Conflict to Resolution: Navigating the Disputes Landscape in 2023

A Cyril Amarchand Mangaldas Thought Leadership Publication

Conflict to Resolution: Navigating the Disputes Landscape in 2023 published by Cyril Amarchand Mangaldas.

This handbook has been updated till January 31, 2024.

This publication is not intended to be used as the basis for trading in the shares of any company or for undertaking any other complex or significant financial transaction without consulting appropriate professional advisers. No part of this publication may be copied or redistributed in any form without the prior written consent of Cyril Amarchand Mangaldas.

Copyright © 2024 Cyril Amarchand Mangaldas.
All rights reserved.

A Thought Leadership Publication

We now present this handbook to enable readers to have an overview of the systems and legal rules and regulations that are essential for business operations in India.

Index

A	Legislative backing to Mediations in India	8
B	Vivad Se Vishwas (Contractual Disputes): From Disputes to Trust	11
C	SEBI Master Circular on Online Resolution of Disputes in the Indian Securities Market	13
D	Standard of proof in claims for lost profits and overheads, and the relevance of industry formulae used to quantify such claims	16
E	Double Taxation Avoidance Agreements and the Applicability of Most Favoured Nation Clauses – Supreme Court adjudicates on conflicting interpretations.	18
F	Relooking at "Put Options" Under the Umbrella of Enforceability of a Foreign Award	20
G	Interplay between the Debt Recovery Tribunal and a Civil Court – the Curious Cases of the Bank of Rajasthan, Mantras Green Resources, and Tata Motors Finance	22

Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd 22

Mantras Green Resources Ltd. & Ors. v. Canara Bank 23

Tata Motors Finance Solutions Limited v. Naushad Khan c/o. Nazbul Hoda Khan 23

H **Enforceability of an Unstamped Arbitration Agreement** **25**

I **Group of Companies Doctrine: Clarifying the Boundaries** **27**

J **Unilateral Appointment of Arbitrators** **29**

K **Third Party Funder is not a party to the arbitration and cannot be held liable to furnish security** **31**

L **Interpretation of Dissenting Opinions** **33**

M **SEBI's Crackdown on Finfluencers - Baap of Charts Case (In the Matter of Unregistered Investment Advisory Activities by Mohammad Nasiruddin Ansari/ Baap of Chart)** **34**

N **Conclusion** **36**

Foreword

Citius, Altius, Fortius![1]

The Olympian motto would be quite befitting to describe the year that was, for India. India literally went over the moon, presided over a global economic bloc, and became the fastest growing economy. Surpassing China, India also became the most populated country and scaled-up investments in all major sectors to meet the requirements of a rapidly growing country.

While the swift commercial growth has complimented the economy, it has also led to nuanced disputes under some ingeniously drafted contracts. Mindful that these disputes should not hinder commercial growth, the year 2023 witnessed a busy legislature, judiciary, and executive, acting in tandem with each other.

The legislature introduced The Mediation Act, 2023, which provided conciliation as an additional means to resolve commercial disputes, along with the existing laws on arbitration and commercial litigation. Further, through its *Vivad Se Vishwas* scheme, the government, which is largest litigant in the country, stepped in through an executive order and proposed a mechanism of settlements for unpaid arbitral awards against government undertakings.

This compilation is an attempt to explore these pivotal events that have impacted commercial dispute resolution in India. We begin with a discussion on policy decisions of the year – first by giving a glimpse of the Mediation Act, 2023 and then exploring the opportunities provided under the *Vivad Se Vishwas* Scheme and then highlighting the salient features of SEBI's ODR rules.

The handbook is a team effort aimed at presenting readers with a ready update of key developments and rulings of Indian courts in relation to dispute resolution. We'd be delighted to tell our readers more, or in more detail, so please send us an email if you have any queries.

[1] Faster, Higher, Stronger!

A

Legislative Backing to Mediations in India

Two years after it was introduced as a bill, the Mediation Act, 2023 (**The Act**) was enacted last year. The Act provides disputing parties with the necessary tools to engage in active pre litigation/pre arbitration mediation. It provides the parties an option to mediate before initiating any commercial dispute, regardless of the existence of a mediation agreement. However, this option to mediate is voluntary and requires mutual consent of the parties concerned to attempt a settlement of disputes through a pre litigation mediation.[2] The definition of "mediation" has been expanded by the Act to include pre-litigation mediation, online mediation, community mediation, conciliation, as well as online mediation. The Act applies to all mediations conducted in India and internationally (where at least one party is situated outside of India).

Scope of the Mediation Act, 2023

Certain disputes may not be submitted for mediation due to prevailing laws. These include disputes relating to minors or persons with intellectual disability, prosecution of criminal offences, levies, collections, penalties, direct/indirect tax refunds, investigations, inquiries, or proceedings before the Telecom Regulatory Authority of India, Telecom Disputes Settlement and Appellate Tribunal and under the Competition Act, 2002, etc., which cannot be mediated – as specified in the Act.[3] Notably, disputes relating to compoundable offences including the matrimonial offences that are compoundable and pending between the parties may also be mediated.[4]

Mediation agreement

Similar to the requirement for a valid arbitration agreement, an agreement to mediate must also be "in writing,". This could be in the form of a document signed by the parties, or an exchange of communications or letters including through electronic form, or in any pleadings or any other proceedings in which existence of mediation agreement is alleged

---

[2] Prior to enactment, the Mediation Bill, as introduced in 2021, contemplated compulsory pre-litigation mediation for parties desirous of filing any suit or proceeding, regardless of the existence of any agreement to mediate between parties. Upon considering the suggestions put forth by the Standing Committee in its Report, it was decided to make pre-litigation mediation voluntary in nature. This however excludes commercial disputes of specified value that are subject to compulsory pre-litigation mediation under the Commercial Courts Act, 2015.

[3] The Mediation Act, 2023, Schedule 6.

[4] The Mediation Act, 2023, Proviso to Section 6(1).

by one party and not denied by the other. A mediation agreement can also be in the form of a specific clause in an underlying agreement.

Time Period

Keeping in mind efficiency in the dispute resolution process, the Act mandates strict timelines and provides that a mediation must be completed within 120 days, extendable by 60 days with the consent of the parties.[5]

Mediation Settlement Agreements

A Mediation Settlement Agreement (**MSA**), is final and binding on the parties, and enforceable as such[6]. Once the parties arrive at their terms of settlement, the same should be reduced to writing, signed by the parties, and authenticated by the mediator.[7] the MSA is thereafter enforceable as a decree or judgment of a court.[8] An MSA can only be challenged on the grounds of fraud, corruption, impersonation, or where the subject matter of dispute was not fit for mediation.

Mediators and the Mediation Council of India

The Act provides that a person of any nationality may be appointed as a mediator according to a process agreeable by the parties.[9] If parties fail to reach an agreement,

[5] The Mediation Act, 2023, Section 18.
[6] The Mediation Act, 2023, Section 27(1).
[7] The Mediation Act, 2023, Section 19.
[8] The Mediation Act, 2023, Section 27(2).
[9] The Mediation Act, 2023, Section 8(1) and 8(2).

they may apply to the Mediation Service Provider to have a mediator appointed from its panel of mediators.[10] Another important feature of the Act is that it provides for institutional mediation by the creation of a Mediation Service Provider.[11]

Further, the Act seeks to establish a Mediation Council of India,[12] in the form of a corporate body, tasked with duties to inter alia develop India as a robust centre for domestic and international mediation.

