The Asia-Pacific Arbitration Review

2024

Terminating arbitration: lessons from India

The Asia-Pacific Arbitration Review

2024

The *Asia-Pacific Arbitration Review 2024* contains insight and thought leadership from 58 pre-eminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Asia-Pacific's more interesting seats.

This edition also contains think pieces on complex financial instruments, private equity and investor–state arbitration, and several on new frontiers in energy disputes.

All articles come complete with footnotes and relevant statistics.

Generated: February 8, 2024

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research

Explore on **GAR**

Terminating arbitration: lessons from India

Vijayendra Pratap Singh, **Abhijnan Jha** and **Abhisar Vidyarthi**
AZB & Partners

Summary

IN SUMMARY

This article examines the scope of section 32(2)(c) of the Arbitration and Conciliation Act 1996, which is based on article 32 of the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration 1985, and discusses the recourse available to parties against an order passed under this section in light of a recent pronouncement from the Delhi High Court.

DISCUSSION POINTS

- Approach of Indian courts towards applications filed seeking termination of arbitration proceedings
- Scope and interpretation of section 32(2)(c) of the Arbitration and Conciliation Act 1996
- Nature of an order passed under section 32(2)(c)
- Right to challenge an order passed under section 32(2)(c)

REFERENCED IN THIS ARTICLE

- *Future Coupons Private Limited v Amazon.com NV Investment Holdings*
- *SREI Infrastructure Finance Limited v Tuff Drilling Private Limited*
- *Maharashtra State Electricity Board v Datar Switchgear Ltd*
- *IFFCO Ltd v Bhadra Products*
- *Wanbury Ltd v Candid Drug Distributors*
- *A Ayyasamy v A Paramasivam*
- *Fiona Trust and Holdings Corp v Privalov*
- *PCL Suncon v NHAI*
- Arbitration and Conciliation Act 1996

INTRODUCTION

A significant yet relatively little discussed aspect of Indian arbitration law is the termination of arbitration proceedings under section 32 of the Arbitration and Conciliation Act 1996 (the Arbitration Act), which is based on article 32 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985 (the Model Law). Once arbitral proceedings are terminated, the arbitral tribunal loses its jurisdiction and its mandate is deemed to have expired,[1] and it is only under exceptional circumstances that the tribunal may be reconstituted.[2]

The primary consequence of the arbitration tribunal losing its jurisdiction is that the authority of the arbitral tribunal over the parties comes to an end. Thus, the arbitral tribunal may not revisit or re-examine the merits or substantive claims of the parties, subject to section 33 and

section 34(4) of the Arbitration Act.[3] Any subsequent order or award passed by the arbitral tribunal would therefore not be enforceable by law.

The issue of the termination of arbitral proceedings is important for the parties and requires careful consideration by arbitral tribunals as an order passed by the arbitral tribunal terminating the arbitration proceedings under section 32 of the Arbitration Act cannot be subsequently recalled or withdrawn by the arbitral tribunal due to the tribunal losing its jurisdiction.[4]

The general rule (as set forth in section 32(1) of the Arbitration Act) is that arbitration proceedings are automatically terminated once the arbitral tribunal makes the final award, which decides the merits of the claims or counterclaims presented by the parties. The award contemplated under this provision is the final award, which disposes of all issues submitted to the arbitral tribunal by the parties' agreement.

In this context, interim or partial awards, which do not decide the final remaining or outstanding claims of the parties, would not trigger the termination of arbitration proceedings under section 32(1) of the Arbitration Act.[5] The termination would only be triggered by a final award, pursuant to which there are no pending issues for consideration of the arbitral tribunal. Arbitration proceedings terminate as of the date on which the signed final award is provided to the parties.[6]

Section 32(1) of the Arbitration Act recognises that arbitration proceedings may also be terminated by an order of the arbitral tribunal under section 32(2) of the Arbitration Act as follows:

> The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where -
>
> 1. the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,
> 2. the parties agree on the termination of the proceedings, or
> 3. the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

While clauses (a) and (b) above are rather uncontroversial,[7] clause (c) is often at the centre of several contentious applications seeking the termination of arbitration proceedings on various grounds. The wording of the provision itself provides limited guidance with respect to the trigger for termination.

