JUDICIAL INTERVENTION IN ARBITRATION

A thesis submitted to the

University of Petroleum and Energy Studies

For the Award of

Doctor of Philosophy

in

School of Law

BY

Sindhu Soman

March 2023

SUPERVISOR

Dr. Sujata Bali

School of Law

University of Petroleum and Energy Studies

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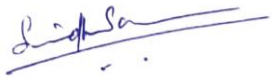
DECLARATION

I declare that the thesis entitled **Judicial Intervention in Arbitration** has been prepared by me under the guidance of Dr. Sujata Bali, Associate Professor of School of Law, University of Petroleum and Energy Studies. No part of this thesis has formed the basis for the award of any degree or fellowship previously.



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I certify that Sindhu Soman has prepared her thesis entitled **"Judicial Intervention in Arbitration"**, for the award of PhD degree of the University of Petroleum & Energy Studies, under my guidance. She has carried out the work at the School of Law, University of Petroleum & Energy Studies.

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ABSTRACT

Arbitration is one of the major methods of dispute resolution of civil and commercial disputes all over the world. The Arbitration Act, 1940 in India got repealed when The Arbitration and Conciliation Act, 1996 came into force in tune with the UNCITRAL Model Law. Courts have a supervisory role in arbitral process under the Act as envisaged under the Model Law. This is to achieve a legitimate and efficient arbitration. Though arbitral process continues till the passing of the arbitral award and its finalisation, here specific stages in arbitral process till the passing of the award regarding reference, appointment, interim measures and related matters are only looked into. In spite of the Act emphasizing about minimum court intervention, courts were seen to have interfered with the arbitral process. This resulted in The Arbitration and Conciliation (Amendment) Act, 2015 which had specifically amended provisions to keep judicial intervention to a minimum level. The case analysis after the said amendment demonstrates the tendency of the lower judiciary to exceed the legislative mandate of minimal judicial intervention which is being rectified by the higher judiciary. Thus, the intervention by courts is excessive, especially by the lower judiciary. The courts at these stages of arbitral process are expected only to make a prima facie enquiry as to the existence of arbitration agreement and arbitrability of disputes. The legislative framework and the approach of judiciary, both before and after the 2015 amendment shows the arbitration friendly approach of the concerned law and the higher judiciary. The qualitative study reveals that the Supreme Court and High Courts in India show the tendency of a pro-arbitration approach. The comparative study of the jurisdictions analysed requires that in India a balanced approach on a case-to-case basis will be appropriate. The autonomy of parties and minimum court intervention are the basic premises of the Indian Arbitration law. Hence it can be concluded that the role of judiciary in arbitration is to supplement and help the arbitral process so that the dispute between the parties gets settled in a speedy and efficient manner.

ACKNOWLEDGEMENT

My journey of Ph.D. started in 2016 January as a part time scholar in School of Law, University of Petroleum and Energy Studies and it has been a long journey until 2022 with many hurdles. Now when I am submitting my thesis I express my gratitude to all who have helped me achieve this. First of all, I thank God Almighty for giving me the chance to join for doctoral study and enabling me to complete it. Secondly, I express my sincere gratitude to all my teachers who have guided me. Dr. Tabrez Ahmad, my first guide who was the Director and Dean in 2016, was a great inspiration and support during my synopsis approval and early chapters. I thank Sir for his kindness and blessings. Dr. Mamta Rana, my second guide for a short span of time was supportive and I thank mam for her guidance. Now I express my sincere feelings for my present guide and mentor Dr. Sujata Bali who actually made it possible in spite of all my obstacles. Without mam, it would not have been possible as she is a real inspiration and support for me. I really thank Dr Vijay Singh, Dr. Shikha Dimri and all Senior Faculty at UPES who helped me in this venture. I also express my gratitude to my former teachers at CUSAT, Kochi with a special mention of my mentor Dr. Chandrasekharan Pillai. Next is my family who should be thanked for helping me in all ways. My supporting husband Adv. Harikumar C, my loving children Vishnu and Vidya, my inspiring father who is no more, my loving mother, my supporting mother-in-law, father-in-law, sisters, sister-in-law and all who were there during my hard times in this journey are remembered with gratitude. Lastly, I thank my students Visakha and Rajanandini for helping with the case analysis, Sandra and Arun for helping with corrections and citations, analyst Dr. Makesh for helping with figures, tables, and Mr. Shyam for giving the technical support. I also express my gratitude to my dear colleagues, Principal and College Management for their continuous support in this long journey.

TABLE OF CONTENTS

LIST OF DIAGRAMS

CHAPTER I
INTRODUCTION

1.1 INTRODUCTORY REMARKS

Arbitration was always a solution for settlement of disputes. All commerce has the potential for problems, and effective trade must have a method of resolving them. Initially a neutral third party as per an express or implied agreement must have decided the dispute and this decision must have been followed by parties as there would have been consequences for not complying with the decision (Mustill, 1989). The adjudication of disputes by tribunals selected by the parties, where decision is final was well known to India. Our arbitration law was created during British Rule. We had “The Arbitration Act, 1940” along with “The 1937 Arbitration (Protocol and Convention) and foreign awards (Recognition and Enforcement) Act, 1961”. Following the “United Nations Commission on International Trade Law (UNCITRAL) Model Law”, “The Arbitration and Conciliation Act, 1996” was enacted.

The Act's primary goal is to promote early conflict resolution and judicial interference has been restricted. The Model Law-based legislation gives importance to freedom of parties. The concept of arbitral contractualism allows the parties to agreement to make their own rule of arbitration (Malhotra & Malhotra, 2006). The 1996 Act, provision 5 starts with a non-obstante clause and is based on Model Law. It says Any judicial authority may intervene only to the extent permissible by this Part I of the Act. One of the major features of the Model Law is the restricted and clearly defined instances of court involvement into the arbitration process, with a limited opportunity to appeal a court judgement obtained while arbitral procedures are pending (Biswas, 2014).

A fundamental aim of model law was to have a proper balance in the relation between arbitration and courts.

Judiciary is supposed to help arbitration and not to destroy it. Model Law allows limited prompt recourse to court during arbitral proceedings but permits arbitration to go forward (Biswas, 2014). Here one problem with "Section 5 of the Act" is that there is no clarity as to whether court intervention is available or excluded in a given situation. Sometimes it is difficult to find a governing law for the concerned issue. If it is clear that there is no law, then the matter need not be decided at all. Here in case of the special law it can be handled with the help of normal interpretation of statute as well as "Model Law" principles (Biswas, 2014). Next issue can be that when "Section 5" is used along with another provision, the role of court would be minimal.

The minimal supervision of court was given to assure that arbitration is not misused. It might be interference on arbitral power. But there has to be a broader power to courts to help arbitration and this is possible if the parties provide it in the agreement. Parties often resorted to courts to delay everything. The intention of those who drafted the "Model Law" must have been to include all situations of judicial intervention and to amend it giving the authority to state so that there is sufficient judicial intervention (Redfern et al., 2004).

It is not easy to explain how the judiciary is related to arbitration. But both judiciary and arbitration should go hand in hand so that the process of arbitration is not abused. Even though arbitration is a type of dispute settlement method, its success depends on the support of National Courts. Many consider arbitration as a contractual substitute of national courts. Courts when compared to arbitration can compel parties through its orders and so the role of judiciary would certainly help the arbitral process. The State prescribes the boundaries of arbitration and enforces these boundaries through its courts. The state, also, through its legislative functions, determines other limitations upon the arbitral process (Redfern et al., 2004). State Courts intervene in arbitrations, at the beginning, during the course of proceedings and at the end of arbitration.

1.2 ARBITRATION PROCESS

Arbitration process in general is used to denote the various stages of arbitration from the stage of notice to passing of the award and its challenge. The present study is confined to the stages prior to passing of the award.

The process of arbitration is controlled by the decision of parties to decide disputes outside the court and also to have minimum court intervention in the process and the amendments in 2015, 2019 and 2021 are trying to keep up with the same. The Sections of "The Arbitration and Conciliation Act, 1996" allows the judiciary to intervene at different stages of arbitration and the amendments to the Act have intended to make it a minimal one. Here sections 5, 8, 11,16, 9 and 17 and their amendments are discussed in order to show how such amendments have tried to minimize court involvement under such provisions of the Act.

Any legal system to work effectively, there has to be court interference at some point (Debroy & Jain, 2016). On one hand, the Arbitration Act minimizes court intervention and on the other hand, some provisions necessitate court intervention before, during and after the arbitral process has concluded. Provisions requiring court intervention are referring parties to arbitration, appointing arbitrator, appeal applications under arbitration procedure and the like. But in all these courts have to act in a restrictive manner as provided in the Act. Arbitration becomes more effective when the intervention by judiciary is less. The Act permits some amount of court intervention at certain stages. But courts can exercise this power only when it is extremely needed thus restricting the intervention to a bare minimum.

"The 1996 Act Section 5" allows court intervention in arbitral process only as given in the first part of "The 1996 Act". Thus, the objectives to minimize court intervention and to provide speedy and cost effective arbitration when there is an arbitration agreement be upheld (Rastogi, 2021). So judicial interference permitted by another law is possible only if it is authorized by that part of the Act. The restricted and minimized judicial interference is possible only as specified under the "Arbitration Act".

Any judicial authority may allow arbitration under "Section 8 of The Arbitration Act" if it is primarily decided that the parties have agreed for arbitration and that the matter is arbitrable. Before the 2015 amendment, courts had discretionary power, but after 2015, courts are directed to refer the matter to arbitration if all the requirements under section 8 are satisfied. Therefore, an application for reference is to be there and there should exist a binding arbitration agreement. In case of an invalid agreement, the court may not refer to arbitration (Kasthuri, 2021). If a court decides that the parties have agreed to arbitration, then the matter has to be decided by the arbitrator, even if there is any contrary order. Whenever a matter between parties to a contract who have agreed for arbitration comes before the court, it has to be referred to arbitration. The Supreme Court in 2020 has elaborated on the arbitrability issue of a dispute and has comprehensively dealt with it thereby trying to reduce the problem of excessive court intervention.

Interim reliefs can be claimed from courts by parties to arbitration agreement before, during or after arbitration before it is enforced. After the 2015 amendment, courts grant interim reliefs only if they believe that the remedy from tribunal would be inefficacious (Thitte & Mishra, 2022). The court can hear an application only where the remedy under section 17 is declared to be ineffective. Thus, there will be speedy disposal of interim relief petitions and minimum court intervention after the tribunal is constituted (Garg, 2020). When the arbitrator is granting interim orders, it has the same power as that of court in granting the same. Such orders by tribunal should be enforced like court orders without any further applications. If an interim measure is not granted by arbitrator, there can be an appeal under "section 37(2)(b) of the Act".

The provision regarding arbitrator appointment has been amended in 2015 and 2019. This power has been given to High Courts and the Apex Court in 2015. The courts are supposed to see whether the parties have agreed to arbitration. Other primary matters will be decided by the arbitrator (Chandra & Buaria, 2020). Section 11(6A) was removed in 2019, and the ability to select arbitrators was transferred to arbitral institutes that would be evaluated by the "Arbitration Council of India". A High Level Committee headed by Justice B.N.

Srikrishna was appointed by the government to assess the working of arbitral institutions in India. The body has since delivered its findings and suggested policies to further institutional arbitration in India. Thus, the process of arbitrator appointment is to be streamlined and the Council has to ensure that the arbitration process is expeditious and subject to least amount of court intervention. By this institutionalization of arbitrator appointment, the legislature has attempted to minimize judicial intervention.

The amendments have reshaped the arbitration regime in India and has upheld the objective of the Act of minimum judicial intervention in arbitration. The relation between judiciary and arbitration is very important and the statutory changes in the Act have tried to make the bonding more effective. This will help in making India a Pro-Arbitration regime with minimum judicial intervention.

1.3 PROBLEM STATEMENT

Contemporary arbitration statute gives a lot of power to courts allowing judicial intervention in favour of arbitral proceedings. The contemporary Indian Legal System gives the courts the possibility of intervening in some stages of arbitral process. The competence principle enabling the arbitrator to decide on all matters of its jurisdiction and the authority of arbitrator to issue interim orders demonstrate that arbitrators are having wider powers. In cases where courts intervene before arbitration, the courts exercise its powers, then afterwards it is handed over to the arbitrator and finally after the award again it is handed over to the courts who have the coercive power to enforce it.

One view is that judicial intervention in arbitration should not be there. The other view is that there should be court supervision and control to protect wider social interests that may be ignored or jeopardized by private arbitrators. These two views have been controversial (Murray et al., 1996).

These two views are equally important. On the one hand, parties to an international contract opting for arbitration for setting disputes look to the finality of the award and it presumably excludes court intervention. On the other hand, the need for public supervision and control as arbitrators are private

persons who may not adhere to the basic standards of fair proceedings leading to a fair award (Abedian, 2011).

On the first view it is also correct to say that when parties agree for arbitration courts have role only in enforcement (Gaillard E., 2010). According to the second point of view, since both arbitration and the judicial system are ways of resolving disputes, justice requires that certain guidelines be followed when resolving disputes. Since the state is ultimately responsible for justice, the courts can step in to make sure that both private and public tribunals are treated fairly. (Redfern et al., 2004). The supervisory court's intervention could substantially impede the parties' efforts to quickly resolve their issues and seriously disrupt the arbitral procedure (Lew et al., 2003). Recent laws have limited the scope for court intervention. The effect is that tribunals are given wider powers by statutes and can be given further powers by parties. The traditional authority of courts has been limited and sometimes excluded or made dependent on agreement by parties (Lew et al., 2003).

How courts can help arbitration has always been debated as the courts are giving contradictory decisions. There is no doubt that the judiciary plays an important role in helping the arbitral process. An arbitration becomes successful only when the supportive role of judiciary and minimal intervention is balanced. In India, there are delayed court proceedings at different stages of arbitration. Hence the present study focuses on the extent or scope of judicial intervention before an award is passed by arbitrator. Courts sometimes would decide whether the parties have agreed for arbitration or whether the matter is arbitrable or whether the dispute is covered by the clause etc. The extent of the power of courts under various sections of “the 1996 Act” is intended to be focused with emphasis on the recent amendments and the judicial decisions.

1.4 HYPOTHESES

1) “Extensive intervention by courts is seen in arbitral proceedings till the passing of the award”.

2) “The intervention by courts during arbitral process till the passing of the award is supposed to be continued to determining issues of existence of agreement and arbitrability of dispute”.

1.5 RESEARCH OBJECTIVES

1) “To examine the extent or scope of interference by courts in arbitral proceedings in India”.
2) “To highlight the problems created by interference by courts in the arbitration proceedings”.
3) “Analysis of the “2015 Amendment” of “The Arbitration and Conciliation Act, 1996” and the mutated response of judiciary”.
4) “To have a qualitative analysis of the cases decided by higher judiciary to find out the problems associated with indulgence shown by courts in intervening with the arbitral process”.
5) “To have a comparative analysis to discern the insights from other jurisdictions concerning appropriate extent of courts’ intervention in arbitral process”.

1.6 RESEARCH QUESTIONS

1) “What is the scope and limit of courts’ intervention with the arbitral process in India?”
2) “What are problems created by courts interfering with arbitral process before passing of the award?”
3) “What is the effect of “The Arbitration and Conciliation (Amendment) Act, 2015” and consequent changes in the approach of courts?”
4) “What does the post 2015 amendment cases and analysis reflect on the trend to balance the intervention by National Courts in the autonomy of arbitration proceedings?”
5) “What are the insights gleaned from the study of other jurisdictions on their experiences in judicial intervention in arbitration?”

1.7 RESEARCH METHODOLOGY

The research is a doctrinal and comparative study about the present statute on arbitration which has been amended in 2015. Primary materials like the Arbitration Act and its Amendment Acts and secondary materials like cases, articles and books are relied on.

First a detailed analysis of Supreme court and High Court decisions is to be done from October 2015 to May 2022. The case analysis will be done on the following grounds:

1) The number of decisions (year-wise) rendered by the higher judiciary during this period with respect to court intervention.
2) The number of decisions (year-wise) decided by Supreme Court.
3) The number of decisions (year-wise) decided by High Courts.
4) The number of pro-arbitration and anti-arbitration decisions (year-wise) rendered by the higher judiciary during this period with respect to court intervention.
5) The number of anti-arbitration decisions (year-wise) decided by Supreme Court and High Courts.
6) The number of pro-arbitration decisions (year-wise) decided by "Apex Court and High Courts".
7) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to reference to arbitration "(Section 8)".
8) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to arbitrator appointment "(Section 11)".
9) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to both arbitration reference and arbitrator appointment "(Sections 8 and 11)".
10) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to interim measures by courts "(Section 9)".

11) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to interim orders by arbitrator "(Section 17)".

12) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to interim measures by tribunal and its appeal "(Sections 17 and 37)".

13) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to non-obstante clause "(Section 5)".

14) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to kompetenz principle "(Section 16)".

A limited empirical study is also undertaken to qualitatively analyze the impact of the recent amendment. There are several stakeholders involved in the process of arbitration who are intended to be interviewed. Delhi and Kochi are chosen as the places for study. Advocates, arbitrators with legal background and retired judges will be included in the sample. The sampling tool will be mostly random sampling and convenience/snowball sampling. Questionnaire pertaining to the objective and hypothesis will be prepared. Emails will be sent to addresses of arbitrators, accessed from databases of Arbitration Centers. Also designated seniors and retired judges who are actively involved in arbitration cases will be personally interviewed through telephone, email, google meet etc. The responses from questionnaire will be analyzed and the trends of analysis in graphical form will be attached.

The mode of citation used in the thesis is the American Psychological Association Format 7th edition.

1.8 LIMITATIONS OF THE STUDY

1. "The post amendment interpretations by the Apex Court and High Courts in India decided between October 2015 and May 2022 is to be undertaken".
2. "For doing the critical analysis, the researcher will only examine the cases in light of "sections 5, 7, 8, 9, 11, 16, and 37(2)(b) of the 1996 Arbitration Conciliation Act".

3. “Due to the controversial nature of the opinions sought and sensitive nature of positions held by the respondents to the empirical questionnaire, only limited and discretionary reliance will be placed on the responses received”.
4. “For comparative analysis, the researcher is restricted to Switzerland, Germany and the United Kingdom”.

1.9 LITERATURE SURVEY

ARTICLES

"Abedian, H. (2011). Judicial Review of Arbitral Awards in International Arbitration- A case for an Efficient System of Judicial Review. *Journal of International Arbitration, 28*(6), 553-590".

This article examines the need for public supervision and control over arbitral process and arbitral awards. The author opines that as arbitrators are private persons this is needed so that basic standards of fairness are achieved. The relevance of judicial review of arbitral process with respect to international arbitration is the main theme of this article.

"Bachand, F. (2006). Does Article 8 of Model Law call for full or prima facie review of the arbitral tribunal’s jurisdiction? *Arbitration International, 22*(3), 463-476".

This article compares the review undertaken by courts in reference to arbitration in different jurisdictions. The issue discussed is whether the parallel provision in "The Model Law" require the courts to have a prima facie review or full review of arbitral jurisdiction. It is said that among nations adopting the "UNCITRAL Model Law", some require a thorough examination of the existence, legality, and application of agreements, while others just permit a prima facie review.

"Payal Chandra, & Rhythm Buaria. (2020, November 28). Appointment of Arbitrators under Section 11 by the Supreme Court: A Time intensive Phenomenoni. *SCC Blog*. https://www.scconline.com/blog/post/2020/

11/28/appointment-of-arbitrators-under-section-11-by-the-supreme-court-a-time-intensive-phenomenon/"

Author opines that quick disposal of section 11 applications has been mandated by Supreme Court. These applications kickstart the arbitration proceedings and all measure have been taken by Supreme Court to ensure that tribunal comes into force without delay. After 2019, arbitral institutions are expected to designate arbitrators, and all other preliminary problems should be handled by the tribunal and not the arbitral institution, despite the courts have defined the extent of power under section 11.

"Chatturvedi, & Agarwal. (2011). Jurisdiction to determine jurisdiction. *Journal Chartered Institute of Arbitrators*, *77*(2), 201".

The present article deals with the competence-competence principle in various jurisdictions and has concluded that there are variations in it. The aforementioned principle enables the arbitrator to choose his own jurisdiction independent of judicial oversight. Problems with this power include its vague theoretical basis and the challenge of recognising an individual as an adjudicator of his own cause.

"Debroy, B., & Jain, S. (2016). Strengthening Arbitration and its Enforcement in India - Resolve in India. *NITI Aayog*. https://smartnet.niua.org/sites/default/files/resources/Arbitration.pdf"

The present paper focusses on the largest mode of dispute resolution, that is, arbitration. First the process of arbitration is explained and then the discussion is how arbitration functions in the country. There the development of arbitral institutions, institutionalization of arbitral process, policy issues and legislative concerns are discussed. Finally the need for judicial support is looked into wherein the problems of judicial intervention are identified as delay in arbitral process and lack of consistency in decisions by courts. The need to expand the base of arbitration with not only judges but also lawyers is felt. Adequate support and assistance of courts are required with respect to reference, evidence

and enforcement of arbitral proceedings. All these are intended to have a pro-arbitration approach in India.

"Gaillard, E. (2005). Prima Facie Review of Existence, Validity of Arbitration Agreement. *New York Law Journal*, 1 - 3".

The scope of an arbitration agreement is the subject of this article. The question is whether the prima facie examination encompasses both the existence and the legitimacy of the arbitration agreement. The author believes that an arbitrator's ability to decide on his jurisdiction (competence-competence) is an inherent authority based on the arbitration agreement. Others have dismissed this as a work of fiction with no basis in arbitration law.

"Ganguli, A. K. (2010). Arbitration law. *Annual Survey of Indian Law, 44,* 32-78".

This article explores the various aspects of arbitration law through a case analysis. In response to the question of whether the court of first instance should refer cases containing serious fraud and malpractice under "Section 8 of the Act," the Apex Court determined that it should not. The rationale for this is because only courts, not arbitrators, would be competent to rule on such matters.

"Ganguli, A. K. (2012). Arbitration Law. *Annual Survey of Indian Law, 48,* 27-76".

This article provides a thorough examination of arbitration law based on Supreme Court rulings. The author draws the conclusion that the arbitration clause is a stand-alone contract that is ancillary to the primary agreement. He claims that the separability concept grants the arbitration provision an autonomous life from the main contract and that it continues to apply to disputes both throughout the duration of the main contract and after its termination.

"Ganguli, A. K. (2013). Arbitration Law. *Annual Survey of Indian Law, 49,* 29-71".

The current study analyses arbitration cases and evaluates the legitimacy of arbitration agreements in documents that must be registered and stamped. The arbitration clause would be legal under section 16 of the Act even if the main deed is defective and unenforceable. However, in terms of the legitimacy of an

unstamped document, the court determined that the arbitration clause would not be enforced and ordered that it be destroyed.

"Garg, S. (2020, June 15). Interim relief by Courts in an Arbitration: The Battle of section 9. *Bar and Bench Indian Legal News.* https://www. barand bench.com/columns/interim-relief-by-courts-in-an-arbitration-the-battle-of-section-9".

Though section 9 remedy is essential in arbitration, the Act through section 9(3), which is not an ouster clause is attempting to reduce the tendency to resort to section 9 even after arbitration has started. Once the forum is constituted, it may take some time before section 17 remedy becomes completely efficacious. Even otherwise there may be reasons by which remedy is not possible from tribunal. In some cases parties were granted relief under section 9 after approaching emergency arbitrator for the same as the concerned rules permitted them. But in cases where party has excluded Part I, then section 9 application is not maintainable. The opinion is that the wide power given under section 9 has not been used by courts. Thus the strategic weapon of section 9 will be powerful and effective if used in the right set of facts backed by compelling evidence.

"Julian, A. F. (2011). Arbitration Law. *Annual Survey of Indian Law*, *47*, 27-58".

The author addresses the extent of mandatory court reference through a thorough case study. The author believes that in a case where the court declined to refer a mortgage case to arbitration, this further restricted the use of arbitration as a different conflict resolution method by eliminating all issues involving rights in rem.

"Kapoor, I., & Agarwal, A. (2017). The Gateway to Arbitration: The Role of Courts in India. *Supreme Court Cases*, *8*, J.5".

This article examines the role of judiciary in determining gateway issues like validity of arbitration clause, relatability of disputes to arbitration clause and arbitrability of disputes. Authors opine that after 2015 amendment courts take a more hands off approach as minimal intervention is the requirement for the

arbitration regime. The amendment balances between courts and arbitral tribunals. Many recent cases have acted accordingly which transforms India as an emerging hub for arbitration.

"Kasthuri, V. (2021, April 15). The Anomalous Case of Sections 8 and 11 of India's Arbitration and Conciliation Act, 1996,. *Kluwer Arbitration Blog*. http:// arbitrationblog.kluwerarbitration.com/2021/04/15/the-anomalous -case -of-sections-8-and-11-of-indias-arbitration-and-conciliation-act-1996/"

Here in this paper the standard of judicial intervention and the differing approaches to appeal under sections 8 and 11 are analysed based on the Apex Court verdicts in *Vidya Drolia* and *Pravin Electricals Ltd*. The scope of intervention under both provisions is identical though prima facie is missing under section 11. Judiciary has done well to circumscribe its role in the operation of these two sections. As a result, it is thought that where two sections share a same objective and prescribe identical tasks to courts in their application, allowing to appeal against orders under only section 8 is anomalous and arbitrary, and that section 37 of the Act be amended to enable the same under section 11.

"Khaitan, N. (2020 October). Fraud and Arbitration : An Attempt to Deconstruct the Russel Principles, *Dispute Resolutions, NPAC Newsletter, 3*(4), 4-10. https://www.khaitanco.com/sites/default/ files/ 2020-11/NPAC-News letter-Dispute-Resolutions-October-2020.pdf"

In this study on fraud and arbitrability based on the principles laid down in *Russel* case, in 16 out of 29 cases the accuser of fraud resisted arbitration. Out of the above 16 cases, 8 times court refused to refer as serious fraud or prima facie fraud was proved. In the 13 cases where accused resisted arbitration, 6 times court refused to refer as court could decide on serious fraud or prove prima facie fraud. Person accusing fraud prefers court trial, but accused prefers arbitration if the case is weak. The first *Russel* principle was applied in *Avitel* case, but not so strong. The second *principle* supports first one, but only the first one and the *Russel* dictum is relied on.

"Mustill, M. J. (1989). Arbitration History and Background. *Journal of International Arrbitration*, 1-43".

The author is highlighting the evolutionary background of arbitration. Before studying any law the learning of its history and background is very important. The author opines that the process of arbitration has always existed as a dispute resolution in commercial relations. From the start, there had to be a neutral decision based on an express or implicit agreement to abide by the outcome, backed up by some type of consequence.

"Nair, P. (2007). Surveying a Decade of the New Law of Arbitration in India. *Arbitration International, 23*(4), 699-740. doi:https://doi.org/10.1093/arbitration/23.4.699"

Here the author analyses the *Konkan* decisions which held that power under section 11 is only an administrative power and the court has to appoint the arbitrator as soon as possible rather than deciding on the arbitrability of dispute. Any controversy on whether the parties have entered into an agreement has to be finalised by arbitrator. As a result, the verdict upheld the principle of competence-competence, reduced judicial interference, and insured that the arbitral procedure is not slowed when the courts designate arbitrators.

"Panjwani, P., & Pathak, H. (2013). Assimilating the Negative Effect of Kompetenz in India: Need to revisit the Question of judicial Intervention. *Indian Journal of Arbitration Law, 2*(2), 1-28".

The present article elaborates on the negative effects of *kompetenz* principle in India. Authors feel that courts are confused as to how much the court can intervene.They also express that the extension of judicial authority can be even misused by the parties as they have an inherent distrust in the mechanism of arbitration.

"Poznanski, B. (1987). The Nature and Extent of an Arbitrator's Powers in International Commercial Arbitration. *Journal of International Arbitration, 4*(3), 71".

The author of this essay on the nature and scope of arbitral authority in international arbitration believes that the judicial impact of arbitration agreements is similar to any other contract in which the dispute is resolved by arbitrators rather than courts. Only to the degree that the state would acknowledge the legitimacy of proceedings and support the enforcement of the judgement would the arbitrator have the authority to make the final decision in the dispute. Therefore, it may be said that a jurisdictional authority that is authorised to exist or that is supported by state authority is linked with a contractual foundation for an arbitrator's power.

"Rastogi, A. (2021). The Scope of Judicial Intervention During Different Stages of Arbitral Proceedings: An Analysis in the Light of the Emerging Regime of Judicial Minimalism. *Asian Law and Public Policy Review, 6*, 26-29".

This study examines court interventions at various phases of arbitral procedures. The Act's purpose and goal is to decrease the strain on courts and provide swift justice, and the international principle of judicial non-interference or judicial minimalism is understood. All amendments to the Act and decisions of the Supreme Court are analysed to see the success of these measures in achieving minimalistic judicial intervention. The author suggests for emergency arbitration and to amend section 16 of the Act to allow arbitration of matters involving fraud and corruption.

"Rau, A. (2003). Everything You Really Need to Know About 'Separability' in Seventeen Simple Propositions. *American Review of International Arbitration, 14*(1), 70".

This article discusses the issues of separability and the challenges relating to the arbitration clause. There can be issues of jurisdiction and that of admissibility. While determining the nature of objection, it is to be seen whether parties intended it to be decided by arbitrator. Only questions concerning the nature of the location in which the dispute was to be resolved constituted real objections to the arbitration provision.

"Rau, A. (2008). Arbitral Jurisdiction and the dimensions of “consent”. *Arbitration International, 24*(2), 199-202".

This material is on arbitral jurisdiction and its connection with the making of agreement. The author distinguishes between issues relating to making of agreement and those not related to making of agreement. Issues related to making of agreement are of arbitral jurisdiction and are finally decided by courts. But those not related to making of agreement are decided finally by arbitrators.

"Roy, G. (2001). The Role of the Lex Loci Arbitri in International Commercial Arbitration. *Arbitration International, 17*(1), 19-39".

The power of arbitrator arises from the state and the legislative and judicial authorities of the state, who control the existence, composition and activities of arbitral tribunal. Law of state cannot impose on the will of parties, but the law chosen by parties or arbitrator on their behalf can supervise arbitrator's power.

"Thitte, S., & Mishra, A. (2022). Confluence of Arbitration and Courts:Diluting Judicial intervention through Amendments. *Pen Acclaims, 18,* 1-15".

The main objective of arbitration system is to settle disputes with minimum court intervention. The ideal of party autonomy and minimization of court involvement regulates the arbitration process and the amendments in 2015,2019 and 2021 are intended to keep up with the same. All important provisions like sections 5, 8, 9, 11, 14, 15, 27, 34, 36 and 37 requiring court involvement and their respective amendments are examined by author and it is felt that these amendments are efforts to make the involvement of judiciary to a minimum extent. Thus the attempt is to make India a pro-arbitration regime involving minimum judicial intervention.

"Varghese, K. L. (2021). Whether Commercial Disputes under Arbitration Reference shall be Governed by the Commercial Courts Act or the Arbitration and Conciliation Act? *KLT, 7*, 23-26".

The present paper is about the scope of commercial courts dealing with arbitration reference and its advantages. To reduce the supervisory function of courts in the arbitral process, in commercial disputes involving an arbitration dispute, only the Commercial Court of the status of District Judge or Additional District Judge should be the competent court to hear the cases under the Arbitration Act. Whereas, other commercial disputes can be decided by the subordinate courts. This can ultimately enhance the efficiency of arbitration and can reduce the delay caused in court proceedings.

BOOKS

"Bermann. (2009). *Part I: International Commercial Arbitration, Chapter 3: The Gateway Problem In International Commercial Arbtitration.* Shore Publications".

This chapter of the book on gateway issues in international arbitration deals with arbitrability issues. The main gateway issues in international arbitration are those associated with arbitral jurisdiction. Author opines that there is confusion and difference of opinion as to what all objections are related to arbitrability. Thus it can be said that certain procedural issues relating to admissibility are to be decided by arbitrators.

"Berti, S. (2007). *Basler Kommentar - Internationales Privatrecht.* Helbing Lichtenhahn".

Here the book is on Swiss law relating to matters of international law. Regarding Swiss law on arbitration, the author opines that if defendant proceeds without contesting court's jurisdiction, court can suo motto decide the dispute. Article 7 PILA provides additional exceptions to the obligations to be followed by the judiciary in reference applications. Article 7 of the PILA permits the claimant, even in circumstances of bad faith or abusive procedural conduct by the respondent, to file a lawsuit in court instead of choosing an arbitrator.

"Binder. (2010). *International Commercial Arbitration And Conciliation In Uncitral Model Law Jurisdictions* (3rd ed.). Sweet and Maxwell".

This material is on the law of German arbitration. The current arbitration law was made in 1998 and it adopted "The UNCITRAL Model Law" except for some amendments considering the country's legal and institutional framework. The German arbitration law gives priority to courts rather than arbitrators. Courts would make not a prima facie enquiry, but a detailed examination of all preliminary matters before them. Thus courts exercised a supervisory role over arbitration proceedings.

"Biswas, T. K. (2014). *Introduction to Arbitration in India-The Role of Judiciary.* Kluwer Law International".

Presentmaterial discusses the scope of judicial intervention as given in Model Law and the actual practice that is happening in courts. Judiciary has a role in the process of arbitration and this has been correctly explained here through the different cases decided by Indian courts. It is concluded that the states can widen the power of court to intervene.

"Born, G. (2009). *International Commercial Arbitration.* Kluwer Law International".

The present author provides a comparative discussion on many aspects of arbitration. The *kompetenz* principle is applied differently in different jurisdictions. In some countries judicial intervention can be at any time. But in others courts intervene only before arbitration. Model Law permits intervention by courts but is not giving any standards as to judicial review. This is the problem faced by Indian courts. The positive effect of an arbitration agreement is that the parties are obliged to participate in arbitration in pursuant to it and the negative effect is that parties do not resolve dispute in courts.

"Gaillard, E. & Banifetami. (2008). Negative effect of competence-competence : The rule in favour of the arbitrators. In E. Gaillard, & D. Pietro, (Eds.), *Enforcemnet Of Arbitration Agreements And International Arbitral Awards: The New York Convention In Practice* (p. 258). Cameron".

The paper examines the negative effect of competence rule, which gives arbitrators priority over judicial review in jurisdictional matters. This restricts the supervision of courts on arbitral orders, as they cannot have a parallel review on existence, validity and applicability of arbitration agreements and arbitrator's decision during arbitral proceedings.

"Gaillard, E. & Savage, J. (Eds.), (1999). *Fouchard, Gaillard, & Goldman on International Commercial Arbitration.* Kluwer Law International".

The numerous features of international business arbitration are covered in this book. The arbitrator's authority to decide disputes, according to the author, corresponds to the extent of the arbitration agreement. The scope of arbitral jurisdiction differs from that of sovereign governments and their institutions. This is because they are appointed by parties with limitation of time and subject-matter. The word “jurisdiction” is used as they function like judges to decide disputes. The use of the above word “jurisdiction” will not make their power a judicial one.

"Heirmann. (2013). In S.Synkova, *Courts’ Inquiry Into Arbitral Jurisdiction At Pre-Award Stage* (pp. 130,196). Springer International Publishing".

The author is cited in the present book and here the German law on arbitration is discussed. First German courts dismissed suits where there were arbitration agreements. Later courts made extensive review on formation, validity and scope of agreement against a limited review done when one party relied on competence clause which a special clause was in agreement giving competence to arbitrator to rule on competence. Hence there is a second arbitration agreement and courts could only examine very few things.

"Holtzmann, H. M., & Neuhaus, J. E. (1989). *The United Nations Commission On International Trade Law A Guide To The Uncitral Model Law On International Commercial Arbitration: Legislative History And Commentary* . Kluwer Law International".

This book on international commercial arbitration discusses the competence-competence concept. This concept empowers the arbitrator to rule on his or her own jurisdiction. "Article 16 of the UNCITRAL Model Law" serves as the foundation for this. Therefore, arbitrators are able to independently assess their ability to resolve disputes in the absence of authority from state courts. The book provides the historical context for the Model Law provision that corresponds to the principle of competence-competence.

"K.T.Thomas, J. (2021). *Two Decades Of Battles,Continuation Of Honeybees Of Solomon.* D.C. Books".

The author, Justice K. T. Thomas, Supreme Court of India, in his biography, has dedicated a chapter to discuss the arbitrations which he had conducted post retirement. He discusses about an arbitration between FACT and ABC companies which he had decided after retirement. Here during the conduct of arbitral proceedings, as a counter, FACT had sued ABC in Sub court. Towards the end of proceedings, FACT contested the jurisdiction of the arbitrator before the arbitrator himself and it was denied. This was appealed, but of no use. So this reiterates the importance of "The competence principle" under "section 16 of the Act".

"Lachlan, M., & Pe, N. (1996). *Transnational Tort Litigation: Jurisdictional Principles* . Oxford University Press".

The present material discusses the jurisdictional principles involved in cases of torts between persons in different jurisdictions. It discusses the applicability of the New York Convention to international arbitrations and the local law to domestic arbitrations. The Swiss law is based on arbitral priority and the courts can examine jurisdiction on their own at any stage.

"Lew, J. D., Mistelis, L. A., & Kröll, S. M. (2003). *Comparative International Commercial Arbitration.* Kluwer Law International".

The authors analyse the consequences of court intervention in international commercial arbitration, showing that the court's authority is limited and the power of the tribunal is expanded by agreement.

"Malhotra, O.P. & Malhotra,Indu. (2006). *The Law and Practice of Arbitration and Conciliation.*(2nd ed.). Lexis Nexis".

The Arbitration Act of India is based on the Model Law and emphasizes the freedom of parties to make their own rules of arbitration. This book explains the law and its practical aspects.

"Sanders, Picter (Ed.) (1967). *International Arbitration Liber Amicorum For Martin Domke.* Martinus Nijhoff".

This present book on international arbitration explains about the arbitral power and its relation with the state's power. The source of arbitrator's power is discussed and it is opined that the source is the parties' agreement and the national legal order that defines, restricts and extends the power of arbitrator. The next question is regarding the power of state to supervise the same. Sovereign states have the authority to regulate activities on their territory.

"Merkin, & Flannery. (2008). *Arbitration Act 1996.* Informa Publishing".

The Act allows a court to pause legal proceedings on the application of a party against whom action is sought in a matter relating to an agreement that is to be sent to arbitration. Unless the agreement is void, ineffective, or incapable of being carried out, the court will stay the legal procedures. The issue is regarding the restraint in court intervention. Under common law and equity, jurisdiction of courts is not ousted by an arbitration agreement, but parties can hold parallel proceedings with arbitration.

"Merkin, R. (2010). *Service Issue No. 55 Arbitration Law* . Informa".

This book on English arbitration law discusses about pending arbitral proceedings parallel to court proceedings. "The UNCITRAL Model Law" allows for the commencement and continuation of arbitral proceedings while the matter is pending in court. But in England, the view that there can be parallel proceedings, was modified by earlier arbitration laws to the effect that there cannot be parallel proceedings. Anyway the English law on arbitration always function on a case to case basis.

"Murray, J. S., Rau, A. S., & Sherman, E. F. (1996). *Processes of Dispute Resolution.* Foundation Press".

The present book explains the entire process of dispute resolution with the role of lawyers intervening in the process. In this the controversies involved in the judicialisation of arbitral process are explained by the authors. One is the over interventionby judiciary and the other is the need for public control to protect social interests.

"Newman, L.W., & Hill, R.D. (Eds.). (2014). *The Leading Arbitrators Guide To International Arbitration.* (3rd edn.). Juris Net Llc. (Original Work Published 2004)"

The present material is an edited book on international arbitration discussing about interim measures. "The 1996 Act" does not directly address the subject of tribunals enforcing interim orders, which is handled by courts. Delay, jurisdictional issues and possibility of courts substituting their reasons for that given by the tribunal are some possible problems. It is hereby opined that the Indian law should either amend in the lines of UNCITRAL Model Law or should give ample powers to tribunals as in England to deal with the issues of non-compliance of interim orders.

"O'Brien, J. (1999). *Conflict Of Laws* (2 ed., Vol. 17). Cavendish Publishing Ltd."

This book is on conflict of laws and discusses on arbitral jurisdiction. Private international law is important as far as agreements between parties in different jurisdictions are concerned. The source of arbitrator's power can have an impact on solution to disputes. Many issues will be connected to this power of arbitrator. Arbitral jurisdiction is a multi-layered legal concept which can be considered as element of state sovereignty. So here if conflicting laws are there, then the rules applied in private international law will have to be applied.

"Paulssson, J. (2005). *Jurisdiction And Admissibility In Global Reflection on International Law, Commerce And Dispute Resolution: Liber Amicorum In Honour of Robert Brine.* (A. G, Ed.) ICC Publishing".

This book's major focus is the worldwide influence on international law, business, and conflict settlement. This book gives out the difference between arbitral jurisdiction and admissibility issues which is difficult to be established. Based on competence principle arbitrator decides on the jurisdiction and then decides on admissibility issues. Arbitral jurisdiction is not finally decided by arbitrator, it is finalized by court. But admissibility issue is finally decided by arbitrator.

"Petrochilos, G. (2004). *Procedural Law In International Arbitration.* Oxford University Press".

Both these books are discussing about arbitral power in international arbitration. The former one explains the procedural aspects in international arbitration. The latter one explains the theoretical explanation on international arbitration. The author discusses on the interests for which arbitral power is supervised by courts. Courts, he claims, use their jurisdiction to promote convenience, practicability, and the development of order and legal clarity.

"Redfern, Hunter, Blackaby, & Partasides. (2009). *Redfern and Hunter on International Arbitration.* (5th ed.). Oxford University Press".

The book discusses the limitations prescribed by states in the field of international commercial arbitration and the theory underlying the relation between courts and tribunals. The author argues that arbitral jurisdiction is based on an agreement and that the power of arbitrator's power is based on the arbitration agreement itself.

"Redfern, Hunter, Blackaby, & Partasides. (2004). *Law and Practice of International Commercial Arbitratiom.* (4th ed.). Sweet and Maxwell".

This book discusses the role of courts in international arbitration, with one view being that arbitration is a private matter and courts have no role to supervise. Justice dictates that certain rules should be in place for dispute resolution, and the courts can intervene to ensure justice is done in public and private tribunals.

"Segesser, G., & Schramm, D. (2010). *Concise International Arbitration* . Kluwer Law International".

Under Swiss law, "The New York Convention" applies to foreign-seated arbitrations, allowing judges to consider jurisdictional problems. In domestic arbitrations, Swiss law applies and courts can only make a prima facie review of agreement and the priority is given to arbitrator. If courts find any defect in agreement in its summary examination, it declines jurisdiction and if no defect found, court assumes jurisdiction and this decision is binding on tribunal.

CASES

"A. Jayakanthan v J.R.S. Crusher (2017) High Court of Madras (Ind.). http:// indiankanoon.org>doc".

In this case, the Madras High Court used the same standard of review as appeals against interim court orders in "section 37(2)" proceedings. The reason for such decision is the lack of standard of review in appeals under section 37(2) of the Act.

"A.Ayyasamy v A Paramsivam & Ors (2016) 10 SCC 386 (Ind.)".

Earlier, fraud cases were held non-arbitrable. But after the 2015 amendment such cases are held arbitrable unless they are serious and complex necessitating extensive evaluation of evidence. *Swiss Timing* case did not overrule Radhakrishnan's case but differentiated between fraud simplicitor and serious fraud. Thus simple frauds were arbitrable and serious ones were decided by courts. The parties' agreement represents their commercial knowledge of the arbitral procedure, and it is the court's responsibility to give a sense of business efficacy to this commercial understanding.

"Abdul Khadir v Madhav Prabhakar (1962) AIR SC 406 (Ind.)".

The first principle in Russel case was applied by Indian courts even though jury trials were abolished. In all such cases civil suit was allowed to proceed as there was prima facie case of fraud. Based on section 20 of the 1940 Act more discretion was given to court to decide on reference. In the present case, supreme Court referred as fraud was not serious but only suspicion. So the first principle depends on the second. So when serious fraud is not referred, if prima facie fraud is not proved, then referred to arbitration.

"Adhunik Steels Ltd. v Orissa Manganese and Minerals Private Ltd. AIR 2007 SC 2563 (Ind.)".

In this case, there was a question about how far a court could go with an interim measure. "Section 9 of the Act" says that if there isn't a specific procedure or set of rules, the courts can use the general rules of the CPC. So, "section 9 of the Act" gives courts broader and even residuary powers that are similar to the inherent powers in the CPC. But now it's not possible to directly use CPC, even though the principles are still followed in spirit.

"Ador Samia (P) Ltd v Peekay Holdings Ltd. (1999) 8 SCC 572 (Ind.)".

The present case relates to the nature of power of court in appointing arbitrators. In this case, it was unclear how far a court could go with an interim measure. In the absence of a specific procedure or set of rules, section 9 of the Act lets courts

use the general principles of the CPC. Under section 9 of the Act, courts are given broader and even residuary powers that are similar to the inherent powers in the CPC. But CPC can't be used directly anymore, even though the principles are still followed in spirit. Court's power is limited to appointing the arbitrator without deciding any other questions on arbitration agreement.

"Alka Chandewar v Shamshul Ishrar Khan (2017) 6 CTC 38 (Ind.)".

The highest court has said that interim orders of tribunal are treated as court orders that can be enforced under the CPC. Section 17(2) was made for this reason. According to the apex court, violation sof interim orders of arbitrators constitutes contempt of court. The aggrieved party could apply to tribunal under the Act to represent to the court to take steps against the guilty.

"Amazon Com NV Investment holdings LCC v Future Retail Limited & Others (2022) 1 SCC 209 (Ind.)".

Here, Amazon started arbitration proceedings with a seat in India and asked for emergency interim relief based on the rules of the Singapore Arbitration Centre. Some transactions were stopped by the emergency arbitrator, and an award was given. Amazon asked the Delhi High Court to enforce the law under Section 17(2) of the Act. While the Single Judge's decision was still being made, the Division Bench stopped it, and then the Single Judge enforced the order of the emergency arbitrator under Section 17(2). Again the Division Bench reiterated its order and stayed enforcement and hence this SLP. The Supreme Court allowed the appeal and held that order of emergency arbitrator is order under section 17(1) of the Act and is enforceable under section 17(2) of the Act. The validity of emergency arbitration with seat in India granting interim reliefs is permissible when institutional rules under which arbitration takes place permits it. Also section 17(1) orders are enforced as per section 37(2) of the Act and CPC and for section 37 appeals which are complete, CPC is not needed. So the appeal allowed by Division Bench under CPC is not possible for orders under section 17(2) enforcing interim orders of emergency arbitrator by Delhi High Court Single Judge.

"Ameet Lalchand Shah & Others v Rishabh Enterprises and Another (2018) 15 SCC 678 (Ind.)".

It was decided that an arbitrator could decide on a claim of fraud in a business contract, even if there were multiple contracts and multiple parties, some of which didn't have an arbitration clause. This is because non-signatories were bound by the arbitration clause in the main contract. Both Single Judge and Division Bench of High Court had not referred the matter as agreements between parties were not interconnected with the main agreement. Fraud and misrepresentation were issues in the suit. The Supreme Court let the appeal and reference go through because even the Law Commission's 246th report made a distinction between simple fraud and serious fraud. In this case, the arbitrator could only decide on simple fraud.

"Amway (India) Enterprises (P) Ltd v Ravindranath Rao Sindhia (2021) 8 SCC 465 (Ind.)".

The issue of maintainability of an international commercial arbitration was raised in this case. One party was a sole proprietorship with husband as primary proprietor and wife co-applicant, both staying in U.S., but office address at Bangalore. So, since one party is from outside of India and the business is in India, section 2(1)(f) of the Act says that it is an international commercial arbitration. So the Supreme Court, not Delhi High Court, has the power to choose an arbitrator.

"Anantesh Bhaktha represented by Mother Usha A. Bhaktha & Others v Nayana S. Bhaktha & Other (2017) 5 SCC 168 (Ind.)".

The reference under section 8 of the Act and the trial court's choice of a single arbitrator under section 11 of the Act, which was upheld by the High Court, were called into question in. The Supreme Court turned down the appeal and noted that the original partnership deed with an arbitration clause had been filed, that only one of the parties to the suit was not a partner, and that there was no law that said an unregistered firm couldn't have an arbitration clause. Thus the reference and appointment was held valid.

"Angle Infrastructure (P) Ltd. v Capital Builders 2016 SCC Online Del. 5621 (Ind.)".

Here again the nature of power under "Section 11(6A)" is analysed to see whether it is wide or limited. According to "2015 Amendment", courts can only look at whether or not there is an agreement in a Section 11 application. In this case, the court has agreed that Section 11 (6A) only gives it the power to look at the arbitration agreement.

"Anil Constructions v Vidarbha Irrigation Development Corporation and Another Arb LR (2000)111 (Bom.) (Ind.)".

"The Supreme Court" is reiterating the position that there cannot be anti-arbitration orders from courts based on jurisdictional issues. The proceedings before the sole arbitrator appointed by the petitioner were quashed by the District Court on an application by the respondent. The High Court quashed the trial court order as the respondent could not approach the civil court to quash the arbitration proceedings based on the Supreme Court decision in "Sundaram case". The remedy is to seek relief from arbitrator and if not granted to approach court later.

"Arul Sigamani and Ors v Paul Durai & Perumal and Ors (2010) 5 CTC 833 (Ind.)".

The Chief Justice has the authority to decide whether a claim is a dormant or time-barred claim, or whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations, or by receiving final payment without objection. In this case, the Chief Justice determined that the claim could not be settled by arbitration.

"Ashapura Mine-Chem Ltd v Gujarat Mineral Development Corporation (2015) 8 SCC 193 (Ind.)".

As "section 16 of the Arbitration Act" says, the Supreme Court chose a single arbitrator, which is in line with the separability principle. Here, a Memorandum of Understanding (MOU) was signed, and when the government policy

changed, the terms and conditions of the MOU had to be changed, which caused a disagreement between the parties. One party asked the High Court to appoint an arbitrator under "section 11 of the Act", based on the arbitration clause. However, the motion was denied because the parties couldn't agree on the terms and conditions of the MOU. The Apex Court considered whether the MOU is a full fledged agreement and whether the arbitration clause in it is binding as a separate and independent agreement from MOU. The appeal was allowed setting aside the High Court order holding that arbitration clause is separate, independent and valid even though there is lack of consensus as to the terms and conditions in MOU and even one party wants to terminate MOU. It is important to make sure that the parties' plan to settle disputes through arbitration doesn't end with every challenge to the main contract's legality, finality, or breach.

"Ashraf M. v Kasim V.K. 2018 (5) KHC 593 (Ind.)".

Before enforcement of an award over a firm dissolution, an interim application was filed before District Court under "section 9(1)(ii)" for interim injunction restraining alienation of properties by other party. This wasn't able to be brought up in court because the court found on its own that there was a good solution under "Section 17 of the Act" and that there was a bar under "Section 9(3) of the Act" and "The Specific Relief Act". Because of this, the District Court's decision was overturned and the case was sent back to District Court. According to the court, the bar in "Section 9(3) of the Act" requires a strict approach during arbitration. After arbitration, the tribunal may have stopped working, and the court should have taken a more flexible approach instead of rejecting "Section 17 of the Act", which says that an effective remedy is possible.

"Asian Hotels (North) Ltd v Alok Kumar Lodha & Others (2022) SCC Online 844 (Ind.)".

The Supreme Court threw out the High Court's order that said a complaint could be changed when a reference could be made. In the case, the reference application was thrown out, and on appeal to the High Court, the case was sent back to the lower court to file a section 8 application. In the meantime, an

interim relief for amending the plaint was given. As the two reliefs were at odds with each other, the Supreme Court allowed an appeal against the interim order and overturned the High Court's decision.

"Avantha Holdings Ltd. v Vistra ITCL India Ltd (2020) SCC Online Del. 1717 (Ind.)".

The Delhi High Court looked at the things that "Section 9 of the Act" says courts should look at when deciding whether to issue an interim order. It was decided that the court can't take over the power of a tribunal that hasn't been set up yet when it has jurisdiction under "Section 9 of the Act". Courts will have to walk a tight rope in granting interim measures. Here after examining the conditions it was held that reliefs could not be granted as it was only enforcement of contractual rights.

"Avinash Hitech City Society v Boddu Manikya Malini (2019) 8 SCC 666 (Ind.)".

The issue of referring disputes between multiple parties with multiple agreements was in question. Here multiple parties and interconnected agreements were there and arbitration clause was in a supplemental development agreement between land owners, society of land owners and developer. In a developer’s petition before District Court, society asked for reference under "section 8" and it was rejected as dispute not within arbitration clause. The order from the District Court was thrown out, and the Supreme Court sent the dispute to arbitration.

"Avitel Post Studioz Ltd v HSBC PI Holdings (Mauritius) Ltd. (2021) 4 SCC 713 (Ind.)".

Here, an order of a foreign party award holder under "Section 9 of the Act" was called into question because of fraud. The court looked at the "*Ayyasamy*" and "*Radhakrishnan*" cases and decided that all of the allegations were between the parties and not public, so the appeal was dismissed and "Section 9" orders were upheld. Thus Radhakrishnan case is negated by Supreme Court and *Ayyasamy* and *Rashid* cases have demystified the arbitrability of fraud. Pro-arbitration

approach is court’s intention, but judicial intervention is needed as courts go into the merits of each case to scrutinize if fraud allegation negates existence of arbitration clause or renders the dispute as non-arbitrable.

"Axon Construction Private Ltd v Om Astha Construction Private Ltd (2016) 12 SCC 423 (Ind.)".

The issue examined was in absence of a written agreement whether general conditions in work order would be arbitration agreement. In a title suit in lower court, based on "section 8" application, the matter was referred to arbitration and arbitrator had decided on existence of agreement as absence of written agreement and forgery of agreement was raised in lower court. High Court had dismissed A.227 petition against this as the above order was appealable otherwise, but had given an interim order for speedy disposal by lower court. The Supreme Court dismissed the SLP, set aside the High Court's interim order, and upheld the lower court's order and the arbitration. This was because the person who was accused of forgery had accepted the existence of the agreement in his counter affidavit and could no longer argue against it.

"Balasore Alloys Ltd v Medima LIC (2020) 9 SCC 136 (Ind.)".

This case related to two agreements between parties and the question was which one would be applicable in the situation. There were two arbitration agreements in two related agreements between same parties. The appropriate clause would be applied in the particular facts depending on the nature of dispute raised. So to determine that all agreements and documents are to be analysed. In this case the main agreement covers all matters and as per the arbitration clause in it reference was made and arbitrator was appointed. Hence a section 11 application based on other agreement was held not maintainable.

"BGS SGS SOMA JV v NHPC (2020) 4 SCC 234 (Ind.)".

In this case, the question was where an interim application for arbitration would take place. It was decided that a "section 9" application for interim relief can be filed in a court where part of the cause of action arises, even if the parties haven't agreed on where the arbitration will take place and before the tribunal has

decided where it will take place based on the facts of the case "section 20(2) of the Act".

"Bharat Aluminium Co. v Kaiser Aluminium Technical Service, Inc. (2012) 9 SCC 552 (Ind.)".

This is the well-known BALCO case about Indian courts giving temporary help in foreign arbitrations. Again, "Section 9 of the Act" says that foreign arbitrations are not allowed. It has decided that "section 2(2) of the 1996 Act" clearly recognises the territorial principle, which means that "Part I of the Act" only applies to arbitrations that happen in the same country. Hence "Section 9 of the Act" is not applicable to foreign arbitrations.

"Bharat Petroleum Corporation Ltd v Go Airlines (2019) 10 SCC 250 (Ind.)".

This was a case under "Section 16 of the Act," which says that a tribunal has the power to decide on everything. Here an arbitrator was appointed by parties and while deciding the dispute he dismissed counterclaims by respondent at threshold stage as they were beyond the scope and jurisdiction of arbitrator without any enquiry. It was said that he could only decide on disputes by claimant which were raised under "section 11 of the Act" and not counter claims. But this was set aside by High Court and Supreme Court as they were arbitrable and were not beyond the scope of reference as they are related questions to be decided by arbitrator.

"Bharat Rasiklal Ashra v Gautam Rasiklal Ashra (2012) 1 CTC 858 (Ind.)".

In this case, the court had to decide what kind of power courts have when they decide whether or not an agreement exists. Courts decide first on whether or not there was an agreement. Rarely would a court decide if an agreement is real, and even if a contract is broken or no longer valid, you can't get out of the arbitration agreement. Courts have the power to deal with false claims, and in such cases, they have given out heavy fines.

"Bharat Sanchar Nigam Ltd. v Nortel Networks India Pvt. Ltd (2021) 5 SCC 738 (Ind.)"

In another case, the court used the "*Duro Felguera* decision" and the "*Mayavati* decision" to say that interefence by court under "sections 8 and 11 of the Act" must be kept to a minimum after "The 2015 Amendment". Previously the power was wider, but now only to find out the existence of agreement. Here also the appointment was not done as the matter was ex facie time barred.

"Bhatia International v Bulk Trading S.A. (2002) 4 SCC 105 (Ind.)".

In this instance, an interim petition was filed as per section 9 and here the court must be convinced that there is a valid arbitration agreement and a desire to proceed to arbitration. Regarding the topic of jurisdiction, the court has jurisdiction if there is no conclusion regarding the court's loss of jurisdiction based on statute or court precedent. "First Part of the Act" would apply to all arbitrations, even those that take place outside of the United States, unless all or some of its parts were left out by the parties.

"Bhaven Construction v Sardar Sarovar Narmada Nigam (2022) 1 SCC 75 (Ind.)".

Here the writ jurisdiction under "Article 227 of the Constitution" in arbitral matters was in question. While invoking writ jurisdiction under "Article 227", the party invoking had to show that there is an exceptional circumstance or bad faith on the part of other party. Thus Supreme Court held that though the ambit of Article 227 is broad, here the High Court erred in using it to interject the arbitral process.

"Booz Allen & Hamilton Inc. v SBI Home Finance Ltd (2011) 5 SCC 532 (Ind.)".

Here, the Supreme Court said that the case couldn't be sent to arbitration because the tribunal couldn't decide or because it wasn't something that could be arbitrated. So the mandatory obligation under "Section 8" is diluted. Here the issue discussed by the court was on arbitrability of subject matter.

"Caravel Shipping Services (P) Ltd v Premier Sea Foods Exim (P) Ltd (2019) 11 SCC 461 (Ind.)".

The Supreme Court said that signing an arbitration agreement is not required, even if it is written or typed. Here bill of lading referred to all conditions annexed to it irrespective of whether written or not. Arbitration clause was printed in annexure and annexure was made part of contract when both parties agreed to it. So dismissal of section 8(3) application was appealed and allowed reversing the order of the High Court.

"Central Organisation for Railway Electrification v ECI-SPIC-SMO-MCML (2020) 14 SCC 712 (Ind.)".

Another case where there were three named arbitrators in the agreement who were senior officers and they were eligible. The Apex Court said that the High Court was wrong to appoint an independent sole arbitrator, and that the parties had not given up their right to appoint one according to the agreement. So when there is a procedure in the agreement, there can be another appointment by court only when the named ones are not eligible and the court appointment held invalid.

"Cheran Properties Limited v Kasturi & Sons Limited (2018) 16 SCC 413 (Ind.)".

The apex court had allowed to enforce arbitral award even against non-signatories by a section 9 interim order for the same from High Court. Here the award as per the arbitration under the agreement between parties had become final as the setting aside was dismissed and all appeals and SLP against it were not allowed. Moreover the NCLT and NCLAT had confirmed the mandate of award by their orders. Thus under the “group of companies” doctrine, “intention of parties” and “direct commonality”, it was held that even non-signatories are bound by the award.

"Chloro Control India (P) Ltd. v Severn Trent Water Purification Inc. (2013) 1 SCC 641 (Ind.)".

This case shows that *SBP* can affect cases under "Section 45". Again the issues to be finally decided by court in international arbitration was the main issue in this case. Here it was held that courts can finally decide all preliminary issues in references under "Section 45". The court agreed that the issues should be separated, and it ruled that the law it made under "Section 11" should apply to both international and domestic arbitration in India.

"Coppee-Lavalin SA/NV v Ken-Rea Chemicals and Fertilizers Limited (In Liquidation) (1994) 2 All ER 449 (Eng.)".

This case is again on the extent of judicial intervention during arbitration. The exceptions in section 5 permits court interventions in certain situations when the arbitral process becomes weak without necessary court support. In this case, Lord Mustill said that no matter what you think about the right balance between arbitration and courts, the role of courts is sometimes not only acceptable but also helpful.

"Cox and Kings Ltd v SAP India Ltd & Another (2022) SCC Online 570 (Ind.)".

The "group of companies" rule from "the *Chloro Controls* case" was looked at again, and it was decided that the "246th Law Commission Report" and the 2015 amendment make it clear that anyone who has a claim through or under a party to an agreement can start arbitration proceedings. Here it was a section 11 application and the parent company of first respondent was not a signatory to many agreements, but was given arbitration notice. The doctrine was used to make things easier, and it is based on the subjective intention of parties to bind people who didn't sign. As it is against party autonomy and separate corporate personality, it was referred to a larger bench to determine its correctness and application.

"Deccan Paper Mills Co. Ltd v Regency Mahavir Properties (2021) 4 SCC 786 (Ind.)".

The Supreme Court considered the arbitrability issue in this case. When a party sought cancellation of a written agreement under the Specific Relief Act and then section 8 reference was sought by other party. The issues were whether arbitrable dispute exists as arbitration clause is missing in initial agreement, whether serious fraud allegations make disputes non-arbitrable and whether seeking cancellation is right *in rem* and hence non-arbitrable. The Supreme Court said no to all of the questions and threw out the appeal. It was decided that the dispute could be settled by arbitration, that the cancellation was *in personam*, and that registration of a private document would not make it public. Specific performance of immovable property will be arbitrable and the arbitrator can grant specific performance as it is a civilly triable issue.

"Deep Industries Ltd v ONGC (2020) 15 SCC 706 (Ind.)".

The Supreme Court held that Article 227 petitions could be filed against judgments disposing first appeals under "section 37 of the Act". The High Court should consider the statutory policy when interfering with orders passed which are patently lacking inherent jurisdiction. The Apex Court quashed the High Court order interfering with the arbitrator's interim order under "section 17".

"Deep Trading Co. v Indian Oil Corporation (2013) 4 SCC 35 (Ind.)".

Three Judges' Bench of Supreme Court based on principle laid down in previous cases held that the right to make appointments of arbitrators is not forfeited even after the deadline stipulated in the agreement. But if a petition is filed under "section 11(6) of the Act," the right ends and is lost.

"Denel (Proprietary Ltd.) v Bharat Electronic Ltd (2010) 6 SCC 394 (Ind.)".

The issue of court appointment of arbitrator when there ia a nominated arbitrator who could not be proved as bias was in question. The nominated arbitrator was the Managing Director of a Government company against whom dispute was raised and when he could not take an independent decision, another one was

appointed by judiciary under the Act. Generally nominated arbitrator can be avoided only if there is just and sufficient cause.

"Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v Bhaskar Raju & Bros. (2020) 4 SCC 612 (Ind.)".

Here an unstamped lease deed was relied by High Court under section 11(6) and this was set aside by the Supreme Court. Before this section 11(6) application, there was an injunction suit where both parties participated and respondent had not filed section 8 reference. The Apex Court, relying on "*SMS Tea Estates* case", opined that court can act only after duty is paid and directed to pay stamp duty and penalty.

"DLF Industries Ltd v Standard Chartered Bank AIR 1999 Del. 11 (Ind.)".

The Delhi High Court has upheld the validity of an exclusive jurisdiction clause over arbitration proceedings, meaning that the court granting interim measures should have jurisdiction to decide questions forming subject matter of arbitration if the same had been the subject matter of suit. The interim application in another court was rejected based on the above reason.

"Duro Felguera S.A. v Gangavaram Port Ltd. (2017) 9 SCC 729 (Ind.)".

The Apex Court held that the court could only examine the existence of agreement and all other issues were to be decided by arbitrator. The doctrine of "composite reference" was not held applicable and clarified when it can be applied. This case affirms the limited intervention of court when arbitrator is appointed in line with the 2015 amendment to the Act.

