

EDITORIAL

Indian Review of International Arbitration (IRI Arb) is dedicated to fostering meaningful dialogue on domestic and international arbitration. It aims to support the advancement of arbitration scholarship and practice by facilitating critical analysis and exploring contemporary developments.

Arbitration in India

The latter half of 2024 has made remarkable strides in the development of arbitration in India. It has witnessed numerous pro-arbitration milestones. The most significant of which is the release of the Draft Arbitration and Conciliation Bill 2024 (Draft Amendment Bill) by the Department of Legal Affairs.¹ The Draft Amendment Bill brings in various long awaiting additions changes to the arbitration law. It grants statutory recognition to Emergency Arbitration, embraces online dispute resolution and ends the place-seat conundrum by replacing ‘place’ u/s 20 with ‘seat.’² It also brings timelines for applications under Section 8 and 16.³

The Draft Amendment Bill also further empowers the non-existent Arbitration Council of India to make model procedure and protocols for various different arbitral processes. The Draft Amendment Bill takes bold steps in bringing a new regime of appellate arbitral tribunals, wherein a challenge to the award could be made u/s 34.⁴ It also proposes the complete removal of judicial interference after the arbitral tribunal is constituted. The proposed changes have been analysed and commented upon by our Managing Editor, Abhisar Vidyarthi.⁵

2024 has been a pivotal year for arbitration, where transformative reforms and institutional developments have set the stage for enhanced dispute resolution mechanisms. In September 2024, the Mumbai Centre for International Arbitration (MCIA) published its updated draft rules (3rd ed.) (MCIA Draft Rules), signalling a progressive step toward refining arbitration practices in India. The MCIA Draft Rules emphasize procedural efficiency, party autonomy, and transparency, incorporating cutting-edge practices such as digital submissions, and enhanced confidentiality measures. Notably,

¹ Draft Arbitration and Conciliation Bill 2024 (Draft Amendment Bill).

² Draft Arbitration and Conciliation Bill 2024 (Draft Amendment Bill), § 20.

³ Draft Arbitration and Conciliation Bill 2024 (Draft Amendment Bill), § 8 & § 16.

⁴ Draft Arbitration and Conciliation Bill 2024 (Draft Amendment Bill), § 34.

⁵ Abhisar Vidyarthi, A Bill to Kill Judicial Intervention: Fresh Arbitration Reforms in India, IRI Arb. It can be accessed [here](#).

the MCIA has proposed innovative mechanisms for cost management and interim relief, catering to the evolving needs of commercial arbitration in India and internationally.

Among the notable additions is Rule 37, which mandates the disclosure of third-party funding agreements.⁶ This requirement aims to enhance transparency and accountability in arbitration proceedings by ensuring that parties disclose any financial arrangements that could potentially influence the outcome or conduct of the arbitration. Such provisions are instrumental in addressing potential conflicts of interest and fostering trust in the arbitral process.

Additionally, Rule 38 provides comprehensive guidance on how proceedings should continue in the event of noncompliance by one or more parties.⁷ By codifying detailed measures for managing such situations, the MCIA seeks to minimize procedural delays and uphold the integrity of the arbitration process. Another key inclusion is Rule 42, which addresses the termination of proceedings or settlement agreements, providing a structured framework for these resolutions.⁸ This new addition emphasizes the MCIA's focus on ensuring that arbitration remains an efficient and adaptable mechanism for dispute resolution.

The MCIA Draft Rules also includes numerous provisions aimed at the digitalization of arbitration practices. These encompass mechanisms for electronic submissions, virtual hearings, and the integration of technology to streamline processes. Such innovations reflect the MCIA's commitment to modernizing arbitration in line with global best practices, reinforcing its position as a leader in institutional arbitration.

