

## LATEST CASE LAW

- **ARM Digital Media (P) Ltd. v. Ritesh Singh**, (2025 SCC OnLine Del 8719):
  - A dispute is commercial only when it arises from a business-oriented relationship and not merely because a party is a commercial entity.

## EDITOR'S COLUMN

- **Ramesh Kumar Jain v. Bharat Aluminium Co. Ltd.**, (2025 SCC OnLine SC 2857):
  - “Patent illegality” permits only minimal judicial interference and does not justify re-appreciation of facts or contract terms in arbitral awards.

## BITES

- **Hindustan Petroleum Corpn. Ltd. v. BCL Secure Premises (P) Ltd.**, (2025 SCC OnLine SC 2746):
  - Manifest duty of the referral court u/s 11 of the A&C Act to conduct the necessary inquiry to verify the existence of arbitration agreement that binds the veritable parties before appointing an arbitrator and referring such parties to arbitration.



# ARBITRATION & COMMERCIAL CASES UPDATES

DECEMBER 2025

An E - Newsletter

**Delhi High Court: ARM Digital Media (P) Ltd. v. Ritesh Singh (2025 SCC OnLine Del 8719):** The hon’ble Delhi High Court held that for assessing whether a dispute is “commercial”, the focus must be on whether the underlying relationship is rooted in business or commercial dealings rather than merely relying on the commercial character of a party. The Court further clarified that although the definition of commercial disputes is broad but it is not unlimited. By examining and drawing support from decisions of various High Courts, the judgment facilitates a cohesive construction of the Commercial Courts Act, 2015.

## BACKGROUND

On 08.09.2016, the Plaintiff (private limited company) and the Defendant executed a Share Subscription-cum-Shareholders’ Agreement (“SSSA”) which provided that parties were also required to sign an employment-cum-non-solicitation & a non-disclosure agreement. Consequently, the Plaintiff and Defendant also executed an Employment-cum-non-solicitation Agreement on 8.09.2016 (“Employment Agreement”). The Defendant had originally served as the Managing Director and later as a non-executive director in Plaintiff Company. Pursuant to resignation, the Defendant joined Insite Digital Private Limited which is a competing entity of the Plaintiff and therefore, the Defendant allegedly violated non-compete, confidentiality, and non solicitation obligations under Employment Agreement and Articles of Association of the Plaintiff. The Defendant also lodged investor complaints with Registrar of Companies, which later formed part of oppression and mismanagement petitions filed before National Company Law Tribunal. The Plaintiff filed a commercial suit for alleged breach of Employment Agreement and fiduciary duties by the Defendant. According to the Plaintiff, although the disputes overlap with the above pending proceedings, the Defendant’s actions during and post-employment have resulted in financial loss and reputational harm. The Defendant filed an interim application under Order VII Rule 11(d) of Code of Civil Procedure, 1908 (“CPC”) seeking rejection of the plaint.

## ISSUES

- Whether the dispute constitutes a commercial dispute under section 2(1)(c)(xii) of Commercial Courts Act, 2015 (“CC Act”)?

## DECISION

The Court reiterated that while considering an application under Order VII Rule 11 CPC, only the plaint must be examined as-is, without reference to the written statement or any defence, and if a plaint liable to be an abuse of process must be rejected. Interpreting Section 2(1)(c) of the Commercial Courts Act, 2015, the Court held that although the definition of “commercial dispute” is inclusive and expansive, it is not unbridled and must relate to disputes foundationally commercial in character, as clarified in *Meena Vohra v. Master Hosts (P) Ltd.* (2025 SCC OnLine Del 1758), *Ekanek Networks Pvt. Ltd. v. Aditya Mertia* (2024 SCC OnLine Del 8302), and *Rachit Malhotra v. One97 Communications Ltd.* (2018 SCC OnLine Del 12410). The mere inclusion of ancillary clauses such as confidentiality, intellectual property, or non-compete does not convert an employment contract, which is essentially a contract of personal service, into a commercial dispute, nor can employment-centric arrangements be artificially portrayed as commercial. Applying these principles, the Court observed the dispute squarely arose from the Employment Agreement devoid of any commercial element and being a private arrangement between the parties. The Court held that the suit is fundamentally civil in nature, centred on employment and related obligations, and is maintainable as a regular civil suit. Consequently, the application of the defendant was without merits and therefore, dismissed.

**Hon'ble Supreme Court in Ramesh Kumar Jain v. Bharat Aluminium Co. Ltd. (2025 SCC OnLine SC 2857):** Reasserting the primacy of arbitral autonomy, the hon'ble Supreme Court set aside the hon'ble High Court's order and clarified that "patent illegality" permits interference only in cases of manifest legal errors, not as a vehicle for reassessing evidence or reinterpreting contractual terms.

## **BACKGROUND**

The appellant, Ramesh Kumar Jain, was awarded a contract by Bharat Aluminium Co. Ltd. (BALCO) for mining and transporting bauxite. After completing the initial contracted quantity, BALCO requested the appellant to continue supplying extra bauxite (1,95,000 MT) via a letter dated 05.01.2002, stating the rate would be decided later. The appellant performed the extra work, but disputes arose over its payment, leading to arbitration. The Ld. sole arbitrator awarded the appellant approximately Rs. 3.71 crores for various claims, including extra work, transportation cost overruns, and compensation for idle machinery during a strike at BALCO's plant. The Commercial Court upheld the award under Section 34 of the Arbitration & Conciliation Act ("A&C"). However, the High Court, in an appeal under Section 37 of the A&C Act, set aside the award, primarily on the ground of "patent illegality", stating the arbitrator rewrote the contract and based findings on guesswork.