"Enercon (India) Ltd. and Others v Enercon Gambitt and Another (2014) 5 SCC 1 (Ind.)".

The decision maintained the separation of the arbitration provision from the main contract to ensure the parties' purpose to settle disputes through arbitration even if the legality, validity, finality, or violation of the main contract is challenged. The main contract deals with substantive rights and the arbitration agreement expresses the intention of parties to opt out.

"Firm Ashok Traders v Gurumukh Das Saluja and others (2004) 3 SCC 155 (Ind.)".

Here the matter was whether arbitration has started, as the interim relief under Section 9 should be followed by arbitration proceedings. The court is asking the party regarding the time they are commencing the arbitration proceeding and held that if they do not commence proceeding within a reasonable time after the interim order, the court would recall its order. In 2015 amendment, a fixed time is prescribed after which the interim order would lapse.

"Food Corporation of India v Indian Council of Arbitration (2003) 6 SCC 564,566 (Ind.)".

This case discussed the power of court appointing arbitrator. Here the view was that expansive explanation of the provision relating to arbitrator appointment was against the legislative intent to resolve disputes expeditiously and limit court intervention. So court's limited power which was administrative in nature as held in *Konkan* decisions was again reiterated.

"Food Corporation of India v National Collateral management Services Ltd (2020) 19 SCC 464 (Ind.)".

In this instance, the essence of a contract between parties to arbitrate was examined. Regarding existence of the same, the Supreme Court determined that a clause in an agreement stating that any issue may be referred to the chairman and managing director of one party for final and binding adjudication is not an arbitration agreement. This case followed the ruling in "*P. Dasaratharama Reddy Complex* case, (2014) 2 SCC 201."

"Garware Wall Ropers v Coastal Marine Constructions & Engineering Ltd (2019) 9 SCC 209 (Ind.)".

The Supreme Court reaffirmed the *SMS Tea Estates* decision, holding that when a court decides on an application for appointment of arbitrator based on an arbitration clause in an unstamped or insufficiently stamped agreement, the court must impound the agreement, send it to the concerned authority for adjudication and payment of stamp duty and penalty, and proceed with the

application only after payment. This decision overruled the Bombay High Court's decision in the "*Gautham Landscapes*" case.

"Gautam Landscapes Pvt. Ltd. v Shailesh Shah (2019) SCC Online Bom. 563 (Ind.)".

The Bombay High Court granted interim orders and allowed application for appointing arbitrators even though the agreement to arbitrate was in an insufficiently stamped document. Court was of the opinion that the said agreement was independent of the main contract which had technical defects and it will not prevent granting of the above reliefs. Issues of stamping could be rectified also.

"Giriraj Garg v Coal India Ltd. (2019) 5 SCC 192 (Ind.)".

In this case arbitration clause from a standard form contract was validated by court as it was referred to in individual sale orders. Sale orders were based on this standard form document with arbitration clause. This was deemed a "single contract case," with a generic reference to standard form sufficing to invoke the arbitration provision. As a result, the application for appointment of an arbitrator under "Section 11(6)" was found to be legitimate.

"Greaves Cotton Ltd v United Machinery and Appliances (2017) 2 SCC 268 (Ind.)".

Again a pro-arbitration approach was taken in this case wherein a damages suit in High Court, the other party had sought a time of two weeks for filing written statement. Then he invoked arbitration clause and moved under "sections 5 and 8 of the Act" for reference which was rejected as he had waived his right to arbitration. However, the Apex Court granted the appeal and ordered the High Court to treat it as a new application since it had not previously examined whether the parties decided to settle the dispute by arbitration and whether the matter can be so settled. It was also held that asking for time extension is not waiving his right to arbitration.

"Harikumar v Shriram Transport Finance Co. Ltd. 2018 (1) KLT 652 (Ind.)".

This case examines the nature of an interim order by court and the factors of enquiry before making the same. Granting or refusing such a relief means a finality to that application. But any order under "section 9" is an interim one including a final order under "section 9" and is appealable under "section 37".

"HDB Financial Services Ltd v Kings Baker Pvt. Ltd. (2019) 1 KLT 784 (Ind.)".

The Kerala High Court held that any court while enforcing and interim order under "Section 17" cannot conduct an enquiry as it is not exercising appellate jurisdiction. Thus power under "Section 17(2)" is different from that under "Section 37(2)(b)" and under "Section 17(2)" it can only enforce the order of tribunal.

"Hema Khattar v Shiv Khera (2017) 7 SCC 716 (Ind.)".

The nature of interpretation under "Sections 8 and 45" was contrasted here. Previously, "Section 8" was commonly construed in the same way as Section 45 was, but today, following a "2015 modification", "Section 8" courts have only the competence to *prima facie* evaluate the existence of an agreement. "Section 45" allows courts to determine whether an agreement is null, invalid, inoperative, or incapable of being executed. This is an imbalance in the court's power. Even in foreign arbitration, the power of the court should be similar to or more limiting than in Indian arbitration.

"Hero Electric Vehicles Private Limited & Another v Lectro E – Mobility Private Limited 2021 SCC Online Del. 1058 (Ind.)".

Here the Supreme Court discussed about the power of court regarding reference to arbitration. It was opined that in such cases, courts should ensure that it is exercising the same jurisdiction which the tribunal is enpowered to exercise while determining arbitrability of dispute or whether the parties had decided to resolve the dispute not in court.

"Heyman v Darwins (1942) AC 356 (UK) (Eng.)".

This English case is based on the separability principle. This clause can be considered as a separate contract of its own and here it was held that it is wide enough to encompass within its purview issues as to its validity on grounds of fraud, misrepresentation, mistake or other, then the same would never take away the power of the tribunal. Thus this is the basis of the competence principle under "Section 16 of Indian Act".

"Himangni Enterprises v Kamaljeet Singh Ahluwalia (2017) 10 SCC 706 (Ind.)".

The Apex Court of India ruled that tenancy issues are covered by "The Transfer of Property Act" cannot be arbitrated. This was subsequently reversed in Vidya Drolia (2021), and the four-fold test is now used to evaluate whether a matter can be determined by an arbitrator as per "section 11 of the Act".

"Hindustan Construction Company Ltd v Union of India (2020) 17 SCC 324 (Ind.)".

With respect to "section 9" relief, the Apex Court reiterated that it can be claimed before, during and after arbitration and that there must be a proximate nexus between the measures sought and the arbitral proceedings. It was also clarified that the above remedy is not taken away even if annulling the arbitrator order as per "section 34 of the Act" is filed, as "section 9" relief is there after award, but before its enforcement.

"Hindustan Petroleum Corporation v Pinkcity Midway Petroleums (2003) 6 SCC 503 (Ind.)".

Apex Court held that on acceptance of arbitration agreements by parties, court has to mandatorily refer the dispute to arbitration. The issue of whether the dispute is covered by arbitration clause was clarified by the arbitrator.

"IBI Consultancy (India) (P) Ltd v DSC Ltd (2018) 17 SCC 95 (Ind.)".

Here the consensus between the parties to resolve the disputes before the arbitrator was evident in the letter of intent was held to be in the integral part of contract. So there was existence of agreement under "section 11(6A)" and hence arbitrator was appointed. The nature of the document is not the issue, but it is the intention.

"ICOMM Tele Ltd v Punjab State Water Supply and Sewage Board (2019) 4 SCC 401 (Ind.)".

The arbitrariness of arbitration clause was the reason for striking it down by court under A.14 of the Constitution in a judicial scrutiny of the clause in tender notice. There was a pre-condition in the arbitration clause by which both parties will have to forfeit some amount of deposit paid and the objective was to avoid frivolous claims. This clause though non-discriminatory was held arbitrary.

"Indian Farmers Fertilizer Co-operative Ltd. v Bhadra Products AIR 2018 SC 627 (Ind.)".

The Supreme Court has commented on the principle of *kompetenz-kompetenz*, stating that jurisdiction in this context includes whether there is a valid arbitration agreement, whether the tribunal is properly constituted, and whether the matters submitted to arbitration are in accordance with the agreement. Under "section 16 of the Act" it is not needed that jurisdictional question shall be decided at the preliminary stage. Here tribunal has to assess whether the jurisdictional plea is genuine to be decided at the preliminary stage.

"Indian Oil Corporation Ltd. v SPS Engg.Ltd. (2011) 3 SCC 507 (Ind.)".

In the present case we can see the limiting of power of courts which are appointing arbitrators. Thus the court attempted to curtail the power given by *SBP case*. In this case, the court would assess whether a claim is live only if there is no need for a full examination of evidence. If more evidence is required it shall be decided by the arbitrator.

"Indowind Energy Ltd. v Wescare (I) Ltd. (2010) 5 SCC 306 (Ind.)".

Here the power of courts in deciding the preliminary issues was upheld and those decisions were held to be final and not prima facie. In a dispute there can be preliminary and final issues.The courts can give a final decision on these preliminary issues as the appointing court is exercising judicial power. This also expanded court's power.

"Indus Biotech Private Limited v Kotak India Venture Offshore Fund (2021) 6 SCC 436 (Ind.)".

The Delhi High Court reviewed the scope of a court's jurisdiction to award interim relief in arbitration, as well as the grounds to be considered before giving interim relief by courts. It was opined that the power of court to grant interim relief at pre-arbitration stage cannot assume jurisdiction of tribunal which is yet to be constituted. Courts will have to walk a tight rope in granting interim measures. Here after examining the conditions it was held that reliefs could not be granted as it was only enforcement of contractual rights.

"Industrial Area Development Authority and Others v Rama Kanth Singh (2022) 4 SCC 489 (Ind.)".

When an agreement between parties was terminated, reference under the State Arbitration Act was made and an award given. In revision before High Court, the award was upheld and the Apex Court in appeal disposed of the appeal by partly allowing the appeal and modifying the award so as not to levy interest. It was held that High Court in revision can intervene only in rare cases and that arbitration under State Act is possible.

"ITI Limited v Siemens Public Communications Network Limited (2002) 5 SCC 510 (Ind.)".

Here the Apex Court is discussing the applicability of CPC and Evidence Act in arbitration proceedings. The Apex Court has held that a revision under Civil Procedure Code is possible after an appeal as the Act has not expressly excluded

the Code. But in 2015 amendment it has been provided that "CPC" and "Evidence Act" cannot be applied in arbitration.

"J.K. Cotton Mills Ltd. v State of U.P. AIR 1961 SC 1170 (Ind.)".

The Apex Court upheld the finality of a court finding of reference in an international commercial arbitration, ruling that a court must make every effort to interpret all words of a statute and that every part of an Act has a purpose.

"Kalpana Kothari v Sudha Yadav AIR 2002 SC 404 (Ind.)".

The language of mandatory reference was reiterated in this case. The Apex Court has held that reference is mandatory and there cannot be stay of proceedings while the decision is pending. When an application for reference is pending in court, arbitration can commence and an award made.

"Kishorekumar v Shriram Transport Finance Co. Ltd 2022 (2) KLT 387 (Ind.)".

A petition under A.227 to direct commercial court not to enforce interim relief by arbitrator was dismissed as a civil court has the power to enforce the same under CPC as it is like any other court order. Hence when the dispute is a commercial one, commercial court is the civil court to enforce interim order.

"Konkan Railway Corpn. Ltd. v Mehul Construction Co. (Konkan-I) (2000) 7 SCC 201 (Ind.)".

"Konkan Railway Corporation Ltd. v Rani Construction (P) Ltd.(Konkan-II) (2002) 2 SCC 388 (Ind.)".

The detailed discussion about the power of court appointing arbitrator can be seen in these two cases. *Konkan I* limited the court's power and it was confirmed in *Konkan II*. Courts' view was that "Section 11" courts should appoint the arbitrator and leave all other questions to the tribunal. The powers of courts are limited and not judicial. Courts can only fill the gap in appointing the arbitrator. So powers of courts were limited and courts took a hands off approach. Thus the power of court was only an administrative one.

"Kotak Mahindra Bank Ltd. v Sundaram Brake Lining Ltd. (2008) 4 CTC 1 (Ind.)".

The present case is regarding the extent of the competence principle under "Section 16 of the Act". Unlike Model Law, the order of tribunal on jurisdiction or validity is final and cannot be questioned in court. In case of nullity of a contract containing arbitration clause, the reasons, implications and consequences can be found out only by invoking the arbitration clause and raising them before the arbitrator. If denied, the contract can be set aside by court.

"M/S Emaar Mgf Land Ltd. v Aftab Singh (2019) 12 SCC 751 (Ind.)".

Special acts are exempt from arbitration proceedings and even the 2015 amendment has not changed this position. A critical analysis of "section 8" in the old and new Acts as well as the 2015 amendment was done and it was held that "section 8" cannot be expanded by which special acts can be overcome. Here the rejection of section 8 application by NCDRC which was dismissed in appeal and revision was held correct by the Apex Court. It was opined, the amended "section 8 of the Act" does not inundate the entire regime of special legislation in arbitrable cases.

"M/S Hedge Finance (P) Ltd v Bijish Joseph, 2022 (5) KHC SN 18 (Ind.)".

A unilateral designation of an arbitrator under an agreement prior to dispute, the disclosure requirements were not fulfilled and the Kerala High Court has held that such appointment will be a nullity and the interim order passed by arbitrator was held to be not enforceable. Here it was clarified that the arbitrator has to be appointed either by court or as per the agreement entered into after the dispute came into existence. This is a mechanism to ensure transparency in cases of appointment of arbitrator.

"M/S N.N. Global Mercantile (P) Ltd. v Indo Unique Flame Ltd. & Others (2021) 4 SCC 379 (Ind.)".

The Apex Court adopted a holistic, well-balanced and contemporary approach discarding long persisting apprehensions of courts unduly interfering with arbitration. It was decided in this case that an arbitration agreement is independent and does not need stamp duty, and so failure to pay stamp duty on a business contract will not invalidate an arbitration provision that has an independent existence. This case overruled "*SMS Tea Estates"* case in holding that technical defect would make arbitration agreement invalid and also expressed dissent with the *Garware* case. Thus it upheld separability and competence and held that there can be a later remedy through court in setting aside.

"M/S Northern Coal Fields Ltd v Heavy Engineering Corporation Ltd (2016) 8 SCC 685 (Ind.)".

The Apex Court allowed the appeal, set aside the order of the High Court, appointed a sole arbitrator and referred all disputes to him. A declaration suit was filed for making the agreement void, but an interim order was granted not to enforce the awards by authority. The Apex Court held that the inhouse awards under the Permanent Machinery of Arbitration were not under the Arbitration statute and appointed the arbitrator.

"M/S.Sundaran Finance Ltd v M/S. N.E.P.C.India Ltd, AIR 1999 SC 565 (Ind.)".

This is a case on interim measures given by court. The court's authority is only for granting interim relief on an application before commencement of arbitration. The judiciary cannot interfere with the proceedings when application for the same is pending and the judiciary cannot interfere even if the arbitration continues and the award is given.

"Magma Leasing and Finance Ltd v Potluri Madhavilatha (2009) 10 SCC 103 (Ind.)".

The Supreme Court has maintained in this instance that once the pre-requisite requirements of "Section 8" are met, the court has no choice. When the necessary elements in "Section 8" are met, the court is required to send the issue to arbitration.

"Maharishi Dayanand University v Anand Co-operative LIC Society Ltd (2007) 5 SCC 295 (Ind.)".

The deciding authority in this case was the Chief Justice, who had to decide the existence of the arbitration agreement, its validity and other preliminary issues under "Section 11 of the Act".

"Marriot International Inc. v Ansal Hotels Ltd. AIR 2000 Delhi 377 (Ind.)".

Again, the granting of temporary relief in a foreign-seated arbitration was at issue in this instance. This court has decided that the provision in the 1996 Act regarding granting of interim relief by court will not apply in case of arbitrations which are happening in foreign countries and court refused relief in such cases as only legislator could extend the scope of this provision.

"Master Abhishek Mehra v DLF Commercial Developers Limited (2008) 4 Arb LR 189 (Del.)(Ind.)".

The Delhi High Court discussed the amount of judicial engagement in this case under Section 5 of the Act. A challenge under "section 12 of the Act" questioning the existence of an agreement and whether the arbitrator has jurisdiction was dismissed as prohibited by "section 5 of the Act". These issues were judged to be within the competence of the arbitrator.

"Mayavati Trading (P) Ltd v Pradyuat Dev Burman (2019) 8 SCC 714 (Ind.)".

The issue here was that the consent in accord and satisfaction was vitiated by vitiating elements. There was a claim that there is no dispute on account of accord and satisfaction. But the objection was that accord was vitiated by

coercion and undue influence. The court opined that in arbitrator appointment it need not look into accord etc, but appoint arbitrator if there exists an agreement.

"Mitra Guha Builders (India) Co. v ONGC (2020) 3 SCC 222 (Ind.)".

The present case related to the issue whether the inhouse mechanism would override arbitration. The matter related to construction of flats between appellant contractor and ONGC referred matters like right to levy compensation for delay in work and mechanism for determining amount of compensation to be decided by a named superintending Engineer. These matters were exempted from arbitration agreement and so the named person decided on above matters. When the arbitrability of the above matters came as an issue before the court, it was held that they cannot be arbitrated but only decided in the ordinary course of law.

"MTNL v Canara Bank (2020) 12 SCC 767 (Ind.)".

The doctrine of "group of companies" was summarized in this case. The implied consent of the subsidiary company has to be impleaded in arbitration, or else there will not be a final resolution of disputes. Relation between subsidiary and parties to agreement and the connection of subsidiary to the original transaction are the facts to be proved. Here the subsidiary took part in proceedings before High Court and represented itself. Arbitration agreement can be inferred from documents and proceedings before arbitrator and court. The participation of party in proceedings without objection and the arbitration agreement are denied by party which is not permissible by estoppel. He had agreed to a court referral, responded to the claim, and filed a counterclaim before the arbitrator. As a result, denying the presence of an arbitration agreement is not viable, and the existence of an arbitration agreement is inferred in this situation.

"Municipal Corporation of Greater Mumbai v Pratibha Enterprises (2019) 3 SCC 203 (Ind.)".

Here Single Judge of High Court appointed arbitrator and later recalled its order as tender notice and general clauses in contract were not arbitration clauses. But

Division Bench reversed this order as "section 5" mandates for judicial intervention as per Part I and so court could not review its order. The Apex Court as there was no arbitration agreement,1996 Act was not applicable and Single Judge of High Court as court of record with its inherent power could recall its own order appointing arbitrator.

"N. Radhakrishnan v Maestro Engineers (2010)1 SCC 72 (Ind.)".

This case concerns the arbitrability of fraud once more. In this case, it was determined even though the issue was coming under the agreement of arbitration, it was not arbitrable since there were claims of fraud and significant misconduct that could be resolved by a court based on specific evidence. Thus, the Apex Court weakens the parties' freedom to select arbitration for conflict settlement and the principle of competence, which gives the arbitrator entire power.

"NALCO Ltd v Subhash Infra Engineers (P) Ltd (2020) 15 SCC 557 (Ind.)".

Here a tender was given in response to tender notice and work order was issued. In case of a dispute arbitrator was appointed by appellant in spite of objection from the respondent that arbitration agreement does not exist. When proceedings started, respondent filed a suit for declaration and injunction objecting the same, which was dismissed in trial court, but allowed in lower appellate court and High Court. In Apex Court, it was held that the said objection can be decided only by arbitrator. The court removed the appointed one under schedule V of the Act and appointed another one and directed respondent to raise the above objection before the tribunal.

"National Highways & Infrastructure Development Corporation Ltd v BSCPL Infrastructure Ltd (2019) 15 SCC 25 (Ind.)".

The Delhi High Court held that the dispute resolution clause in the request for proposal was not ousted and the Delhi High Court could decide any dispute at this stage to not disturb the bidding process. This case followed the decision in "*PSA Mumbai Investments Pvt. Ltd v Jawaharlal Nehru Port Trust,* (2018) 10 SCC 522".

"National Highways Authority of India v Gwalior Jhansi Expressway Ltd (Ind.). http://indiankanoon.org>doc".

The Apex Court did not determine the standard of review for interim orders, but annulled the decision as "violative of fundamental policy of Indian Law" as per "section 34 of the Act". The court evaluated the legitimacy of the interim decision on the basis of India's public policy, not the merits of the issue.

"National Insurance Co. Ltd. v Boghara Polyfab (P) Ltd. (2009) 1 SCC 267 (Ind.)".

This case had influenced the "*Chloro Control"* decision. In a petition for appointing arbitrator, judiciary segregated issues. The primary category comprises of matters that must be determined only by the court. The second category of questions consists of those which the Court or tribunal can decide. The third category includes matters that the court must defer to the tribunal. Court decisions are definitive, and the courts' authority has been enlarged once again.

"NHPC Ltd v Patel Engineering Ltd (2019) 13 SCC 629 (Ind.)".

Here the issue was whether interim relief can be granted by court when the matter was settled. A "section 9" order granting interim measure was challenged in this case and while it was pending the award was annulled. Because the primary issue had already been addressed, the Apex Court declined to rule on the constitutionality of the interim order.

"Nimet Resources Inc. v Essar Steels Ltd (2000) 7 SCC 497 (Ind.)".

In this case the issues discussed were the questions to be determined by the court regarding appointment of arbitrator and whether they are final. Here the challenge on existence of agreement was brought under "Section 11". The court ruled that the issue of existence of agreement should be decided by the tribunal and not by the court in an application under "Section 11". Courts can only decide if they are sure there is no agreement. Even if they decide on such issues, they will not be conclusive. Thus again the power of court is restricted.

"NTPC Ltd. v Jindal ITF Ltd 2017 SCC Online Del.11219 (Ind.)".

The standard of review in cases of appeals against interim orders by tribunal was in question. As there is no such standard of review, courts use that power according to their discretion. Either they conduct an enquiry on merits or apply grouds of setting aside. Here the High Court of Delhi tested the validity of tribunal's order by conducting an enquiry on merits.

"Olympus Superstructures Pvt. Ltd v Meena Vijay Khaitan (1999) 5 S.C.C 651 (Ind.)".

The present Apex Court decision discusses the application of "Section 8" petition and its requirements. According to the court, the jurisdiction of the judicial authority remains even if the matter is covered by the arbitration clause. The conditions under "section 8" for reference to arbitration has to be strictly complied with.

"ONGC Mangalore Petrol Chemicals Ltd. v ANS Constructions Ltd. and Anr. (2018) 3 SCC 373 (Ind.)".

This case was on whether accord and satisfaction would make the dispute as non-existing. Accord and satisfaction is a mode of discharge of a contract and if there is proof for the same or no claim of coercion etc in it, then there can be no dispute. The arbitrator appointment application was dismissed and it was held that on account of accord and satisfaction there was no dispute at all.

"Oommen Thomas Panicker v Monica Constructions 2022 (1) KLT SN 14 (Ind.)".

The question of maintainability of a "section 8(1)" application filed as I.A. was answered in the negative by the lower court. The appeal against this order under "section 37(1)(a)" against this was not allowed by the High Court as it is possible only when a "section 8(1)" application is dismissed refusing to refer to arbitration on a finding that dispute in agreement is not arbitrable.

"Oriental Insurance Company Ltd. v Nardhesan Power and Steel Pvt. Ltd. (2018) 6 SCC 534 (Ind.)".

In the current case, the court ruled that if a clause in an insurance policy states that there would be no arbitration under particular conditions, then no arbitrator will be appointed. Though this case is not on "section 11(6A)", it became a basis for later decisions as the intention in the clause is very important.

"P. Anand Gajapathi Raju v PVG Raju (2000) 4 SCC 539 (Ind.)".

This case gives the consistent view of Apex Court about arbitrator reference is that it is mandatory and the courts when seized of an arbitrable dispute emanating from an agreement with an arbitration clause are obliged to refer it to arbitration. Here the language of mandatory reference under "Section 8" is analysed.

"PASL Wind Solutions (P) Ltd v GE Power Conversion (India) (P) Ltd (2021) 7 SCC 1 (Ind.)".

The issue before the Supreme Court concerned temporary reliefs under "section 9 of the Act" for foreign-seated arbitrations with assets in India. The court distinguished between foreign-seated international commercial arbitrations and Indian-seated international commercial arbitrations under "section 2(2)," and determined that the current "section 9 application" was maintainable in the current court.

"Perkins Eastman Architects DPC v HSCC (India) Ltd. (2020) 20 SCC 760 (Ind.)".

The issue of a substitute arbitrator in place of a named one was the issue. Generally when there is a named arbitrator, court has to accept it and cannot appoint under "section 11(6) of the Act", or else there should be proof that nomination is invalid. So when independence and impartiality of the nominated arbitrator is not there or when other circumstance warranting appointment of an independent arbitrator is there, court can appoint ignoring the prescribed procedure. In this instance, it was determined that if a nominee has an interest

in a dispute or outcome, there is a risk of bias and he is unable to serve as an arbitrator or designate another arbitrator. Thus, the application under "section 11(6)" was granted and a sole arbitrator was appointed. This ruling applied "*Trf Ltd v. Energo Engineering Projects Ltd*, (2017) 8 SCC 377", which found that once the M.D. of a firm has been appointed as its arbitrator, he is not qualified as per the Act and another cannot be appointed by him. Also in "*Bharat Broadband Network Ltd v. United Telecoms Ltd*, (2019) 5 SCC 760", the Apex Court overturned the selection of a lone arbitrator by the company's Chairman and Managing Director, who was authorised under the arbitration clause to do so, and ordered the court to appoint a substitute arbitrator with the approval of both parties.

"Pravin Electricals v Galaxy Infra and Engineering Private Limited (2021) 5 SCC 671 (Ind.)".

The Apex Court was required to examine the scope of a "*prima facie*" review under "Section 11 of the Arbitration Act" in the present case, where Pravin Electricals appealed against an order of the Delhi High Court appointing a sole arbitrator in a dispute. The presence of the arbitration clause in the consulting agreement was contested by the parties. Numerous factual and evidentiary concerns, such as signatures, notarization, dates, etc., of the arbitration agreement required consideration, and this would necessitate a more in-depth review. The Apex Court left to the arbitrator the determination of whether an arbitration agreement exists, while confirming the appointment of the arbitrator. Existence in "section 11 of the Act" would incorporate aspects of contractual validity.

"Premier Sea Foods Exim (P) Ltd v Carvel Shipping Services (P) Ltd (2022) SCC Online SC 530 (Ind.)".

The reference application was denied in lower court and Kerala High Court in appeal and review, but held valid by Apex Court in SLP. In between a party got a conflicting order where an arbitrator was appointed from Madras High Court and there the other party filed and withdrew counter claim as the matter was pending in lower court in Kerala. Later when Apex Court referred the matter to

arbitrator after SLP, the counter claim filing was not permitted by arbitrator and it was confirmed by Madras High Court. This in appeal before Supreme Court was permitted as his reasons were genuine and had to pay costs for the condonation of delay. This shows the possibility of misuse of a law by parties by filing in different for a and getting conflicting orders which were rectified by the apex court.

"Punjab State Power Corporation Ltd v Emta Coal Ltd (2020) 17 SCC 93 (Ind.)".

A writ under A.227 was filed against the dismissal of a "section 16" petition. This is permissible only if the order passed is so perverse that only possible conclusion is that there is a patent lack of inherent jurisdiction. Here the court opined that non-reference to a stranger who is not a party to a joint venture agreement with arbitration clause by arbitrator is not perverse and the High Court had wrongly admitted the A.227 petition and should have dismissed it. So the order of the arbitrator was held valid.

"Purushottam S/O Tulsiram Badwaik v Anil & Others (2018) 8 SCC 95 (Ind.)".

The trial court rejected the section 8 application due to the dispute resolution clause being vague and not providing procedure for appointing arbitrator and the matter in dispute not forming subject matter of agreement. The High Court affirmed this finding and held that the agreement was as per the "1940 Act" and now the "1996 Act" is applicable. However, the Apex Court allowed the appeal and held that if proceedings started after 1996, then the 1996 Act would apply. The trial court was asked to consider the "section 8" application for reference.

"Rajasthan Small Industries Corporation Ltd v Ganesh Containers Movers Syndicate (2019) 3 SCC 282 (Ind.)".

The question of already appointed arbitrator overriding court appointment of arbitrator was raised here in this case. Here a sole arbitrator was already appointed who was the M.D. and the proceedings began wherein the parties participated and acquiesced. Later, one of them petitions the High Court for the appointment of an impartial arbitrator according to "section 11(6) of the Act".

The Apex Court ruled that the High Court could not appoint a sole arbitrator under "section 11(6)" because there was no presumption of partiality or lack of neutrality on the side of the sole arbitrator.

"Rashid Raza v Sadaf Akhtar (2019) 8 SCC 710 (Ind.)".

The two Judges Bench here relied on *Ayyasamy* and scrutinized facts on the following "two fold test:

i) Does the plea permeate the whole contract, including the arbitration clause, rendering it null and void?

ii) Do the claims of fraud involve the private affairs of the parties, with no bearing on the public domain?

It was held that simple allegations of fraud will not vitiate arbitration agreement".

"Reckitt Benckiser (India) Pvt. Ltd. v Reynders Label Printing India Pvt. Ltd. & Another (2019) 7 SCC 62 (Ind.)".

In this case, the issue included an arbitrator's power to hold a non-signatory to an agreement accountable. Both the signature and the non-signatory are members of a group of businesses, which raises the question of whether the non-signatory is subject to the arbitration agreement. However, it was decided that non-signatory cannot be committed to arbitration since the burden of proving that they intended to accede to that agreement was not met.

"Renusagar Power Co. Ltd v General Electric Co. (1984) 4 SCC 1156 (Ind.)".

The mandatory reference and staying of legal proceedings was the issue before the court in the present case. It was decided that, if all conditions in "section 8" are satisfied there has to be mandatory staying of legal proceedings. Also the non obstante clause in section 8 gives it an overriding effect over the other provisions of the Act and CPC.

"Reva Electric Car Co. Pvt. Ltd. v Green Mobil (2012) 2 SCC 93 (Ind.)".

The Apex Court took into account this case's interpretation of "section 16" of the Act, which clarifies the kompetenz-kompetenz concept. According to the ruling, the arbitration clause must be seen as a distinct contract when evaluating any challenges to its existence or legality. The separability theory with relation to the arbitration provision is this..

"Ruby Chemicals v Charabot Group (2018) 17 SCC 232 (Ind.)".

When the provision stated that only arbitration conducted in accordance with particular norms is permitted, the question in this case concerned the application of judicial appointment. It is sought to submit to arbitration under "section 8 of the Act" in a civil dispute between parties who have an arbitration agreement. Then the party went to the ICC in Paris, but the case was dismissed because the responder failed to cover the expenses. Even so, the respondent consented to arbitration outside of the ICC Rules. Therefore, the Apex Court dismissed the authorised application under "section 11(6)" before the High Court.

"Russel v Russel (1880) LR 14 Ch D 471 (UK) (Eng.)".

The following principles laid down in this case were quoted in Ayyasamy case:

a) On allegation of fraud, arbitration could be resisted if person charged with fraud wanted public enquiry; and

b) Regardless of who was rejecting it, there should be a prima facie case of fraud.

"S.P.Singla Constructions (P) Ltd v State of H.P. (2019) 2 SCC 488 (Ind.)".

In this case, the issue was whether an appointment by designation would override court appointment of arbitrator. Here appointment was done by designation as permitted by agreement and later appointment under "section 11(6)" was sought invoking the agreement for the second time. The present application was not allowed and the earlier appointment by designation was held valid by court.

"Sakthi Finance Ltd. v Shanavas (2019) 1 KLT SN 15 (Ind.)".

A major issue where District Courts interfere with arbitral orders coming for enforcement was in question in this case. While enforcing an interim order of tribunal, the district court intervened and this was set aside by Kerala High Court by holding that such an enquiry was beyond the extent of proceedings under "section 17(2) of the Act".

"Samir Narain Bhojwani v Aurora Properties and Investments (2018) 17 SCC 203 (Ind.)".

In a suit before High Court both reference under "section 8" and appointment under "section 11 of the Act" were sought which were rejected as there was no reference to the previous agreement with arbitration clause. Then arbitration was initiated otherwise and interim relief under "section 17" granted by arbitrator was confirmed by both High Court and Apex court in SLP observing that this will not affect final order. In the original suit the Single Judge relied on interim order by arbitrator as interim award and mandatory interim order was given and this was confirmed by High court Single Judge and Division Bench. But the Apex Court allowed appeal and set aside both High Courts' orders and revived the ad-interim order given by High Court in original suit. A mandatory injunction is only to restore status quo and not to establish new set of things different from state of things at the time of suit. Principle of moulding of relief is given only at the time of final relief and not at interlocutory stage. Both moulding of relief and mandatory relief at interlocutory stage are different.

"Sanjiv Prakash v Seema Kukreja (2021) 9 SCC 732 (Ind.)".

The court's constrained authority at the referral stage after 2015 was questioned in this case. Courts simply do a preliminary investigation and an arbitrator conducts a thorough investigation. Only in matters that are time-barred, over, or in which there is no longer a dispute will the court step in. It was found that the court cannot resolve a disagreement over a novation of an agreement with an arbitration provision at the referral stage since doing so would need a mini trial or a thorough analysis of the law and facts. Due to the fact that the subject falls

under the jurisdiction of the arbitrator, the matter had to be submitted by the court to arbitration. It was decided that the Single Judge's ruling that "sections 16 and 11(6A)" do not apply was in error.

"SBP & Co. v Patel Engineering Ltd. (2005) 8 SCC 618 (Ind.)".

The clock was turned back in this case by which the courts can take up a full and final review of all preliminary issues regarding appointment of arbitrator, as the above power is only a judicial one. The decision of courts are final and there is no review except appeal in Apex Court. "Section 16" was restricted allowing arbitrators to rule on their own jurisdiction only when arbitrator was appointed without court intervention. So all jurisdictional issues decided by courts under "Sections 8 and 11" were binding on the tribunal irrespective of "Section 16". This case gave the courts a free pass to intervene at the initial stage of arbitration proceeding itself. Thus for a decade the course of Indian arbitration was seen as an interventionist jurisdiction.

"Secunderabad Cantonment Board v M/S Ramachandraiah and Sons (2021) 5 SCC 705 (Ind.)".

Here the issue before the Apex Court was that whether limitation is an admissibility before the court under "Section 11 of the Act". It was held that court appoint under "section 11 of the Act" when claims are ex facie time barred. Post 2015 amendment courts' power is narrow under "section 11(6A)" and can only see whether there exists an agreement, at least a clause providing for arbitration.

"Secure Industries Ltd v Godrej and Boyce Mfg C. Ltd AIR 2004 SC 1766 (Ind.)".

The Apex Court here discussed about the extent of the non obstante clause under "Section 5 of the Arbitration Act". It was held that the extent of judicial intervention in arbitration is limited by the non obstante clause of "section 5 of the Act" and the courts could intervene only in matters expressly provided in the Act. The validity of proceedings could be decided only by the arbitrator.

"SEPCO Electric Power Construction Corporation v Power Mech Projects Ltd (2021) 10 SCC 792 (Ind.)".

The matter related to an interim relief relating to an irrevocable bank guarantee. Here as per court direction appellant furnished an irrevocable bank guarantee from ICBC, though court wanted it from a scheduled Indian Bank it was typed in order as Scheduled bank in India. The Article 136 petition was dismissed by Apex Court as not needed and the court modified the direction and asked to substitute. As the matter was related to an interim order of the court and as there was no credibility issue with respect to ICBC, it was referred to a larger bench.

"Shailesh Dhairyawan v Mohan Balakrishna Lulla (2016) 3 SCC 619 (Ind.)".

The issue of appointment of a substitute arbitrator in case of resignation of named arbitrator appointed as per consent terms by court was in question before Apex Court based on the legality of the legality of arbitration clause. Here in a suit in High Court, the parties entered into consent terms and the suit was disposed of as per its terms and the remaining disputes were referred to a named arbitrator. When he resigned, one party applied under "section 11" for appointment of a substitute arbitrator. Appointment can be as per the agreement or in absence of agreement based on consent of parties. Here though a procedure was not prescribed for substitute appointment, arbitrator was appointed under "section 15(2) of the Act" and which was upheld by Apex Court and appeal dismissed.

"Shin-Etsu Chemical Co. Limited v Aksh Optifibre and another (2005) 7 SCC 234 (Ind.)".

In this case, the court under a reference under "Section 45" gave conflicting opinions, but Srikrishna J.'s majority view is that a court in referring a dispute to arbitration has to be prima facie satisfied that there is an arbitration agreement that is not null and void, inoperative, or incapable of being performed; the tribunal or court will decide the rest after the arbitration award has been made. Thus, the dispute centred on the international commercial arbitration reference.

"Shree Ram Mills Ltd. v Utility Premises (P) Ltd.(2007) 4 SCC 599 (Ind.)".

The present case discuss the power of court that is appointing an arbitrator and held that the said power is a judicial one. This case reiterated the power of courts to decide on the existence of arbitration agreement. So based on "*SBP" case* the court's power was widened.

"Shreeje Traco (P) Limited v Paperline International (2002) 9 SCC 79 (Ind.)".

This case is about court appointing arbitrator in a foreign seated arbitration where there is an exclusive jurisdiction clause for arbitration. Here the assistance of the court was sought under "section 11(4) of the 1996 Act" for appointment of arbitrator in a foreign seated arbitration and the petition was held not maintainable as the arbitration clause contemplated arbitration in New York. Exclusive jurisdiction clause in arbitration always prevails over the general law of arbitration.

"SMS Tea Estates v Chandmari Tea Company Pvt. Ltd. (2011) 14 SCC 66 (Ind.)".

It was decided by the Apex Court that stamping was a technical issue which can be resolved by arbitrator. This position continued even after "section 11(6A)" when it was reiterated in "*Garware"* case. The question whether existence includes validity including technical defects needs to be clarified by a larger Bench as even the 246th Law Commission Report has not dealt with it while inserting "section 11(6A)".

"South Delhi Municipal Corporation v SMS AAMW Tollways (P) Ltd (2019) 11 SCC 776 (Ind.)".

Here the issue related to the nature of arbitration agreement in an inhouse mechanism. An arbitration agreement was defined to be one clearly referring dispute or difference to arbitration either expressly or impliedly. Here agreement providing for departmental appeal and enquiry was held to be not an arbitration agreement as the competent officer and commissioner had supervisory control over work and administrative control over it to prevent

disputes. So there was no arbitrator appointment under "section 11(6) of the Act".

"State of Bihar v Brahmaputra Infrastructure Ltd (2018) 17 SCC 444 (Ind.)".

If there is a State Act for arbitration, then the question would be whether the "1996 Act" would be excluded by the State Act. The State was in appeal and in the above issue it was held that State Act is in addition to Central Act and State Act would apply if no agreement referring to the "1996 Act" is there. Here agreement with arbitration clause by parties referred to the "1996 Act" was there and High Court had issued order under "section 11 of the 1996 Arbitration Act". Thus Apex Court retained the High Court order, dismissed appeal and directed State to move High Court for change of arbitrator.

"State of Gujarat v Amber Builders (2020) 2 SCC 540 (Ind.)".

The court here applied "sections 17 and 9(3)" of Part I to statutory arbitration with respect to interim reliefs. Party approached High Court instead of tribunal for interim reliefs and it was granted. This was set aside by Apex Court directing the party to approach tribunal for interim reliefs. It was held that "section 17" is not against any statute and once tribunal is formed interim relief is given by tribunal and party can approach court only if remedy under "section 17" is not efficacious.

"State of West Bengal and Ors. v Associated Contractors (2015) 1 SCC 32 (Ind.)".

This case differentiates the power of court under "section 11 of the Act" from the power of courts otherwise. It was held that the power under "section 11 of the Act" is not like that of courts generally and those decisions have no precedential value as that of courts in other cases. This is a power to appoint arbitrators and hence is a supervisory power over arbitration.

"Subhash Chander Chachra v Ashwani Kumar Chachra (2007) 1 Arb LR 288 (Delhi) (Ind.)".

Here the scope of power of court in "Section 37 (2)" appeals was in question. In appeals against interim orders of tribunals under "section 37(2) of the Act", no standard of review is provided and courts can either apply grounds for setting aside or as appeals can assess the legality on merits. In this case it was held that court's power to intervene in tribunal's interim order is limited.

"Sukanya Holdings (P)Ltd v Jayesh H. Pandya (2003) 5 SCC 531 (Ind.)".

In this case, claims against third parties who were not parties to the arbitration agreement were the subject of the dispute. The court determined that the claims could not be divided because doing so would result in conflicting decisions by various forums, and the matter was not referred to arbitration. This is again a situation where the mandatory obligation under Section 8 has been exempted.

"Sundaram Finance Ltd. v P. Sakthivel (2018) SCC Online Mad. 3080 (Ind.)".

In this case, the Madras High Court reminded all district courts that any interim orders made by arbitral tribunals must be treated as court orders for purposes of the CPC and must be enforced as such. No judicial injunction is required in this case to enforce the tribunal's interim order since the court is acting in a ministerial capacity. Court in such cases cannot sit in appeal for such orders and under "section 37(2)(b)" interim orders are otherwise appealable.

"Suresh Shah v Hipad Technology India Private Limited (2021) 1 SCC 529 (Ind.)".

Here in the Apex Court, a petition to appoint arbitrator to solve dispute relating to a sub-lease deed under the transfer of Property Act was allowed and the dispute was held arbitrable. This remedy is not possible if the tenant has special statutory protection under a special Act, but T.P. Act provides equitable jurisdiction and not statutory protection.

"Swiss Timing Ltd. v Organizing Committee, Commonwealth Games (2014) 6 SCC 677 (Ind.)".

The present case was on arbitrability of fraud and was held that dispute was arbitrable even where the alleged contract is vitiated by fraud. The Apex Court held that decision in Radhakrishnan's case is per incuriam and is not a fair rule. The effect of parallel criminal proceedings in a matter for reference to arbitration was discussed in the present case. The standard of proof is different in civil and criminal proceedings. So it was held that merely because criminal proceedings were instituted in the same subject matter will not make the dispute non-arbitrable.

"Tata Consultancy Services Ltd v Resolution Professional, Vishal Ghisulal Jain, SK Wheels (P) Ltd (2022) 2 SCC 583 (Ind.)".

The agreement between parties was terminated by one and this was stayed by NCLT and confirmed by NCLAT as the terms were not complied with. But the Apex Court annuled the NCLAT order and opined that NCLT is having residuary power under the Insolvency and Bankruptcy Code only for insolvency matters and not to stay termination of contract on other grounds. Thus this decision, though not on arbitration emphasizes the point that all private and contractual matters between parties can be arbitrable as other civil disputes and the Insolvency and Bankruptcy Code will not override the same.

"The Oriental Insurance Co. Ltd. v Dicitex Furnishing Ltd. (2020) 4 SCC 621 (Ind.)".

According to the Apex Court, a court that must determine whether an arbitrable issue exists, must be initially persuaded of the plausibility or veracity of the coercive claim; because the claim must be articulated and established in the substantive case, it cannot be explicit about its form. If the court takes a different stance and carefully considers the plea, assessing its sincerity or reasonableness, there is a risk that it will deny the applicant a forum entirely, because rejection of the application would make the finding final, denying the applicant's right to even approach a civil forum.

"Today Homes and Infrastructure Pvt. Ltd. v Ludhiana Improvement Trust and Anr. (2013) 3 CTC 559 (Ind.)".

The court reiterated the separability theory of the arbitration provision in this instance. It was decided that the arbitration provision is lawful and enforceable as per "section 16 of the Act", even if the arbitrator determines that the contract is invalid. This is so because the provision exists apart from the main contract.

"TRF Ltd v Energo Engineering Projects Ltd (2017) 8 SCC 377 (Ind.)".

Here the Apex Court invalidated a part of the arbitration clause on the ground of ineligibility of an arbitrator and struck down that part and remanded the matter back to the High Court for arbitrator appointment. It was opined that once the arbitrator is not eligible under the law, he cannot nominate another arbitrator. This unusual exercise of power under "Section 11" might again result in widening of power under "Section 11". The expansion of power is the job of the legislature.

"Umesh Goel v Himachal Pradesh Co-operative Group Housing Society Ltd (2016) 11 SCC 313 (Ind.)".

Another aspect regarding the nature of arbitral award in an unregistered partnership dispute as to whether it is a civil proceeding to include within “other proceedings” in "section 69(3) of Partnership Act" was discussed in this case. It was held that under "sections 35 and 36 of the Act", arbitration is not a civil proceeding to apply "section 69(3) of Partnership Act" and under section 36 arbitral award is treated as a court decree only for execution. Thus the upholding of arbitral award by Single Judge of High Court and interim relief to enforce the award were restored, thereby court giving a pro-arbitration approach.

"Union of India v Parmar Construction Co. (2019) 15 SCC 682 (Ind.)".

One issue settled by the Apex Court was that the 2015 amendment is not retrospective in operation and the arbitrator appointment by Chief Justice/Designate was appealed and the appeal was allowed. Another issue with respect to appointment under "section 11(6)" was that it had not resorted to the

procedure in the agreement. When the manner of appointment is in the agreement, court has to follow it. There can be a fresh appointment under "section 11(6)" by the court only after giving cogent reasons like independence or impartiality of appointed one is in doubt or when appointed does not function. Then another issue was whether furnishing of no claim certificate and receipt of payment of final bills imply discharge of contract or cessation of arbitrable dispute under economic duress or upper hand of employer. It was held that it is not an absolute rule and each case has to be decided on its own facts and circumstances and in the present case there was no discharge and the dispute was arbitrable.

"Union of India v Pradeep Vinod Construction Co (2020) 2 SCC 464 (Ind.)."

This case was about the applicability of appointment as per agreement over appointment by court. Here the agreement provided named arbitrator, but the High Court appointed as per "section 11(6) of the Act". The issue whether the dispute between railway and contractor is arbitrable was also raised. The Apex Court invalidated the appointment by High Court and directed to appoint as per the agreement as only in exceptional circumstances the parties could depart from the agreement.

"United India Insurance Co. Ltd v Antique Art Exports (P) Ltd. (2019) 5 SCC 362 (Ind.)".

In the present case, appointment under "section 11(6)" was sought in the absence of arbitrable dispute. Here there was full and final settlement between parties without any protest and it was a voluntary acceptance. Later in High Court fresh appointment was sought saying that the discharge was under coercion or undue influence and that power of appointment was judicial having some judicial intervention. But as the discharge was voluntary, it was held that there was no arbitrable dispute and hence no appointment needed under section 11(6).

"United Insurance Company Ltd. v Hyundai Engineering and Construction Company Ltd. (2018) SCC Online SC 1045 (Ind.)".

This case overruled the decision in "*Duro Felguera"* by holding that the views in that case regarding power of court under "section 11(6A)" was only general and not specific about the issue. The arbitration provision stated that no issue may be arbitrated if the corporation challenged or refused to accept culpability. This case was distinguishable from "*Duro Felguera"* by the fact that the firm had raised a challenge.

"Uttarakhand Purv Sainik Kalyan Nigam Limited v Northern Coal Field Limited (2020) 2 SCC 455 (Ind.)".

The Apex Court held that the issue of limitation would be decided by arbitrator as it is a jurisdictional issue and not by High Court at pre-reference stage, relying on the competence-competence principle in "section 16 of the Act" and the legislative intent to restrict judicial intervention at pre-reference stage under "sections 8 and 11 of the Act". All questions, including jurisdictional ones, will be determined by the arbitrator once the arbitration agreement is not in question because the foundation of the arbitration system is party autonomy and minimal court intrusion in the arbitral procedure. Only the existence of the agreement is examined by the court under "section 11(6A)", and all preliminary or threshold problems are decided by the arbitrator in accordance with "section 16 of the Act". In order to prevent the arbitral procedure from being derailed at the threshold when a party to the dispute raises a preliminary objection, this was meant to limit court involvement at the pre-reference stage.

"Venture Global Engineering v Satyam Computer Services Ltd & Another (2008) 4 SCC 190 (Ind.)".

This case included an arbitral decision from an arbitration with a foreign venue. In this case, the Supreme Court interpreted the Bhatia ruling and decided that a court might annul an arbitral award made in London. A foreign-seated arbitral ruling can therefore be overturned in India.

"Vidya Drolia & Others v Durga Trading Corporation (2019) 20 SCC 406 (Ind.)".

Here the court referring to "section 11(6A)". "section 16" and "246th law Commission Report" and "*Duro Felguera"* observed that existence and validity of agreement are both different and referred to a larger bench to decide whether existence includes validity of agreement and arbitrability of dispute. The tenancy dispute was held arbitrable.

"Vidya Drolia v Durga Trading Corporation (2021) 2 SCC 1 (Ind.)".

The Apex Court's ruling on the arbitrability of subject matter was a significant one. "Sections 8 and 11 of the Act" were examined, and it was determined that the first step in reviewing a case in court is to clear out any arbitration agreements or conflicts that are "manifestly prima facie non-existent and unlawful." So no reference if there is no valid agreement or there is no arbitrable subject matter. Here the Apex court attempted to streamline the test for arbitrability in India and expounded a " four-fold test to decide the non arbitrability of dispute in India:

(i) where the cause of action and subject matter of the dispute are proceedings in rem that do not concern subordinate rights in personam arising from rights in rem

(ii) where the cause of action and subject matter of the dispute are actions in rem that do not relate to subordinate rights in personam arising from rights in rem;

(iii) when the cause of action and subject matter of the dispute concern the State's fundamental sovereign and public interest functions; and

(iv) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s)".

The Apex Court of India specifically recognised that subordinate rights *in personam* arising from acts *in rem* are arbitrable, paving the way for private adjudication of statutory claims in India. By using this standard, the Apex Court

overturned "Himangni Enterprises v. Kamaljeet Singh Ahluwalia" and determined that conflicts between landlords and tenants covered by the Transfer of Property Act are arbitrable in India. Therefore, the arbitrability of any dispute in India will depend upon the non-satisfaction of the aforementioned “four-fold test”.

"Vijay Sharma v Vivek Makhija (Ind.). http://indiankanoon.org>doc".

A party under "section 9 of the act" shall not be refused relief just because an objection has been brought over the insufficiency of stamping of the agreement, the Bombay High Court said in this instance, upholding the ruling in "A. Ayyasamy's" case. The parameters of the parties' agreement reflect the business understanding of the arbitral procedure.

"Vijay Viswanath Talwar v Marsheq Bank (2004) Arb LR 399 (Del.) (Ind.)".

Here the Delhi High Court was faced with issue of bifurcation of disputes with respect to reference to arbitration. Sukanya Holdings case was relied here and the matter was not referred to arbitration as there were multiple disputes some of which were not arbitrable and there was no provision for splitting the disputes and "section 5" would not be attracted.

"Vinod Bhaiyalal Jain v Wadhwani Parmeshwari Cold Storage (P) Ltd (2020) 15 SCC 726 (Ind.)".

In this case the nature of document in which the arbitration clause was printed was in question. The arbitration clause was contested since it was placed as a requirement overleaf on a receipt. They were not satisfied with the named arbitrator in the clause and filed "section 11" application for appointment. It was held that they were estopped from raising a contrary intention at this stage.

"WAPCOS Ltd v Salma Dam Joint Venture (2020) 3 SCC 169 (Ind.)".

The issue of navation was raised before the Apex Court. Here it rejected "section 11(6)" application for appointment as there was lack of arbitration agreement. The old agreement was replaced by a new one that lowered the prices, stated

that no claims would be brought in the future, and prohibited using arbitration to address disputes. So all claims under the earlier agreement were given up.

"Wellington Associates Ltd v Kirit Mehta AIR 2000 SC1379 (Ind.)".

In this ruling, the court stated that by defining the scope of judicial involvement in arbitration under "Section 5", the arbitral process is provided with clarity and the parties are guaranteed swift and affordable justice. The Apex Court ruled that the court could address the issue since "Section 16" did not state that only the tribunal may consider such matters when it was raised in an application under "Section 11" for the appointment of an arbitrator. So this decision deviates from previous cases limiting the court's power.

"World Sport Group (Mauritius) Ltd. v MSM Satellite (Singapore) Pvt. Ltd (2014) 11 SCC 639 (Ind.)".

This case is related to television rights for viewing and the presence of BCCI made it a fit case for open public trial in court. The High Court of Bombay had observed on arbitrability of fraud and in appeal Apex Court has held that fraud is not relevant for "section 45 of the said Act". There was public involvement in the game and this indirect public element prompted the court to grant stay on arbitration.

"Yenepoya Minerals and Granites Ltd. v Maharashtra Apex Corporation (2004) 2 Arb LR 18 (Kar.) (Ind.)".

This case is about the forum before which the party could claim interim relief during arbitral proceedings. When an arbitration clause is invoked and the matter is referred to arbitration by the court under "section 8 of the Act" and during proceedings "section 9" application for interim measures is filed, it has been held that the same remedy available before the arbitrator under "section 17 of the Act" has to be explored and if it is not possible there only the relief should be granted by court.

"Zenith Drugs & Allied Agencies v M/S Nicholas Piramal India Ltd (2020) 17 SCC 419 (Ind.)".

Fraud was an issue in this case and the question was whether arbitration clause survives subsequent compromise/settlement by parties which happened after the matter has been referred to arbitration relying on the arbitration clause. Here it was held that parties have settled their differences and compromised the matter by which in subsequent dispute arbitration clause in prior agreement cannot be invoked. The compromise decree has no arbitration clause, but the agency agreement had such a clause. The declaration suit in District Court was compromised and the reference application was filed later in a money suit in District Court which was rejected as earlier suit was compromised. In an appeal, the High Court noted that the merger had already occurred before the title dispute, that the opposing party had acknowledged the existence of the arbitration clause, and that, in accordance with section 16 of the Act, the arbitrator may determine whether the clause existed. The High Court ruling was overturned by the Apex Court, which also reinstated the monetary claim in the trial court and accepted the appeal. Additionally, there was a claim of fraud in the compromise decree, and only the court could determine whether the contract's arbitration clause was genuine. The question was whether the money suit was subject to agency agreements that required arbitration or could be decided by trial. Other claims were not protected by the agency agreement, even though some of them were connected to it. Therefore, all of these issues, as well as the compromise decree's fraud, had to be decided by the trial court. The Apex Court ruled that the arbitration clause terminates with the termination of the original agreement and that it would still be in effect if the original agreement had merely been terminated with respect to future performance. This is an approach taken by the Apex court against arbitration.

"Zostel Hospitality (P) Ltd v Oravel Stays (P) Ltd. (2021) 9 SCC 765 (Ind.)".

Here a "section 11(6)" application for appointment of sole arbitrator was filed on the premise that disputes arose on the arbitration agreement in the term sheet. The objection was that disputes were under the non-disclosure agreement and were not arbitrable as it did not have an arbitration clause. The petition was allowed and held that the party can raise the arbitrability issue before the arbitrator.

CHAPTER II
LEGAL FRAMEWORK OF JUDICIAL INTERVENTION IN ARBITRAL PROCESS

2.1 INTRODUCTION

The history of Indian arbitration law has been characterised by consistent attempts to lessen judicial involvement in the arbitration process, similar to other national legal systems. The 1996 Act was based on the widely accepted "UNCITRAL Model Law" on International Commercial Arbitration. An alternative to court involvement is party autonomy, which is supported under the Act. It is clear that one of the fundamental ideas of the "1996 Act" is the limitation of court involvement, even if "Section 5 of the Act" begins with a non-obstante language that is absent from the UNCITRAL Model Law "(*Bhatia International v Bulk Trading S.A.* 2002)" (*Union of India v Popular Construction Company* 2001). But in a number of judicial decisions there has been uncertainty and confusion about the law of arbitration. The Act was amended in 2015 to rectify the problems created by the unnecessary and excessive judicial interference to the arbitral process defeating the main object of the legislation. This chapter is intended to discuss the background of the amendment and the legal frame work with respect to judicial intervention in arbitral process.

2.2 JUDICIAL INTERVENTION IN FOREIGN ARBITRATIONS

Depending on the location of the arbitration, the 1996 Act offers two separate dispute resolution systems. The rules for domestic arbitrations and those having foreign components but Indian seats are provided in Part I. In accordance with this, Indian Courts may issue temporary orders, choose arbitrators, and consider complaints against judgements. The subject of Part II,

which limits judicial action, is the recognition and enforcement of foreign awards. Therefore, it was generally accepted that Indian courts could not intervene in arbitrations with foreign seats. But Apex Court in "*(Bhatia International v Bulk Trading S.A.* 2002)" proposed that Indian courts are empowered under Part I even in foreign seated arbitrations. Thus, Indian courts have set aside arbitral awards in foreign-seated arbitrations and have suggested that they have power to appoint arbitrators in such arbitrations happening outside India.

In "*(Venture Global Engineering v Satyam Computer Services Ltd & Another* 2008)" the Apex Court in India interpreted the "(*Bhatia International v Bulk Trading S.A.* 2002)" decision and held that the Court can set aside an arbitral award rendered in London. Again in *"(M/S. Indtel Technical Services Private limited v W.S. Atkins Rail Limited* 2008)" the Apex Court held that it can appoint arbitrators in case of deadlock between the parties even if it is a foreign seated arbitration. But in (*Shreeje Traco (P) Limited v Paperline International* 2002) the assistance of court was sought under "Section 11(4) of the 1996 Act" for the appointment of arbitrator in a foreign seated arbitration and the petition was held not maintainable as the arbitration clause contemplated arbitration in New York. It was held that Section 11 under Part I is not applicable to foreign seated arbitrations.

Since majority decisions were favoring excessive judicial intervention, parties in India related international commercial transactions started excluding Part I application in foreign seated arbitrations. The "Section 2(2) of Arbitration and Conciliation (Amendment) Act 2015", No.3, "Acts of Parliament, 2016 (India)" has expressly excluded Part I from foreign seated arbitrations except Sections 9 and 27 which would be useful to parties. Section 9 is for interim reliefs against parties or assets in India. Section 27 is for seeking court assistance in obtaining evidence against a reluctant counter-party.

2.3 NON OBSTANTE CLAUSE

"Section 5 of the Arbitration and Conciliation Act, 1996" emphasises the concept relating to the scope of judicial involvement. No judicial authority shall intervene in subjects controlled by this part, despite anything stated in any other legislation now in effect, unless specifically stated in this part. This is comparable to UNCITRAL Model Law Article 5 in many ways. Recognizing the necessity of limiting and defining the function of the courts in arbitration is the fundamental tenet of "Section 5 of the 1996 Act". The preference for party autonomy over judicial involvement is in order to expedite and reduce the cost of arbitrating disputes where those issues are covered by an arbitration agreement "(*P. Anand Gajapathi Raju v PVG Raju* 2000)" is the object of this act.

In order to eliminate any possibility of intervention of courts, section 5 begins with a non obstante clause "Notwithstanding anything contained in any other law". So judicial intervention is permissible in arbitral process only to the extent as permitted in Part I. This shows the legislative intention to minimize supportive role of courts so that judicial intervention is minimal. Thus by defining the extent of judicial intervention in arbitral proceedings, the aim is to give certainty to arbitral proceedings and ensure speedy and inexpensive justice to parties "*(Wellington Associates Ltd v Kirit Mehta* 2000)".

The words "Notwithstanding anything contained in any other law" signifies that even if any other law permits judicial intervention, there shall be intervention only if it is given in Part I of the Act. Only in the subject matter addressed by Part I of the Act is a ban on judicial involvement permissible. The phrase "no judicial authority" is broad and encompasses courts and any other judicial body authorised to intervene in arbitration under Part I of the Act. Again "shall intervene" denotes that it takes away the discretion normally available to a judicial authority.

Permitted court intervention can be seen from the words "except where so provided in this part". But in some cases, court intervention may be highly

beneficial. It can be termed court assistance rather than court intervention. The question here is to what extent should a court intervene in arbitration and the use of this discretionary power is a deciding factor as to the final outcome in disputes.

The intervention of the legislature is to ensure that the 1996 Act is a complete code for arbitration and there is no other judicial intervention. But in "*ITI Limited v Siemens Public Communications Network Limited* (2002)" the Apex Court held that a revision under Civil Procedure Code is possible after an appeal as the Act has not expressly excluded the Code. Thereafter Section19 of the 1996 Act as amended in 2015 provides that CPC and Evidence Act are not applicable to arbitration proceedings. Yet in another decision Apex Court in "*N. Radhakrishnan v Maestro Engineers* (2009)" has held that even though the matter comes within the arbitration clause, as there were allegations of fraud and significant misconduct, the disagreement could only be resolved by the court using specific evidence. So in these decisions the Supreme Court undermines parties' right to choose arbitration for dispute resolution and principle of kompetenz-kompetenz giving the absolute power to arbitrator.

In *"Anil Constructions v Vidarbha Irrigation Development Corporation and Another* (1999)" the proceedings before a sole arbitrator was restrained by the District Court under Section 9 and this was set aside by the High Court in a writ petition. The High court in accordance with "*M/S.Sundaran Finance Ltd v M/S. N.E.P.C.India Ltd* (1999)" held that the party could not approach the civil court under "Section 9" to restrain the arbitration.

Regarding the power of judicial authority under Section 5 the Supreme Court in "*Morgan Securities and Credit Pvt. Ltd v Modi Rubber Ltd* (2006*)"* observed that courts of limited jurisdiction like a statutory board come within the purview of "Judicial Authority". They have power to pass an interim order for preservation of property during pendency of proceedings but this incidental power cannot be exercised for disposal of assets at the stage of enquiry.

Again, in the aspect of jurisdiction the apex court in "*Secure Industries Ltd v Godrej and Boyce Mfg C. Ltd* (2004)" held that according to "Section 16 of the 1996 Act", the Tribunal, and not the court, may decide whether the procedures before the arbitral tribunal were lawful. If a lawsuit is filed on a matter covered by an arbitration agreement, the court must send it to arbitration. While the jurisdictional question is still being litigated, the arbitral tribunal may still make an award, and the court may not terminate the arbitral panel's proceedings. This is another situation where "Section 5" of the 1996 Act's non-obstante provision limits judicial action.

2.4 REFERENCE TO ARBITRATION

India has considered the UNICITRAL Model Law in its own law. Here a party can challenge the agreement in court before arbitration and the court can refuse reference or appointment of arbitrator. When one party raises doubt on validity of agreement, court gets confused as to decide the issue on its own or to refer it to tribunal to decide the same (Panjwani & Pathak, 2013). Sometimes the courts decide the issue themselves instead of referring it to arbitration. This reflects the inherent distrust in arbitration.

Whenever a case is filed in court on a matter within the scope of arbitration agreement, the court may refer it to arbitration. For domestic arbitration it is done under Section 8 and for foreign arbitration it is under Sections 45 and 54. In spite of court having power to decide, under a special statute conferring jurisdiction on arbitral tribunal to decide the dispute, the court would refer it to arbitration (*Sundaram Finance Ltd v T.Thankam* 2015). That is because general law yields to special law. Under "Section 8 of the Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India)" once all conditions are satisfied, the court is obliged to refer to arbitration. The conditions are the following;

a. Arbitration agreement;

b. One party to it sues the other in court;

c. Matter of suit and agreement is same; and

d. Other party moves to refer to arbitration before his first statement "*(Magma Leasing and Finance Ltd v Potluri Madhavilatha* 2009)".

But under Sections 45 and 54, when determining whether an agreement is enforceable, functional, and capable of performance, courts have considerable latitude. If agreement becomes null and void, inoperative or incapable of being performed, court can refuse to refer to arbitration. The "UNCITRAL Model Law" is not giving any standards to be employed by the court in considering the jurisdictional objection i.e., is it a preliminary enquiry or full review of the objection *(Sundaram Finance Ltd v T.Thankam* 2015).

Under Section 8 it is mandatory to refer to arbitration any dispute covered by arbitration agreement. In cases like "*P. Anand Gajapathi Raju v PVG Raju* (2000)" and "*Hindustan Petroleum Corporation v Pinkcity Midway Petroleums* (2003)" the Court found the language of Section 8 to be peremptory thus making it obligatory to enforce the parties' agreement by referring them to arbitration. In "*Hindustan Petroleum Corporation v Pinkcity Midway Petroleums* (2003)" in spite of an objection by one party as to the dispute not coming within the arbitration agreement, the court held that under Section 16 any objection as to applicability of clause to the case has to be determined by the arbitrator alone. Once both parties have acknowledged the existence of the agreement, the court must order the parties to arbitrate. The issue is whether a court's determination that the agreement exists and is applicable is prima-facie or conclusive.

