



Bird's Eye View of Recent Developments in India



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ahead of the curve

A. Key Judicial Pronouncements

1. The Supreme Court has recently clarified that two Indian parties are free to choose a foreign arbitral seat¹. While emphasising the concept of party autonomy, recurring throughout the entire scheme of the Arbitration & Conciliation Act, 1996, the Apex Court observed that *“nothing stands in the way of party autonomy in designating a seat of arbitration outside India even when both parties happen to be Indian nationals.”* The Court has also clarified that two Indian parties, who have chosen a foreign seat of arbitration, can take recourse to Indian Courts for interim relief, unless otherwise stipulated by the agreement.
2. The Delhi High Court has held that a foreign court cannot pass an injunction order to restrain a party from pursuing a cause of action before an Indian Court, when the said Indian Court is the only competent forum for adjudication of the said cause of action. However, as per the Court, such injunction could be granted in exceptional circumstances i.e., when continuation of the proceeding is vexatious or oppressive to the proceedings pending before the injunction Court².
3. The Supreme Court has reiterated that in proceedings challenging an arbitral award under

Section 34 of the Arbitration and Conciliation Act, 1996, Courts do not have the power to modify, revise or alter the award. Per the Court, intervention is envisaged on limited grounds and Courts cannot correct the errors of the arbitrators³.

4. An award passed by an emergency arbitrator is now recognised and enforceable in India⁴. Per the Supreme Court, an emergency arbitrator is an arbitrator within the meaning of the Arbitration and Conciliation Act, 1996 and the rulings of emergency arbitrators could be enforced through Indian Courts.
5. The Supreme Court has held that a foreign arbitration award is enforceable against a non-signatory to an arbitration agreement. No evidence is required to “prove” that a non-signatory would be bound by the foreign award. However, it has been clarified by the Apex Court that a non-signatory is restrained from challenging the enforcement of a foreign award⁵.
6. The Supreme Court has reiterated the principle that restraint has to be shown by Courts, while examining the validity of an arbitral award. As per the Court, dissecting and reassessing factual aspects of the cases by the Courts lead to corrosion of the object of the Arbitration and Conciliation Act, principles

¹ *PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.*, Civil Appeal No 1647 of 2021, Judgement dated 20th April 2021

² *Interdigital Technology Corporation v Xiaomi Corporation & Ors.*, I.A. 8772/2020 in CS(COMM) 295/2020, Delhi High Court judgement dated 03rd May 2021

³ *The Project Director, National Highways Authority of India v M. Hakeem*, 2021 SCC Online SC 473, Judgement dated 20th July 2021

⁴ *Amazon.com NV Investment Holdings LLC v. Future Retail Limited & Ors*, Civil Appeal No. 4492-4493 of 2021, Judgement dated 06th August 2021

⁵ *Gemini Bay Transcription Pvt. Ltd. v Integrated Sales Service Ltd. & Anr.*, Civil Appeal No.8343-8344 of 2018 Judgement dated 10th August 2021

of minimal judicial interference with the arbitral awards⁶.

7. The question of correctness and application of the “*group of companies*” doctrine, which is often used to bind non-signatories to an arbitration agreement, has been referred to a larger Bench of the Supreme Court⁷. As per the Apex Court, the group of companies doctrine, in its present form, requires the joining of non-signatories as ‘parties in their own right’ and not ‘through or under’ a party to the arbitration agreement. Per the Court, joinder of the non-signatories has the effect of obliterating (a) the commercial reality; and (b) the benefits of keeping a subsidiary company distinct.
8. The Supreme Court in a recent judgment⁸ has upheld the constitutional validity of *inter-alia* certain provisions of the Prevention of Money Laundering Act, 2002 (“**PMLA**”), which relate to the powers of the Enforcement Directorate for arrest, attachment, search, seizure, summons and raids. The Apex Court has also upheld *inter-alia* the reverse burden of proof and twin conditions⁹ for the grant of bail, contemplated under the PMLA. Presently, a review petition against the said judgment is pending before the Supreme Court.
9. Section 3(2) of the Benami Transactions (Prohibition) Act, 1998 (“**Benami Act**”), which provides for punishment for benami transactions, has been held as unconstitutional by the Supreme Court¹⁰. *Vide* the same judgment, the Apex Court has also held that the Benami Transactions (Prohibition) Amendment Act, 2016 (“**2016 Amendment**”) is not applicable retrospectively. The 2016 Amendment *inter-alia* expanded the