Conclusion

The Mediation Act is a welcome step since it provides a legal and stable framework for the conduct of mediation in the country and aids in promoting the alternative dispute resolution culture in the country.

India became a signatory to the Singapore Convention on Mediation (**Singapore Convention**) on August 7, 2019. The term “International Mediation” is defined under clause 3(f) of the Act; however, as India is yet to ratify the Singapore Convention, there is currently no framework for cross-border enforcement of settlement agreements resulting from international mediation. Effectively, a mediated settlement in a country other than India cannot thus readily be enforced in India. The same goes for a mediated settlement in India, which may be required to be enforced beyond the territory of India.

Despite these drawbacks, the Act has the potential of addressing a huge number of issues that have plagued the commercial dispute resolution process in India

[10] The Mediation Act, 2023, Section 9.
[11] The Mediation Act, 2023, Section 40.
[12] The Mediation Act, 2023, Section 31.

B

Vivad se Vishwas (Contractual Disputes): From Disputes to Trust

Introduction

To provide a much-needed impetus to the resolution of contractual disputes involving the government and government undertakings, the Ministry of Finance, launched the *Vivad se Vishwas* 2 scheme (**the scheme**) in March 2023. This voluntary settlement process is applicable to disputes that have resulted in arbitral awards, court decrees, or court orders upholding arbitral awards (**awards**). The date of commencement of the Scheme is July 15, 2023, and the last date for submission of claims is now March 31, 2024.

Applicability of the Scheme

The scheme applies to all domestic contractual disputes where one of the parties is either the Government of India or an organisation operating under its control. They are referred to as the "*procurement entities*" under the scheme. One of the contrasting features of the scheme is that it is not applicable to international arbitration matters.

The Scheme is voluntary and would apply to only those Contractors who wish to participate in it. For the Scheme to be applicable, the Contractor need not be an award-holder. Importantly, even where the Contractor is the award/judgment debtor, it can opt to settle under this Scheme. So, if the Contractor has suffered an Award, it can reduce its liability by opting to settle under this Scheme as per the same mathematical calculation provided subsequently. This is indeed a welcome and bold move by the Government. As an extension of the same, Public-Sector Undertakings such as Oil and Natural Gas Limited (**ONGC**), National Highways Authority of India (**NHAI**), Oil India Limited (**OIL**) and Bharat Dynamics Limited India (**BDL**) have framed and adopted the provisions of the scheme *mutatis mutandis*.

Amount of Settlement

Under the scheme, for court awards passed on or before April 30, 2023, contractors would be offered settlement amounts up to 85 per cent of the net amount awarded or upheld by the court. Similarly, for arbitral awards passed on or before January 31, 2023,

the settlement amount is pegged at 65 per cent of the net amount awarded/upheld or 65 per cent of the claim lodged by the Contractor under the Scheme, whichever is lesser. The Scheme provides that in case of a counterclaim (Y) in a dispute and the same is successful along with the claim (X), the calculation of the settlement amount would be the net amount awarded (X-Y).

Procedure for Processing of Claims

Contractors are required to submit their claims through the Government e-Marketplace or other relevant portals (**Portal**). Within two weeks of the receipt of the claims, the Procuring Entity will have to evaluate the settlement amount as per the Scheme and offer it to the Contractor. Thereafter, the Contractor shall respond to the offer strictly within 30 days from the date of the offer. The Procuring Entity would be entitled to amend/withdraw the offer before the Contractor accepts it.

The execution of the settlement agreement based on the format annexed with the Scheme (**Settlement Agreement**) and subsequent payments must take place only after the permission to withdraw the case from the court has been obtained by the Contractor and the same has been uploaded on the Portal. The Settlement Agreement would have the same effect as the settlement agreement drawn after a successful conciliation under the Arbitration Act. In case a Contractor is unwilling to accept a Procuring Entity's offer, the ongoing litigation would continue.

SEBI Master Circular on Online Resolution of Disputes in the Indian Securities Market

The Securities and Exchange Board of India (**SEBI**) is no laggard in embracing the best of technology and alternative dispute resolution. On August 4, 2023, SEBI issued a Master Circular on "Online Resolution of Disputes in the Indian Securities Market"[13] (**ODR Circular**), providing for online conciliation and online arbitration for resolution of disputes arising in the Indian Securities Market. The ODR Circular was further amended on December 20, 2023, to clarify ambiguity and provide clarification on procedure.

Salient features of the ODR Framework

Mandatory and Optional Framework

The ODR Circular envisages two separate frameworks (mandatory and optional) for resolution of disputes between different categories of specified intermediaries/regulated entities.[14] Firstly, disputes between listed companies or any intermediaries/ regulated entities as specified in Schedule A[15] to the ODR Circular and investors/clients (including institutional/ corporate clients)[16] arising out of the securities market are to be resolved in accordance with the mechanism and timelines provided in the circular.[17] Secondly, for disputes between regulated entities/ intermediaries in the securities market as specified in Schedule B[18] can be resolved at the option of such institutional or corporate clients. The optional framework allows for resolution (a) either within the mechanism and timelines provided in the ODR mechanism (b) or by harnessing an independent mediation, independent institutional conciliation, and/or independent arbitration institution in India.

[13] SEBI Circular SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145, 'Master Circular for Online Resolution of Disputes in the Indian Securities Market' (dated August 4, 2023, and amended on December 20, 2023) [hereinafter referred as "ODR Circular"]
[14] ODR Circular ¶2
[15] Alternative Investment Funds-Fund Managers, Collective Investment Management Company, Commodity Clearing Corporations, Depository Participants, Investment Advisors, Infrastructure Investment Trust- Investment Manager, Mutual Funds-AMCs, Portfolio Managers, Registrar and Share Transfer Agents, Real Estate Investment Trusts- Managers, Research Analyst, Stock Brokers.
[16] ODR Circular ¶2 (as amended on December 20, 2023)
[17] ODR Circular ¶2
[18] Clearing Corporations, Credit Rating Agency, Debenture Trustees, Merchant Bankers, Proxy Advisors, Vault Managers.

The institutional or corporate clients of Schedule B intermediaries/ regulated entities are required to exercise the abovementioned options in case of (a) an existing and continuing contracting arrangements within a period of 6 months from the date of the ODR Circular, failing which the mechanism and timelines under the ODR Circular shall apply; and for (b) new contractual arrangements at the time of entering into the arrangements.[19]

Setting up the SMART ODR Portal – 'Securities Market Approach for Resolution Through ODR'

Pursuant to the said ODR Circular, the SMART ODR Portal – "Securities Market Approach for Resolution through ODR" (**ODR Portal**) was set up by the Market Infrastructure Institutions (**MII**), which empanelled the ODR institutions. All the listed entities/ specified intermediaries/regulated entities were expected to enrol on the ODR Portal within certain timelines.[20] Upon completion of enrollment within the given timeline, the ODR Portal commenced the registration of complaints/disputes against all such market participants, broker, depository participants, or any other listed entities.