So it seems sense that the courts cannot arbitrate disputes on their own volition. The parties may submit these matters before the tribunal under "Section 16 of the Act", but the court cannot review whether the agreement applies to the dispute between the parties before reference. However, in accordance with the legislative interpretation, the court may determine, prima facie, that the subject of the dispute is a contract before submitting it to arbitration "*(Hindustan Petroleum Corporation v Pinkcity Midway Petroleums* 2003)".

A court may refer to arbitration under "Section 45 of Part II of the Act" unless the agreement is invalid, ineffective, and incapable of being carried out. The question here is whether the court must merely conduct a preliminary examination and leave the remainder to the tribunal or the court at the post-award stage. In *"Shin-Etsu Chemical Co. Limited v Aksh Optifibre and another* (2005)" the majority view led by Srikrishna J opined that "Section 45" does not mandate the court to make a final determination of the issue but only a prima facie view which is not binding on the tribunal or court enforcing the award. They gave many reasons for this decision. One was that a finality can be reached only based on a foreign law chosen by parties and proving this would result in delay, complexity and expense. Another was based on competence-competence principle by which such issues were to be dealt with by tribunal first and then to be decided by court at a later stage, if needed.

A final finding under Section 45 requires a full-fledged trial causing delay even after commencement of arbitration. Accordingly, it was decided that the court only needed to make a preliminary determination under Section 45, leaving the remainder up to the tribunal or court at the post-award stage "*(Shin-Etsu Chemical Co. Limited v Aksh Optifibre and another* 2005)". If the court renders a final determination under Section 45, then Section 48, which gives the court the authority to deny execution of a foreign award based on an agreement's illegality, has no bearing at all. Therefore, the court decided that, in interpreting a legislation, it must give careful consideration to all of its language and that each section of an Act has a specific function "(*J.K. Cotton Mills Ltd. v State of U.P.* 1960)". If on a prima facie finding, the court is rejecting reference, then also the court will have to give an opportunity to parties for proving and determining the case in a trial "*(Shin-Etsu Chemical Co. Limited v Aksh Optifibre and another* 2005)". This ruling preserves the tribunal's authority to determine its own jurisdiction and defers judicial oversight of that authority until after the award has been made. By doing so, delays at various levels are avoided, and the Model Law is fully implemented.

The mandatory obligation of court to refer under Section 8 has been diluted and matters were not referred in many situations. One such situation was when the court opined that arbitrator was not competent to decide or dispute was not arbitrable "*(Booz Allen & Hamilton Inc. v SBI Home Finance Ltd* 2011)" "*(Haryana Telecom Ltd v Sterlite Industries (India) Ltd* 1999)". When the subject matter of dispute included claims against third persons who have not signed the arbitration agreement, again the Apex Court opined that the claims could not be bifurcated as there would be conflicting judgments by different forums and so the matter was not referred "*(Sukanya Holdings (P)Ltd v Jayesh H. Pandya* 2003)". Another case was when the dispute covered by the agreement related to oppression, mismanagement and/or other matters coming under the then company Law Board now called National Company Law Tribunal held to be not arbitrable as it cannot grant proper reliefs "(*Rakesh Malhotra v Rajinder Kumar Malhotra* 2014) *(Vikram Bakshi v Mc Donalds India (P) Ltd.* 2014)".

The wording "unless satisfied that the agreement is null and void, inoperative, or incapable of being performed" that appears in the corresponding clause of provision 8 of the Model Law was not included in "Section 8" as it was established in the "1996 Act". As a result, determining the existence and legitimacy of the agreement would be difficult for the courts. This was supported by the Act's Section 5 restriction on judicial action. As per "Section 16 of the Act", the arbitrator alone might consider any objection. But the 2015 amendment has added the phrase "unless it finds that prima facie no valid arbitration agreement exists". Nevertheless, as there are no set standards, the courts are not clear with the extent of review i.e. prima-facie or full and final, that is to be done on an objection. Another thing is that, reference application under Section 8 would not stay the proceedings of an arbitrator. Despite a pending application, arbitral tribunal can commence or continue or can even pass an award.

The expression "Judicial Authority" has a wider meaning and includes consumer forums "*(Fair Air Engineers Pvt Ltd v N.K.Modi* 1996)", MRTP

Commission "*(Shri Balaji Traders v MMTC Ltd* 1999)", Company Law Board "*(Canara Bank v Nuclear Power Corporation of India Ltd* 1995*)"* etc. All such forums can refer the matter to arbitration when there is a pending case before them. A review of the full agreement is required to establish if a topic is covered under arbitration agreement. The jurisdiction of the judicial authority is not completely ousted even if the matter is covered by the clause. For a proper reference all procedural requirements under Section 8 have to be complied within a strict sense "*(Olympus Superstructures Pvt. Ltd v Meena Vijay Khaitan* 1999)". Before filing the first statement on the subject of the dispute, a reference application must be filed. Any interlocutory application or any reply to an interlocutory application may include the initial statement on the topic of the dispute. It must be a statement indicating the clear indication of a party to proceed with the court proceedings *(Jashu M. Patel v Shivdatta R.Josh* 2002).

Comparing reference to domestic and international arbitrations it can be concluded that the words used in Section 8 varies from those in Sections 45 and 54. The discretionary power vested in Sections 45 and 54 is intentionally and purposefully different. They start with a non obstante clause and the nullity and validity of the agreement is looked into before reference. As a result, it is believed that "Part II of the 1996 Act" represents an acceptance of the "UNCITRAL Model Law", but Part I contains changes tailored to the Indian context. 2015 amendment has permitted a prima-facie enquiry into the matter under Section 8. But as there are no clear standards, extent of enquiry is not easy to be concluded. Anyway, the role of courts is very important for the smooth functioning of arbitration proceedings.

2.5 APPOINTMENT OF ARBITRATORS

When choosing arbitrators under "Section 11 of the 1996 Act", the court may also intervene before arbitration. When the parties are unable to agree on a single arbitrator, when one party refuses to nominate an arbitrator, or when the appointed arbitrators fail to identify the third arbitrator, the court appoints an arbitrator. Various courts have interpreted this differently. The courts adopted a stringent stance in the late 1990s. In cases of domestic arbitrations, the Chief

Justices of the High Court or their designees were given this authority, as well as the Chief Justice of India or his designee in cases of international commercial arbitrations. This was done to guarantee that an arbitrator is chosen who is qualified, unbiased, and independent. It was determined that the Chief Justice's or his designee's authority to select arbitrators under Section 11 constituted an administrative rather than judicial power "*(Ador Samia (P) Ltd v Peekay Holdings Ltd.* 1999)" "(*M/S.Sundaran Finance Ltd v M/S. N.E.P.C.India Ltd* 1999)". The court limited its power to appointing an arbitrator without dealing any issues relating to the arbitration agreement.

A different view was taken in "*Wellington Associates Ltd v Kirit Mehta* (2000)" where a question regarding existence of arbitration clause was raised by one party in a petition for arbitrator appointment. This issue came under "Section 7(1)" defining arbitration agreement. The Apex Court held that when such a question was raised at the stage of appointment of arbitrator it could not be referred to arbitrator. Even though the power is administrative the issue on the existence of arbitration clause had to be decided. The court stated that even though Section 16 allowed the arbitrator to rule on its own jurisdiction, it was not said in Section 16 that no one else can determine such a question. Therefore, it did not take away the power of Chief justice or his designate to decide on the existence of arbitration agreement "*(Wellington Associates Ltd v Kirit Mehta* 2000)".

But in "*(Nimet Resources Inc. v Essar Steels Ltd* 2000)" when the existence of the agreement was contested in a request made under "Section 11 of the Act", the court expressed its opinion that the issue of the agreement's existence should be determined by the tribunal since it appeared that the parties had engaged in certain activities. According to the court, such "Section 11" disputes could only be handled if the Chief Justice or a designee was confident that no arbitration agreement existed at all. Additionally, the court ruled that any determination of an agreement's existence made at the time an arbitrator was appointed could not be final since Section 11's powers are administrative "*(Nimet Resources Inc. v Essar Steels Ltd* 2000)".

Therefore, the debate was whether the power of courts is administrative or judicial. If the power is judicial, courts can decide arbitrability of dispute, existence or validity of arbitration agreement and the like before appointing the arbitrator and these decisions would be binding on the tribunal.

Considering the legislative intent, the Apex Court in "*Konkan Railway Corpn. Ltd. v Mehul Construction Co. (Konkan-I)* (2000)" held that the Chief Justice or designate should appoint an arbitrator without wasting any time, leaving all other questions to be decided by the tribunal. This was reiterated by a larger bench of five judges in "*Konkan Railway Corporation Ltd. v Rani Construction (P) Ltd.(Konkan-II)* (2002)" by ruling that under "Section 11", the Chief Justice or his designee had to fill the vacancy caused by a party or the two arbitrators appointed and select an arbitrator. Court further held that "decision" is not meaning adjudicatory and so the powers of the court were limited "*(Konkan Railway Corporation Ltd. v Rani Construction (P) Ltd.(Konkan-II)* 2002)".

The power under Section 11 is only an administrative power and the court cannot decide on the arbitrability of dispute but has to appoint the arbitrator as soon as possible. So any dispute as to existence or validity of agreement is to be determined by the arbitrator alone "*(Konkan Railway Corporation Ltd. v Rani Construction (P) Ltd.(Konkan-II)* 2002*)".* Therefore, the judgment respected the principle of competence-competence, minimized court intervention and arbitrator appointment without delay (Nair, 2007). So in many cases the courts realized that an expansive interpretation of Section 11 was against the legislative intent of the act to resolve disputes expeditiously and limit the intervention of the court "*(Food Corporation of India v Indian Council of Arbitration* 2003*) (Hythro Power Corpn.Ltd. v Delhi Transco Ltd.* 2003)".

This position was again reversed by the full Bench decision in "*SBP & Co. v Patel Engineering Ltd.* (2005)", which held that courts can make a final judgment on jurisdictional issues regarding arbitrator appointment. The seven-judge Bench ruled that the Chief Justice must evaluate all preliminary questions, including his own authority to choose an arbitrator, whether a valid arbitration

agreement exists, and if the party requesting arbitration completed the agreement while exercising his power under Section 11. This authority granted by Section 11 was judicial rather than administrative. Therefore, the Apex Court's judgment would be final and could not be appealed, and there would be a right of appeal to the Apex Court from any order of the lower Courts "(*SBP & Co. v Patel Engineering Ltd.* 2005)". The court observed that under "Section 8 of the Act", in many earlier cases, *"(Sundaram Finance Ltd v T.Thankam* 2015)" once a judicial body determines the existence of an arbitration agreement, it is required to send the parties to arbitration. But under Section 11 the Chief Justice cannot examine such questions. The power was also held to be one which could not be delegated to an arbitral institution "*(SBP & Co. v Patel Engineering Ltd.* 2005)". "Section 16" was likewise limited by the court, allowing arbitrators to rule on their jurisdiction only when arbitrator was appointed without court intervention. Therefore, if jurisdictional issues were decided under sections 8 and 11, they were binding on the tribunal irrespective of "Section 16" "(*SBP & Co. v Patel Engineering Ltd.* 2005)". Thus by this judgment, courts could intervene at the beginning of arbitration.

Many cases later reiterated the power of the Chief Justice to adjudicate on whether he had power to decide the existence of arbitration agreement "*(Shree Ram Mills Ltd. v Utility Premises (P) Ltd.* 2007)" "*(DHV BV v Tahal Consulting Engineers Ltd.* 2007)". In addition, any decision on by court was held to be final and not prima facie "*(Indowind Energy Ltd. v Wescare (I) Ltd.* 2010)". In "*Chloro Control India (P) Ltd. v Severn Trent Water Purification Inc.* (2012*)"* Apex Court opined that court's decision on objections by party under Section 45 would be final and that the court would finally decide all preliminary issues in references under Section 45. The court accepted a segregation of preliminary issues which was done by the Apex Court in *"National Insurance Co. Ltd. v Boghara Polyfab (P) Ltd.* (2008)" on arbitrator appointment application. There the court segregated issues which must be decided by court, issues decided by courts or tribunal and issues which the courts must leave to the tribunal.

All these would go beyond the object of the Act to prevent abuse of arbitral process and effective disposal of matters with minimum supervision of courts as per "Section 5 of the Act". The finality given by the Apex Court can be misused by the parties to defeat the purpose of the Act "(*Sundaram Finance Ltd. v T.Thankam* 2015)". In a few situations, the Apex Court has ruled that the Chief Justice or his nominee should decide whether a claim is live only where there is no need for a full examination of evidence. If more evidence is required it shall be determined by arbitrator "(*Indian Oil Corporation Ltd. v SPS Engg.Ltd.* 2011)".

The *Konkan* decision established a process that was working which was overruled in *S.B.P. Company Case*. As Apex Court decisions are binding on all courts, legal interpretation by Apex Court has to be certain and continuous "*(Keshav Mills Co. Ltd. v CIT* 1965*)"*. This overruling would result in confusion and uncertainty as to the state of law. The amendment in 2015 has vested the power with the courts instead of Chief Justices and has not clarified as to the nature of power under Section 11. It has said that courts should only examine existence of agreement, that the delegation of power to an institution is not a delegation of judicial power and also orders of courts or authority are non-appealable. Therefore, we can assure that the power under Section 11 is an administrative one. But in later cases the courts are again confused with the power which can be seen in the chapter dealing with the post amendment cases. This can be avoided to an extent if the entire power is delegated to a chosen arbitral institution as in other jurisdictions.

2.6 INTERIM MEASURES

The current Act gives courts and tribunals the authority to appoint temporary safeguards. In line with "Section 9 of the Arbitration and Conciliation Act of 1996", a party may seek interim remedy before, during, or after an arbitration hearing, as well as at any time after the award has been rendered but before it is enforced. The 1996 Act's Section 9 and the "UNCITRAL Model Law's Section 9" are quite similar. The court has the same authority to make orders in this case as it does in other civil lawsuits. While the

application for temporary relief is underway, the court lacks the authority to impose orders delaying or suspending the arbitration procedures. If the parties initiate arbitration procedures and the arbitrators provide an award, the court will not intervene. Even before the start of the arbitration process, the application can be submitted to the court. "*(M/S.Sundaran Finance Ltd. v M/S. N.E.P.C.India Ltd.* 1999*)"*. However, the applicant must demonstrate to the court that there is a legitimate arbitration agreement in place and that they plan to submit the matter to tribunal. If there is no legal conclusion that the court's jurisdiction has been removed, either explicitly or implicitly, then the court has jurisdiction in this matter "*(Bhatia International v Bulk Trading S.A.* 2002)".

In order to guarantee that the judgement is upheld and to stop the damage of property, interim remedy must be granted after the arbitrator's mandate has expired. If the questions were the topic of a law suit instead of arbitration, the court that would have the authority to determine them would be the one that can award temporary measures of protection. In a case, an exclusive jurisdiction provision existed , thus the interim application filed in another court was denied "(*DLF Industries Ltd v Standard Chartered Bank* 1998)". Prior to granting the measures, the court considers elements such as need, imminence of harm, the need to avoid aggravation, the significance of maintaining the parties' positions, and the likelihood that the party requesting the measures and would give a final arbitral ruling. Granting or refusing a measure under Section 9 can mean finality of Section 9 application. But any order under Section 9 is an interim measure including a final order under Section 9 and is appealable under "Section 37" "*(Harikumar v Shriram Transport Finance Co. Ltd.* 2018)".

The Apex Court has affirmed "(*M/S.Sundaran Finance Ltd v M/S. N.E.P.C.India Ltd* 1999)" that civil courts can award interim measures before commencement of arbitration. The courts would issue orders with conditions by which the applicant has to take effective steps before commencing arbitration. In "*Firm Ashok Traders v Gurumukh Das Saluja and others* (2004)" the court asked the party how and when it intended to start arbitration procedures, and it may recall its own interim order if it wasn't started within a reasonable amount

of time after an order under “Section 9” is made. The 2015 modification to the Act stipulates that an interim order would immediately expire if a party granted relief under Section 9 does not take action to initiate arbitration proceedings within the allotted period.

Contrary to the “UNCITRAL Model Law”, Indian law does not empower the state courts to grant interim relief in foreign arbitration, as the analogous exceptions in Model Law have not been incorporated in our act. “Section 2(2) of 1996 Act” provides that part 1 of the act applies “where the place of arbitration is India.” Thus “Section 9” does not apply to foreign arbitrations and our courts refused applications under Section 9 for foreign seated arbitrations as only the legislature can extend the scope of this provision “*(Marriot International Inc. v Ansal Hotels Ltd.* 1999)”. However the Supreme Court took a different view in “*Bhatia International v Bulk Trading S.A.* (2002*)”* holding that part I will be applicable to all arbitrations, unless the parties have excluded all or any of its provisions. Here interim relief was granted under “Section 9” where the arbitration was seated in Paris even though this came under Part I of Act which was applicable only for arbitrations seated in India. Apex Court held that general provisions of Part I will be applicable unless parties expressly or impliedly exclude the applicability of the Act and then the laws, chosen by parties would prevail. The reasoning of the court was that otherwise parties would not get any interim relief even if assets and property are located in India even though the seat of arbitration is outside “(*Bhatia International v Bulk Trading S.A.* 2002)”.

This ruling violates legislative purpose, which makes it plain that Indian courts only have the authority to give relief if the arbitration's location is in India. There may be other effects of this. One is that, even when such authority is vested in a foreign arbitral institution, an Indian court would name arbitrators in foreign-seated arbitrations. Another difference is that in international arbitrations, an award may be set aside by “Section 34 of the Act” before being refused recognition and enforcement under “Section 48 of the Act”. But in “*Shreeje Traco (P) Limited v Paperline International* (2002)” the petition for

arbitrator appointment was denied by the court as arbitration clause contemplated proceedings in New York and Section 11 under Part I would only apply in Indian seated arbitrations. In "*Bharat Aluminium Co. v Kaiser Aluminium Technical Service, Inc.* (2012)", Supreme Court opined that Section 2(2) clearly recognized the territorial principle limiting the extent of "Part I of 1996 Act" to arbitrations having their place in India. As a result, "Section 9 of the Arbitration and Conciliation Act of 1996" does not apply to overseas arbitrations.

However, following the 2015 change, "Part I of the Act" will no longer apply in the event of foreign-seated arbitration, with the exception of "provisions 9, 27, and 37 of the Act", unless the arbitration agreement expressly states otherwise. The Apex Court in *"IMAX Corporation v E-City Entertainment Pvt. Ltd* (2017)" has affirmed that, under the pre-*BALCO* regime, an arbitral institution's selection of a foreign seat constitutes an exemption from "First Part of the Act". After the *BALCO* case, the High Court of Bombay in "*Katra Holdings v Corsair Investments LLC & Others* (2017)" and the High Court of Calcutta in "*Government of West Bengal v Chatterjee Petrochem* (2017)" have ruled that the Indian Arbitration Act does not apply to arbitration proceedings in which the parties agree to hold the arbitration in a foreign nation in accordance with their rules. These show that the courts have a pro-arbitration approach. For an interim order under "section 9 of the Act", the choice of seat of arbitration is important. As per the "UNCITRAL Model Law" when the dispute is decided as per the parties' chosen law, courts have only a supervisory role.

The 1996 Act makes no mention of the question of enforcing temporary protection orders made by tribunals. As a result, it is possible that the person against whom the order is made will not follow it. Enforcement in India can happen through our courts. Defining an award including interim award, we can interpret that the courts can enforce interim measures by tribunal under the 1996 Act. Delay, jurisdictional issues and possibility of courts substituting their reasons for that given by tribunal are some of the problems that can happen in

court. Indian law should either amend in the lines of UNCITRAL Model Law or should give ample powers to tribunals as in England to deal with the issues of non-compliance of interim orders (Redfern, 2004).

2.7 PRINCIPLE OF KOMPETENZ-KOMPETENZ WITHIN STATUTORY PROVISIONS

Any party to an arbitration agreement who wished to contest the existence or legality of the agreement was required to file an application with the court under "Section 33 of The Arbitration Act 1940, No.10, Acts of Parliament, 1940 Act". Arbitrator could determine its jurisdiction only if the power was expressly conferred upon him "(*Renusagar Power Co. Ltd v General Electric Co*. 1984)". The 1940 Act opposed arbitration as a form of alternative dispute resolution, and courts have rejected arbitration agreements. However, the "1996 Act" incorporates the *kompetenz-kompetenz* principles in "Section 16", which gives the arbitral tribunal the authority to rule on matters within its purview and is based on "Article 16 of the UNCITRAL Model Law".

Although Section 8 (in Indian seated arbitrations) and Section 45 (in foreign seated arbitrations) are mandatory clauses requiring the courts to deny the exercise of jurisdiction in favour of arbitration, arbitration agreements do not exclude state court actions. According to Section 16's *Kompetenz-Kompetenz* principle, when parties request arbitration, the tribunal decides on its authority, including any challenges to the existence or legality of the agreement. This doctrine was restricted in "*SBP & Co. v Patel Engineering Ltd.* (2005)" in which it was held that power of arbitrator appointment under Section 11 is a judicial one and the issue as to existence or validity of agreement has to be finally decided by court and not tribunal. Therefore, the effect is that the principle of *Kompetenz-Kompetenz* applies when parties appoint the tribunal. The courts in reference, appointment etc. make a full judicial review of the preliminary issues relating to arbitration agreement, claim etc. as in many other jurisdictions "*(SBP & Co. v Patel Engineering Ltd.* 2005)".

In "*Chloro Control India (P) Ltd. v Severn Trent Water Purification Inc.* (2012)" a case under Section 45 relating to international arbitration, the Apex Court required the parties to produce evidence to examine the form and requirements of Section 7. Usually evidence is taken in summary way by affidavits and oral evidence only if required. In cases of challenges on validity, courts look into the legal and factual grounds before invalidity of agreements. Here the court decided that the arbitrator cannot re-adjudicate the issue as to the existence and validity of agreement but is bound by the decision of the court "*(Chloro Control India (P) Ltd. v Severn Trent Water Purification Inc.* 2012)".

The scope of court's scrutiny is restricted in other cases. Regarding power under S. 11, the Apex Court in "*National Insurance Co. Ltd. v Boghara Polyfab (P) Ltd.* (2008)" distinguished three different issues. The court must first determine if a request to court has been made and whether an arbitration agreement is legitimate . The second question is whether there is a valid claim that is not time-barred and that the tribunal or the court can resolve. The third one requires the tribunal to provide a decision on the merits of the claim and whether it is subject to the arbitration agreement "(*National Insurance Co. Ltd. v Boghara Polyfab (P) Ltd.*2008)". Also in *"Indian Oil Corporation Ltd. v SPS Engg. Ltd.* (2011)" the Apex Court has held that the arbitrator should exclusively determine on the issue that the claim was barred by res judicata. Therefore, after discussing the above cases it is felt that even the Supreme Court, at times, feel that between the civil court and arbitral tribunal, only a prima facie enquiry is expected from courts and the finality has to be laid down by the tribunal.

2.8 SUMMARY

The 1996 Act based on the "UNCITRAL Model Law" is based on minimal judicial intervention. This legislative intent is expressed in some cases. But in majority decisions the courts exceed their limit and make final orders as to many issues which are to be decided by the arbitrator. To rectify the flaws in the Act regarding this aspect, the Act was amended in 2015 in the areas of reference, appointment, interim reliefs etc. In case of overseas arbitrations, the

amendment has excluded the application of Part I except for interim reliefs and court assistance for taking evidence.

Regarding arbitrator appointment the problem now is likely to get solved as the entire power can be delegated to a chosen arbitral institution after the 2019 amendment. But practically such graded institutions are not there in many places and courts appoint from their panel of arbitrators. To solve this we have to develop a culture of such institutionalization in arbitrator appointment.

When a non-obstante provision is included, courts must take into account the parties' rights to select arbitration as their method of dispute settlement and preserve the concept of competence-competence, which gives the arbitrator complete authority.

Following the 2015 amendment to Section 8, the only possible court reference to arbitration is a preliminary investigation into the existence and legitimacy of the arbitration agreement. After the 2019 revision to “section 45”, courts can only conduct a prima facie investigation to determine whether the arbitration agreement is invalid, ineffective, or unable to be carried out. As a result, there may be less of an issue with excessive interference.

In cases of interim reliefs, the main problem is with their enforcement, which is happening through courts. In sections 9 and 17 it has been said that interim orders are to be enforced as if they are actual court orders. There also should be changes by which the tribunals are empowered to deal with the issues of not complying with interim orders.

When parties designate the tribunal, the concept of *competence-competence* under “section 16” is followed, allowing the tribunal to make a final determination concerning its own jurisdiction, including any challenge to the agreement's existence or legitimacy. This should be followed even when the matters of reference, appointment etc. are before the courts as the courts should make only a prima facie enquiry on the preliminary issues and the finality is to be decided by the tribunal.

The impact of these can be correctly understood only when post amendment cases are discussed. The next area to be investigated is the judicial approach with regard to court intervention in the pre-arbitration procedure.

CHAPTER III
JUDICIAL APPROACH TOWARDS COURT INTERVENTION IN ARBITRAL PROCESS

3.1 INTRODUCTION

In order to lessen excessive judicial interference in the arbitral procedure, the Arbitration Act, 1940 was superseded with the Arbitration and Conciliation Act in 1996. The 1996 Act, based on the UNCITRAL Model Law, provides a unified legal framework for the prompt and fair settlement of disputes. Despite the modernisation of arbitral law, Indian courts were unwilling to execute the new norms in a pro-arbitration mindset. In 2015, the 1996 Act was revised to decrease the amount of judicial intervention with arbitration. Parts I and II of the 1996 Act provide a favourable legal basis for arbitration procedures. The basic concepts and rules of Indian arbitration law are analogous to those of various international statutes based on the UNCITRAL Model Law. As a result, overseas arbitration practitioners can access Indian law.

Recent court rulings that have contributed to the most recent advancements in arbitration law are a strong indication of the judiciary's support for India's adoption of the finest global standards. Courts have embraced a pro-arbitration posture, and the Supreme Court of India and High Courts have made laudable efforts to completely change India's arbitration environment. The Supreme Court has issued many historic decisions from 2012 to 2021 that take a crucially pro-arbitration stance. On October 23, 2015, “The Arbitration and Conciliation (Amendment) Act of 2015” went into force. The Act was highly embraced and greatly increased India's arbitration industry's effectiveness. Following that, a High-Level Committee was formed to review the institutionalisation of the Arbitration Mechanism in India, with retired Justice B. N. Srikrishna acting as its head. “The Arbitration and Conciliation

(Amendment) Bill, 2019", was then introduced, and it was successfully passed into law as "The Arbitration and Conciliation (Amendment) Act" on August 9, 2019. The 2019 Amendment Act was passed in order to develop India as a centre of institutional arbitration for both local and international arbitration.

3.2 NON OBSTANTE CLAUSE AND SECTION 5 OF THE ACT

The 1996 Act places a strong emphasis on party autonomy to minimise judicial involvement. The Model Law does not have the non obstante language at the beginning of Section 5, but the 1996 Act stresses the limits on judicial involvement. The necessity to define and restrict the Court's involvement in arbitration is acknowledged in Section 5. The purpose of the 1996 Act is to favour party sovereignty over court intervention in favour of quick and less expensive conflict settlement through arbitration "*(P. Anand Gajapathi Raju v PVG Raju* 2000)". Any possible court intervention is limited by the non obstante clause and is permissible only to the as permitted in Part I. Therefore, the legislature intends to give only minimal role of supervision to courts and describes the extent of court intervention in arbitration. The Act aims to give certainty to arbitral proceedings and to ensure speedy and inexpensive justice to parties.

The exceptions in Section 5 permits court intervention as in certain situations the arbitral process becomes weak without necessary court support. Such a situation was contemplated by House of Lords in "*Coppee-Lavalin SA/NV v Ken-Rea Chemicals and Fertilizers Limited (In Liquidation)* (1994)" and whatever perspective is held on the proper ratio between arbitration and courts, according to Lord Mustill, there are specific situations when the role of courts is not only acceptable but also advantageous. The question is only as to the extent of intervention during arbitration.

The power given to courts to intervene in pending proceedings is not fixed. Sometimes court intervention results in delay in termination of proceedings. But in peculiar facts and circumstances courts might not interfere as the rights and equities can be corrected in appeals later. Yet in certain

situations judicial intervention is needed. Thus, the power vested with the courts under the Act is a discretionary one.

When an arbitration clause is invoked and the case is referred to arbitration under Section 8 of the Act and during proceedings Section 9 application for interim measure is filed, it has been held that same remedy is available before the arbitrator *(Yenepoya Minerals and Granites Ltd. v Maharashtra Apex Corporation* 2004). Courts have relied on "*Bhatia International v Bulk Trading S.A.* (2002)" and held that under Section 5 matters governed by Part I cannot be decided by any judicial authority and hence Section 9 is ousted "*(Ispat Industries Ltd. v M.V. Thor Orchid* 2004*)"*. Though court's power sections 9, 11 etc. exists in spite of arbitration clause, Section 5 would prevail over them and issuing interim orders by court can be given only in very rare situations. Authority under Section 9 is to be applied in accordance with equity as the relief granted is a discretionary one *(Reliance Infocomm Ltd. v BSNL* 2004).

Considering Section 5 and the object of the Act to reduce the supportive role of courts in arbitration, courts can decide on the issue whether in fact there is an arbitrable dispute that can be referred to arbitration "*(United India Insurance Company Ltd. v M/S. Kumar Texturisers* 1998)". But in *(Master Abhishek Mehra v DLF Commercial Developers Limited* 2008) a complaint challenging the existence of an arbitration agreement and whether the arbitrator has jurisdiction under Section 12 of the Act was dismissed as barred by Section 5 of the Act and was ordered to be resolved by the arbitrator. But in cases where suit with a Section 8 application has disputes other than arbitrable ones, courts would not refer to arbitration and Section 5 would not be attracted as there is no provision for splitting disputes "(*Sukanya Holdings (P)Ltd v Jayesh H. Pandya* 2003)". Hence in *Vijay Viswanath Talwar v Marsheq Bank* (2003), the above case was relied upon and the matter was not referred to arbitration as there were multiple disputes some of which were not arbitrable, Supreme Court in an application under Section 8 and 5 of the Act has held that Section 8 phrasing is obligatory, and the civil court should have directed the case to arbitration. The

court cannot hear the suit when a Section 8 application is made "*(Hindustan Petroleum Corporation v Pinkcity Midway Petroleums* 2003*)"*.

3.3 REFERENCE TO ARBITRATION AND JUDICIARY

Depending on the circumstances, a party to a court procedure may request that the issue be sent to arbitration as per Sections 8, 45, or 54 of the Arbitration Act. When there is an arbitration agreement in existence and one of the parties to the same issue is before the court, the other party may petition the same judicial authority to submit the parties to arbitration. This is addressed under Section 8 of the 1996 Act, which is identical to Article 8 of the UNCITRAL Model Law and incorporates provisions similar to those found in other foreign nations.

If the party who has filed the suit is not objecting the application, the matter is referred to arbitration. The authority can even refer to arbitration even after the party submits the first statement, if both consent to arbitration. If the plaintiff of the suit objects to the application for reference, the authority may not refer the matter *(Sudarshan Chopra v Company Law Board* 2004). But, if primarily a criminal offence is proved, then the presence of arbitration clause cannot prevent criminal prosecution against the accused (*S.N. Palanikar v State of Bihar* 2001). As the basic aim of arbitration law is speedy and inexpensive dispute resolution, judicial intervention should be to help the arbitration process.

When a reference petition is before a court, arbitration may commence and an award made (*Kalpana Kothari v Sudha Yadav* 2001) and there cannot be any stay of arbitration proceedings while the decision is pending. Thus, this section of judicial intervention is very important and has a specific object of marginalizing the judicial intervention as given in Section 5 of the Act. Once an application is properly made before the court, it is obligatory to make the reference and the authority cannot by any means interfere with arbitration. This again prevents the unnecessary prolonging of the adjudication of matter by arbitrator.

The jurisdiction of the court remains even if the matter is coming under the arbitration clause. Thus if the procedural requirements under Section 8(2) are not complied with, the application will be rejected (*Northern Eastern Electric Power Corporation Ltd. v Jiban Kumar Saha* 2000). The suit should be of a matter which comes within the agreement. Section 8 would not be applied if the suit is on a matter outside the agreement or if it is between non signatories to agreement. Therefore, the entire agreement requires to be looked into. In *"Sukanya Holdings (P)Ltd v Jayesh H. Pandya* (2003)", in a similar case, the Supreme Court did not submit the case to arbitration.

Before the initial declaration on the merits of the dispute, which need not be the written statement, the application for a referral must be submitted (*Manna Lal Kedia and others v State of Bihar* 1999*).* The application for reference can be filed along with the first statement of the case "*(Ajit Singh v Sri. Mata Vaishno Devi Shrine Board, Katra* 2001)". Previously, Section 34 of the 1940 Act required this to be filed prior to filing a written statement or taking any actions in the proceedings.

The application under Section 8 cannot be an oral one *(Raj & Associates v Videsh Sanchar Nigam Ltd.* 2004) but has to be a request in a written form. The original arbitration agreement as defined in Section 7 or its certified copy should be filed along with the application. Where in a case an application along with a photocopy of agreement was filed and later produced the certified copy and original agreement, it was held to be sufficient under Section 8 (*Tata Finance Ltd. v Naresh Ch. Deb* 2006). This was again reiterated by Supreme Court in "*Bharath Seva Sansthan v U.P. Electronics Corporation Ltd* (2007)" The agreement made by parties even after the dispute has arisen is valid. As per Section 8, along with the application it has to be produced. In *Jonsons Rubber Industries v General Manager, Eastern Railway and another* (2000), the application had arbitration clause reproduced verbatim and an affidavit was filed stating that the agreement would be submitted later, the court held that the requirement of Section 8 has been fulfilled.

If all conditions in Section 8 are satisfied there has to be mandatory staying of legal proceedings "*(Renusagar Power Co. Ltd v General Electric Co.* 1984*)"* "*(Agri Gold Exims Ltd v Lakshmi Knits and Wovens* 2007)". In addition, the known obstante clause in Section 8 gives it an overriding effect over the 1940 Act and Civil Procedure Code *(Renusagar Power Co. Ltd v General Electric Co.*1984). Under Section 89 of CPC, courts can make a possible settlement with the observations of parties in cases where it is possible and can refer it to arbitration, conciliation, lok adalat etc. In such references, Section 8 requirements are not to be followed "*(Afcons Infrastructure Ltd.v Cherian Varkey Construction Co.* 2010)".

In case of international commercial arbitrations under the New York and Geneva Conventions there are Sections 45 and 54 giving power to judicial authority to refer matter to arbitration. These provisions in Part II of the Act are different from Section 8 of the Act. The distinction had been brought out in "*Shin-Etsu Chemical Co. Limited v Aksh Optifibre and another* (2005)". Sections 45 and 54 have a non obstante provision that excludes anything in Part I of the Act or the Civil Procedure Code from being considered in proceedings brought under them. But Section 8 is conditioned by non obstante clause in Section 5 and Section 16 giving authority to arbitrator to deal with jurisdiction and existence and validity of agreement. Under Section 8 the application for reference has to be made before filing the first statement, but this time limitation is not there in Sections 45 and 54. Under Section 8 only a party as defined in Section 2(1)(h) can apply, whereas in Sections 45 and 54 it can be party or any person claiming through or under him.

The main distinction between Section 8 and Sections 45 and 54, which utilise the word "shall," is that Section 8 lacks any discretionary authority. In Section 45, the judicial authority has the option to decide not to submit a case in which the agreement is void, ineffective, or unable to be carried out. Section 54 states that the referral should not be adverse to the judicial authority's competence if the agreement or arbitration cannot be carried out or becomes inoperative. If all the conditions in Section 8 are satisfied, the judicial authority

must send the case to arbitration, and any challenge to the agreement's legality must be brought before the arbitrator or the court after the award has been made. Therefore, Section 8 of the Act knowingly, consciously, and intentionally removed the discretionary power granted to the judicial authority under Sections 45 and 54 of the Act.

The Supreme Court, in "*World Sport Group (Mauritius) Ltd. v MSM Satellite (Singapore) Pte. Ltd* (2014)" opined that no formal application is necessary to request that a court refer a matter to arbitration under Section 45 of the Act. If a side asks arbitration in an affidavit, a court must submit the matter to arbitration, with the sole exception being cases in which the arbitration agreement is defective, ineffective, or unable to be carried out. When a case is sent to arbitrations with foreign seats, the scope of judicial review is limited. As a result, Section 45 only needs a "request" for that purpose, even if Section 8 of the Act anticipates the submission of an application by a party to the suit asking arbitration of the dispute. Furthermore, Section 8 applies to all arbitration provisions in Part I of the Act in general, whereas Section 45 applies only when the dispute is the subject of a New York Convention arbitration agreement.

The Supreme Court ruled in the "*Chloro Controls* case" that the phrase "person claiming through or under," as defined by Section 45 of the Act, would include and encompass numerous and multi-party agreements within its jurisdiction"*(Chloro Control India (P) Ltd. v Severn Trent Water Purification Inc.* 2012)". As a result, some of the agreements allow even non-signatory parties to file a claim and have it sent to tribunal. This decision has broad repercussions for overseas investors and parties because it now allows non-parties like a parent company, subsidiary, group companies, or directors to be referred to and made parties to an international commercial arbitration in exceptional circumstances involving composite transactions and linked agreements.

The Apex Court, in the case of "*Reckitt Benckiser (India) Pvt. Ltd. v Reynders Label Printing India Pvt. Ltd. & Another* (2019)" stated that it was appropriate to examine the ideas advanced in the *Chloro Controls* case in this

instance. The Apex Court has ruled that the burden of proving intent to accede to the arbitration agreement is with the party seeking to bring a non-signatory into the case. Furthermore, it was ruled that a non-signatory who had no role in the negotiations leading up to the arbitration agreement could not be a party to the arbitration. It has also found that events and communication following the signing of an arbitration agreement cannot bind a party who did not sign the arbitration agreement, which is important.

In "*Cheran Properties Limited v Kasturi & Sons Limited* (2018)", the Apex Court agreed that transactions among a group of firms were permissible. They may have been entered into with the goal of tying together signatory and non-signatory entities as a group, depending on the circumstances. Indian courts have frequently been asked to evaluate whether non-signatory parties are amenable to arbitration. The group of businesses theory precludes the application of the contract privity requirement to an arbitration agreement between parties. Another exception to Section 7 of the Act is the requirement that an arbitration agreement be in writing and enforced only against parties who have signed it. As a result, the idea of a group of enterprises may only be extended to non-signatories when particular conditions are demonstrated to be capable of combining the various signatory and non-signatory organisations into a "single economic reality."

Under Section 45, if arbitration has already started before the suit, the authority cannot restrain arbitration by injunction. In addition, when a party to suit applies for reference under Section 45, there cannot be a stay of suit proceedings. From the objects and reasons of the "UNCITRAL Model Law" it can be concluded that Part II dealing with the international commercial arbitration is an adoption of Model Law whereas Part I dealing with the domestic arbitration is an adoption of Model Law with appropriate and suitable modifications. Judicial authority while exercising a limited intervention plays a crucial role for the smooth functioning of arbitration.

3.4 INTERIM MEASURES BY COURT

Under Sections 9 and 17, respectively, of the Act, the parties may ask courts and arbitral tribunals for temporary relief. Section 9 of the Act allows a party to apply to a court for interim remedies and safeguards, such as interim injunctions, before, during, or after the arbitral procedures, or at any time after the arbitral award is issued but before it is executed. Because some Part I of the Act's provisions (including Section 9) have been extended to foreign-seated arbitrations, a party may prefer an application for interim relief under Section 9 of the Act. Due to the two provisions' distinct goals, the scope of actions under Section 9 is broader than those under Section 17. The goals are to safeguard parties' positions, preserve the status quo, preserve assets, and gather evidence.

Court has a mandatory power which is based on the Act. It is not based on party autonomy or agreement. Indian Law, especially the older colonial acts evolved from lots of judicial supervision. But the "1996 Act" based on "Model Law" stresses on minimum judicial intervention. Further these powers are not available when the arbitration is decided in a foreign country or a place not designated. Section 9 is used before arbitration commences, hence it is not a substantive relief "(*Liverpool and London Steamship Protection and Indemnity Association Ltd. v Arabian Tankers Co.* 2003)". The relief under Section 9 is not in a case and is not a contractual right. The measures under the section protect rights of parties from being frustrated "(*Firm Ashok Traders v Gurumukh Das Saluja and Others* 2004)" as the arbitral tribunal has not commenced its proceedings. Under this section there cannot be an inquiry into the claim and counter claim of parties regarding custody of articles beyond what is admitted by the respondent.

Only a party to the arbitration agreement with regard to the subject matter of the agreement may request that the court to issue the measures under Section 9 of the Act "*(National Highway Authority of India v China Coal Construction Group Corporation* 2006)". As a result, only a party to an arbitration agreement as defined in Section 2(1)(h) of the Act has locus standi, and neither the court nor the arbitrator may give relief on its own motion. The court that is being

referred to here is the court that would have jurisdiction to rule on the issues that would have been the subject of a lawsuit rather than the ones that are the topic of arbitration. This does not have to be a lower court as described in Section 2(1)(e) of the Act, but rather the District Court or the High Court.

Before, during, or at any point after the making of the award, the court may take the requisite preliminary procedures under Section 9 before the award is enforced under Section 36 of the "1996 Act" (*Sundaram Finance Ltd. v M.K. Kurian* 2006) (*Globe Generation Power Ltd. v Sri. Hiranyakeshi Sahakari Sakkere Karthane Niyamat Sankeshwar* 2004). Therefore, it can occur after the contract after the start of the arbitration, throughout the arbitration up until the arbitrator's mandate expires, and at any moment in between the making and implementation of the arbitral decision.

A petition as per Section 9 can be filed only when the applicant intends to start arbitral proceedings. But there was no further clarification as to the time period which was clarified by the court in a later case "(*Firm Ashok Traders v Gurumukh Das Saluja and others* 2004)". The applicant under Section 9 must be able to convince the court that the procedures are truly anticipated or obviously intended and are likely to start in a reasonable amount of time, it was noted. The applicant may not have already started the proceedings. The length of a reasonable period varies on the case's facts, circumstances, and type of interim relief requested. Time must not be separated from two occurrences in such a way that it would ruin their closeness and ability to occur simultaneously. The relationship between an interim order as per Section 9 of the Act and the actual proceedings in arbitration would end and the order could not be regarded as having been made before the arbitral proceedings if arbitration does not begin within a reasonable period of time after the date of the interim order "(*Firm Ashok Traders v Gurumukh Das Saluja and others* 2004)".

The general proceedings under Civil Procedure Code would apply to proceedings under this section as it does not provide a special procedure or a different method for the same "*(Adhunik Steels Ltd. v Orissa Manganese and Minerals Private Ltd.* 2007)". Hence the intervening court should render a

fertile ground for arbitration. Section 9 measures through court are available before and after the arbitral proceedings. Once arbitrator is appointed, remedies under Section 9 and 17 co-exist, though the preference is to Section 17. In *ECC Leasing Co. Ltd. v Paramount Airways* (2010) it was held that court has wide powers under Section 9 similar to those under CPC. In addition, the court has residuary powers to grant any interim measure similar to the inherent powers of CPC. In exercise of all these powers under Section 9 the court can follow the principles governing interim measures under CPC as held in "*ITI Limited v Siemens Public Communications Network Limited* (2002)".

These measures are only to protect rights of party pending adjudication of the arbitral proceedings. This section does not confer a substantive and is not a substitute of the main arbitration proceedings. This power cannot be exercised by court to prejudice the power of arbitrator to resolve the dispute. The discretionary power of the court must be exercised rarely only in appropriate suits where the court is justified adequate material on record.

When the goods are coming within the purview of arbitration agreement and there is a genuine risk that the respondent may defeat, delay, or hinder the execution of any award that may be rendered against it, the court may grant the remedy of preservation, temporary possession, or sale of the items. The type of measure relies on the type of products and the dispute's specific circumstances *(L.G. Electronics Inc. v Onida Savak Ltd.* 1997*).*

The petitioner must demonstrate that the amount is a component of the claim and that there is a risk that the respondent may thwart, delay, or hinder the execution of a judgment rendered against it in order to get the amount in dispute in arbitration. Court can order respondent to furnish security to be given for the amount in dispute, but this will not be on the sole ground of protection of financial interest of petitioner (*Global Co. v National Fertilizers Ltd.* 1998).

Detention and preservation of property that is the subject of an arbitration dispute is the third type of remedies under Section 9. The court may also appoint

commissioners to gather comprehensive evidence to aid in the arbitration of disputes and to stop property damage, modification, or disposal.

Next relief is an order of interim injunction for which the petitioner has to prove a prima facie case, there has to be balance of convenience in his favour, there is likelihood of irreparable injury to petitioner etc. These were held to be the guiding principles in "*Transmission Corporation of A.P. Ltd. v Lanco Kondapalli Power* (2005)". Court can even order injunction freezing assets from being dissipated. Any order of injunction has to be a reasoned one.

Appointment of receiver is yet another relief where the courts have to follow certain principles held in *T. Krishnaswamy Chetty v C. Thangavelu Chetty* (1954). Plaintiff must prove that prima facie he would succeed the suit and that there is emergency or danger or loss. In exercising the discretion, court considers whole circumstances to protect rights of parties and finds that there is no other remedy. The petitioner's conduct has to be free from blame and there cannot be a deprivation of de facto possession of property by the defendant by this order. Thus, the de jure possession of property is held by court through the receiver. There is yet another just and convenient measure like the pre award attachment. This is based on the residuary power and is to be exercised only if needed so that arbitral process is not abused. Therefore, it has to be within the limited judicial intervention.

High Courts are empowered to make rules of procedure to be followed by courts while exercising jurisdiction under Section 9 of the Act. Under Section 9 courts were supposed to make sure that the arbitration has started. This has been rectified the Legislature by amending Section 9 in 2015 saying that within 90 days of the interim order the arbitral proceedings should commence. Thus, an interim order becomes a temporary measure for a time-period of 90 days.

Significant modifications were made to the 2015 Amendment Act that have an impact on the award of interim orders by arbitrators that are initiated after "October 23, 2015 and accordingly:

a) Unless the court determines that circumstances exist that may make the remedy granted under Section 17 ineffective, an application for temporary protection under Section 9 of the Act will not be considered if an arbitral tribunal has been established;

b) The arbitral procedures shall begin once Section 9 of the Act grants temporary protection within 90 (ninety) days of the order's date, or within such other period as the court may specify;

c) In some situations, courts may also impose interim remedies under Section 9 against third parties."

A court may award temporary relief under Section 9 of the Act without regard to any standards that have been specified by the Act. The CPC's criteria have been determined by courts to not be strictly applicable to Section 9 proceedings. In arbitrations, a party would probably be successful in getting an interim remedy if it could only demonstrate that its case has substance. In certain circumstances, courts have been guided by the notion that denying the grant of such interim reliefs would result in unfairness to the applicant or that if such reliefs are not granted, the resulting judgment will become unenforceable/unexecutable.

Recently, in "*Avantha Holdings Ltd. v Vistra ITCL India Ltd* (2020)" Section 9 of the Act required additional prerequisites for temporary relief. The court stated that "the following considerations must be considered when determining whether or not a case for imposing interim measures exists.,

i. The presence of a preliminary case,

ii. Balance of convenience,

iii. Where interim remedy is not granted, there is a risk of irreparable damage or harm,

iv. Public interest consideration

v. Emergence of the need to order temporary measures,

vi. When the petitioner expressly states that he or she wants to commence arbitration procedures".

The Court dismissed the application for interim relief. The Court's reasoning is given below. First, the Court analysed the substance and intent of the Act's Section 9 temporary reliefs. The Court recognised that the measures required to be interim in nature, "granted to serve the temporary purpose of protecting the plaintiff's interest so that the suit is not frustrated".

Second, the Court assessed the nature of Section 9 in relation to its relationship with Section 17 of the 1996 Act. It acknowledged that, even at the pre-arbitration stage, the Court could not usurp the jurisdiction that an arbitral tribunal would have once formed under Section 17 of the Arbitration and Conciliation Act. This was obvious from the fact that Section 9 remedy was to be offered only when circumstances made Section 17 remedies ineffectual.

Thirdly, the Court outlined the legal standards used to determine whether a prima facie case exists and contrasted them with the standards used to provide interim reliefs under "Section 9 of the Civil Procedure Code, 1908". The possibility of irreparable damage or injury if the interim remedy is not granted, as well as whether the balance of convenience favours the plaintiff/applicant requesting relief, are considered.

The considerations for granting temporary reliefs under the CPC and those under Section 9 of the Act were distinguished by the Court, even though the Court eventually denied the application for interim relief on the grounds that the petitioner had not shown a prima facie case. It was ruled that, in light of Section 17 of the Act, a court that had received a Section 9 petition should also evaluate whether or not interim reliefs might be granted awaiting the establishment of the arbitral panel and any further Section 17 petitions to the arbitral tribunal. Therefore, before providing relief under "Section 9 of the 1996 Act", it is also necessary to satisfy the condition of "emerging need" of imposing temporary measures.

The Court must determine whether failing to impose temporary remedies under “Section 9” would hinder or make useless the resorting to arbitration in accordance with the goal of interim reliefs. The Court cited a number of examples where it was determined that, in enforcing Section 9, the Court was simply creating temporary safeguards to prevent the arbitral tribunal's right from being violated. Although the scope of the "just and convenient" clause's authority is fairly broad, it must be used sparingly. It did not give the Court the freedom to act irrationally and defeat the purpose of arbitration. It was crucial to determine whether the petitioner had a clear intention to start arbitration proceedings in accordance with “Section 9(2) of the Act”. The Court determined that none of the petition's requests called for interim remedy under “Section 9 of the Act” based on the aforementioned criteria.

3.5 JUDICIAL TAKE ON APPOINTMENT OF ARBITRATORS

The terms of “Section 11 of the Arbitration and Conciliation Act, 1996” provide the parties the greatest amount of latitude to agree on a process to name arbitrators, and if the parties are unable to reach an understanding, the courts are granted this authority. Therefore, in this case, judicial aid is crucial to guarantee the arbitration process. The "Chief Justice" served as the appointment authority at first. Following the 2015 change, "Court" was used in place of "Chief Justice" as found in the Model Law. Regarding the Chief Justice's or Court's authority, which might be administrative, judicial, statutory, etc., courts have expressed varying perspectives. However, this power was no longer considered as a judicial power in 2015 amendments under Section 11(6B) when it was given to the High Court or Supreme Court. Following the 2019 amendment, the arbitral institution chosen by the High Court or Supreme Court and rated by the Arbitration Council of India is now the appointing authority, as stated in “Section 2(ca)” of the modified Act. Therefore, under Section 11, the function of courts is now relatively limited..

It is up to the parties to decide how to pick the arbitrator (s). If there is no agreement on how the arbitrators will be chosen for a tribunal of three, each party will choose one arbitrator, and the two designated arbitrators will choose

the third arbitrator, who will act as the presiding arbitrator. If one of the parties fails to name an arbitrator within 30 days, or if the two appointed arbitrators fail to name the third arbitrator within 30 days, a party may petition the Supreme Court or the relevant High Court (as applicable) to appoint an arbitrator. The Supreme Court or High Court may appoint any individual or organisation to act as an arbitrator. Individual High Courts with territorial power will appoint the arbitrator in situations of domestic arbitration; in cases of international commercial arbitration, an application for the appointment of the arbitrator must be made with the Supreme Court.

The 2015 Amendment Act also limited the Supreme Court's authority in international commercial arbitrations with a seat in India, as well as the authority of the High Courts in domestic arbitrations, and it stated that the Court could only determine whether an arbitration agreement existed at the time the appointment was made. This should be viewed in light of the Section 8 application requirement for referring a case to arbitration, which only allows a court to consider whether an arbitration agreement exists on the surface. Section 11 of the Act was amended in 2019 by the 2019 Amendment Act, which empowered the Supreme Court and High Court to identify arbitral institutes recognised by the Arbitration Council of India and to choose arbitrators in specific situations.

The Apex Court decided that “Section 11 of the Act” is still limited to examining just the presence of an arbitration agreement and is to be regarded in the restricted meaning when reading “Section 11 of the Act” as amended by the “2019 Amendment Act”. However, the Apex Court in *Vidya Drolia v Durga Trading Corporation* (2020) since "existence" and "validity" are connected concepts, stated that an arbitration agreement does not exist if it is illegal or does not correspond to sufficient legal requirements. With this decision, the Supreme Court has equalised the scope of an investigation in a Section 11 petition with that in a Section 8 petition.

When there was a default in arbitration with a single arbitrator or three arbitrators, or when the parties failed to follow the predetermined procedure, the

courts had a role in the nomination of the arbitrator. This court's ruling was definitive because it would guarantee that the person nominated is qualified, independent, and unbiased. The High Court has the same initial jurisdiction as the Principal Civil Court, where a lawsuit on the topic of arbitration would have been filed. According to Section 11, the court just needs to appoint the arbitrator; it has no authority to determine the arbitrator's jurisdiction, the legitimacy of the arbitration agreement, or its scope. Section 16 empowers the arbitral tribunal to rule on its own jurisdiction and the legality of the agreement. Here, the goal is to prevent any delays or interference with the arbitral procedure.

Regarding the nature of power under Section 11, the Apex Court in "*SBP & Co. v Patel Engineering Ltd.* (2005)" reserved the previous position and held that power under Section 11 is purely a judicial power which could be delegated by Chief Justice to another judge. Another issue was regarding the applicability of *SBP* Case whether prospective or retrospective because there were cases following *Konkan Railway* Case wherein arbitrators had been appointed. Then it was held to be applicable prospectively and all appointments made before as valid. Previously it was arbitrator who decided the existence and validity of agreement. But later in "*Maharishi Dayanand University v Anand Co-operative LIC Society Ltd* (2007)" and *Andhra Pradesh Tourism Development Corporation Ltd. v Pamba Hotels Ltd* (2010), the Honourable Chief Justice had to determine the existence of arbitration agreement, its validity and other preliminary issues under Section 11.

When the arbitration agreement is denied by the parties, regarding the powers to be exercised under "Section 11 of the Act", Supreme Court in "*SBP & Co. v Patel Engineering Ltd.* (2005)" has ruled that "Section 11 of the Act" requires the Hon. Chief Justice or his designee to determine whether an arbitration agreement meets the Act's definition and whether the party in front of the court is a party to it. Additionally, it was made plain which problems would be decided by the arbitrator. Following this in "*National Insurance Co. Ltd. v Boghara Polyfab (P) Ltd.* (2008)", Apex Court held that duty of Chief

Justice under "Section 11" was already defined in *SBP & Co.* case. The court next acknowledged and divided the three kinds of preliminary concerns that needed to be considered.

The Chief Justice or a representative of him was to rule on the first group of concerns. Whether a party had contacted the proper High Court, whether an agreement existed, and whether the applicant under Section 11 was a party to the agreement were the questions. The second group of matters was those that the Chief Justice or a representative of him might determine on their own or refer to the Tribunal. These included determining if the claim was still valid or expired, as well as whether the parties had fully satisfied their responsibilities and rights to complete the transaction. The third category comprised the merits of the arbitration claim as well as whether the issue fell under the arbitration provision. These were to be absolutely decided by the tribunal *"*(*National Insurance Co. Ltd. v Boghara Polyfab (P) Ltd.* 2008)".

The issue of whether there exists an arbitration agreement is a preliminary one to be determined by the court as then only there could be an arbitrator appointment under "Section 11". The court had to rule on the allegations of fraud, falsification, and fabrication in order to evaluate the existence of a legitimate arbitration agreement. There can be contentions that these matters require evidence or that arbitration might get delayed etc. The court, only in few cases, had to decide on genuineness of the agreement. Even in cases of termination or frustration of contract, arbitration agreement cannot be avoided. Courts are given powers to identify an effectively deal with false claims and courts have awarded heavy costs in such cases *(Bharat Rasiklal Ashra v Gautam Rasiklal Ashra* 2011).

The credibility of arbitration process is affected when the costs involved is unrealistic and when there is delay in disposal. Appointment of arbitrator by court or an arbitral institution can also include the terms of appointment including the costs of arbitration. In India costs of ad hoc arbitrations is expensive and courts have emphasized on the need to save arbitration from arbitration cost. One solution is that in institutional arbitration, fees of arbitrator

will be a standard rate which is fixed by the institution. Another solution is for the court to prescribe arbitrator fee at the time of appointment with the parties' consent and in consultation with the concerned arbitrator. A third solution is when retired judges serving as arbitrators to indicate their fee structure to the High Court Registry so that the parties can choose an arbitrator whose fees are affordable having regard to the subject matter involved "(*Sanjeev Kumar Jain v Raghubir Saran Charitable Trust* 2011)".

Another issue faced by courts was that of limitation when an application under "Section 11(6) of the Act" was considered. In "*SBP & Co. v Patel Engineering Ltd.* (2005)", the Chief Justice was required under Provision 11(6) to determine whether the prerequisites set forth by the section for the exercise of such authority are met. Therefore, the Chief Justice might determine the arbitrator's jurisdiction, the agreement's legality, whether the applicant is a party to it, if an arbitral dispute has arisen, etc. Therefore, the court might determine in accordance on the question of limitation, i.e., whether the claim is alive or dead and should be settled through arbitration.

Again in *Arul Sigamani and ors v Paul Durai & Perumal and ors* (2010) It was reiterated that, according to section 11(6), the Chief Justice could rule on issues such as whether the claim at issue was a long-dead claim that was being revived, whether the parties had concluded the transaction by noting the satisfaction of their respective rights and obligations, or by receiving final payment without protest, and thus rule that the claim at issue was time-barred and ineligible for arbitration. The Chief Justice of India utilised Section 14 of the Limitation Act while selecting the arbitrator in international commercial arbitration and disregarded the time that the application was mistakenly filed with the High Court and was pending there *(HBM Print Ltd v Scantrans India Pvt Ltd.* 2007).

Another aspect that came before the court was that of the role of court under Section 11 when already parties have chosen an arbitrator under the agreement. In an earlier case in "*Bhupinder Singh Bindra v Union of India* (1995)" it was decided that unless evidence of the arbitrator's legal misconduct,

fraud, disqualification, or similar behaviour is presented, the court cannot intervene and prevent the appointment of an arbitrator when the parties have chosen one pursuant to the provisions of a contract. As a result, unless there is a strong and sufficient cause, a party cannot revoke the authority of the arbitrator appointed with his consent.

An exception to this normal rule is seen in "*Denel (Proprietary Ltd.) v Bharat Electronic Ltd.* (2010)" where the nominated arbitrator was the Managing Director of a government corporation against which a dispute was attempted to be made, and when he was unable to render an unbiased ruling, the court appointed another one. It was also observed that in case the appointment by public institutions as parties to contract is not made in time, courts can make the appointment under Section 11.

In "*Union of India and Anr v V.S. Engineering (P) Ltd.* (2006)" the railways delayed the appointment beyond the expiry of notice of 30 days and the court under Section 11 held that it could appoint any Railway Officer or retired judge according to the given situation. Supreme Court in *Northern Railway Admn. v Patel Engineering Co.* (2008). held that the focus of Section 11 is on the terms of contract being adhered to, as far as possible, and then the court could do what had not been done.

Again Supreme Court in "*Indian Oil Corporation v Raja Transport Pvt. Ltd.* (2009)" laid down certain fundamental principles on the right of a party to approach court under "Section 11" and the powers of the court thereunder. Regarding the 30 days' time-period for appointment, the Apex Court in "*Datar Switchgears Ltd. v Tata Finance Ltd* (2000)*"* had ruled that the opposing party's right to arrange an appointment would not be extinguished after 30 days, but would remain until the first party applied under Section 11.

This was approved in "*Punj Lloyd Ltd. v Petronet MHB Ltd* (2005)" by a three Judges bench in Apex Court and opined that as Punj Llyod gave a notice of appointment to Petronet, Petronet failed to appoint in 30 days and Punj Lloyd had filed under Section 11(6), the right of Petronet would cease and get

forfeited. This was again reiterated by another three Judges bench in "*Deep Trading Co. v Indian Oil Corporation* (2013*)*" as the principle laid down in all these cases is that the right to make appointments is not forfeited even after the deadline stipulated in the agreement and the right ceases and gets forfeited when a person moves the court for appointment of arbitrator.

In contrast to "Section 3G(5) of the National Highways Act of 1956", which allows the central government to select an arbitrator in certain circumstances, the Apex Court in "*National Highways Authority of India v Sayedabad Tea Company* (2019)" dealt with arbitral appointments under Section 11 of the Act. The Apex Court ruled that because the Highways Act is a specific statute, it would take precedence over Arbitration Act.

The Apex Court, in the case of "*Garware Wall Ropers v Coastal Marine Constructions & Engineering Ltd.* (2019)", ruled that the court cannot appoint an arbitrator unless the agreement including the arbitration clause is suitably stamped. The agreement on which insufficient stamp duty has been paid shall be seized by the court and returned to the relevant stamp authority for rectification. The stamp authorities should resolve any disagreements about stamp duty and penalties (if any) as quickly as possible, ideally within 45 days after receiving the agreement.

The Apex Court has addressed the issue of the restriction period for filing an arbitrator appointment petition under "Section 11" in "*Bharat Sanchar Nigam Ltd. v Nortel Networks India Pvt. Ltd* (2021)". The Supreme Court determined that the time limit for submitting an application under Section 11 is three years from the date of failure to appoint the arbitrator, and that a court may refuse to refer claims to arbitration ex-facie because they are time-barred. Furthermore, the Supreme Court noted that Parliament must amend Section 11 to include a limitation term provision since the three-year period is excessive and goes against the spirit of the Act.

The 2015 amendment to the 1996 Act was that instead of 'Chief Justice' in Section 11 'High Courts' was used. But major changes in Section 11 were

brought by 2019 amendment. Courts now have the authority to nominate arbitral institutions for the appointment of arbitrators. “The Arbitration Council of India” should have assessed these institutions in accordance with “Section 43-I of the Act”. If there are no such graded institutions, courts may maintain a panel of arbitrators and appoint from the same. Section 11(6B) saying that the power designated by courts to institution shall not be regarded as judicial power has not been omitted. But Section 11(6A) saying that court shall confine to the existence of agreement has been omitted as now appointment is done by institutions. In addition, Section 11(7) saying that the decision of the court is final and non-appealable is also omitted, as it is the institution that appoints the arbitrator. As a result, the Arbitration Council of India establishes an apex organisation to assess and sustain arbitral institutions. These institutions will be designated by courts under Section 11 to appoint arbitrators. So the power of courts under Section 11 has been limited by the 2019 amendment. Thus, the judicial interventional discretion has been limited as envisaged by the UNCITRAL Model law.

3.6 PRINCIPLE OF *KOMPETENZ-KOMPETENZ* AND THE INDIAN JUDICIAL OUTLOOK

Arbitration clause can be considered as an independent contract on its own. In *Heyman v Darwins* (1942*)* it was opined that if the arbitration clause is wide enough to encompass within its purview issues as to its validity on grounds of fraud, misrepresentation, mistake or the other, then the same would not oust the jurisdiction of arbitrator. This is the basis for Section 16 of the 1996 Act. It would not mean that in the presence of such a clause, a party would be deprived of the right of a civil suit if the validity or existence or binding nature of parent contract is referred to arbitration irrespective of whether the issue is covered by the clause or not.

According to “Section 16 of the Act”, an arbitrator has the authority to rule on its own jurisdiction, including any objections to the existence or legality of the arbitration agreement. The notion of *'competence-competence'* gives the Arbitrators the authority to resolve objections to the arbitration clause itself. In

"*SBP & Co. v Patel Engineering Ltd.* (2005)" the Apex Court concluded that if the arbitral panel was created solely by the parties, the arbitral tribunal might address any jurisdictional issues by exercising its powers of competence under Section 16 of the Act.

