



**NIRKA**  
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**Engineering Projects (India) Limited v. MSA Global LLC (OMAN), CS(OS) 243/2025 – Delhi High Court emphasizes mandatory disclosure requirements by arbitrators**

**The Court underlines judicial oversight's necessity when impartiality and procedural fairness in international arbitration proceedings are compromised**

The present dispute arose from a subcontract agreement executed on 21.09.2015 between the Plaintiff, a public sector undertaking operating under the Ministry of Heavy Industries and Public Enterprises, Government of India, and the Defendant, an Oman-based military and security systems integrator. The agreement's scope encompassed the design, supply, installation, integration, and commissioning of a border security system specifically for Sections 3 and 4 of the Oman-Yemen Border. Crucially, the agreement incorporated an arbitration clause, Article 19, stipulating that arbitration disputes would be governed by ICC Rules with jurisdiction specifically vested in New Delhi, India.

When disputes emerged due to alleged delays in the performance of contractual obligations, the Defendant commenced arbitration proceedings under the ICC Rules. During the arbitration, however, significant concerns surfaced regarding

the impartiality and independence of one of the arbitrators. The controversy stemmed from the Arbitrator's non-disclosure of a prior professional engagement involving the Defendant's Managing Director in earlier arbitration proceedings. This omission raised fundamental questions regarding his neutrality and compliance with Article 11 of the ICC Rules, which explicitly mandates arbitrators to disclose any circumstances potentially compromising their impartiality.

The Plaintiff, upon discovering this undisclosed information, challenged the Arbitrator's appointment under Article 14(1) of the ICC Rules, arguing that his deliberate non-disclosure constituted a grave breach of mandatory ICC disclosure obligations, casting doubt upon the integrity of the arbitration process. The ICC Court acknowledged that the Arbitrator's non-disclosure was "regrettable," but ultimately determined it insufficiently serious to warrant disqualification, holding that this omission alone did not conclusively indicate bias or prejudice.

Following this decision, the Plaintiff approached the Delhi High Court seeking judicial intervention through an anti-arbitration injunction, contending that the proceedings had become vexatious, oppressive, and violative of Indian public policy due to significant procedural impropriety. The Defendant contested the suit, emphasizing exclusive jurisdiction of the

arbitration seat in Singapore and accusing the Plaintiff of forum shopping and procedural misuse.

In its thorough analysis, the Delhi High Court emphasized established jurisprudential principles that arbitration, while inherently aimed at minimizing judicial intervention, must nonetheless adhere strictly to fundamental procedural fairness, including absolute impartiality and transparency of arbitrators. Referencing key judicial precedents, such as *Oil and Natural Gas Commission v. Western Company of North America (1987) 1 SCC 496* and *McDonald's India Pvt. Ltd. v. Vikram Bakshi 2016 SCC OnLine Del 3949*, the Court highlighted that any non-disclosure, especially deliberate or material omissions by arbitrators, undermines the foundational tenet of arbitration, which is party autonomy informed by transparent procedures and fair adjudicators.

The Court underscored that the standard for disclosure under ICC Rules is not subjective; instead, it requires disclosure from the viewpoint of the parties involved, emphasizing that transparency is essential to maintain trust and legitimacy in arbitral processes. The Delhi High Court firmly rejected the notion that an arbitrator's personal perception of impartiality could excuse non-disclosure. Instead, it reaffirmed the imperative that arbitrators resolve

any doubts about disclosable information in favour of disclosure to uphold procedural integrity.

Critically evaluating the conduct of the Arbitrator in question, the Court found that his non-disclosure represented not merely a procedural oversight but a deliberate act that effectively deprived the Plaintiff of its legitimate right to challenge the arbitrator's impartiality at the earliest opportunity.

The Court further scrutinized the Defendant's litigation strategy, noting an aggressive, strategic use of multiple forums to pursue simultaneous proceedings, thus demonstrating a clear pattern of vexatious and oppressive litigation, highlighting instances such as the Defendant's repeated insistence on progressing with evidentiary hearings despite pending judicial challenges, and its opposition to the Plaintiff's procedural motions, including efforts to withdraw from related proceedings in Singapore. This conduct indicated a strategic misuse of judicial resources and procedural mechanisms, intended to exert undue pressure on the Plaintiff and circumvent legitimate legal scrutiny.

Moreover, the Court held that permitting arbitration to proceed without addressing these foundational procedural breaches would not only cause irreparable prejudice to the Plaintiff but

would also significantly undermine public confidence in arbitration as an equitable and trustworthy dispute resolution mechanism. The Court articulated that continuation under these circumstances would potentially lead to an arbitral award vulnerable to legal challenge, resulting in further judicial inefficiencies and unnecessary expenditures.