Online Conciliation and Online Arbitration under the ODR Circular

The ODR Portal offers investors with a platform to file complaints if they are not satisfied with the resolution raised directly with the concerned market participant (listed companies / specific intermediaries / regulated entities in the securities market). Complaints can either be filed (a) prior to escalation through SCORES Portal or (b) post escalation through the SCORES Portal. In terms of the ODR Circular, market participant intending to initiate dispute resolution is required to provide at least 15 calendar days' notice to the investors for resolution of pending dispute.[21] Furthermore, dispute resolution through the ODR Portal can be initiated only when it is within the applicable laws of limitation.

Dispute resolution through the ODR Portal cannot be initiated when (a) the dispute is pending before any arbitral process, court, tribunal or consumer forum or being considered under SCORES guidelines (b) the dispute's subject matter is non-arbitrable under Indian law including when moratorium is in effect under the Insolvency and Bankruptcy Code, 2016 or if a liquidation or winding -up process has been commenced against the Market Participant or (c) counter party to the dispute is the Government of India/President of India or a State Government/Governor of a State.[22]

[19] ODR Circular ¶3
[20] ODR Circular ¶8
[21] ODR Circular ¶12
[22] ODR Circular ¶13

Once a complaint is registered on the ODR Portal, it proceeds to online conciliation by a sole independent and neutral conciliator, appointed from the panel of conciliators by the ODR institutions. If the conciliation is successful, a settlement agreement is to be executed and stamped through an online mode. The MIIs are tasked with monitoring the due payment or adherence to the settlement agreement. However, if the grievance is not successfully resolved through conciliation, then an online arbitration is initiated. Online arbitration would commence only after the conciliator ascertains the value of the admissible claim and notifies the disputing parties, ODR institutions and the MII of the same. The market participant must deposit 100 per cent of the admissible claim value with the relevant MII and make the payment of fees within 10 days of the initiation of the online arbitration.[23]

The detailed procedure of the online conciliation and online arbitration as per the ODR Circular is covered in our article hyperlinked below.

Conclusion

The ODR Portal is working in tandem with the dual objectives of the ODR Circular to ensure that the investors are provided a cost-effective, timebound, and effective resolution of their grievance pertaining to all specified market intermediaries.

For further material on the ODR Circular, refer to our article- "Smart ODR portal not the only game in town: Will it make the cut?"

[23] ODR Circular ¶20

D

Standard of Proof in Claims for Lost Profits and Overheads, and the Relevance of Industry Formulae Used to Quantify Such Claims

The Supreme Court (**SC**) (in two unrelated matters) clarified about the standard of proof required for lost profit and overhead claims. The SC ruled that the quantification of these claims through use of formulae (e.g., the Hudson's formula) should be supported by the availability of contemporaneous evidence such as financial statements or relevant clauses in the contract. The SC also cautioned about the possible issues of double counting when using Hudson's formula.

Both *Batliboi*[24] and *Unibros*[25] arose out of claims contractors made against employers in arbitrations. The award in *Batliboi* granted the contractor's claim for lost profits and overheads. In Unibros, the award granted the contractor's lost profits claim. Both awards were successfully challenged by the respective employers/respondents in the arbitrations and set aside (the *Unibros* award, only partially) by the lower court and in appeal. As a result, the contractors in both cases approached the SC.

The SC noted that the Hudson, Emden, and Eichleay formulae are based on factual assumptions that needed to be tested and examined before relying on any of them to compute and award damages.[26] In *Batliboi*, the court noted in respect of Hudson's formula, the possibility of double counting, inasmuch as the formula multiplies (i) overheads and profit with (ii) the contract sum, without taking into account the fact that the contract sum agreed to by the parties already contains an element of overheads and profit for the contractor. The SC opined that the Eichleay formula is "*far more nuanced and rigorous*" because the contractor must itemise and quantify the total fixed overheads during the contract period as well as include all of the contracts with the individually delayed contract to determine the proportionate fraction of the total fixed

[24] *Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited & Another* 2023 SCC OnLine SC 1208.
[25] *Unibros v. All India Radio* 2023 SCC OnLine SC 1366.
[26] The Court referred to the 10th edition of Hudson's Building and Engineering Contracts for the assumptions underpinning Hudson's formula: (i) the contractor is not habitually or otherwise underestimating the cost when pricing; (ii) the profit element was realistic at that time; and (iii) there was no fluctuation in the market conditions and the work of the same general level of profitability would be available to him/her at the end of the contract period.

overheads.[27] Accordingly, the Hudson's formula may be used, but with caution "*where no other way to compute damages is feasible or mathematically accurate.*"[28]

The SC observed that the *Batliboi* award was "*completely silent*"[29] and suffered from a "*manifest lack of reasoning*"[30] on the method and manner of computing lost profits and overheads.

As for the *Unibros* award, the SC noted that despite the tribunal relying on the Hudson formula for computing overheads, it had not adequately evaluated the evidence to support a claim for lost profits. A contractor must prove lost profits by adducing independent contemporaneous evidence; for example, potential projects that could have been undertaken had it not been for the delays, financial statements, or any clauses in the contract related to delays. In the SC's words, "*the credibility of the evidence, therefore, is the evidence of the credibility of such claim.*"[31]

Industry formulae are useful for assessing the quantum of losses only if the contractor has discharged the factual evidentiary burden of proving that it suffered lost profits in the first place. Considering the respective arbitral tribunals did not engage with adequate reasoning on the evidence and these issues, the SC agreed with the lower courts in setting aside both awards.

The most important takeaway from the aforementioned rulings is that the use of industry formulae for computing lost profits and overheads should be used responsibly and underpinned by contemporaneous evidence to factually substantiate the loss suffered in the first place. The success of a claim is thus as much an exercise in proving causation as an exercise in quantification.

[27] *Batliboi* at ¶24.
[28] *Batliboi* at ¶26.
[29] *Batliboi* at ¶8.
[30] *Batliboi* at ¶46.
[31] *Unibros* at ¶17.

E

Double Taxation Avoidance Agreements and the Applicability of Most Favoured Nation Clauses – Supreme Court adjudicates on conflicting interpretations

In *Assessing Officer Circle (International Taxation) v. Nestle SA*,[32] the SC delivered a contentious yet pathbreaking judgment, adjudicating on the interpretational conflicts involving Most Favoured Nation (**MFN**) clauses in the Double Taxation Avoidance Agreement (**DTAA**) between India and other States.

As an agreement between States, a DTAA precludes double taxation of an assessee with income accruing in both States. It often contains an MFN or the "same treatment" clause, which ensures that same or better treatment is offered to such a State if a different DTAA (with a different third-party State) offers more favourable terms to such third-party State. Broadly, there were two issues in the case – (i) whether there is any right to invoke the MFN clause when the third country with which India has entered into a DTAA was not an Organization for Economic Cooperation and Development (**OECD**) member yet (at the time of entering into such DTAA); and (ii) whether the MFN clause is to be given effect to automatically or if it is to only come into effect after a notification is issued.