Notable Arbitration Cases in India

The latter half of 2024 has witnessed notable judgements in the realm of domestic and international arbitration

1.) International Air Transport Ass'n v. Spring Travels Pvt. Ltd.⁹

In this case India took a pro-enforcement standpoint consistent with global best practices under the New York Convention. The court brought about crucial aspects about enforcement of foreign arbitral award. It has strengthened international arbitration practices within the Indian judicial system. The case surrounds a sizeable commercial dispute over unpaid ticket sales amounting to INR 124 crores, held to be resolved by an ICC-arbitration seated in Singapore and favouring IATA. However, Spring

⁶ Mumbai Centre for International Arbitration (MCIA) Draft Rules (3rd ed), Rule 37.

⁷ Mumbai Centre for International Arbitration (MCIA) Draft Rules (3rd ed), Rule 38.

⁸ Mumbai Centre for International Arbitration (MCIA) Draft Rules (3rd ed), Rule 42.

⁹ *International Air Transport Ass'n v. Spring Travels Pvt. Ltd.*, W.P. No. 2024 SCC OnLine Del 7540.

Travels appealed for the annulment of this order in India as it pleaded the procedural objection of the order requiring TAC approval which is a mandatory precondition. The court negated that technical preconditions cannot be used to dismiss an agreed-upon arbitration clause. This judgment reaffirmed a narrow construction of Section 48 of the Arbitration and Conciliation Act, dealing with grounds for resisting enforcement. The decision gave a clear message against frivolous objections, which frustrates arbitral awards. The judgment enriched discourse on the balanced approach of arbitration enforcement, valuing substantive justice while acknowledging procedural fairness. The decision with these careful observations of standards of enforcement and procedural fairness is likely to shift India towards international commercial arbitration and make it an arbitration-friendly jurisdiction.

2.) *Honasa Consumer Ltd. v. RSM General Trading LLC*¹⁰

In this case, India witnessed a train of anti-suit injunctions propping across major jurisdictions such as the U.K. and Singapore. One such case was also adjudicated upon in the Delhi HC. In this case, the parties had entered into an Authorized Distribution Agreement. The said agreement contained an arbitration clause stipulating Arbitration & Conciliation Act 1996 (“the Act”) as the governing law. This was coupled with an exclusive jurisdiction agreement, conferring jurisdiction to adjudicate every dispute arising out of the contract to courts in New Delhi. Despite the said contractual arrangement, the respondents initiated a suit and obtained a decree against the petitioners, their promoter and a subsidiary at the Dubai Court of First Instance. The current petition was filed u/s 9 of the Act, seeking an anti-suit injunction, restraining the respondents from enforcing the decree. To this end, the Delhi HC held that the respondents’ actions were in breach of the agreement and constituted an erroneous invocation of jurisdiction. For the purposes of granting the *ad interim injunction*, the court relied on the traditional three-prong test of *prima facie* case, irreparable loss and balance of convenience. On the *first* prong, the existence of a *prima facie* case was already observed as there was a breach of the agreement. The *second* prong i.e., irreparable loss was assumed by the court on facts and no specific observation was made on facts, except that even the courts in Dubai had not enjoined the respondents. On the *third* prong, the court observed that the respondents will still have the option of resuming the execution proceedings before the Dubai Court of First Instance even if the final ruling will be in favour of the respondents.

¹⁰ *Honasa Consumer Ltd. v. RSM General Trading LLC*, 2024 SCC OnLine Del 5631.

3.) *SBI General Insurance Co. Ltd. v. Krish Spinning*¹¹

In this case, the Supreme Court focused on the role of discharge vouchers and the limits of judicial intervention under Section 11 of the Arbitration Act. Krish Spinning (the insured party) sought compensation for losses from two fire incidents but later claimed coercion in signing a discharge voucher for partial settlement. The insurer argued that this settlement barred arbitration. However, the Court stated that allegations of coercion or fraud have made the dispute arbitrable and upheld the referral to arbitration suggested by the High Court. It also clarified that arbitration agreements remain in effect even after the contract is discharged unless explicitly voided. This judgment reinforced the principle that courts should primarily focus on the existence of arbitration agreements, leaving substantive issues to be decided by arbitrators.