scope of benami transactions and added a provision for confiscation of property obtained from benami transaction.

B. Cross Reliance of Judgments by the Indian and Singapore Courts

10. In the landmark judgment of *Vijay Karia and Ors. vs. Prysmian Cavi E Sistemi Srl and Ors.*¹¹, the Supreme Court of India while interpreting the scope of Section 48(1)(b) of the Arbitration and Conciliation Act, 1996, has placed reliance on the judgments of the Singapore Courts i.e., *Front Row Investment Holdings v. Daimler South East Asia; (2010) SGHC 80, TMM Division Maritime SA v. Pacific Richfield Marine Pte. Ltd.; (2013) SGHC 186, AKN and Anr. v. ALC and Ors.; (2015) SGCA 18, BAZ v BBA and Ors.; (2018) SGHC 275*. The Singapore Courts have, in the said judgments, dealt with the setting aside of an award where principles of natural justice are breached.

⁶ *Delhi Airport Metro Express Private Limited v Delhi Metro Rail Corporation Limited*, Civil Appeal No. 5627 of 2021, Judgement dated 09th September 2021

⁷ *Cox and Kings Limited v SAP India Private Limited*, Arbitration Petition (Civil) No. 38 of 2020; Judgement dated 06th May 2022

⁸ *Vijay Madanlal Choudhary & Ors. v Union of India & Ors*, Special Leave Petition (Criminal) No. 4634 OF 2014, Judgement dated 27th July 2022

⁹ *The Public Prosecutor has been given an opportunity to oppose the application for release; and the Court is satisfied that there are reasonable grounds for believing that the applicant is not guilty of the alleged offence and he is not likely to commit any offence while on bail.*

¹⁰ *Union of India and Anr. v M/s. Ganpati Dealcom Pvt. Ltd.*, Civil Appeal No. 5783 of 2022, Judgement dated 23rd August 2022.

¹¹ Civil Appeal No. 1544 of 2020 (Arising out of SLP (Civil) No. 8304 of 2019) and Civil Appeal No. 1545 of 2020, Judgement dated 13th February 2020.

11. In another judgment of *Anglo American Metallurgical Coal Pty. Ltd. vs. MMTC Ltd*¹², the Supreme Court of India has adopted the approach of the Court of Appeal in Singapore, in *Zurich Insurance (Singapore) Pte. Ltd. v. B-Gold Interior Design & Construction Pte. Ltd.*, [2008] SGCA 27, while dealing with Section 96 of the Evidence Act of Singapore, equivalent to Section 94 of the Indian Evidence Act, 1872. Concurring with the approach of the Singapore Court, the Supreme Court held that when there are several documents exchanged between the parties in the performance of a contract, all of them must be read as a whole.
12. The Supreme Court in *Government of India v Vedanta Limited*¹³, has also placed reliance on the interpretation of international public policy expounded by the Singapore Court of Appeal in *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA*¹⁴ i.e., public policy has a narrow scope and it should operate in instances where the upholding of an arbitral award would shock the conscience or is clearly injurious to the public good or wholly offensive to the ordinary reasonable and fully informed member of the public or where it violates the forum's most basic notions of morality and justice.
13. The Court of Appeal of Singapore, in the judgment of *The Online Citizen Pte Ltd. v Attorney-General and Ors.*¹⁵, has also referred to and concurred with the judgment of the Supreme Court of India in *Shreya Singhal v Union of India*¹⁶, which held that the overarching test for invoking the public order exception was- whether the particular act led to disturbance of the current life of the community, as opposed to merely affecting an individual, leaving the tranquillity of the society undisturbed.

