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Legal Updates, Insights and Summary Judgements

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Recent Judgements

ARBITRATION

South Delhi Municipal Corporation V. SMS Limited a/w M/s DSC Limited V. Municipal Corporation of Delhi a/w Municipal Corporation of Delhi V. M/s Consolidated Consortium Limtied

Citation: SLP (C) No. 16193/2017, SLP (C) No. 21437/2022 & SLP (C) No. 17510/2023: 2025 INSC 693

The Supreme Court held that a vaguely worded dispute resolution clause in several Concession Agreements mandating referral of disputes to the Municipal Commissioner for "mediation" cannot be stretched so far to mean an arbitration clause / agreement under Section 7 of the Arbitration and Conciliation Act, 1996 ("A&C Act") despite the decision of Municipal Commissioner being 'final & binding' on the parties.

South Delhi Municipal Corporation ("SDMC") and Municipal Corporation of Delhi entered into Concession Agreements with three parties viz., SMS Ltd., M/s DSC Ltd., and M/s Consolidated Construction Consortium ("CCC") Ltd. to construct parking and commercial complexes in New Delhi. All Concession Agreements contained similar dispute resolution clause, where all disputes arising from the Concession Agreements were to be referred to the Municipal Commissioner Delhi ("MCD"), for mediation whereby the decision of MCD was final and binding on the parties. The captioned judgment arises from three civil appeals challenging orders passed by the High Court of Delhi concerning the interpretation of the dispute resolution clauses of the Concession Agreements specifically, whether they constitute an arbitration clause, thus making the disputes arbitrable.

At the arbitral referral stage, the Delhi High Court, in the cases of SMS Ltd. and CCC Ltd. cases interpreted the dispute resolution clause as a valid arbitration clause u/s. 7 of the A&C Act and appointed arbitrators. However, in the DSC Ltd. case, the Delhi High Court held that the dispute resolution clause provided for mediation and not arbitration.

The Supreme Court deliberated whether the dispute resolution clauses, namely Article 20, in the subject Concession Agreements constitute a valid arbitration agreement between the parties whilst delving into the necessary ingredients of an enforceable arbitration clause / agreement and applying the same to the matter at hand.

The Supreme Court relying upon the judgement in the case of K.K. Modi vs K.N. Modi & Ors[1] (1998) & South Delhi Municipal Corporation v. SMS AAMW Tollways (P) Ltd[2] (2019) held that the existence of an arbitration agreement necessarily postulates three key ingredients: clear intent to arbitrate, a binding adjudicatory process, and compliance with arbitration norms. This test is conjunctive, meaning all elements must co-exist and be duly proven. While the DSC Ltd. and CCC Ltd. Concession Agreements state the MCDs decision is “final and binding,” finality alone does not equate to arbitration.

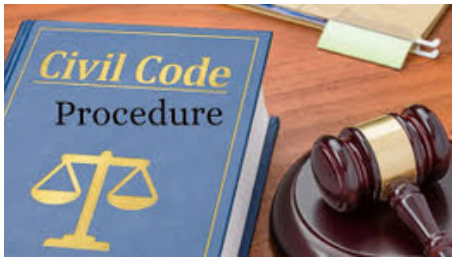
The Supreme Court concluded that the dispute resolution clause does not satisfy the requirements of an arbitration agreement under Section 7 of the A&C Act due to its procedural and structural deficiencies, including lack of clear intent, adversarial process, party autonomy in appointment, and neutrality.

The Supreme Court furthermore found the controversy "broadly similar" to that in Tollways (supra) and reiterated the view taken in that case, noting that the dispute resolution clauses in both sets of cases lack the essential ingredients of an arbitration agreement.

The Supreme Court lastly made observations on the poor drafting of arbitration clauses in India, the ironic misuse of arbitration for delay, and expressed concern over the significant judicial time wasted on determining the mode of dispute resolution itself. It urged clarity in drafting and cautioned against ambiguous phraseology, calling for courts to reject shoddily drafted clauses and consider assigning personal liability for such acts.
[1] (1998) 3 SCC 573 [2] (2019) 11 SCC 776

CIVIL

Shubhkaran Singh v. Abhayraj Singh & Ors [2025 SCC OnLine SC 1028, 2025 INSC 628]



The Supreme Court in the present case held that Order 18 Rule 17 of the Civil Procedure Code, 1908 ("CPC") empowers the court to recall a witness only to seek clarification and not for further examination or cross-examination by the parties.