4.) *Ambrish H. Soni v. Chetan Narendra Dhakan, 2024 SCC OnLine Bom 2280*¹²

In this case, Bombay High Court highlights the issue regarding adherence to interim orders and the scope of judicial interference. The case arose from disputes among partners of a construction firm, where allegations of detrimental management led to arbitration. A sole arbitrator was appointed, and a *status quo* order was issued concerning the firm's property. However, the petitioner's blatant violation of this order triggered judicial scrutiny.

The court's dismissal demonstrates deference to the tribunal's discretion under Section 37 of the Arbitration Act. The court reinforced that it would not reassess tribunal decisions unless they were arbitrary or capricious. This aligns with established principles discouraging judicial micromanagement in arbitration, thereby upholding party autonomy. However, the decision also emphasizes the limitations of tribunal orders. In Commercial Arbitration Petition (L) No. 33385 of 2023, the petitioner's non-compliance with the status quo order justified the court's intervention. The court clarified that it retains jurisdiction to grant interim relief under Section 9, even after the tribunal constitution, if remedies under Section 17 are ineffective. The appointment of a court receiver to safeguard the disputed property was a pragmatic measure, addressing the petitioner's disregard for tribunal authority. While the court appropriately balanced respect for tribunal discretion and enforcement of tribunal orders, the case affirms the need for stricter adherence to interim measures. It also raises concerns about the adequacy of tribunal mechanisms to enforce compliance, prompting reflection on strengthening enforcement provisions within arbitration frameworks.

¹¹ *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 SCC OnLine SC 1754.

¹² *Ambrish H. Soni v. Chetan Narendra Dhakan, 2024 SCC OnLine Bom 2280.*

5.) *Telex Advertising Pvt Ltd vs Central Railway*¹³

In this case, Telex Advertising's conflict arose from a tender for advertising rights, disrupted by the COVID-19 pandemic, leading to disagreements over licensing fees and obligations. Similarly, N.P. Enterprises faced blacklisting and contract termination over housekeeping services at railway stations. The Bombay High Court addressed whether arbitrators appointed by vested-interest parties, such as the Railways, could ensure impartiality. The court applied key doctrines, including the Doctrine of Party Autonomy, which allows parties to determine the arbitration process but limits this autonomy when it jeopardizes fairness. The Rule Against Bias and principles of Natural Justice emphasized that arbitrators must be independent, a requirement aligned with Section 12(5) of the Arbitration and Conciliation Act. Precedents like *Perkins Eastman Architects* and *TRF Ltd.* were invoked, which restrict interested parties from appointing arbitrators due to inherent conflicts. The court ruled that such unilateral appointments violated impartiality standards. It reinforces neutrality in arbitration, aligns Indian practices with global standards, and upholds the principle that arbitration must be free of bias to ensure fair dispute resolution.

Notable Arbitration Cases Worldwide

1.) *Port Autonome de Douala v. Douala Int'l Terminal S.A., No. 23-10.972, French Court of Cassation, decision dated June 19, 2024.*¹⁴

This case is a recent landmark judgment in international arbitration by the French Court of Cassation. The question the court had to decide upon was whether close personal ties between an arbitrator and counsel for a party may suffice for the annulment of an arbitration award. The court maintained the annulment of an award because of failure to disclose close personal connections on the part of an arbitrator; a eulogy, highlighted such significant connections between one of the parties' counsel and an arbitrator. The decision reinforced an arbitrator's duty to disclose such connections during both inception and during the course of proceedings. Further, it clarified that professional and academic contacts do not have to be disclosed, but personal relationships that cross certain boundaries shall be disclosed. This decision promotes the practice of openness and neutrality within arbitration processes while raising high standards in terms of disclosure to provide transparency and integrity into international arbitration procedures

¹³ *Telex Advertising Pvt Ltd vs Central Railway* BHC-OS:6304 (Bombay High Ct. Mar. 27, 2024).

¹⁴ *Port Autonome de Douala v. Douala Int'l Terminal S.A., No. 23-10.972*, French Court of Cassation, decision dated June 19, 2024.