Despite the fact that Section 16 is based on Model Law, the corresponding clause in it differs somewhat. According to the Model Law, the arbitral tribunal has the authority to rule on its own jurisdiction as a preliminary matter or in a merits award. This ruling can be challenged in court by an aggrieved party. However, Section 16 does not enable the arbitral tribunal to resolve it as a preliminary matter, hence there can be no appeal to the panel's judgement on the preliminary issue before a court. The tribunal determines any disputes concerning the legality or existence of the agreement within its jurisdiction, and an arbitration provision is deemed to be an agreement independent of the other conditions of the contract for this purpose. Even if the arbitrator rules that the contract is null and unenforceable, the arbitration provision will remain in effect. Any objections to jurisdiction or the extent of power must be brought before the arbitrator, and if they are denied, the award may be set aside in court.

Arbitration law in India and other countries based on the "UNCITRAL Model Law" demonstrates that arbitration clauses might be expanded to encompass all issues pertaining to the validity of contracts on all grounds where the arbitrator has jurisdiction. If the clause is too narrow, the separability concept can aid to keep arbitration going. This is adopted by English law, however the court has a minor power not to delay legal actions if it is satisfied that the agreement is null and void or incapable of being implemented. The conflict over competence and separability includes both courts and arbitrators. In the event that a tribunal lacks the capacity to resolve its own jurisdiction, the separability concept permits the arbitrator to make a decision on merits that cannot be appealed by courts. If the tribunal obtains competence through the agreement, separability becomes less important.

In "*Reva Electric Car Co. Pvt. Ltd. v Green Mobil* (2011)", Section 16(1) explains the Kompetenz-theory. The arbitration provision, which is part of the

contract, was evaluated and held to be handled as an independent contract when examining any objections regarding the existence or validity of the arbitration agreement. As a result, even if the tribunal rules that the contract is defective, the arbitration clause remains legitimate and enforceable under Section 16(1)(b) of the Act "*(Today Homes and Infrastructure Pvt. Ltd. v Ludhiana Improvement Trust and Anr.* 2013*)".*

In India, under "Section 16 of the 1996 Act", the arbitrator is empowered to decide on his own jurisdiction as well as on the validity or existence of agreement which the court cannot review immediately. In domestic arbitration, courts are restricted by "Sections 5, 8, 9 and 11 of the Act". Unlike the "Model Law", in Section 16 the order of the tribunal on jurisdiction or validity is not preliminary but a final one which cannot be questioned in court. Thus in case of nullity of a contract containing arbitration clause, the reasons, implications and consequences for the same can be found out only by invoking the arbitration clause "*(Kotak Mahindra Bank Ltd. v Sundaram Brake Lining Ltd.* 2008)".

3.7 INTERIM RELIEFS UNDER SECTION 17

Section 17 has been amended to provide the Arbitral Tribunal the same authority as a "civil court" when it comes to issuing interim remedies. Notably, as a result of the 2015 Amendment Act, an Arbitral Tribunal now has the ability to grant interim remedy after the verdict but before it is implemented. Furthermore, in Indian arbitrations, the order of an Arbitral Tribunal is now considered as a court order and is enforceable under the Code of Civil Procedure, 1908 as if it were a court order, offering clarification on its enforcement. The fundamental goal was to grant the Arbitral Tribunal significant powers in order to reduce the strain and backlog on the courts. The breadth and scope of the arbitrator's powers to grant temporary relief were unclear, and such orders were difficult to implement. This was effectively addressed by making orders issued under Sections 9 and 17 of the Act equally enforceable in local and international commercial arbitrations convened in India. However, in some cases, a party must still get a court order of interim relief (e.g. injunctive relief against encashment of a bank guarantee).

The 2015 Amendment Act authorised an arbitral tribunal to give interim relief during the arbitral proceedings or at any time after the arbitral award is issued but before it is enforced in accordance with section 36. Because an arbitral tribunal cannot act until the final award is announced, this section of the 2015 Amendment Act created much consternation. However, the 2019 Amendment Act resolved this issue by deleting from Section 17 of the Act the lines "or at any time after the arbitral judgement is reached, but before it is implemented in accordance with Section 36."

3.8 COURT REVIEW OF INTERIM ORDERS OF AN ARBITRAL TRIBUNAL IN APPEALS AND ENFORCEMENT

The arbitration Act, 1996 provides in Section 37(2)(b) for an appeal from an arbitral tribunal's order on interim measures. But there is no standard of review provided to be applied by courts while reviewing such orders. Courts can either apply the grounds for setting aside under section 34 or can treat them as appeals and assess the legality on merits. In *Subhash Chander Chachra v Ashwani Kumar Chachra* (2007) it was observed that court's power to intervene in tribunal's interim order is limited. But in *NTPC Ltd. v Jindal ITF Ltd* (2017*).* court tested the validity of tribunal's interim order by conducting an enquiry on merits. Yet in *A. Jayakanthan v J.R.S. Crusher* (2017), the standard of review applied in appeals against court's interim measures was applied in Section 37(2) proceedings.

Finally Apex Court in "*National Highways Authority of India v Gwalior Jhansi Expressway Ltd.* (2018)" did not determine on the standard of review for interim orders, but dismissed the decision as a breach of Indian Law's fundamental policy. Thus, the court assessed the legality of interim order on this ground, which is a ground under Section 34 of the Act for setting aside the award under the head of public policy of India. Thus, it is not a review on the merits of the dispute.

In "Section 37(2)(a)" which is an appeal against tribunal's order declining jurisdiction, a review on merits is needed. Therefore, in that way in in Section 37(2) (b) also a review on merits can be done. But in the *Jhansi* case, it was not

done. When the court conducts a full review of an interim order by tribunal it would mean that all parties can appeal under that provision. This goes against the objective of 2015 amendment to Sections 9 and 17. Under Section 17(1) a tribunal can pass orders like a court and under Section 17(2) it can be enforced like a court order. Once the tribunal is constituted, relief under Section 9 through Court is difficult. This is to reduce court intervention for granting interim measures once the tribunal is active. This might be the reason behind the Apex Court decision in Gwalior Jhansi case.

Under the "UNCITRAL Model Law" the grounds for recognition/ enforcement of interim orders are same as those for refusal/enforcement of awards and also provides same additional grounds for interim measures. But it is clearly specified that in such cases the court shall not make a review of the substance of the case. So even in Model Law the approach regulating review of awards and interim awards is consistent and an enquiry into the merits of the matter is discouraged.

But the Indian courts have gone into the merits of the dispute when they are approached for enforcement of orders of tribunals for interim measures. These have been set aside by high courts in appeal. According to Section 17, after the 2019 amendment, the interim measures can be sought for by parties under this only during the arbitral proceedings. Section 17(1) empowers the tribunal to give interim orders like any other court. Section 17(2) says that orders under Section 17(1) are deemed to be court orders enforceable under the Civil Procedure Code.

In *Sakthi Finance Ltd. v Shanavas* (2018) and *HDB Financial Services Ltd v Kings Baker Pvt. Ltd.* (2018), Kerala High Court has reiterated that court while passing an order reiterating an interim order by tribunal cannot conduct an enquiry as it was exercising appellant jurisdiction. In the first case petitioner was permitted by the tribunal to repossess the vehicle for the purchase of which the respondent availed loan. The District Judge while enforcing this order under Section 17(2) intervened with this order and held that petitioner failed to satisfy the court that taking over possession of vehicle is necessary. High Court rightly

held that such an enquiry was beyond the extent of proceedings under Section 17(2) of the Act (*Sakthi Finance Ltd. v Shanavas* 2018).

In the next case the District Court tried to modify or vary the directions given by the arbitrator while deciding interim application. The High Court held that powers of court under Section 17(2) and Section 37(2)(b) are fundamentally different and that under Section 17(2) court can only enforce the order of tribunal *HDB Financial Services Ltd v Kings Baker Pvt. Ltd*. (2018). Here the court relied on *Harikumar v Shriram Transport Finance Co. Ltd.* (2018) wherein the court has opined that while granting interim orders, the court can issue appropriate directions relating to the subject matter, but these powers cannot be invoked by court under Section 17(2) where the court's power is limited to enforcement of interim order of the arbitral tribunal.

Madras High Court, Madurai Bench in *Sundaram Finance Ltd. v P. Sakthivel* (2018) reminded all district courts that an interim order made by the arbitral tribunal is treated as a court order and is enforceable as such under the CPC. The court orders to take note of the of the legislative amendment and the Apex Court decision in "*Alka Chandewar v Shamshul Ishrar Khan* (2017)" and to enforce the interim order passed by the arbitral tribunal accordingly.

The Bombay High Court, in the case of "*Alka Chandewar v Shamshul Ishrar Khan"*, determined that "Section 27(5) of the Act" does not authorise the Tribunal to file a contempt complaint with the Court. However, the Apex Court overturned the judgement, ruling that under "Section 27(5) of the Act", any non-compliance with an arbitral tribunal's order or conduct amounting to contempt during the course of the arbitration proceedings can be referred to the appropriate court for trial under the "Contempt of Courts Act, 1971".

If interim orders granted by the Arbitral Tribunal are not enforced, the entire purpose of permitting a party to seek interim relief through the Arbitral Tribunal rather than the Court is undermined. To give effect to such orders, an express provision in "Section 27(5) of the Act" was introduced. Supreme Court in *Alka Chandewar* case has observed that interim orders of tribunal are deemed

to be court orders enforceable under CPC and Section 17(2) was enacted for this purpose "*(Alka Chandewar v Shamshul Ishrar Khan* 2017)".

In *"Sundaram Finance Ltd. v P. Sakthivel* (2018)", arbitrator passed an interim order attaching the property of respondents as they failed to furnish security as previously ordered by the tribunal. When this was sent to District Judge for enforcement, he declined to enforce it and informed the arbitrator that he is not competent to pass an order of attachment of property under the amended Section 17. Arbitrator replied on it, but as the order was not enforced the petitioner approached the High Court questioning the communication of the District Judge to the arbitrator. The High Court held that "Section 17(1) of the Act" shall be read with "Section 94 of CPC" and hence can conclude that the tribunal can attach a property even though it is not the subject matter of arbitral proceedings. Also under Section 17(2), an interim order Section 17(1) is deemed to be a court order enforceable under CPC.

Hence, regarding enforceability the powers of arbitrator under Section 17 are similar to that of court under Section 9 of the Act. The court here performs an administrative act and no judicial order is needed in enforcing the tribunal's interim order. Court in such cases cannot sit in appeal for such orders and moreover under Section 37(2)(b) interim orders are otherwise appealable *(Sundaram Finance Ltd. v P. Sakthivel* 2018).

In all of the preceding cases, courts must rule on the existence of an arbitration agreement and the arbitrability of disputes. "Section 7 of the Arbitration and Conciliation Act of 1996" discusses the former requirement. The latter has not been addressed in the Act but has been established via case law. The presence of an arbitration agreement is a jurisdictional fact that serves as the foundation for the existence of authority by arbitral tribunals and arbitration courts. Thus, the presence of a valid arbitration agreement is reviewed at every point where the courts of law are approached with a request to intervene in arbitration proceedings, and it is critical to explain these two conditions for arbitration in this chapter.

3.9 JUDICIAL APPROACH ON ARBITRATION AGREEMENT

"Arbitration agreement," according to "section 7 of the 1996 Act," is "an agreement by the parties to submit to arbitration all or some of the disputes that have arisen or may arise between them in connection with a specific legal relationship, whether contractual or not." Arbitration agreements might take the form of an arbitration clause in a contract or a separate agreement. “It has to be in writing which includes:

a) a document signed by parties;

b) an exchange of letters, telex, telegrams or other modes of telecommunications including electronic ones which provide a record of the agreement; or

c) an exchange of statements of claim and defence in which existence of agreement alleged by one and not denied by other;”

A reference to a document containing an arbitration clause makes it an arbitration agreement if the contract is in writing and the reference is intended to make the provision part of the contract.

The arbitration agreement must be in writing, and parties' signatures are not required; just proof of oral acceptance is required. But an oral agreement is not binding. Section 7(3) recognizes the above three methods of arriving at a written agreement. Whatever be the form or contents of the agreement, there should be a mandatory requirement for settlement of disputes by arbitration. It cannot be implied from a set of documents of trade. In *Jagdish Chander v Ramesh Chander* (2007), the Supreme Court laid down the imperative formal and content-based requirements that has to be there in a valid arbitration clause. The agreement must, first and foremost, be in writing. Second, the agreement should stipulate that the disagreement be resolved by a private tribunal. Third, the tribunal referred to must be authorised or have jurisdiction to hear the case. Fourth, the agreement must declare that the tribunal's ruling is final and binding on the parties. The Act expressly specifies that a reference in a contract to a

document containing an arbitration provision constitutes an arbitration agreement if the contract is in writing and the reference is intended to make the clause part of the contract. As a result, the entire scenario is contingent on the intentions of the parties. The essential feature of an arbitration agreement is the *consensus ad idem* of the parties to the agreement to send the issue to arbitration.

In "*M.R. Engineers and Contractors (P) Ltd v Som Datt Builders Ltd* (2009)", the Apex Court discussed the extent and intent of section 7(5) which permits arbitration agreements to be adopted by incorporation and distinguished between incorporation of standard form contracts or standard terms and conditions and incorporation of other types of document. In case of standard terms and conditions, the blanket incorporation of such documents will include the incorporation of any arbitration clause in it subject to any repugnancy of the incorporating document. But in case of incorporation of other documents, blanket incorporation will not automatically bring with it the incorporation of the arbitration clause. A specific reference must be made to the arbitration clause in order to incorporate it into the main document. Thus, the intention of parties to bring the clause into the fold of the incorporating document is needed.

Settlement of disputes through a two-tier arbitration procedure is possible in India. It was held by Apex Court that finality of an award does not exclude autonomy of parties from adopting an acceptable method of appellate arbitration "*(Centrotrade Minerals and Metals Inc v Hindustan Copper Ltd* 2016)". In reference, parties jointly refer the matter to arbitration, whereas arbitration agreement is wider including the bare agreement submitting the dispute to arbitration as well as the actual reference of dispute to arbitrator. Depending on its scope, a contract clause might become an arbitration agreement. The intention in it should be that any dispute has to be decided by an arbitrator who would hear and decide a dispute based on evidence and by conducting a judicial enquiry. Accordingly, some clauses will not become arbitration agreements. Unilateral documents and vague and uncertain clauses would not be considered as arbitration agreements.

A time-barred claim may even be included in an arbitration agreement. As a result, a time-barred claim might be a subject matter of reference, which differs from sending a time-barred claim to arbitration, as there is no legal claim in the latter scenario. In general, it is not possible to include an arbitration clause from the primary contract into a subcontract. This must be clearly stated in any paper. An arbitration clause is a clause within a clause. This collateral, independent, and separate contract term differs from others. As a result, there should be a clear indication that the primary contract's arbitration clause applies to the subcontract. The individual requesting a reference or appointment must demonstrate the existence of an arbitration agreement. To be properly interpreted, an arbitration provision must be read in its whole. All elements of statutory interpretation can be applied to understanding an arbitration provision to determine what conflicts are covered by it and, if there are any, exclusions.

The modification or substitution of the general terms for appointment of arbitrator will not affect the arbitral process. The privity principle is generally applied in arbitration clause, so that non-parties are not bound by the agreement. Reference on a void or non-existing agreement is another important aspect in this regard. “Section 16 of the 1996 Act” empowers the arbitrator to decide on the existence or validity of the agreement. More over even if the main agreement is invalid, the arbitration agreement will subsist. Arbitration agreement becomes invalid only when the invalidity is so fundamental thereby invalidating even the arbitration agreement.

A vitiating element making the main contract voidable under the Contract Law may also make the arbitration agreement voidable. Doctrine of severability is also relevant here, by which even when parts of a document are unenforceable, the remaining parts can be binding provided they are not dependent on the invalid parts. Thus, the valid parts can be severed from the invalid parts and held enforceable by law. In case of unregistered arbitration agreement which is compulsorily registrable severability applies and it will be valid. But in unstamped agreements, this is not applied and it can be acted upon only if the deficiency is cured by parties.

The main contract and arbitration clause are kept together for convenience, but arbitration agreement has to be considered as an independent agreement. So even after termination of the main agreement, the arbitration agreement may survive if the infirmity that affects the main agreement does not affect the arbitration agreement.

Section 7 of the Act states that the dispute might be existing or future and must concern a specified legal relationship, whether contractual or not. There are some non-arbitrable problems that fall under other laws, which will be covered later. The disagreement does not need to be mentioned in the agreement or in the reference, but might be stated broadly. The arbitrator can find out the dispute from the general specification. Reference to arbitration can be under statutory provisions or by consent of parties. Arbitration through court intervention is not there after the 1996 Act. Only as per the selected provisions under Part I of the Act, courts can intervene. One such example is reference under section 8 of the above Act.

3.10 COURT REVIEW OF ARBITRABILITY UNDER INDIAN LAW

One of the key difficulties affecting the contractual and jurisdictional conditions of the dispute is arbitrability. It all comes down to the simple question of what issues may and cannot be submitted to arbitration. In "*Booz Allen & Hamilton Inc. v SBI Home Finance Ltd* (2011)", the Supreme Court thoroughly examined the concept of arbitrability and determined that it had different meanings in different contexts: (a) disputes capable of being adjudicated through arbitration, (b) disputes covered by the arbitration agreement, and (c) disputes referred to arbitration by the parties. It said that, in theory, every dispute that can be resolved in a civil court may also be resolved through arbitration.

The Apex Court considered the idea of arbitrability in depth and concluded that certain conflicts may, by necessity, be prohibited from settlement by a private forum. "Non-arbitrable disputes include: (i) rights and liabilities that give rise to or arise out of criminal offences; (ii) matrimonial

disputes involving divorce, judicial separation, restitution of conjugal rights, or child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration, and succession certificate); and (vi) eviction or tenancy".

The Bombay High Court in "*Rakesh Malhotra v Rajinder Kumar Malhotra* (2014)", the court held that issues concerning tyranny and mismanagement could not be arbitrated and had to be handled by the judicial body itself. Sections 397 and 398 of the Companies Act of 1956 allow for a petition to include activity that results in mismanagement of the company's operations, harassment of minority shareholders, or both. Even if an arbitration agreement exists in such cases, every act does not have to be ipso facto relevant to that arbitration agreement. Furthermore, such matters are not arbitrable since they may affect the interests of third parties who are not parties to the arbitration agreement.

Also in *"M/S Emaar Mgf Land Ltd. v Aftab Singh* (2018)", despite the changes to "Section 8 of the Act", the Apex Court has held that an arbitration clause in a contract between a builder and a consumer cannot limit the NCDRC's power. It concluded that the non-obstante provision did not prevent consumer fora from using their jurisdiction since they were specifically designated entities to handle consumer issues.

The Transfer of Property Act governs leased properties that are immune from rent control legislation, and landlord-tenant disputes governed by the Transfer of Property Act are arbitrable. Under the Transfer of Property Act, arbitrators have the ability to provide landlord-tenant remedies. Conflicts between landlords and tenants protected by specific rent control legislation remain unresolved. In "*Natraj Studios (P) Ltd. v Navrang Studios & Others* (1981)" the Apex Court held that disputes between landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 cannot be referred to an arbitrator.

In "*Booz Allen & Hamilton Inc. v SBI Home Finance Ltd* (2011*)"*, the Court found that rather than an arbitral panel, a claim to enforce a mortgage must be decided by a court of law. The Court concluded that a mortgage enforcement action involved the exercise of a right *in rem*. It said that a right *in rem* can be asserted against the entire globe and is not subject to arbitration. In contrast, a right *in personam* protects interests against individual people and is arbitrable. It was also recognised that disputes arising from rights *in rem* affecting subordinate rights *in personam* are arbitrable. The Court went on to say that any civil or commercial problem that may be decided by a court can, in theory, be adjudicated and settled through arbitration, unless expressly (as a matter of public interest) or by necessary inference is barred. In its ruling, the Court gave examples of non-arbitrable disputes. Concerning landlord-tenant disputes, the Court stated in obiter that "tenancy disputes are not arbitrable when (i) eviction or tenancy matters are governed by special statutes; (ii) the tenant has statutory protection from eviction; and (iii) only specified courts have jurisdiction to grant eviction or resolve the disputes" (**"***Booz Allen* Criterion**"**).

Regarding the arbitrability of copyright issues, Bombay High Court "(*Eros International v Telemax Links India Private Limited* 2016)" has held that as there is no bar in the copyright law as to arbitrability and as the dispute in the case was regarding a remedy which was only a right *in personam*, the issue was arbitrable. But the same Court (*Indian Performing Right Society Ltd v Entertainment Network (India) Ltd* 2016) has ruled that the *Eros* case may be distinguished on the circumstances of the case and that the remedy sought in the case in respect of copyright was a right in rem and not arbitrable, citing the Supreme Court's *Booz Allen* judgement.

In "*Himangni Enterprises v Kamaljeet Singh Ahluwalia* (2017)", the Court was faced with the question of whether landlord-tenant disputes can be arbitrated once again. The landlord initiated a civil complaint against the tenant in this case. The subject property was leased in accordance with a lease agreement that included an arbitration clause. The tenant petitioned the civil court under "Section 8 of the Arbitration Act", requesting that the matter be sent

to arbitration. The landlord opposed to the application, claiming that the subject matter of the litigation was ineligible for arbitration. The civil court and the Delhi High Court (on appeal) agreed the landlord's argument and denied the request for arbitration. In the appeal, the Court concluded that the mere inapplicability of the Delhi Rent Act to the leased premises did not constitute the matter arbitrable. At any time, the government may withdraw the exemption from the application of the Delhi Rent Act to leased premises. In such a case, the Delhi Rent Act (a special legislation) will restart its application, rendering the arbitrator's authority null and void (as per Booz Allen Criterion). As a result, simply because the premises are not subject to the Delhi Rent Act does not mean that the issue cannot be settled through arbitration. In such cases, the TP Act applies, and the situation must be resolved by civil courts with the authority to grant eviction or settle disputes.

In "*Vidya Drolia & Others v Durga Trading Corporation* (2019)", the landlord and tenant signed a tenancy agreement that contained an arbitration clause. The landlord demanded that the renter vacate the property after ten years. When the renter failed to quit the premises, the landlord sent him with an arbitration notice. Section 11 of the Arbitration Act was used by the landlord to request the appointment of an arbitrator. The High Court of Calcutta disregarded the tenant's arguments to the non-arbitrability of the dispute and ordered the issue to be arbitrated.

Meanwhile, when the Court ruled in "*Himangni Enterprises"* That landlord-tenant conflicts covered by the TP Act would not be arbitrable, a review/recall application was brought against the judgement appointing the arbitrator in the High Court of Calcutta. This request was refused by the High Court of Calcutta, and an appeal was filed with this Court. When a two-judge bench heard the appeal for the first time in 2019 "(*Vidya Drolia I*)", the Court found that a landlord-tenant conflict controlled by the TP Act was never covered by either *Natraj Studios* (since this was a matter under the "Bombay Rent Act") or "*Booz Allen"* (as this was a case involving enforcement of mortgage which was a right *in rem*). The Court disagreed with its decision in *Himangni*

Enterprises, ruling that the possibility of the government rescinding the exemption from the application of the Delhi Rent Act did not render the issue unarbitrable. The Court found that if the Delhi Rent Act became ineffective, the problem would be addressed by the TP Act, and nothing in the TP Act prohibits arbitrability.

The Court referred the matter to a three judges' bench, which culminated in "*Vidya Drolia v Durga Trading Corporation* (2020)","(*Vidya Drolia II)"*, the Court laid down a four-fold test to determine the arbitrability of disputes. It held that "a dispute would be inarbitrable when:

1. it relates to actions *in rem* or actions that do not pertain to subordinate rights *in personam* that arise from rights *in rem.*

2. it affects third party rights; have *erga omnes effect;* require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;

3. it relates to the inalienable sovereign and public interest functions of the state; and

4. it is expressly or by necessary implication non-arbitrable as per mandatory statute(s)."

Using the aforementioned criteria and quoting Sections 111, 114, and 114A of the Transfer of Property Act, the Court decided that nothing in the TP Act expressly or indirectly bans arbitration. These were actions *in personam* resulting from rights *in rem*, not actions *in rem*. They had no impact on third-party rights and had no *erga omnes* effect. They also have nothing to do with the state's sovereign powers. Concerning the public policy considerations, the Court held that they might be brought to the arbitrator in the same way as they would in a civil court. The arbitrator, like all politicians, would be bound by the TP Act and would be required to settle disputes in line with the benefits and protections afforded to tenants. The Court also found that a landlord-tenant

award is enforceable in the same manner that a civil Court decree is. As a result, it concluded that the TP Act's landlord-tenant conflicts would be arbitrable.

In 2020, in "*Suresh Shah v Hipad Technology India Private Limited* (2020)", the parties had signed a sublease agreement that included an arbitration clause. As a result of the sublease agreement, disagreements arose. Under Section 11 of the Arbitration Act, an application for the appointment of an arbitrator was filed in Court. The Court considered the arbitrability of lease/tenancy agreements/deeds before considering the appointment of an arbitrator. The Court emphasised that the problems would be unresolvable if the eviction or tenancy was governed by specific legislation, the tenant had statutory protection against eviction, and a separate court was granted jurisdiction (*Booz Allen* Criterion). To put it another way, determining that landlord-tenant disputes would be arbitrable under the TP Act.

The "*Suresh Shah"* and "*Vidya Drolia II"* the verdicts now give much-needed clarification to landlords and renters on the sorts of tenancy disputes that can be submitted to arbitration. The four-pronged standard developed by the Court in *Vidya Drolia II* to evaluate arbitrability would likewise be applicable to ordinary disputes. The courts' workload is projected to reduce in the future as greater clarification is provided on the arbitrability of landlord-tenant problems governed by the TP Act. However, the judgements must be properly construed in the context of landlord-tenant conflicts under specific sections of the TP Act. The nature of the topic under consideration should be approached with prudence. The ruling cannot be read liberally to imply that all provisions of the TP Act are arbitrable. Disputes under the TP Act involving *in rem* action or *erga omnes* effect will remain non-arbitrable and must be decided on a case-by-case basis..

3.11 ARBITRABILITY OF FRAUD IN INDIAN CASES

The Apex Court, in "*N. Radhakrishnan v Maestro Engineers* (2009)", it was ruled that if fraud and severe malpractices were alleged, only the court could handle the case and that such a situation could not be referred to an

arbitrator. The Supreme Court further stated that fraud, financial malpractice, and collusion are criminal accusations, and that an arbitrator has limited jurisdiction since he is a contract product. The courts are better able to deal with significant and complicated claims, and they may provide a broader variety of redress to the parties involved. In "*Afcons Infrastructure Ltd.v Cherian Varkey Construction Co.* (2010)", the Supreme Court gave categories of cases not suitable for arbitration and made a separate category of serious and specific fraud, fabrication of documents etc. In "*Booz Allen & Hamilton Inc. v SBI Home Finance Ltd.* (2011)", all actions *in rem* were held to be non-arbitrable.

The Apex Court, in "*Swiss Timing Ltd. v Organizing Committee, Commonwealth Games* (2014)", and "*World Sport Group (Mauritius) Ltd. v MSM Satellite (Singapore) Pte. Ltd.* (2014)", held that allegations of fraud are not a bar to referring parties to a foreign-seated arbitration and that the only exceptions to referring parties to a foreign-seated arbitration are those specified in Section 45 of the Act, namely when the arbitration agreement is either (i) null and void, (ii) inoperative, or (iii) incapable of performance. Thus, while fraud accusations are not arbitrable in international commercial arbitrations with a seat in India, it appeared that the same restriction would not apply in international commercial arbitrations with a seat in another country. In the earlier instance, the fraud involving the game's broadcast rights was deemed to have an indirect public component, necessitating an open public trial in court, and therefore arbitration was postponed. "*Swiss Timing Ltd. v Organizing Committee, Commonwealth Games* (2014)". In the latter case the effect of parallel criminal proceedings in reference matters was discussed and was held that standard of proof is different for civil and criminal proceedings and merely because criminal proceedings were instituted in same subject matter, a dispute will not be non-arbitrable "*World Sport Group (Mauritius) Ltd. v MSM Satellite (Singapore) Pte. Ltd* 2014)".

Later, the decision of the Apex Court in "*A Ayyasamy v A Paramasivam & Others* (2016)", court did not overrule the decision in *Radhakrishnan*, but as it stood in the way, the court stated that claims of fraud are arbitrable if they are

based on basic fraud. The signature of firm cheques without the approval of other partners was deemed not to be a major or complicated fraud requiring extensive proof in this case. The Apex Court held in *A Ayyasamy* that: "(a) allegations of fraud are arbitrable unless they are serious and complex in nature; (b) there is no impediment to the arbitrability of fraud unless it is alleged against the arbitration agreement; and (c) the decision in *Swiss Timing* did not overrule *Radhakrishnan".*

The judgement differentiates between 'fraud simpliciter' and'serious fraud,' stating that while'serious fraud' should be handled by the court, 'fraud simpliciter' can be handled by the arbitral panel. Court has to see the nature of dispute and a strict enquiry is needed to see whether allegation is serious and complicated to refuse reference. Accordingly serious fraud includes all that make a criminal offence, complicated facts requiring lot of evidence, forgery or document fabrication, fraud against arbitration agreement or permeating the entire contract etc. But fraud between parties with no implication on public domain are arbitrable. In the same spirit, the Apex Court has opined that a tribunal designated by the parties can extensively investigate the charges of fraud. Here the "two principles laid down in *(Russel v. Russel* 1880*)* was quoted which are as follows:

a) On allegation of fraud, arbitration could be resisted if person charged with fraud wanted public enquiry;

b) A prima facie case of fraud should exist irrespective of who was resisting it".

Here the matter was referred as there was no prima facie case of fraud. This has been applied in earlier Indian cases even though jury trials have been abolished in India. Here courts get more discretion to decide on reference and on prima facie proof of fraud, courts proceeded with the suit. The first principle depends on the second and in cases of suspicious fraud and when prima facie fraud not proved, courts refer to arbitration. The prima facie fraud in the second principle has been used as serious fraud by the Supreme Court *(Abdul Khadir v*

Madhav Prabhakar 1961). Here mere allegations or suspicion of accounts were held to be not serious fraud. This case was relied on in *Radhakrishnan* where malpractice in account books was held not arbitrable being a serious fraud requiring detailed evidence (*N. Radhakrishnan v Maestro Engineers* 2009). The difference between prima facie case of fraud and prima facie case of serious fraud is illusionary.

Recently, in the case of "*Rashid Raza v Sadaf Akhtar* (2019)", while appointing an arbitrator under Section 11 of the Act, the Supreme Court relied on its decision in *A Ayyasamy* and established the working standards for determining whether an accusation of fraud is arbitrable. Here a fraud in a partnership was held to be private and hence arbitrable. It derived two workable tests from "*A Ayyasamy"* to distinguish between a basic charge of fraud and others, as follows:

i. "does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or

ii. whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain".

In "*Avitel Post Studioz Ltd v HSBC PI Holdings (Mauritius) Ltd.* (2020)", a strong prima facie case for section 9 interim order was made in Bombay High Court pending enforcement of award. This was upheld by the Supreme Court on prima facie evidence and balance of convenience and section 9 relief allowed as even serious fraud between parties which has no public element at all is arbitrable. Therefore, the court indication was that commercial frauds are to be arbitrated. Even in suspicion of serious fraud, court cannot refuse arbitration. The *Avitel* relying on *Ayyasamy* made a two-prong test to look into serious allegation of fraud. First test is when arbitration clause cannot be existing when court concludes that party who has allegedly breached has not entered into agreement. The second test is when allegations against state or its instrumentality is arbitrary or fraudulent conduct, then court has to decide. But

these tests are very narrow and so it is better to rely on *Ayyasamy* to keep out cases of serious fraud.

In "*Vimal Shah & Others v Jayesh Shah & Others* (2016)", The Supreme Court has held that trust documents and the Indian Trusts Act of 1882 cannot be arbitrated. In the case of "*The Oriental Insurance Co. Ltd. v Dicitex Furnishing Ltd.* (2019)", The Supreme Court has ruled that, at the Section 11 stage, the court that is required to ensure the existence of an arbitrable dispute must be prima facie convinced of the genuineness or credibility of the coercion plea; it cannot be overly specific about the nature of the plea, which must be made and established in the substantive (arbitration) proceeding. If the court takes a different approach and thoroughly examines the plea and judges its credibility or reasonableness, the applicant may be denied a forum entirely, because rejection of the application would make the finding (about the finality of the discharge and its effect as satisfaction) final, denying the applicant even the right to approach a civil court. In a more recent case of *"Suresh Shah v Hipad Technology India Private Limited* (2020)", the Apex Court upheld the non arbitrability of tenancy disputes.

In 2019, in the case of "*Vidya Drolia & Others v Durga Trading Corporation* (2019)", a two-judge Supreme Court panel referred the question of landlord-tenant arbitration to a three-judge Supreme Court bench. In 2020, the Apex Court finalised the law *in "Vidya Drolia v Durga Trading Corporation* (2020)", and established a "four-fold test" for determining the arbitrability of disputes. According to the Court, tenancy disputes are arbitrable as long as they are not governed by special legislation. The Supreme Court further declared that an arbitral tribunal is the preferred first authority to determine and resolve all issues concerning dispute arbitrability.

After the case of "*Vidya Drolia",* the Apex Court considered a similar issue *in "M/S N.N. Global Mercantile (P) Ltd. v Indo Unique Flame Ltd. & Others* (2021)". The Apex Court concluded in "*Global Mercantile*" whether the fraudulent invocation of a bank guarantee is arbitrable. In finding the case arbitrable, the Supreme Court also backed the arbitrability of fraud thresholds

and the type of standards set by previous Supreme Court judgements in "*Vidya Drolia"* and "*Rashid Raza"*.

While discussing the reason for finding the arbitrability of fraud, the Apex Court reiterated the difference as laid down in "*Swiss Timing Ltd. v Organizing Committee, Commonwealth Games* (2014)", with relation to voidable and void agreements. According to the Indian Contract Act of 1872, disputes including claims of fraud, misrepresentation, etc. are voidable contracts, the Supreme Court stated. The Contract Act defines fraud as any act done with the intent of deceiving or persuading a third party to execute a contract. The Supreme Court determined that disputes involving charges of fraud are susceptible to arbitration, and that the question of whether authorization was gained by fraud, deception, etc., can be settled through arbitration using strong, convincing evidence. A voidable agreement is nevertheless enforceable unless it is proven that it violates Sections 2(i) and (j) of the Contract Act.

According to a series of Supreme Court judgements, it is now established that charges of fraud can be arbitrated when they are part of a civil dispute. There is still an exception to this rule, though. Under this provision, fraud that renders the arbitration clause itself void and ineffective cannot be the subject of arbitration.

Arbitration has been resisted in simpler cases and there lies the question why the tribunal cannot decide complex private disputes in spite of the 1996 Act with all the amended provisions. It has been a long journey from *Russel* to *Avitel* on arbitrability of fraud. While Indian courts have earlier applied *Russel* principles, in *Ayyasamy* and *Avitel* have forgotten them. So courts should have a relook on the issue of fraud and arbitration so that all efforts are taken by courts to give importance to arbitrator.

For a rapidly expanding economy to be able to draw in foreign investment, a trustworthy, stable conflict resolution procedure is essential. Due to the massive backlog of cases before Indian courts, commercial actors in India and outside have developed a strong preference for employing arbitration to settle

disputes. Despite being one of the initial signatories to the New York Convention, arbitration in India has not always followed worldwide best practises.

However, there has been a noticeable improvement in strategy during the past five years. In order to bring Indian arbitration legislation in line with the world's best practises, courts and lawmakers have taken action. With “the 2015, 2019 and 2021 Amendment Acts” in place and the courts' pro-arbitration stance, there is reason to anticipate that these best practises will soon be incorporated into Indian arbitration law. Our courts are ready to address a multitude of instances regarding the interpretation of the Act's multiple revisions.

3.12 SUMMARY

The autonomy of parties by reducing court intervention in the arbitral process is made possible by the non obstante clause in “section 5” as it only permits an intervention as permitted by “Part I of the 1996 Act”. In exceptional situations where arbitration requires court support it is possible but the question is regarding the extent of intervention in such cases. The normal discretion available to a judicial authority is not there in “section 5”. This intervention should never delay proceedings. In addition, there can be corrections made in appeals later. Therefore, the courts power should be exercised with utmost care and caution. The courts have not intervened in many matters. Thus section 5 operates as a supervisory provision over the provisions of judicial intervention in arbitration.

“Part I of the Act” deals with domestic arbitration, and “section 8 of the Act” gives courts the power to mandate arbitration at the request of a party. According to “section 16 of the Act”, the arbitrator will decide whether or not the arbitration agreement is legitimate in this case. The Apex Court has reaffirmed that, in the event of a valid application, the court must compel arbitration and cannot postpone arbitral proceedings to avoid a delay in arbitration. The 2015 amendment allows the court to investigate an agreement's existence and legality on a preliminary basis. Therefore, the non-obstante provision in sections 5 and 16 that gives the arbitrator authority to determine on

problems of jurisdiction and the existence and legality of the agreement is a requirement of section 8. Courts may subsequently determine all of these problems in a post-award stage.

Arbitration clause is independent and wide to cover all issues relating to it. If the clause is not wide enough then the separability doctrine empowers the arbitrator to decide such issues on merit which cannot be reviewed by courts. In India, section 16 gives the arbitrator the authority to make final decisions that are not subject to judicial review, including those regarding jurisdiction, the existence of an agreement, and its legality. Thus like sections 5, 8,9,11 etc., section 16 also restricts courts from intervening with the arbitral proceedings.

Regarding interim measures through court, section 9 measures are available before and after the arbitral proceedings. Once arbitrator is appointed remedies under section 9 and 17 co-exist, though the preference is to section 17. Courts under section 9 has residuary powers to grant any interim measure similar to those under CPC and courts can follow the principles under the CPC for the same. But these measures are to protect rights of party pending arbitral proceedings. This section does not give a substantive right and is not a substitute for the arbitration proceeding. Therefore, court cannot exercise this power thereby affecting the power of arbitrator. Thus, the discretionary power of court under section 9 must be exercised with caution and only in appropriate cases where the court is justified with adequate material on record. In addition, this power is exercised by Indian courts in domestic arbitrations and not foreign-seated arbitrations.

In appeals from arbitral tribunal's order on interim measures, there is no standard of review provided. Courts either apply the grounds for setting aside under section 34 or treat them as appeals and assess the legality on merits. Indian courts were confused as to the extent of review of the substance of interim measure. In "Model Law" the appeal regulating review of interim orders is that it discourages an enquiry into the merits of the case. If a full review is made then all parties can appeal and this goes against the Model Law and the objective of 2015 amendment to Sections 9 and 17. Thus Supreme Court was reluctant to

conduct an enquiry on the issue so that courts are not interfering with interim orders by the tribunal.

But Indian Courts have gone into the merits of the dispute when they are approached with enforcement of interim orders of tribunals and the High Courts have set aside them in appeal. After the 2019 amendment, section 17 measures are granted by arbitrator only during arbitral proceedings. As recently reiterated to district courts by a number of High Courts and the Supreme Court, an interim order made by the arbitrator shall be deemed to be an order of the court and shall be enforced under CPC as if it were an order of the court. The court in enforcing such order is doing a ministerial act and no judicial order is required for enforcing tribunal's interim order. Moreover, under Section 37, interim orders are appealable and so there exists a court remedy for that.

In appointment of arbitrators by Court under "section 11 of the 1996 Act", the nature of power exercised by courts was always in question. Some cases described it as administrative power, whereas some others as judicial power. The issue was that if the power is judicial, courts would have discretion and they would have to decide on preliminary issues like validity, existence of agreement etc. In one case Supreme Court segregated issues to be decided by court and tribunal. Finally in "2015 the Act" made clear by saying that the courts power is only administrative and that the court shall confine to the existence of agreement and that the determination of the court is settled and non-appealable. In 2019 amendment the "Arbitration Council of India" is formed to grade and maintain arbitral institutions. Courts under section 11 would now designate such institutions to appoint arbitrators. So now this institutional appointment of arbitrators by courts has limited the extent of judicial intervention under "section 11 of the 1996 Act" taking the spirit of the "UNCITRAL Model Law".

In the present chapter, by analyzing the judicial approach with respect to judicial intervention in arbitration before passing of the award, it can be seen that, the "UNCITRAL Model Law" which provides a pro-arbitration approach is adopted by "the 1996 Arbitration Act" which is trying to reduce excessive court intervention in arbitration. But in courts, we can see the reluctance to apply

the provisions in an arbitration friendly way. This has resulted in the amendments in 2015 and 2019. Cases after the 2015 amendment will have to be analyzed in detail in order to see whether the courts have exercised proper restraints in exercise of their power. This will be the analysis involved in the next chapter.

CHAPTER IV
JUDICIAL RESPONSE TO LIMITATION IMPOSED BY THE 2015 AMENDMENT TO JUDICIAL INTERVENTION IN ARBITRATON

4.1 INTRODUCTION

"The 2015 amendment to the Arbitration Act 1996" was a major change in the existing law. Many provisions got amended following the "UNCITRAL Model Law" which is based on a pro-arbitration approach and on the suggestions of "the Law Commission of India". Amendment is for a more equitable balance between courts and arbitral tribunals. The main focus of this study is to see how Indian courts are trying to achieve this balance. When in cases courts act according to the amendments, India shows an arbitration friendly approach. But acting otherwise courts show an unusual exercise of power. The exact balance between the powers of courts and arbitrators is the focus here.

Section 9 was amended in such a way that when an interim measure is granted, arbitration proceedings shall commence within 90 days. Also remedy under Section 9 shall be granted by courts only in exceptional circumstances when the tribunal is constituted. Section 11 got amended and the authority for arbitrator appointment has been vested with the High Courts and Supreme Court. Under "Section 11 (6A)", the courts had to confine to the existence of an arbitration agreement. The power of courts in such cases was not considered to be a judicial power under Section 11 (6B). As per Section 11(7), the order of the court was final and non-appealable. Thus, major changes were made again reiterating the arbitration-friendly approach of the law. Section 17 was amended in such a way to grant power to tribunal to issue interim measures during proceedings or afterwards.

4.2 REFERENCE TO ARBITRATION IN THE POST 2015 AMENDMENT ERA

According to "Section 8 of the Act", if a party has requested arbitration before making their initial statement, the case will be sent to arbitration unless the court on finding the matter to be sent to arbitration concluding that the agreement is defective, ineffective, or incapable of being fulfilled. According to "Article 8 of the Model Law", a court must recognise and give effect to an arbitration agreement, and it gives the arbitral tribunal sole authority to determine the merits of any dispute covered by a valid arbitration agreement. The Model Law covers the same ground as "Article II (3) of the New York Convention" in terms of the court's investigation into the agreement's legality. "Article 8 of the Model Law" is similar to "Section 8 of the 1996 Act". However, with the 2015 modification, the Arbitral Tribunal, as per "Section 16 of the Act", shall make the final conclusion as to whether or not a genuine arbitration agreement exists. The arbitration clause will remain in effect even if the parties agree to dissolve the agreement, as arbitration must be used to resolve disputes. The 1940 Act's equivalent clause had allowed the court a great deal of latitude. But in "*Kalpana Kothari v Sudha Yadav* (2001)" the Supreme Court has differentiated Section 8 from the analogous provision in the 1940 Act.

In "*P. Anand Gajapathi Raju v PVG Raju* (2000)", it was held that under Section 8 when all conditions are satisfied the court is obliged to refer to arbitration. The Supreme Court in *"Booz Allen & Hamilton Inc. v SBI Home Finance Ltd* (2011*)",* has ruled that even in cases where there is an arbitration agreement, a mortgage claim cannot be sent for arbitration. By barring any conflicts concerning the rights *in rem*, this ruling has further constrained the use of arbitration as a different dispute resolution method (Julian, 2011).

In "*M/S Emaar Mgf Land Ltd. v Aftab Singh* (2018)" The Supreme Court held that in a section 8 reference when the issue of arbitrability is before the court, it has to see if the dispute is intended to be covered by arbitration clause. Even though non-arbitrable categories are laid down in this case and in *Booz Allen*, they are not exhaustive and are based on individual facts whether remedy

under Arbitration Act is barred or not. In "*Hema Khattar v Shiv Khera* (2017)", the Apex Court ruled that whereas Section 8 used to be broadly read similarly to Section 45, it is now limited to a prima facie examination of whether an arbitration agreement is genuine. As a result, this decision follows the spirit of the 2015 amendment, which provides in Section 8 that, in the case of an application for arbitration reference, the arbitral tribunal shall determine the finality.

In "*Ruby Chemicals v Charabot Group* (2017)", the party contacted the International Chamber of Commerce, Paris, notwithstanding a section 8 application for reference to arbitration, but the action was abandoned because the respondents failed to cover the costs. Except for under "The ICC Rules", the respondent consented to arbitration. Therefore, the court reversed the High Court's decision to uphold the section 11 petition for arbitrator appointment.

Recently the Delhi High Court in "*Hero Electric Vehicles Private Limited & Another v Lectro E – Mobility Private Limited* (2021)" held that in cases under section 8, the court is to ensure that it is exercising the same jurisdiction, which the tribunal is empowered to exercise while determining arbitrability of dispute or existence of valid arbitration agreement. Also in "*Oommen Thomas Panicker v Monica Constructions* (2021)", a Section 8(1) petition was filed as I.A. and dismissed as not maintainable. When appealed under Section 37(1)(a), the high Court did not allow it as only when a section 8(1)(a) application is dismissed refusing to refer to arbitration on a finding that dispute in agreement is not arbitrable there can be such an appeal.

The extent of court review and court jurisdiction under sections 8 and 11 have been held to be identical, but limited and restricted after 2015 in "*Vidya Drolia v Durga Trading Corporation* (2020)". In both situations courts follow the prima facie standard. Public policy of India, a ground to annul the award under section 34 of the Act, cannot be used at referral stage. But a public policy based on which a statute restricts or prohibits arbitrability of disputed is seen at the referral stage. The issues of existence and validity of agreement are connected and non-distinguishable. Agreement exists only if it is valid and

enforceable under the law. In order to eliminate obviously and ex facie illegal arbitration agreements and non-arbitrable conflicts, Section 8 court uses the *prima facie* review, which is not a final review.

It is necessary to remove deadwood and side branches at the reference stage in simple situations where dismissal is obvious and in accordance with the facts and the law so that the lawsuit must end at the first stage. Under Sections 8 and 11, all doubtful cases will be referred or appointed. The rest including arbitrability will be decided by arbitrator. The scope at section 8 stage is severely constrained in situations where the defence of novation, agreement, and satisfaction, case of contested no-claim certificate, or claim barred by limitation, are asserted. Limitation law is procedural, but disputes are factual that are to be decided by arbitrator with the facts and applicable law.

In Section 8 applications for reference, when the issue of arbitrability of disputes involving fraud allegations was raised, courts gave conflicting views. Hence "the Law Commission in its 246th Report (India, 2014)" had recommended changes to "Section 16 of the Act" to empower tribunals to decide on disputes of serious nature like that of fraud, complicated issues etc. In "*N. Radhakrishnan v Maestro Engineers* (2009)" two judges Bench of Apex Court held that issues of fraud are non-arbitrable relying on "*Abdul Kadir Shamsuddin Bubure v Madhav Prabhakar Oak"* cited in (Ganguli A., 2010) where the court opined that when serious fraud issues are raised by one party, the court need not make a reference.

Later in "*Swiss Timing Ltd. v Organizing Committee, Commonwealth Games* (2014)", the Apex Court held that Radhakrishnan's case is per incurium and is not a fair rule. So, when parties are before tribunal, unlike Section 8 or Section 11 and the power or jurisdiction of tribunal to determine fraud cases is challenged, there a lack of tribunal's power is seen. But Apex Court in "*A.Ayyasamy v A Paramsivam & Ors* (2016)" without overruling Radhakrishnan's case held that fraud allegations are arbitrable if not serious and complex and not alleged against arbitration agreement. It held that "*Swiss Timing* case" did not overrule "*Radhakrishnan* case" but differentiated between

simple and serious frauds. The court concluded that serious fraud having a public element or involving a right *in rem* had to be decided by court, whereas simplicitor fraud was arbitrable. Though courts below refused to refer to arbitration, Supreme Court ordered reference to arbitration as under Section 16 the tribunal had power to arbitrate claims of fraud.

This twin test was applied in "*Rashid Raza v Sadaf Akhtar* (2019)" which was a full bench decision of Supreme Court and thus the decision in "*Radhakrishnan case"* is impliedly overruled by the Apex Court. Again in "*Avitel Post Studioz Ltd v HSBC PI Holdings (Mauritius) Ltd*. (2020)", the allegations of fraud in an order under Section 9 was challenged and Supreme Court applied both *Ayyasamy* and *Rashid* decisions and held that the allegations were between parties and not public ones and dismissed the appeal and upheld the Section 9 order. Thus, all these have demystified the arbitrability of fraud. These conflicting decisions on the power under Section 16 could have been avoided by amending Section 16 as per the 246th Report. But the legislators did not amend Section 16 as then it would be difficult for the court to decide on matters of fraud with public element. Even though pro-arbitration approach is the intention of courts, judicial intervention is required as courts would go into the merits of each case to scrutinize if the fraud allegation negates the existence of arbitration clause or renders the dispute as non-arbitrable.

4.3 INTERIM MEASURES BY COURT AFTER THE 2015 AMENDMENT ACT

A party does not give up their right to pursue arbitration by asking for or receiving temporary relief from a national court, and a national court is not barred from giving such relief just because there is an arbitration agreement, according to "Article 9 of the Model Law". Article 9 established that national court granting injunctive relief was and continues to be consistent with arbitration. According to "Section 9 of 1996 Act", interim measures can be sought before, during or after proceedings. After the 2015 modification, we clarified the fact that after the tribunal is established, the courts cannot consider Section 9 applications unless they determine that certain conditions exist that

may not make the tribunal's Section 17 remedy effective. A further requirement of the amendment is that the arbitration procedures must begin within 90 days after the date of such interim orders.

In "*Firm Ashok Traders v Gurumukh Das Saluja and others* (2004)", according to the Supreme Court, a right under Section 9 cannot be stated to result from a contract. A party to the arbitration agreement has to be the person who invokes Section 9. This has nothing to do with the requested remedy or the supporting claim. Only the arbitration agreement is important for interpreting Section 9 since it is an agreement in and of itself.

The Apex Court has in "*Hindustan Construction Company Ltd v Union of India* (2019)" has held that interim relief can be granted before, during and after arbitration, but there must be a proximate nexus between interim orders sought under Section 9 and arbitration. Even if a setting aside petition is brought under "Section 34 of the Act" after the award has been issued but before it is implemented, Section 9 relief may be granted.

Regarding international commercial arbitrations there are foreign seated as defined in "Section 2(2)" and Indian seated as defined in "Section 2(1)(f)". In "*PASL Wind Solutions (P) Ltd v GE Power Conversion (India) (P) Ltd* (2021)" the interim orders were granted by court in a foreign seated arbitration with assets in India.

The Bombay High Court in "*Vijay Sharma v Vivek Makhija* (2019)" upholding the Apex Court in "*A.Ayyasamy v A Paramsivam & Ors* (2016)" has ruled that a party seeking remedy under Section 9 cannot be refused such relief only because there is a claim that the agreement's stamp is insufficient. The parameters of the parties' agreement reflect the business understanding of the arbitral procedure. The task of the court is to instil a feeling of business effectiveness in that commercial knowledge "(*A.Ayyasamy v A Paramsivam & Ors* 2016)".

Under Section 9, courts may adopt inferior measures even if the original agreement including the arbitration clause is not stamped or is not stamped

properly. The Supreme Court in "*M/S N.N. Global Mercantile (P) Ltd. v Indo Unique Flame Ltd. & Others* (2021*)"* has ruled that the High Court may offer temporary relief to protect the subject of an arbitration, but only after seizing the document and ordering the payment of stamp duty within a certain amount of time.

In *"Avantha Holdings Ltd. v Vistra ITCL India Ltd* (2020)", the Delhi High Court considered the criteria for awarding relief as well as the scope of section 9, and it concluded that courts will have to tread carefully while giving interim remedies. After reviewing the circumstances, it was determined that no relief could be given because it only involved the enforcement of contractual rights and that the courts, in exercising their Section 9 pre-arbitration jurisdiction, could not assume the jurisdiction of the arbitrator or arbitral tribunal, which had not yet been established.

There was a challenge to a Section 9 order granting interim orders during pendency of the award and later the award was annulled in "*NHPC Ltd v Patel Engineering Ltd* (2018)". As the main matter was decided, Supreme Court refused to decide on the legality of interim order.

Regarding place where Section 9 application has to be filed when seat of arbitration has not been consented by the parties and before such place of arbitration may have been determined on the facts of the case by the tribunal, in "*(BGS SGS SOMA JV v NHPC* (2019*)"*, the Apex Court held that it has to be the court where part of cause of action arises.

In "*SEPCO Electric Power Construction Corporation v Power Mech Projects Ltd* (2021)", In order to change an incorrectly worded Section 9 court ruling requiring a party to provide a specific bank guarantee, an Article 136 petition was brought before the Supreme Court. This was denied because it was not necessary for a matter involving an interim measure under Section 9, and the court amended the order by asking the party to use the bank guarantee that had already been provided instead.

4.4 JUDICIAL RESPONSE TO APPOINTMENT OF ARBITRATORS DURING THE POST 2015 AMENDMENT PERIOD

"Section 11" as enacted in 1996 Act and amended in 2015 had made a departure from A.11 of Model Law and further amendments in 2019 had again made departure from Model Law. According to Supreme Court earlier as in "*Konkan Railway Corporation Ltd. v Rani Construction (P) Ltd.(Konkan-II)* (2002)" and later in "*State of West Bengal and Ors. v Associated Contractors* (2015)" has held that the power of the courts under Section 11 cannot be considered as that of court and the decision in such cases had no precedential value as of courts. Regarding international commercial arbitration, the Supreme Court in "*Amway (India) Enterprises (P) Ltd v Ravindranath Rao Sindhia* (2021)" has held that when parties are abroad and business and office in India, as per section 2(1)(f) the arbitration is international and not domestic and the Supreme Court alone can appoint arbitrator under section 11(6) and not the High Court of Delhi.

In "Angle Infrastructure (P) Ltd. v Capital Builders (2016)" court has recognized the limited power under Section 11. But in "*(TRF Ltd v Energo Engineering Projects Ltd* 2017*)"* the court found a part of arbitration clause as void under Section 12(5) on the ground of ineligibility of an arbitrator and struck down that part and remanded the matter back to the High Court for arbitrator appointment. It was also opined that once an arbitrator is not eligible under law, he cannot nominate another. After this, the Apex Court referred a matter of appointment of arbitrator to the Mumbai Centre for International Arbitration saying that the power under Section 11 is purely administrative.

In "*Municipal Corporation of Greater Mumbai v Pratibha Enterprises* (2018)", the single judge of a High Court appointed an arbitrator to decide on issues between parties based on a tender notice and later the court recalled its own order as the tender notice and general clauses in contract were not arbitration clauses but only an in house mechanism. This was reversed by Division bench as under "Section 5 of the Act", judicial intervention was possible only under Part I of the Act and hence court could not review its own

order. But the Apex Court opined that in case of lack of arbitration agreement, the Arbitration Act would not apply and the single judge with its inherent power could recall its own order appointing arbitrator.

When reference was sought in a suit for cancellation under the Specific Relief Act in *"Deccan Paper Mills Co. Ltd v Regency Mahavir Properties* (2020)", it was held to be arbitrable as granting such a relief was a civilly triable dispute. In spite of serious fraud allegations and absence of arbitration clause in the initial agreement, the dispute was held arbitrable. Also seeking cancellation was not a dispute *in rem* but one *in personam*, even though the private document was registered.

The prospective operation of the 2015 amendment was declared by the Supreme Court in "*Union of India v Parmar Construction Co.* (2019*)"* Here the High Court under Section 11(6) had appointed arbitrator without resorting to the prescribed procedure in the agreement which the court could do only after giving cogent reasons like independence or impartiality of appointed arbitrator doubtful or appointed one does not function. Also furnishing no claim certificate and receipt of payment of final bills was held to be a discharge under economic duress and upper hand of employer and so not implying discharge of contract and cessation of arbitrable dispute. There is no absolute rule and each case is to be decided on its own facts and circumstances. But in this case, there was no discharge and the dispute was arbitrable.

Another question raised before the court was whether there can be appointment under Section 11(6) when there was no arbitral dispute in "*United India Insurance Co. Ltd v Antique Art Exports (P) Ltd.* (2019*)".* Here there was full and final settlement between parties without any protest, but later they moved the court for arbitrator appointment saying that the settlement was made under coercion. It was held that the power of appointment had some judicial intervention and the court could find that there was no existing dispute as there was no coercion or undue influence but was voluntary acceptance by party. Hence there was no arbitrable dispute and an appointment under Section 11(6) not needed.

In "*The Oriental Insurance Co. Ltd. v Dicitex Furnishing Ltd.* (2019)" the arbitrator appointment under Section 11(6) by High Court was in question on the ground that the discharge voucher gave full discharge and the arbitration agreement was barred. But defence that it was given under economic duress as there was delay in settlement and the insurer had insisted for discharge voucher. All these were enough for the court to have a prima facie belief as to the plea of coercion and hence there was an arbitrable dispute. This much only is expected from the court at this stage and the rest could be decided by arbitrator. Instead, if court gives a final order on discharge, the party will not be able to approach even a civil court. So arbitration clause can be invoked and arbitrator appointed.

An appointment as per agreement by designation and not by name was held valid in "*S.P.Singla Constructions (P) Ltd v State of H.P.* (2018)" and seeking appointment again invoking Section 11(6) was not allowed by Supreme Court. In "*Rajasthan Small Industries Corporation Ltd v Ganesh Containers Movers Syndicate* (2019)". the question of bias of an already appointed arbitrator who was the M.D. was raised by a party who participated in the proceedings already begun. It was held that High Court could not appoint under Section 11(6) as here there was no presumption of partiality or lack of impartiality on the part of the sole arbitrator as he was not at all connected to the matter.

In "*Union of India v Pradeep Vinod Construction Co.* (2019)" the arbitrator appointment under section 11(6) by High Court was held not valid as agreement provided named arbitrator. The appointment should be as per agreement except in exceptional circumstances for departing from the agreement. It was held that the appointment has to be done as per agreement. Here as the application for reference was before 2015, the unamended Act before 2015 has to be applied. Again in "*Central Organisation for Railway Electrification v ECI-SPIC-SMO-MCML* (2019*)"*, the High Court appointing sole arbitrator was held invalid as the agreement had stipulated that arbitration shall be by three senior officers who are named and eligible and procedure was prescribed in the agreement to appoint if they are not eligible. Here there was

no waiver of right of appointment of arbitrator as per agreement by the party and so appointment had to be in terms of agreement.

However, under "Section 11(6)" the court may appoint an independent single arbitrator if the independence and impartiality of the nominated arbitrator are contested and proven as held in "*Perkins Eastman Architects DPC v HSCC (India) Ltd.* (2019)". Here the nominated person had personal interest in the subject matter and as per the procedure in agreement, he could nominate other in which again there can be bias. Therefore, the court invalidated the appointment of single arbitrator by party under the agreement and appointed a sole arbitrator. This decision applied the *"TRF Ltd v Energo Engineering Projects Ltd* (2017)", where it was decided that once a company's M.D. is designated as an arbitrator, he is no longer permitted to serve in that capacity under Section 12(5) of the Act and cannot choose another arbitrator.

Then in "*(Bharat Broadband Network Ltd v United Telecoms Ltd* 2019)", the Chairman and Managing Director of the Company had been appointed as the sole arbitrator pursuant to the arbitration provision, but the Supreme Court had overturned that appointment, and the court ordered that a replacement arbitrator be appointed with the approval of both parties.

The Kerala High Court in "*M/S Hedge Finance (P) Ltd v Bijish Joseph* (2022)" regarding unilateral appointment of an arbitrator under an agreement prior to dispute, but without fulfilling the disclosure requirements, has held that such appointment will be a nullity and the interim order passed by arbitrator was held not enforceable. The court held that arbitrator appointment has to be either by court or by agreement entered into after the dispute to ensure transparency in appointment.

In Section 11(6A), the court shall limit its inquiry to the question of whether an arbitration agreement exists, it is said that the legislative policy and aim is primarily to minimise the court's interference at the stage of assigning the arbitrator. In 2017, a two-Judge Bench of Apex Court in "*Duro Felguera S.A. v Gangavaram Port Ltd.* (2017)" has rightly upheld this position that the court

could only decide on the existence of agreement and all other matters were to be determined by arbitrator. In 2018, a three-Judge Bench of Supreme Court in "*Oriental Insurance Company Ltd. v Nardhesan Power and Steel Pvt. Ltd.* (2018)" While interpreting an arbitration clause in an insurance contract, the court ruled that if a clause states that no arbitration would be place under certain circumstances, then no arbitrator will be chosen. This case became a basis for a three-Judge Bench decision in "*United Insurance Company Ltd. v Hyundai Engineering and Construction Company Ltd.* (2018*)"* when the arbitration provision indicated that no issue is arbitrable if the corporation has challenged or not admitted culpability. This case was distinguishable from *Duro Felguera* by the fact that the firm had raised a challenge.

In "*Secunderabad Cantonment Board v M/S Ramachandraiah and Sons* (2021)" and "*(Bharat Sanchar Nigam Ltd. v Nortel Networks India Pvt. Ltd* 2021)", the Apex Court relying on "*Duro Felguera* and *Mayavati Trading"*, held that court may refuse reference under Section 11 when claims are ex facie time barred, as after 2015 amendment, Section 11(6A) provides a narrow power to courts to intervene only to find out the existence of agreement. In *"Mayavati Trading (P) Ltd v Pradyuat Dev Burman* (2019)" it was decided that before the 2015 amendment, the court could examine the existence of the agreement and any other preliminary issues, but section 11(6A) was added to limit the court's examination to the existence of the agreement and mandate that the arbitrator resolve any additional preliminary issues.

Section 11(6A) was omitted in 2019, but court's power is limited only and not as it was before 2015. Analysing Section 11(6A) and the above cases it can be said that in Section 11 petition court has to examine the existence of an arbitration agreement and its relatability to the matter in issue. The latter part involving the relation of dispute with the agreement is an aspect implied in Section 11(6A) and if court finds no relation between both it may refuse the relief under Section 11. But if there is a dispute in this aspect the court should allow the parties to bring it before the arbitrator.

In the "*Secunderabad* case", it was held that the application for appointment under section 11 was time barred and no arbitrator could be appointed. In addition, substantive claim itself was ex facie time barred and limitation was an admissibility issue. Courts refuse to refer ex facie time barred claims or non-arbitrable disputes under Section 8 and 11.

In "*Bharat Sanchar Nigam Ltd. v Nortel Networks India Pvt. Ltd* (2021)" again it was held that ex facie time barred substantive claims are not to be referred to arbitration by court. Arbitrator can decide limitation issue as preliminary or final one after evidence. To screen and weed out meritless and frivolous claims, the court may only conduct a prima facie review at the referral stage under Section 11. Only when claims are time-barred, dead, and there is no ongoing arbitrable dispute does the court become involved. In this case, claims were time-barred five and a half years after the claim was denied, and the section 11(6) limitation period started three years after the procedure failed. Therefore, courts only become involved in matters that are time-barred, over, or in which there is no ongoing disagreement.

In "*Sanjiv Prakash v Seema Kukreja* (2021)" the dispute was as to novation of agreement with arbitration clause at referral stage and the court held that as it would be a small trial or exhaustive factual and legal enquiry, court had to refer it to arbitration as it comes within his jurisdiction. Here court can only do a *prima facie* review and not detailed examination. Thus arbitrator appointed, matter referred and single judge's order that Sections 16 and 11 (6A) do not apply held invalid.

Again objection that disputes under Non-Disclosure Agreement between parties having no arbitration clause was denied by the court and sole arbitrator appointed as dispute arose on the arbitration agreement in term sheet in "*Zostel Hospitality (P) Ltd v Oravel Stays (P) Ltd.* (2018)". It was also held that the arbitrability issue can be raised before the arbitrator.