Upon applying the established criteria for interim injunctions, prima facie case, balance of convenience, and likelihood of irreparable harm, the Court concluded that each condition favoured the Plaintiff. It observed that the Plaintiff presented a compelling prima facie case highlighting procedural impropriety due to non-disclosure. The Court further determined that the balance of convenience decisively favoured suspending arbitration proceedings pending full adjudication of the Plaintiff's claims, given the substantial public interest involved and the potential wastage of judicial and public resources. Finally, the Court held that irreparable harm would ensue if proceedings continued, given the severity of procedural breaches undermining arbitration's integrity.

Consequently, the Delhi High Court granted the Plaintiff's application, issuing an interim injunction restraining both parties from further participation in the ICC arbitration proceedings until the suit's resolution. This pivotal ruling

underscores the judiciary's critical role in preserving arbitration's integrity, emphasizing that procedural fairness and arbitrator impartiality remain indispensable to legitimate and enforceable arbitration outcomes.

The principle of mandatory disclosure by arbitrators is crucial to ensuring impartiality and procedural fairness in arbitration. Article 11 of the ICC Arbitration Rules explicitly mandates that arbitrators disclose any circumstances that might reasonably affect their neutrality. Failure to comply can lead to perceptions of bias, undermining the arbitration's legitimacy. Courts have emphasized that such disclosures must be complete and proactive, from the viewpoint of the parties involved. Judicial intervention under Section 34 of India's Arbitration and Conciliation Act becomes justified when an arbitrator's deliberate nondisclosure violates these fundamental standards, risking annulment of otherwise enforceable arbitration awards.

**BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Limited, 2025 SCC OnLine SC 1471 – Supreme Court clarifies conditions for valid arbitration agreements**

**The Court emphasized that arbitration clauses must unequivocally bind parties without**

**requiring further consent at the time disputes arise**

The present dispute arose from a contract between the Appellant and the Respondent, concerning the transportation and handling of goods. Differences between the parties emerged during the contract's execution. The Appellant sought to resolve the disputes through arbitration under Clause 13 of the contract's General Terms and Conditions. When the Respondent resisted arbitration, the Appellant applied under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator. The Respondent opposed the application, asserting that Clause 13 did not constitute a valid arbitration agreement.

The key issue revolved around the interpretation of Clause 13, particularly its wording, which stated that disputes "may be sought" through arbitration under the 1996 Act. The High Court dismissed the Appellant's application, holding that the use of the term "may" suggested the parties had not unequivocally agreed to arbitration as a binding method of dispute resolution. This finding relied significantly on Supreme Court precedents such as *Jagdish Chander v. Ramesh Chander 2007 (5) SCC 719* and *Mahanadi Coalfields Ltd. v. IVRCL AMR Joint Venture (Civil Appeal No 4914 of 2022)*, where similar clauses were held not to constitute

binding arbitration agreements due to the discretionary language used.

On appeal to the Supreme Court, the Appellant contended that Clause 13 provided a clear arbitration option, binding once chosen by either party. They argued that the High Court incorrectly applied precedents since those cases involved fundamentally different dispute resolution clauses. Moreover, the Appellant maintained that at the arbitration agreement's prima facie examination stage, the referral court should avoid deep scrutiny and leave substantial determinations about the existence of an arbitration agreement to the arbitral tribunal itself.

Conversely, the Respondent supported the High Court's decision, reiterating that the contract language indicated no unequivocal consensus to arbitrate disputes. The Respondent emphasized Clause 32 of the Instructions to Bidders, stipulating that disputes would fall under the jurisdiction of district courts, indicating a preference for litigation over arbitration.

Addressing these submissions, the Supreme Court undertook an extensive analysis of the relevant clauses and legal principles. It reaffirmed the established law that the court's jurisdiction under Section 11 of the Arbitration Act was confined to a prima facie examination regarding the existence of an arbitration agreement. The

Court clarified that an arbitration agreement must express a clear intent to submit disputes exclusively to arbitration and be bound by the arbitrator's decision. Referring explicitly to previous judgments, the Supreme Court noted that arbitration clauses requiring subsequent mutual consent or agreement at the point of dispute resolution do not meet the legal standard for a valid arbitration agreement under Section 7 of the Arbitration Act.

Applying these principles, the Supreme Court analysed Clause 13 meticulously, observing that the clause's structure indicated an intent first to settle disputes internally within company mechanisms, escalating only optionally to arbitration. The usage of "may be sought" demonstrated that arbitration was not automatically binding upon dispute occurrence; rather, it required mutual subsequent agreement by the parties at that point. Consequently, the Court concluded that Clause 13 was merely an enabling provision and did not reflect a binding arbitration agreement.

The Supreme Court also considered Clause 32, which provided for the jurisdiction of district courts, clarifying that this clause did not inherently negate the possibility of arbitration if an arbitration clause existed separately and validly. However, given that Clause 13 failed to meet the requirements of a binding arbitration

agreement, the Court determined Clause 32's interpretation was immaterial to the core question before it.