On the first issue, the SC held that it is only a third-party State which is a member of the OECD that would have the right to invoke the MFN clauses under a relevant DTAA and additionally, the third-party State should have been an OECD member when entering into the DTAA to claim equal treatment.

In keeping with the long-standing custom of incorporating treaties into national legislation, on the second issue the SC held that a separate and specific notification under the Income Tax Act, 1960, was a mandatory condition to enforce DTAAs (or any protocol changing its terms or conditions that have the effect of altering the existing provisions of law). Analysing India's treaty-making power, the SC concluded that solely

[32] *Assessing Officer Circle (International Taxation) v. Nestle SA*, 2023 SCC OnLine SC 1372.

 I 2024 © Cyril Amarchand Mangaldas

the Union Government had this power pursuant to a law approved by the Parliament to give effect to the treaty.

The SC relied on *Union of India v. Azaadi Bachao Andolan*[33] to the effect that any treaty or protocol India entered into would not result in its automatic enforceability in Courts; the rights would accrue to party States only after appropriate notifications/amendments under the relevant legislation by the Parliament.

This decision acts as a compass needle, changing the path for all parties and impacting previous tax cases in which foreign taxpayers used the MFN clause to withhold lesser taxes. The ruling also serves as a model for the interpretation of treaties under international law. It specifies the timeframe for claiming treaty benefits, upholds the sanctity of treaties, and emphasises the importance of future practice, thus providing much-needed clarity in this regard.

[33] *Union of India v. Azaadi Bachao Andolan,* (2004) 10 SCC 1

F

Relooking at "Put Options" Under the Umbrella of Enforceability of a Foreign Award

The bone of contention in *GPE (India) Ltd. and Ors. v. Twarit Consultancy Services (P) Ltd. and Anr.*[34] was whether a foreign award was unenforceable and contradicted the public policy of India. The Madras High Court rejected the objections and allowed the enforcement of the foreign award subject to the Reserve Bank of India's (**RBI**) approval in terms of the Foreign Exchange and Management Act, 2000 (**FEMA**).

The parties had entered into two contracts through which the award creditors had subscribed to shares in Haldia Coke and Chemicals Private Ltd (**Haldia**). The agreements provided multiple exit options for the claimants, which included the exercise of a put-option. The put options provided that the award creditors will be entitled to require the promoter to buy or make any other person to buy any of the shares of the award creditors at a price provided by the Investor with an Internal Rate of Return (**IRR**) of 24 per cent on the total investment.

Following disputes between the parties, GPE (India) and Ors. invoked arbitration, which culminated in an award in its favour. The award directed the respondents to clear certain pending payments due to the petitioners (including the cost of arbitration, legal, and other charges) with at a 7.25 per cent interest rate against each category of payment directed to be made.

GPE (India) and Ors. sought the enforcement of this foreign award in India before the Madras High Court, which the award debtors Twarit Consultancy Services and Haldia opposed on the ground of it being in conflict with the public policy of India and contrary to FEMA rules. FEMA prohibits a non-resident investor in the share capital of an Indian company to be guaranteed a return at the time of such investment or exit and permits an exit only at the fair market value at the time of exit. Haldia argued that the enforcement of the award would contravene Indian law and public policy as the agreement between the parties provided for a guaranteed return to the award creditor at a pre-determined IRR of 24 per cent – a price far higher than the fair market value.

[34] *GPE (India) Ltd. and Ors. v. Twarit Consultancy Services (P) Ltd. and Anr* 2023 SCC OnLine Mad 46.

The Madras High Court relied on a similar case decided by the SC in *Vijay Karia v Prysmian Cavi E Systemi S.r.l* [35] in which the SC held that "*a rectifiable breach under FEMA can never be held to be a violation of the fundamental policy of Indian law.*" The HC also noted that the Arbitral Tribunal had reckoned the market value of the shares of the Company to be zero as on the date of breach as drawn on the appraisal of the evidence. The HC also observed that the Arbitral Tribunal had held that the loss caused due to breach was hence the total unpaid consideration of INR 1,95,00,00,000. In light of this, the HC held that the Arbitral Tribunal's conclusion on the market value of the shares did not contradict the fundamental policy of Indian law.

The Madras High Court held the foreign award to be enforceable, subject to the RBI's approval as might be required under FEMA, given that FEMA is a statute aimed at regulating foreign exchange. Accordingly, notwithstanding that the award granted damages equivalent to the entire unpaid sale consideration (under the put option), it would require prior approval of the RBI. Additionally, the HC also ordered the respondents to pay any further amounts imposed by the RBI as part of the approval.

By clarifying that a rectifiable violation of the statute or regulation would not amount to a violation of the fundamental policy of Indian law and that an award would not be rendered unenforceable, the Madras High Court reaffirmed India's established pro-arbitration stance. However, the regulator's approval might still be necessary in cross-border transactions, irrespective of specific performance of the transaction being awarded or damages being granted because of breach.

[35] *Vijay Karia v Prysmian Cavi E Systemi S.r.l.* (2020) 11 SCC 1.

G

Interplay Between the Debt Recovery Tribunal and a Civil Court - The Curious Cases of the Bank of Rajasthan, Mantras Green Resources and Tata Motors Finance

Of the several specialised tribunals the Indian government has set up to expedite commercial dispute resolution, the Debt Recovery Tribunal (**DRT**) needs a special mention. DRT, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (**RDB Act**), adjudicates on the recovery of debts of over INR 20,00,000 due to banks and financial institutions.

In *Vidya Drolia and others v. Durga Trading Corporation*[36] (**Vidya Drolia**), the SC ruled the claims of banks and financial institutions covered under the RDB Act, were not arbitrable since the RDB Act had created special rights (and procedures) for such institutions to recover their debts through DRTs. While this seems straightforward, over the past year, courts have had to weigh in on some interesting points of law connected with these special rights.

Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.[37] (Bank of Rajasthan)

In this case arising out of a term loan that the Appellant bank had sanctioned to the Respondent company, the Appellant initiated proceedings under the RDB Act before the DRT after the Respondent defaulted on the loan. Simultaneously, the Appellant had also sold some of the Respondent's shares pledged with it, which had led to the Respondent filing a civil suit to have the sale declared void. Following debate over whether a borrower's suit regarding a term loan would be maintainable in a civil court or the DRT, the case reached a full bench of the SC for adjudication.

[36] *Vidya Drolia and others v. Durga Trading Corporation,* (2021) 2 SCC 1.
[37] *Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd,* (2023) 1 SCC 1.

Analysing the scope and ambit of the RDB Act and the DRT's jurisdiction, the SC held that while banks or financial institutions would be bound by virtue of the specialised jurisdiction of the DRT created under the RDB Act, they could not be so precluded where a borrower was concerned. While considering the arbitrability of the issue, the SC held that the jurisdiction of a civil court to try a suit filed by a borrower could not be ousted using the RDB Act. Although the debtor had the option of initiating a counterclaim against the bank/financial institution in proceedings before the DRT, the RDB Act did not make it compulsory for a debtor to file a claim/counter-claim before the DRT.

