

## LATEST CASE LAW

- **Motilal Oswal Financial Services Ltd. v. Santosh Cordeiro, [2026 SCC OnLine SC 6]**
  - Arbitration Clause Survives Jurisdictional Challenge: SC holds Small Causes Court bar cannot defeat Section 11 appointment

## EDITOR'S COLUMN

- **Jagdeep Chowgule v. Sheela Chowgule, [2026 SCC OnLine SC 124]**
  - High Courts become Functus Officio after appointment of Arbitrator
  - Extension for time applications under Section 29A of A&C Act lie before Courts under Section 2(1)(e) of A&C Act

## BITES

- **Essar Power Gujarat Ltd. v. Narayan Resources (P) Ltd. [2026 SCC OnLine Bom 278]**
- **Kirolskar Brothers Limited & Anr. v. Indian Council of Arbitration (ICA) & Ors [Arb.(P) No. 50/2025, Supreme Court of India]**



# ARBITRATION & COMMERCIAL CASES UPDATES

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An E - Newsletter

**Supreme Court: Motilal Oswal Financial Services Ltd. v. Santosh Cordeiro, (2026 SCC OnLine SC 6):** Hon’ble Supreme Court reaffirms Kompetenz – Kompetenz principle and Limits Section 11 Scrutiny; Licensor–Licensee monetary disputes held arbitrable despite small causes court jurisdiction.

## BACKGROUND

Motilal Oswal Financial Services Ltd. entered into a Leave and License Agreement dated 06.10.2017 for commercial premises at Malad, Mumbai, for 60 months, later extended to 96 months through an addendum dated 13.03.2020 with a lock-in period of 72 months. Due to the COVID-19 pandemic, Motilal Oswal claimed force majeure and handed over vacant possession on 09.09.2020 and also sought refund of its security deposit. The licensor disputed this and, in June 2023, demanded approximately ₹94.40 lakhs along with interest towards the alleged arrears of licence fees for the remaining lock-in period. Motilal Oswal denied the alleged liability and further sought a refund of ₹10 lakhs.

The Respondent invoked the arbitration clause, sent a notice u/s 21 of the A&C Act and filed a Section 11 application under the Act. Motilal Oswal objected the said application contending that disputes between licensor and licensee fall exclusively within the jurisdiction of the Small Causes Court under Section 41 of the Presidency Small Cause Courts Act, 1882. Despite this objection, the Bombay High Court appointed an arbitrator, leading to the present appeal before the Supreme Court.

## ISSUES

- Whether disputes arising from a leave and licence agreement are non-arbitrable due to Section 41 of the Presidency Small Cause Courts Act, 1882?
- Whether the High Court, while exercising powers under Section 11 of the A&C Act could appoint an arbitrator despite such objection ?
- Whether the arbitration clause could be treated as non-existent or invalid at the Section 11 stage ?

## DECISION

- The Supreme Court dismissed the appeal and upheld the appointment of the arbitrator. The Court held that, under Section 11(6)(a) of the Arbitration Act, judicial scrutiny is confined only to examining the *existence* of an arbitration agreement. Since a valid arbitration clause admittedly existed, deeper questions of arbitrability and jurisdiction must be decided by the arbitral tribunal under Section 16 of the A&C Act.
- The Court clarified that mere conferment of jurisdiction on the Small Causes Court does not automatically render such disputes non-arbitrable. It emphasized the doctrine of kompetenz-kompetenz and ruled that objections based on Section 41 of the 1882 Act could be raised before the arbitrator. Accordingly, the arbitrator was directed to proceed with the matter and conclude it expeditiously.

**Hon'ble Supreme Court in Jagdeep Chowgule v. Sheela Chowgule, (2026 SCC OnLine SC 124):** Hon'ble Supreme Court clarifies Section 29A jurisdiction in domestic arbitrations, time extension and substitution of arbitrators must be sought before Commercial Courts not appointing High Courts.

## BACKGROUND

The dispute arose from a Memorandum of Family Settlement dated 11 January 2021 executed between members of the Chowgule family. Arbitration was invoked in May 2021. During the proceedings, the presiding arbitrator resigned, following which a fresh arbitrator was appointed by the Bombay High Court (Goa Bench) under Section 11 of the Arbitration and Conciliation Act, 1996 and the said application was allowed by the High Court on 31.10.2021. Subsequently, after filing Section 11 application, an application under Section 29A seeking extension of time was filed before the Commercial Court, wherein the court granted the extension vide order dated 02.01.2024. This order was challenged on the ground that since the arbitrator had been appointed by the High Court, only the High Court and not the Commercial Court had jurisdiction to extend time. The High Court accepted this argument, quashed the Commercial Court's order, and directed the parties to approach the High Court. The matter ultimately reached the Supreme Court.