In this context, this article examines the scope of section 32(2)(c) of the Arbitration Act, as well as the nature of orders passed pursuant to applications made under the provision, to throw light on the meaning of the term 'unnecessary or impossible'. These terms must be strictly construed to apply only in exceptional circumstances (ie, where the proceedings have either become infructuous, or there is a legal or material barrier to the continuation of the proceedings). Finally, this article discusses the recourse available to parties against an order passed under section 32(2)(c) of the Arbitration Act in light of a recent pronouncement of the Delhi High Court in the much-publicised dispute between Amazon and Future Group.

SCOPE OF SECTION 32(2)(C)

The underlying objective of section 32(2)(c) of the Arbitration Act appears to be to provide a residuary provision to encompass situations that could not have been foreseen during the drafting of the Act. Inspired by the Model Law, the legislature in India has also advisedly left it to the tribunal's discretion to determine when the continuation of the proceedings has become unnecessary or impossible.[8]

A plain reading of section 32(2) indicates arbitration proceedings terminating by the passing of a final award is an exception to the general rule. Under Indian law, an exception clause must be strictly interpreted and the party seeking to invoke the exception must establish that it falls within the scope of the exception.[9] Thus, section 32(2)(c), being an exception clause, ought to be interpreted strictly and applied in exceptional cases.

It is also evident from section 32(2)(c) that arbitration proceedings may only be terminated under this provision in cases where 'for any other reason' the arbitration proceedings become unnecessary or impossible. This necessarily implies that such reasons would only be those that do not fall under the circumstances provided under section 32(2), clauses (a) and (b), or in other provisions of the Arbitration Act pursuant to which arbitration proceedings stand terminated, such as in proceedings under sections 16 ('Competence of arbitral tribunal to rule on its jurisdiction'), 25 ('Default of a party') or 30 ('Settlement').

In *SREI Infrastructure Finance Limited v Tuff Drilling Private Limited*, the Supreme Court drew a distinction between termination of arbitration proceedings contemplated under sections 25 and 32(2)(c) of the Arbitration Act.[10] In this regard, the Supreme Court opined:

> Whether termination of proceedings in the present case can be treated to be covered by Section 32(2)(c) is the question to be considered. Clause (c) contemplates two grounds for termination i.e. (i) the Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary, or (ii) impossible. The eventuality as contemplated under Section 32 shall arise only when the claim is not terminated under Section 25(a) and proceeds further. The words "unnecessary" or "impossible" as used in clause (c) of Section 32(2), cannot be said to be covering a situation where proceedings are terminated in default of the claimant. The words "unnecessary" or "impossible" has been used in different contexts than to one of default as contemplated under Section 25(a).[11]

The explanatory notes for article 32 of the Model Law, which inspired section 32 of the Arbitration Act, also indicate that the expressions 'impossible' and 'unnecessary' found under article 32(2)(c) of the Model Law prescribe a high threshold. The explanatory notes prescribe that the termination is only triggered when the continuation of the proceedings is manifestly a waste of time and money.[12]

The explanatory notes also evidence that the word 'inappropriate' was consciously changed to 'impossible' in article 32(2)(c) during the drafting stage of the Model Law. This shows that the drafters of the Model Law conceived a high threshold for the application of the exception clause envisaged under article 32(2)(c).[13]

Ilias Bantekas, in the commentary to article 32 of the Model Law, indicates that certain situations (eg, a failure of the parties to pursue the arbitration proceedings despite being so requested by the arbitral tribunal, or a refusal by the parties to make an advance on costs or

arbitration fees) may be grounds to terminate arbitration proceedings under article 32(2)(c) of the Model Law.[14] Bantekas also mentions that arbitration proceedings:

> may be characterised as unnecessary where the respondent has satisfied the claimant's claims and hence there is no longer a need to proceed with their examination in arbitral proceedings. The same is equally true where the claimant fails to pursue its case, or withdraws its case altogether, or where the subject matter of the arbitration becomes moot.[15]