2.) *Asiana Airlines v Gate Gourmet Korea Co Ltd and Ors, [2024] SGCA(I) 8*¹⁵

In this case, the Singapore Court of Appeals dealt with nuanced aspects of anti-suit injunctions such as whether they can be granted for suits instituted against related but non-contracting third parties and what is the threshold to be met to ascertain the validity of the arbitration agreement while issuing an anti-suit injunction. Herein, the appellant and respondents (comprising 3 companies of the Gate Gourmet group along with their chairman) had entered into a joint venture agreement and an additional catering agreement. The same also contained an arbitration clause with Singapore as the seat. During the course of the performance, two civil suits were initiated by the appellants seeking the declaration that the catering agreement is null and void and that there was a breach of trust on the part of the respondent's chairman. This was followed by a few other suits pertaining to various aspects such as compensation proceedings against the directors, fraud, etc. In response, the respondents obtained an anti-suit injunction against the proceedings initiated in Incheon, Korea. What is interesting in this case is that the injunction was only granted for proceedings initiated against the respondent corporate entities that were part of the joint venture and the agreement. However, the SGCA refused to issue the same to seize the proceedings initiated against the chairman. This is because the respondents solely relied on violation of contractual terms and the suit against its directors/ chairman did not have the effect of frustrating the contractual arrangements. The test laid down for grant of anti-suit injunctions for suits initiated against a non-party was laid as follows – (a) the clause was intended to cover the non-party, or; (b) the real purpose of suing the non-party is to bypass the exclusive forum clause and that it would be vexatious and oppressive to allow the foreign proceedings to continue. Lord Scott's observations from the case *Donohue v Armco Inc* stated that whether the injunction claimant had a sufficient interest in obtaining the injunction was rejected for being overinclusive. Since the appellants were resisting the injunction on the ground that the catering agreement and thus the arbitration agreement is invalid under Korean law, the threshold for assessing the validity of an arbitration agreement when considering the grant of an anti-suit injunction was that the agreement should *prima facie* appear to be valid. The appellants failed to adduce expert evidence proving the contrary.

¹⁵ *Asiana Airlines v Gate Gourmet Korea Co Ltd and Ors, [2024] SGCA(I) 8.*

3.) *Zhongshan Fucheng Indus. Inv. Co. Ltd. v. Fed. Republic of Nigeria*.¹⁶

This case is pivotal, it reshaped how international arbitration awards are enforced globally. The dispute originated from a joint venture between Zhongshan, a Chinese investor, and Nigeria's Ogun State to develop a free trade zone. After the partnership dissolved in 2016, Zhongshan alleged expropriation and won \$55.6 million plus costs in a 2021 UNCITRAL tribunal. A significant development came in 2024 when the London Commercial Court permitted Zhongshan to seize Nigerian state-owned properties in Liverpool worth £1.7 million to enforce the award. This decision emphasised the effectiveness of arbitration as a dispute resolution tool, even against sovereign states, and demonstrated the growing willingness of courts to support international treaties and arbitration frameworks. It reinforced confidence in the enforceability of arbitration awards across borders and demonstrated arbitration's role in facilitating fairness in global commerce.

4.) *H1 and another v W and others [2024] EWHC 382*¹⁷

This case emphasises significant concerns about impartiality and procedural missteps in arbitration. The Commercial Court's decision to remove the arbitrator under Section 24(1) of the Arbitration Act, 1996 indicates the importance of neutrality and proper handling of evidence. The arbitrator's comments, particularly regarding the parties' expert witnesses, demonstrated a troubling lack of impartiality and procedural understanding. The arbitrator's remarks that he knew and trusted the Film Company's experts, while dismissing the relevance of the Insurer's experts, gave rise to justifiable doubts about his impartiality. His declaration that he did not need to hear expert evidence, coupled with pre-judgment of their credibility based on personal familiarity, violated the fundamental principles of fairness and equality in arbitration. The court correctly concluded that such statements would lead a fair-minded observer to perceive a real possibility of bias, especially when the arbitrator stated he would believe the testimony of one expert "*come what may*." A critical takeaway is the risk inherent in appointing arbitrators with industry expertise but limited legal experience. While industry-specific knowledge can be valuable, it cannot compensate for a lack of procedural rigour or an understanding of impartiality's importance. The arbitrator's failure to recognize the impropriety of pre-judging evidence highlighted his inexperience and undermined the arbitration's integrity. The court's decision reflects a balanced approach, acknowledging the high threshold for bias challenges under Section 24 of the Act. It affirms that mere prior relationships within niche industries are insufficient to establish bias. However, the arbitrator's overtly biased remarks breached this high