C. Legal Reforms and Developments in India

Arbitration & Mediation

14. The Arbitration and Conciliation Act, 1996 was amended in 2021, to provide Courts with the power to grant an unconditional stay on the enforcement of an arbitral award, where a prima facie case has been made out that the arbitration agreement or contract forming the basis of the award, or the making of the award itself, was induced by fraud or corruption. The Amendment also omitted the Schedule to the Act, which stipulated an exhaustive list of nine categories of persons who would qualify as arbitrators in India. Instead, the Amendment provides that the qualifications, experience and norms for accreditation of arbitrators shall be specified by regulations. However, no regulations have been notified by the Indian Government yet.
15. In India, *ad-hoc* arbitrations are the norm, as opposed to institutional arbitrations. The 2019 Amendment to the Arbitration & Conciliation Act, 1996, proposes the appointment of arbitrators by "designated arbitral institutions", instead of the present practice of appointment by the Supreme Court/ High Courts. The Amendment also proposes to introduce the Arbitration Council of India ("ACI"), to *inter-alia* grade arbitration institutions basis the criteria including infrastructure, quality and calibre of arbitrators, performance, and compliance with time limits for disposal. These amendments are yet to be brought into force through an official notification.
16. The Draft Mediation Bill 2021 was introduced in the Rajya Sabha on December 20, 2021 and referred to the Parliamentary Standing Committee on the

¹² Civil Appeal No. 4083 of 2020 (Arising out of Special Leave Petition (Civil) No. 11431 of 2020), Judgement dated 17th December 2020.

¹³ Civil Appeal No. 3185 of 2020, Judgement dated 16th September 2020.

¹⁴ [2005] SGHC 197.

¹⁵ Civil Appeal Nos. 47, 52 of 2020 and Summonses Nos. 72, 97 and 98 of 2020, Judgement dated 08th October 2021.

¹⁶ Writ Petition (Criminal) No.167 of 2012, Judgement dated 24th March 2015.

same day. The Standing Committee submitted its report on July 13, 2022. The Bill aims to operate as a standalone law on mediation and provides legislative encouragement to mediation, especially institutional mediation. It makes pre-litigation mediation a condition precedent for filing of any suit of any civil or commercial nature and provides for a time bound completion of the same. The Bill also proposes to establish the Mediation Council of India, which will endeavour to (i) promote mediation through appropriate guidelines, (ii) develop India as a robust centre for mediation, (iii) lay down standards for professional conduct of mediators, and (iv) recognise mediation institutes and service providers, as per specified criteria.

17. The New Delhi International Arbitration Centre Act, 2019 (“**NDIAC Act**”) came into force on March 2, 2019. It attempts to bring targeted reforms to develop the NDIAC as a flagship institution for conducting international and domestic arbitration, and by providing cost effective facilities and administrative assistance for conciliation, mediation, and arbitral proceedings.
18. In the Union Budget 2022-2023, the Indian Government announced that an arbitration centre will be set up in the Gujarat International Finance Tec (**GIFT**) City¹⁷, aiming to provide a strong dispute resolution mechanism in the GIFT IFSC, to give necessary comfort to investors. The GIFT City International Finance Services Centre (**IFSC**) has been set up in a Special Economic Zone in India, and the Singapore International Arbitration Centre has also signed a Memorandum of Agreement, to establish a representative office in the GIFT City.

Data Protection

19. The Personal Data Protection Bill, 2019, aimed at providing protection of individuals’ personal data, and establishing a Data Protection Authority in India, has been withdrawn from the Lok Sabha in August 2022. As per the note circulated in Parliament, the Bill was deliberated in great



detail by a Joint Parliamentary Committee, which proposed 81 amendments and gave 12 recommendations to build a comprehensive legal framework for a digital ecosystem. In view of the suggestions, a comprehensive legal framework is being worked on¹⁸.