Other experts have expressed the following views on article 36(2) of the UNCITRAL Arbitration Rules 2010, which is similar in some respects to section 32(2)(c) of the Arbitration Act:[16]

> 1. Article 36(2) of the 2010 Rules addresses any other situation where the proceedings are to be terminated because their continuation has become "unnecessary or impossible". As noted, a tribunal faced with this situation will either (i) order the termination of the proceedings (which, as mentioned above, is not intended to have res judicata effect) after having informed the parties and heard them; or (ii) continue the proceedings because, after having heard the parties, it considers that 'there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so'. The provision is similar in its conception and operation with article 30(1)(a).
> 2. The travaux préparatoires of the 1976 Rules and of the Model Law provide little guidance as to how the tribunal should make the determination that continuation of the proceedings has become unnecessary or impossible. Nor did the Working Group discuss the meaning of the terms "unnecessary" or "impossible", or the distinction between them. It appears that they are used as compendious terms intended to cover a variety of possible circumstances. As a notion, the term "unnecessary" encompasses situations where the parties have no legitimate interest in continuing the proceedings – for example, where the dispute has become moot – whereas the term "impossible" implies a legal or material barrier to the continuation of the proceedings (for example, a party has ceased to exist and there is no successor).

The Indian courts have interpreted section 32(2)(c) of the Arbitration Act similarly and construed it to cover only exceptional situations. The courts have held that the termination of arbitration proceedings is warranted in cases where the continuation thereof is rendered impossible or becomes infructuous.[17] In ***Maharashtra State Electricity Board v Datar Switchgear Ltd***, the Bombay High Court observed:

> Clause (c) of sub-section (2) of section 32 has vested a residuary power in the Arbitral Tribunal to terminate the proceedings where it finds that a continuation thereof has for any other reason become unnecessary or impossible. The legislature has advisedly left it to the Tribunal to determine as to when the continuation of the proceedings has become unnecessary or impossible. The expression "unnecessary" may for instance involve a situation where

> proceedings are rendered infructuous. A situation may have arisen as a result of which an adjudication into the dispute has become unnecessary either as a result of the fact that the dispute does not survive or for any other valid reason. Situations may also arise where a continuation of proceedings is rendered impossible. Impossibility is not merely to be viewed from the point of view of a physical impossibility of an adjudication, but may conceivably encompass a situation where a party by a consistent course of conduct renders the very continuation of the arbitral proceedings impossible. Then again a party which has been guilty of contumacious conduct cannot be heard to seek the benefit of its conduct to seek termination. It is impossible to catalogue the circumstances in which the Arbitral Tribunal may hold that it is either unnecessary or impossible to continue the arbitral proceedings.[18]

The onus lies on the party seeking the termination of arbitration proceedings to satisfy the arbitral tribunal that the exception envisaged under section 32(2)(c) of the Arbitration Act applies to their case and that the continuation of the arbitration proceedings has, indeed, become impossible or unnecessary. It is not uncommon for recalcitrant parties to file frivolous applications under section 32(2) with the sole purpose of derailing and delaying the completion of arbitration proceedings. It is therefore essential to purposively and objectively interpret section 32(2)(c) such that parties are not allowed to seek termination of arbitration proceedings merely by filing recalcitrant applications.

The Bombay High Court has held that 'the word "shall" in section 32 thus has to be construed as "may"' to afford arbitral tribunals the discretion 'to suppress any public mischief' or guerrilla tactics that render the continuation of proceedings impossible or unnecessary 'to prevent injustice'.[19] In view of this, it is clear that section 32(2)(c) of the Arbitration Act does not enumerate the specific situations and circumstances that may warrant the termination of arbitral proceedings, which are 'impossible to catalogue'.[20] The arbitral tribunal is entrusted with deciding whether circumstances exist that render it unnecessary or impossible to continue with the arbitration proceedings. The application of section 32(2)(c), as well as the meanings to be ascribed to the words 'unnecessary' and 'impossible', should be carried out in a practical way and with the use of common sense, having regard to all the circumstances of the case, and the need to ensure a fair and efficient resolution of all disputes between parties. The precise thresholds that the words 'unnecessary" and 'impossible' prescribe may therefore not be as important as the notion that the words themselves seek to convey.