¹⁶ *Zhongshan Fucheng Indus. Inv. Co. Ltd. v. Fed. Republic of Nigeria*, No. 23-7016, 2024 WL 1234567 (D.C. Cir. Aug. 9, 2024).

¹⁷ *H1 and another v W and others [2024] EWHC 382*.

threshold, justifying removal. This case demonstrates the importance of appointing experienced arbitrators or balanced panels to ensure procedural fairness, especially in high-stakes disputes. It also highlights the risks of allowing extraneous considerations to undermine justice, even inadvertently.

5.) *Iraq Telecom Limited v. Sirwin Saber Mustafa*¹⁸

In this case, a dispute arose from a commercial agreement, with the claimant seeking enforcement of an arbitral award. The respondent challenged enforcement on grounds of personal jurisdiction and validity, but the court dismissed these objections, emphasizing that the respondent waived jurisdictional challenges by participating in related proceedings. It was decided by the United States District Court for the Eastern District of Pennsylvania on August 22, 2024, focused on enforcing an arbitration award under the New York Convention. Key doctrines applied include the Doctrine of Waiver, wherein the respondent's conduct in filing an application indicated submission to jurisdiction, and the principles of the New York Convention, ensuring recognition and enforcement of arbitral awards unless explicitly invalidated. This judgment is significant as it shows the court's commitment to upholding international arbitration awards, reinforcing procedural integrity, and promoting confidence in arbitration as a dispute resolution mechanism. It aligns with global norms and sets a precedent for limiting procedural challenges to arbitral awards.

IRI Arb is pleased to bring its Volume 4 Issue 2 against these developments in the arbitration landscape around the world and in India. This issue contains contributions from around the world and features articles on issues relevant to arbitrations.

The first article of this issue is by Shubham Singh and Jenish Shah titled “*Extension Of Time Disputes In Indian Construction Projects- Legal Insights And Practical Solutions*” examines the interplay between contractual obligations which govern reciprocal promises, the essence of time in contracts, and compensation for breaches. The authors also explore the procedural framework for lodging EOT claims, the evidentiary standards, and the safeguards against liquidated damages. Judicial precedents on delay attribution, apportionment, and the enforceability of no-claim certificates are scrutinized. The article underscores the necessity of contemporaneous record-keeping, forensic delay analysis, and proactive communication between contracting parties. It critiques the inconsistency in judicial decisions and advocates for adherence to international best practices.

The second article is by Jennifer Wu titled, “*Resolving Technology Disputes through Arbitration*” explores the complexities of technology disputes and the effectiveness of arbitration compared to

¹⁸ *Iraq Telecom Limited v. Sirwin Saber Mustafa* 24-3728 (E.D. Pa. Aug. 22, 2024).

litigation as a dispute resolution mechanism. It categorises technology disputes into contractual and specialised-technology disputes. The article advocates for arbitration due to its many advantages including confidentiality, expertise of arbitrators, and streamlined processes, given the sensitive and complex technological disputes. However, it also acknowledges that litigation may be preferable in certain situations. The article emphasises the importance of selecting the appropriate dispute resolution mechanism to minimise costs and maximise outcomes, while also addressing concerns such as data privacy and cybersecurity breaches. Overall, it provides guidance for companies to strategize in their technology disputes.