Mantras Green Resources Ltd. & Ors. v. Canara Bank[38] (Mantras)

The Bombay High Court in this case had the opportunity to appreciate the law laid down in *Bank of Rajasthan*, when it adjudicated an application by Mantras Green Resources Ltd. & Ors. (Applicant) seeking the appointment of a sole arbitrator in connection with disputes arising with the Respondent (Canara Bank) arising from an agreement which contained an arbitration clause. The bank contested such application on the grounds that the matter could not be arbitrated, as it was not arbitrable as the DRT had specialised and exclusive jurisdiction to adjudicate disputes relating to banks, and therefore, the civil court (and by extension arbitral tribunals) would be barred from dealing with such cases.

The Court affirmed *Bank of Rajasthan*, and taking it a step further, ruled in favour of the Applicant. It held that the RDB Act did not bar a borrower from approaching a civil court despite providing the borrower with the ability to initiate a counterclaim before the DRT. By extension of this principle, it ruled that there was no bar on an arbitral tribunal's jurisdiction (subject to the fulfilment of conditions under the A&C Act) in entertaining a claim from such a borrower. Accordingly, the Court appointed a sole arbitrator to adjudicate the disputes between the parties.

Tata Motors Finance Solutions Limited v. Naushad Khan c/o. Nazbul Hoda Khan[39] (Tata Motors)

Mantras was then followed by the Bombay High Court case of *Tata Motors* in which the court was called upon to decide a case connected with the jurisdiction of a civil court and that of the DRT under the Securitisation and Reconstruction of Financial Assets

[38] *Mantras Green Resources Ltd. & Ors. v. Canara Bank,* CARBP(L) No. 12570 of 2021, Bombay High Court.
[39] *Tata Motors Finance Solutions Limited v. Naushad Khan c/o. Nazbul Hoda Khan,* CARBP(L) No. 8654 OF 2022, Bombay High Court.

and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) and RDB Act. This case involved vehicle loans the Petitioner had sanctioned to the Respondents, secured by the hypothecation of the vehicles. The Respondents defaulted on the loan, but in the meantime had sold one of the vehicles hypothecated to the Petitioner. The Petitioner accordingly invoked arbitration and sought interim reliefs and the appointment of an arbitrator before the Bombay High Court.

The Respondents contended that, in line with *Vidya Drolia, Bank of Rajasthan*, and *Mantras*, the Petitioner could not invoke arbitration and was only entitled to approach the DRT. On this basis, the Respondent argued for the dismissal of the Petitioner's applications for want of jurisdiction.

The Court contrasted the provisions of the SARFAESI Act with those of the RDB Act, noting specifically that the Petitioner was a notified financial institution under the SARFAESI Act but not under the RDB Act. The Court's inference in this regard was premised on the fact that the RDB Act and the SAFAESI Act apply only to those organisations specifically falling within the definition of a "financial institution" under Section 2 of both the Acts of which one such criterion is an entity specifically notified as such by the Central Government under each statute.

The Court opined that the Petitioner could not avail of any provisions under the RDB Act – including approaching the DRT – as it was not a notified entity under the Act. In any event, as the quantum of debt due by the Respondent remained unascertained, the Petitioner did not have a cause of action before the DRT under the SARFAESI Act either.

The Court held that the provisions of the A&C Act and the SARFAESI Act operate in tandem, with the process of determining and resolving the disputes pertaining to the debt due falling within the ambit of arbitration, and the enforcement of such debt, once crystallized, falling within the purview of the DRT under the SARFAESI Act.

The Court accordingly granted interim relief to the Petitioner by restraining the Respondent from dealing with or otherwise alienating the hypothecated vehicles and appointed a sole arbitrator under Section 11 of the A&C Act.

H

Enforceability of an unstamped arbitration agreement

After delivering a string of conflicting rulings, a seven-judge bench of the SC, in *Re Interplay*,[40] finally put to rest the debate on the validity and enforcement of unstamped arbitration agreements – unstamped arbitration agreements were inadmissible in law as opposed to being non-existent as a matter of law.

The debated originated following the SC's 2011 decision[41] that an arbitration agreement in an unstamped agreement cannot be acted upon.

The whole conundrum lies in the taxing statute, the Indian Stamp Act, 1899, which mandates that a document be properly "stamped" by paying the constituent stamp duty and renders it inadmissible as evidence in a court of law if not stamped with the full stamp duty. A curable defect, this document, upon the payment of appropriate stamp duty (along with any penalty levied), becomes validly stamped and hence admissible before a court of law.

Various courts considering applications in support of arbitral proceedings (e.g., for appointment of arbitrator(s) or referring parties to arbitration) faced objections from Respondents in relation to "arbitration agreements or the underlying contract, not being sufficiently stamped," such that they were not admissible before the court considering the application.

Several years and rulings later, the debate has intensified after the SC's five-judge bench verdict this year,[42] which has overruled its previous judgment[43] and held an unstamped/ insufficiently arbitration agreement (including an arbitration clause in an unstamped main contract) to be void and unenforceable for the purposes of dispute resolution.

The Court in *Re Interplay* was then called upon to resolve the issue arising in the context of three statues—the A&C Act, the Indian Stamp Act, 1899 and the Indian Contract Act, 1872 (**Contract Act**).

In this case, the Court differentiated between the non-admissibility of an unstamped document in evidence under the Indian Stamp Act, 1899, and contracts altogether

[40] *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the India stamp Act 1899*, 2023 SCC OnLine SC 1666.
[41] *SMS Tea Estates (P) Ltd. V. Chandmari Tea Co. (P) Ltd.* (2011) 14 SCC 66.
[42] *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.* (2023) 7 SCC 1.
[43] *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.* (2021) 4 SCC 379.

void under the Contract Act. The SC also differentiated between admissibility and enforceability to clarify that an unstamped agreement though inadmissible as evidence for as long as it remained unstamped or insufficiently stamped was not void or unenforceable in its entirety.

Accordingly, the SC held inadequate or non-stamping as a curable defect – in that a document could be admitted in evidence after proper stamping.

The SC took note of the limited jurisdiction of the courts at the pre-arbitration stages under Section 8 or 11 of the A&C Act. Recognising and upholding the principle of *kompetenz-kompetenz*, the Court ruled that such applications could be considered irrespective of the appropriate stamping of the arbitration agreement, considering the agreement would eventually come under the jurisdiction of the arbitral tribunal once constituted.The SC set aside and overruled its previous judgments of *SMS Tea Estates and N.N. Global*, reaffirming India's pro-arbitration stance.

Group of Companies Doctrine: clarifying the boundaries

The controversy surrounding the applicability of the Group of Companies (**GoC**) doctrine in India has witnessed a catena of judgments.[44] By reconciling the differences in this doctrine and the well-settled principles of Indian law, the Supreme Court in *Cox & Kings (2023)*[45] has cleared muddy waters surrounding the GoC and paved the way for the continued but nuanced existence of this doctrine in Indian law.

The GoC doctrine binds a non-signatory entity to an arbitration agreement signed by its sister concerns/affiliates/other related parties within a group of companies. The principle is based on "consent" or the ostensible non-signatory, rather than the 'alter ego' principle by which the corporate veil between corporate entities may be lifted. The SC first recognised the GoC doctrine in *Chloro Controls India Private Limited v. Severn Trent Water Purification Inc.*[46] (**Chloro Controls**).