In "*Vidya Drolia & Others v Durga Trading Corporation* (2019)" the dispute was a landlord tenant one regarding determination of lease under

Transfer of Property Act and as it was concerning a right *in rem* it was held that it is not arbitrable. There was nothing in Transfer of Property Act showing that it is not arbitrable and as it was doubtful, the matter was referred to a larger bench of the Supreme Court. Finally the Apex Court in "*Vidya Drolia v Durga Trading Corporation* (2020)" referring to "Section 11(6A)", "Section 16", "246th Law Commission Report" and "*Duro Felguera"* observed that existence of agreement and validity of agreement are both different and attempted to streamline the test for arbitrability in India and expounded "a four-fold test to determine when a dispute shall not be arbitrable in India:

(i) when the cause of action and subject matter of the dispute relates to actions *in rem*, that do not pertain to subordinate rights *in personam* that arise from rights *in rem*;

(ii) when the cause of action and subject matter of the dispute affects third party rights; have *erga omnes* effect; require centralised adjudication;

(iii) when the cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State; and

(iv) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s) "(*Vidya Drolia v Durga Trading Corporation* 2020)".

The first test is about rights *in rem* and *in personam*. Decsion in *rem* determines the personal status, settles the matter itself and binds all interested in property. Judgment *in personam*, concerns a matter, but decides rights of parties to the matter. Rights *in personam* and also personal rights arising from rights *in rem* are arbitrable as rights in rem sometimes results in enforceability of rights *in personam*. Rights *in rem* are excluded because arbitration is binding on parties to agreement. The second involves matters affecting third parties and requiring centralised adjudication which are excluded as a third party is not a party to agreement and also a collective adjudication in court is needed. In such cases agreement between two to arbitrate is not enough. The third is about

matters affecting sovereign and public functions of state. These are inalienable rights and duties which cannot be delegated and are non-arbitrable unless permitted by statute. Disputes that are prohibited by law fall under the fourth category. Implied non-arbitrability occurs when parties are forced to enter into a contract and must waive arbitration by a certain court or forum. But creation of another forum as substitute of civil court is not enough to prove implied non-arbitrability *"*(*Vidya Drolia v Durga Trading Corporation* 2020)".

The Supreme Court, by expressly acknowledging that subordinate rights *in personam* arising from actions *in rem* are arbitrable, paved the way for private adjudication of statutory claims in India. Applying this test, the Apex Court overruled "*Himangni Enterprises v Kamaljeet Singh Ahluwalia* (2017)" and held that tenancy disputes, under the Transfer of Property Act, are arbitrable in India. Therefore, the arbitrability of any dispute in India will depend upon the non-satisfaction of the aforementioned "four-fold test".

"The second part of the court's decision decided about who must decide issues of arbitrability and to what extent. The issue of non-arbitrability of a dispute may be raised at three distinct stages:

a. Before a court or judicial authority under Sections 8 or 11 of the Arbitration Act (Referral Stage);

b. Before the arbitral tribunal (Arbitration Stage); and

c. Before a court when an arbitral award is being questioned (Challenge Stage) *(Vidya Drolia v Durga Trading Corporation* 2020*)".*

Regarding the Arbitration Stage, the situation is comparatively clear and well-established. The Arbitration Act's Section 16 (1) expressly grants the arbitral tribunal the authority to decide on matters within its purview, such as the existence or legality of the arbitration agreement. The Arbitration Act therefore acknowledges the competence-competence concept and gives the arbitral tribunal the authority to make decisions regarding all aspects of

arbitrability. The court determined that even though the competence-competence principle dictates that the arbitral tribunal be given priority to decide non-arbitrability issues at the Arbitration Stage, a second look by the courts is still permissible at the Challenge Stage under Section 34 of the Arbitration Act "(*Vidya Drolia v Durga Trading Corporation* 2020)".

The judiciary's view of the scope available in the Referral stage is more informative. The court said at the beginning that while adjudicating an application under "Section 8 or Section 11," it is performing a judicial job, not a simply ministerial one. The court agreed with the decision in "*Mayavati Trading*," which concluded that the dicta in "*Patel Engineering*," inasmuch as it applies to Section 11, has been legislatively reduced and overturned by the addition of Sub-section 6A. The court determined that the later elimination of Subsection 6A did not change this conclusion "*(Vidya Drolia v Durga Trading Corporation* 2020)".

Sections 8 and 11 are complementary provisions. The court found that the extent of court review and court jurisdiction under both "Section 8 and Section 11" is identical, but limited and restricted after 2015. Despite the difference in language, the *prima facie* standard is applied in both provisions. Arbitrability of subject matter is looked into in sections 8 and 11 to cut off deadwood and court interferes when agreement non-existing, invalid or disputes are demonstrably non-arbitrable. Reference is mandatory under sections 8 and 11 when the arbitration agreement is valid found in a *prima facie* review. Even if validity is doubtful in prima facie review, courts have to refer. Under "Section 8 of the Act" a court makes a reference to arbitration in all cases except when there is no valid arbitration agreement. A simple examination of the now-defunct sub-section 6A of Section 11 reveals that it confines the court's authority to finding the existence of an arbitration agreement. The court, on the other hand, argues that an agreement has no significance unless it is legally enforceable, and an arbitration agreement that is not legitimate or legally enforceable is not really an agreement at all. As a result, even under Section 11, the court has the

authority to assess the arbitration agreement's legitimacy "*(Vidya Drolia v Durga Trading Corporation* 2020)".

The court agreed and adopted the position that questions concerning arbitrability that a court faces at the Referral Stage fall under the three stages outlined in "*Boghara Polyfab*," but added a "few aspects.:

First, as stated in *Boghara Polyfab*, the referral court shall determine all issues relating to the jurisdiction of the court, the identity of the parties appearing before the court, and the identity of the parties to the arbitration agreement. The court made it clear that in addition to these, questions regarding whether a cause of action relates to an action *in personam* or *in rem*, whether it affects third parties, whether it relates to the state's inalienable sovereign and public interest functions, and whether it is non-arbitrable by virtue of a statute should also be taken into account. Secondly, there are questions that the court may determine or defer for the consideration of the arbitral tribunal. These include questions such as whether there is a live and subsisting dispute. Thirdly, there are matters that must necessarily be deferred to the tribunal which includes questions on the arbitrability and merits of a claim".

The court underlined that even when a court makes a decision, it can only be a preliminary conclusion. This was clarified to relate to a primary first review with the only objective of removing ex-facie invalid and non-existent arbitration agreements and non-arbitrable problems. The court said unequivocally that a prima facie case is more significant to the establishment of an initial presumption than a degree of proof. An application under Section 8 would only be denied if the court was positive that there was no legitimate arbitration agreement in place or that the issues could not be resolved by arbitration. This decision must be made provisionally and summarily based on the documents provided rather than through a mini-trial. A referring court would normally require parties to follow the arbitration provision unless there were compelling reasons not to. Where concerns concerning the creation, existence, or legality of the contract, as well as problems about non-arbitrability, are complicated and

entwined with matters of fact, the court has stated that they must be determined by the arbitrator "(*Vidya Drolia v Durga Trading Corporation* 2020)".

If the legality of the arbitration agreement cannot be determined on a *prima facie* basis, the matter should be sent to another court, according to the Court. It further specifies that the arbitral tribunal must address jurisdictional issues, such as whether particular parties are bound by a specific arbitration agreement under the group business theory or good faith, and so on, or where a multi-party arbitration involves complicated factual issues. The court recognises that, in making a determination on these issues, the referring court must strike a balance between honouring arbitration agreements and prohibiting parties from being pushed into arbitration where the dispute cannot be resolved via arbitration. The court has left it up to the referring court's discretion to determine the scope of the summary and *prima facie* review, always keeping in mind that its role is to support the arbitration process rather than assume the arbitral tribunal's authority in that area. In conclusion, the Court's guiding principle is "when in doubt, do refer" "*(Vidya Drolia v Durga Trading Corporation* 2020)".

Just three months after the "*Vidya Drolia"* decision, the Apex Court again examined the scope of a "*prima facie*" review in arbitrator appointment in the case of "*Pravin Electricals v Galaxy Infra and Engineering Private Limited* (2021)", where "*Pravin Electricals"* appealed before the Apex Court against an order of the High Court of Delhi, appointing a single arbitrator in a dispute. The existence of the arbitration agreement within a consultancy contract was disputed. The Court in this case examined the contours of Sections 8 and 11 in great detail and noted that while these provisions have been brought at par in so far as the extent of judicial review is concerned, there continued to be an anomaly in respect of appealability. A comparable refusal to refer parties to arbitration under Section 11(6) read with Sections 6(A) and 7 is not appealable, save to the extent that orders under Section 8 refusing to refer parties to arbitration are appealable under Section 37(1)(a). The Supreme Court advised

the Parliament to revisit Sections 11(7) and 37 in order to equalise the appealability of orders under Sections 8 and 11 as a result.

In *Pravin Electricals*, the Court grappled with another interesting question. There were a lot of factual and evidentiary issues that it needed to consider, such as signatures, notarisation, dates, etc., of the arbitration agreement and this would require a deeper examination, which the arbitrator would be fit to make rather than the Court at a *prima facie* stage. Due to this (and disregarding the Delhi High Court's decision that an arbitration agreement exists), the Supreme Court confirmed the appointment of the arbitrator in accordance with the Delhi High Court's ruling while leaving it up to the arbitrator to determine whether an arbitration agreement exists. The procedures under Section 11 are preliminary, summarising, and not a mini-trial. When it seems that a prima facie evaluation won't be conclusive and necessitates a more thorough investigation, the subject should be left for the arbitral tribunal's ultimate decision "(*Pravin Electricals v Galaxy Infra and Engineering Private Limited* 2021)".

In "*Suresh Shah v Hipad Technology India Private Limited* (2020)" the petition to appoint arbitrator to disputes relating to sub-lease deed under Transfer of property Act was allowed as arbitrable as the said Act provides equitable jurisdiction without statutory protection. But a dispute under a special statute giving special statutory protection will not be arbitrable.

The recent trend of Section 8 decisions has been well thought out and encouraging. With the fast and very many changes in the arbitration regime, the interplay of issues along with questions of what and how much can be considered at the threshold stage by a Court are bound to come up. Generally, the trend has been to treat Section 8 applications as peremptory and sacrosanct, and the arbitrator will have to decide all main issues, including (applying *Pravin Electricals*). This approach is in accordance with global standards since matters of jurisdiction and arbitrability ought to be left to the tribunals. Other than reducing backlog, this approach has another benefit. If a tribunal decides that an arbitration agreement is not existing after examining all evidence, that would

be the end of the matter and therefore no prejudice is caused to the party saying that there is no arbitration agreement. Such an inquiry would need consideration of (often complex) factual issues and a Court at a threshold stage is just not the right forum for it. Such an approach is therefore fair even to the party that claims the existence of an arbitration agreement.

So as per Indian law not all matters can be decided by arbitration, particularly those that are *in rem*. The Supreme Court, in "*Vidya Drolia"*, opined that the Court may refuse to refer the parties to arbitration even at the Section 8 stage because it is recognised that some subject matter may be ex facie non-arbitrable. This is done to "check and protect parties from being forced to arbitrate when the matter is demonstrably non-arbitrable and to cut off the deadwood " "*(Vidya Drolia v Durga Trading Corporation* 2020)". If a court decides on arbitrability (in line with the *Booz Allen* approach of deciding this matter at the threshold), it would be contrary to the now amended language of Section 8, which seeks to dilute the effect of the *Booz Allen* approach of deciding even arbitrability at the threshold.

In "*Indus Biotech Private Limited v Kotak India Venture Offshore Fund* (2021)", a petition filed as per "section 7 of the Insolvency and Bankruptcy Code, 2016" was filed by a financial creditor against a corporate debtor and the National Company Law Tribunal examined whether reference to arbitration is required and as the above petition was admissible and the Insolvency and Bankruptcy Code overrides other laws, the dispute was held to be non-arbitrable. Some would argue that this case is, in effect, the revival of the *Booz Allen* ratio on deciding arbitrability at the threshold.

However, the *Vidya Drolia* intends to only exclude demonstrably non-arbitrable matters at a prima facie stage. In fact, this is applied by courts if the dispute arises from private agreement inter se parties, as it would be arbitrable. However, issues such as registration of trademarks or grant of patents coming under the exclusive sovereign functions of the State would not be arbitrable since they pertain to matters *in rem*.

In "*The Oriental Insurance Co. Ltd. v Dicitex Furnishing Ltd.* (2019)", the Apex Court noted that although a court must determine whether an arbitrable dispute exists, it must be at least initially persuaded of the plausibility or validity of the claim of coercion made. However, the court could not examine the claim in great detail because doing so would render the decision final and deny the applicant the right to even file a civil lawsuit. This test of determining demonstrable non-arbitrability is obviously a subjective test and one susceptible to expansion. One way or another, Courts walk a tight rope in section 8 decision making. A one size fits all approach is neither sensible nor possible. Perhaps, therefore, the current approach of our Courts, on the basis of individual cases is much better .

On the question of accord and satisfaction in "*ONGC Mangalore Petrol Chemicals Ltd. v ANS Constructions Ltd. and Anr.* (2018)", Section 11 petition was dismissed by holding that on account of accord and satisfaction there was no dispute at all. But in "*Mayavati Trading (P) Ltd v Pradyuat Dev Burman* (2019)" there was a claim of accord and satisfaction and hence no dispute. But the objection was that accord was vitiated by coercion and undue influence. The court opined that under Section 11(6A) it need not look into accord etc., but appoint arbitrator if there exists an agreement.

Hence the power of the court was narrowed down by the 2015 amendment. Under section 11, the court must conduct a prima facie examination to identify and dismiss presumptively baseless, frivolous, and dishonest lawsuits. As a result, the minimal court participation is intended to facilitate a rapid and successful settlement at the referral stage. Only when it is clear that claims are ex ante time barred and dead, or where no viable alternative issue exists, would the court intervene. The arbitrator should be asked to decide the merits of all other instances. Courts cannot enter into trial or elaborate review at this stage which is interfering with the arbitral process. Even if validity is doubtful, the courts are to refer. Regarding the deletion of Section 11(6A), it was opined that the deletion was for the purpose of institutionalization of arbitrator appointment and not to change the position already laid down.

The reliefs under both Sections 9 and 11 were in question in "*Gautam Landscapes Pvt. Ltd. v Shailesh Shah* (2019)" when the arbitration clause was in a document that was insufficiently stamped. The Bombay High Court granted interim reliefs under Section 9 and allowed Section 11 application for appointment of arbitrators, court opined that arbitration agreement was different from the document containing it and any such technical defects shall not prevent the granting of the above reliefs.

Supreme Court has very recently in *"Garware Wall Ropers v Coastal Marine Constructions & Engineering Ltd* (2019)" held that when a court is asked to decide on an application for the appointment of an arbitrator under Section 11 of the Act based on an arbitration clause in the agreement that is not stamped or is not stamped properly, the court must first impound the agreement, send it to the relevant authority for adjudication, and pay stamp duty and penalty before proceeding with the application. In this, the Supreme Court reiterated its earlier judgment in "*SMS Tea Estates v Chandmari Tea Company Pvt. Ltd.* (2011)" that stamping is a technical issue which can be resolved by arbitrator, but in such case the arbitration agreement cannot be acted upon (Ganguli A.K., 2013). Thus, Supreme Court was saying that "*SMS Tea Estates* case" continues to apply even after Section 11(6A) and overruled the decision of Bombay High Court in "*Goutham Landscapes* case".

In the "*Garware* case", the High Court of Bombay ruled that "Section 11" of the 1996 Act's 2015 revision reduced the court's authority to just determining whether an arbitration agreement existed. The court further determined that arbitration is not prohibited by an unstamped document. In order to understand the scope and nature of pre-arbitral judicial intervention, the Bombay High Court relied on "the 246th Report of the Law Commission" on the "Amendment to the 1996 Act". The court held that judicial intervention is only permitted in cases where the court determines that the arbitration agreement does not exist or is null and void.

Court analysed the decision in "*SMS Tea Estates* case" and opined that it lost its efficacy after the 2015 amendment of introduction of "Section

11(6A)". Therefore, the High Court gave a pro-arbitration approach, limiting the scope of judicial intervention and saying that courts should render the administrative function of examining the existence of arbitration clause and should not adjudicate on judicial issues of enforceability or validity of the original agreement. Even in "*SMS Tea Estates* case", the direction that the issue of unstamped document containing arbitration clause be decided by arbitrator is a move to encourage arbitration.

However, the Supreme Court in the same case decided that, while Section 11(6A) permits courts to consider whether or not an arbitration agreement exists, it also includes whether or not the agreement is correctly stamped. The word 'existence' in Section 11(6A) whether includes validity of agreement is an issue that needs to be clarified by a higher bench. Supreme Court has held that decision in "*SMS Tea Estates* Case" is binding irrespective of Section 11(6A) as the Law Commission Report has not mentioned about it while inserting Section 11(6A). In addition, the court discards the independent presence of arbitration clause.

But previously Supreme Court in many cases including "*Enercon (India) Ltd. and Others v Enercon Gambitt and Another* (2014)" has maintained the arbitration clause's/separability agreement's from the main contract's aim to ensure that parties' intentions to arbitrate disputes even when the main contract's legality, validity, finality, or violation are being contested. According to the idea of separability accepted by Section 16, the arbitration agreement conveys the parties' desire to opt out of arbitration while the main contract deals with the substantive rights.

Here courts should ensure the success of arbitration, but they cannot discard the independence of arbitration clause even if the original contract is unenforceable or null or void. In addition, when the court ordered impounding of the document in Section 11 application, the 60-day period in Section 11(B) is breached which was for speedy arbitration with minimal court intervention. They could have appointed arbitrator and impound the document directing the

party to settle the rest with the arbitrator. Then there would have been speedy disposal of Section 11 application without any delay to arbitration proceedings.

Finally in *"M/S N.N. Global Mercantile (P) Ltd. v Indo Unique Flame Ltd. & Others* (2021)", the Apex Court adopted a holistic, well-balanced and contemporary approach discarding long persisting apprehensions of courts unduly interfering in the arbitral process. Here the court overruled the "*SMS Tea Estates* case" and gave its dissent to the "*Garware* decision"n and held that the arbitration clause in a business contract is still lawful if the stamp duty is not paid. The court in this instance used the separability concept and the principle of competence under section 16 of the Arbitration Act and found that there was a later remedy available through the court by annuling the award under section 34 of the Act. Arbitration clause in an unstamped main contract cannot be acted upon before paying the duty. Impounding the instrument for stamp duty payment can be done by arbitrator when parties appoint arbitrator, by court when appointment is under section 11 and by judicial authority when matter comes for reference. In all these cases payment of duty is assessed by collector and can be appealed as per statute. Here as both parties have admitted existence of agreement, either they can appoint arbitrator or approach court under section 11 for the same. Supreme Court directed to impound the document for duty payment in a fixed period and stay by High Court extended and interim relief can be claimed for safeguarding subject matter of arbitration.

The 2019 amendments to Section 11 based on Justice B. N. Srikrishna Committee's recommendations has resulted in starting the development of institutional arbitration in India. Therefore, the role of judiciary in the process of finding the presence of arbitration agreement is likely to be reduced. But to certain extent judicial intervention is required. "S.11 (6A)" was inserted by "2015 amendment" because of cases like "*SBP & Co. v Patel Engineering Ltd.* (2005)" which expanded the power under Section 11 and "*National Insurance Co. Ltd. v Boghara Polyfab (P) Ltd.* (2008)" which categorised issues to be decided by court and arbitral tribunal. Section 11(6A) restricted the power of the authority to examine the validity of agreement. This was reiterated by

Supreme Court in "*Duro Felguera S.A. v Gangavaram Port Ltd.* (2017)" and *"United Insurance Company Ltd. v Hyundai Engineering and Construction Company Ltd.* (2018)" But later there were issues of validity of agreement, whether validity could come under existence and the like before the courts which had to be clarified. As per the 2019 amendment, an Arbitration Council of India should be formed which shall incorporate graded arbitral institutions who shall be appointing arbitrators when courts designate them under Section 11. Thus, the residual power of courts to decide whether there is an arbitration agreement is taken away. This is in consonance with the "*kompetenz-kompetenz* principle in Section 16" vesting the arbitrator to decide on his own jurisdiction.

Now the power to appoint is with institution and Section 11(6A) is deleted, issue is whether arbitration would commence without deciding the existence of agreement on a mere reference to institution. Deciding on existence of agreement was a significant power exercised by courts with the intention to give relief against frivolous and misconceived actions by implementing a system for actual costs. Apex Court had held that courts should examine the clause and the relation of it to the dispute. The consequence can be that there will be automatic appointment of tribunals even for non-arbitrable claims. Later tribunals may conclude that there is lack of agreement on arbitrability of dispute, thereby resulting in delay.

The Srikrishna Committee with an aim to reduce judicial intervention in arbitration has adopted the practice followed in foreign jurisdictions. While recommending for institutional arbitration in India. On the question as to who will decide on the existence of agreement after repeal of Section 11(6A), the Committee seems to indicate its intention of bestowing this task to the graded arbitral institutions. But this cannot be understood from the amended provisions.

According to "Section 18 of the English Arbitration Act, 1996", in the United Kingdom, in order to request the appointment of an arbitrator, a party must make a "good arguable case" that the tribunal would have jurisdiction to hear the case. Section 18 also emphasises that the tribunal may resolve any remaining jurisdictional issues in accordance with the *kompetenz-kompetenz*

principle. Thus, an initial threshold test must be met in order for an application under Section 8 to succeed. In India, by deleting "Section 11(6A)", the requirement of meeting the initial threshold of existence of arbitral agreement is taken away.

The 2019 amendment does not specifically give the scope of the role and powers of "Arbitral Council of India" who has to institute graded arbitral institutions which will be nominated by High Courts and Apex Court to appoint arbitrators. These institutions will have to ascertain that there is an arbitration agreement and also will have to decide on objections regarding its validity. The rules and guidelines for dealing such issues is not in the Act. Deletion of Section 11(6A) may result in more litigations which defeat the aim of speedy disposal of Section 11 applications. It is important to reduce court intervention to achieve fast and effective results of arbitration, but some amount of judicial intervention is needed to get a certainty or clarity in such issues so that appeals and challenges to pre-arbitration decisions are reduced. Thus, legislative clarity is lacking in the amendments, which will have to be clarified by Indian judiciary.

4.5 PRINCIPLE OF *KOMPETENZ-KOMPETENZ* IN THE POST 2015 AMENDMENT ERA

A.16 of Model Law is similar to Section 16 of 1996 Act which means that the arbitrator can decide on his own jurisdiction. This is important because without it a party could raise a jurisdictional objection that would be resolved in prolonged court proceedings. Under Model Law thus power of arbitral tribunal is circumscribed which means it is neither exclusive nor final. The decision can be reviewed by court under "A.16(3)" and later to another court review under "A.34" and finally to a further review in recognition and enforcement under A.36. The principle is mandatory and parties cannot limit this power. The tribunal under A.16 can decide on jurisdiction at preliminary stage or at final stage. Section 16 of our Act is slightly different. If the arbitrator concludes that he has jurisdiction, under Model Law it can be reviewed by a court, but there is no appeal on it. In Section 16, if a tribunal accepts a plea questioning jurisdiction of tribunal, there is a "right to appeal under Section 37

(2) (a) of Act". If the claim is rejected and arbitration continued, there is no immediate remedy, but it is a ground to annul the award later under "Section 34 of the Act".

In *"Indian Farmers Fertilizer Co-operative Ltd. v Bhadra Products* (2018)", the Supreme Court's commentary on the "*kompetenz-kompetenz* principle" was that, the tribunal's jurisdiction in this case extends to determining whether the arbitration agreement is valid, the tribunal is properly constituted, and the matters that have been submitted for arbitration are in line with the agreement. According to "Section 16 of the Act", it is not necessary to settle the jurisdictional issue during the preliminary stage. Here tribunal has to assess whether the jurisdictional plea is genuine to be decided at the preliminary stage. The Act's legislative goal is to ensure party autonomy and minimal court intervention in the arbitral procedure, in *"Uttarakhand Purv Sainik Kalyan Nigam Limited v Northern Coal Field Limited* (2019)", relying on competence principle under section 16 of the Act and legislative intent to restrict judicial intervention at per-reference stage, Apex Court opined that issue of limitation would be decided by arbitrator. The regime of Arbitration Act outlines that once an arbitrator is appointed, all objections and issues are to be decided by arbitrator. Limitation is a jurisdictional problem that should be resolved by arbitration, in accordance with "section 16 of the Act", rather than going before the High Court at the preliminary stage, in accordance with "section 11 of the Act". Once the arbitration agreement is clear, the arbitrator will resolve all matters, including those pertaining to jurisdiction.

Under section 11(6A), the court simply looks at whether an agreement exists as per section 16 of the Act any initial or threshold questions are left to the arbitrator.The *kompetenz-kompetenz* principle will not apply if agreement is by fraud or when agreement is not final but only draft as acceptance of arbitration agreement must be absolute and unqualified. In addition, when not in writing or dispute beyond the scope of arbitration, arbitrator appointment can be refused. Limitation is a mixed factual and legal question and after section 11(6A) limitation can be decided by arbitrator. "Section 16" is an inclusive

provision by which all preliminary issues of jurisdiction as well as existence and validity of agreement are to be decided by arbitrator. “Section 11(6A) of the Arbitration Act” is applicable because limitation is a jurisdictional issue, notice of the arbitrator was given after 2015, and the arbitrator was chosen with the consent of the parties. The Apex Court overturned the decision of the High Court dismissing the limitation application and decided the arbitration's venue. In order to prevent the arbitral procedure from being derailed at the threshold when a party to the dispute raises a preliminary objection, this was meant to limit court involvement at the pre-reference stage.In “*NALCO Ltd v Subhash Infra Engineers (P) Ltd* (2019)” an offer in response to tender notice was accepted and work order was issued. Even though arbitrator was appointed, a dispute as to re-existence or valid agreement was raised in court and it was held that such objection could only be decided by arbitrator and the suit was dismissed. But as the appointed person got removed under schedule V of the Act and another appointed, the court directed the party to raise the above objection before the tribunal under the Act.

In “*Deep Industries Ltd v ONGC* (2019)” a section 16 petition claiming that arbitration notice was only for termination of contract and was not on blacklisting was dismissed by arbitrator. The High Court under A.227 held that blacklisting was not part of notice and this was set aside by Supreme Court as under A.227 revision is possible only on final orders.

The issue whether counter claims by respondent could be decided at the threshold stage by arbitrator appointed by parties as they were beyond the scope and jurisdiction of arbitrator without enquiry, was raised in “*Bharat Petroleum Corporation Ltd v Go Airlines* (2019)”. The Supreme Court held that they were arbitrable and not beyond the scope of reference as they were related questions to be decided by arbitrator.

In “*Vidya Drolia v Durga Trading Corporation* (2020)” it was found that problems such whether a claim is time-barred, whether a no-claim certificate is in question, or a defence based on novation are factual ones that should be addressed by an arbitrator using the facts and relevant law; the court cannot

decide them at the reference stage. While discussing severability and *kompetenz* principle the court opined that arbitrator is the preferred first authority to decide non-arbitrability and courts have power of second look under section 34 in the post award stage. Non-arbitrability is looked into at referral stage by courts under sections 8 and 11, at arbitration stage by arbitrator and at post award stage of setting aside by courts. The arbitrator can decide on his own jurisdiction. The negative effect of the *kompetenz* principle gives priority to tribunal to decide issues of validity of agreement, disputes not within the scope of submission and subject matter non-arbitrable. Judiciary has a chance of having a re-look into these issues in the post award stage.

Arbitration agreement autonomy based on the complementary but independent concepts of "separability" and "*kompetenz-kompetenz"* was again discussed in "*M/S N.N. Global Mercantile (P) Ltd. v Indo Unique Flame Ltd. & Others* (2021)". A substantive business contract governs the rights and responsibilities of the parties to a transaction, but an arbitration agreement including a party's legally enforceable commitment to settle a dispute is different, independent, and unrelated to a substantive contract. Separability means that even if substantive contract is invalid, ineffective or terminated, arbitration agreement survives except when arbitration agreement is impeached as being void *ab initio*. *Kompetenz* principle refers to the tribunal's ability to determine the arbitration agreement's scope, existence, and legality in the first instance before being subject to later judicial review. This minimises judicial involvement. As arbitration agreement is separate even if substantive contract is not valid, arbitration agreement can be acted upon. Reference can be done even if validity of substantive contract is raised.

Section 16 recognises separability and *komptenz* and is based on Model Law. As per non obstante clause in section 5, judicial intervention is possible except as in Part I and this was to reinforce *kompetenz* principle. The arbitration agreement is a standalone contract that is a collateral or ancillary to the primary transaction, and this is the fundamental tenet upon which the law of arbitration is based. To give the arbitrators continuing jurisdiction over disputes arising

from events occurring while the contract was still in effect as well as whether the contract has come to an end and, if so, with what consequences to the parties, the doctrine of separability treats the arbitration agreement as having a life of its own, severable from the substantive contract, and capable of surviving it. (Ganguli A., 2012). Arbitrator can decide so all civil commercial matters, including issue whether the main contract is voidable. Scope of judicial enquiry is only with respect to existence of agreement. Strengthening institutional arbitration, deference to forum chosen by parties to resolve disputes and minimal judicial intervention are the main principles under the 1996 Act.

In "*Pravin Electricals v Galaxy Infra and Engineering Private Limited* (2021)" the dispute was whether there was an arbitration agreement in case of reference of dispute and appointment of arbitrator and it was held that primarily and ex facie non-existing and invalid agreements as well as non-arbitrable issues were weeded out at the referral stage by the prima facie assessment. Here detailed examination of documentary evidence and cross examination was needed, but the High Court appointed arbitrator and referred the matter finding that agreement exists. But Supreme Court set aside the finding on existence of agreement, held appointment valid and directed arbitrator to decide primarily whether there is an agreement and then decide the merits of the case only if it exists.

The distinction between jurisdictional and admissibility issues was discussed in "*Bharat Sanchar Nigam Ltd. v Nortel Networks India Pvt. Ltd* (2021)". It is the "tribunal v claim" test, which determines whether the objection is directed at the tribunal or the claim. Jurisdiction refers to an arbitrator's ability and authority to hear and determine a case, and such concerns include objections to the tribunal's competence to consider a dispute, such as a lack of consent or a disagreement that falls beyond the scope of the agreement. Admissibility refers to procedural restrictions such as failure to meet pre-arbitration requirements such as required mediation before arbitration, or challenging a claim that is time-barred or forbidden until some pre-condition is met. As a result, it was determined that the statutory time bar plea is an admissibility

problem since it only assaults the claim. There must be a clear notice seeking arbitration outlining the specific substantive issues in question, including claims that must be received by the opposite party within the required time frame to avoid rejection, failing which the time restriction will apply. Letters or settlement negotiations will not suffice to prolong the time of limitation for issuing a notice of arbitration.

When there were multiple arbitration agreements on the same transaction, the main dispute being common, in "*Indus Biotech Private Limited v Kotak India Venture Offshore Fund* (2021)", it was held that tribunal of same members but separately constituted for each agreement would be proper. Such tribunal would be free to hold separate proceedings for individual agreement and also to club disputes when needed. Here parties have only remedy by arbitration as NCLT proceedings have terminated.

Regarding the validity of an A.227 petition against a section 16 order of the tribunal, the Apex Court in "*Punjab State Power Corporation Ltd v Emta Coal Ltd* (2020)" held that it is permissible only if the order is so perverse that only possible conclusion is that there is a patent lack of inherent jurisdiction. Here non-reference to a third party in a joint venture agreement with arbitration clause by arbitrator was held to be not perverse, but valid. The High Court had wrongly admitted A.227 application and should have dismissed it.

This got reiterated in "*Bhaven Construction v Sardar Sarovar Narmada Nigam* (2021)" wherein the appellant had unilaterally appointed a sole arbitrator under the procedure in the agreement and respondent without going to court challenged it before arbitrator and failed. Against this he filed an A.226/227 petition under the inherent power of High Court and got an order. But this was annuled by Supreme Court as there was a remedy to set aside the award later and the inherent power of High Court could not be used to interfere with arbitral process as its efficiency would be affected. This power is used rarely only when one party is remediless under the Act or a clear bad faith is shown by one party. So the appeal was allowed as the High Court erred.

The question related to the nature of contract whether for manufacture and supply or a works contract under another Act. The interpretation of the present contract whether coming under a state legislation could be finalized by the tribunal. That is the reason for applying section 16 instead of writ jurisdiction. The issue of jurisdiction will be first dealt with by the tribunal and then the court in setting aside petition. The High Court wrongly applied the discretion under A.226/227 in interfering with the ruling of arbitrator under "section 16 of the 1996 Act".

4.6 INTERIM MEASURES BY ARBITRAL TRIBUNAL AFTER THE 2015 AMENDMENT ACT

After the 2019 Amendement, "Section 17 of the 1996 Act" adopts the "2006 Model Law" as modified. Only during arbitration procedures are the reliefs accessible, and any ruling made by the tribunal according to this provision is enforceable as a court order under the Civil Procedure Code. According to Section 37(2)(b), these orders are appealable, although it isn't specified what standard of review courts should use in certain situations. Courts evaluate the validity and merits of appeals or apply Section 34 reasons for setting aside.

Though earlier this power was held to be limited, in "*NTPC Ltd. v Jindal ITF Ltd* (2017)" tribunal's interim order was tested by an enquiry on merits. Also in "*A. Jayakanthan v J.R.S. Crusher* (2017)" the same standard of review applied in appeals under Section 9 was applied in Section 37(2) proceedings. Finally Supreme Court in "*National Highways Authority of India v Gwalior Jhansi Expressway Ltd* (2018)", held that as provided for in "Section 34 of the Act", the tribunal's ruling should be set aside because it violates a basic principle of Indian law rather than using the standard of review for temporary orders. As a result, the dispute's merits were not reviewed.

The extent of section 37 appeal has been further limited by court by excluding appeals already provided and the Apex Court in *"Chintels (India Ltd) v Bhayana Builders (P) Ltd* (2021)" held that courts cannot do so because

minimum judicial intervention in section 5 does not mean that court can interpret the 1996 Act in a narrower way than intended by the Act.

Section 37(2)(a) is an appeal provision in the Act against tribunal's order denying jurisdiction and here a review on merits is done. Similarly in Section 37(2)(b) also such a review is done. But the problem is that when a full review is done, it becomes appealable for both parties. This is against the 2015 amendment of Section17 which makes a tribunal's interim order like one made by court and enforceable like a court order. Section 9 remedy is difficult after arbitration starts and this is to reduce judicial intervention. This might be the reason behind the finding of the Apex Court in "*Gwalior Jhansi Case"*. In the "UNCITRAL Model Law" the reasons for enforcement of interim orders are same as for enforcement of awards and also provides additional grounds for interim orders. But there it is clearly specified that there will not be an enquiry on the merits of interim order in such cases. So even in Model Law the approach for review of awards and interim orders is consistent and an enquiry into the merits of the case is discharged.

In "*State of Gujarat v Amber Builders* (2020)", there was statutory arbitration, but the party sought interim reliefs from the High Court under "A.226" rather than going to the tribunal, and the Apex Court overturned it. In accordance with section 9(3), only the tribunal established under section 17 may seek interim relief, unless the tribunal's remedy is ineffective.

But the High Court of Kerala has opined that the District Court can grant temporary relief to a party after the award which is not enforced in "*Ashraf M. v Kasim V.K.* (2018*)"*. Here the District Court had opined that the application was not maintainable as there was other effective remedy before the arbitrator. But the High Court set aside this order and remanded it back to District court saying that during arbitration court has to take a strict approach by which the party approaching will have to satisfy the court of the circumstances rendering the remedy under section 17 not efficacious and he should prove before the court as to why he did not get a remedy from the arbitrator. But after arbitration, the arbitrator will not be functioning and the person who did not get any remedy

might immediately sell the property, so the court should take a liberal approach and not reject on ground of efficacious remedy under section 17 of the Act.

The Supreme Court also addressed petitions brought before the High Court under "Articles 226 and 227 of the Constitution" challenging decisions made in appeals under "Section 37 of the Act". The non-obstante provision of Section 5 of the Act has no effect on the constitutional provision of A.227. Thus in "*Deep Industries Ltd v ONGC* (2019)" the Apex Court held that though A.227 petitions could be filed against judgments disposing first appeals under Section 37 of the Act, the High Court while interfering with the same, analyse the legislative policy so that interference is limited to orders issued that are clearly devoid of inherent authority.

Here there was a contract between the company and ONGC which was terminated by ONGC and show cause notice issued for blacklisting company for 2 years. The company had invoked arbitration clause and challenged termination before arbitrator and claimed damages. They also had filed Section 17 petition against blacklisting. Then the company got blacklisted and it amended both petitions to challenge the ban. Meanwhile a Section 16 petition was filed saying that arbitration notice was confined only to termination and not blacklisting. This was dismissed. Section 17 application was disposed of staying the blacklisting for 2 years on condition that it would operate only if the company loses in the arbitration finally. This was appealed in the City Civil Court which was dismissed. Then a special civil application was filed in High Court which held that there could not be a stay of ban under Section 17 as an injunction could not be granted when a party can be compensated later in damages.

The Section 16 application dismissed by arbitrator could not be appealed but could only be challenged after final award under Section 34. High Court intervened with this and held that the ban order was not part of notice of arbitration. This part of appeal was set aside by Apex Court as reversing of the statutory scheme. The court was of the view that the termination was the reason of the ban. The High Court could interfere under A.227 but only for correcting

jurisdictional errors. The Supreme Court viewed that ban order was not an administrative one originating from the General Contract Manual, but it emanated from the agreement itself. Arbitral tribunal did not lack inherent jurisdiction in deciding Section 17 application. It could refer to the contract and ban order and apply the law and issue a stay order. The argument that injunction cannot be granted where damages could have been given later is an error of law and not error of jurisdiction. Legislative policy with respect to revision under Civil procedure Code is that when there is alternative remedy, there is no revision and even if there is revision it is only against final orders and not interim ones. Considering all these the Apex Court annulled the High Court order interfering with the arbitrator's interim order under Section 17 "(*Deep Industries Ltd v ONGC* 2019)".

Ambit of Article 227 is broad, but Apex Court in "*Bhaven Construction v Sardar Sarovar Narmada Nigam* (2021)" has held that in order to invoke writ jurisdiction, party has to show exceptional circumstance or bad faith on the part of other party and that the High Court has erred in using it to interject arbitral process. Gujarat High Court has already in *"GTPL Hathway Limited v Strategic Marketing Private Limited* (2020)" held that orders by tribunal cannot be challenged in writ jurisdiction as the 1996 Act is a special Act and a self-contained code.

Indian courts have gone into the merits of the dispute when they are approached for enforcing interim orders of tribunals and the High Courts have set aside them in appeal. The Kerala High Court in "*Sakthi Finance Ltd. v Shanavas* (2018)" held that in enforcing a Section 17(1) order court cannot conduct an enquiry under Section 17(2). Here the tribunal's order to petitioner to repossess the vehicle for which he availed loan was intervened with by District Judge and this was set aside by High Court again in "*HDB Financial Services Ltd v Kings Baker Pvt. Ltd.* (2018)", wherein the District Court tried to modify directions given by the arbitrator in an interim order and High Court differentiated S17(2) and Section 37(2)(b) and held that under Section 17(2) court could only enforce tribunal's order. Here court relied on "*Harikumar v*

Shriram Transport Finance Co. Ltd. (2018)" wherein it was opined that court can give interim orders and can issue appropriate directions related to the subject matter, but under Section 17(2) court can only enforce an interim order of tribunal.

Apex Court in "*Alka Chandewar v Shamshul Ishrar Khan* (2017)" had taken note of the 2015 amendment in Section 17 and held that all interim orders of tribunal are deemed to be court orders enforceable under CPC and Section 17(2) was enacted for this purpose. In "*Sundaram Finance Ltd. v P. Sakthivel* (2018)" the arbitrator by an interim order directed to attach property of respondents for not furnishing security on a previous order of tribunal and when this was sent for enforcement the District Judge refused and informed that arbitrator is not competent to pass such an order under Section 17. Arbitrator replied, but as order was not enforced, petitioner approached the Madhurai Bench of Madras High Court which held that Section 17(1) is to be read with Section 94 of CPC and hence tribunal can order to attach property even though not subject matter of proceedings. Regarding enforceability, both orders under Sections 9 and 17 are similar and the District Court here performs a ministerial act and no judicial function is being rendered here. These orders can be appealed and here this is not an appeal. Therefore, the High Court reminded all District Courts to enforce interim orders issued by arbitral tribunal under Section 17(2) as if they are orders of court "(*Sundaram Finance Ltd. v P. Sakthivel* 2018)".

In *"Kishorekumar v Shriram Transport Finance Co. Ltd* (2022)" the High Court of Kerala dismissed a case under A.227 to direct commercial court to enforce interim relief passed by arbitrator as a civil court can enforce an interim order by arbitrator under CPC as it is like any other court order and when dispute is a commercial one, the commercial court is the civil court to enforce interim order.

Again Apex Court reiterated in "*Amazon Com NV Investment holdings LCC v Future Retail Limited & Others* (2021)" by holding that arbitral tribunal cannot enforce its orders, but it can be only by a civil court under CPC and commercial court is such a court. Here Amazon initiated arbitration proceedings

with seat in India and sought interim emergency relief under applicable rules of Singapore arbitration Centre. In India under the 1996 Act this is permissible if applicable rules permit and also arbitral tribunal under Section 2(1)(d) can give final as well as timely interim reliefs as per amendment of sections 9(2), 9(3) and 17 of the Act. Thus, emergency arbitrator granted injunctions against some transactions and interim award was given. Amazon under section 17(2) moved Delhi High court for enforcement, while Single Judge decision was pending, Division Bench in appeal under CPC stayed it. Single Judge enforced it under Section 17(2) and then division Bench reiterated its order and stayed enforcement and hence this SLP.

The Apex Court allowed the appeal and was of the view that the order of emergency arbitrator as an interim order and hence enforceable as per "Section 17(2) of the Act". Arbitral orders are enforced by courts and under "section 17(2) read with CPC" courts enforce section 17(1) orders. A literal reading shows that section 37(2)(b) is only referring to section 17(1) orders and so enforcement orders under section 17(2) are not covered as per section 37 of the Act. But section 37 appeals are complete and CPC not needed. So an order under "section 17(2)" enforcing interim order of emergency arbitrator by Delhi High Court Single Judge cannot be appealed under CPC, but under section 37 of the Act "*(Amazon Com NV Investment holdings LCC v Future Retail Limited & Others* 2021)".

4.7 ARBITRATION AGREEMENT AND ARBITRABILITY OF DISPUTES DURING THE POST 2015 AMENDMENT PERIOD

Courts must determine whether an arbitration agreement exists and whether a dispute may be arbitrated in each case requiring judicial involvement. Both of them have been thoroughly covered in the prior chapter. An arbitration agreement's existence is a jurisdictional fact that serves as the foundation for the authority of both the arbitral tribunals and the arbitration courts. Therefore, the presence of a valid arbitration agreement is verified at each point where the courts of law are asked to intervene in arbitration proceedings, and here an examination of some recent cases is meant to be done.

The term "legal relationship" in section 7 was defined as one resulting into legal obligations and duties and thus conferring a right in "*Vidya Drolia v Durga Trading Corporation* (2020*)"*. Both contractual and non-contractual rights are possible. Non-contractual would necessitate a separate agreement based on a claim for damages from a tort, restitution, violation of a legal obligation, or other non-contractual cause of action. Legal relations will have immediate/remote consequences as action or no action by judiciary or executive different from purely private actions which are not related to law. Legal relationship is when there is assertion for upholding or denying a right or for imposing punishment or otherwise in an adjudicative action. Actually objective regarding defined legal relation is not raised or tested.

Interpretation of arbitration agreement in commercial cases is to be a liberal one as presumption is in favour of one-stop adjudication. The strategy should be determined by the language, the parties, the type of relationship, the circumstances surrounding the agreement, etc. A pro-arbitration approach is based on the true contractual language assuming that related disputes covered by it. A restrictive approach is that where arbitration is an exception to court system and doubtful disputes are not covered. A third approach looks into intention of parties, language, circumstance etc. Scope of court enquiry includes whether agreement is written, whether agreement is in the form of letters, communication etc., whether contractual elements are fulfilled and rarely whether matter is arbitrable.

In "*National Highways & Infrastructure Development Corporation Ltd v BSCPL Infrastructure Ltd* (2019)" there was a standard arbitration clause in an unsigned draft agreement as well as a dispute resolution clause in the request for proposal. Though the arbitration clause in the draft agreement was part of the request for proposal, it was held that the dispute resolution clause was not ousted. Thus, the Delhi courts had jurisdiction to decide any dispute at this stage so as not to disturb the entire scheme of schedule of the bidding process. This case followed "*PSA Mumbai Investments private Ltd v Jawaharlal Nehru Port Trust* (2018)". When an arbitration clause was printed as a condition on the

overleaf of a receipt, it was held to be valid in "*Vinod Bhaiyalal Jain v Wadhwani Parmeshwari Cold Storage (P) Ltd* (2019)". The party challenged the validity of the clause as they were not satisfied with the named arbitrator in the clause. But the court held that they were estopped from raising a contrary intention at this stage.

In deciding the issue of novation of an arbitration agreement, "*WAPCOS Ltd v Salma Dam Joint Venture* (2019)" the Apex Court refused the application for arbitrator appointment as the agreement with the arbitration clause was novated by the amended agreement which gave up the claims under the earlier agreement. The novated agreement revised rates and said that no claims will be raised in future and arbitration will cease.

The arbitrariness in an arbitration clause was struck down under Article 14 of the Constitution in a judicial scrutiny of an arbitration agreement in a tender notice by the Apex Court in "*ICOMM Tele Ltd v Punjab State Water Supply and Sewage Board* (2019)". Though the arbitration clause was non-discriminatory to parties, it had a pre-condition for invoking arbitration with the objective of avoiding frivolous claims by which both parties will have to forfeit 10% of the deposit paid. This was held to be arbitrary.

Arbitration clause in a supplementary development agreement in a case with multiple parties and inter connected agreements was in question in "*Avinash Hitech City Society v Boddu Manikya Malini* (2019)". On the grounds that the disagreement was not covered by the arbitration provision, the section 8 reference was denied in a lawsuit before the District Court. But the Supreme Court decided to submit the case to arbitration since it was determined that the disagreement fell under the arbitration provision.

In "*South Delhi Municipal Corporation v SMS AAMW Tollways (P) Ltd* (2018)" an agreement providing for departmental appeal and enquiry was held to be not an arbitration agreement and the same should either expressly or impliedly refer dispute/difference to arbitrator. So a competent officer and commissioner having supervisory control over work and administrative matters

to prevent disputes was held to be not an arbitration agreement. Again in "*Food Corporation of India v National Collateral management Services Ltd* (2019)" a clause that any dispute could be referred to Chairman and M.D. of one party for final and binding settlement was held to be not an arbitration agreement.

Difference between arbitration clause in a compulsorily registrable document which is not registered and document to be compulsorily stamped but that is not stamped is yet another issue faced by courts. In "*SMS Tea Estates v Chandmari Tea Company Pvt. Ltd.* (2011)" the arbitration clause in an unstamped document was impounded by the court as per the Stamp Act for paying stamp duty and penalty before acting upon and the Stamp Act applies to the whole agreement and no bifurcation of arbitration clause is possible giving it an independent existence.

In "*Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v Bhaskar Raju & Bros.* (2020)", a lease deed that has to be compulsorily stamped was relied by High Court and arbitrator was appointed. But this was set aside as the court could act only after paying the stamp duty and penalty. Also before this, an injunction suit was there where both parties participated and the respondent could have applied for section 8 reference if the deed was legal and valid. In deciding whether there is an arbitration agreement applying the mandatory law applicable to the agreement as well as analysing the triggering factors bringing it into existence, the court cannot decide preliminary questions between parties.

In "*United Insurance Company Ltd. v Hyundai Engineering and Construction Company Ltd.* (2018)", whether there is a conditional arbitration clause was in question and the matter fell within the exempted category. Hence the matter was not possible of arbitration and hence the clause would expire and the remedy would be in court.

" Garware Wall Ropers v Coastal Marine Constructions & Engineering Ltd (2019)" was a situation where the arbitration provision in a contract that was

required to be registered but wasn't was in issue. It was decided that the arbitration clause in this case may be separated from the agreement and used.

Another concern is whether a party that did not sign an arbitration agreement can still be arbitrated. In "*Reckitt Benckiser (India) Pvt. Ltd. v Reynders Label Printing India Pvt. Ltd. & Another* (2019)", according to the ruling, even if both the signatory and the non-signatory are members of a group of firms, the burden of proof is on the non-signatory to show that they intended to accede to the agreement, and since this burden has not been met, they cannot be forced to arbitration.

The doctrine of "group of companies" was summarized in "*MTNL v Canara Bank* (2019)", wherein it was held that implied consent of subsidiary company has to be impleaded and if not there will not be final resolution of disputes. The relation between subsidiary and parties to agreement as well as subsidiary connected to original transaction has to be proved. Arbitration agreement is inferred from documents and proceedings before arbitrator and court without any objection and later on if existence of agreement is denied, estoppel would apply. Here the appellant consented to reference in court and before arbitrator replied to claim and filed counter claim. All these proved inference that there is an arbitration agreement and the denial of agreement was not permitted by court.

In a case there were two different arbitration clauses in two related agreements between same parties the court opined that the appropriate clause would be applied in the particular facts of the case depending on the nature of dispute involved. Hence in *"Balasore Alloys Ltd v Medima LIC* (2020)", all agreements and documents were analysed and it was held that the main agreement covers all matters and as per the main agreement reference and appointment was done, another application for appointment was not maintainable.

When signing is not mandatory as in the case of a bill of lading that is written referring to all conditions including arbitration clause in the annexure was deemed to be an arbitration agreement in "*Caravel Shipping Services (P)*

Ltd v Premier Sea Foods Exim (P) Ltd (2018)" as the annexure was made part of contract. Also arbitration agreement in letter of intent was held in "*IBI Consultancy (India) (P) Ltd v DSC Ltd* (2018)" to be an integral part of contract and hence in existence. Standard form contract with arbitration clause was referred to in individual sale orders was held to be enough for applying the said clause in "*Giriraj Garg v Coal India Ltd.* (2019)". It was considered as a "single contract case" as the sale order was based on standard form document and the general reference to standard form was sufficient to prove the presence of an arbitration agreement.

In "*Rashid Raza v Sadaf Akhtar* (2019)", "the twin test" of arbitrability of fraud was formulated by court. As simple allegations are not falling within public domain, in this case the partnership was held to be not vitiated and hence the dispute arbitrable and section 11 application maintainable. The above twin test on arbitrability of fraud was adopted in "*Avitel Post Studioz Ltd v HSBC PI Holdings (Mauritius) Ltd.* (2020)" and the question raised was whether the possibility of criminal proceedings on fraud allegations is a matter in public domain. Earlier cases had already discussed fraud between parties and those in public domain.

The first test is whether fraud affects the entire contract and thereby makes arbitration agreement void and the second is whether fraud affects only parties *inter se* or is in public domain. So the first sees the existence of contract and the second is to find out the nature of fraud. In cases of serious fraud, these principles are looked into. A matter can be a civil or criminal dispute and that is not the reason for making it non-arbitrable. Here the matter started as a criminal matter, but failed. The court held that fraud would not vitiate arbitration clause as it is independent and inspite of the contract being void, the arbitration agreement is valid. In addition, disputes do not have public element and hence they are arbitrable.

For granting section 9 remedy, HSBC proved a primary case that the principal amount awarded to them is kept apart as indicated by Bombay High Court and that there was balance of convenience. The arbitrability of fraud was

determined as per Indian substantive law even though it was a foreign seated arbitration. If HSBC has to enforce the award, then it would suffer irreparable loss and so principal amount is to be kept apart for enforcing award here. The arbitrability was confirmed irrespective of the fact whether fraud was at the stage of contract formation or at the stage of contract performance.

In a study of 29 cases on fraud and arbitrability based on the principles laid down in *Russel* case, in 16 cases the accuser of fraud resisted arbitration. In these 16 cases, 8 cases were not referred as it was proved that there was serious fraud or prima facie fraud. In the 13 cases where accused resisted arbitration, six cases were not referred as courts could decide on serious fraud or prove prima facie fraud. Generally, the accuser of fraud prefers court trial, but if the case is weak the accused prefers arbitration (Khaitan, 2020).

The general principle of arbitrability is that all civil, whether contractual or not are arbitrable except those exempted statutorily as a matter of public policy. An example can be disputes relating to rights *in rem*, which are decided by courts or statutory fora. Civil aspects of fraud, coercion, misrepresentation, undue influence and the like under the Indian Contract Act are generally arbitrable. Dispute whether main contract or arbitration clause is voidable is arbitrable, but if clause or main agreement is clearly void then arbitration is not possible. In addition, when there is concurrent arbitration and criminal proceedings on same matter, dispute is arbitrable unless the matter falls in public domain. Thus in "*M/S N.N. Global Mercantile (P) Ltd. v Indo Unique Flame Ltd. & Others* (2021)", fraud in case of invocation of bank guarantee was held arbitrable as it was out of the dispute between parties but not in public domain.

In "*Mitra Guha Builders (India) Co. v ONGC* (2019)", in a construction contract the Superintending Engineer the named person by the parties, was to decide matters like right to levy compensation for delay in work completion and mechanism for determining compensation. The above matters were exempted from the arbitration agreement and hence the court opined that they were not arbitrable and could only be decided by the named person.

All the tests on arbitrability are to be used with care and caution. They are not water tight compartments and can overlap, so to be applied holistically and pragmatically. Parties can limit the authority of arbitrator, so even if agreement is valid, tribunal may not have jurisdiction as per will of parties. Non arbitrable subject matter and non arbitrable claim are different. The former relates to law, for example, statutory exclusion of non arbitrable subject matter as in DRT Act or SARFESI Act and the latter is with respect to the scope of agreement or when cannot be arbitrated. Even though grounds of non arbitrability make arbitration an inferior procedure, the Act and amendments strengthen it by making arbitration a just, fair and impartial proceeding like that of court.

4.8 SUMMARY

"The Arbitration and Conciliation (Amendment) Act, 2015" was made with the purpose to keep judicial intervention to a minimum level. *Prima facie* enquiry that there is a valid arbitration agreement in "Section 8" resulting in mandatory reference could be seen in cases before 2015 itself. Regarding arbitrability the 246th Law Commission Report had suggested amendments to Section16 to empower tribunals to decide on all matters including serious fraud, but not yet been incorporated.

Courts grant interim measures mainly before or after arbitration and rarely during proceedings. Not all technical defects in agreement had effected the granting of this remedy, but only existence of agreement was important there.

The Supreme Court on arbitrability based on specific clauses in the agreement has refused to appoint arbitrator. In Section 11, court has to examine the existence of agreement and its relatability to the dispute. If the relation of agreement to the dispute is not found, the court may refuse the relief. Proof of agreement present and agreement being valid and enforceable were found to be different issues by the Supreme Court and it had been clarified to a certain extent.

When the agreement is terminated by any type of discharge, appointment was refused by courts. Regarding technical issues of stamping, the latest

approach was to appoint arbitrator, impound the document and leave the rest to be decided by the tribunal. This again is an approach favouring arbitration.

With the 2019 amendment the concept of institutional arbitrations and Section 11(6A) is deleted thus vesting the arbitrator with the authority to decide on his competency under Section 16. The existence of the agreement would be decided by institutions. There is a chance of arbitrators getting appointed for non-arbitrable claims. The initial threshold test to be met in court to succeed a Section 11 application is lost. The powers of the Central Council and how the institutions are going to deal with the existence of agreement and related objections are to be clarified and more disputes are likely. Though judicial intervention is to be minimised for effective arbitration, a minimum amount of intervention would act as a check and balance on the arbitral process.

The *kompetenz-kompetenz* principle allows the arbitrator to decide on its own competency and it can be at the preliminary stage or later. Section 16 is not a final word on jurisdictional issues, but remedy before the court is always there. But a minimum court intervention is envisaged under the Act.

Orders of interim reliefs from the arbitrator are considered as court orders enforceable by court and in appeals there cannot be full review on merits. But setting aside interim orders based on grounds under Section 34 is also not desirable.

Another aspect that came before Supreme Court is the excessive intervention by High Courts under “Article 227” against orders in appeals under “Section 37”. High courts are expected only to correct patent jurisdictional errors.

Also lower courts excessively intervene when they are approached with enforcement of interim order of Tribunals. The act of the courts is not a judicial one but only a ministerial act as reminded by the higher judiciary.

Justice K.T. Thomas, Supreme Court of India was an arbitrator in a matter between FACT and ABC companies which he had decided after retirement.

Here during the conduct of arbitral proceedings, as a counter, FACT had sued ABC in Sub Court. Towards the end of proceedings, FACT contested the power of the tribunal before itself and it was denied. This was appealed, but of no use (K.T.Thomas, 2021). This is a clear instance of misuse of arbitral proceedings by parties resulting in delay of the entire process.

Commercial courts presided by District Judge or Additional District Judge can be opted for dealing with arbitration matters so that ordinary civil courts can decide other matters before them. This will help the speedy and effective dispute settlement by arbitration. (Varghese, 2021).

Thus in this analysis of cases after the "2015 amendment to the Arbitration Act" it can be seen that in many situations the Indian courts including the apex court is trying to balance the efficiency of arbitral process with a minimum judicial interference. If the courts are kept out totally from the arbitral process, it may result in other consequences. Hence the need of the hour is to have a minimum court intervention so that the arbitration process happens in the most efficient and effective way. The amendment is taking the law towards a more equitable balance between the courts and arbitral tribunals. Even though the full effect is not known, there are several recent cases where courts have acted according to the amendment thereby transforming India as an emerging hub for arbitration (Kapoor & Agarwal, 2017).

CHAPTER V
QUALITATIVE STUDY ON THE IMPACT OF JUDICIAL INTERVENTION IN ARBITRATION IN INDIA

5.1 INTRODUCTION

In the year 2015, "the Arbitration and Conciliation Act, 1996" was amended largely so that judicial intervention could be brought to a reduced level. The balance between arbitration and judicial intervention has been the aim of the Act and the judiciary is also striving to achieve the same in cases before and after the 2015 amendment. This chapter is a qualitative study to understand the approach of the judiciary with respect to judicial intervention in arbitration in India after the 2015 amendment. For this purpose, cases of Apex Court and High Courts have been analysed and categorized based on various aspects to find out whether they are pro-arbitration or anti-arbitration. This would enable the researcher to conclude whether the approach adopted by the Indian judiciary is pro-arbitration or not.

5.2 METHODOLOGY OF CASE ANALYSIS

A detailed analysis of 400 decisions of higher judiciary (Supreme court and High Courts) has been done from October 2015 to September 2022. The case analysis was done on the following grounds:

1) The number of decisions (year-wise) rendered by the Supreme Court and High courts together and separately during this period with respect to judicial intervention in arbitration.

2) The number of pro-arbitration and anti-arbitration decisions (year-wise) rendered by both Supreme Court and High courts together and separately during this period with respect to the same.

3) The number of pro-arbitration and anti-arbitration decisions (year-wise) with respect to

   - reference to arbitration "(Section 8)",
   - appointment of arbitrator "(Section 11)",
   - both reference to arbitration and appointment of arbitrator "(Sections 8 and 11)",
   - interim measures by courts "(Section 9)",
   - interim measures by tribunal "(Section 17)",
   - interim measures by tribunal and its appeal "(Sections 17 and 37)",
   - application of non-obstante clause "(Section 5)" and
   - application of *kompetenz* principle "(Section 16)".

   The list of these decisions in a tabular form is included in the appendix.

5.3 COMPREHENSIVE CASE ANALYSIS (October 2015 to September 2022)

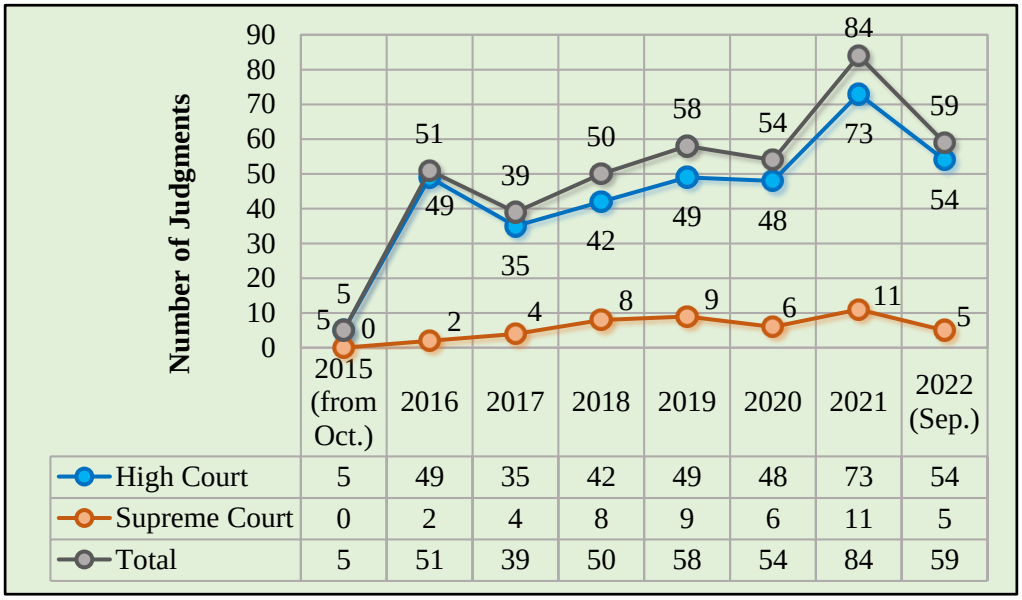


Figure 5.1: Year-wise total number of judgments on Judicial Intervention in Arbitration by the "High Courts in India", "Supreme Court of India", and Total - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.1 explains that between October 2015 and May 2022, there were 400 cases on Judicial intervention in Arbitration decided by the higher judiciary ("Supreme court of India and High Courts") of which 45 are decided by the Apex Court of India and 355 are decided by various High courts in India. Out of 400 cases on Judicial intervention in Arbitration decided by the higher judiciary (Apex court of India and High Courts), 11% cases were decided by the Apex Court of India and 89% cases were decided by various High courts in India. Under the Arbitration and Conciliation Act, 1996, only first appeal is provided and Supreme Court can be approached only by a Special Leave Petition.

In the analysis, the number of decisions between 2015 and 2022 has shown no pattern. In 2015, after the amendment to the Act in October, only limited decisions have come on judicial intervention in arbitration. In the overall analysis, the maximum number of decisions in 2021 is 84, out of which, 11 are decided by Supreme Court and 73 by High Courts. The four fold test on arbitrability was laid down in "*Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1 (Ind.)" and the "two fold test" on fraud in" *Rashid Raza v Sadaf*

Akhtar (2019) 8 SCC 710 (Ind.)". Majority decisions are regarding interim measures by courts and tribunals.