The Petitioner had filed a Petition under Order 18 Rule 17 CPC before the Ld. Trial Court. By way of the said Petition, the Petitioner sought to recall certain witnesses for further examination, cross examination or re-examination. The Ld. Trial Court rejected the Petitioner's said Petition. Being aggrieved, the Petitioner file a Miscellaneous Petition No. 7264 of 2024 ("Miscellaneous Petition") before the Hon'ble Madhya Pradesh High Court at Jabalpur. Vide its Order dated 07.01.2025 dismissed the Miscellaneous Petition and upheld the Ld. Trial Court's decision. Thereafter, the Petitioner filed a Review Petition No. 117 of 2025 ("Review Petition") before the Hon'ble High Court. The Hon'ble High Court vide its order dated 27.02.2025 dismissed the Review Petition. Being aggrieved, the Petitioner filed a Special Leave Petition (Civil) Nos. 12012 and 12013 of 2025 before the Hon'ble Supreme Court.

The Hon'ble Supreme Court cited previous judgments, including Sultan Salen Bin Omer V. Vijayachand Sirmal and Vadiraj Naggappa Vernekar V. Sharadchandra Prabhakar Gogate to emphasize that a party driven recall is not provided under Rule 17 and that such power should be exercised sparingly. The Hon'ble Supreme Court relied on judgment in the case of K. K. Velusamy V. N. Palanisamy and reiterated that recalling a witness for fresh evidence is impermissible without valid reasons and must be regulated to prevent misuse.

The Hon'ble Supreme Court dismissed the Special Leave Petitions and upheld the Hon'ble High Court's decision. The Hon'ble Supreme Court held that Order 18 Rule 17 of CPC exclusively authorizes the court to recall a witness for clarification purposes. It does not grant parties an independent right to re-examine or cross examine a witness. Any party driven recall must be based on the court's inherent jurisdiction under Section 151 of CPC.

Vijaya Bank & Anr. V. Prashant B. Narnaware [2025 SCC Online SC 1107]

The Hon'ble Supreme Court in the instant case held that a clause in an employment contract requiring payment of sum of Rs. 2,00,000/- (Rupees Two Lakhs) as liquidated damages for resigning before completing a period of three (3) years of service, without imposing any restrictions on future employment after resignation does not violate Section 27 or Section 23 of the Indian Contract Act 1872, nor Articles 14 or 19(1)(g) of the Constitution of India.

In 2007, Respondent was hired as a Senior Manager by the Appellant after agreeing (via recruitment notification clause 9(w) and appointment-letter clause 11(k)) to serve a minimum of three (3) years or pay ₹ 2 lakhs if he resigned earlier. In July 2009 less than three years into service, Respondent resigned and paid a sum of Rs. 2,00,000/- (Rupees Two Lakhs) under protest. Subsequently, Respondent challenged clauses 9(w) and 11(k) before the Hon'ble Bombay High Court.

There were two primary issues, firstly whether clause 11(k) of the appointment-letter imposed an unlawful restraint on Respondent's right to practice or employment and secondly whether the liquidated-damage covenant was unconscionable, an unequal-bargaining-power imposition, or otherwise opposed to public policy.

The Hon'ble Supreme Court relied on Niranjan Shankar Golikari v. Century Spinning and Superintendence Company (P) Ltd. v. Krishan Murgai to distinguish covenants operative during employment (which are not void under Section 27 of the Indian Contract Act, 1872, if reasonable) from those operative after termination. Clause 11(k) merely required Respondent to serve three years or compensate the Appellant Bank, it did not bar the Respondent from joining any other employer after resignation. Hence, no post-employment restraint existed, and Section 27 of the Indian Contract Act, 1872 was not attracted in the present case.

The Appellant Bnak demonstrated that premature resignations caused substantial recruitment costs, service disruptions, and administrative burden. The liquidated-damages clause was calibrated to offset those quantifiable losses especially given public-sector recruitment procedures under Articles 14 and 16 of the Constitution of India.

The Hon'ble Supreme Court found the quantum neither excessive nor punitive. The Respondent, commanding a middle-management salary, could afford the amount and did resign after paying it. As such, clause 11(k) was rationally connected to legitimate business interests and hence not "opposed to public policy."