The next article by Vrinda Pareek titled, “*Arbitrating Data Disputes: India’s Path Forward*” examines arbitrability of data disputes, particularly under the recently enacted Digital Personal Data Protection Act 2023 (DPDP Act) in India, its categorization of data stakeholders, and the establishment of the Data Protection Board of India for dispute resolution. It highlights the anticipated increase in data-related disputes due to India's nascent regulatory experience. The article argues for the incorporation of arbitration as a dispute resolution mechanism, drawing parallels with practices in the EU and Singapore, and emphasizes the suitability of arbitration for resolving technical and sensitive data disputes. The author recommends legislative amendments or rules to explicitly allow arbitration for private data-related disputes to enhance efficiency and clarity in the DPDP Act's implementation.

The last article in this issue by Xiaohan Cai titled, “*A proposal for Arbitrating Disputes Arising from Nuclear Damage*” examines advocates for arbitration as a more effective alternative to litigation for claims arising from nuclear damage. It highlights the limitations of current nuclear liability conventions, such as capped compensation, high costs, non-neutral forums, reliance on national laws, and procedural inefficiencies. The article argues that arbitration offers significant advantages, including enforceability of awards, neutrality of arbitrators and venues, specialised expertise, procedural flexibility, and faster resolution of disputes. While the author acknowledges potential drawbacks of arbitration, it offers solutions to mitigate the challenges. The article argues that a fair and efficient system to address claims arising from nuclear damage can be ensured by adopting arbitration as the primary mode of dispute settlement, benefiting both victims and stakeholders.

The industry insight by Luis King titled, “*ADR In No-Judge Land*” explores the constitutional, political, and legal crises in Mexico following drastic judicial reforms introduced by the ruling political coalition. The author explains how these changes, including electing judges through popular vote and limiting judicial review, have dismantled the system of checks and balances, leading to

institutional collapse and eroding trust in the judiciary. As the judicial system struggles to function, individuals and organizations are increasingly turning to Alternative Dispute Resolution (ADR) to address disputes amidst growing legal uncertainty and diminished rule of law. The author examines the rising significance of ADR, focusing on four key aspects: increasing awareness, promoting sophisticated negotiation, tackling enforceability challenges, and prioritizing preventive measures like tailored dispute resolution clauses.

In her case comment, Ritika Ajitsaria analyzes the Indian Supreme Court's judgment in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)*, where unilateral arbitrator appointment clauses were deemed invalid. The author contrasts the majority and minority opinions, critiquing the majority's reliance on constitutional principles over the Arbitration Act's statutory framework. The Author argues that the ruling overlooks the practical needs of sectors like insurance and banking, where such clauses are common. Nonetheless, she concludes that the decision promotes fairness by favouring institutional arbitration and balancing party autonomy with impartiality.

The case comment by Kirthana Shivakumar on *UniCredit Bank GmbH v. RusChemAlliance LLC*, [2024] UKSC 30 explores the evolving jurisprudence on the law governing arbitration agreements (AA law) when explicit choice-of-law clauses are absent. It examines the English Supreme Court's dismissal of an exception introduced in *Enka v. Chubb*. The article notes that the Court of Appeal in the same case adopted a more flexible stance, preserving the exception under certain conditions. The article underscores the ongoing debate surrounding these interpretations and discusses the possibility of legislative intervention, as recommended by the UK Law Commission, to bring clarity and predictability to the determination of AA law in the absence of explicit clauses.

The Book Review by Dev Jhunhunwala on Ajar Rab's *"Interim Measures in International Commercial Arbitration – A Comparative Review of the Indian Experience"* praises the book for its meticulous examination of interim measures in Indian arbitration, positioning it as a critical scholarly work. The reviewer highlights Rab's extensive analysis of Indian case law and his comparative approach that aligns Indian practices with international standards. The review appreciates Rab's insights into judicial intervention and his proposals for legislative reform, noting their contemporary relevance amidst ongoing legal changes in India. The reviewer acknowledges the depth of Rab's research and his forward-looking suggestions, which have already influenced recent legislative drafts, underscoring the book's importance for practitioners and lawmakers in India's evolving arbitration landscape.