The *Chloro Controls* ruling was thereafter followed in a series of judgments, which noted that the intention (and therefore consent) of the concerned entity was paramount in ascertaining a non-signatory's treatment as a party to an arbitration agreement. Certain determinative factors evolved in *ONGC v. Discovery Enterprises*[47] named the following as exceptions to cases where the non-signatory's intention was unclear:

a. The mutual intent of the parties
b. The relationship of a non-signatory to a signatory
c. The commonality of the subject matter
d. The composite nature of the transaction
e. The performance of the contract

In 2022, the SC in *Cox & Kings (2022)*[48] doubted the correctness of its consistent line of earlier decisions and held that the GoC was likely based more on economics and convenience –the alter ego argument (rather than arbitration principles of consent) and law. The SC referred several questions regarding the validity and applicability of the

[44] *Cheran Properties Ltd. v. Kasturi & Sons Ltd.,* (2018) 16 SCC 413; Ameet Lalchand Shah v. Rishabh Enterprises, (2018) 15 SCC 678; Mahanagar Telephone Nigam Ltd. v. Canara Bank, AIR (2019) SC 4449.
[45] *Cox and Kings v. SAP India Private Limited & Anr.* 2023 SCC OnLine SC 1634.
[46] *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.,* (2013) 1 SCC 641.
[47] *ONGC Ltd. v. Discovery Enterprises (P) Ltd.,* (2022) 8 SCC 42.
[48] *Cox & Kings Ltd. v. SAP India (P) Ltd.,* (2022) 8 SCC 1.

doctrine in India to a larger bench for consideration in the *Cox and Kings (2023)* decision. The SC noted that the GoC doctrine "*is a means of identifying the common intention of the parties to bind a non-signatory to an arbitration agreement by emphasizing and analysing the corporate affiliation of the distinct legal entities.*" The SC observed that while the "alter ego" doctrine disregarded the separate legal identity of a corporation, the GoC doctrine did not disrupt the legal personality of the entities involved. The GoC doctrine was instead a means to ascertain the true intention of the parties (including non-signatories) to the arbitration agreement and "piercing the corporate veil" did not apply here.

The ruling of the SC can be summarised as follows:

a. Recognising the competence of a tribunal to rule on issues relating to its jurisdiction over parties, a court considering an application for appointment of an arbitrator under Section 11 of the A&C Act ought to refer the matter to the arbitral tribunal when deciding whether non-signatories are bound by the arbitration agreement.

b. The GoC has an independent existence as a principle of law stemming from a balanced reading of the definition of "parties" under Section 2(1)(h) of the A&C Act and the meaning of an arbitration agreement under Section 7 thereof.

c. The principle of alter ego or single economic unit that can permit piercing the corporate veil cannot be the sole basis for the application of GoC.

d. The *Chloro Controls* judgment is erroneous, as it held that non-signatories could be roped in by invoking the phrase "*parties claiming through or under*" used in Section 8 of the A&C Act to refer parties to arbitration. The phrase is used to bind successors-in-interest of party in a derivative capacity rather than dealing with the intention of an entity that is not a formal signatory to an arbitration agreement.

e. While an arbitration agreement has to be written, it need not be specifically signed by an entity to be treated as a party to the arbitration agreement.

Unilateral appointment of arbitrators

The Calcutta High Court in *McLeod Russel India Limited v. Aditya Birla Finance Limited*[49] (**McLeod**) deliberated on the appointment of arbitrators and the power of an individual ineligible to be an arbitrator to appoint an arbitrator. While in its past judgments the Supreme Court had established that allowing this would taint the appointment of such an arbitrator, the Calcutta High Court deviated from this position in *McLeod*.

The SC's position on the appointment of arbitrators, established in 2017,[50] relies on Section 12(5) of the A&C Act that states that an arbitrator whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule will be ineligible for appointment. It includes in its scope a scenario where the arbitrator is a manager, director, or part of the management of one of the parties. The proviso allows the parties to waive such ineligibility through an "express agreement in writing." The Court held that a person ineligible under Section 12(5) of the A&C Act could not appoint another as an arbitrator as this would taint any such appointment/nomination. The ineligibility under the Seventh Schedule also included an appointment made by the managing director.

In *Perkind Eastman Architects DPC v. HSCC (India) Limited* (**Perkins**)[51] the SC held that any arbitrator appointment arising out of a clause providing an exclusive and unilateral power to one party to make such an appointment would be invalid from the get-go. The Court noted that no person with any interest in the dispute or the outcome should have the power to influence the proceedings.

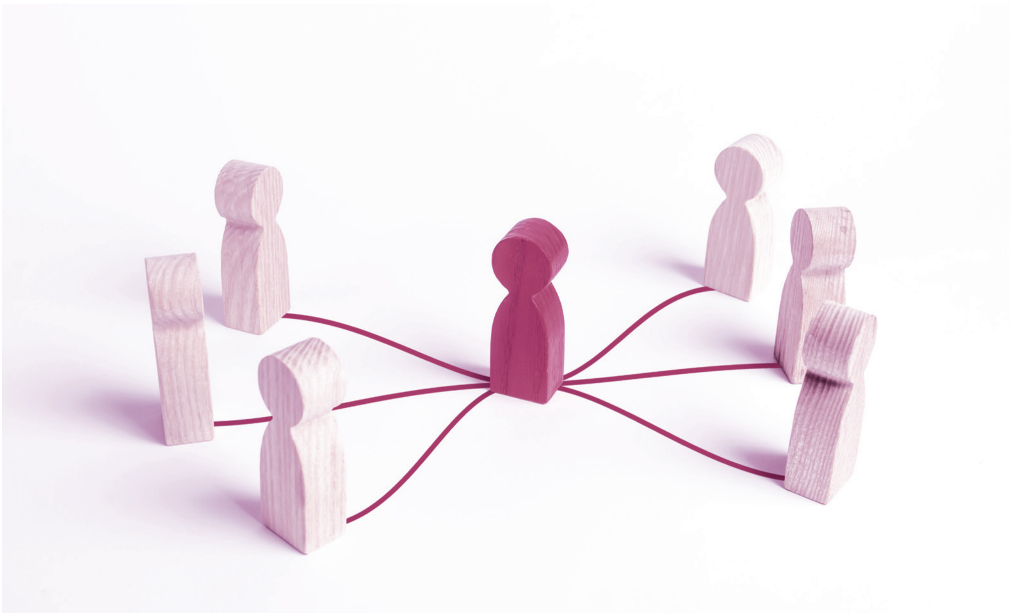
The judgment in *McLeod*, however, deviated from this position. The arbitration clause stipulated that one of the parties to the arbitration (the respondent) appoint a sole arbitrator. The respondent appointed a retired judge of the Madhya Pradesh High Court as arbitrator. Since it was unilateral, no express agreement was executed in writing to waive the ineligibility of the arbitrator. The petitioner filed pleadings in the arbitration and challenged that the arbitrator's mandate under the A&C Act was invalid and void a*b initio* as the sole arbitrator's appointment was unilateral.