The Hon'ble Supreme Court set aside the order passed by the Hon'ble Bombay High Court's and upheld the validity of the liquidated damages clause and dismissed with Writ Petition. The Hon'ble Supreme Court held that the clause in the employment contract requiring payment of sum of Rs. 2,00,000/- (Rupees Two Lakhs) as liquidated damages for resigning before three years without imposing any post-employment restraint did not violate Section 27 or Section 23 of the Indian Contract Act nor Article 14 or 19 (1)(g) of the Constitution of India.

CRIMINAL

M/S Shri Sendhur Agro & Oil Industries vs Kotak Mahindra Bank Ltd. (2025 SCC OnLine SC 508; 2025 INSC 328

The Supreme Court said it will only transfer a criminal case under Section 406 of the CrPC when that shift is genuinely needed to protect justice. Being bothered by travel, language, or the fact that another court might also hear the case is not enough. Because Shri Sendhur Agro could not show any real fear that a trial in Chandigarh would be unfair, the Court refused to move Kotak Mahindra Bank's cheque-bounce case to Tamil Nadu, and the matter will keep going before the Judicial Magistrate in Chandigarh.

Shri Sendhur Agro, based in Coimbatore, got an overdraft from Kotak's branch at R.S. Puram. After the loan went bad, Kotak used SARFAESI to recover money in Coimbatore and filed a cheque-bounce complaint in Chandigarh, since the ₹21-lakh security cheque was routed through its Chandigarh collection account. Shri Sendhur Agro asked the Supreme Court to switch the case to Tamil Nadu, saying every fundamental part of the deal loan approval, collateral, bank account, and earlier proceedings was in Tamil Nadu, so filing in Chandigarh felt like forum shopping and forced the owner to travel far and face a language he didn't know.

The judges compared Section 142(2) of the NI Act (added in 2015) with Section 406 of the CrPC. Under Section 142(2)(a), the court where a cheque is deposited "for collection through an account" has apparent authority, so Chandigarh was a valid spot. To beat that rule, a defendant must show an intense, sensible fear of bias or injustice, not just hassle. Using past cases like Kaushik Chatterjee vs State of Haryana and Bhiaru Ram vs CBI, the Court said distance, cost, or language alone won't do. If someone thinks the court lacks jurisdiction, they should raise that before the trial court once evidence is in, not jump straight to a transfer request.

Since Section 142(2) let Kotak sue in Chandigarh and Shri Sendhur Agro showed no solid threat to a fair trial, the Supreme Court left the case where it is. The ruling keeps the complainant's legal right to pick that venue under the NI Act, while clarifying that Section 406 transfers are meant for serious risks to justice, not mere inconvenience.

TAX

Infiniti Retail Limited vs. Union of India TS-440-HC(DEL)-2025-GST

Order-in-Original passed under Section 74 of CGST Act, 2017 confirming tax demand for wrongly availing ITC and for short payment of tax was challenged in a writ petition before the Hon'ble Delhi High Court. The challenged was on the ground that such order has been passed without bearing in mind the directions of the High Court in a previous writ petition on the same subject matter.

In the previous writ petition, the Court directed the adjudicating authority to not implicitly rely on the observations in the audit report and while passing the order should also independently examine the reply to the show cause notice. The adjudicating authority thereafter merely reproduced the reply of the petitioner in the impugned order. The petitioner submitted that such reproduction of reply in the order is not sufficient compliance with the directions of the high court in the previous writ petition.

Judgment:

After examination of the new order, the Court reached the conclusion that various facts and documents would be required to be gone into to ascertain as to whether any of the demands are justified or not. Thereafter the Court observed that as per the impugned order the question is whether the availment of ITC would be qua IGST or qua SGST/CGST, but the availment of ITC itself is not in question. Based on such observation the Court held that in such circumstances the requirement of payment of pre-deposit is required to be paid only in respect of all other issues but not in respect of issue of availment of ITC.

W&B Comments

In this case the court has carved a reasonable exception to the rule of payment of pre-deposit laid down in Section 107(6) of the CGST Act.

Such an exception is reasonable because the entitlement of ITC was not in question in this dispute but the only question was whether such ITC should be that of IGST or that of CGST + SGST. This principle is also supported by the judgments Rejimon Padickapparambil Alex vs. Union of India 2024 (12) TMI 399, wherein the Kerala High Court held that when the taxpayer has my mistake availed ITC of CGST + SGST instead of IGST then it cannot be held to be a case of wrongful availment of ITC.