5.4 COMPREHENSIVE CASE ANALYSIS OF PRO-ARBITRATION AND ANTI-ARBITRATION DECISIONS (October 2015 to September 2022)

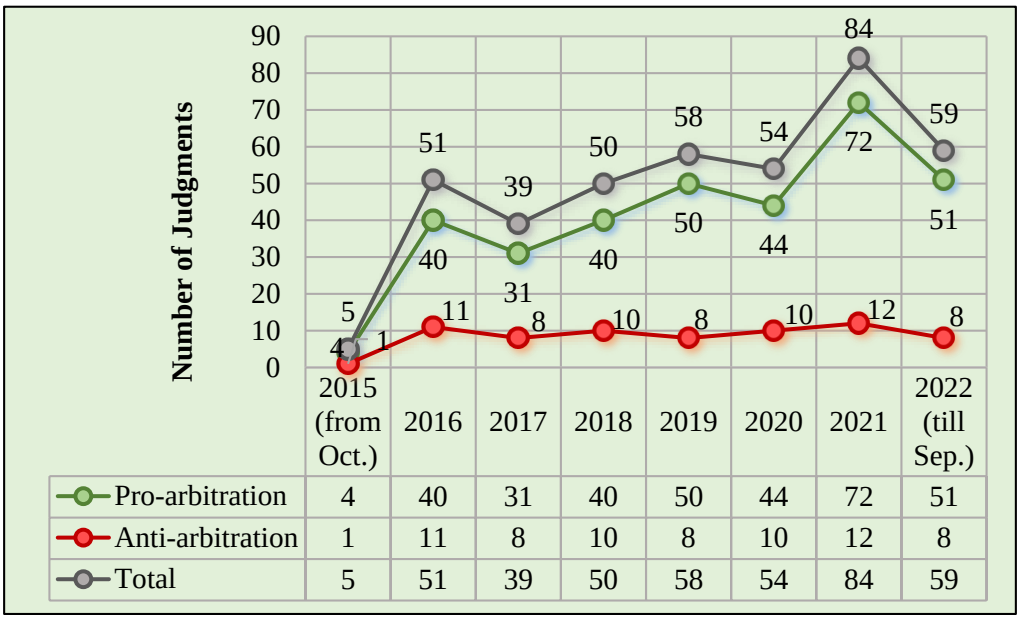
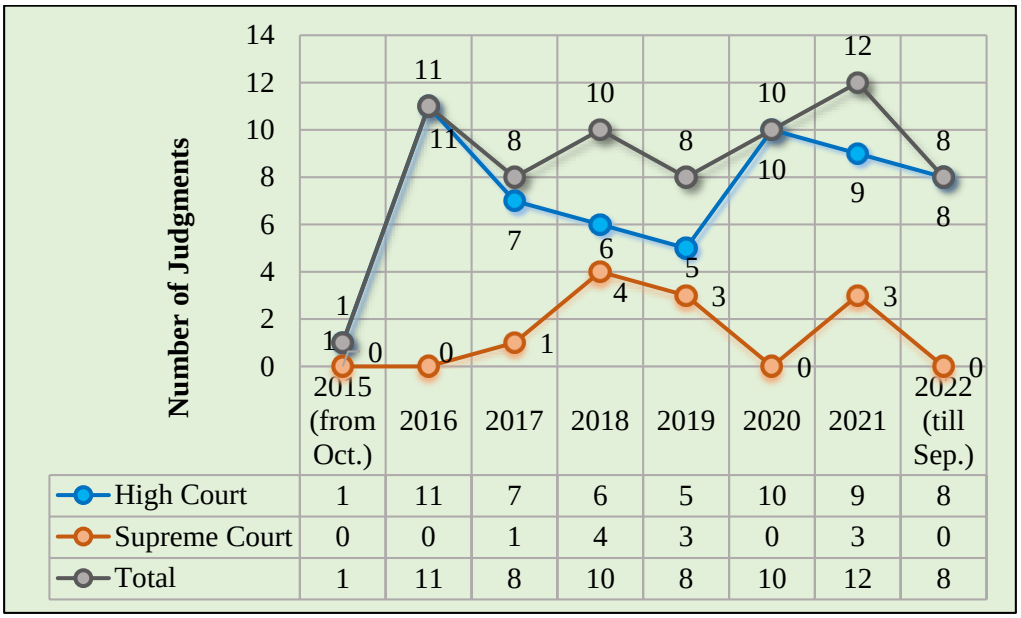


Figure 5.2: Year-wise number of Judgments on Judicial Intervention in Arbitration by the "High Courts in India", "Supreme Court of India", and Total with Pro-arbitration and Anti-arbitration Judgments - 2015 (from Oct.) to 2022 (till Sep.)

In figure 5.2, it can be seen that between October 2015 and May 2022, there were 400 cases on Judicial intervention in Arbitration decided by the higher judiciary (Apex court of India and High Courts) of which 83% were pro-arbitration decisions and 17% were anti-arbitration decisions. The tendency of the higher judiciary, especially the Supreme Court, is to facilitate arbitration.

5.5 COMPREHENSIVE CASE ANALYSIS OF ANTI-ARBITRATION DECISIONS (October 2015 to September 2022)

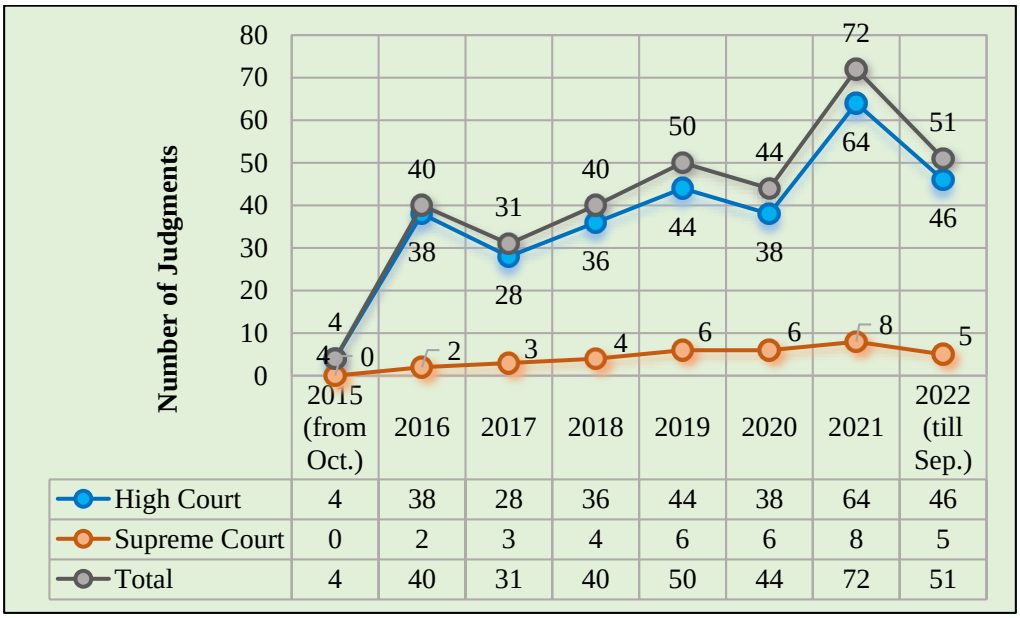


	2015 (from Oct.)	2016	2017	2018	2019	2020	2021	2022 (till Sep.)
High Court	1	11	7	6	5	10	9	8
Supreme Court	0	0	1	4	3	0	3	0
Total	1	11	8	10	8	10	12	8

Figure 5.3: Year-wise total number of Anti-arbitration Judgments on Judicial Intervention in Arbitration by the "High Courts in India", "Supreme Court of India", and Total - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.3 depicts that out of the 68 anti-arbitration judgments, between October 2015 and May 2022, on judicial intervention in Arbitration determined by the higher judiciary ("Apex court of India and High Courts"), 84 % were decided by the various "High Courts in India" and 16% by the Apex Court of India. In such cases, the matter was held not arbitrable based on a *prima facie* conclusion as to non-existence of agreement or non-arbitrability of disputes. The major grounds for denial of arbitration were serious fraud, statutory bar or clauses against arbitration, limitation as admissibility issue, novation etc.

5.6 COMPREHENSIVE CASE ANALYSIS OF PRO-ARBITRATION DECISIONS (October 2015 to September 2022)



	2015 (from Oct.)	2016	2017	2018	2019	2020	2021	2022 (till Sep.)
High Court	4	38	28	36	44	38	64	46
Supreme Court	0	2	3	4	6	6	8	5
Total	4	40	31	40	50	44	72	51

Figure 5.4: Year-wise total number of Pro-arbitration Judgments on Judicial Intervention in Arbitration by the "High Courts in India, the Supreme Court of India" and Total - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.4 illustrates that out of the 332 pro-arbitration decisions, between October 2015 and May 2022, on Judicial intervention in Arbitration decided by the higher judiciary, 90% were decided by the various "High Courts in India" and 10% by "the Supreme Court". In all pro-arbitration decisions, based on a prima facie enquiry on existence of agreement or arbitrability of dispute, matters were referred to arbitration or arbitrators appointed or both or interim measures granted by courts or interim orders of tribunal upheld.

5.7 COMPREHENSIVE CASE ANALYSIS ON APPOINTMENT OF ARBITRATOR (October 2015 to September 2022)

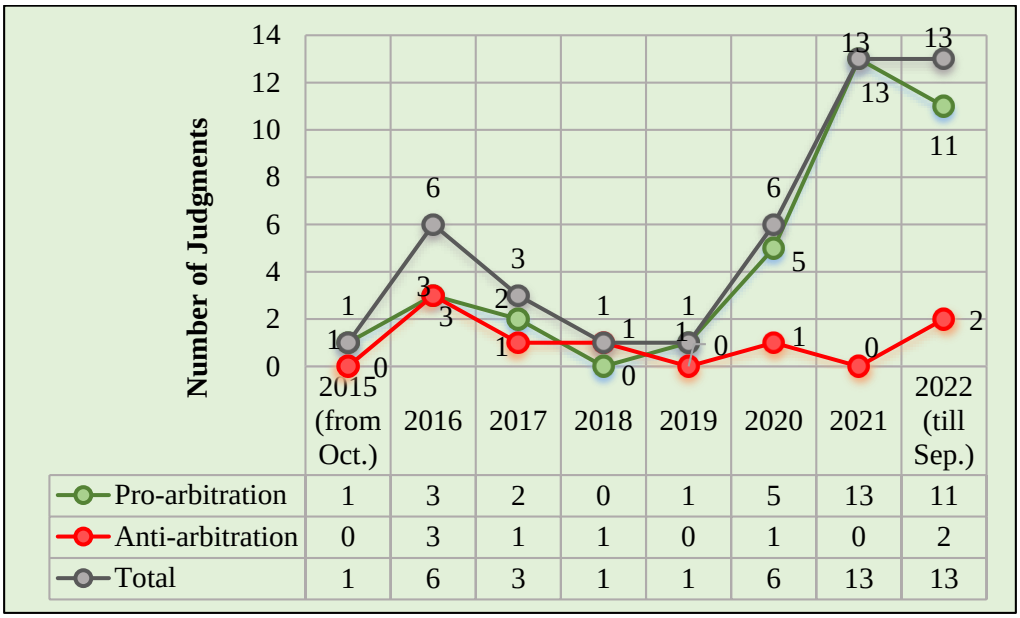


Figure 5.5: Year-wise number of Judgments (pro-arbitration, anti-arbitration and total) on Judicial Intervention in Arbitration involving only "Sec. 11 of Arbitration and Conciliation Act, 1996" - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.5 explains decisions of the higher judiciary with respect to arbitrator appointment under "section 11 of the Arbitration and Conciliation Act, 1996". Out of the total 44 cases, 82% are pro-arbitration decisions and 18% are anti-arbitration decisions. In these pro-arbitration decisions, arbitrators have been appointed by courts and its denial has happened only because there is no agreement or the dispute is not arbitrable.

5.8 COMPREHENSIVE CASE ANALYSIS ON REFERENCE TO ARBITRATION (October 2015 to September 2022)

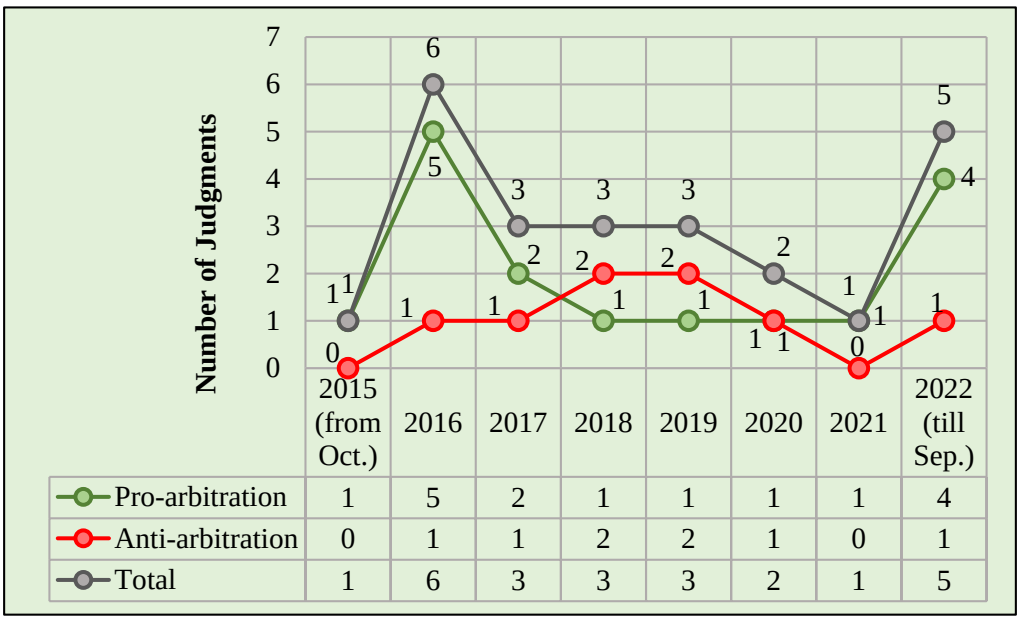
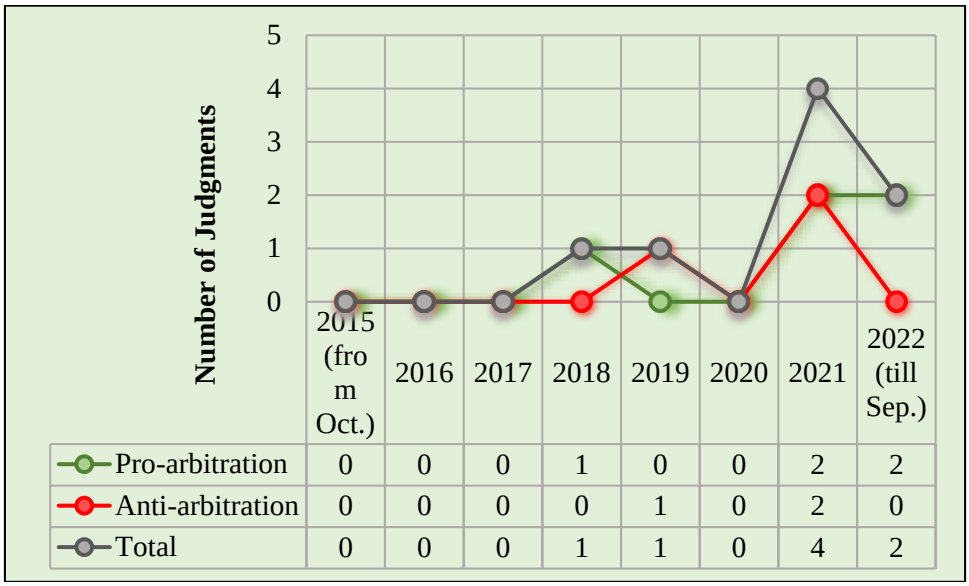


Figure 5.6: Year-wise number of Judgments (pro-arbitration, anti-arbitration and total) on Judicial Intervention in Arbitration involving only "Sec. 8 of Arbitration and Conciliation Act, 1996" - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.6 depicts decisions of the higher judiciary with respect to reference to arbitration under "section 8 of the Arbitration and Conciliation Act, 1996". Out of the total 24 cases, 67% are pro-arbitration decisions and 33% are anti-arbitration decisions. In matters before court, when the parties prove that agreement exits and if the dispute is arbitrable, courts refer them to arbitration. Here also majority cases are referred to arbitration.

5.9 COMPREHENSIVE CASE ANALYSIS ON BOTH REFERENCE AND APPOINTMENT (October 2015 to September 2022)



	2015 (from Oct.)	2016	2017	2018	2019	2020	2021	2022 (till Sep.)
Pro-arbitration	0	0	0	1	0	0	2	2
Anti-arbitration	0	0	0	0	1	0	2	0
Total	0	0	0	1	1	0	4	2

Figure 5.7: Year-wise number of Judgments (pro-arbitration, anti-arbitration and total) on Judicial Intervention in Arbitration involving "Sections 8 and 11 of Arbitration and Conciliation Act, 1996" - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.7 shows that there are only 8 decisions of the higher judiciary with respect to both reference to arbitrator and appointment of arbitrator under "sections 8 and 11 of the Arbitration and Conciliation Act, 1996". Out of the total 8 cases, 88% are pro-arbitration decisions and 12% are anti-arbitration decisions. These are the cases wherein both reference and appointment are claimed by parties before courts and in most of them both have been granted.

5.10 COMPREHENSIVE CASE ANALYSIS ON INTERIM MEASURES BY COURTS (October 2015 to September 2022)

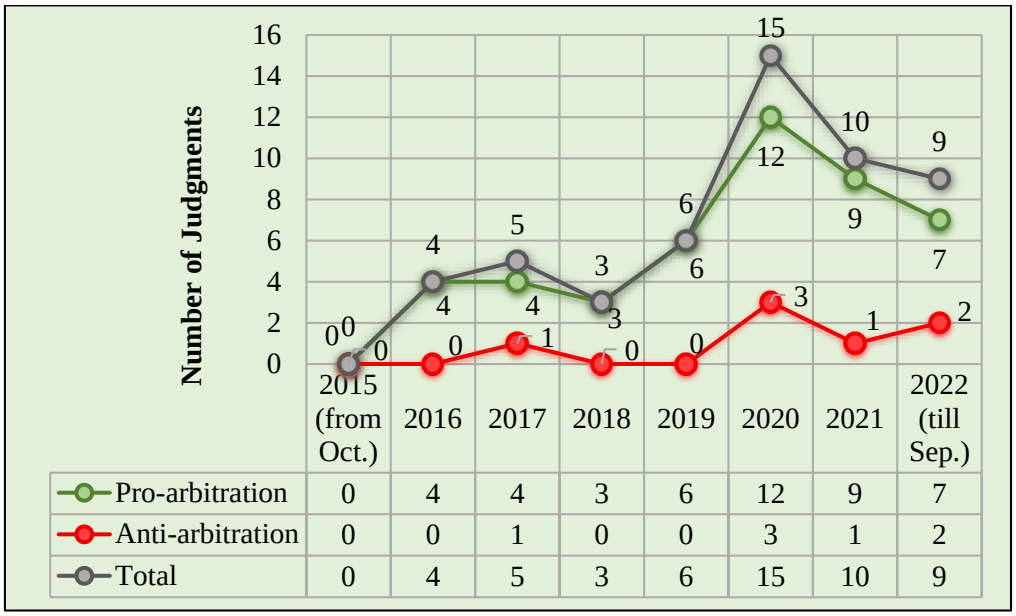


Figure 5.8: Year-wise number of Judgments (pro-arbitration, anti-arbitration and total) on Judicial Intervention in Arbitration involving only "Sec. 9 of Arbitration and Conciliation Act, 1996" - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.8 represents decisions of the higher judiciary in connection with granting of interim measures by court under "section 9 of the Arbitration and Conciliation Act, 1996". Out of the total 52 cases, 87% are pro-arbitration decisions and 13% are anti-arbitration decisions. In order to help arbitration, courts grant interim measures and the pro-arbitration decisions here are doing the same to facilitate arbitration process.

5.11 COMPREHENSIVE CASE ANALYSIS ON INTERIM MEASURES BY TRIBUNAL (October 2015 to September 2022)

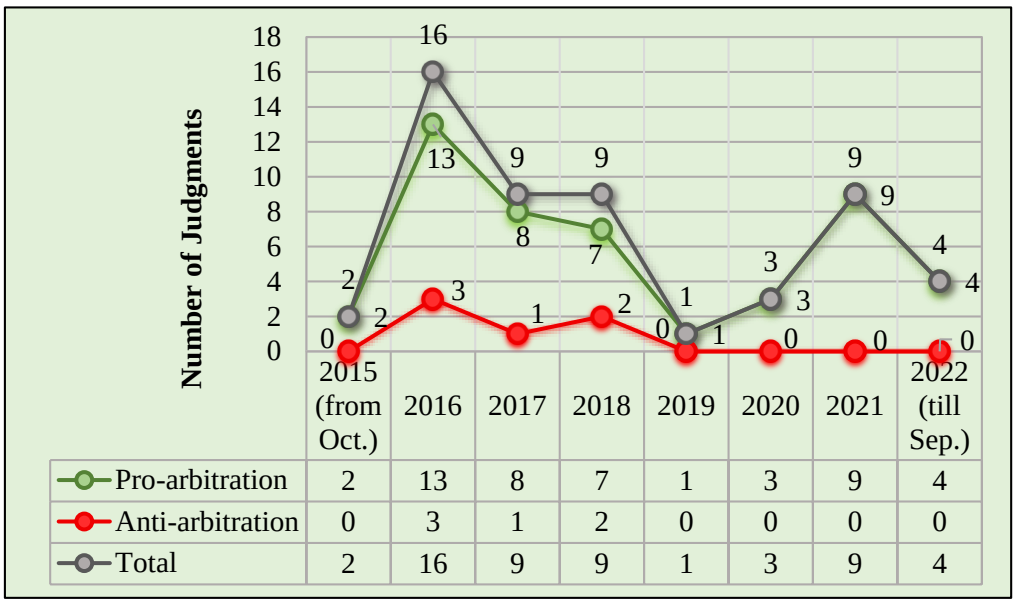
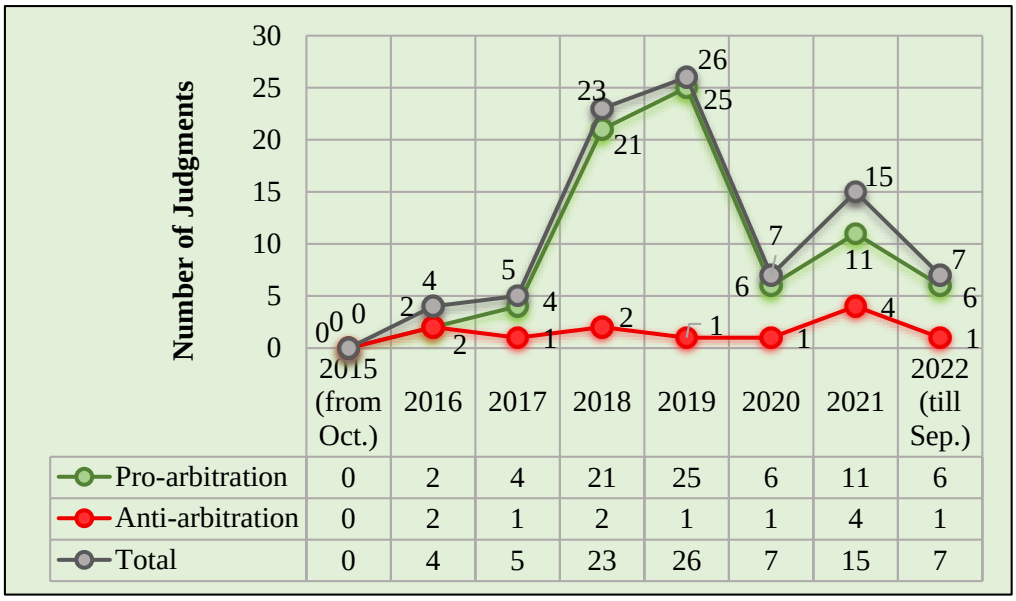


Figure 5.9: Year-wise number of Judgments (pro-arbitration, anti-arbitration and total) on Judicial Intervention in Arbitration involving only "Sec. 17 of Arbitration and Conciliation Act, 1996" - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.9 illustrates the decisions of the higher judiciary with respect to interim measures by tribunal under "section 17 of the Arbitration and Conciliation Act, 1996". Out of the total 53 cases, 89% are pro-arbitration decisions and 11% are anti-arbitration decisions. In the majority decisions here, courts have directed the arbitral tribunals to grant interim reliefs instead of themselves giving interim orders.

5.12 COMPREHENSIVE CASE ANALYSIS ON APPEALS AGAINST INTERIM MEASURES BY TRIBUNAL (October 2015 to September 2022)



	2015 (from Oct.)	2016	2017	2018	2019	2020	2021	2022 (till Sep.)
Pro-arbitration	0	2	4	21	25	6	11	6
Anti-arbitration	0	2	1	2	1	1	4	1
Total	0	4	5	23	26	7	15	7

Figure 5.10: Year-wise number of Judgments (pro-arbitration, anti-arbitration and total) on Judicial Intervention in Arbitration involving only "Sec. 17 and 37 of Arbitration and Conciliation Act, 1996" - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.10 demonstrates decisions of the higher judiciary with respect to interim measures by tribunal and its appeal under "Sections 17 and 37 of the Arbitration and Conciliation Act, 1996" are graphically represented. Out of the total 87 cases, 86% are pro-arbitration decisions and 14% are anti-arbitration decisions. These are the cases wherein the interim orders by tribunals were appealed and majority of them were upheld showing the pro-arbitration approach of courts.

5.13 COMPREHENSIVE CASE ANALYSIS ON *NON OBSTANTE* CLAUSE (October 2015 to September 2022)

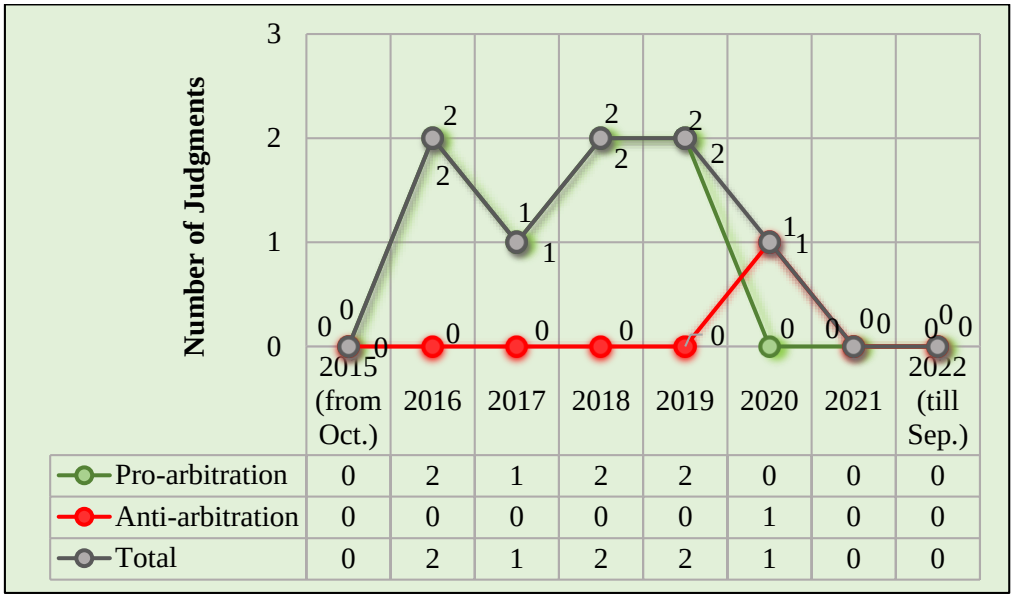


Figure 5.11: Year-wise number of Judgments (pro-arbitration, anti-arbitration and total) on Judicial Intervention in Arbitration involving only "Sec. 5 of Arbitration and Conciliation Act, 1996" - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.11 represents decisions of the higher judiciary applying the non obstante clause as per "section 5 of the Arbitration and Conciliation Act, 1996". Out of the total 8 cases, 88% are pro-arbitration decisions and 12% are anti-arbitration decisions. The decisions favouring arbitration are based on the non obstante clause upholding judicial intervention in arbitration only according to "the Arbitration and Conciliation Act, 1996".

5.14 COMPREHENSIVE CASE ANALYSIS ON *KOMPETENZ* PRINCIPLE (October 2015 to September 2022)

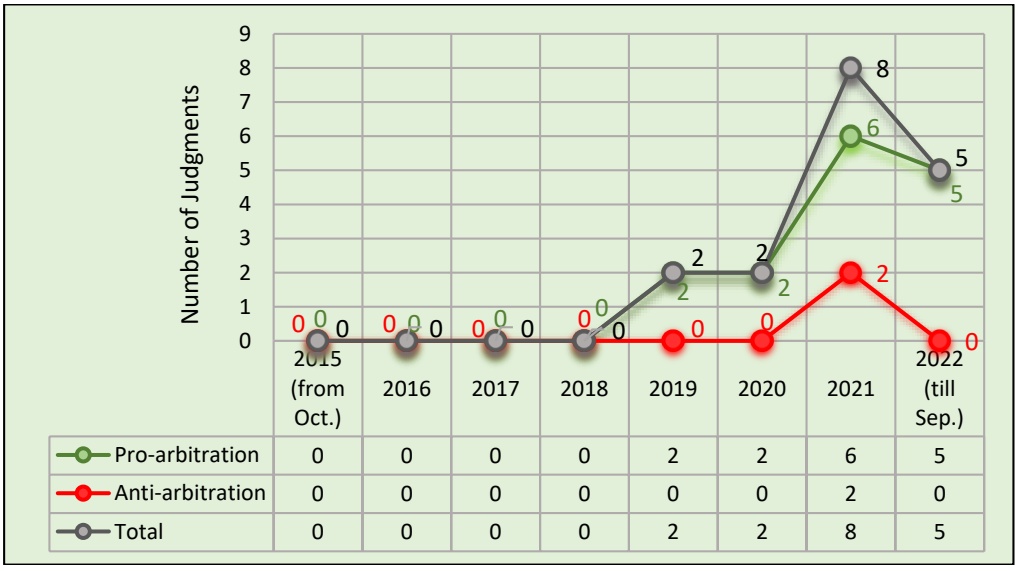


Figure 5.12: Year-wise number of Judgments (pro-arbitration, anti-arbitration and total) on Judicial Intervention in Arbitration involving only "Sec. 16 of Arbitration and Conciliation Act, 1996" - 2015 (from Oct.) to 2022 (till Sep.)

Figure 5.12 shows decisions of the higher judiciary applying the *kompetenz* principle as per "section 16 of the Arbitration and Conciliation Act, 1996". Out of the total 17 cases, 88% are pro-arbitration decisions and 12% are anti-arbitration decisions. The pro-arbitration decisions relied on the principle upholding the authority of arbitrator to determine on his jurisdiction.

5.15 SUMMARY

From 2015 till May 2022, 400 cases decided by Apex Court and High Courts on the different instances of judicial intervention were analysed and in these 332 cases are favouring arbitration and 68 against arbitration. The Supreme Court had decided 45 cases out of which 34 were pro-arbitration decisions and 11 were anti-arbitration decisions. Whereas out of the 355 cases decided by various High Courts, 298 were pro-arbitration decisions and 57 were anti-arbitration decisions. In all anti-arbitration cases, the court finding was that the matter cannot be arbitrated based on sufficient *prima facie* finding of necessary facts disclosing the non-arbitrability of dispute or non-existence of agreement.

There were many reasons for denying arbitration in anti-arbitration decisions and some of the major reasons can be summed up as follows. One was the *prima facie* finding of serious fraud and another was the statutory bar against arbitration. A dispute resolution clause was held to override the standard form arbitration clause in an unsigned agreement. In addition, a clause that dispute will be settled by a higher official was held to be not an arbitration agreement.

There were cases of conditional arbitration clause, where either the clause was struck down as arbitrary or the other the matter was not referred as it was exempted by the said clause.

Cases were decided in favour of named persons as against appointment by court. The matter was decided by the named person as it was exempted by clause and hence held not arbitrable or the court appointment was held invalid as there was a named person under the agreements and this was reiterated in another with three named persons under the procedure in the agreement.

Case involving a non-signatory to agreement was held not arbitrable as the burden with respect to consent was not proved. In addition, where a party consented to arbitration only under ICC Rules was left to be decided by the court. Novation of an agreement with arbitration clause where all earlier claims are taken away by the new one was held not arbitrable.

In some other cases, the matter was not referred as the issue of claims becoming time barred was considered to be an “admissibility” issue to be prima facie determined by court as only “jurisdictional” issue can be left to the arbitrator for determination.

In all pro-arbitration cases, the Supreme Court has favoured arbitration by referring the matter to arbitration or appointing arbitrator or granting interim reliefs by courts or tribunals. There are cases where the kompetenz principle or non obstante clause have been applied by courts.

In cases of fraud when the court on a prima facie enquiry finds that it is only a simple fraud not invalidating the entire agreement and not requiring a public enquiry then it has been left to the arbitrator for decision. It was expressed that even a serious fraud between parties could be decided by arbitrator.

In a case where the question of novation of an arbitration clause arose at the referral stage, it was decided that the court could not make a decision because doing so would require a miniature trial or an in-depth analysis of the facts and the law. Instead, an arbitrator was appointed, and the matter was referred because the arbitrator has jurisdiction over it.

Based on implicit assent, commercial need, and subjective purpose of the parties, non-signatories were found to be bound by the arbitration agreement. The matter had been sent to a bigger bench because this violates party autonomy and independent corporate personality.

Though the overriding effect of Special Acts over the Arbitration Act was reiterated in some cases, with respect to the Insolvency and Bankruptcy Code it was held that it only applies to termination of contract by insolvency and no other grounds.

Remedy under A. 227 of the Constitution granted by High Courts had been set aside as the Act provides remedy by way of setting aside, appeals etc. Thus the jurisdictional issue as to the nature of contract, counter claim etc. were left to the arbitrator for decision.

By way of granting or affirming interim order under "section 9 of the Act", arbitral awards have been modified, made final and enforced by the higher judiciary.

With respect to the issue of arbitrability, Apex Court in *Vidya Drolia* (2021) had laid down the four-fold test. There it was held that the difference between existence and validity is difficult as the essentials under section 7 of the Act and Contract Law have to be looked upon. In addition, it was held that all doubtful cases are to be referred and the courts get an opportunity for a second look.

The separability of the arbitration provision as a separate contract and the *kompetenz* concept, which gives the tribunal the authority to choose its own jurisdiction, are believed to be the major pillars of party autonomy. Therefore, the arbitrator will determine in the first instance on all questions pertaining to jurisdiction, existence, legality, and the extent of the agreement. Unless specifically exempted by statute, all civilly triable matters are arbitrable. Unless the primary agreement is entirely defective and unenforceable, all things that may be void or voidable owing to coercion, fraud, economic pressure, or misrepresentation are subject to arbitration.

In cases of unstamped agreements, the judiciary has impounded the document for payment of duty and referred the matter to arbitration. But limitation was held to be not a threshold issue decided by court, but a jurisdictional one involving mixed questions of facts and law which can be decided by arbitrator and hence arbitrator was appointed.

In light of all the criteria on which courts make their decisions to favour or reject arbitration, the courts often take a pro-arbitration stance. But each case will have unique circumstances that will determine the outcome. Courts are conducting a preliminary inquiry, and arbitration is only chosen if the relevant facts about the existence of an agreement and the arbitrability of the dispute are discovered.

CHAPTER VI
LIMITATION ON JUDICIAL INTERVENTION IN ARBITRATION IN THE INTERNATIONAL SCENARIO

6.1 INTRODUCTION

The 1996 Act's section 16 is well known for enshrining the *kompetenz-kompetenz* concept. (Born, 2014) and accepted internationally. There are variations in its scope and consequences. Jurisdiction like France provide that tribunal initially determines jurisdictional disputes like existence and validity of arbitration agreement, subject to eventual judicial review. But if arbitral process has not yet begun, courts can look into prima facie evidence of agreements (Born, 2014). Other countries like Sweden (Born, 2014) acknowledges the authority of the arbitrator to decide on its jurisdiction, but allows courts to interfere at any point, including before the tribunal makes a ruling. The UNICITRAL Model Law also enables the tribunal to decide on its jurisdiction subject to judicial review but also provides court participation prior to an arbitral determination (Born, 2014).

National court interference was one of the top worries for those taking part in international arbitrations, according to the 2006 International Arbitration Study (Arbitration, 2006). When arbitral jurisdiction is challenged in court, the resolution of the original dispute is affected and delayed. Often one person not willing to arbitrate commences litigation and the other would try to invoke arbitration proceedings. If the claimant is opposing the defendant’s request then this dispute would threaten the effectiveness of arbitral proceedings. As a result, each nation will need to handle this and determine the specifics of any court inquiries into these jurisdictional issues.

International treaties merely give a limited direction leaving it to individual governments. Every jurisdiction needs to strike an appropriate balance between the interest of efficacy and that of legitimacy of arbitral procedure. Courts should have the authority to judge on matters within their purview, such as the existence, legality, and application of arbitration agreements. The ability of an arbitrator to determine its own jurisdiction is now acknowledged by every nation. As a result, there is an inherent conflict between the authority of courts to determine the existence, legality, and application of an agreement and the authority of arbitrators to determine their own jurisdiction. The dimensions of judicial involvement rely on the choice as to the balance between efficacy and legitimacy described above.

Once arbitration is established, courts' jurisdiction gets displaced. Therefore, when legitimacy of arbitration is emphasized, courts perform a detailed enquiry on all issues on jurisdiction and agreement. But if efficacy of arbitration is given importance, then courts cannot run a parallel litigation on jurisdictional issues. Here preference of one alone can be a problem, so a balance has to be there between the two.

This chapter intends to look into the courts review of arbitral jurisdiction in the international scenario when one relies on arbitration and often objects to it. Here at this pre-award stage, the arbitral jurisdiction is determined. The major issue is not whether courts have power to finalise arbitral jurisdiction, but whether arbitrators can primarily decide on such issue. As a result, it is demonstrated in this chapter how courts from various countries consider the issue of arbitral jurisdiction in proceedings involving a substantive dispute in which one party invokes an arbitration agreement to challenge the court's authority to hear the dispute.

Three categories of legal systems are possible. First gives arbitrators the right to choose their own jurisdiction before subjecting these rulings to judicial review. The second group decides to provide judges early access to decide jurisdictional disputes without giving arbitrators any precedence. The third group presents a compromise that allows precedence to be granted or not,

depending on the circumstances. In this article, the pertinent arbitration laws of Switzerland, Germany, and England are to be analysed and compared.

6.2 ENFORCEMENT OF ARBITRATION AGREEMENTS

Arbitration agreements are the foundation of arbitration, but in some cases they need to be legally enforced by national courts in order to be effective. An arbitration agreement has two effects: one is that it requires the parties to engage in arbitration; the other is that it prevents the parties from going to court to resolve their disputes (Born G. , 2009). The negative effect is enforced judicially by stay of suit or anti-suit injunction. The court referring a matter to arbitration without proceeding in court is also an enforcement of the negative effect directly and that of positive effect indirectly. Referring a matter to arbitration always entails examining the arbitrator's jurisdiction, and practically all major nations' arbitration statutes reflect this.

"A.II(3) of the New York Convention" contains a requirement that parties be referred to arbitration at the request of one party, unless the court determines that the agreement is invalid, ineffective, or unable to be carried out. "The UNCITRAL Model Law's A.8" is a comparable clause.

In England, a party to an agreement may seek for arbitration before or after taking a procedural step in court, and the issue will be postponed by the court unless the agreement is void and unenforceable, inoperable, or incapable of being carried out. This is supplemented by the "Civil Procedure Rules 1998", 1998/3132, Act of Parliament, 1998, (England) which says that if there is a question as to existence of agreement or relation of the dispute to the agreement, the court may determine or direct to decide and may order stay of proceedings till then.

In Switzerland, "A.7 of Chapter 12 of the Private International Law Act (PILA)" states that the court would decline jurisdiction if the parties had reached an arbitration agreement regarding a dispute that could be resolved by arbitration, unless the defendant had not objected to the court's jurisdiction or the court had determined that the arbitration agreement was invalid, ineffective,

or incapable of being carried out, or that a tribunal could not be established for which the defendant in the proceeding was responsible (Umbricht, 2011).

In “Book 10 of the German Code of Civil Procedure”, there is a corresponding provision that is identical to the “Model Law”. According to the clause, if respondents raise objections prior to a hearing, the court will dismiss the case unless the agreement is void, ineffective, or unable to be carried out. Additionally, before the tribunal is established, an application may be made to the court to ask whether arbitration is admissible (German Federal Ministry of Justice, 2005).

The three countries are all parties to “the New York Convention”, and their laws first appear to be comparable. Section 9 of the English Act is applicable to both local and foreign arbitrations in terms of its scope of applicability. If at least one party was domiciled or a resident of Switzerland, then A.176(1) of Chapter 12 of the PILA of Switzerland is applicable to the arbitration. All domestic and international arbitration of business and consumer disputes is governed by German law. The Model Law is being used for all other international conflicts.

The three nations use different procedural methods to carry out the requirement. The German law compels the courts to reject the action before them as inadmissible, the Swiss law requires the courts to renounce jurisdiction, and the English law allows for a suspension of proceedings. Even though various methods of directing parties to arbitration differ procedurally, the outcome is always the same.

The English Act specifies that the application for a stay should not be made before or after taking any action in the proceedings with regard to the deadline for objecting to the court's jurisdiction. In Switzerland, no request is necessary, however the court will reject jurisdiction if the defendant has not started the court procedures. In Germany, the same must be made prior to the beginning of the hearings. The Model Law's time restriction is before filing the

first statement in dispute, but the New York Convention's time limit is undefined.

The “UNCITRAL Model Law” has been incorporated into the laws of Germany and Switzerland, which permit the initiation and continuation of arbitral procedures while the matter is still ongoing in court (Swiss Arbitration Centre, 2021). But the English Act is not addressing this issue like “the New York Convention”. There is a view that there has to be a stay of arbitral proceedings (Merkin, 2010), but this question was left open in “*Grammar v Lane and Webster* (2000)” When comparing the prerequisites for a referral to arbitration, it is apparent that neither “the New York Convention” nor the “UNCITRAL Model Law” indicate which party must make use of the agreement. However, it is evident that it must be the defendant in the case against whom proceedings were commenced.

The Swiss law refers whether the matter is arbitrable (Umbricht, 2011). Before deciding whether to dismiss the lawsuit as being inadmissible, the German court considered whether the disagreement might be arbitrated (Poznanski, 1987). Arbitrability is governed by Common Law in English law. Thus in case of reference to arbitration when the three jurisdictions are compared, no major differences can be seen.

6.3 ARBITRAL JURISDICTION

A relevant viewpoint on the study of positive law solutions and on prepositions to change such solutions is provided by the philosophy underpinning the delicate interaction between the courts and arbitral tribunals. The answer to many disagreements will directly depend on a basic point, such as where the authority for arbitrators to provide judgement comes from. This arbitrator's authority and the agreement's legal status are related to several legal difficulties. According to “Article 16 of the UNCITRAL Model Law”, the arbitrator's power to arbitrate is referred to as his "jurisdiction," which is a complex legal notion and a component of state sovereignty (O’Brien, 1999).

But the foundation for an arbitrator's authority in consensual arbitration is an agreement between the parties (Redfern & Hunter, 2009). The parameters of the arbitration agreement match the scope of his authority to settle disputes (Gaillard & Savage, 1999). Arbitrators do not possess jurisdiction in the same sense as sovereign governments and their institution since they are chosen by the parties to resolve a dispute between them with a time and subject matter limitation. However, as they are legally permitted to act as judges in order to resolve disputes, the term "jurisdiction" is used to describe an arbitrator's capacity to do so. Unlike Germany, where the phrase "arbitral jurisdiction" is used, both the English and Swiss Arbitration Acts are similar to “the Model Law”.

The term competence is used to denote the authority of arbitrator to decide on his own competency. This is known in many ways, i.e., Competence-Competence, *Kompetenz-Kompetenz* etc. Anyway, the term competence and jurisdiction denote the power of arbitrator to decide a specific matter. After determining jurisdiction, arbitrator decides the admissibility wherein issues like conditions precedent, time issues, waiver of claim, absence of dispute etc. are considered. Both are different and important.

Jurisdiction issue cannot be finally decided by arbitrator whereas admissibility decision by arbitrator is final. Thus in matters of arbitral jurisdiction there is shared jurisdiction between courts and arbitrator, but admissibility is something coming within the exclusive ambit of arbitrator. Still any arbitral award could be annuled by court. But the difference is difficult to be established (Paulssson, 2005) and courts may review decisions without distinguishing them. In “*Vekoma B.V. v Maran Coal Corporation* (1996)” the arbitrator had incorrectly determined that it had jurisdiction and that the claim was within the predetermined time frame, thus the Swiss Federal Court invalidated the judgment. Due to the agreed-upon time limit having passed, the court took jurisdiction “*Vekoma B.V. v Maran Coal Corporation* (1996)”. Here the court never discussed the classification of jurisdiction/admissibility issues.

If it had found out that the claim was one of admissibility, under the Swiss law the court would not have annulled the award.

The difference could be understood as that lack of jurisdiction means the dispute cannot be before the arbitrator and lack of admissibility means there is no valid dispute at all for consideration by any authority. It is important to consider whether the parties intended for a specific issue to be determined definitively by the arbitrator when assessing the kind of objection. Challenges to the arbitration provision itself were limited to those pertaining to the type of venue in which the dispute was to be resolved (Rau, 2003).

It is important to determine if the objection was directed at the tribunal or the claim while separating jurisdiction and admissibility (Gaillard & Savage, 1999). But sometimes the objection seems to appear that it is aimed at arbitral jurisdiction, like a party arguing non fulfilment of a condition precedent to arbitration. To determine whether this is an objection on jurisdiction or admissibility, a careful review of the agreement and circumstances is necessary. Now as a solution, it may be presented to an arbitrator at the pre-award stage who will conduct a thorough investigation. In doing so, if he determines that the parties intended for the matter to be resolved in court, the jurisdictional issue will be raised. If he finds that parties never intended a dispute resolution or not until a pre-condition is fulfilled, the question is of admissibility (Gaillard & Savage, 1999).

Arbitrability means matters which cannot be resolved by arbitration as per the national law, in spite of an arbitration agreement which is legally enforceable (Born, 2014). Sometimes it is used widely to include both jurisdictional and admissibility issues. The term "arbitrable" is used in the US to describe a dispute's suitability for arbitration (Born, 2014). They have distinguished between issues relating to making of agreement with those not related to making of agreement. Issues related to making of agreement are of arbitral jurisdiction and are finally decided by courts. But those not related to making of agreement are decided finally by arbitrators (Rau, 2008). There is confusion and difference of opinion as to what all objections are related to

arbitrability (Bermann, 2009). Therefore, it can be said that certain procedural matters relating to admissibility are to be determined by arbitrators.

On the question whether the arbitral jurisdiction can be supervised by any forum there has to be an inquiry into the source of the power of arbitrator to arbitrate. There is an agreement for arbitration, but that is not the only source, there can be legal orders which are the other sources. There are four theories justifying the legal nature of arbitration. The contractual theory is based on an agreement and award and agreement is the sole source of authority. The jurisdictional theory linked the arbitrator to a court and considered the award as an act of jurisdiction, with the state serving as the source of authority by giving the arbitrators' authority. The hybrid approach acknowledged the agreement but insisted that the arbitrators were bound by jurisdictional laws and followed procedural standards. Arbitrators weren't serving a public purpose, and their decisions weren't binding agreements; instead, everything was hybrid in nature. According to the autonomous view, arbitration's character may be defined by considering its use and purpose and that it might transcend the limitations of the law or judicial institutions. However, the consequences of this approach was not clear (Born, 2014).

In modern arbitration, it is stated that an arbitration agreement nullifies a court's authority (O'Brien, 1999) to decide the case. But national courts retain jurisdiction on some matters which could be otherwise resolved by arbitrators. This might be viewed as the state choosing—rather than the agreement's result—not to arbitrate disputes over which the parties have reached an agreement. By signing the agreement, the parties give up their right to seek redress in court, and if the parties or the agreement cannot be carried out, the courts take over the responsibility for resolving conflicts. Thus, arbitration agreement is basis for arbitration (O'Brien, 1999) and extent of arbitrator's authority to decide cases corresponds with the limits of agreement (Redfern et al., 2009).

The jurisdictional effect of arbitration agreement is like any contract (Poznanski, 1987) by which the dispute is settled by arbitrator instead of courts.

Only if the state would accept the arbitrator's decision as final and help enforce the award would the arbitrator have the authority to do so (Poznanski, 1987). Therefore, the conclusion is that the jurisdictional authority as authorised to exist or as helped by state authority is paired with the contractual basis of the arbitrator's power (Poznanski, 1987). The sources of arbitrator's power is the parties' agreement on which it is founded as well as the national legal orders which define, restrict and extend the power of arbitrator.

Once these sources are identified the next question is regarding the power of state to supervise the same. A sovereign state has control over everything that happens on its soil (Sanders, 1967). As a result, the state has the authority to specify what constitutes a valid arbitration and to oversee the arbitration process. Therefore, the state is where the authority of the arbitrator comes from. The existence, makeup, and operations of the tribunal are under the legislative and judicial supervision of the state. However, the state's legislation, which the parties or the arbitrator may choose on their behalf, can monitor the arbitrator's authority without completely overriding the parties' desire (Roy, 2001). Another viewpoint is that courts utilise their authority in the interests of convenience, practicability, attaining order and legal clarity, and other related purposes (Petrochilos, 2004); (Gaillard, 2010). Hence the debate continues as to the interests for which the arbitral power is being supervised by courts.

6.4 *KOMPETENZ-KOMPETENZ* PRINCIPLE IN DIFFERENT JURISDICTIONS

The authority of tribunal to decide on his own jurisdiction is called as 'competence-competence' principle (Holtzmann & Neuhaus, 1989) (Gaillard & Savage, 1999). Almost all national arbitration legislation, international treaties, and norms include language similar to that in A.16 of the Model Law. This concept enables arbitrators to decide on their own whether they have the authority to settle a dispute without the involvement of state courts. There may be differences when this power is analysed across jurisdictions. Problems with this power include its hazy theoretical underpinnings and the challenge of

recognising an individual as an arbiter of his own cause (Chatturvedi & Agarwal, 2011).

The foundation or source of this power of arbitrator is opined by many others differently. Redfern and Hunter contend that in order for the tribunal to effectively carry out its duties, the arbitrator's ability to decide cases within its own jurisdiction is a power inherent in the appointment of arbitrators (O'Brien, 1999). They also necessitate that the real scope of this power is clearly understood from the state central law (O'Brien, 1999). Although the concept is thought to be a result of the arbitration agreement, other writers contend that the arbitration laws of the nation where the arbitration is held serve as the basis for this principle, not the arbitration agreement (Redfern et al., 2009).

But later Gaillard refers this as arbitrator's inherent power based on arbitration agreement (Gaillard, 2005). Yet others consider this power of arbitrator as a legal fiction and its basis as even lying outside the applicable arbitration law (Lew et al., 2003). According to Gary Born, unless there is a contrary agreement, the arbitrator's ability to decide cases within his own jurisdiction is presumed to be an inherent authority (Born, 2014). He continued by saying that this assumption stems from the fundamental goals of the arbitration procedure as well as the inherent authority and mandate of the arbitral panel. He stated that the applicable arbitration legislation regulating arbitration is the basis of this authority (Born, 2014).

But this is again countered by authors who express that the above power given to arbitrator by this doctrine of separability and that it is not inherent but arises from the arbitration clause (Chatturvedi & Agarwal, 2011). Thus, an arbitral tribunal only possesses this authority if parties grant it to the tribunal by operation of law while staying within the bounds of relevant law (O'Brien, 1999).

The competence principle, which is founded on the idea of separability, stipulated that an arbitration clause in an agreement must be regarded as a separate contract. As a result, even in the absence of the underlying contract,

the provision would still be in effect. As a result, separability affords arbitration the authority to rule on the primary contract's annulment. However, a legally binding arbitration agreement is required for this. Therefore, the competence concept forms the basis for the authority to determine whether an arbitration agreement is valid. So, regardless of separability or whether an arbitration provision is contested, an arbitral tribunal may rule on its jurisdiction (Born, 2014).

The principles of separability and competence-competence are both found in Section 7 of the English Constitution. According to Colman J., under Section 7 the arbitrator has the authority to determine whether the primary contract is legal since it contains a valid arbitration provision. He must make a decision under “Section 30 of the Act”, which can be reviewed by courts under “Section 67 of the Act”, if the existence or legality of the arbitration provision is in question “*Vee Networks Ltd. v Econet Wireless International Ltd* (2004)”. A challenge under Section 30 is made against the arbitral tribunal's substantive jurisdiction, which is not indicated in a challenge under Section 7.

By allowing arbitrators to choose their own jurisdiction under the concept of competence-competence, time and money are saved, and a fair investigation is accomplished (Born, 2014). There is constant debate concerning the arbitrator's decision-making authority against the courts' decision-making authority. The dispute centres on when and how deeply the court should look into issues relating to the existence, legality, and application of arbitration agreements (Born, 2014). The idea has both good and bad effects, with the former allowing the arbitrator to be the only judge in their respective jurisdictions (Redfern et al., 2009).

But an arbitrator’s jurisdictional decision is provisional and subject to judicial review. To what extent the judicial review can be done by courts is again a problem. The principle allows arbitrators to arbitrate the dispute without considering jurisdictional challenges. Here the arbitrators decide and there is only a subsequent judicial review. Then rarely there can be exclusive authority to arbitrators where parties may not use their right to judicial review.

The courts should not examine an arbitrator's judgement before the arbitrators have done so in order to determine the existence, legality, and application of the arbitration agreement. Therefore, there should not be a parallel review on the same issue during the arbitral proceedings (Gaillard & Banifetami, 2008). Courts should only conduct a preliminary investigation into the agreement's existence and legality at the pre-award stage. Arbitral procedures won't be delayed if the courts aren't conducting in-depth investigations into these issues. The issue is then thoroughly reviewed by the courts (Redfern et al., 2009).

There are variations as to the effects of this principle in various jurisdictions. First and foremost, this approach is recognised because it honours the parties' intentions. This indicates that the parties' aim is carried out in the agreement to the greatest degree feasible (O'Brien, 1999). But here also parties should never be losing their rights to go to courts if there is any absence of this intention.

Second, arbitration's primary goal is to safeguard arbitration and prevent disputes from being resolved in court. Although there may be a delay after the award, the negative effect of the principle prevents any delays in arbitration. There are situations when the arbitrator assumes jurisdiction in error, (Redfern et al., 2009) the award may be annulled resulting in delay of the entire process. To reduce this there can be a safeguard to minimise the annulment of awards on jurisdictional defects.

The final justification for accepting the bad consequences of the concept is the uniformity and specialisation being attained. Court rulings on arbitral jurisdiction will be consistent, and arbitrators in arbitrations (particularly those that are conducted internationally) will be subject-matter experts.

Finally, the negative effect results in the anatomy of arbitration, which also can be dangerous. Therefore, to have an effective arbitration, this principle should have safeguards to avoid the above problems. The negative effect of

competence-competence is internationally accepted, but this gets defeated if the parties get the jurisdictional matter decided in courts (Redfern et al., 2009).

The practical advantages of the concept, which let parties to first debate before the arbitrator and later in courts, serve as a protection against the principle's adverse effects. The *prima facie* standard of scrutiny used by courts to determine the existence and legality of arbitration agreements at the pre-award stage can be another protection. However, this idea is hazy and unclear. Despite recognising an arbitrator's right to make decisions within their own jurisdiction subject to judicial review, the UNCITRAL Model Law permits court involvement at any moment, including before an arbitral ruling (Born, 2014).

In many forms of processes where there is simply a cursory assessment of scant evidence, a *prima facie* examination can be observed. The detrimental impact of competence-competence may be taken into account as a legal justification for arbitration, which may allow courts to conduct a preliminary inquiry. Sometimes courts may need to organise the tribunal in order to assess if the agreement can be carried out. When courts are forced to confine their investigation to a prima facie standard, the jurisdictional question occasionally may be related to the case's merits.

The assessment of an arbitration agreement's nullity or inapplicability in Swiss law involves more than just a *prima facie* level of proof. According to "Article 7 of the Private International Law Act", the court shall deny jurisdiction over an arbitration agreement dispute unless the agreement is invalid, ineffective, or unable to be carried out. Here, the court summarily reviews to see if the agreement is invalid, ineffective, or incapable of being implemented, hence the scope of review is broad (Redfern et al., 2009).

Some nations that accept the UNCITRAL Model Law examine an agreement's existence, legitimacy, and application in full, whereas others simply permit a *prima facie* examination (Bachand, 2006). In "*Shin-Etsu Chemical Co. Limited v Aksh Optifibre and Another* (2005)", in a case brought under "Section

45 of the Act", the Indian Apex Court ruled that the court may only do a *prima facie* analysis to determine if the agreement is invalid, ineffective, or unable to be carried out. As a result, when applying the prima facie criteria to assess arbitral jurisdiction, the level of inquiry differs among countries.

6.5 JUDICIAL INTERVENTION IN ARBITRATION IN ENGLAND

The English law on arbitration had not completely adopted the UNCITRAL Model Law. Accordingly, fairness, impartiality and avoiding delay in arbitration process was a major premise of arbitration. Party autonomy came next, followed by the concept of court non-intervention, which is comparable to "A.5 of the Model Law". No court involvement should be undertaken in cases covered by "Part I of the English Act", according to "Section 1(c) of the Act". By using the word 'should' they have not contemplated an absolute prohibition. Therefore, there could be minimal and limited court intervention within the law. The intervention is supposed to supplement the arbitral process. So sometimes court can decide preliminary issues even before arbitration, if needed for effective arbitration.

In accordance with "Section 9(4) of the Arbitration Act", the court may order a party who is being sought for legal action in a subject pertaining to the agreement that is to be sent to arbitration to request that the court halt its actions. Unless the agreement is invalid, ineffective, or unable to be carried out, the court must halt the case. Here, under the Act, courts can intervene but the issue is regarding the restraint in exercising such jurisdiction.

Under common law and equity, jurisdiction of courts is not ousted by an arbitration agreement, but parties could hold parallel court proceedings along with arbitration (Merkin & Flannery, 2008). Early arbitration statutes that called for a suspension of judicial proceedings in instances referred to arbitration changed this. A required delay of court proceedings is mandated in circumstances where arbitration is requested under "Section 9 of the 1996 Act". This power was held by the Court of Appeal in "*Al-Naimi v Islamic Press Services Inc*. (2000)" as one within the inherent jurisdiction of the court. Courts

employ this inherent right to halt proceedings because arbitrators are the most qualified individuals to resolve jurisdictional disputes (Merkin & Flannery, 2008).

The idea that an arbitral tribunal may make decisions within its own jurisdiction has been acknowledged by Common Law (Merkin & Flannery, 2008). This could be later appealed in courts. But in matters involving the validity of agreement or the like, the arbitrator decided it as a substantive one and courts could do only a limited review (Merkin & Flannery, 2008). According to “Section 30 of the 1996 Act”, the arbitral tribunals might decide on their jurisdiction and on issues pertaining to the legality of contracts, the structure of the tribunal, issues in arbitration, etc. This exhaustive list had been expanded by court.

Therefore, unless the parties have agreed differently, Section 30 empowers the arbitrator to choose his jurisdiction. But it will be a matter of construction to determine whether the tribunal can rule on its own jurisdiction if the parties are silent regarding whether competence-competence is precluded (Merkin & Flannery, 2008). The jurisdictional matter is decided as preliminary which can be reviewed in court under “Section 67 of the Act”. If the award is made, then also it can be reviewed on merits in courts. The courts would be deciding not whether the tribunal could decide the issue but whether it was correct in reaching the decision.

The concepts in sections 9 and 30 create a conflict between the arbitrators' authority to decide their own jurisdiction and the court's power to assess the existence and extent of the arbitration agreement. English courts would not refer the parties to arbitration if there was any uncertainty over the tribunal's authority, which is permitted under Section 30. According to “Section 32 of the Act”, the court may, upon application of the parties, determine a preliminary point of jurisdiction, and arbitration may proceed even while this is ongoing. A person who is claimed to be a party but does not show up may therefore contest the tribunal's legal authority under Section 72. Finally, a

decision may be appealed based on a legal issue under “Section 69 of the Act” or contested as to jurisdiction under “Section 67 of the Act”.

So other than Section 9 these are other provisions enabling courts to interfere with the arbitration process. A study of proceedings under Section 9 will not amount to judicial reference to arbitration, but the parties have the choice to opt for it or not (Merkin & Flannery, 2008). Only when legal proceedings are brought by one party to agreement against another, the latter seeks to stop the process (Merkin & Flannery, 2008). When it is established that there is an arbitration agreement and that the issue is covered by it, “Section 9” is applicable. English courts may issue a stay of proceedings under their inherent jurisdiction if any of these are not proven. When the courts were certain of the existence of agreement, the rest would be referred to arbitrator for decision.

English system was not giving priority to arbitrator or court but determined on the fact of each case. It is a middle ground solution where arbitration shall be prioritised depending on the circumstances of the cases. The conditions for referring arbitral jurisdiction to arbitrators are very narrow and in most cases, courts determine jurisdictional issues before granting stay of its proceedings. Thus, very rarely here courts refer matters as to existence of agreement, its scope, its binding nature etc. to arbitrators.

6.6 THE GERMAN LAW REGARDING COURT INTERVENTION IN ARBITRAL PROCESS

“The 1985 UNCITRAL Model Law on International Commercial Arbitration” was integrated into the tenth book of the “German Code of Civil Procedure (ZPO)”, which governs arbitration procedures. Here it differs from England which is a common law country. The courts do not have inherent powers as in England. §1032(1) ZPO, courts have the authority to rule that an action is inadmissible on the grounds of the existence, legality, and application of arbitration agreements as an alternative to “Section 9 of the Arbitration Act of 1996”.

The current arbitration law was made in 1998 and it adopted the "UNCITRAL Model Law" except for some amendments considering the country's legal and institutional framework (Binder, 2010). The primary distinction is that Model Law only applied to international business arbitration whereas German Arbitration Law included both national and non-commercial arbitration. The German Code of Civil Procedure's Tenth Book, which is where the arbitration legislation is found. Some other provisions in ZPO and few arbitration specific provisions in other statutes are applicable if not in conflict with the Tenth Book. There are no general principles guiding the German law as in England.

But the fundamental characteristics of German arbitration law are as follows: "(1) The territoriality principle; (2) the predominating function of party autonomy. (3) the assurance of due process; (4) efficient processes; and (5) the restriction of court intervention" (Böckstiegel et al., 2007). §1026 ZPO restricts the scope of judicial involvement. The general rule of German law is that the courts may only become involved in people's personal lives when the law permits them to (Wagner & Gerhard, 2007).

§1026 ZPO is narrower than the English Act as it applies to all measures of court. In addition, the cost- and time-efficiency criterion should govern judicial participation in arbitration (Binder, 2010). Additionally, such court actions are always one-time, leaving arbitration unaffected. Here, the court where the case is filed should make the ultimate decision about the arbitral jurisdiction, which is again justified in the interests of procedural economy.

An arbitration agreement's primary implications are procedural in nature. The agreement establishes arbitrator's jurisdiction and excludes courts from deciding disputes relating to it. Therefore, it is contractual and results in mutual obligations. So both substantive and procedural contract law (Binder, 2010) will determine the validity of it. Initially the German courts dismissed suits where there were arbitration agreements. In contrast to situations where one party relied on the *kompetenz-kompetenz* clause, a particular clause in the agreement giving competence to rule on competence, later courts undertook an

exhaustive analysis on the formulation, legality, and extent of the agreement (Synkova, 2013).

Thus, by including such a paragraph, a second arbitration agreement would be created, and courts could only review the legality and scope of this clause. This was criticized and in 1998, §1032 ZPO empowered the court to reject a suit as a dispute in arbitration agreement as inadmissible. But here courts do not have inherent powers to do so as in England (Binder, 2010). Thus, the German law is different from English law. Although the law was to correspond to the Model Law, many changes were adopted in German law so that the courts could reject any action as inadmissible.

The authority of the arbitrator to decide on his own competency was expressly established in the reformed arbitration law. §1040 ZPO corresponds to "Section 16 of UNCITRAL Model Law" and possesses the separability and competence principles. Arbitrators may decide on their jurisdiction in arbitrations even if it is not contested. The ruling of arbitrator on jurisdiction has to be separate and preliminary under § 1040 and there can be an immediate court review on the same giving a final ruling. But if the jurisdictional ruling is part of the award, it could be annulled under §1059 where the grounds are different and broader than that in § 1040.