Competition

20. The Indian Government has introduced the Competition (Amendment) Bill, 2022, proposing significant changes to the Competition Act, 2002, which includes providing for a new mechanism for ‘settlement’ and ‘commitment’, allowing parties under investigation to offer commitments in respect of the alleged contravention or for settlement of cases with the Competition Commission of India (“**CCI**”), except in specified cases. The Bill also provides that transactions involving consideration exceeding INR 20 billion will have to be notified to the CCI even if the target meets the *de minimis* exemption.

Contract Enforcement

21. The Ministry of Law and Justice has launched the ‘contract enforcement’ portal¹⁹, which provides key information relating to legislative and policy

¹⁷ <https://economictimes.indiatimes.com/news/economy/policy/fm-announces-international-arbitration-centre-at-gift-city/articleshow/89268445.cms>

¹⁸ <https://timesofindia.indiatimes.com/india/centre-withdraws-personal-data-protection-bill/articleshow/93323625.cms>

¹⁹ Press Release, Justice Department launches “Enforcing Contracts Portal”, Ministry of Law and Justice, June 29, 2021, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1731090>

reforms undertaken by the Government based on the 'Enforcing Contracts' parameter used by the World Bank in assessing Ease of Doing Business. This includes data on the functioning of commercial courts and disposal rates of cases in the commercial courts of Delhi, Mumbai, Bengaluru and Kolkata.

Crypto Currencies and VDAs

22. Similar to China's digital Yuan, the Reserve Bank of India ("RBI") proposes to introduce a central bank digital currency ("CBDC"), in the ongoing FY²⁰.

23. Income from transfer of virtual digital assets ("VDA") will be taxed at 30 per cent²¹. However, certain assets such as gift cards/vouchers, mileage, reward points, loyalty cards, website / platform/ application subscriptions have been excluded from the ambit of VDA²².

24. The RBI has, time and again, expressed its concerns about cryptocurrencies. As per the RBI, virtual currencies are neither approved nor registered²³ and none of the crypto platforms have been granted licence/ authorisation from the RBI²⁴. The Governor of the RBI recently observed that cryptos may lead to dollarisation of developing countries like India, as the prices of crypto tokens are mostly denominated in dollars²⁵. Moreover, the Advertising Standards Council of India has released certain guidelines in relation to VDA²⁶. The said guidelines *inter-alia* provide that all advertisements in relation to VDA must contain a disclaimer that, "Crypto products and NFTs are unregulated and can be highly risky. There may be no regulatory recourse for any loss from such transactions."

25. India's Minister of State for Finance has announced in the Rajya Sabha that the Enforcement Directorate ("ED") had served upon the crypto exchange WazirX a notice under the Foreign Exchange Management Act, 1999. It is reported that the said notice has been issued to WazirX for allowing outward remittance of crypto assets worth INR 2790 crore to unknown wallets. As per newspaper reports, it is alleged that WazirX was using the walled infrastructure of Cayman Island based exchange BINANCE and that the crypto transactions between the said two exchanges were not being reported on blockchains. The ED conducted searches on one of the directors of Zangmai Labs Private Limited, which owns WazirX, and issued an order to freeze their bank balances to the tune of ₹64.67 crore²⁷.

26. The soon-to-be-tabled Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 proposes to facilitate an RBI-issued digital currency and "prohibit" private cryptocurrencies in India, as per the Lok Sabha bulletin. It is yet to be seen, however, whether the Bill will lean towards regulating, or banning private cryptocurrencies. The Indian Minister of Finance, Mrs. Nirmala Sitharaman, has stated that "cryptocurrencies require international collaboration to prevent regulatory arbitrage and therefore, any legislation for regulation or for banning can be effective only after significant international collaboration on evaluation of the risks and benefits and evolution of common taxonomy and standards"²⁸.