## ISSUES

- Whether applications under Section 29A for extension of arbitral timelines lie before the appointing High Court or the Commercial/Principal Civil Court under Section 2(1)(e)?
- Whether the High Court retains supervisory jurisdiction after appointing an arbitrator under Section 11?

## DECISION

- Allowing the appeal, the Supreme Court held that applications under Section 29A for extension of arbitral timelines must be filed before the "Court" defined in Section 2(1)(e) of the Act, irrespective of whether the arbitrator was appointed by the High Court under Section 11 or by consent of parties.
- The Court clarified that the High Court's role under Section 11 is limited to appointment and stands exhausted thereafter the High Court becomes *functus officio* and retains no supervisory jurisdiction over the arbitration. The court while making its observations also took into consideration the divergence in opinion of the High Courts on interpretation of "Court" under section 2(1)(e). Concerns about "hierarchy" or "conflict of powers" between courts were rejected and the Court emphasised that jurisdiction flows strictly from statute.
- Consequently, the Court set aside the High Court's orders and restored the Commercial Court's extension of time, reaffirming that curial supervision under Section 29A (including extension of mandate or substitution of arbitrators) lies exclusively with the Court under Section 2(1)(e).



## EDITOR'S COMMENTS

- **SC clarifies Section 29A jurisdiction:** Time-extension applications lie before Commercial Courts, with High Courts becoming *functus officio* after arbitrator appointment.
- **Boost to arbitration efficiency:** The ruling reinforces statutory certainty and supports faster, streamlined arbitral proceedings.

**Bombay High Court: Essar Power Gujarat Ltd. v. Narayan Resources (P) Ltd. (2026 SCC OnLine Bom 278)**

- A dispute arose between Essar Power Gujarat Ltd. and Narayan Resources Pvt. Ltd. in relation to a Sale and Purchase Contract dated 24 June 2024, which contained a detailed arbitration clause providing for amicable settlement followed by arbitration seated in Mumbai. Upon failure of negotiations, Essar Power invoked arbitration and approached the hon'ble Bombay High Court under Section 11 of the Arbitration and Conciliation Act, 1996 seeking constitution of an arbitral tribunal. During the hearing, the respondent highlighted that the parties had executed 8 multiple contracts between March 2023 and June 2024, all of which had given rise to disputes. The counsel for the Claimant was agreeable to the said suggestion.
- The Court directed a composite reference to arbitration covering disputes under the Sale and Purchase Contract dated 24 June 2024 as well as all other related contracts. The Court observed that both the parties have appointed their respective nominee arbitrators and therefore, both the nominee arbitrators would appoint the presiding arbitrator. The Court further clarified that with the consent of the parties the seat of arbitration would be Mumbai

**Kirolskar Brothers Limited & Anr. v. Indian Council of Arbitration (ICA) & Ors [Arb.(P) No. 50/2025, Supreme Court of India]**

- The 3 judge of the Hon'ble Supreme Court in their order dated 19.01.2026 held that a party's refusal to deposit its share of arbitral costs cannot stall the arbitral process. In such circumstances, the arbitrator is empowered to proceed in accordance with the ICA Rules, with liberty to account for all arbitration costs and expenses in the final award.
- In this case a dispute arose from a Joint Venture Agreement dated 27.01.1988, followed by several subsequent events leading to multiple proceedings between the parties, including before the NCLT, Mumbai and a civil suit before the Commercial Court, Pune. By order dated 10.05.2024, the Commercial Court referred the matter to arbitration, leaving certain objections raised by Respondent No. 3 open for determination by the arbitral tribunal. Although statements of claim were filed and an arbitrator's name was also proposed, however, Respondent No. 3 refused to share arbitration costs in advance, prompting the present petition before the Supreme Court.
- The Court while strengthening institutional arbitration observed the only recourse available to the Arbitrator is to follow ICA rules, and include costs and expenses incurred in the final award. The ICA was directed to appoint a former Judge of the Supreme Court as the sole arbitrator and the liability of arbitration costs and expenses was left open for adjudication by the Arbitrator.



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