§ 1032(i) ZPO, as amended, provides that the court must refuse admission in a suit, meaning that, there will be a review of the agreement's existence, legality, and scope during the pre-award stage. The jurisdictional issue would be finally decided by the court under§1032(2) as the tribunal is not in existence and it is done in the interest of procedural economy. But after the arbitrator is appointed, jurisdictional issue is decided by him as per §1040. Between the power of court under §1032(1) and that of arbitrator under §1040, the legislation has intended that the power to finally decide arbitral jurisdiction is with the court (Synkova, 2013). The arbitrator is only provisionally determining jurisdictional issue whether a competence clause is there or not. German courts thoroughly examine the existence and legality of arbitration

agreements, and the rule of competence-competence does not apply there (Binder, 2010).

In an application under §1032(1), to reject a suit as inadmissible, it is determined if the contract is void, ineffective, or incapable of being carried out, whether the claim is inside the purview of the contract, and whether it is subject to arbitration. Whereas under§1032(2), when determining whether arbitration is admissible, the court looks at whether there is an effective arbitration agreement, whether it can be carried out, and if the issue is covered by the agreement. Courts thoroughly scrutinise agreements when there is a question about their legality or scope in both of these situations. A full review in §1032(1) proceedings results in a final and binding decision and there is no priority for arbitration.

Thus, German law prefers early disposal of cases on jurisdictional issues. The scrutiny by courts in §1032(1) is not at all limited when arbitration is happening as a parallel proceeding (Binder, 2010). There can be decisions on the admissibility of arbitration and also review of preliminary rulings of arbitrators on jurisdiction. All court rulings are accepted as final and priority to arbitration is seen only in limited situations. German law favours judicial determination of the same because it aims to prove absence of arbitral jurisdiction from the beginning. Sub sections (1) and (2) of §1032 ZPO allow the parties to approach courts in case of arbitral jurisdiction in two ways. English law has a different approach, where the courts decide the jurisdictional issues by choosing the best way to decide which is the best forum to resolve the dispute. But in German law, procedural economy seems to justify all these measures that are preferring courts to arbitration.

6.7 COURT INTERVENTION AND ARBITRAL PROCESS UNDER THE SWISS LAW OF ARBITRATION

International arbitrations are governed by “Chapter 12 of the Swiss Private International Law Act (PILA)”. In this case, the use of *lis pendens* in international arbitration is connected to the question of a court's investigation of

the existence and legality of an arbitration agreement at the pre-award stage. In 1989, “the Model Law” and “Chapter 12 of the PILA “went into effect. However, Chapter 12 has its own modifications despite being adopted by UNCITRAL. The third section of the Federal Code of Civil Procedure (SCCP) is applicable to domestic arbitrations. There is a particular clause permitting limited judicial involvement in arbitration in Germany and England. Chapter 12 of the PILA does not mention this, but generally speaking, the courts have only intervened minimally in arbitration at the pre-award stage.

Arbitration agreement in Swiss law is sometimes viewed as procedural, private or a combination of both. A.7 PILA is similar to “Section 9 of English Act” and “§1032(1) ZPO” and it permits courts to decline to exercise their jurisdiction over disputes involving arbitration agreements. Even while A.7 PILA can be applied to both domestic and foreign arbitrations as a general rule, Chapter 12 PILA has been understood to apply to international arbitrations. But in international ones, judges have used the “New York Convention”. Therefore, for arbitrations with one party not in Switzerland, Section 7 PILA applies, New York Convention for purely international ones and purely domestic arbitration the SCCP applies.

Under Section 7 PILA, unless the court determines that the agreement is invalid, ineffective, or incapable of being implemented, or unless no jurisdictional objection is made, or unless a tribunal is not created, the court denies jurisdiction. The first difference in Section 7 is that courts here examine jurisdiction on their own motion at any stage (Lachlan & Pe, 1996). If defendant proceeds without contesting court’s jurisdiction, court can assume jurisdiction over the dispute (Berti, 2007). The second distinction is that A.7 adds further exclusions to the requirement that courts transfer disputes to arbitration. Even when the defendant acts in bad faith or uses abusive procedural tactics, the claimant may nonetheless bring their case before the court under A.7 rather than having the court appoint an arbitrator (Berti, 2007).

Arbitral tribunals may choose their own jurisdiction in accordance with A.186 PILA. The separability and competence-competence principles are

viewed differently in this situation. The jurisdictional dispute decision is made as a preliminary award. Prior to any defence, the claim of lack of jurisdiction must be made, and its outcome will not be affected by any concurrent actions brought in the same case (Swiss Arbitration Centre, 2021). This provision cannot be excluded by parties and the same excludes other reliefs from courts.

An analogous provision is A.359 SCCP for domestic arbitration. Another point of contention is the preliminary award, which is whether it is founded on a careful examination of the agreement or just a prima facie examination. Actually, this preliminary award can be reviewed by courts, which is final unless parties expressly excluded it. Therefore, arbitrator gets the priority to decide on jurisdiction, though not absolute and the court in pre-award stage examines in a limited way. The next question is whether *lis pendens* under Section 9 PILA applies to arbitrators ruling on an issue that is pending in a foreign venue.

When the identical case is ongoing in another country, the Swiss court may delay its proceedings under A.9 PILA if it believes that the foreign forum will resolve it in a reasonable period. Here *lis pendens* rule is followed and in spite of arbitration agreement the court decision on the matter is given binding effect. When conditions under A.9 PILA are found, even the arbitral tribunal must stay its proceedings. In *lis pendens*, rather than priority to decide, it is that the second gets stayed in favour of the first. As a result, A.86 PILA was amended granting priority to arbitration when same matter is pending before any forum. Even though similar to Model Law provision, A.186 PILA is wider in scope in giving the arbitrator priority over courts.

The final judgment on arbitral jurisdiction rests with the Swiss courts, as an arbitral award can be set aside on jurisdictional grounds under A.190(2)(b) PILA. However, the scope of review by courts, both pre- and post-award, is contentious, as a limited investigation reinforces the precedence of arbitration in jurisdictional concerns. Subsequent review by courts is possible only if jurisdictional objection was raised in arbitration. Therefore, it can be said that arbitration has priority to decide its jurisdiction but this is not an absolute one.

In foreign arbitrations seated abroad, if “the New York Convention” applied which allows courts to fully review and decide on the jurisdictional issue and if they are seated in Switzerland, Section 7 of the PILA applies, and courts only conduct a preliminary assessment of the arbitration agreement (Segesser & Schramm, 2010).

A.61 SCCP applies in exclusively domestic arbitrations, under which the court denies jurisdiction unless the agreement is clearly invalid and void, inoperative, or incapable of being executed. In PILA and SCCP cases, courts eventually determine the jurisdictional question at the post-award stage. Under A.7 PILA, court declines jurisdiction if any defect in agreement is found in a summary examination and if no defect found, court assumes jurisdiction and this court decision is binding on the tribunal.

The discrepancy in arbitration seat in A.7 PILA was suggested to be modified in 2008. A.7 PILA concerns the quality of review of agreements as well as the extent of summary examination of arbitration agreements. In the event of arbitrations held in Switzerland, courts perform a preliminary review before the award and a thorough review after the verdict. However, in foreign-seated arbitrations, the courts perform a detailed examination before the ruling, and no such review occurs after the award. Here full review is given to courts at pre-award stage fearing that the foreign seat is not favourable to arbitration (Besson, 2010). But there can be review at post-award stage when the foreign award comes for recognition or enforcement.

Summary review under A.7 PILA deviates from the standard rule of thorough review in order to safeguard the arbitrator's competence to decide on jurisdiction. A.7 PILA gives priority to arbitrators to determine their jurisdiction. Under A.186 PILA arbitrators decide on jurisdiction even when same issue is before another forum. Thus, arbitrators decide on jurisdiction at the pre-award stage unless the agreement is null and invalid, etc. The court's assessment of the agreement is summary in nature, and while a thorough review is occasionally required, the summary review is used as the foundation for the court's investigation.

Unlike the English and German laws, A.186 PILA gives power only to tribunal to determine its competency. There is no remedy of declaratory relief in this context. There the principal of competence-competence is followed in both negative and positive ways and a relief of anti-arbitration injunction is not granted. In matters of court appointment of arbitrators, court's review is only to the existence of agreement and nothing more. So always arbitral jurisdiction is decided by arbitrators under PILA and in some situations at pre-award stage courts are granted a very limited power to do a summary examination of the arbitration clause. When the courts decline jurisdiction under A.7 PILA, it is a permanent decision of arbitral jurisdiction.

According to one point of view, a permanent decision necessitates a thorough assessment of the agreement. The accepted version is that if the court conducts a prima facie investigation, the ruling becomes final and binding. The proposed adjustment to A.7 PILA was that the court merely conducts a preliminary examination of the arbitration agreement and then defers to the arbitrator in determining his jurisdiction. Similar to the summary examination, the question here is whether the court must just investigate the existence of an agreement or do more. If a flaw in the agreement is discovered during the preliminary investigation, a thorough review may be required to determine the court's jurisdiction.

The Swiss jurisdiction emphasises arbitrators to decide jurisdiction, which can then be challenged by courts. Foreign seated international arbitrations are governed by the New York Convention, Swiss seated international arbitrations are governed by the PILA, and domestic arbitrations are governed by the SCCP. "A.II(3) of the New York Convention" requires courts to conduct a comprehensive evaluation of the existence, legality, and extent of agreements before refusing jurisdiction, but A.7 of the PILA merely allows for a preliminary review, leaving it to arbitrators. But if prima facie agreement does not exist, there will not be jurisdiction to arbitrators. Here the courts do only a summary examination and the decision is binding on arbitrators.

Under “the New York Convention”, courts will decide the competency matter. This is similar to the German law. In case of wrongful assumption of jurisdiction by arbitrators, Swiss law provides minimum safeguards than German law. A.7 PILA permits limited summary inquiry into agreements by courts, Swiss law does not give declaratory relief to arbitral jurisdiction and PILA allows exclusion of setting aside if parties are not connected to Switzerland. Therefore, we can see minimum safeguards in Swiss law compared to the excessive safeguards in German law.

6.8 SUMMARY

In all the countries it could be seen that the intention of parties to arbitrate is not destroyed by approaching courts for reliefs. When parties raise the issue of arbitral jurisdiction in court, the relationship between litigation and arbitration allows the courts to analyse it. If an arbitration agreement is invalid, a party should be entitled to seek redress in court. As a result, it was demonstrated how the parties to the agreement agreed to arbitrate and how that aim is safeguarded by not resolving conflicts in courts.

In English law, if arbitration agreement is proved courts under Section 9 of 1996 Act would stay proceedings and leave jurisdictional matters to arbitrators. Courts rarely do this when there is an agreement and it is reasonable on the ground of case management. In majority situations, courts decide on the existence of agreement and whether the matter comes within it. Party can apply to court to decide arbitral jurisdiction both before and during proceedings. Even after the award jurisdiction can be challenged.

German law does not provide courts the inherent competence to dismiss a claim as inadmissible, as it does in English law, and the suit is dismissed only if the agreement is not null and invalid, inoperative, or incapable of being completed and the disagreement is arbitrable. Positive preliminary jurisdictional rulings and negative jurisdictional awards can be contested in court in this jurisdiction.

In Switzerland, courts deny jurisdiction after a brief assessment of the agreement and refer the matter to an arbitrator. Here the courts' power is not considered inherent. Here only minimum protection is given to ensure consent of parties. Rulings of arbitrators on jurisdiction can be challenged. In terms of the purpose of parties to arbitrate and the safeguarding of that goal by not depending on courts, England takes a more balanced approach than the other two nations.

The three countries differ in their approaches, when courts in proceedings prioritise arbitrators to decide their jurisdiction. Swiss courts granted priority to arbitrators to decide on jurisdiction, German courts determined jurisdiction and English courts decided issues on facts of each case. In Switzerland, in foreign seated arbitrations, the courts decided jurisdiction and there arbitrators were not prioritised. England was providing a middle solution in jurisdictional matters.

Regarding the balance between legitimacy of arbitration and efficacy of arbitration the compared laws are slightly different. In some laws court decisions are given importance whereas in some other arbitral decisions are more important as they are time saving. Internationally arbitration agreements should be enforced to the maximum extent. Courts and arbitrators are equally good in deciding jurisdictional issues, but to avoid multiple proceedings, high cost, time etc., the preference is given to one forum. Arbitrators should pick their jurisdiction for the efficacy of arbitration, and this priority is the negative effect of competence-competence. If the arbitrator assumes incorrect jurisdiction and the award is thrown aside, the implications are delay and excessive expenses. Before referring the jurisdictional question to arbitrators, Swiss courts perform a prima facie evaluation of the existence of the agreement. So limited exceptions to arbitral priority are the minimal court interventions.

As to challenges to agreement, Section 9 of English Act permits courts to stay its proceedings if proved that there is arbitration agreement and it covers the issue involved. In German law, courts look into formation, validity and scope of agreement is seen and here parties can waive the right to approach

courts. Whereas in Swiss law, only a summary examination as to existence of agreement is possible.

The general rule of prioritising arbitrator for deciding jurisdiction can be slightly changed if the challenge is purely on facts. But if both fact and law are there, arbitrator should only decide. After starting arbitration, court's power is reduced to minimum to interfere with arbitral process. English courts consider the order of proceedings to decide whether courts or tribunals have jurisdiction. Arbitration's legitimacy is further preserved by allowing for rapid court review of arbitrators' jurisdictional judgements.

Different standards of review have been applied based on the location of the arbitration, the nature of the dispute, jurisdictional issues before and after the award, and so on. It is suggested in Swiss legislation to erase the distinction between various standards of review based on the location of arbitration. Here a summary review on jurisdiction may only determine jurisdiction and the priority to determine it but no other issues.

For questions concerning consent to arbitrate and other matters concerning arbitral jurisdiction, a separate standard of scrutiny might be used. The former one may be done by a summary review, but for the latter a more flexible and comprehensive approach may be required as in the English law. But when such issues are connected, a fragmentation is not possible and so a decision between factual and legal issues might cause difficulty.

There can be different standards in the stages before and during arbitral proceedings. Once arbitration is initiated, a jurisdictional issue brought before court may be disposed by a limited review in a short time. But a challenge before arbitration can be of bad faith to delay proceedings and has to be dealt with caution. So, resolving the difficulty of defining arbitral jurisdiction at the pre-award stage in all jurisdictions compared underlines the necessity for an universal worldwide consensus. This can be accomplished by making the New York Convention and others uniform by adopting a UNICITRAL recommendation for the same.

CHAPTER VII
CONCLUSION AND SUGGESTIONS FOR FUTURE WORK

7.1 CONCLUSION

Based on “the UNCITRAL Model Law”, “the Arbitration and Conciliation Act of 1996” is governed by party sovereignty and limited court intervention. The courts in many cases exceed their limit fixed by the Act and make final orders with respect to matters which are to be decided by the arbitrator. The Act was amended in 2015 in the concerned areas to cure the defects in the existing Act. The 2019 Amendment assigned the authority to select arbitrators to arbitral institutes accredited by “the Arbitration Council of India”.

In the context of the non-obstante provision, courts must evaluate the parties' rights to choose arbitration for dispute settlement while simultaneously upholding the concept of competence-competence granting the arbitrator total power. In circumstances when the tribunal is appointed by the parties, the competence principle under section 16 permitting the tribunal to make a final determination on its own jurisdiction, including any objection to the existence or legality of the agreement is followed. This should be followed even when the matters of reference, appointment, interim measures etc. are before the courts as the courts should make only a *prima facie* enquiry on the preliminary issues and the finality is to be decided by the tribunal.

The non-obstante provision in Section 5 allows parties' autonomy by limiting court participation in the arbitral procedure, as it only allows intervention as authorised by Part I of the 1996 Act. The Act's goal is to offer quick and effective conflict resolution through arbitration with judicial

oversight. But the extent of intervention in such cases has been an issue. The courts' power should be exercised with utmost care and caution as there are remedies from Courts in appeals. Though the amount of discretion to be exercised by courts is not given in Section 5, the aim is to have the disputes settled without delay. All provisions involved in judicial intervention grant power to courts, but Section 5 prevails over them. Thus section 5 operates as a supervisory provision over those of judicial intervention.

The ability of courts to send a party to arbitration under "Section 8 of the Act" is included in "Part I of the Act" and applies to domestic arbitration. This clause, like "section 5 of the Act", has the express goal of marginalising judicial involvement. Under "section 16 of the Act", courts cannot evaluate the existence and legality of an arbitration agreement, but must rely on the judgement of the arbitrator. If a competent application is filed, the court must submit the issue to arbitration and cannot halt arbitral proceedings to avoid delays in arbitration. In several situations, the Supreme Court has reaffirmed this necessary reference under Section 8, allowing the remaining questions to be determined by the arbitrator.

Unlike "Section 45", the court can only do a preliminary inquiry into the existence and legality of an agreement under the 2015 change. Thus, section 8 is constrained by the non-obstante provision in "section 5" and the authority granted to the arbitrator in section 16 to consider problems of jurisdiction, the existence and legality of the agreement, and the like. Such issues can be decided by courts later in a post award stage.

Regarding disputes with allegations of frauds, courts were confused as to decide them as arbitrable or not. Recently the court differentiated fraud cases and opined that serious fraud cases with a public element or a right *in rem* were to be decided by courts and simpler ones could be by arbitrator. "The 246th Law Commission Report" proposed amending "Section 16 of the Act" to allow tribunals to rule on all such issues. But Section 16 had not been amended yet accordingly as then all cases would be decided by arbitrator and courts would not be able to decide fraud cases with public element. So now courts go into

merits of each case to see if fraud negates existence of arbitration clause or renders dispute non-arbitrable.

Arbitration clause is independent and wide to cover all issues relating to it. This is the basis for “section 16 of the 1996 Act”. If the clause is not wide enough then the separability doctrine empowers the arbitrator to decide such issues on merit which cannot be reviewed by courts. *Kompetenz-kompetenz* concept as per “Section 16”, permits the tribunal to decide on its own jurisdiction. This need not be at the preliminary stage and the tribunal decides it after assessing whether the plea is genuine to be decided at that stage. Supreme Court has commented that under Section 16, tribunal can decide on the validity of agreement, its own constitution, the relation of disputed matters to agreement etc. Under the Act, there is a right to appeal if the plea questioning jurisdiction is accepted. If it is rejected, there is no appeal, but after the award it becomes a ground to set aside. Thus Section 16 is not a final word on jurisdictional issues. But a minimum court intervention is envisaged under the Act. So there must be limited court interference at the pre-reference stage so that the arbitral procedure is not halted at the threshold level when one party raises a preliminary objection.

Regarding interim measures through court, Section 9 measures are available before and after the arbitral proceedings. Once arbitrator is appointed remedies under section 9 and 17 co-exist, though the preference is to section 17. Courts have residuary powers under section 9 to approve any temporary measure stated in the Act after applying the criteria of prima facie case, balance of convenience, and irreparable damage. But these measures are to protect rights of party pending arbitral proceedings. This section does not give a substantive right and is subject to the outcome of arbitration. Thus, the discretionary power of court under section 9 must be exercised with caution and only in appropriate cases where the court is justified with adequate material on record. Except for interim relief and judicial aid for obtaining evidence, the amendment has barred the use of Part I in foreign-seated arbitrations.

When Section 9 remedy is claimed, any technical problems like insufficient stamping in the main agreement was always a problem. However,

"the High Courts and Supreme Court" have made it plain that such arguments would not be considered, and that in order to apply Section 9, courts must only consider the presence of an arbitration agreement. Regarding the 2015 amendment to Section 9, clause (3) is a clear instance where the power under Section 9 of courts is further limited by Section 9(3) providing that courts shall not interfere when the matter is before the arbitrator and to provide additional information to court as pleadings as to why he failed to go before the tribunal. Thus, an additional burden is placed on person seeking to invoke the authority of court as per section 9 simultaneously when arbitration is going on. This shows that even the trend of 2015 amendment is to follow the statutory mandate under Section 5 and courts under section 9 at the pre-arbitration stage cannot assume jurisdiction of arbitrator which is yet to be formed.

Orders of interim reliefs from the arbitrator are considered as court orders enforceable under Civil Procedure Code when they are appealed under Section 37(2)(b), courts either apply grounds for setting aside under Section 34 or assess them as appeals on merit. The Supreme Court overturned a Section 17 ruling in 2018 because it violated basic policy of Indian law, which is a basis under Section 34 of the Act. When a thorough merits review is performed in Section 37(2)(b), it becomes appealable by both parties. This contradicts the 2015 modification, which made Section 17 orders enforceable in court. This might be the reasoning behind the Supreme Court's judgment. The Model Law also discourages a review on merits. However, using a ground under Section 34 and setting aside the interim order is excessive.

Recently in the matter of "*Deep Industries Limited v ONGC* (2020) 15 SCC 706 (Ind.)", the Apex Court considered orders from High Court in appeal under Article 227 and set aside the High Court order interfering with Section 17 order of arbitrator. The view expressed was that, while the High Court had power under Article 227 to interfere with judgements disposing of first appeals under "Section 37 of the Act", the High Court should consider the statutory policy so that interference was limited to orders passed which were clearly lacking inherent jurisdiction. The High Court could interfere only for correcting

jurisdictional errors. Therefore, this is a very important aspect pointed out by Supreme Court in judicial interference. Though the ambit of Article 227 is broad, but Arbitration Act is a special one and a self-contained code.

Another aspect is when courts interfere with Section 17 orders when approached for enforcement of the same. Such orders have been set aside by High Courts in appeal. Courts have pointed out that under Section 9 courts while granting interim reliefs can also issue appropriate directions, but under Section 17(2) they can only enforce interim orders of tribunal. In "*Sundaram Finance v P. Sakthivel* (2018) SCC Online Mad.3080 (Ind.)", the Madras High Court had rightly taken note of the 2015 amendment to Section 17 and held that all District Courts while enforcing interim orders are performing a ministerial act and no judicial function is being rendered here. The orders can be appealed later under Section 37(2)(b). As a result, all district courts were reminded to execute interim tribunal orders under Section 17(2) of the Act as if they were court orders.

The essence of authority exerted by courts was always in doubt when courts appointed arbitrators under "Section 11 of the 1996 Act". Some cases described it as administrative power, whereas some others as judicial power. The issue was that if the power is judicial, courts would have discretion and they would have to decide on preliminary issues like validity, existence of agreement etc. In Supreme Court segregated issues to be decided by court and tribunal. Finally, in 2015, the Act clarified that the authority of courts under "Section 11" is not a judicial power, that the court's judgment is final and non-appealable, and that the court's decision is final and non-appealable.

Under Section 11(6A), courts had limited authority and could only consider the existence of an arbitration agreement and its relevance to the dispute. This was upheld by the Apex Court in "*Duro Felguera S.A. v Gangavaram Port Ltd* (2017) 9 SCC 729 (Ind.)". Later the Apex Court in cases not on Section 11(6A), but on arbitrability based on specific clauses in the agreement refused to appoint arbitrator. The Delhi High Court examined these instances and concluded that under Section 11, the court must consider the existence of an agreement and its relevance to the dispute. If the relation of

agreement to the dispute is not found, the court may refuse the relief. Again, the Supreme Court referring to Sections 11(6A), 16 and 246th Law Commission Report observed that existence of agreement and validity of agreement are different issues, which had to be clarified by a larger Bench.

Thus in "*Vidya Drolia v Durga Trading Corporation (*2021) 2 SCC 1 (Ind.)", the Supreme Court distinguished between the existence and legality of an agreement and established a "four-fold test" to evaluate the arbitrability of a dispute. It was opined that section 11 is identical with section 8 in that there can be examination of validity of agreement under section 11 and also there can be appeals against section 11 orders. At the referral step, the court conducts a preliminary examination to rule out *ex facie* non-existent and invalid arbitration agreements, as well as non-arbitrable issues. This preliminary and summary evaluation is based on materials that are accessible, and any problematic or uncertain issues will be left to the tribunal. At this time, the court is not the appropriate forum for deciding intricate factual questions concerning jurisdiction and dispute arbitrability. But if they involve issues involving rights *in rem*, they cannot be decided by the arbitrator. Arbitrability test is a subjective one and same standards cannot be applied in all cases. So presently courts decide on the facts of individual cases and this seems to be a better approach.

Regarding the issue of accord and satisfaction, the court has not appointed arbitrator under Section 11 as there was no dispute at all. But when there was an objection of coercion and undue influence of the accord agreement, court decided that there is agreement and hence arbitrator was appointed.

Another issue faced by courts was when agreement had technical defects like insufficient stamping and then High Courts had before and after 2015 held that arbitration clause and the main defective agreement are separable and hence reliefs could be granted. But unusually in 2019 the Supreme Court though reiterating the earlier position that technical defects were to be decided by arbitrator ordered to impound the document, sent it to concerned authority for curing the defects and paying penalty and then to proceed with Section 11 application. The court discarded the separate existence of arbitration clause and

held that under Section 11(6A) it could examine existence of agreement as well as other technical issues of enforceability. This is not a pro-arbitration approach. But in 2021 the Supreme Court has appointed arbitrator and then impounded the document and left the rest to the arbitrator so that Section 11 application or arbitration proceedings is not delayed. Thus, non-stamping will not make arbitration clause invalid as it has an independent existence and if needed, later there can be a remedy as per "section 34 of the Act".

The notion of institutional arbitration is established with the 2019 amendment, and the residual power of courts under "Section 11(6A)" is removed, giving the arbitral tribunal the authority to decide on its own jurisdiction under "Section 16". Now who is going to decide on existence of agreement is not made clear though J. Sri Krishna Committee indicated that it would be by the graded institutions. One consequence can be that there will be arbitrators appointed for non-arbitrable claims. Deletion of Section 11(6A) has resulted in taking away the initial threshold test to be met in court to succeed a Section 11 application. The powers of the Central Council and how the institutions are going to deal with the existence of agreement and related objections is not clear in the Act. More litigations in this regard is anticipated, as there is lack of clarity in many areas. Though judicial intervention is to be minimized for effective arbitration, a minimum amount of intervention would act as a check and balance on the arbitral process.

Thus, in this study of cases following the 2015 change to the Arbitration Act, it can be observed that in many scenarios, Indian courts, including the Apex Court, are attempting to balance the efficiency of the arbitral process with the least amount of judicial intervention. If the courts are kept out totally from the arbitral process, it may result in other consequences. So after analysing cases before and after the 2015 amendment, it can be seen that there should be minimum court intervention so that the arbitration process happens in the most efficient and effective way.

In the comparative analysis of England, Germany and Switzerland, it could be seen that the intention of parties to arbitrate is not destroyed by

approaching courts for reliefs. When parties raise the issue of arbitral jurisdiction in court, the relationship between litigation and arbitration allows the courts to analyse it. If an arbitration agreement is invalid, a party should be entitled to seek redress in court. As a result, it was demonstrated how the parties to the agreement agreed to arbitrate and how that aim is safeguarded by not resolving conflicts in courts.

In English law, if arbitration agreement is proved and when it is reasonable, courts under Section 9 of 1996 Act would stay proceedings and leave jurisdictional matters to arbitrators. In majority situations, courts decide on the existence of agreement and whether the matter comes within it. Under Section 32 and Section 72 party can apply to court to decide arbitral jurisdiction both before and during proceedings. “Section 67 of the Act” allows jurisdiction to be contested after the award has been made.

German law does not provide courts the inherent competence to dismiss a claim as inadmissible, as it does in English law, and the suit is dismissed only if the agreement is not null and invalid, inoperative, or incapable of being completed and the disagreement is arbitrable. The ZPO implements protections to verify that all parties have consented.

In England and Germany, declaratory relief is granted, but not subject to conditions in Germany. Positive preliminary jurisdictional rulings and negative jurisdictional awards can be contested in court in this jurisdiction.

In Switzerland, courts deny jurisdiction after a brief assessment of the agreement and refer the matter to an arbitrator. Here the courts’ power is not considered inherent as in England. Here only minimum protection is given to ensure consent of parties. There is no declaratory relief, but rulings of arbitrators on jurisdiction can be challenged. Challenge of award can be excluded subject to conditions under A.190 PILA.

In terms of the purpose of parties to arbitrate and the safeguarding of that goal by not depending on courts, England takes a more balanced approach than the other two nations.

The three countries differ in their approaches, when courts in proceedings prioritise arbitrators to decide their jurisdiction. Swiss courts granted priority to arbitrators to decide on jurisdiction, German courts determined jurisdiction and English courts decided issues on facts of each case. In Switzerland, in foreign seated arbitrations, the courts decided jurisdiction and there arbitrators were not prioritised. England was providing a middle solution in jurisdictional matters.

Regarding the balance between legitimacy of arbitration and efficacy of arbitration the compared laws are slightly different. In some laws court decisions are given importance whereas in some other arbitral decisions are more important as they are time saving. Internationally arbitration agreements should be enforced to the maximum extent. Courts and arbitrators are equally good in deciding jurisdictional issues, but to avoid multiple proceedings, high cost, time etc., the preference is given to one forum. In cases, lis pendens, res judicata etc., are used to solve them. Arbitration can be easily given away whereas litigation can be abused more. By opting courts, arbitration is avoided and it cannot persuade parties.

As a result, for arbitration to be effective, arbitrators must decide their jurisdiction, and this priority is the negative impact of competence-competence. If the arbitrator assumes wrong jurisdiction and the award is set aside, delay and high costs are the consequences of this negative effect. So absolute priority to arbitrators is not there. Before referring the jurisdictional question to arbitrators, Swiss courts perform a *prima facie* evaluation of the existence of the agreement. As a result, the smallest judicial interventions are restricted exceptions to arbitral primacy.

Concerning challenges to agreements, “Section 9 of the English Act” allows courts to delay proceedings if it is proven that there is an arbitration agreement in place that addresses the dispute at hand. In German law, courts look into formation, validity and scope of agreement and parties can waive the right to approach courts. Whereas in Swiss law, only a summary examination as to existence of agreement is possible.

The general rule of prioritising arbitrator for deciding jurisdiction can be slightly changed if the challenge is purely on facts. But if both fact and law are there, arbitrator should only decide. After starting arbitration, court's power is reduced to minimum to interfere with arbitral process. In this case, German law gives for the ability to seek declaratory relief from a court about the tribunal's jurisdiction. Courts assess the sequence of proceedings to determine whether courts or tribunals have jurisdiction under "Section 9 of the English Act". Arbitration's legitimacy is further preserved by allowing for rapid court review of arbitrators' jurisdictional judgments.

Different standards of review have been applied based on the location of the arbitration, the nature of the dispute, jurisdictional issues before and after the award, and so on. It is suggested in Swiss legislation to erase the distinction between various standards of review based on the location of arbitration. A pending parallel proceedings in another jurisdiction is likely to have a conflicting decision with that of pending arbitral proceedings in the country. Here a summary review on jurisdiction may only determine jurisdiction and the priority to determine it but no other issues.

For questions concerning consent to arbitrate and other matters concerning arbitral jurisdiction, a separate standard of scrutiny might be used. The former one may be done by a summary review, but for the latter a more flexible and comprehensive approach may be required as in the English law. But when such issues are connected, a fragmentation is not possible and so a decision between factual and legal issues might cause difficulty.

There can be different standards in the stages before and during arbitral proceedings. Once arbitration is initiated, a jurisdictional issue brought before court may be disposed by a limited review in a short time. But a challenge before arbitration can be of bad faith to delay proceedings and has to be dealt with caution. The negative effect of competence with the precaution of summary review might be complemented with a claim for conditional declaratory reliefs, as in English and German law.

So, resolving the difficulty of defining arbitral jurisdiction at the pre-award stage in all jurisdictions compared underlines the necessity for an universal worldwide consensus. This can be accomplished by making “the New York Convention” and others uniform by adopting a UNICITRAL recommendation for the same.

Thus after consolidating the Act, its amendments in 2015 and 2019, cases and expert opinions, it can be said that there has to be a balance of arbitral process and court intervention which has been always difficult and the Apex Court has always, even in 2021, reiterated the need for striking the balance. The reason for this is because courts have to support and supplement the arbitral process and cannot control it. The findings are prima facie and temporary in nature and the finality is given by the arbitrator. In this first inquiry, courts need simply consider the existence of an agreement and the arbitrability of the issue. In some cases, there may be mixed questions of law and fact which can be a difficulty as far as courts are concerned. The balance to be achieved by courts in supervising and intervening in a limited way has been a difficult task always.

After amendment, the courts believing in the theory of minimum intervention have taken a more hands off approach. This change in law is trying to balance the role of courts and arbitral tribunals. The Indian Courts have taken a pro-arbitration stance in certain recent rulings related to the amendment.

Analyzing the Supreme Court's rulings from 2015 to 2022 and taking into account all of the reasons used by courts to favour or reject arbitration, the overall stance of the courts is pro-arbitration. However, the decision of each case will be determined by its unique facts. Courts conduct a preliminary investigation, and arbitration is favoured only if the required facts regarding the existence of an agreement and the arbitrability of the dispute are discovered. Standards have been set up by courts in many areas as to the difference between existence and validity of agreements, categories of arbitrable and non-arbitrable disputes, issue of fraud and arbitrability etc. which again are likely to get enhanced in coming years. Some areas are again referred to a larger bench for

more clarification. So, this is a developing area where courts have a big role along with legislature in setting standards for the grey areas in coming days.

7.2 FINDINGS

- Whenever the courts have shown a tendency to exceed the statutory mandate by the exercise of so-called discretion, the Constitutional Courts by their authoritative pronouncements have held the line.

- Unnecessary interference at the pre-award stage, typically accompanied by a stay of proceedings before the arbitrator, delays the prompt disposition that is one of the goals of arbitration.

- Taking a cue from the legislative amendments made by "the Arbitration and Conciliation (Amendment) Act, 2015", the courts have interpreted the Act in such a way that while keeping interference at the minimum transparency is safeguarded.

- The domestic courts are mandated to keep away from unnecessary interference in matters which the arbitrator has got jurisdiction, but at the same time intervening effectively when matters relating to the jurisdiction of the tribunal comes up before court. This means that all factual issues are left outside the zone of intervention where the tribunal's determination is given finality, but in questions of law including jurisdiction can be effectively brought before the courts and prosecuted.

- When compared to countries prioritizing arbitration and countries prioritizing courts, a balanced approach is seen in England where issues are decided on the facts of each individual case and this approach is suitable for domestic arbitration in India.

- There is extensive judicial intervention in the arbitration process till the passing of the award.

- The intervention by courts during arbitral process till the passing of the award should be limited to determining the issues of existence of agreement and arbitrability of dispute.

7.3 SUGGESTIONS

- Lack of clarity of the latest position of the Arbitration Act, 1996 with its 2015 and 2019 amendments and the post amendment case analysis is a major drawback as far as arbitrators and judges of lower judiciary are concerned. This can be rectified by conducting academic deliberations like discussions, seminars and trainings for the updating of law. The initiative should come from "the Arbitration Council of India"and it can be delegated to the various arbitral institutions under it.

- Instead of ordinary courts, use of commercial courts can be an option to reduce the delay in court proceedings and to increase the effectiveness of arbitration. To reduce the supervisory function of courts in the arbitral process, in commercial disputes involving an arbitration dispute, only the Commercial Court of the status of District Judge or Additional District Judge should be the competent court to hear the cases under the Arbitration Act. Whereas, other commercial disputes can be decided by the subordinate courts.

- Institutional arbitration has been initiated by the 2019 amendment, but it has not become fully operative. It requires proper rules and regulations with more clarity so that it can be a proper solution for successful arbitration in place of the *ad hoc* system, which already exists.

- Uniform standards in the international scenario can be of help in domestic arbitration like adopting the "New York Convention" as a model.

- The adoption of standards from other jurisdictions like that of England which follows a balanced approach in domestic arbitration can be suitable for Indian conditions. This approach protects the intention of parties to arbitrate by not relying on courts.

- The court preference under German law in providing preliminary jurisdictional rulings on arbitration by complete evaluation of the existence and legality of the agreement can be used to avoid the negative effect of the competence principle.

- Another idea that can be implemented is Swiss law, which gives the arbitrator total power to rule on jurisdiction while granting the court limited power for a summary analysis of the agreement.

- In its "246th Report, the Law Commission of India" proposed changes to "Section 16 of the Arbitration and Conciliation Act", which gives the tribunal the authority to rule on any complicated legal and factual issues. The incorporation of the same can be helpful as then court intervention gets again limited with only nominal role.

- Above all, the role of courts in arbitration is to provide assistance to an effective arbitral process and hence striking the balance between arbitral process and minimal court intervention is the ultimate aim of the arbitration regime.

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ANNEXURES

APPENDIX

No.	Title of judgment with citation	Date of Judgment	Name of court	Number of judges	Judicial approach	Decision of court	Provisions of the Arbitration and Conciliation Act, 1996 involved
1	IREO (P) Ltd. v Vibhor Home Developers (P) Ltd., 2022 SCC OnLine Del 2203	26-07-2022	High Court of Delhi	1	Pro-arbitration	Interim measure by court	S.9
2	Shanghai Electric Group Co. Ltd. v Reliance Infrastructure Ltd., 2022 SCC OnLine Del 2112	19-07-2022	High Court of Delhi	1	Anti-arbitration	No interim measure by court as prima facie case not proved	S.9
3	Ocean Sparkle Ltd. v ONGC, 2022 SCC OnLine Bom 1138	06-06-2022	High Court of Bombay	1	Pro-arbitration	Partly allowed interim reliefs by court directing to invoke arbitration	S.9
4	IDBI Bank Ltd. v National Highways Authority of India, 2022 SCC OnLine Del 1668	01-06-2022	High Court of Delhi	1	Pro-arbitration	Interim measure by court	S.9

5	VR Commodities (P) Ltd. v Norvic Shipping Asia Pte. Ltd., 2022 SCC OnLine AP 1001	05-05-2022	High Court of Andhra Pradesh	2	Pro-arbitration	Interim relief granted sustained in appeal though agreement unstamped	S.9 and S.37
6	Garg Builders v Hindustan Prefab Ltd., (2022) 3 HCC (Del) 211	02-05-2022	High Court of Delhi	1	Pro-arbitration	Interim reliefs can be claimed from arbitral tribunal	S.9
7	Pravara Renewable Energy Ltd. V Padmashri Dr. Vitthalrao Vikhe Patil Sahakari Sakhar Karkhana Ltd., 2022 SCC OnLine Bom 759	11-04-2022	High Court of Bombay	1	Pro-arbitration	Pro-arbitral interim reliefs by court confirmed in contempt proceedings	S.9
8	Shubham HP Security Force (P) Ltd. v Central Warehousing Corpn., (2022) 2 HCC (Del) 264	11-03-2022	High Court of Delhi	1	Anti-arbitration	No interim relief by court as the agreement terminated	S.9
9	Abhibus Services India (P) Ltd. v Pallavan Transport Consultancies Services Ltd., 2022 SCC OnLine Mad 796	04-02-2022	High Court of Madras	1	Anti-arbitration	Interim order of arbitrator impleading non-signatories to arbitration set aside as express power to do so not in the Act	S.17 and S.37
10	Essar Bulk Terminal Ltd. V Arcelor Mittal Nippon Steel India Ltd., 2022 SCC OnLine Guj 751	03-02-2022	High Court of Gujarat	2	Pro-arbitration	Interim relief by court partly allowed till final decision of interim relief by arbitrator	S.9, S.17 and S.37

11	Hindustan Cleanenergy Ltd. v MAIF Investments India 2 (P) Ltd., 2022 SCC OnLine Del 238	20-01-2022	High Court of Delhi	1	Pro-arbitration	Interim reliefs by court	S.9
12	Panipat Jalandhar NH 1 Tollway (P) Ltd. V National Highways Authority of India, 2022 SCC OnLine Del 108	17-01-2022	High Court of Delhi	1	Pro-arbitration	No appointment of arbitrator as arbitral tribunal already existing and interim reliefs can be claimed there	S.9 and S.11
13	Meenakshi Energy Ltd. v PTC India Ltd., (2021) 4 HCC (Del) 511	22-12-2021	High Court of Delhi	1	Anti-arbitration	No interim relief as prima facie case not proved	S.9
14	Ultra Deep Subsea Pte Ltd. v Hindustan Oil Exploration Company Ltd., 2021 SCC OnLine Bom 5481	13-12-2021	High Court of Bombay	1	Pro-arbitration	Interim relief by court	S.9
15	Vidya Mandir Classes Limited v Harsh Tiwary, (2021) 3 HCC (Del) 587	01-12-2021	High Court of Delhi	1	Pro-arbitration	Interim relief by court	S.9
16	Mohinder Nath v Indian Oil Corpn. Ltd., 2021 SCC OnLine HP 9119	29-11-2021	High Court of Himachal Pradesh	1	Pro-arbitration	A.226 petition dismissed and the interim reliefs to be claimed from arbitral tribunal	S.9

17	Kuber Enterprises v Doosan Power Systems India (P) Ltd., 2021 SCC OnLine Del 5049	12-11-2021	High Court of Delhi	1	Pro-arbitration	Partly allowed an interim relief denying another one	S.9
18	Sanjay Arora v Rajan Chadha, (2021) 3 HCC (Del) 654	05-10-2021	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator upheld	S.17 and S.37
19	Ayyappan Ashokan v K.P. Indrapalan, 2021 SCC OnLine Ker 11763	30-09-2021	High Court of Kerala	1	Pro-arbitration	Interim order by tribunal upheld and A.227 petition dismissed	S.5, S.17 and S.37
20	Augmont Gold (P) Ltd. v One97 Communication Limited, (2021) 4 HCC (Del) 642	27-09-2021	High Court of Delhi	1	Pro-arbitration	Interim order by tribunal modified	S.17 and S.37
21	Arcelormittal Nippon Steel (India) Ltd. v Essar Bulk Terminal Ltd., (2022) 1 SCC 712	14-09-2021	Supreme Court of India	2	Anti-arbitration	The interim application to be decided by Commercial Court without considering the efficacy of relief before arbitrator as the matter already considered by court	S.9 and S.17
22	Hindustan Cleanenergy Ltd. v Maif Investments India 2 Pte. Ltd., 2021 SCC OnLine Del 4102	16-08-2021	High Court of Delhi	1	Pro-arbitration	Interim relief by court in foreign seated arbitration	S.9

23	Golden Chariot Recreations Pvt. Ltd. v Mukesh Panika, 2021 SCC OnLine Del 3767	23-07-2021	High Court of Delhi	1	Pro-arbitration	Interim order given, but no appointment of arbitrator as barred by limitation	S.9 and S.11
24	Thar Camps Pvt. Ltd. v Indus River Cruises Pvt. Ltd., 2021 SCC OnLine Del 3150	07-06-2021	High Court of Delhi	1	Pro-arbitration	Interim relief to a limited extent subject to arbitral orders	S.9
25	Raghuvir Buildcon Pvt. Ltd. v. Ircon International Limited, 2021 SCC OnLine Del 2491	18-05-2021	High Court of Delhi	1	Pro-arbitration	Arbitrator's order on non-arbitrability of excepted matters upheld in appeal	S.16 and S.37
26	Pasl Wind Solutions (P) Ltd. v. GE Power Conversion (India) (P) Ltd., (2021) 7 SCC 1	20-04-2021	Supreme Court of India	3	Pro-arbitration	Interim relief by court in international commercial arbitration	S.9
27	Mumbai International Airport Ltd. v. Airports Authority of India, 2020 SCC OnLine Del 2088	27-11-2020	High Court of Delhi	1	Pro-arbitration	Interim order by court	S.9
28	Pearl Hospitality & Events (P) Ltd. v. OYO Hotels & Homes (P) Ltd., 2020 SCC OnLine Del 2089	03-11-2020	High Court of Delhi	1	Pro-arbitration	Interim relief by court directing to initiate arbitration without delay	S.9
29	Big Charter Private Limited v. Ezen Aviation Pty. Ltd., 2020 SCC OnLine Del 1713	23-10-2020	High Court of Delhi	1	Pro-arbitration	Interim order by court	S.9

30	CRSC Research & Design Institute Group Co. Ltd. v. Dedicated Freight Corridor Corpn. of India Ltd., 2020 SCC OnLine Del 2100	30-09-2020	High Court of Delhi	1	Anti-arbitration	No interim relief as the petition is premature	S.9
31	Lindsay International Private Limited v. Laxmi Niwas Mittal, 2020 SCC OnLine Cal 1658	15-09-2020	High Court of Calcutta	1	Anti-arbitration	No reference to arbitration as application not filed	S.8
32	Avantha Holdings Limited v. Vistra ITCL India Limited, 2020 SCC OnLine Del 1717	14-08-2020	High Court of Delhi	1	Pro-arbitration	Interim measure by court not granted	S.9
33	Hero Wind Energy Private Ltd. v. Inox Renewables Limited, 2020 SCC OnLine Del 720	07-07-2020	High Court of Delhi	2	Pro-arbitration	Interim relief by court on subsequent disputes subject to finality by arbitrator	S.9 and S.37
34	Goodwill Non-Woven(P) Limited v. Xcoal Energy & Resources LLC, 2020 SCC OnLine Del 631	09-06-2020	High Court of Delhi	1	Pro-arbitration	No interim relief as prima facie case not proved and remedy possible in arbitration	S.9
35	Inter ADS Exhibition (P) Ltd. v. Busworld International Coop. Vennootschap Met Beperkte Anasprakelijkheid, 2020 SCC OnLine Del 2485	01-05-2020	High Court of Delhi	2	Anti-arbitration	No interim relief as there is termination of agreement	S.9

36	Hindustan Construction Co. Ltd. v. Union of India, (2020) 17 SCC 324	27-11-2019	Supreme Court of India	3	Pro-arbitration	Interim relief by court before enforcement of award	S.9
37	Everest Industries Ltd. v. MW High Tech Projects India (P) Ltd., 2019 SCC OnLine TS 3558	29-07-2019	High Court of Telengana	2	Pro-arbitration	No interim measure by court	S.9
38	ANS Constructions Pvt. Ltd. v. Ramagundma Fertilizer & Chemicals Ltd., 2019 SCC OnLine Del 8694	24-05-2019	High Court of Delhi	1	Pro-arbitration	No interim relief by court restraining bank guarantee and remedy possible before arbitrator	S.9
39	ICOMM Tele Ltd. v. Bharat Sanchar Nigam Ltd., 2019 SCC OnLine Del 8667	23-05-2019	High Court of Delhi	1	Pro-arbitration	No interim relief by court restraining bank guarantee and remedy possible before arbitrator	S.9
40	Lifestyle Equities CV v. QD Seatoman Design Private Limited, 2019 SCC OnLine Mad 38921	01-03-2019	High Court of Madras	1	Pro-arbitration	Reference to arbitration in a suit for permanent injunction regarding infringement of copyright, matter not in rem but in personam	S.8 and S.9

41	India Infoline Finance Limited v. Harshad Hirji Thakkar, 2019 SCC OnLine Del 7342	20-02-2019	High Court of Delhi	1	Pro-arbitration	No interim relief due to lack of territorial jurisdiction	S.9
42	Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd., (2019) 3 SCC 203	04-12-2018	Supreme Court of India	2	Anti-arbitration	High Court under its inherent jurisdiction reviewed its own order appointing arbitrator as there was no arbitration agreement and this order upheld	S.5, S.7, S.9, S.11 and S.16
43	ISGEC Heavy Engineering Limited v. Cavite Biofuel Producers Inc., 2018 SCC OnLine P&H 6914	17-04-2018	High Court of Punjab and Haryana	1	Pro-arbitration	No interim relief against enforcement of bank guarantee	S.9
44	Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd., (2018) 14 SCC 783	23-02-2018	High Court of Punjab and Haryana	1	Pro-arbitration	No interim relief against enforcement of bank guarantee	S.9
45	Arkay Energy (Rameswaram) Limitied v. Gail (India) Limited, 2017 SCC OnLine Mad 26845	18-12-2017	Supreme Court of India	2	Anti-arbitration	Special statute (SARFESI Act) applicable even if steps taken under Arbitration Act	S.9

46	Trammo DMCC v. Nagarjuna Fertilizers and Chemicals Ltd., 2017 SCC OnLine Bom 8676	09-10-2017	High Court of Madras	1	Pro-arbitration	Arbitrator appointed and matters of fraud and impleading third party referred to him, but no interim relief	S.9, S.11 and S.16
47	Qdseatoman Designs (P) Ltd. v. Lifestyle Equities CV, 2017 SCC OnLine Mad 25864	11-08-2017	High Court of Madras	1	Pro-arbitration	Interim relief by court which can be later confirmed by arbitrator	S.9
48	Rosmerta Hsrp Ventures Pvt. Ltd. v. Govt. (NCT of Delhi), 2017 SCC OnLine Del 9328	24-07-2017	High Court of Delhi	1	Pro-arbitration	Interim order by tribunal modified in appeal upheld and A.226 petition dismissed	S.17 and S.37
49	Biswanath Ghosh v. Hijal Kanya Co-Operative Housing Society Ltd., 2017 SCC OnLine Cal 8426	23-06-2017	High Court of Calcutta	2	Pro-arbitration	Interim measure by court	S.9
50	Essar Projects (India) Limited v. Indian Oil Corporation Limited, 2017 SCC OnLine Del 88175	02-06-2017	High Court of Delhi	1	Pro-arbitration	Interim relief by court against enforcing bank guarantee refused as remedy possible before arbitrator	S.9

51	Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678	19-04-2017	Supreme Court of India	2	Pro-arbitration	Interim relief by court confirmed, but court order set aside as seat of arbitration clause violated	S.9 and S.11
52	TRF Ltd. v. Energo Engineering Projects Ltd., 2017 SCC OnLine Del 7011	17-02-2017	High Court of Delhi	1	Pro-arbitration	Interim relief by court against enforcing bank guarantee refused as remedy possible before arbitrator	S.9
53	Raffles Design International India (P) Ltd. v. Educomp Professional Education Ltd., 2016 SCC OnLine Del 5521	07-10-2016	High Court of Delhi	1	Pro-arbitration	Interim relief by court irrespective of foreign emergency award	S.9
54	Jyoti Structure Ltd. v. Dakshinanchal Vidyut Vitran Nigam Ltd., 2016 SCC OnLine Del 5035	06-09-2016	High Court of Delhi	1	Pro-arbitration	Interim relief by court	S.9
55	Indian Oil Corporation Ltd. v. Shiv Oil Carrier, 2016 SCC OnLine P&H 3889	31-05-2016	High Court of Punjab and Haryana	1	Pro-arbitration	Interim relief by court affirmed in appeal subject to finality by arbitrator	S.9

56	Talwandi Sabo Power Limited v. SEPCO Electric Power Construction Corporation, 2016 SCC OnLine P&H 3402	17-05-2016	High Court of Punjab and Haryana	2	Pro-arbitration	Interim relief by court affirmed as appeal was not under the Act	S.9
57	USP Studios (P) Ltd. v. Ganpati Enterprises, 2022 SCC OnLine Bom 1739	25-08-2022	High Court of Bombay	1	Pro-arbitration	Reference to arbitration	S.8
58	Cox & Kings Ltd. v. SAP India (P) Ltd., 2022 SCC OnLine SC 570	06-05-2022	Supreme Court of India	3	Pro-arbitration	Reference to arbitration	S.8
59	Chunduru Visalakshi v. Chunduru Rajendra Prasad, 2022 SCC OnLine AP 888	22-04-2022	High Court of Andhra Pradesh	2	Anti-arbitration	Reference refused as proper application not filed	S.8
60	IRB Chitradurga Tollway (P) Ltd. v. National Highways Authority of India, 2022 SCC OnLine Del 801	16-03-2022	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.8 and S.11
61	Jharia Petrol Supply v. Indian Oil Corpn. Ltd., 2022 SCC OnLine Jhar 176	02-03-2022	High Court of Jharkhand	1	Anti-arbitration	No appointment on issue of limitation	S.11
62	Talaipalli Coal Mining (P) Ltd. v. NTPC Ltd., 2022 SCC OnLine Del 623	25-02-2022	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11

63	Vijay Kumar Munjal v. Pawan Munjal, 2022 SCC OnLine Del 499	17-02-2022	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
64	Ashav Advisory LLP v. Patanjali Ayurveda Ltd., 2022 SCC OnLine Del 328	31-01-2022	High Court of Delhi	1	Pro-arbitration	Reference and Appointment	S.8 and S.11
65	Lindsay International (P) Ltd. v. Laxmi Niwas Mittal, 2022 SCC OnLine Cal 170	21-01-2022	High Court of Calcutta	1	Pro-arbitration	Reference to arbitration	S.8
66	Avantha Holdings Ltd. v. CG Power and Industrial Solutions Ltd., (2021) 4 SCC (Del) 267	06-12-2021	High Court of Delhi	1	Anti-arbitration	No appointment as matter of serious fraud to be decided by courts	S.8 and S.11
67	TATA Consultancy Services Ltd. v. SK Wheels (P) Ltd. (Resolution Professional), (2022) 2 SCC 583	23-11-2021	Supreme Court of India	2	Pro-arbitration	Arbitration preferred over Special Act	S.8 and Insolvency and Bankruptcy Code
68	V.B. Cold Storage (P) Ltd. v. Bajaj Allianz General Insurance Company Limited, 2021 SCC OnLine AP 2958	24-09-2021	High Court of Andhra Pradesh	1	Pro-arbitration	Appointment of arbitrator	S.11
69	SPML Infra Ltd. v. NTPC Limited, 2021 SCC OnLine Del 2653	08-04-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11

70	Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708	25-03-2021	High Court of Delhi	1	Pro-arbitration	Reference to arbitration	S.8 and S.16
71	Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705	15-03-2021	Supreme Court of India	2	Anti-arbitration	No reference or appointment on issue of limitation	S.8, S.11 and S.16
72	. BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738	10-03-2021	Supreme Court of India	2	Anti-arbitration	No reference or appointment on issue of limitation	S.8 and S.11
73	Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd., (2021) 5 SCC 671	08-03-2021	Supreme Court of India	3	Pro-arbitration	Reference and Appointment	S.7, S.8, S.11 and S.16
74	Hero Electric Vehicles Private Limited v. Lectro E-Mobility Private Limited, 2021 SCC OnLine Del 1058	02-03-2021	High Court of Delhi	1	Pro-arbitration	Reference to arbitration	S.8
75	Manju Gupta v. Vilas Gupta, 2021 SCC OnLine Del 3486	22-01-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
76	N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2021) 4 SCC 379	11-01-2021	Supreme Court of India	3	Pro-arbitration	Reference and Appointment	S.7, S.8, S.11 and S.16

77	Bina Modi v. Lalit Kumar Modi, 2020 SCC OnLine Del 1678	24-12-2020	High Court of Delhi	2	Anti-arbitration	Matter relating to trust not arbitrable	S.5, S.8 and S.16
78	Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1	14-12-2020	Supreme Court of India	3	Pro-arbitration	Four fold test on arbitrability and reference and appointment even in doubtful cases	S.7, S.8, S,11, S.16 and S.9
79	Pricewaterhouse Coopers Service Delivery Centre (Bangalore) (P) Ltd. v. Mohan Kumar Thakur, 2020 SCC OnLine Kar 3434	05-11-2020	High Court of Karnataka	2	Pro-arbitration	Reference to arbitration	S.8 and S.37
80	Royal Orchid Hotels Limited v. Rock Reality (P) Ltd., 2020 SCC OnLine Kar 3414	13-10-2020	High Court of Karnataka	1	Pro-arbitration	Appointment of arbitrator	S.11
81	Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4 SCC 713	19-08-2020	Supreme Court of India	2	Pro-arbitration	Interim relief by court to enforce emergency award and arbitrability of matter with fraud of civil and criminal nature upheld	S.9
82	Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties, (2021) 4 SCC 786	19-08-2020	Supreme Court of India	3	Pro-arbitration	Reference to arbitration	S.8 and S.16

83	V.G. Santhosam v. Shanthi Gnanasekaran, 2020 SCC OnLine Mad 560	24-02-2020	High Court of Madras	1	Pro-arbitration	Arbitrator's order beyond jurisdiction set aside in appeal	S.17 and S.37
84	Taru Meghani v. Shree Tirupati Greenfield, 2020 SCC OnLine Bom 110	10-01-2020	High Court of Bombay	1	Pro-arbitration	Partial reference of one matter	S.8
85	Sree Narayana Dharma Paripalana Yogam v. Sathyan M.S., 2019 SCC OnLine Ker 6904	13-12-2019	High Court of Kerala	1	Anti-arbitration	No reference as no existing arbitration agreement	S.8
86	Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455	27-11-2019	Supreme Court of India	2	Pro-arbitration	Appointment of arbitrator	S.11 and S.16
87	Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714	05-09-2019	Supreme Court of India	3	Anti-arbitration	No appointment as no existing arbitration agreement	S.11
88	Vishvendra Singh Jat v. Godavari Shilp Kala Hospitality Private Limited, 2019 SCC OnLine Raj 6139	20-07-2019	High Court of Rajasthan	1	Anti-arbitration	No reference as no existing arbitration agreement	S.8
89	Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd., (2019) 9 SCC 209	10-04-2019	Supreme Court of India	2	Pro-arbitration	Appointment of arbitrator	S.11

90	G.&T. Beckfield Drilling Services (P) Ltd. v. ONGC, 2019 SCC OnLine Gau 5967	08-03-2019	High Court of Gauhati	1	Pro-arbitration	Arbitral award upheld based on kompetenz principle	S.16 and S.37
91	Lifestyle Equities CV v. QD Seatoman Design Private Limited, 2019 SCC OnLine Mad 38921	26-09-2019	High Court of Madras	1	Pro-arbitration	Interim order by arbitrator sustained	S.17 and S.37
92	Shah v. Urmi Trenchless Technology Pvt. Ltd., 2019 SCC OnLine Bom 340	25-02-2019	High Court of Bombay	1	Pro-arbitration	Reference to arbitration	S.8
93	Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751	10-12-2018	Supreme Court of India	2	Anti-arbitration	No reference as statutory bar against arbitration	S.8
94	Zostel Hospitality (P) Ltd. v. Oravel Stays (P) Ltd., (2021) 9 SCC 765	19-09-2018	Supreme Court of India	3	Pro-arbitration	Appointment of arbitrator	S.8 and S.11
95	Prabhat Steel Traders Pvt. Ltd. v. Excel Metal Processors Pvt. Ltd., 2018 SCC OnLine Bom 2347	31-08-2018	High Court of Bombay	1	Pro-arbitration	Interim order by arbitrator set aside in appeal	S.17 and S.37
96	Milind v. Pramod, 2018 SCC OnLine Bom 2268	23-08-2018	High Court of Bombay	1	Pro-arbitration	Arbitrator's order sustained and A.227 petition dismissed	S.17

97	Gujarat Composite Limited v. A. Infrastructure Limited, 2018 SCC OnLine Guj 4782	23-04-2018	High Court of Gujarat	2	Anti-arbitration	No reference as bifurcation of subject matter not possible	S.8
98	Parasramka Holdings Pvt. Ltd. v. Ambience Private Ltd., 2018 SCC OnLine Del 6573	15-01-2018	High Court of Delhi	1	Pro-arbitration	Reference to arbitration	S.8
99	Egret Park Home Owners Association v. Bhaskar Swamy, 2017 SCC OnLine Mad 25870	13-09-2017	High Court of Madras	1	Pro-arbitration	Reference to arbitration	S.8
100	Paras Marketing Co. (P) Ltd. v. Air India Limited, 2017 SCC OnLine Cal 13097	28-08-2017	High Court of Calcutta	1	Pro-arbitration	Reference to arbitration	S.8
101	Rajesh Korat v. Innoviti Embedded Solutions Pvt. Ltd., 2017 SCC OnLine Kar 4975	21-04-2017	High Court of Karnataka	1	Anti-arbitration	No reference as dispute under Industrial Disputes Act and not arbitrable and matter referred to its tribunal by Government	S.8
102	Srei Equipment Finance Ltd. v. Paban Poddar, 2017 SCC OnLine Cal 21454	09-01-2017	High Court of Calcutta	2	Pro-arbitration	Reference to arbitration and interim order by court	S.8 and S.9

103	Krishan Radhu v. Emmar MGF Construction Pvt. Ltd., 2016 SCC OnLine Del 6499	21-12-2016	High Court of Delhi	1	Pro-arbitration	Reference to arbitration	S.8
104	Jhansi-Orai Tollyway Pvt. Ltd. v. Bank of India, 2016 SCC OnLine Chh 1475	11-11-2016	High Court of Chattisgarh	1	Pro-arbitration	Reference to arbitration	S.8
105	Maruti Udyog Ltd. v. Classic Motors. Ltd., 2016 SCC OnLine Del 5860	02-11-2016	High Court of Delhi	1	Pro-arbitration	Reference to arbitration	S.8
106	A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386	04-10-2016	Supreme Court of India	2	Pro-arbitration	Reference to arbitration as fraud not serious or complicated	S.8 and S.16
107	Lafarge India Pvt. Ltd. v. Emami Realty Ltd., 2016 SCC OnLine Cal 4964	15-09-2016	High Court of Calcutta	2	Pro-arbitration	Appointment of arbitrator and anti-arbitration injunction refused during arbitration	S.5, S.8 and S.11
108	Amrit Jal Ventures Private Limited v. Srei Infrastructure Finance Limited, 2016 SCC OnLine Cal 4245	02-08-2016	High Court of Calcutta	1	Pro-arbitration	Appointment of arbitrator preferred over debt recovery Acts on existence of arbitration agreement	S.9 and S.11
109	Umesh Goel v. H.P. Coop. Group Housing Society Ltd., (2016) 11 SCC 313	29-06-2016	Supreme Court of India	2	Pro-arbitration	Interim order by court for enforcement of award	S.5, S.9, S.35 and S.36

110	S. Karthikeya Balaji v. Lions Club International, 2016 SCC OnLine Mad 11502	21-06-2016	High Court of Madras	1	Pro-arbitration	Reference to arbitration	S.8
111	Talwandi Sabo Power Limited v. SEPCO Electric Power Construction Corporation, 2016 SCC OnLine P&H 3402	17-05-2016	High Court of Punjab and Haryana	2	Pro-arbitration	In international arbitration petition, interim relief by arbitrator and not by court	S.9 and S.17
112	IndusInd Bank Ltd. v. K. Nachimuthu, 2016 SCC OnLine Mad 5686	01-03-2016	High Court of Madras	1	Pro-arbitration	Reference to arbitration	S.5 and S.8
113	Rathore Builders Registered Partner Firm v. State of U.P., 2016 SCC OnLine All 2752	10-02-2016	High Court of Allahabad	1	Anti-arbitration	Reference and award set aside as arbitrator appointment wrong in procedure and A.227 petition dismissed	S.8
114	SREI Infrastructure Finance Limited v. State of Haryana, 2015 SCC OnLine P&H 20019	24-12-2015	High Court of Punjab and Haryana	1	Pro-arbitration	Reference to arbitration, but writ petition not maintainable	S.8
115	OYO Hotels & Homes (P) Ltd. v. Agarwal Packers & Movers Ltd., 2022 SCC OnLine Del 2728	01-09-2022	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11

116	Eicher Motors Ltd. v. Forte Solutions (P) Ltd., 2022 SCC OnLine Mad 4044	11-08-2022	High Court of Madras	1	Pro-arbitration	Appointment of arbitrator	S.11
117	Manika Sett v. Sett Iron Foundry, 2022 SCC OnLine Cal 2102	28-07-2022	High Court of Calcutta	1	Pro-arbitration	Appointment of arbitrator	S.7 and S.11
118	Indian Oil Corpn. Ltd. v. NCC Ltd., 2022 SCC OnLine SC 896	20-07-2022	Supreme Court of India	2	Pro-arbitration	Appointment of arbitrator and reference in two cases set aside, in one arbitrator to decide on accord and satisfaction and in another arbitrator to decide notified claims	S.8. S.11 and S.16
119	TBS India Telematic & Biomedical Services (P) Ltd. v. Commr. of Health & Family Welfare, 2022 SCC OnLine AP 1648	08-07-2022	High Court of Andhra Pradesh	1	Anti-arbitration	No appointment of arbitrator due to absence of arbitration agreement	S.7, S.8 and S.11
120	Maya Construction v. Union of India, 2022 SCC OnLine Megh 138	02-05-2022	High court of Meghalaya	1	Pro-arbitration	Appointment of arbitrator	S.11
121	Malvika Rajnikant Mehta v. JESS Construction, 2022 SCC OnLine Bom 920	28-04-2022	High Court of Bombay	1	Pro-arbitration	Appointment of arbitrator	S.11 and S.16