In Re: M/s. Adi Enterprises 2025 (6) TMI 919

In this matter, the Advance Ruling authority dealt with the question that whether time limit to avail ITC as mentioned in Section 16(4) of the CGST Act, 2017 will be applicable to import ITC availed though a bill of entry.

The IGST paid by the Applicant as per the Bill of Entry was reflected in GSTR 2A of August 2022 and reflected in GSTR 2B of March 2023. However, the Applicant did not avail such ITC in GSTR 3B of FY 2022-23 and also in GSTR 3B till 30.11.2023. The attention of the Applicant was brought to such credit when department issued notice to him on 21.03.2024 to avail and reverse such credit.

Submissions of the Applicant:

i.Section 16(2)(a) mentions that the person who avails ITC should be in possession of "tax invoice or debit note or such other tax paying document as may be prescribed", Section 16(4) only mentions "invoice or debit note". Legislature has specifically omitted to mention "any other tax paying document as may be prescribed".
ii.Section 20(iv) of the IGST Act cannot be interpreted in a way that for purposes of import IGST, "bill of entry" is also read in Section 16(4) because the concept of mutatis mutandis cannot extent scope of the Section 16(4).
iii.Section 5(1) of the IGST Act provides that IGST on import of goods shall be levied as per Section 3 of the Customs Tariff Act, 1975. Such import IGST is an independent levy and not equivalent to any other tax or duty.

Ruling:

The Advance Ruling Authority held that IGST of goods imported in India will be subject to time limit mentioned in Section 16(4) and such time limit will be calculated as per the Bill of Entry. The ruling was based on the following observations:

i. Under section 7(2) of the IGST Act, supply of goods imported into the territory of India, shall be treated to be a supply of goods in the course of inter-State trade. Further, under Section 31(2) of the CGST Act, government may notify any other document issued in relation to the supply as deemed tax invoice and since Bill of Entry contains all the details required under Rule 46, Bill of Entry is deemed tax invoice for the import IGST.
ii. Rul 36(1)(d) clearly mentions that ITC shall be availed based on the bill of entry used for assessment of IGST on import of goods.

W&B Comments:

It may be noted that the Advance Ruling Authority has depended heavily upon the principle of mutatis mutandis to hold that time limit will be applicable with relation to bill of entry. The Authority also relied upon Rule 36. However, Rule 36 is prescribed under Section 16(2) and not Section 16(4). Even the power under proviso (2) to Section 31(2), has not been exercised to 'notify' that Bill of Entry shall be deemed tax invoice. The distinction drawn by the Applicant between Section 16(2) and Section16(4) prima facie appears to be correct.

SICPA India Private Limited vs. Union of India 2025 (6) TMI 834

The issue before the Hon'ble High Court of Sikkim in this case was whether the refund of ITC is only limited to conditions under Section 54(3) of the CGST Act or does every registered company have a right to refund of ITC in case of discontinuance of its business?

The Petitioner has filed an application for refund of unutilised ITC in the Electronic Credit Ledger. The Petitioner-Company had discontinued its business and ITC amounting to Rs. 4.37 crores was left unutilised. The said refund application was rejected by the department and thereafter the Petitioner did not file appeal before the Appellate Authority but approached the High Court by way of writ petition.

Before the High Court, the department submitted that the claim of the Petitioner cannot be accepted because the combined reading of Section 54(3) of the CGST Act provide for refund of unutilised ITC but only in two situations: when the applicant has made zero rated supply and when there is a case of inverted duty structure; it does not provide for refund of such ITC in case of discontinuance of business. Further Section 29 of the CGST Act provides for reversal of ITC upon cancellation of registration but not for refund of such ITC. It was further contended that instead of filing a writ petition, the company should have filed an appeal against the refund rejection order under Section 112 of the CGST Act.

On the other hand, the Petitioner contended that the vested right of ITC accrued to the Petitioner cannot be taken away just because only two cases are listed in the statute.