²⁰ [Digital rupee will be introduced in this fiscal year: RBI \(timesnownews.com\)](https://timesnownews.com)

²¹ Key Features of Budget 2022-2023, February 2022, Ministry of Finance, Budget Division

²² Ministry of Finance (Department of Revenue) (Central Board of Direct Taxes) [Notification dated 30th June 2022, available at Notification No. 74/2022 \(incometaxindia.gov.in\)](https://www.incometaxindia.gov.in)

²³ RBI cautions users of Virtual Currencies against Risk, RBI Press Release dated 24th December 2013

²⁴ RBI cautions users of Virtual Currencies, RBI Press Release dated 01st February 2017

²⁵ [Cryptos will lead to financial instability, dollarization of the economy, says RBI Governor - The Economic Times \(indiatimes.com\)](https://economictimes.com)

²⁶ [asci_code_of_self_regulation.pdf \(ascionline.in\)](https://www.ascionline.in)

²⁷ <https://www.livemint.com/news/india/enforcement-directorate-freezes-crypto-exchange-wazirx-after-search-11659696068471.html>

²⁸ Press Release, Justice Department launches "Enforcing Contracts Portal", Ministry of Law and Justice, June 29, 2021, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1731090>

Other Developments

27. To provide a defined framework for collection of certain details relating to international passengers travelling by air, the Central Board of Indirect Taxes and Customs published the Passenger Name Record Information Regulations, 2022²⁹. These regulations aim to enhance detection, interdiction and investigative capabilities of customs authorities using non-intrusive techniques for combating offences related to smuggling of contraband such as narcotics, psychotropic substances, gold, arms & ammunition etc., which directly impacts national security.
28. The Indian Government introduced the National Policy on Electronics (“**NPE 2019**”) with the aim to position India as a global hub for Electronics System Design and Manufacturing (ESDM). The Indian Government under the NPE 2019 envisions to encourage and drive capabilities in the country for developing core components, including chipsets, and creating an enabling environment for the industry to compete globally³⁰.
29. The Indian Government initiated the National Mission on Transformative Mobility and Battery Storage in 2019. This Mission recommends and drives strategies for transformative mobility and phased manufacturing programs for EVs, EV components and batteries. A Phased Manufacturing Program (PMP) will be launched to localise production across the entire EV value chain. The Mission’s objective is to coordinate with key stakeholders in the Ministries/ Departments and the states to integrate various initiatives to transform mobility in India³¹.
30. The e-Amrit³² portal is launched by the Indian Government as a one-step guide and a knowledge repository, concerning the enabling ecosystem for electric mobility in India and market updates.



31. In March 2022, the Indian Government launched the India Semiconductor Mission (“**ISM**”)³³. The ISM has a total outlay of INR 76,000 crore for the development of semiconductor and display manufacturing ecosystem in India. Under the ISM, the following four schemes have been launched by the Indian Government:
- a. Scheme for setting up of Semiconductor Fabs in India³⁴: The scheme is aimed at attracting large investments for setting up semiconductor wafer fabrication facilities in India, to strengthen the electronics manufacturing ecosystem and help establish a trusted value chain.
 - b. Scheme for setting up of Display Fabs in India³⁵: The scheme is aimed at attracting large investments for manufacturing tft, lcd or AMOLED based display panels.
 - c. Scheme for setting up of Compound Semiconductors / Silicon Photonics / Sensors Fab and Semiconductor Assembly, Testing, Marking and Packaging (ATMP) / OSAT facilities in India³⁶.