Ultimately, the Supreme Court upheld the High Court's decision, firmly stating that Clause 13 lacked the necessary elements to constitute a valid arbitration agreement under the Arbitration Act.

It emphasized that an arbitration agreement must unequivocally bind parties to arbitrate disputes without additional conditional consent. The Court's detailed reasoning underscores the importance of clarity and explicitness in contractual arbitration clauses, ensuring all parties clearly understand and accept arbitration as the binding method of dispute resolution at the contract's outset. Consequently, the Supreme Court dismissed the appeal, affirming the High Court's denial of arbitration appointment.

A valid arbitration agreement must reflect a clear and unequivocal intention by parties to submit their disputes exclusively to arbitration. Clauses using discretionary language such as "may be sought" typically do not constitute binding arbitration agreements unless subsequently confirmed by mutual consent. Indian courts consistently emphasize that arbitration clauses requiring further agreement at dispute occurrence fail to satisfy Section 7 of the Arbitration and Conciliation Act, 1996. Judicial scrutiny under Section 11 primarily

involves a prima facie evaluation of the existence of a binding arbitration agreement, ensuring that only unequivocal commitments to arbitrate proceed to arbitration, thereby preserving arbitration's consensual nature.

**Mahendra Swain v. State of Odisha & Anr., ARBA Nos. 1 & 3 of 2016 – Orissa High Court outlines boundaries for judicial review of arbitral awards**

**The Court reiterates that intervention under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, is permissible only in cases of patent illegality or perversity**

The dispute emerged from a contract awarded to the Appellant, for repairing and reconstructing cyclone-damaged roads in Ganjam District under a World Bank-assisted package. The agreement, signed in December 2002, had an original timeline of fifteen months. However, the contract execution faced significant delays due to site-related issues, lack of clarity in borrow areas, and delayed payments, leading to an extension request by the Contractor. Although recommended internally, this extension was never officially communicated. Subsequently, the State retrospectively terminated the contract effective from September 2004, communicated only in February 2005. Disputing this termination and alleging procedural lapses, the Contractor

invoked arbitration proceedings. A Sole Arbitrator appointed by the High Court allowed several of the Contractor's claims and rejected the State's counterclaim, awarding INR 1,48,60,263.

Dissatisfied, the State challenged the arbitral award under Section 34, citing arbitrariness and absence of supporting evidence for specific claims. The District Judge upheld most aspects of the award but reduced compensation for work executed (Claim 1), and set aside claims related to private land compensation for borrowed earth (Claim 4) and extended establishment costs due to delays (Claim 6), reducing the total award to INR 1,06,76,616.

Aggrieved by these modifications, the Contractor filed an appeal under Section 37 with the Orissa High Court, arguing that the District Judge had overstepped judicial limits by reassessing facts and re-evaluating evidence, effectively acting as an appellate authority. Conversely, the State supported the modifications, highlighting the Arbitrator's error in awarding claims without any substantiated evidence.

Upon appeal, the Orissa High Court delved into the principles governing judicial intervention in arbitral awards under the Arbitration Act, 1996. The Court reiterated established jurisprudence, emphasizing minimal judicial interference unless awards demonstrated patent illegality, perversity,

or a lack of evidence. Referencing landmark Supreme Court judgments like *McDermott International Inc. v. Burn Standard Co. Ltd.* (2006) 11 SCC 181 and *Associate Builders v. DDA* (2015) 3 SCC 49, the High Court underlined that while courts cannot re-assess evidence considered by the arbitrator, they must intervene when an award is unsupported by credible evidence or fundamentally violates public policy.

Applying these standards, the Court upheld the District Judge's reduction of Claim 1 from INR 41,05,445 to INR 38,65,619, deeming it a permissible correction of a quantifiable and evidenced computational error. However, regarding Claims 4 and 6, the Court concurred with the District Judge's decision to set them aside entirely, given the absence of supportive evidence. Claim 4, relating to compensation for earth borrowed from private landowners, lacked documentary proof or testimony substantiating any such transaction. Claim 6, addressing costs incurred due to project delays, was similarly unsubstantiated, lacking evidence of actual expenditures or losses directly attributable to prolongation.

The High Court acknowledged the permissible grounds for partial intervention, noting that these claims were rightly set aside because their allowance by the Arbitrator was clearly speculative, arbitrary, and thus opposed to

fundamental principles of justice and contract law. It clarified that judicial intervention under Section 34 is justified when arbitrators award compensation without sufficient evidence, which constitutes patent illegality and violates public policy.