122	Vistrat Real Estates (P) Ltd. v. Asian Hotels North Ltd., 2022 SCC OnLine Del 1139	22-04-2022	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
123	Parsvnath Developers Ltd. v. Future Retail Ltd., (2022) 2 HCC (Del) 516	12-04-2022	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
124	Orissa Concrete & Allied Industries Ltd. v. Union of India, 2022 SCC OnLine Del 955	05-04-2022	High Court of Delhi	1	Pro-arbitration	No interim relief by court as same is available before arbitrator	S.9 and S.37
125	Indian Farmers Fertilizers Coop. Ltd. v. Manish Engineering Enterprises, 2022 SCC OnLine All 150	11-03-2022	High Court of Allahabad	1	Pro-arbitration	Appointment of arbitrator and extension of mandate of arbitrator	S.11 and S.29A
126	Ashav Advisory LLP v. Patanjali Ayurveda Ltd., 2022 SCC OnLine Del 328	31-01-2022	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
127	C.G. Power & Industrial Solutions Ltd. v. U.P. Power Transmission Corpn. Ltd., 2022 SCC OnLine All 19	17-01-2022	High Court of Allahabad	1	Pro-arbitration	Appointment of arbitrator	S.11
128	Panipat Jalandhar NH 1 Tollway (P) Ltd. v. National Highways Authority of India, 2022 SCC OnLine Del 108	17-01-2022	High Court of Delhi	1	Pro-arbitration	Instead of having a new arbitrator, present disputes can be decided by second arbitral tribunal already existing	S.11

129	India Pistons Limited v. Ganapathi Chandrasekar, 2021 SCC OnLine Mad 5729	10-11-2021	High Court of Madras	1	Pro-arbitration	Appointment of arbitrator	S.11
130	Pooja Infotech (P) Ltd. v. Prabhuprem Infotech (P) Ltd., 2021 SCC OnLine Del 4749	21-10-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
131	Airone Charters (P) Ltd. v. Jetsetgo Aviation Services (P) Ltd., 2021 SCC OnLine Del 4693	12-10-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator by nomination by respondent and disputes not referred to existing arbitral tribunal	S.11
132	Global Agency v. General Manager, 2021 SCC OnLine AP 3113	01-10-2021	High Court of Andhra Pradesh	1	Pro-arbitration	Appointment of arbitrator	S.11
133	V.B. Cold Storage (P) Ltd. v. Bajaj Allianz General Insurance Company Limited, 2021 SCC OnLine AP 2958	24-09-2021	High Court of Andhra Pradesh	1	Pro-arbitration	Appointment of arbitrator	S.11
134	P. Krishnan v. M. Ramachandran, 2021 SCC OnLine Mad 5130	13-09-2021	High Court of Madras	1	Pro-arbitration	A.227 petition dismissed as arbitral order can only be set aside on ground of absence of arbitration agreement	S.7 and S.16

135	Foodworld v. Indian Railway Catering and Tourism Corporation Ltd., 2021 SCC OnLine Del 4264	01-09-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11 and S.16
136	G4S Secure Solutions (India) (P) Ltd. v. LI Consulting (P) Ltd., (2021) 3 HCC (Del) 92	23-08-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11 and S.8
137	Rajeev Agnihotri v. Ashok Jain, 2021 SCC OnLine MP 4969	23-08-2021	High Court of Madhya Pradesh	1	Pro-arbitration	Appointment of arbitrator	S.11
138	Golden Chariot Recreations Pvt. Ltd. v. Mukesh Panika, 2021 SCC OnLine Del 3767	23-07-2021	High Court of Delhi	1	Anti-arbitration	No appointment of arbitrator as petition barred by limitation	S.11, S.8 and S.9
139	Geo Chem Laboratories Pvt. Ltd. v. United India Insurance Co. Ltd., 2021 SCC OnLine Del 3054	03-06-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11, S.8 and S.16
140	Sanjiv Prakash v. Seema Kukreja, (2021) 9 SCC 732	06-04-2021	Supreme Court of India	3	Pro-arbitration	Reference to arbitration and appointment of arbitrator as novation issue requires minitrial or elaborate review of facts and law	S.8 and S.11

141	Mahindra Susten Private Limited v. NHPC Limited, 2021 SCC OnLine Del 3273	17-02-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator by Delhi Arbitration Centre and interim relief by arbitrator	S.11 and S.17
142	Valecha Engineering Ltd. v. DMRC Ltd., (2021) 1 HCC (Del) 153	15-01-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
143	Srimaya Builders & Developers v. Bharath Electronics Employees, 2020 SCC OnLine Kar 3487	10-11-2020	High Court of Karnataka	1	Pro-arbitration	Appointment of arbitrator	S.11
144	Big Charter Private Limited v. Ezen Aviation Pty. Ltd., 2020 SCC OnLine Del 1713	23-10-2020	High Court of Delhi	1	Pro-arbitration	Interim relief by court	S.9
145	Royal Orchid Hotels Limited v. Rock Reality (P) Ltd., 2020 SCC OnLine Kar 3414	13-10-2020	High Court of Karnataka	1	Pro-arbitration	Appointment of arbitrator	S.11
146	Resham Mahtani v. Shabna Akmal, 2020 SCC OnLine Mad 15600	24-08-2020	High Court of Madras	1	Anti-arbitration	No arbitrator appointment as matter coming under Small Causes Court and not arbitrable	S.11

147	CARDIO Fitness India (P) Ltd. v. Sportsfit World (P) Ltd., 2020 SCC OnLine Del 2469	12-05-2020	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11, S,8 and S.16
148	Chennai Container Terminal Private Limited v. Board of Trustees for Chennai Port Trust, 2020 SCC OnLine Mad 636	28-02-2020	High Court of Madras	1	Anti-arbitration	No appointment of arbitrator as no arbitration agreement	S.5, S.7 and S.11
149	C. Shamsuddin v. Now Realty Ventures LLP, 2020 SCC OnLine Bom 100	16-01-2020	High Court of Bombay	1	Pro-arbitration	Appointment of arbitrator	S.11
150	Mitra Guha Builders (India) Co. v. ONGC, (2020) 3 SCC 222	08-11-2019	Supreme Court of India	3	Anti-arbitration	No reference to arbitration or appointment of arbitrator as matter exempted by arbitration clause to be decided by a named official and not arbitrable	S.8 and S.11
151	Hassan Thermal Power Pvt. Ltd. v. State of Karnataka, 2019 SCC OnLine Kar 3103	27-09-2019	High Court of Karnataka	1	Pro-arbitration	Writ petition allowed favouring arbitration under Permanent Court of arbitration	No provision
152	Namrata Sen v. Saurabh Chauhan, 2019 SCC OnLine Utt 864	05-09-2019	High Court of Uttarakhand	1	Anti-arbitration	No appointment as petition for termination of mandate not filed in correct court and so dismissed	S.11, S.14 and S.15

153	Tangirala Srinivasa Gangadhara Baladitya v. Sanjay Aggarwal, 2019 SCC OnLine Del 9112	03-07-2019	High Court of Delhi	2	Pro-arbitration	Writ petition and appeal against order of arbitrator dismissed as judicial intervention only as per the part I of Act	S.5 and S.162
154	SAP India Private Limited v. Cox & Kings Limited, 2019 SCC OnLine Bom 722	30-04-2019	High Court of Bombay	1	Pro-arbitration	Substitute arbitrator appointed	S.11, S.14 and S.15
155	Gautam Landscapes Pvt. Ltd. v. Shailesh S. Shah, 2019 SCC OnLine Bom 563	04-04-2019	High court of Bombay	3	Pro-arbitration	Interim relief by court and appointment of arbitrator possible even though the document with arbitration clause is unstamped	S.9 and S.11
156	United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., (2019) 5 SCC 362	28-03-2019	Supreme Court of India	2	Anti-arbitration	No arbitrator appointment due to absence of arbitrable dispute which was discharged by a full and final settlement without coercion or undue influence	S.11

157	Adani Enterprises Limited v. Antikeros Shipping Corporation, 2019 SCC OnLine Bom 528	22-03-2019	High Court of Bombay	1	Pro-arbitration	Order of arbitrator appointment recalled as only apex court could do so in international commercial arbitration	S.11 and S.16
158	Damont Developers Pvt. Ltd. v. BRYS Hotels Pvt. Ltd., 2019 SCC OnLine Del 7478	07-03-2019	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
159	Vidya Drolia v. Durga Trading Corpn., (2019) 20 SCC 406	28-02-2019	Supreme Court of India	2	Pro-arbitration	Tenancy dispute under TP Act arbitrable, but referred to larger Bench	S.5, S.11 and S.16
160	Ravi Arya v. Palmview Investments Overseas Ltd., 2019 SCC OnLine Bom 251	12-02-2019	High Court of Bombay	2	Pro-arbitration	No injunction against arbitration and remedy against it is only setting aside by court	S.5, S.8 and S.16
161	NCC Limited v. Indian Oil Corporation Limited, 2019 SCC OnLine Del 6964 [08-02-2019] J 1 OR	08-02-2019	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11 and S.16
162	Jay Bhagwati Construction Co. v. Haware Engineers & Builders Pvt. Ltd., 2018 SCC OnLine Bom 3873	25-10-2018	High Court of Bombay	1	Pro-arbitration	Appointment of arbitrator	S.11 and S.12

163	Team Interventure Exports (India) Pvt. Ltd. v. SBI Global Factors Ltd., 2018 SCC OnLine Bom 12060	08-10-2018	High Court of Bombay	2	Pro-arbitration	Writ petition against arbitral order dismissed as there is a right to appeal	S.37
164	Atlanta Limited v. National Highways & Infrastructure Development Corporation Limited, 2018 SCC OnLine Del 9025	01-03-2018	High Court of Delhi	1	Pro-arbitration	Interim order against invoking a bank guarantee refused	S.9
165	IBI Consultancy (India) (P) Ltd. v. DSC Ltd., (2018) 17 SCC 95	16-04-2018	Supreme Court of India	2	Pro-arbitration	Appointment of arbitrator	S.7 and S.11
166	Concept Resources v. Om Associates, 2018 SCC OnLine Bom 12228	05-04-2018	High Court of Bombay	1	Anti-arbitration	No appointment of substitute arbitrator as matter coming under Small Causes Court and not arbitrable	S.11, S.14 and S.15
167	GMR Ambala Chandigarh Expressways Pvt. Ltd. v. National Highway Authority of India, 2018 SCC OnLine Del 7588	09-03-2018	High Court of Delhi	1	Pro-arbitration	Appointment of substitute arbitrator	S.11 and S.15
168	Gamesa Wind Turbines Pvt. Ltd. v. Mytrah Energy (India) Ltd., 2017 SCC OnLine Hyd 466	27-12-2017	High Court of Hyderabad	1	Pro-arbitration	Appointment of substitute arbitrator by respondent as per agreement and not by court	S.11 and S.15

169	Reliance Life Science Pvt. Ltd. v. Klenzaids Contamination Controls (P) Ltd., 2017 SCC OnLine Bom 9999	24-11-2017	High Court of Bombay	1	Anti-arbitration	No appointment as dispute settlement under special statute which overrides arbitration agreement	S.11
170	Hindustan Steel Works Construction Ltd. v. Union of India, 2017 SCC OnLine Kar 3427	02-08-2017	High Court of Karnataka	1	Pro-arbitration	Appointment of arbitrator	S.11
171	Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729	10-10-2017	Supreme Court of India	2	Pro-arbitration	Appointment of arbitrator	S.11 and S.7
172	CSE Infra v. Union of India, 2017 SCC OnLine Del 10812	26-09-2017	High Court of Delhi	1	Pro-arbitration	No fresh appointment of arbitrator, but balance claims referred to existing arbitral tribunal	S.11
173	Lal Mahal Limited v. Abdul Ghaffar, 2017 SCC OnLine Del 7899	16-03-2017	High Court of Delhi	1	Anti-arbitration	No appointment of arbitrator as application not filed, rejection of plaint refused as barred by limitation	S.11 and S.45
174	Voestalpine Schienen GmbH v. Delhi Metro Rail Corpn. Ltd., (2017) 4 SCC 665	10-02-2017	Supreme Court of India	2	Pro-arbitration	Arbitrator not appointed, but party asked to nominate arbitrator from list	S.11

175	Jindal Stainless Limited v. Damco India Private Ltd., 2016 SCC OnLine Del 6368	14-12-2016	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11 and S.12
176	Essar Steel India Ltd. v. New India Assurance Co. Ltd., 2016 SCC OnLine Bom 9472	21-10-2016	High Court of Bombay	1	Anti-arbitration	No appointment of arbitration as arbitration agreement does not exist	S.11
177	Columbia Holdings Private Limited v. SSP Developers Pvt. Ltd., 2016 SCC OnLine Del 4433	11-08-2016	High Court of Delhi	1	Pro-arbitration	Both petitions maintainable and not hit by Partnership Act	S.11 and S.9
178	Roptonal Ltd. v. Anees Bazmee, 2016 SCC OnLine Bom 3555	08-06-2016	High Court of Bombay	1	Pro-arbitration	Arbitrator appointment by designate of Chief Justice recalled as without jurisdiction	S.11
179	Bhambri Devi v. Manju Sharma, 2016 SCC OnLine Raj 4734	13-05-2016	High Court of Rajasthan	1	Pro-arbitration	Appointment of arbitrator and matter referred	S.11
180	Jumbo Bags Ltd. v. New India Assurance Co. Ltd., 2016 SCC OnLine Mad 9141	10-03-2016	High Court of Madras	1	Anti-arbitration	No appointment of arbitrator, but remedy is civil suit as arbitration excluded by clause when claim repudiated in toto	S.11

181	Overseas Mobiles Pvt. Ltd. v. Zte Telecom India Pvt. Ltd., 2016 SCC OnLine Del 1522	08-03-2016	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
182	Jharna Sao v. Sheo Shankar Prasad, 2016 SCC OnLine Jhar 171	08-01-2016	High Court of Jharkhand	1	Anti-arbitration	Arbitration application dismissed as it is without merits	S.11
183	Shiningkart Ecommerce Pvt. Ltd. v. Jiayun Data Limited, 2019 SCC OnLine Del 11464	16-10-2019	High Court of Delhi	1	Pro- Arbitration	Interim relief by arbitrator	S.17 and S.37
184	Cooling Quality Management Ltd. v. Tsur Ben David, 2019 SCC OnLine Bom 9604	10-10-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
185	Hiren Vishanji Shah v. Tarachand Hirji Shah, 2019 SCC OnLine Bom 8158 Arbitration	07-10-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
186	Cooling Quality Management Ltd. v. Tsur Ben David, 2019 SCC OnLine Bom 9603	03-10-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
187	Indian Oil Corporation Limited v. State of W.B., 2019 SCC OnLine Cal 4284	09-09-2019	High Court of Calcutta	1	Anti-arbitration	No interim relief by arbitrator as arbitral tribunal does not exist	S.17 and S.37

188	Secunderabad Golf and Leisure Resorts Private Limited v. State of Telangana, 2019SCC OnLine TS 1294	08-08-2019	High Court of Telengana	2	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
189	Energy Development Company Ltd. v. Uttarakhand Jal Vidhut Nigam Limited, 2019SCC OnLine Utt 806	30-07-2019	High Court of Uttarakhand	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
190	Jatin Keshruwala v. DAG Creative Media Pvt. Ltd., 2019 SCC OnLine Bom 1346	16-07-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
191	Shiningkart Ecommerce Pvt. Ltd. v. Jiayun Data Limited, 2019 SCC OnLine Del 9169	05-07-2019	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
192	Ajay Mehra v. Enercon GmbH, 2019 SCC OnLine Bom 1064	24-06-2019	High Court of Bombay	2	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
193	Infrastructure Development Corporation Ltd. v. C & C Construction Ltd., 2019 SCCOnLine HP 1884	14-06-2019	High Court of Himachal Pradesh	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
194	H.P. State Road v. C&C Construction Ltd., 2019 SCC OnLine HP 3606	14-06-2019	High Court of Himachal Pradesh	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37

195	Shabnam Dhillon v. Zee Entertainment Enterprises Ltd., 2019 SCC OnLine Del 8905	31-05-2019	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
196	Krishna Kumar Balakrishnan v. Saffron Ganesha Entertainment LLP., 2019 SCC OnLine Bom 7145	21-02-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
197	Ecogreen Cleantech Pvt. Ltd. v. IIFL Wealth Finance Ltd., 2019 SCC OnLine Bom 7161	14-02-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
198	L and T Finance Ltd. v. Brij Bhushan Singal, 2019 SCC OnLine Bom 6796	13-02-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
199	HDB Financial Services Limited v. Kings Baker Private Limited, 2019 SCC OnLine Ker 702	13-02-2019	High Court of Kerala	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
200	Raymond Limited v. Akshaypat Singhania, 2019 SCC OnLine Bom 227	08-02-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
201	Gail India Limited v. Triveni Engineering and Industires Limited, 2019 SCC OnLine Del 7082	31-01-2019	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37

202	Niraj G. Kakad v. Tulsibai Sunderdas Jagasia, 2019 SCC OnLine Bom 4717	17-01-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
203	North Bombay Central Co-op. Consumer Wholesaler & Retail Stores Ltd. v. SOS Developers, 2019 SCC OnLine Bom 4728	17-01-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
204	National Highways Authority of India v. VIL Rohtak Jind Highway Private Limited, 2019 SCC OnLine Del 6545	17-01-2019	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
205	Pennar Aluminium Company Limited v. Chairman-cum-Managing Director, 2019 SCC OnLine Ori 370	16-01-2019	High Court of Orissa	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
206	Senthil Construction Corporation Private Ltd. v. Chandra, 2019 SCC OnLine Mad 3068	10-01-2019	High Court of Madras	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
207	Shaila Mathias v. Nitesh Estates Limited, 2019 SCC OnLine Kar 3040	02-01-2019	High Court of Karnataka	1	Anti-arbitration	Interim order by arbitrator to be executed by court and not liable under the Stamp Act	S.17 and S.37

208	Epimoney Private Limited v. Onus Enterprises Pvt. Ltd., 2018 SCC OnLine Bom 20438	12-12-2018	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
209	Prashant Narayanrao Kimmatkar v. Maharashtra Tourism Development Corp., 2018 SCC OnLine Bom 20311	11-12-2018	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
210	Medall Scans and Labs Private Limited v. Green Turtle Health Solutions LLP, 2018 SCC OnLine Mad 11426	10-12-2018	High Court of Madras	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
211	Centre for Digestive and Kidney Diseases (I) Pvt. Ltd. v. Metropolis Healthcare Ltd., 2018 SCC OnLine Bom 20322	04-12-2018	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
212	Ramo Industries Pte. Ltd. v. Punj Lloyd Ltd., 2018 SCC OnLine Del 13188	30-11-2018	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
213	Sakthi Finance Limited v. Shanavas, 2018 SCC OnLine Ker 19451	29-11-2018	High Court of Kerala	1	Pro-arbitration	No prima facie finding on merits of interim order by arbitrator under Section 17(2) of the Act, but only execution	S.17(1) and S. 17(2)

214	Sharcon Infrastructure Pvt. Ltd. v. Amber Credit Company Ltd., 2018 SCC OnLine Bom 18054	16-11-2018	High Court of Bombay	1	Pro-arbitration	Interim order by arbitrator granted with extension of time	S.17 and S.37
215	Swarup Group of Industries v. National Agricultural Cooperative Marketing Federation of India, 2018 SCC OnLine Del 12357	12-11-2018	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
216	Kumar Urban Development Pvt. Ltd. v. Central Railways, 2018 SCC OnLine Bom 20615	23-10-2018	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
217	Balan K.S. v. Yogakshemam Loans Ltd., 2018 SCC OnLine Ker 14807	23-10-2018	High Court of Kerala	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
218	Anzu K.H. v. Shakthi Finance Limited, 2018 SCC OnLine Ker 14274	16-10-2018	High Court of Kerala	2	Pro-arbitration	Interim relief by arbitrator and steps taken for enforcement upheld	S.17 and S.37
219	NGC Network India Pvt. Ltd. v. Orangefish Entertainment Private Limited, 2018 SCC OnLine Del 11350	18-09-2018	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
220	Sundaram Finance Ltd. v. P. Sakthivel, 2018 SCC OnLine Mad 3080	17-09-2018	High Court of Madras	1	Pro-arbitration	Interim relief by arbitrator when enforced by court	S.17

						there should be no interference	
221	Larika Resorts Pvt. Ltd. v. West Bengal Tourism Development Corporation, 2018 SCC OnLine Cal 14046	10-09-2018	High Court of Calcutta	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
222	Indian Oil Corporation Limited v. Shankar Auto Service, 2018 SCC OnLine Cal 13377	03-09-2018	High Court of Calcutta	2	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
223	Prabhat Steel Traders Pvt. Ltd. v. Excel Metal Processors Pvt. Ltd., 2018 SCC OnLine Bom 2347	31-08-2018	High Court of Bombay	1	Anti-arbitration	Interim relief by arbitrator set aside	S.17 and S.37
224	Karamtara Engineering Pvt. Ltd. v. Excel Metal Processors Pvt. Ltd., 2018 SCC OnLine Bom 2716	31-08-2018	High Court of Bombay	1	Anti-arbitration	Interim relief by arbitrator set aside and mandatory injunction granted on notice of motion by applicant in suit	S.17
225	Reliance Estate Developers v. Triveni Co-operative Housing Society Ltd., 2018 SCC OnLine Bom 2715	30-08-2018	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37

226	Reliance Estate Developers v. Triveni Co-operative Housing Society Ltd., 2018 SCC OnLine Bom 2715	30-08-2018	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
227	Tigaksha Metallics Private Limited v. Supermax Personal Care Private Limited, 2018 SCC OnLine Bom 10403	21-08-2018	High Court of Bombay	2	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
228	Matrix Partners India Investment Holdings, LLC v. Shailendra Bhadauria, 2018 SCC OnLine Bom 12630	20-08-2018	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
229	NHAI v. Gwalior-Jhansi Expressway Ltd., (2018) 8 SCC 243	13-07-2018	Supreme Court of India	3	Anti-arbitration	Interim order by arbitrator set aside as against the fundamental policy of Indian law	S.17 and S.37
230	Ashish Mohan v. Anand Divine Developers Pvt. Ltd., 2018 SCC OnLine Del 10079	09-07-2018	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37
231	Pamba Electronic Systems Private Limited v. Varghese P.G., 2018 SCC OnLine Ker 2269	28-06-2018	High Court of Kerala	2	Pro-arbitration	Interim relief by arbitrator	S.17 and S.37

232	Board of Trustee of Deendayal Port Trust v. Jre Infra Private Limited, 2018 SCC OnLine Guj 1792	12-06-2018	High Court of Gujarat	2	Anti-arbitration	Interim relief by arbitrator set aside as violative of principles of natural justice	S.17
233	Graphisads Pvt. Ltd. v. South Delhi Municipal Corporation, 2018 SCC OnLine Del 9389	01-06-2018	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator upheld in writ petitions and contempt petitions dismissed	S.17
234	P.C. Babu v. Sandeep B., 2018 SCC OnLine Kar 2151	19-04-2018	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17
235	SBI v. Ericsson (India) (P) Ltd., (2018) 16 SCC 617	05-04-2018	Supreme Court of India	2	Anti-arbitration	Interim order by arbitrator set aside as the statutory rights of the third party secured creditors against the assets of debtors has to be decided by court	S.17 and S.37
236	Ascot Hotels and Resorts Pvt. Ltd. v. Connaught Plaza Restaurants Pvt. Ltd., 2018 SCC OnLine Del 7940	20-03-2018	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator	S.17
237	Lifestyle Equities CV (LE CV) v. Qdseatoman Designs Pvt. Ltd. (QSD), 2018 SCC OnLine SC 638	13-02-2018	Supreme Court of India	2	Pro-arbitration	Arbitrator appointed in Arbitration Petition and all interim relief by arbitrator	S.17

238	National Laminate Corporation v. Cosmos Co-operative Bank Limited, 2018 SCC OnLine Bom 4732	19-01-2018	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17
239	TDI International India (P) Ltd. v. Regional Executive Director, 2017 SCC OnLine Mad 21611	13-12-2017	High Court of Madras	2	Pro-arbitration	Interim relief by arbitrator	S.17
240	General Manager v. Surya Alloy Industries Ltd., 2017 SCC OnLine Cal 19768	12-12-2017	High Court of Calcutta	2	Pro-arbitration	Interim relief by arbitrator	S.17
241	NGC Network (India) Pvt. Ltd. v. Orangefish Entertainment Pvt. Ltd., 2017 SCC OnLine P&H 3041	24-11-2017	High Court of Punjab and Haryana	1	Anti-Arbitration	Interim order by arbitrator modified	S.17 and S.37
242	Md. Sakir v. Union of India, 2017 SCC OnLine Cal 17209	09-11-2017	High Court of Calcutta	1	Anti-Arbitration	Interim order by arbitrator modified and method devised for paying arrears with instalments	S.17
243	Naveen Kumar v. DDA, 2017 SCC OnLine Del 11687 [09-11-2017] J 1-Pro-Arbitration	09-11-2017	High Court of Delhi	1	Pro-Arbitration	Interim relief by arbitrator	S.17

244	Raja Ram Mohan Roy Education Foundation Society v. State of Haryana, 2017 SCC OnLine P&H 4756	11-10-2017	High Court of Punjab and Haryana	2	Pro-Arbitration	Interim relief by arbitrator	S.17
245	E. Sugumaran v. M. Malarmaran, 2017 SCC OnLine Mad 22399	01-09-2017	High Court of Madras	1	Anti-Arbitration	Appeal dismissed as dispute beyond the scope of the arbitration proceedings.	S.9, S.17 and S.37
246	Royal Mindz Infra Pvt. Ltd. v. Coastal Ceramics & Clay Works Pvt. Ltd., 2017 SCC OnLine Hyd 322	27-07-2017	High Court of Hyderabad	2	Pro-Arbitration	Interim relief by arbitrator	S.17
247	V.K. Sood Engineers and Contractors v. Northern Railways, 2017 SCC OnLine Del 9211	17-07-2017	High Court of Delhi	1	Pro-Arbitration	Interim relief by arbitrator	S.17
248	Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 SCC 119	06-07-2017	High Court of Delhi	2	Pro-Arbitration	Interim relief by arbitrator to be enforced like court order and remanded back to decide on contempt on facts	S.17 and S.27
249	Pratibha Industries Ltd. v. Municipal Corpn. of Greater Mumbai, 2017 SCC OnLine Bom 9944	27-06-2017	High Court of Bombay	1	Pro-Arbitration	Interim relief by arbitrator	S.17

250	Chaudhary Avadhesh Kumar v. Volleyball Federation of India, 2017 SCC OnLine Mad 19117	06-04-2017	High Court of Madras	1	Pro-Arbitration	Interim relief by court in appeal	S.5 and S.9
251	Supreme Infrastructure India Ltd. v. Central Public Works Department, 2017 SCC OnLine Del 8228	28-04-2017	High Court of Delhi	1	Pro-Arbitration	Interim relief by arbitrator	S.5 and S.9
252	Chaudhary Avadhesh Kumar v. Volleyball Federation of India, 2017 SCC OnLine Mad 19117	06-04-2017	High Court of Madras	1	Pro-Arbitration	Interim relief by arbitrator upheld	S.17 and S.37
253	Vendhar Movies v. S. Mukunchand Bothra, 2017 SCC OnLine Mad 17059	24-03-2017	High Court of Madras	1	Pro-Arbitration	Interim order by arbitrator set aside as barred by the principles of res judicata and matter to be decided by arbitrator	S.17 and S.37
254	Shakti International (P) Ltd. v. Excel Metal Processors (P) Ltd., 2017 SCC OnLine Bom 321	16-03-2017	High Court of Bombay	1	Anti-Arbitration	Interim order by arbitrator for execution of its orders	S.17
255	Vendhar Movies v. S. Mukunchand Bothra, 2017 SCC OnLine Mad 17059	24-03-2017	High Court of Madras	1	Pro-Arbitration	Interim order by arbitrator set aside and matter remanded back to arbitrator to be decided	S.17 and S.37

256	K. Sudha Sole Proprietrix v. Hindustan Petroleum Corporation Ltd., 2016 SCC OnLine Mad 32044	12-12-2016	High Court of Madras	2	Pro-Arbitration	Interim relief by arbitrator	S.17
257	Samir Narain Bhojwani v. Bombay Slum Redevelopment Corporation Ltd., 2016 SCC OnLine Bom 15502	21-11-2016	High Court of Bombay	1	Pro-Arbitration	Interim relief by arbitrator	S.17
258	Mayaveeran v. Mahindra & Mahindra Financial Services Ltd., 2016 SCC OnLine Ker 37256	15-11-2016	High Court of Kerala	1	Anti-Arbitration	Interim relief by arbitrator set aside as seat of arbitration is out of Kerala	S.17
259	Shyam Kumar v. State of Kerala, 2016 SCC OnLine Ker 36950	14-11-2016	High Court of Kerala	1	Pro-Arbitration	Interim relief by arbitrator	S.17
260	Sanjay Subrao Nikam Sanjay Nivas v. HDFC Bank Limited, 2016 SCC OnLine Ker 36703	11-11-2016	High Court of Kerala	1	Pro-Arbitration	Interim relief by arbitrator	S.17
261	Sakthi Finance Limited v. Ansu K.H., 2016 SCC OnLine Ker 34702	24-09-2016	High Court of Kerala	1	Pro-Arbitration	Interim relief by arbitrator to be enforced and A.227 petition dismissed	S.17
262	Arohi Infrastructure Private Limited v. Tata Capital Financial Services Limited, 2016 SCC OnLine Bom 11106	02-12-2015	High Court of Bombay	2	Pro-Arbitration	No appointment of arbitrator as sole arbitrator appointed under agreement exists	S.11

263	Lanco Infratech Ltd. v. Hindustan Construction Company Ltd., 2016 SCC OnLine Del 5365	23-09-2016	High Court of Delhi	1	Pro-Arbitration	Interim relief by arbitrator set aside in appeal and arbitrator to decide dispute finally	S.17 and S.37
264	United Media Works (P) Ltd. v. Spartan Advertising & Films India (P) Ltd., 2016 SCC OnLine Bom 6455	15-06-2016	High Court of Bombay	1	Pro-Arbitration	Refusal of interim relief by arbitrator not set aside in appeal, but arbitrator to decide without delay	S.17 and S.37
265	Svogl Oil Gas & Energy Ltd. v. Indian Oil Corporation Ltd., 2016 SCC OnLine Del 3296	17-05-2016	High Court of Delhi	1	Pro-Arbitration	Writ petition dismissed and relief against blacklisting to be from arbitrator or court under Arbitration Act	S.9 and S.17
266	Kumar Urban Development Pvt. Ltd. v. General Manager, 2016 SCC OnLine Bom 8356	24-02-2016	High Court of Bombay	1	Anti-Arbitration	Interim relief granted by court and the rest before arbitrator	S.17
267	Gujarat Chemical Port Terminal Co. Ltd. v. Indian Oil Corpn. of India, 2016 SCC OnLine Bom 2605	06-05-2016	High Court of Bombay	1	Anti-Arbitration	Interim relief by arbitrator set aside in appeal on ground of patent illegality	S.17 and S.37
268	Sealord Diving & Salvage Pvt. Ltd. v. Arihant Ship Breakers, 2016 SCC OnLine Bom 8479	05-05-2016	High Court of Bombay	1	Pro-Arbitration	Interim relief by arbitrator	S.17

269	Global Veetra Helicorp Ltd. v. Airports Authority of India, 2016 SCC OnLine Bom 4805	29-04-2016	High Court of Bombay	1	Pro-Arbitration	Interim relief by arbitrator	S.17
270	Jai Shri. Rice Mills v. Punjab State Civil Supplies Corporation Limited, 2016 SCC OnLine P&H 2275	26-04-2016	High Court of Punjab and Haryana	2	Pro-Arbitration	Interim relief by arbitrator	S.17
271	Universals Enterprises v. Deluxe Laboratories Pvt. Ltd., 2016 SCC OnLine Bom 3963	02-04-2016	High Court of Bombay	2	Pro-Arbitration	Appeal allowed and interim relief to be granted by court after hearing both	S.9 and S.37
272	Srei Equipment Finance Limited (Sefl) v. Ray Infra Services Private Limited, 2016 SCC OnLine Cal 6765	29-05-2016	High Court of Bombay	2	Anti-Arbitration	Interim relief granted by court as same by arbitrator not efficacious	S.17
273	Wind World (India) Ltd. v. Enercon GmbH, 2016 SCC OnLine Bom 1404	29-03-2016	High Court of Bombay	1	Anti-Arbitration	Interim order of arbitrator set aside in appeal	S.17 and S.37
274	Pradeep K.N. v. Station House officer, 2016 SCC OnLine Ker 8995	16-03-2016	High Court of Kerala	1	Pro-Arbitration	Interim relief by arbitrator	S.17
275	Nirmal Infrastructure (P) Ltd. v. Aanant Developers (P) Ltd., 2016 SCC OnLine Bom 4080	03-03-2016	High Court of Bombay	1	Pro-Arbitration	Interim relief by arbitrator	S.17

276	Tufan Chatterjee v. Rangan Dhar, 2016 SCC OnLine Cal 483	02-03-2016	High Court of Calcutta	2	Pro-Arbitration	Interim relief by arbitrator	S.17
277	Kumar Urban Development (P) Ltd. v. General Manager, 2016 SCC OnLine Bom 1644	24-02-2016	High Court of Bombay	1	Pro-Arbitration	Interim relief by arbitrator	S.17
278	Ghanshyambhai Bhikhabhai Kamani v. Sureshbhai Savjibhai Patel, 2016 SCC OnLine Guj 5300	15-02-2016	High Court of Gujarat	1	Pro-Arbitration	Interim relief by arbitrator	S.17
279	Satish Jamnadas Dattani v. Samir Bhojwani, 2015 SCC OnLine Bom 8160	17-11-2015	High Court of Bombay	1	Pro-Arbitration	Interim relief by arbitrator	S.17
280	Gulmali Amrullah Babul v. Shabbir Salebhai Mahimwala, 2015 SCC OnLine Bom 5624	29-10-2015	High Court of Bombay	1	Pro-Arbitration	Interim relief by arbitrator	S.17
281	Airports Authority of India v. TDI International India Ltd., 2022 SCC OnLine Del 2286	01-08-2022	High Court of Delhi	1	Pro-arbitration	Interim order by tribunal upheld	S.17 and S.37
282	Suraj Marbles & Granite v. Bundelkhand Sahakari Dugdh Sangh, 2022 SCC OnLine MP 1597	09-07-2022	High Court of Madhya Pradesh	1	Pro-arbitration	Interim application to be decided by tribunal without delay in A.227 petition	S.17

283	Clarist Convent Educational Society v. Union of India, 2022 SCC OnLine Ker 3310	27-06-2022	High Court of Kerala	1	Pro-arbitration	Interim relief to be sought from arbitrator if aggrieved of the order of Land Acquisition Authority	S.17
284	Pink City Expressway (P) Ltd. v. National Highway Authority of India, 2022 SCC OnLine Del 1714	03-06-2022	High Court of Delhi	1	Pro-arbitration	No interim relief by court and the same can be sought in arbitration	S.9
285	Splendor Buildwell (P) Ltd. v. Rajesh Kumar Pasricha, 2022 SCC OnLine Del 1138	19-04-2022	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator modified by court and matter to be finally decided by arbitrator	S.17 and S.9
286	Evergreen Land Mark (P) Ltd. v. John Tinson & Co. (P) Ltd., (2022) 7 SCC 757	19-04-2022	Supreme Court of India	2	Pro-arbitration	Interim relief by arbitrator modified by Supreme Court and matter to be finally decided by arbitrator	S.17 and S.37
287	Mizpah Publishing Services (P) Ltd. v. Fullerton India Credit Co. Ltd., 2022 SCC OnLine Mad 2368	30-03-2022	High Court of Madras	1	Pro-arbitration	Interim relief by arbitrator upheld as appeal dismissed as withdrawn	S.17 and S.37
288	Indiabulls Housing Finance Ltd. v. GNEX Projects (P) Ltd., 2022 SCC OnLine Del 753	14-03-2022	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator upheld in appeal	S.17 and S.37

289	Kishorekumar M. v. Shriram Transport Finance Co. Ltd., 2022 SCC OnLine Ker 999	15-02-2022	High Court of Kerala	1	Pro-arbitration	Interim relief by arbitrator enforceable by court	S.17
290	Edelweiss Asset Reconstruction Co. Ltd. v. GTL Infrastructure Ltd., 2022 SCC OnLine Del 346	04-02-2022	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator upheld and to be enforced	S.17 and S.37
291	Future Coupons (P) Ltd. v. Amazon.com NV Investment Holdings LLC, 2022 SCC OnLine SC 126	01-02-2022	Supreme Court of India	3	Pro-arbitration	Interim order by court enforcing Emergency Arbitrator Award set aside and issue of effect of such award and jurisdiction of arbitrator remitted back	S.17 and S.37
292	HDFC Bank Ltd. v. Dinesh Shanmathuran, 2022 SCC OnLine Ker 602	01-02-2022	High Court of Kerala	1	Pro-arbitration	Interim order by arbitrator to be enforced	S.17
293	Cholamandalam Investment & Finance Co. Ltd. v. Suryaprakaas Foundry, 2022 SCC OnLine Mad 289	19-01-2022	High Court of Madras	1	Pro-arbitration	Arbitrator appointed and interim relief from arbitrator	S.11 and S.17
294	Dinesh Gupta v. Bechu Singh, (2021) 3 HCC (Del) 763	24-12-2021	High Court of Delhi	1	Pro-arbitration	One interim order by arbitrator upheld and another modified	S.17 and S.37

295	Vijay Shukla v. Career Launcher Infrastructure (P) Ltd., (2021) 4 HCC (Del) 72	03-12-2021	High Court of Delhi	1	Anti-arbitration	Interim order by arbitrator set aside	S.17 and S.37
296	World Window Infrastructure (P) Ltd. v. Central Warehousing Corpn., (2021) 3 HCC (Del) 731	24-11-2021	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator upheld in appeal	S.17 and S.37
297	Girdhar Impex Limited v. A and A Automobiles (P) Ltd., 2021 SCC OnLine Del 4948	11-11-2021	High Court of Delhi	1	Pro-arbitration	Appointment of substitute arbitrator by court	S.15 and S.11
298	DM South India Hospitality (P) Ltd. v. L and T Finance Limited, 2021 SCC OnLine Del 4940	10-11-2021	High Court of Delhi	1	Anti-arbitration	Interim relief by arbitrator set aside	S.17 and S.37
299	Sarens Heavy Lift India (P) Ltd. v. Gammon-Construtora Cidade-Tensacciai JV, 2021 SCC OnLine Del 4859	27-10-2021	High Court of Delhi	1	Pro-arbitration	Interim relief claimed from court to be granted by arbitrator	S.17
300	Simplex Infrastructures Limited v. Director General Married Accommodation Project, 2021 SCC OnLine Del 4839	25-10-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11

301	Sanjay Arora v. Rajan Chadha, (2021) 3 HCC (Del) 654	05-10-2021	High Court of Delhi	1	Pro-arbitration	Interim order of arbitrator upheld	S.17 and S.37
302	Bholu Ram Jat v. Daimler Financial Services India (P) Ltd., 2021 SCC OnLine Mad 9902	03-09-2021	High Court of Madras	1	Pro-arbitration	Interim order of arbitrator upheld	S.17 and S.37
303	Mcnally Bharat Engineering Co. Ltd. v. Tata Capital Financial Services Ltd., 2021 SCC OnLine Bom 10315	02-09-2021	High Court of Bombay	1	Pro-arbitration	Interim relief by arbitrator	S.17
304	BHEL v. ANCL & Co. India Pvt. Ltd., 2021 SCC OnLine Mad 4906 [27-08-2021] J 1	27-08-2021	High Court of Madras	1	Pro-arbitration	Appeal against procedural order by arbitrator dismissed directing party to claim it as interim relief from arbitrator	S.17
305	Sital Dass Jewellers v. Asian Hotels (North) Ltd., 2021 SCC OnLine Del 3914	06-08-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
306	Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209	06-08-2021	Supreme Court of India	2	Pro-arbitration	Interim orders of Emergency Arbitrator in Singapore enforceable in Indian courts	S.17 and S.37

307	Delhi Buildtech Pvt. Ltd. v. Satya Developers Pvt. Ltd., 2021 SCC OnLine Del 3927	05-08-2021	High Court of Delhi	1	Anti-arbitration	Interim relief by arbitrator set aside	S.17 and S.37
308	National Highway Authority of India v. Jabeena Beevi, 2021 SCC OnLine Ker 3460	03-08-2021	High Court of Kerala	2	Pro-arbitration	Interim order by arbitrator upheld and writ petition dismissed	S.17
309	Asian Hotels (North) Ltd. v. Shivam Mediratta, 2021 SCC OnLine Del 3802	23-07-2021	High Court of Delhi	1	Pro-arbitration	The matter before court referred to arbitrator as interim relief	S.17
310	Asian Hotels (North) Ltd. v. Rajwant Singh Bawa, 2021 SCC OnLine Del 2400	19-05-2021	High Court of Delhi	1	Pro-arbitration	Interim relief given by arbitrator modified with consent of parties	S.9 and S.17
311	Supertech Limited v. B.E. Billimoria and Co. Ltd., (2021) 2 HCC (Del) 231	23-04-2021	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator upheld	S.17 and S.37
312	Mithilesh Singh v. Hindustan Petroleum Corporation Limited, 2021 SCC OnLine Pat 701	26-03-2021	High Court of Patna	1	Pro-arbitration	No interim relief by court as the same is possible in pending arbitral proceedings	S.17
313	Randhawa Construction Private Limited v. HCBS Promoters and Developers Private Limited, 2021 SCC OnLine Del 2721	25-03-2021	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator and present dispute referred as an interim application	S.11 and S.17

314	Amazon COM NV Investment Holdings LLC v. Future Coupons (P) Ltd., 2021 SCC OnLine Del 1279	18-03-2021	High Court of Delhi	1	Pro-arbitration	Interim award of Emergency Arbitration held as order under section 17(1)	S.17 and S.37
315	Linkquest Quippo Infra Limited v. A2Z Infra Engineering Limited, 2021 SCC OnLine Del 2855	09-03-2021	High Court of Delhi	1	Pro-arbitration	Appointment of presiding arbitrator and present dispute referred as an interim application	S.17
316	Cinepolis India Pvt. Ltd. v. Sarita Multiplexs Pvt. Ltd., 2021 SCC OnLine Del 3125	09-09-2021	High Court of Delhi	1	Pro-arbitration	Interim order by arbitrator upheld	S.17 and S.37
317	Kuppusamy Muniaiah v. Kotak Mahindra Bank Ltd., 2021 SCC OnLine Mad 9230	19-01-2021	High Court of Madras	1	Anti-arbitration	Interim order by arbitrator set aside in appeal	S.17 and S.37
318	N.K. Shah Infra Projects v. Navi Mumbai Municipal Corporation, 2021 SCC OnLine Bom 1109	18-01-2021	High Court of Bombay	2	Pro-arbitration	Arbitrator appointed with consent of parties and claim of writ petition referred to arbitrator as interim application	S.17
319	Dale Robert Brown v. Vedanta Ltd., (2021) 1 HCC (Del) 307	18-01-2021	High Court of Delhi	1	Pro-arbitration	No interim relief by court, but to claim the same from arbitrator	S.9

320	Airports Authority of India v. Mumbai International Airport Limited, 2021 SCC OnLine Del 3485	14-01-2021	High Court of Delhi	2	Pro-arbitration	Order of Single Judge modified subject to interim order by arbitrator	S.17 and S.37
321	Sterling Buildcon Pvt. Ltd. v. Balan and Chheda Developers Pvt. Ltd., 2020 SCC OnLine Bom 10655	11-12-2020	High Court of Bombay	1	Pro-arbitration	Interim application before court will be disposed of as that before arbitrator	S.9 and S.17
322	Delhi International Airport Limited v. Airport Authority of India, 2021 SCC OnLine Del 3415	27-11-2020	High Court of Delhi	1	Pro-arbitration	Pre-arbitral interim relief by court directing appointment of arbitrator and claiming relief from arbitrator under section 17	S.9
323	Shahul Hameed v. Shriram Transport Finance Co. Limited, 2020 SCC OnLine Ker 24024	20-11-2020	High Court of Kerala	1	Pro-arbitration	Interim relief by arbitrator upheld and A.226/227 petition dismissed	S.17 and S.37
324	Jaleel M.K. v. Fortune Integrated Asset Finance Limited, 2020 SCC OnLine Ker 23004	10-11-2020	High Court of Kerala	1	Pro-arbitration	Interim relief by arbitrator enforceable by court	S.17
325	China Datang Technologies & Engineering Co. Ltd. v. NLC India Limited, 2020 SCC OnLine Mad 26548	12-10-2020	High Court of Madras	1	Pro-arbitration	Interim relief by court, arbitrator appointed and interim order till arbitral award	S.9

326	Flywheel Logistics Solutions Pvt. Ltd. v. Hinduja Leyland Finance Ltd., 2020 SCC OnLine Mad 20614	17-09-2020	High Court of Madras	1	Anti-arbitration	Interim relief by arbitrator set aside in appeal as not following basic well established principles of law	S.17 and S.37
327	Dinesh Gupta v. Anand Gupta, 2020 SCC OnLine Del 2099	17-09-2020	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator upheld in appeal	S.17 and S.37
328	Career Launcher Infrastructure (P) Ltd. v. Nalanda Foundation, 2021 SCC OnLine Del 5638	15-02-2021	High Court of Delhi	1	Pro-arbitration	Interim relief by not interfered with, directing to start arbitration without delay	S.9
329	Thenandal Films v. Tan Sri Dato Sri Ramasamy, 2020 SCC OnLine Mad 14804	19-08-2020	High Court of Madras	1	Pro-arbitration	Substitute arbitrator appointed as earlier one was unilaterally appointed, interim relief given by court, can approach arbitrator for further orders	S.17 and S.37
330	Md. Rashid v. Md. Arif, 2020 SCC OnLine Cal 2382	07-07-2020	High Court of Calcutta	1	Pro-arbitration	No interim relief by court as relief from arbitrator under section 17 of the Act exists	S.9

331	Jinofer Kawasji Bhujwala v. State of Gujarat, (2020) 6 SCC 298	19-06-2020	Supreme Court of India	3	Pro-arbitration	Interim order by arbitrator sustained while granting bail in criminal appeal	S.17
332	Ravindra Kumar Gupta v. Union of India, 2020 SCC OnLine Utt 266	09-06-2020	High Court of Uttarakhand	1	Pro-arbitration	Interim order by arbitrator to be enforced under the Act and not under A.226	S.17
333	L&T Finance Ltd. v. Manoj Pathak, 2020 SCC OnLine Bom 177	31-01-2020	High Court of Bombay	1	Anti-arbitration	No interim order by court due to lack of jurisdiction	S.9
334	Paharpur Cooling Towers Ltd. v. Elena Power & Infrastruucture Ltd., 2020 SCC OnLine Del 2285	31-01-2020	High Court of Delhi	1	Pro-arbitration	Arbitrator appointed, interim application before court to be considered by arbitrator	S.9
335	Valliyara Trading and Services (Pvt.) Ltd. v. Kotak Mahindra Bank Ltd., 2020 SCC OnLine Ker 968	24-01-2020	High Court of Kerala	1	Pro-arbitration	Interim order of arbitrator upheld	S.17 and S.37
336	Simplex Projects Ltd. v. State of Manipur, 2020 SCC OnLine Mani 66	23-01-2020	High Court of Manipur	1	Anti-arbitration	Interim application before court not maintainable	S.9
337	Sona Corporation India Pvt. Ltd. v. Ingram Micro India Pvt. Ltd., 2020 SCC OnLine Del 300	20-01-2020	High Court of Delhi	1	Pro-arbitration	Interim relief by arbitrator upheld in appeal	S.17 and S.37

338	C. Shamsuddin v. Now Realty Ventures LLP, 2020 SCC OnLine Bom 100	16-01-2020	High Court of Delhi	1	Pro-arbitration	Arbitrator appointed and all matters including interim applications referred	S.11, S.16 and S.17
339	Get Together Co-operative Housing Society Ltd. v. Goel Ganga India Pvt. Ltd., 2020 SCC OnLine Bom 499 [14-01-2020] J 1	14-01-2020	High Court of Bombay	1	Pro-arbitration	Arbitrator appointed by nomination, interim application before court to be decided by arbitrator	S.9, S.16 and S.17
340	JS Taraporewala Construction Company v. Empire Industries Limited, 2020 SCC OnLine Bom 2492	08-01-2020	High Court of Bombay	1	Pro-arbitration	Interim relief by court with respect to one prayer and the rest before arbitrator	S.9 and S.17
341	State of Gujarat v. Amber Builders, (2020) 2 SCC 540	08-01-2020	Supreme Court of India	2	Pro-arbitration	Interim relief under section 17 can be claimed from statutory arbitral tribunal and not court	S.17 and S.9
342	L&T Finance Limited v. Manoj Pathak, 2019 SCC OnLine Bom 12534	02-12-2019	High Court of Bombay	1	Pro-arbitration	Interim relief by court	S.9
343	Roshan John Chirayath v. Praveen Kumar Pugalia, 2019 SCC OnLine Cal 8528	20-11-2019	High Court of Calcutta	2	Pro-arbitration	Arbitrator appointed by consent of parties and interim relief by arbitrator	S.17

344	ICOMM Tele Ltd. v. Punjab State Water Supply and Sewerage Board, (2019) 4 SCC 401	11-03-2019	Supreme Court of India	2	Pro-arbitration	A clause with a pre-condition of pre-deposit of 10% to invoke arbitration held arbitrary and set aside	S.5
345	IBI Consultancy (India) (P) Ltd. v. DSC Ltd., (2018) 17 SCC 95	16-04-2018	Supreme Court of India	2	Pro-arbitration	Appointment of arbitrator	S.11 and S.12
346	National Aluminum Co. Ltd. v. Subhash Infraengineers Pvt. Ltd., 2016 SCC OnLine P&H 19317	22-10-2016	High Court of Punjab and Haryana	1	Anti-arbitration	No arbitration possible when both arbitration agreement and arbitrable dispute are absent	S.7 and S.16
347	Nayagarh Coop. Sugar Industries Ltd. v. Nayagarh Sugar Complex Ltd., 2022 SCC OnLine Ori 2693	25-08-2022	High Court of Orissa	1	Pro-arbitration	Reference to arbitration already done held valid	S.8
348	Satyendra Nath Ray v. VCK Share & Stock Broking Services Limited, 2021 SCC OnLine Cal 2096	19-07-2021	High Court of Calcutta	1	Pro-arbitration	Interim order by tribunal modified in A.227 petition, but finality by arbitrator	S.17
349	Chintels (India) Ltd. v. Bhayana Builders (P) Ltd., (2021) 4 SCC 602	11-02-2021	Supreme Court of India	3	Pro-arbitration	Scope of S.37 appeals cannot be limited by courts as minimum judicial intervention is intended	S.5 and S.37

350	Senbo Engineering Limited v. Hooghly River Bridge Commissioners, 2020 SCC OnLine Cal 2424	02-12-2020	High Court of Calcutta	1	Pro-arbitration	Extension of time for reference to arbitration given in appeal	S.5 and S.37
351	Nawal Kishore Dangayach v. Govind Kripa Build Heights LLP, 2020 SCC OnLine Raj 1276	31-08-2020	High Court of Rajasthan	1	Anti- arbitration	Matter remanded to trial court to decide on issue of temporary injunction, no reference application filed	S.5
352	Gourmet Renaissance Pvt. Ltd. v. Nashik Merchants Co-op Bank Ltd., 2019 SCC OnLine Bom 5405	18-02-2019	High Court of Bombay	2	Pro-arbitration	Order by arbitrator upheld and writ petition dismissed	S.5
353	T. Jeganatha v. Madras High Court Arbitration Centre, 2018 SCC OnLine Mad 9692	28-11-2018	High Court of Madras	1	Pro-arbitration	Arbitral order upheld and writ petition dismissed	S.5
354	Reliance Communications Limited v. State of Bihar, 2018 SCC OnLine Pat 6657	19-06-2018	High Court of Patna	1	Pro-arbitration	Decision of council under special statute set aside as without jurisdiction and matter remitted to the council for arbitration	S.5
355	Concept Resources v. Om Associates, 2018 SCC OnLine Bom 12228	05-04-2018	High Court of Bombay	1	Anti-arbitration	No arbitrator appointed as matter to be decided by Small Causes Court	S.11

356	Biswanath Ghosh v. Hijal Kanya Co-Operative Housing Society Ltd., 2017 SCC OnLine Cal 8426	23-06-2017	High Court of Calcutta	2	Pro-arbitration	Interim relief by court	S.5, S.8 and S.9
357	Janardan Nirman Pvt. Ltd. v. Quippo Construction Equipment Ltd., 2017 SCC OnLine Cal 3815	28-03-2017	High Court of Calcutta	1	Pro-arbitration	Reference to arbitration upheld, jurisdiction can be raised before arbitrator and later in court	S.5, S.8 and S.16
358	Express Infrastructure Private Limited v. B.L. Kashyap and Sons Limited, 2017 SCC OnLine Mad 644	02-03-2017	High Court of Madras	1	Pro-arbitration	Arbitral order upheld and A.227 petition dismissed	S.5
359	Krishan Radhu v. Emmar MGF Construction Pvt. Ltd., 2016 SCC OnLine Del 6499	21-12-2016	High Court of Delhi	1	Pro-arbitration	Reference of matter to arbitrator appointed under agreement	S.8
360	Mohd. Hussain Khan v. Mohd. Imtiyaz Ahmed, 2016 SCC OnLine Hyd 181	18-07-2016	High Court of Hyderabad	2	Pro-arbitration	Arbitral order upheld and A.227 petition dismissed	S.5
361	Gateway Transport Com. Pvt. Ltd. v. Indian Oil Corporation Ltd., 2016 SCC OnLine Cal 3967	15-07-2016	High Court of Calcutta	1	Pro-arbitration	Writ petition dismissed as matter to be arbitrated under arbitration agreement	S.5
362	Punj. Lloyd Ltd. v. ONGC, 2016 SCC OnLine Bom 3749	16-10-2016	High Court of Bombay	1	Pro-arbitration	Interim petition before court dismissed, but bank guarantees enforced subject to final outcome of arbitration	S.9

363	Today Hotels (New Delhi) Pvt. Ltd. v. Intecture India Designs Pvt. Ltd., 2016 SCC OnLine Del 211	13-01-2016	High Court of Delhi	2	Anti-arbitration	Reference to arbitration rejected and appeal dismissed as only orders of court are appealable and not of judicial authority	S.8 and S.37
364	United Spirits Limited v. Uttarakhand Agricultural Produce Marketing Board, 2015 SCC OnLine Utt 2109	23-12-2015	High Court of Uttarakhand	1	Anti-arbitration	No reference to arbitration as matter serious and beyond arbitration clause, writ petitions allowed	S.5 and S.8
365	Yashovardhan Sinha Huf v. Satyatej Vyapaar (P) Ltd., 2022 SCC OnLine Cal 2386	24-08-2022	High Court of Calcutta	1	Pro-arbitration	Mandate of arbitrator terminated and another appointed	S.14 and S.16
366	Siddhast Intellectual Property Innovations (P) Ltd. v. Controller General of Patents, Designs & Trademarks, 2022 SCC OnLine Del 2556	22-08-2022	High Court of Delhi	1	Pro-arbitration	Arbitral order under S.16 cannot be raised in A.227 petition	S.16
367	Eastern Coalfields Ltd. v. RREPL-KIPL (JV), 2022 SCC OnLine Cal 2350	18-08-2022	High Court of Calcutta	1	Anti-arbitration	No arbitrator appointed as arbitration agreement does not exist	S.11

368	Lindsay International (P) Ltd. v. IFGL Refractories Ltd., 2022 SCC OnLine Cal 1880	08-07-2022	High Court of Calcutta	1	Pro-arbitration	Arbitral order under S.16 upheld	S.16
369	National Research Development Corpn. v. Mak Controls & Systems (P) Ltd., 2022 SCC OnLine Del 2018	05-07-2022	High Court of Delhi	1	Pro-arbitration	Appointment of arbitrator	S.11
370	Mujeeb Rahman v. Haseena V., 2022 SCC OnLine Ker 3329	28-06-2022	High Court of Kerala	1	Pro-arbitration	Arbitral order under S.16 upheld, A.227 petition dismissed	S.16
371	ONGC Ltd. v. Discovery Enterprises (P) Ltd., 2022 SCC OnLine SC 522	27-04-2022	Supreme Court of India	3	Pro-arbitration	Interim order by arbitrator set aside, as award given, new arbitrators appointed to decide on interim reliefs	S.16 and S.37
372	Union of India v. Krishnapatnam Railway Co. Ltd., 2022 SCC OnLine TS 447	22-02-2022	High Court of Telengana	2	Pro-arbitration	Arbitral order upheld, writ petition dismissed	S.16
373	Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd., 2022 SCC OnLine Del 566	22-02-2022	High Court of Delhi	1	Pro-arbitration	Arbitral order upheld, writ petition dismissed	S.16

374	Madras Sporting Youngsters Football Club v. Tamil Nadu Football Assn., 2022 SCC OnLine Mad 460	31-01-2022	High Court of Madras	1	Anti-arbitration	No appointment of arbitrator as matter of election under bye-laws is not arbitrable (right in rem)	S.11 and S.16
375	India Pistons Limited v. Ganapathi Chandrasekar, 2021 SCC OnLine Mad 5729 [10-11-2021] J 1	10-11-2021	High Court of Madras	1	Pro-arbitration	Appointment of arbitrator by court	S.11
376	S. Sivagurunathan v. R. Mennan, 2021 SCC OnLine Mad 5501	12-10-2021	High Court of Madras	1	Anti-arbitration	Termination of arbitration by arbitrator due to lack of jurisdiction by not binding non-signatory upheld in appeal	S.16
377	One Point One Solutions Ltd. v. Reliance Nippon Life Insurance Co. Ltd., 2021 SCC OnLine Bom 7861	28-09-2021	High Court of Bombay	1	Pro-arbitration	Arbitrator appointed and all claims before arbitrator	S.11 and S.16
378	Kalpesh G. Oswal v. Sunil S. Ranka, 2021 SCC OnLine Bom 9842	15-09-2021	High Court of Bombay	1	Pro-arbitration	Arbitrator appointed and all claims before arbitrator	S.11 and S.16
379	M.P. Road Development Corpn. v. Ministry of Road, Transport & Highways (Imort & H), 2021 SCC OnLine MP 1599	03-09-2021	High Court of Madhya Pradesh	2	Pro-arbitration	Arbitral order upheld and writ petition dismissed	S.16

380	Surendar Chitoor Pandarirao v. EPIKInDiFi Software & Solutions (P) Ltd., 2021 SCC OnLine Mad 4951	31-08-2021	High Court of Madras	1	Pro-arbitration	Arbitrator appointed and all claims before arbitrator	S.11 and S.16
381	Odisha State Road Transport Corporation v. ARSS Bus Terminal Pvt. Ltd., 2021 SCC OnLine Ori 898	16-07-2021	High Court of Orissa	1	Pro-arbitration	Arbitral order under S.16 upheld, A.227 petition dismissed	S.16
382	Tejswi Impex Pvt. Ltd. v. R-Tech Promoters Pvt. Ltd., 2021 SCC OnLine Del 3870	15-07-2021	High Court of Delhi	1	Pro-arbitration	Arbitrator appointed and all claims before arbitrator	S.11 and S.16
383	Assam Power Distribution Company Ltd. v. Eastern India Powertech Ltd., 2021 SCC OnLine Gau 1198	14-06-2021	High Court of Gauhati	1	Anti-arbitration	Appointment of arbitrator by statutory body set aside	S.16
384	Geo Chem Laboratories Pvt. Ltd. v. United India Insurance Co. Ltd., 2021 SCC OnLine Del 3054	24-05-2021	High Court of Delhi	1	Pro-arbitration	Arbitrator appointed and all claims before arbitrator	S.11 and S.16
385	Tirupati Shopping Centre Premises Coop. Society Ltd. v. Shabayesha Construction Co. (P) Ltd., 2021 SCC OnLine Bom 623	22-04-2021	High Court of Bombay	2	Pro-arbitration	Arbitral order under S.16 upheld, A.227 petition dismissed	S.16

386	Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708	25-03-2021	High Court of Delhi	1	Pro-arbitration	In A.226/227 petition arbitrator to decide on issue of jurisdiction first	S.16
387	Jeph Bev (P) Ltd. v. Delhi International Arbitration Centre, (2021) 1 HCC (Del) 569	08-02-2021	High Court of Delhi	1	Pro-arbitration	Writ petition dismissed directing Delhi Arbitration Centre to appoint arbitrator and all objections decided there	S.16
388	Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75	06-01-2021	Supreme Court of India	3	Pro-arbitration	Arbitral order under S.16 upheld, remedy against it only under the Act	S.5 and S.16
389	Super Smelters Ltd. v. Visa Resources Pte Ltd., 2021 SCC OnLine Cal 3294	05-01-2021	High Court of Calcutta	1	Pro-arbitration	No injunction against arbitration by court	S.16
390	Rajesh B. Naik v. Om Hrim Arham Developers, 2020 SCC OnLine Bom 10629	17-12-2020	High Court of Bombay	1	Pro-arbitration	Arbitrator appointed and all matters referred	S.11, S.16 and S.17
391	Rajesh K. Shah v. Sabari Developers LLP, 2020 SCC OnLine Bom 8866	25-11-2020	High Court of Bombay	1	Pro-arbitration	Arbitrator appointed and all matters referred	S.9, S.16 and S.17
392	VA Tech Wabag Limited v. Travancore Titanium Products Limited, 2020 SCC OnLine Ker 21901	29-09-2020	High Court of Kerala	1	Pro-arbitration	Writ petition to invoke arbitration dismissed and parties to move under the Act	S.16

393	Punjab State Power Corpn. Ltd. v. Emta Coal Ltd., (2020) 17 SCC 93	18-09-2020	Supreme Court of India	3	Pro-arbitration	Arbitral order under S.16 upheld as no patent lack of inherent jurisdiction	S.16
394	Indian Golf Union v. West Bengal Golf Society, 2020 SCC OnLine Cal 381	19-02-2020	High court of Calcutta	2	Pro-arbitration	Interim order by trial court set aside and all matters to be decided by arbitrator	S.9 and S.16
395	China Petroleum Pipeline Bureau v. Indian Oil Corporation Limited, 2020 SCC OnLine Del 122	10-01-2020	High court of Delhi	1	Pro-arbitration	Arbitral order on arbitrability upheld in appeal	S.16 and S.37
396	Shailesh Nagindas Shah v. Subodh Manohar Pandit, 2020 SCC OnLine Bom 2502	09-01-2020	High court of Bombay	1	Pro-arbitration	Arbitral order that matter not arbitrable due to lack of jurisdiction set aside, another appointed and matters referred	S.16 and S.37
397	Sterlite Technologies Limited v. Aster Private Limited, 2020 SCC OnLine TS 164 [07-01-2020] J 1	07-01-2020	High court of Bombay	1	Pro-arbitration	Appointment of arbitrator	S.11
398	Ashoka Kraft Paper Mills LLP v. Raj Kumar Aggarwal, 2019 SCC OnLine Del 12285	24-12-2019	High court of Delhi	1	Pro-arbitration	Appointment of substitute arbitrator refused as there is no bias of existing arbitrator	S.16

399	Punjab State Power Corporation Limited v. Arbitration Tribunal, 2019 SCC OnLine P&H 6029	10-12-2019	High Court of Punjab and haryana	1	Pro-arbitration	Arbitral order under S.16 upheld, A.227 petition dismissed	S.16
400	Bharat Petroleum Corpn. Ltd. v. Go Airlines (India) Ltd., (2019) 10 SCC 250	23-10-2019	Supreme Court of India	3	Pro-arbitration	Arbitral order set aside and arbitrator has jurisdiction to decide counter claims	S.16 and S.37

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