²⁹ <https://pib.gov.in/PressReleasePage.aspx?PRID=1850623>

³⁰ https://www.meity.gov.in/writereaddata/files/eGazette_Notification_NPE%202019_dated%2025022019.pdf

³¹ <https://www.niti.gov.in/e-mobility-national-mission-transformative-mobility-and-battery-storage>

³² <https://e-amrit.niti.gov.in/choose-my-electric-vehicle>

³³ <https://pib.gov.in/PressReleasePage.aspx?PRID=1808676>

³⁴ <https://ism.gov.in/compound-semiconductors-silicon-photonics-sensors-fab-and-semiconductor-atmposat-facilities.html>

³⁵ <https://ism.gov.in/compound-semiconductors-silicon-photonics-sensors-fab-and-semiconductor-atmposat-facilities.html>

³⁶ <https://ism.gov.in/compound-semiconductors-silicon-photonics-sensors-fab-and-semiconductor-atmposat-facilities.html>

- d. Digital Linked Incentive Scheme³⁷: This Scheme shall offer financial incentives as well as design infrastructure support across various stages of development and deployment of semiconductor design for Integrated Circuits (ICs), Chipsets, System on Chips (SoCs), Systems & IP Cores and semiconductor linked design.
32. The Government of Gujarat has also recently announced the Gujarat Semiconductor Policy, 2022-27, in order to attract investments into the domestic chip manufacturing sector in India under the ISM³⁸. Under the said policy, *inter-alia*, additional capital assistance at the rate of 40 percent of the capital assistance provided by the Indian Government will be provided by the Gujarat Government. It also aims at setting up of Dholera Semicon City and eligible projects shall be given subsidies on the water, land and power tariffs³⁹.
33. It is reported that India has entered into an agreement with Israel's ISMC Analog Private Limited, under which the latter shall make an investment of \$3 billion in India, to establish a semiconductor chip making plant in Karnataka⁴⁰.
34. The Indian Government has approved Phase II of the Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (**FAME**) Scheme⁴¹, with an outlay of INR 10,000 crore. Phase II of the FAME Scheme is being implemented by the Indian Government

for faster adoption of electric mobility and development of its manufacturing eco-system in India. Under Phase II, the Indian Government aims to generate demand by way of supporting 7000 e-Buses, 5 lakh e-3 Wheelers, 55000 e-4 Wheeler Passenger Cars (including Strong Hybrid) and 10 lakh e-2 Wheelers. About 86 percent of the funds have been allocated under Phase II for demand incentive, to create demand for xEVs in India.

D. FDI in India

35. In the FY 2021-22, India recorded its highest ever annual FDI inflow of USD 83.57 billion. In terms of top contributing countries to India's FDI Equity inflow, Singapore is at the forefront with 27%, followed by the USA. The Computer Software & Hardware sector has emerged as the top recipient of the FDI Equity inflows during the FY 2021-22, followed by the Services and the Automobile sectors, respectively⁴².
36. India's FDI policy is liberal and transparent, where most sectors are open to FDI through the automatic route. The Indian Government has recently undertaken reforms in sectors such as Coal Mining, Contract Manufacturing, Digital Media, Single Brand Retail Trading, Civil Aviation, Defence, Insurance and Telecom to further liberalise and simplify the FDI policy, provide ease of doing business and attract investments⁴³.

³⁷ https://d2p5j06zete1i7.cloudfront.net/Cms/2022/May/05/1651757254_notification_dli.pdf

³⁸ <https://economictimes.indiatimes.com/news/india/gujarat-announces-semiconductor-policy-with-heavy-subsidies/articleshow/93166497.cms>

³⁹ <https://economictimes.indiatimes.com/news/india/gujarat-announces-semiconductor-policy-with-heavy-subsidies/articleshow/93166497.cms>

⁴⁰ <https://economictimes.indiatimes.com/small-biz/sme-sector/global-majors-bet-on-india-becoming-a-chip-manufacturing-hub/articleshow/91484005.cms>

⁴¹ <https://fame2.heavyindustries.gov.in/#>

⁴² <https://pib.gov.in/PressReleasePage.aspx?PRID=1826946>

⁴³ <https://pib.gov.in/PressReleasePage.aspx?PRID=1826946>

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