[49] *McLeod Russel India Limited v. Aditya Birla Finance Limited,* 2023 SCC OnLine Cal 330.
[50] *TRF Limited v. Enerho Engineering Projects Limited* (2017) 8 SCC 377 ("TRF")
[51] *Perkins Eastman Architects DPC. v. HSCC (India) Limited* (2020) 20 SCC 760.

The Calcutta High Court distinguished the appointment of the sole arbitrator in *McLeod* from the decisions in *TRF* and *Perkins* on three grounds:

1. The appointed sole arbitrator - a retired judge of the Madhya Pradesh High Court – did not fall under any of the ineligibility categories listed in the A&C Act.
2. The court made a distinction between the case before it and the decisions of the SC in *TRF* and *Perkins*. The respondent was not a *persona designata* and had the right only to appoint the sole arbitrator not act as one. The retired judge was an independent and impartial appointee; therefore, the appointment could not be challenged merely because it emanated from a clause providing a unilateral right.
3. Considering the parties had already participated in the proceedings, filed their pleadings, and even recognised consent awards passed by the sole arbitrator, any objection to the unilateral appointment would be construed as waived – effectively acceding to the jurisdiction of the sole arbitrator.

In *McLeod*, the Calcutta High Court deviated from the apprehension of the bias test. This currently remains an anomaly in the established jurisprudence on unilateral appointments post-*Perkins*.



K

Third-party funder is not a party to the arbitration and cannot be held liable to furnish security

In the recent *Tomorrow Sales Agency Ltd v SBS Holdings Inc*,[52] a Division Bench of the Delhi High Court refused to hold a third-party funder liable for an adverse award. The Court ruled that third-party funders not party to an arbitration agreement, the arbitral proceedings, or the resultant arbitral award could not be "*mulcted with liability, which they have neither undertaken nor are aware of.*".

The appellant, Tomorrow Sales Agency Private Limited (**TSA**) funded a group of claimants in bringing an SIAC arbitration against SBS Holdings Inc. (**SBS**) in a funding arrangement made through a Bespoke Financing Agreement (**BFA**). In the arbitration, the SIAC tribunal rendered an award in favour of SBS. Rejecting the Claimants' appeals, the tribunal directed them to pay SBS' costs of the arbitration (**Award**). As the funder, TSA was a party to neither the arbitration agreement between the parties nor the arbitral proceedings. SBS demanded that TSA pay the awarded sum when the Claimants failed to satisfy the Award and pay SBS. TSA refused to pay asserting that it did not have any liability to pay the Award.

SBS filed an application for interim relief under Section 9 of the A&C Act, seeking inter alia a direction that TSA and the Claimants disclose details of their assets and bank accounts and furnish security for the amounts awarded to SBS through the Award. Allowing SBS' application, a Single Judge of the Delhi High Court restrained the Claimants and TSA from creating any third-party interest/right/title regarding any unencumbered immovable assets to the extent of the sum awarded in favour of SBS under the Award. Following TSA's appeal against the order of the Single Judge under Section 37 of the A&C Act, a division bench of the Delhi High Court heard the matter.

The Court agreed with SBS that an arbitration agreement could bind a non-signatory in certain circumstances (as seen through Supreme Court decisions), but held that this was not relevant to the present case. Here SBS was not attempting to bind TSA under

[52] *Tomorrow Sales Agency Ltd v SBS Holdings Inc* , FAO (OS) (COMM) 59/2023.

an arbitration agreement. Instead, it was trying to enforce an award against TSA even when it had no liability under the award nor was it a party to the arbitration. Given these circumstances, there was "*no question of enforcing an arbitral award against a non-signatory, who is not a party to the arbitral proceedings.*"

The Court clarified that an arbitral award may bind a third party only if it was "*compelled to arbitrate*" and "*was a party to the arbitration proceedings.*" In the absence of such participation, the resultant arbitral award could not bind third party.

The Court observed that no steps were taken to include TSA as a party to the arbitration despite the disclosure to SBS about TSA's funding of the Claimants. The Court was not impressed by an argument that the SIAC Rules would not have permitted joinder of TSA as the conditions of joinder would not be met on the basis that parties would have to bear the consequences of choosing the SIAC Rules.

The division bench also noted that third-party funding was essential to ensure access to justice. It was essential that third-party funders be fully aware of their exposure and not be mulcted with the liability they had not undertaken or were unaware of. In view of this, the division bench set aside the award of the single bench to extent that it not only directed TSA to disclose its assets and furnish security, but it also restrained it from encumbering or alienating its assets.

For further information, please see our article published on Kluwer Arbitration Blog here and our article published on the CAM Blog here.

L

Interpretation of Dissenting Opinions

A dissenting opinion is not part of the award or another/independent award. Instead, it is a separate statement by the dissenting arbitrator, without any of the legal consequences of an award.[53] The SC recently, in *Hindustan Construction Company Limited v. National Highways Authority of India*,[54] had the opportunity to consider the interpretation of dissenting opinions.

While when first passed by the arbitral tribunal, the award was unanimous on most questions; however, one of the arbitrators had a dissenting view on others. On appeal, the Bombay High Court division bench set aside the award observing that the tribunal's majority view and award were based on an implausible interpretation of the contract.

In appeal, the SC opined that a dissenting opinion could be treated as an award if the majority award were set aside. A dissenting opinion provides useful clues in case of a procedural issue, making it critical during the challenge hearings. It disagrees with the majority and only embodies the views of the arbitrator. The SC also held that the dissenting opinion would not receive the same level and standard of scrutiny as the majority award (under challenge). Since the arbitrator appointed by the consent of both the parties issued the award, the standard of scrutiny of the award should not be that of judicial review. Thus, the conversion of a dissenting opinion into a tribunal's opinion and subsequent elevation of the opinion to the award would be inappropriate and improper.

[53] *Gary Born, International Commercial Arbitration,* Wolters Kluwer, Edn. 2009, Vol. II, p. 2466 & 2469.
[54] *Hindustan Construction Company Limited v. National Highways Authority of India* 2023 SCC OnLine SC 1063

M

SEBI's Crackdown on Finfluencers – Baap of Charts Case (In the Matter of Unregistered Investment Advisory Activities by Mohammad Nasiruddin Ansari/ Baap of Chart)

The Securities and Exchange Board of India (**SEBI**), in the matter of *Unregistered investment advisory activities by Mohammad Nasiruddin Ansari,*[55] passed an interim *ex parte* order against Mohammad Nasiruddin Ansari (**Ansari**) and the directors of Golden Syndicate Ventures Pvt. Ltd., (**the noticees**) the primary body corporate used by Ansari. Ansari, a financial influencer or more commonly known as a "finfluencer," *via* his handle "Baap of Chart" provided investment advice and educated about the securities market on various social media platforms. Finfluencers are individuals who give investment advice on financial subjects (e.g., stock market trading, mutual funds and insurance) across social media platforms.