## **ISSUES**

- Whether the High Court's interference with the arbitral award under Section 37 of the A&C Act on the ground of patent illegality was sustainable when the award had been affirmed by the Commercial Court under Section 34?

## **DECISION**

The Court allowed the appeal, set aside the High Court's judgment, and restored the arbitral award, reiterating that judicial review under Sections 34 and 37 of the A&C Act is extremely narrow and supervisory and not appellate. The Court clarified that "patent illegality" under Section 34(2A) refers only to a glaring illegality going to the root of the matter and does not permit re-appreciation of evidence, erroneous application of law, or substitution of a plausible contractual interpretation. The Court held that an arbitrator is the final authority on facts and contract interpretation, and interference is justified only where the award is based on no evidence, violates substantive law or the Act, exceeds the arbitration agreement, or contradicts express contractual terms. Applying these principles, the Court found that the High Court exceeded its jurisdiction by reassessing evidence and treating arbitral estimation as guesswork. Fixing a reasonable rate for extra work in the absence of an agreed rate was held to be a legitimate application of quantum meruit under Section 70 of the Indian Contract Act, not a rewriting of the contract. Consequently, the arbitral award in favour of the appellant for approximately Rs. 3.71 crores with statutory interest was restored, reaffirming arbitral autonomy and finality.



## **EDITOR'S COMMENTS**

- Judicial restraint reaffirmed: Courts cannot re-appreciate evidence or substitute their views in arbitration as "*Patent Illegality*" has a narrowly confined meaning.
- Arbitral autonomy strengthened: Fixing reasonable compensation for extra work under quantum meruit is within the arbitrator's powers and does not amount to rewriting the contract.

**Supreme Court: Hindustan Petroleum Corpn. Ltd. v. BCL Secure Premises (P) Ltd. (2025 SCC OnLine SC 2746):** The hon’ble Supreme Court clarified the scope of powers of the referral court under section 11 of the A&C Act. Their manifest duty to conduct the necessary inquiry to verify the existence of arbitration agreement that binds the veritable parties before appointing an arbitrator and referring such parties to arbitration.

## BACKGROUND

In the present case, the Appellant challenged the judgment and order dated 07.04.2025 passed by the hon’ble Bombay High Court allowing a Section 11 petition under the A&C Act, 1996 filed by the Respondent. The Appellant had floated a tender for design, supply, installation, integration, testing, commissioning and post commissioning warranty support services of Tank Truck Locking System (TTLS), containing a clause prohibiting subletting, transfer, or assignment without the owner’s written consent. Pursuant thereto a purchase order dated 20.08.2013 was issued to and accepted by M/s AGC Networks Ltd. Under an agreement dated 15.01.2014, the Respondent undertook performance of AGC’s obligations on a back-to-back payment basis. HPCL issued a notice to AGC regarding non-functioning of certain works and thereafter in 2017 issued SCN for unsatisfactory performance of work. In 2018, the Respondent’s informed HPCL that they were working as sub-vendor of AGC and claimed entitlement to 94% of the payment due. This was disputed by the Appellant on the ground that no contract existed between HPCL and the Respondent. The Respondent initiated multiple proceedings against AGC, including a civil suit, a Section 9 petition, and three rounds before the MSME Facilitation Council, Haryana, to which the Appellant was not a party. Thereafter, on 31.03.2023, AGC and the Respondent executed a Settlement-cum-Assignment Agreement assigning AGC’s receivables against the Appellant to the Respondent, pursuant to which the Respondent invoked arbitration on 28.08.2024. BCL filed a Section 11 petition which was allowed by the High Court with liberty to the arbitral tribunal to decide the existence of a valid arbitration agreement under Section 16 of the A&C Act, prompting the Appellant to approach the Hon’ble Supreme Court.

## ISSUES

- Whether the High Court, on facts, was justified in referring the parties to arbitration by allowing the Section 11(4) petition filed by the Respondent?

## DECISION

The Court, relying on *Cox and Kings Limited v. SAP India Private Limited* ((2024) 4 SCC 1), reiterated that while deciding a Section 11 petition the court may conduct a preliminary inquiry into the existence of an arbitration agreement and whether a non-signatory is a veritable party to an arbitration agreement. The Court relied on the decisions of *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899* ((2024) 6 SCC 1) and *ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited* ((2025) 9 SCC 76) and observed that the referral court is not denuded of jurisdiction and must scrutinize the agreement, and if it finds that the non-signatory is a complete stranger with no real connection to the agreement, such party cannot be referred to arbitration as it would defeat the principle of consent. Applying these principles, the Supreme Court held that the Respondent failed to establish privity of contract or its status as a veritable party, that the Settlement Agreement dated 31.10.2023 did not evidence any arbitration agreement with the Appellant, and that both parties operated on separate orbits, reiterating that a mere legal or commercial connection is insufficient for a non-signatory to claim through or under a signatory, and accordingly allowed the appeal and set aside the Bombay High Court order dated 07.04.2025.



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