6861
[21] AIR 2020 SC 929
[22] AIR 2021 SC 3723
[23] 2023
[24] 2024 INSC 857
[25] ibid
[26] Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd 2019 SCC 1517
[27] Voestalpine Schienen Gmbh v. Delhi Metro Rail Corporation Ltd 2017 4 SCC 665
[28] (2021) 2 SCC 684
[29] (2022) 4 SCC 116
[30] State of Haryana v. S L Arora 2010 3 SCC 690

carve out a niche for Arbitration in India. Continuous efforts to integrate ADR into mainstream legal frameworks and enhance awareness among individuals and businesses will solidify its role as a cornerstone of modern dispute resolution. As legal systems evolve to address the challenges of globalization and resource constraints, ADR stands as a testament to the pursuit of accessible, efficient, and harmonious justice.