SEBI's Investment Advisers Regulations, 2013 (**IA Regulations**), and Research Analysts Regulations, 2014 (**RA Regulations**), help regulate the activities of investment advisers and research analysts. However, finfluencers do not come under the purview of a specific regulatory framework. Even SEBI's "*Advertisement code for Investment Advisers (IA) and Research Analysts (RA)*" released in 2023 only applies to registered advisers and analysts, not finfluencers.[56] Nevertheless, finfluencers must adhere to general securities regulations such as Section 12-A of the SEBI Act, 1992, and Regulation 4 of SEBI Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market Regulations (**PFUTP Regulations**).

Recently, SEBI's interim order against Mohammad Nasiruddin Ansari / Baap of Chart has garnered significant media attention. SEBI herein exercised its powers under Sections 11(1), 11(4), 11B, and 11D of the SEBI Act, 1992, to bar Ansari from operating

[55] Interim Order cum SCN in the matter of unregistered investment advisory activities of Mohammad Nasiruddin Ansari/ Baap of Chart, WTM/AN/MIRSD/MIRSD-SEC-6/29693/2023-24 (Oct 25, 2023)
[56] Securities and Exchange Board of India, Advertisement Code for Investment Advisers(IA) and Research Analysts (RA) [April 5, 2023]

under the handle “Baap of Chart,” and from accessing the securities market. SEBI directed the noticees to disgorge INR 17.2 crore for indulging in unregistered investment advisory.

Pursuant to SEBI’s investigation, it was found that Ansari did not have the registration required to provide investment advice. SEBI also found that Ansari had (a) gained massive social media following by guaranteeing profits of up to 200–300 per cent in the market, ignoring the well-known risks associated with trading in securities; (b) collected money for enrolment in his “education courses” uploaded through Bunch Microtechnologies Private Limited (**Bunch**) and for providing investors/clients access to his “classes;” and (c) sold his strategies and provided buy/sell/hold recommendations privately under the guise of offering securities market courses.

SEBI noted that Ansari had not registered himself as an investment adviser under Section 12(1) of the SEBI Act 1992 and Regulation 3 of IA Regulations. Moreover, his reckless promise of assured returns violated various regulations[57] prohibiting fraudulent and unfair trade practices. SEBI held that Ansari was misleading investors by misrepresenting himself as a “stock market wiz” and concealing his loss of more than INR 2 crore in the markets. Pursuant to the aforementioned observations, SEBI issued a show-cause notice and passed an interim order directing the noticees to cease and desist from acting as unregistered investment advisers under the name of “Baap of Chart” or otherwise. Further, SEBI restrained them from participating in the securities market in any capacity until further orders. The board also directed the noticees to immediately withdraw public access to all content relating to investment advice from all platforms. It directed Ansari and the other noticees to disgorge the INR 17,20,76,619.09 crore they had collected from clients/investors through unregistered investment advisory activities.

SEBI took a strict and prompt approach *vide* this order to curb the rise of unregistered finfluencers, reaffirming its role as a watchdog that can easily detect marketing gimmicks of the finfluencers. Hence, finfluencers must be wary of the type of services they offer to the public and exercise caution regarding how they advertise their content and conduct with respect to the securities market.

Further material on various issues surrounding the regulation of financial influencers by SEBI is covered in our blog “End of the Party for Sin (Fin) Fluencers? SEBI’s Regulatory Crackdown on Finfluencers.”

[57] Regulation 4(1), 4(2)(k) & 4(2)(s) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

N

Conclusion

In the last decade, various judicial and legislative changes towards streamlining the dispute resolution process in India have been implemented. While the 2015, 2019, and 2021 amendments to the A&C Act were indeed positive indicators, the past year stands out for the pronounced efforts undertaken through legislative changes and certain judicial pronouncements to expedite dispute resolution in India.

It is a known fact that Indian courts are overburdened. Therefore, changes such as another avenue to resolve a commercial dispute through the Mediation Act or the more simplified and predictable ODR rules to resolve a securities dispute are truly noteworthy. The SC judgment in Re Interplay deserves laurels because the Court had stepped in and revisited a decision to end all chaos and confusion that its earlier decision may have caused.

The government has also taken cognizance of the large-scale pendency and is actively trying to remedy the situation through various schemes, including *Vivad Se Vishwas*. This in turn furthers India's push to not only be a pro-arbitration jurisdiction, but also an investor-friendly one.

One hopes that this trend continues to gather momentum in the coming year.

 2024 © Cyril Amarchand Mangaldas

Contributors

Shaneen Parikh
Partner, Head - International Arbitration

Abhileen Chaturvedi
Partner

Namita Shetty
Partner

Akhil Mahesh
Principal Associate

Mohit Prabhu
Principal Associate

Surya Sambyal
Principal Associate

Sanskriti Sidana
Senior Associate

Rahul Mantri
Senior Associate

Amoga Krishnan
Associate

Tushar Karkaria
Associate

Anjali Kumari
Associate

Pritha Taraphder
Associate

Varsha Divakar
Associate

Ilina Peehu
Associate

Urja Dhapre
Associate

Editors

Jhini Phira

Devika Ghosh

Offices of Cyril Amarchand Mangaldas

mumbai

Peninsula Chambers,
Peninsula Corporate Park,
GK Marg, Lower Parel,
Mumbai – 400 013, India
T +91 22 2496 4455 F +91 22 2496 3666
E cam.mumbai@cyrilshroff.com

bengaluru

3rd Floor, Prestige Falcon Tower,
19, Brunton Road, Off M G Road,
Bengaluru – 560 025, India
T +91 80 6792 2000
E cam.bengaluru@cyrilshroff.com

chennai

Office No. 823, 8th Floor, Regus KRM Plaza,
Old Harrington Road, Chetpet,
Chennai – 600 031, India
T +91 44 4904 2874
E cam.chennai@cyrilshroff.com

gift city

Cyril Amarchand Mangaldas – OFC,
415, Pragya Tower, GIFT City,
Gandhinagar – 382 355,
Gujarat, India
T +91 79 4903 9900 F +91 79 4903 9999
E cam.giftcity@cyrilshroff.com

delhi-ncr

Level 1 & 2, Max Towers,
C-001/A,Sector 16 B,
Noida – 201 301,
Uttar Pradesh, India
T +91 120 669 9000 F +91 120 669 9009
E cam.delhi@cyrilshroff.com

ahmedabad

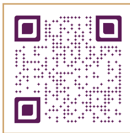
Block A-1512, 15th Floor, Navratna Corporate Park,
Ambli Bopal Road, Bodakdev,
Ahmedabad – 380 058, India
T +91 79 3503 9999
E cam.ahmedabad@cyrilshroff.com

hyderabad

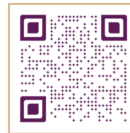
Office No. 226, 2nd Floor, Regus Ilabs Oval,
Gate No. 6, Inorbit Mall Road, Madhapur
Hyderabad – 500 081, India
T +91 40 4433 4323
E cam.hyderabad@cyrilshroff.com

singapore

61 Robinson Road,
#11-03, Singapore – 068 893
T +65 6329 2260
E cam.singapore@cyrilshroff.com
(CAM Singapore Pte Ltd., UEN: 202137213R)



www.cyrilshroff.com



www.cyrilshroff.com/blogs

64%
MARKETING PLANNING