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FEBRUARY, 2025

ARBITRATION

Case Title: Central Organization for Railway Electrification Vs. M/S ESI SPIC SMO MCML (JV) A Joint Venture Company

Diary Details: C.A. No. 009486 - 009487 / 2019

- The Supreme Court, in a landmark ruling on November 8, held that Public Sector Undertakings (PSUs) cannot unilaterally appoint arbitrators in disputes with private contractors. The Constitution Bench, led by Chief Justice DY Chandrachud, ruled that while PSUs can maintain a panel of potential arbitrators, they cannot compel the other party to select from the curated panel. The judgment reinforces the principle of equal treatment in arbitration and aims to ensure impartiality in dispute resolution. The decision will apply prospectively to arbitrator appointments made after the judgment.
- Key conclusions from the majority judgment include the importance of equal treatment in arbitration proceedings, the need for a neutral appointment process, and the invalidation of unilateral appointment clauses in public-private contracts as violative of Article 14 of the Constitution. The ruling also stated that any arbitration clause mandating the selection of arbitrators from a PSU-curated panel undermines party autonomy and fairness. A three-member arbitration tribunal must allow both parties equal participation in the appointment process.
- Justice Hrishikesh Roy dissented partially, arguing that unilateral appointments should not be outright invalid. He emphasized party autonomy, asserting that as long as an arbitrator is not disqualified under Schedule 7 of the Arbitration Act, their appointment should stand. Justice PS Narasimha added that courts must ensure arbitration agreements inspire confidence, but intervention should occur only when a challenge is raised. This reflects a balanced approach, recognizing the role of judicial oversight without excessive interference.
- The ruling stems from multiple cases, including *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)* and *JSW Steel Ltd v. South Western Railway*, which questioned whether an ineligible arbitrator could appoint another arbitrator. Past judgments, including *TRF Ltd. v. Energo Engineering Projects Ltd.* and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, established that such appointments were impermissible. However, conflicting rulings by lower courts prompted a reference to the larger bench for clarity.
- Arguments from the Union of India, represented by Solicitor General Tushar Mehta, emphasized party autonomy and the validity of PSU-maintained panels. The respondents, including Senior Advocates Gaurab Banerji and NK Kaul, countered that unilateral appointments violate the Arbitration Act's provisions on

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impartiality and fairness. They advocated for institutionalized arbitration with arbitrators selected from neutral third-party panels. The judgment marks a significant step in ensuring transparency and fairness in arbitration proceedings involving public and private entities.

Case Title: Rajendra Kumar Barjatya and Another v. U.P. Avas Evam Vikas Parishad & others

Diary Details: Civil Appeal No. 14604 of 2024

- The Supreme Court of India ruled in favor of Som Datt Builders-NCC-NEC (JV) in a contractual dispute against the National Highways Authority of India (NHAI) regarding additional payment for reinforced earth structures in a road construction project on NH-2.
- The conflict arose when the actual quantity of geogrid material used exceeded the Bill of Quantities (BOQ). While the contractor argued that the increase was due to incorrect initial estimates, NHAI sought to renegotiate the rates, leading to arbitration.
- The Dispute Review Board (DRB) and the Arbitral Tribunal ruled in favor of the contractor, stating that the increased quantity did not constitute a "variation" under Clause 51.1 of the contract and should be paid at the BOQ rate. The Delhi High Court's Single Judge upheld this decision.
- The Division Bench of the Delhi High Court overturned the Single Judge's ruling, siding with NHAI's argument that any variation beyond 25% should be subject to rate renegotiation. However, the Supreme Court found this interpretation incorrect, restoring the arbitral award.
- The Supreme Court reaffirmed the limited scope of judicial interference in arbitration cases, emphasizing that technical findings by arbitral tribunals and dispute resolution boards should not be overturned unless they are arbitrary, perverse, or against public policy.

PREVENTION OF MONEY LAUNDERING

Case Title: Shiv Charan v. Adjudicating Authority

Diary Details: Writ Petition (L) No. 9943 of 2023

- The Bombay High Court ruled that the NCLT has the authority to direct the Enforcement Directorate (ED) to release properties of a corporate debtor once a resolution plan is approved and immunity from prosecution is triggered under Section 32A of the IBC, 2016.
- The court held that Section 32A of the IBC, which provides immunity to corporate debtors from actions related to offences committed before the CIRP, overrides the PMLA in case of a conflict.
- The NCLT is empowered to interpret and apply Section 32A under Section 60(5) of

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the IBC, which allows it to decide any question of fact or law related to the resolution of the corporate debtor.