NATURE OF ORDERS PASSED UNDER SECTION 32(2)(C)

Under Indian law, for a decision of the arbitral tribunal to qualify as an award, the decision must finally decide a point or claim at issue in the arbitration proceedings.[21] An order under section 32(2)(c) of the Arbitration Act to terminate arbitration proceedings is therefore merely a procedural order and does not constitute an award on the merits,[22] as such an order does not answer any issue at dispute in arbitration between the parties and is merely an expression of the decision of the arbitral tribunal not to continue with the arbitration proceedings.[23]

An order under section 32(2)(c) is also not subject to proceedings under section 34 of the Arbitration Act, which permits a challenge to an award on the grounds listed therein, as is otherwise the case with an arbitral award to the same effect.[24] In fact, section 32 recognises a clear distinction between a final award and an order to terminate the arbitration proceedings passed under section 32(2). This distinction is also manifest from a reading of section 32(2)(a), which allows the respondent to seek an award as against an order for

termination as a matter of legitimate interest in situations where the claimant withdraws its claims.[25]

In view of the above, the arbitral tribunal is not required to consider the merits of the dispute upon an application under section 32(2)(c). (ie, grounds that ultimately relate to the substantive defences to claims of the claimant cannot be relied upon as grounds on which to seek termination of the arbitration proceedings, as such grounds would be required to be considered and disposed of in the usual way).

An application under section 32(2)(c) cannot be successfully based on the argument that no relief can be granted to the claimant on account of the underlying agreements between the parties being void; for instance, a mere assertion that the contract forming the subject matter of arbitration proceedings that involve claims of breach of contract was void from the beginning, or has now become null and void, would be tantamount to asserting a defence on the merits and may not be appropriate grounds on which to seek the termination of arbitration proceedings.

Any arguments that address the merits of the respondent's defences to the claimant's claim in arbitration proceedings would be required to be addressed in a final award by the arbitral tribunal. Such an award can only be passed after all parties have been granted an opportunity to be heard and to fully present their arguments on all issues at dispute. All such arguments are, by the very nature of arbitration, destined to be tried by the arbitral tribunal as its primary mandate and reason for constitution. Due process requires that all substantive contentions that address the merits of the case must be considered in accordance with established procedural rules. In this regard, the doctrine of severability also becomes relevant as it allows the arbitral tribunal to retain jurisdiction over the parties. This is due to the fact that an arbitration agreement is an independent and separate agreement that continues to subsist even if the underlying agreement is held illegal or unenforceable, per the provisions set forth in section 16(1)(b) of the Arbitration Act.[26]

An application under section 32(2)(c) cannot be equated to, or used as, a proxy application for summary or early dismissal of claims. For instance, Rule 29 of the Singapore International Arbitration Centre Arbitration Rules 2016 allows a party to apply to the arbitral tribunal for early dismissal of a claim or a defence on the basis that the claim or defence is manifestly without legal merit or manifestly outside the jurisdiction of the arbitral tribunal.[27] In early dismissal cases, the arbitral tribunal may allow the application for early dismissal of a claim or defence, and make an award on application. This is substantially different from section 32(2)(c) of the Arbitration Act, wherein the arbitral tribunal does not exercise its powers to terminate the arbitration proceedings based on its view of the merits of the case. The power to terminate arbitration proceedings under section 32(2)(c) cannot be relied upon merely because, in the view of the arbitral tribunal, the case of the claimant is so unmeritorious or doomed to fail on technical grounds that there is no point in continuing on with the arbitration proceedings.

Section 32(2)(c) cannot be used as an impermissible shortcut through the arbitral process or to seek a summary award on the merits without hearing all issues at dispute. The power entrusted to the arbitral tribunal under section 32(2)(c) is to be applied when it has become physically, legally or financially impossible or unnecessary for the arbitration proceedings to continue due to extraneous circumstances.