Judgment:

i. Alternative Remedy of Appeal: The Court observed that there is no rule that the High Court should not entertain a writ petition where an alternative remedy is available and it is always a matter of discretion of such High Court. The existence of alternative remedy does not operate as an absolute bar to the maintainability of writ petition and hence the writ petition shall not be rejected.
ii. Refund of ITC on closure of business: The Court observed that under Section 49(6), balance of electronic credit ledger may be refunded in accordance with Section 54. The Court relied upon Union of India vs. Slovak India Trading Company Private Limited MANU/KA/0709/2006 wherein the CESTAT allowed CENVAT refund to a person whose business was closed even though there was no provision of specifically providing for refund of ITC in such cases. Based on this, the Court observed that in the CGST Act also there is no express provision prohibiting refund in cases of closure of business.

W&B Comments:

This judgment will be a huge relief for tax payers who have suffered financially due to closure of their business. In case of closure of business, such ITC paid becomes cost of the closing business as they can no longer utilise it for paying their output tax liability. The judgment in Slovak India (supra) was upheld by the Karnataka High Court in appeal and then later by the Supreme Court in the ground that the tribunal relied upon the order of coordinate Benches of the tribunal and against orders, no appeals were preferred by the Revenue. The Bombay High Court in Gauri Plasticulture Pvt. Ltd. vs. Commissioner of Central Excise 2019 (7) TMI 1204 cash refund u/s 11B of the Central Excise Act, 1944 is not permissible when CENVAT Credit on inputs remains unutilized on account of closure of manufacturing unit. Thus, given such legal scenario, the dispute regarding this issue might continue for some time.

Sundyne Pumps and Compressors India Pvt Ltd vs. Union of India 2025 (6) TMI 1259

In this case, the Court adjudicated upon the validity of refund under Section 54(3) read with Rule 89(4) where an Indian entity exported services to its foreign related entity.

The Petitioner applied for refund of unutilised ITC for two periods July to September 2021 and October to December 2021 but such refund application was rejected by the State Tax Officer and this rejection order was also upheld by the Appellate Authority.

The refund was rejected on the grounds that the conditions no. (v) of 'export of services' under Section 2(6) of the IGST has not been satisfied hence the transaction is not a zero rated supply, making the Petitioner ineligible for refund. The department did not dispute any other condition of export of services but submitted that the recipient of services located outside India are carrying on the business in India through the Petitioner and the Petitioner is an establishment/agency of such recipient of services. The department relied upon Explanation 2 to Section 8 of IGST Act. As per such Explanation, a person carrying on a business through an agency in any territory shall be treated as having an establishment in that territory. Based on such provision department concluded that Petitioner is an agency and by implication mere establishment of the recipient of services

To further support its case, the department also recorded that the following facts:

1. foreign party controls the Petitioner,
2. Petitioner is a subsidiary of the foreign firm,
3. foreign firm exerts managerial control over Petitioner
4. expenses incurred by the Petitioner are reimbursed by the foreign recipient
5. books of accounts of Petitioner are readily available for inspection and audit to the foreign recipient
6. The fixed mark-up on the costs earned by the Petitioner is nothing but commission

Judgment:

Independent Contractor and not an agent: The Court held that the Petitioner is an independent contractor and not an agent of the recipient and after thoroughly examining the agreement between the Petitioner and the recipient, observed that the Petitioner provides design and engineering services to its customers on principal-to-principal basis by employing its own manpower and other resources.

Consideration at cost plus markup and power to examine books of accounts: The Court also observed that the Petitioner earning consideration of 100% of costs fixed between the party is consistent with the general commercial practice and as per the transfer pricing norms and is not commission. Similarly, the clause for inspection of books of accounts is very common when consideration is costs plus a reasonable mark up.

Petitioner is an incorporated entity in India: The judgment also relied upon Circular No. 161/2017/2021 by CBIC which states that a subsidiary of any foreign company which is incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company and such separate legal entities would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8". Since the Petitioner is incorporated under Indian laws and the recipient is incorporated under foreign laws, the Petitioner is not an establishment.

W&B Comments:

This judgment will be helpful for a lot of Indian companies providing information technology services to their foreign group companies. The department often attempts to reject the refund claims of such entities on grounds of failure of condition no. (v) of Section 2(6) of IGST Act. The judgment reiterates a very clear distinction to resolve such disputes: that if the Indian entity and the foreign entity are both registered under the respective laws of their territory, then department cannot invoke explanations to Section 8 to reject the refund claims.

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