Consequently, the High Court affirmed the District Judge's judgment, maintaining the reduced award amount and dismissing both appeals and sustaining the modified arbitral award as legally sound and justifiable. It reiterated that such judicial corrections were essential to uphold the integrity and legality of arbitral processes, reinforcing the narrow yet critical scope of judicial oversight.

Judicial intervention in arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996, is strictly limited, permitting courts to set aside awards only when they are patently illegal, perverse, or based on no evidence. Courts do not possess the power to reassess the evidence evaluated by arbitrators. For instance, claims for compensation or damages awarded without substantive documentary or testimonial support are susceptible to annulment for violating public policy. This restrained judicial role ensures arbitration remains an efficient and final method of dispute resolution, upholding the arbitrator's autonomy while maintaining accountability to

fundamental principles of fairness and evidentiary standards.

**Sreepad Bhiwaniwala v. Grant Thornton US Knowledge and Capability Center India Pvt. Ltd., AP No. 62 of 2025 – Calcutta High Court reinforces the principle of competence-competence in arbitration**

**The Court emphasizes the limited role of referral courts in appointing arbitrators, reaffirming that issues of arbitrability should primarily be decided by arbitrators themselves**

The dispute arose from the termination of employment of the Petitioner by the Respondent, citing "business reasons." However, the Petitioner challenged his termination, contending that it was not a simple termination but rather a retaliatory measure following an internal inquiry relating to a complaint made by another employee. Although the internal inquiry did not substantiate the harassment allegations, the Petitioner argued that the termination adversely impacted his professional reputation and was thus wrongful.

Following the termination, the Petitioner invoked the arbitration clause as per the terms of the employment contract, nominating a senior advocate as an arbitrator. Opposing the Petitioner's claims, the Respondent argued that the employment contract allowed termination without notice or cause, provided the employee

was compensated with 60 days' gross salary, which had been duly paid.

The Respondent stressed that this was a case of private employment not covered by public employment statutes or protections, thus precluding additional claims or damages beyond the contractually stipulated severance. Citing multiple precedents, the Respondent argued that compensation for emotional distress or loss of reputation was not available under ordinary employment contracts. In response, the Petitioner asserted that despite compliance with the termination clause, the circumstances of termination suggested an underlying punitive intent, requiring adjudication through arbitration as agreed in their contract.

The dispute was referred to for adjudication under Section 11 of the Arbitration Act to the Calcutta High Court, for the consideration and validity of the termination, and the justification for the appointment of the arbitrator. Upon careful consideration, the Court focused on the critical arbitration principle of "competence-competence," which permits an arbitral tribunal to determine its jurisdiction, including issues regarding arbitrability. The Court reiterated established jurisprudence that, while a referral court under Section 11 of the Arbitration and Conciliation Act, 1996, may undertake a preliminary inquiry to confirm the existence of an

arbitration agreement, it should not delve deeply into the merits or arbitrability of disputes.

The Court found that, prima facie, the dispute resolution clause in Annexure “A” constituted a valid arbitration agreement, mandating arbitration for resolving disputes between employer and employee. It observed that the Petitioner's termination, despite being labelled as due to "business reasons," appeared to be closely linked with the preceding internal inquiry into harassment allegations, thereby raising a legitimate question regarding the bona fide nature of the termination. The termination letter's detailed compliance requirements post-termination further suggested it was not merely a termination simpliciter. The Court acknowledged the precedents cited by the Respondent, clarifying that their applicability at this preliminary stage was limited. It distinguished the current matter from cited cases, noting the specific circumstances and nature of claims involved.

Crucially, the Court underscored that the detailed adjudication of issues, such as arbitrability of claims concerning reputation damages and wrongful termination, was within the arbitral tribunal's competence. The Court's role at this juncture was confined to confirming the prima facie existence of an arbitration agreement and determining whether the dispute should proceed to arbitration.

Consequently, the Court directed the appointment of the sole arbitrator, reiterating that any jurisdictional challenges or disputes regarding arbitrability should be raised and decided as preliminary issues by the arbitrator. The Court emphasized its decision was a preliminary finding solely for arbitration referral purposes and did not reflect on the dispute's substantive merits.

In conclusion, the Calcutta High Court's judgment emphasises judicial restraint in arbitration matters, upholding the autonomy of parties and the arbitral tribunal's authority to decide its jurisdiction. This decision reaffirms the importance of arbitration as a dispute resolution mechanism in employment contracts, while delineating clear boundaries for judicial intervention at the referral stage.

Courts, when approached under Section 11 for arbitrator appointments, must limit their role to a prima facie assessment of the arbitration agreement's existence, avoiding deep scrutiny of the underlying dispute. Issues such as the arbitrability of claims arising from private employment disputes, particularly wrongful termination linked to allegations of misconduct, should initially be determined by the arbitrator, thereby reinforcing arbitration's autonomy and efficiency, and minimising unwarranted judicial intervention.