CHALLENGE AGAINST AN ORDER PASSED UNDER SECTION 32(2)(C)

Recently, the right to challenge an order passed under section 32(2)(c) of the Arbitration Act drew significant attention in India with the dismissal of an application filed by Future Group seeking the termination of its ongoing Singapore International Arbitration Centre-administered arbitration proceedings against Amazon (***Amazon v Future Group***). On 25 March 2021, in the midst of ***Amazon v Future Group***, Future Group filed a complaint with the Indian antitrust regulator, the Competition Commission of India (CCI), seeking revocation of the approval that was granted to Amazon on 28 November 2019 for its investment in Future Group.[28]

Despite the questionable timing of the complaint, Future Group successfully secured an order from the CCI wherein, on 17 December 2021, the CCI held in abeyance the approval granted to Amazon for its investment and directed Amazon to reapply for the approval pursuant to fresh filling.[29] Based on the CCI's order, Future Group filed an application under section 32(2)(c) of the Arbitration Act seeking termination of the ***Amazon v Future Group*** arbitration. The basis of the application was that, absent an existing CCI approval, the underlying agreements that were the subject matter of the arbitration were rendered incapable of performance under Indian law.[30] On 28 June 2022, the termination application was dismissed by the arbitral tribunal on the grounds that the continuation of ***Amazon v Future Group*** was not rendered unnecessary or impossible, and arguments based on the CCI's order would be required to be considered and determined by the arbitral tribunal in the final award.[31]

Aggrieved by this, Future Group filed a petition before the Delhi High Court under article 227 of the Constitution of India, which grants supervisory jurisdiction to the high courts over all lower courts and tribunals in India.[32] The jurisdiction of the high courts envisaged in article 227 is required to be exercised in exceptional circumstances (eg, the order passed suffers from a fundamental lack of inherent jurisdiction,[33] one party is left remediless under the statute or clear bad faith is shown by one of the parties).[34] In light of this position, the Delhi High Court dismissed the petition filed by Future Group as being impossible to maintain and, in doing so, clarified the manner in which orders under section 32(2)(c) of the Arbitration Act can be challenged under Indian law.

The Delhi High Court highlighted a distinction between the two kinds of orders that may be passed under section 32(2) of the Arbitration Act, which are:

- when the arbitral tribunal allows an application under section 32(2) and terminates the arbitration proceedings; and
- when the arbitral tribunal rejects and dismisses an application under section 32(2), resulting in continuation of the arbitration proceedings.

In the first scenario, the Delhi High Court held that the party may be left remediless as there is no provision under the Arbitration Act that would permit the party to raise a challenge against such an order because it would neither be an award amenable to challenge under section 34 or an interim order amenable to challenge under section 37. In such situations, the Delhi High Court has opined that a petition under article 227 of the Constitution of India may be held to be maintainable against an order passed under section 32 of the Arbitration Act. In the second scenario, however, the right to challenge the final award under section 34 of the Arbitration Act would subsist and is merely deferred until the final award is passed. Accordingly, if the arbitration proceedings deserved to be terminated, the option for the party to urge the same grounds (if the occasion arose) in a challenge to an award under section

34 would always be available. In such situations, it has been held that a petition under article 227 of the Constitution of India would not be maintainable against an order passed under section 32 of the Arbitration Act. In light of this, the petition filed by Future Group seeking termination of its arbitration with Amazon was dismissed as being impossible to maintain.

This judgment of the Delhi High Court upholds the sanctity of the arbitral process, and ensures that there is no unwarranted interference with the arbitration proceedings in cases where the arbitral tribunal dismisses an application under section 32 of the Arbitration Act and continues with the arbitration proceedings. Recognising the principle of indestructability of arbitration proceedings, the Delhi High Court observed:

> Clipping of arbitral wings is against the basic ethos of the 1996 Act. Allowing free flight to arbitration is the very raison d'etre of the reforms that the UNCITRAL arbitral model sought to introduce. The 1996 Act, founded as it is on the UNCITRAL model, is pervaded by the same philosophy.[35]

At the same time, the judgment recognises the right of a party to challenge an order terminating the arbitration proceedings to ensure that no party is left remediless.