- The immunity under Section 32A applies if there is a complete change in the ownership and control of the corporate debtor in favor of persons not involved in the commission of the offence.
- The court directed the ED to release the attached properties of DSK Southern Projects Private Limited and communicate the release to the corporate debtor and resolution applicants within six weeks. The ED's petition challenging the NCLT's jurisdiction was dismissed.

existence of a fact likely to have happened based on common events, human conduct, and business practices. The court advised against applying general presumptions in medico-legal matters without conclusive evidence.

- The court noted that pathological reports are generated using advanced diagnostic tools and are prepared under the supervision of certified medical professionals. Allegations of signature discrepancies do not negate the integrity of these scientifically validated reports unless there is conclusive proof of falsification.
- The court analyzed the charges under the Indian Penal Code (IPC) and observed that for forgery charges to stand, there must be evidence of a "false document" created with dishonest or fraudulent intent. In the absence of such evidence, the allegations remain speculative and unsubstantiated.
- The court found that the trial court's cognizance of the case was based on mere presumption rather than credible evidence. Consequently, the charges against the doctors were set aside, and the petitioners were exonerated.

CONSUMER LAWS - MEDICAL NEGLIGENCE

Case Title: Dr. Ashok Kumar v the State of Rajasthan and other

Diary Details: S.B. Criminal Misc(Pet.) No. 267/2013

- The Rajasthan High Court emphasized the need for meticulous judicial scrutiny in cases involving doctors and hospital administration, especially when allegations of forging pathological reports are made. The court stressed the importance of clear, scientific, and legally admissible evidence before taking cognizance.
- The court highlighted the risks of invoking presumptions under Section 114, which allows courts to presume the

WRIT JURISDICTION AND CONSTITUTION

Case Title: Sattar Khan v. Zila Parishad Dausha
Diary Details: S.B. Civil Writ Petition No.1496/2009

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- The document pertains to a legal case involving Sattar Khan, who challenged the termination of his employment as an Employment Assistant under the NREGA scheme. The petitioner argued that he belongs to the Teli caste, which is recognized as an Other Backward Class (OBC) in Rajasthan, regardless of his Muslim identity. The petitioner was initially employed based on an OBC certificate issued by the Tehsildar Mahua, which confirmed his eligibility under the OBC category as per the Rajasthan Gazette and a circular from 1994 that included all members of the Teli caste, irrespective of their religion.
- The respondents, however, contended that the petitioner, being a Muslim-Teli, does not qualify for OBC benefits, citing a recent list from the Ministry of Minority Affairs that excluded Muslim-Teli from the OBC category. The court examined the relevant documents and found that the Teli caste is indeed included in the OBC category according to various notifications and circulars issued by the Government of Rajasthan, which clearly state that the caste is recognized regardless of the individual's religion.
- Ultimately, the court ruled in favor of the petitioner, quashing the order that had terminated his employment. The court directed the respondents to reconsider the petitioner's application for employment based on the established notifications and to restore his position if his claim was validated **10**. Additionally, the court issued a general mandamus to ensure that all departments in the Government of

Rajasthan do not deny OBC benefits to Muslim candidates belonging to recognized castes.

FIRM UPDATE

- **Our firm is hiring interns for the month of March and April, 2025. For more details you can check the post at the following link:**

<https://www.linkedin.com/feed/update/urn:li:activity:7296190461755502592>

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ABOUT US

NBA Legal is a law firm offering a wide range of services to its clients in all spheres of law.

Lawyers at the firm present a proper blend of legal proficiency and commercial insight required in providing legal and transactional support services. The firm has its fully functional state of art office at Jaipur with channel offices located at Jodhpur and Gurgaon.

The firm's practice is aimed at rendering well-conceived advice and strategies founded on legal, commercial and human realities that are receptive to the clients' needs.

The firm's clientele includes renowned corporate blue chips, notable public sector undertakings and NGO's.

The firm also assists private individuals who need avant-garde legal advice. It assists its clients in litigation before all judicial and quasi-judicial forums, international and domestic arbitration and dispute resolution, corporate legal advice, establishment of companies (including obtaining requisite permissions and licences), investments, property development and real estate due diligence, infrastructure, hospitality and entertainment, insurance laws, intellectual property, consumer protection and labour laws.

The firm also has access to a large pool of consultants in various specialized fields.



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