CONCLUSION

Given the significant ramifications of a termination of arbitration proceedings, applications filed under section 32(2)(c) of the Arbitration Act ought to be carefully and purposively considered by arbitral tribunals. Frivolous applications filed with the sole purpose of derailing the arbitral process should be discouraged. The application of section 32(2)(c), as well as the meaning to be ascribed to the words 'unnecessary' and 'impossible', should be carried out in a practical way and with the use of common sense, having regard to all the circumstances of the case, and the need to ensure a fair and efficient resolution of all disputes between parties. On the other hand, in circumstances where the continuation of the arbitration proceedings has in fact become impossible or unnecessary, the arbitral tribunal should pass an order terminating the arbitration proceedings in such a way as to ensure that party autonomy is respected and there is no unwarranted financial or other harm caused to the parties.

Endnotes

1 *Dakshin Haryana Bijli v Navigant Technologies* (2021) SCC OnLine SC 157, paragraph 31. ^ Back to section

2 id., paragraph 35; Ilias Bantekas and others, 'Termination of Proceedings', *UNCITRAL Model Law on International Commercial Arbitration: A Commentary* (Cambridge University Press 2020), page 831. ^ Back to section

3 See *Dakshin Haryana Bijli v Navigant Technologies*, paragraph 31; *MS Vag Educational Services v Akash Education* (2022) SCC OnLine Del 3401, paragraph 15; *24Office & Prof'l Emps Intl Union, Local No. 471 v Brownsville Gen Hosp*, 186 F3d 326, 331 (3rd Cir 1999); *T Co Metals, LLC v Dempsey Pipe & Supply, Inc* (2010) US App LEXIS 893 (2nd Cir, 14 January 2010); *Trade & Transp, Inc v Natural Petroleum Charterers Inc*, 931 F2d 191, 195 (2nd Cir 1991). ^ Back to section

4 *Sai Babu v M/s Clariya Steels Pvt Ltd*, Civil Appeal No. 4956 of 2019 (judgment dated 1 May 2019); *MS Vag Educational Services v Akash Education* (2022) SCC OnLine Del 3401, paragraphs 15–18. Back to section

5 Bantekas, page 836. Back to section

6 *Dakshin Haryana Bijli v Navigant Technologies*, paragraphs 31–35. Back to section

7 Given that termination orders do not decide the claims or counterclaims of the parties and are primarily in the nature of a procedural order, they do not produce any res judicata effect. Accordingly, in situations where the claimant withdraws its claims but does not waive them, section 32(2)(a) of the Arbitration Act would allow the respondent to seek a final award on the merits to restrict the claimant from pursuing the same claims in other proceedings, particularly when the claimant's case is weak. See Bantekas, page 839. Back to section

8 *Maharashtra State Electricity Board v Datar Switchgear Ltd* (2002) SCC OnLine Bom 983, paragraph 47. Back to section

9 *IRDP v P D Chacko* (2010) 6 SCC 637, paragraph 15; *Union of India v Wood Papers Ltd* (1990) 4 SCC 256, paragraph 4. Back to section

10 *SREI Infrastructure Finance Limited v Tuff Drilling Private Limited* (2018) 11 SCC 470, paragraph 22. Back to section

11 id. See also *Sai Babu v M/s Clariya Steels Pvt Ltd.* Back to section

12 *Summary Records of Meetings on UNCITRAL Model Law on International Commercial Arbitration*, 329th Meeting (18 June 1985), article 32, paragraphs 32–33. Back to section

13 id. Back to section

14 Bantekas, page 844. Back to section

15 id., page 845. Back to section

16 Jan Paulsson and Georgios Petrochilos, *UNCITRAL Arbitration* (Kluwer Law International, 2017), pages 333–334. Back to section

17 *Maharashtra State Electricity Board v Datar Switchgear Ltd*, paragraph 47; see also *M P v Associated Computers Service* (2016) SCC OnLine MP 9791, paragraph 14; and definitions of 'circumstances', 'impossibility' and 'unnecessary' in *Black's Law Dictionary* (9th edn, 2009), pages 308, 888 and 1707. Back to section

18 *Maharashtra State Electricity Board v Datar Switchgear Ltd*, paragraph 47. Back to section

19 *Wanbury Ltd v Candid Drug Distributors* (2015) SCC OnLine Bom 3810, paragraph 43. Although this case was held in the context of section 25 of the Arbitration Act, which deals with termination on account of default of the claimant, the Bombay High Court also considered and made observations on section 32. Back to section

20 *Maharashtra State Electricity Board v Datar Switchgear Ltd*, paragraph 47. Back to section

21 *IFFCO Ltd v Bhadra Products* (2018) 2 SCC 534. Back to section

22 Bantekas, page 841. Back to section

23 *PCL Suncon v NHAI* (2021) SCC OnLine Del 313, paragraph 30. Back to section

24 Bantekas, page 834. Back to section

25 id.; see also section 32(2)(a), Arbitration Act. Back to section

26 See *A Ayyasamy v A Paramasivam* (2016) 10 SCC 386, paragraphs 47–54, citing with approval *Fiona Trust and Holdings Corp v Privalov* (2007) (1) ALL ER (COMM) 891, paragraphs 17–19; *Enercon (India) Ltd v Enercon Gmbh* (2014) 5 SCC 1, paragraph 83; *Reva Electric Car Co (P) Ltd v Green Mobil* (2012) 2 SCC 93, paragraph 54; *Today Homes & Infrastructure (P) Ltd v Ludhiana Improvement Trust* (2014) 5 SCC 68, paragraph 14; and *SMS Tea Estates (P) Ltd v Chandmari Tea Co* (2011) 14 SCC 66, paragraphs 12–14. Back to section

27 See also article 39 of the Stockholm Chamber of Commerce's Arbitration Rules 2017; article 43 of the Hong Kong International Arbitration Centre's Administered Arbitration Rules 2018; article 22 of the International Chamber of Commerce's Arbitration Rules 2021; and article 22 of the London Court of International Arbitration's Arbitration Rules 2020. Back to section

28 See Vijayendra Pratap Singh and others, 'The More Things Change, the More They Remain the Same: Guerrilla Tactics in Arbitration in India', *Asian Dispute Review* (2022); 'Proceedings against Amazon.com NV Investment Holdings LLC under Sections 43A, 44 and 45 of the Competition Act, 2002', Competition Commission of India (17 December 2021), section 10. Back to section

29 An appeal is presently pending against the CCI's order, which was upheld by the National Company Law Appellate Tribunal, before the Supreme Court (*Amazon.com NV Investment Holdings LLC v Competition Commission of India*, Civil Appeal No. 4974/2022). Back to section

30 *Future Retail Ltd v Amazon.com NV Investment Holdings LLC*, CM(M) No. 2/2022 & CM No. 176/2022, paragraph 6. Back to section

31 *Future Coupons Private Limited v Amazon.com NV Investment Holdings* (2022) SCC OnLine Del 3890, paragraph 49. Back to section

32 id. Back to section

33 *Deep Industries v ONGC* (2019) SCC Online SC 1602. Back to section

34 *Haven Construction v Sardar Sarovar Narmada Nigam Ltd* (2021) SCC OnLine SC 8. Back to section

35 *Future Coupons Private Limited v Amazon.com NV Investment Holdings*, paragraph 87. Back to section

AZB & PARTNERS
ADVOCATES & SOLICITORS

Vijayendra Pratap Singh vijayendra.singh@azbpartners.com
Abhijnan Jha abhijnan.jha@azbpartners.com
Abhisar Vidyarthi abhisar.vidyarthi@azbpartners.com

Tel: +91 22 4072 9999

https://www.azbpartners.com/

Read more from this firm on GAR