

**Ref No: 021/FPTA/2022-2023**

**20.12.2023**

**The Consolidated Report of the Constitution and Arbitration Committee  
(2022-2023) of FPTA Presented to the 4<sup>th</sup> Managing Committee and 62<sup>nd</sup> AGM  
at Delhi (revised) .**

The Consolidated Report of the FPTA Constitution and Arbitration Committee (2022-2023) presented to the 4<sup>th</sup> Managing Committee and 62<sup>nd</sup> AGM of FPTA at Kanpur on 7<sup>th</sup> to 9<sup>th</sup> October 2023.

I was re-nominated as the convener of Constitution and Arbitration Committee of FPTA for the year 2022-2023 in the first meeting of Managing Committee of FPTA on the 19<sup>th</sup> September 2022 at Nagpur.

I selected a team with Shri. Mehul .J. Mehta, Mumbai, Shri. R.M.Veerappan, Chennai, Shri. Subhrajit Kundu, Kolkata, Shri. Deepak Kumar Jain, Delhi, Shri. Uttam Chand Jain and Shri. Ramesh Kumar Salecha from Bengaluru, Shri. Nirmal Kuhad from Hyderabad, Shri. Sourabh Agarwal, Kanpur, Shri MadhuSudhan Bang, Vijayawada and Shri. Aadharsh Hemanth .M, Sivakasi as members.

I bought few copies of the "Arbitration and Conciliation Act 1996 Bare Act book" and sent to all committee members and to all Affiliated Associations.

The existing WhatsApp group "FPTA Arb and Const com " was updated with new members and regular messages almost daily, were posted on various case laws from High Courts and Supreme Court.

I presided a webinar on the topic "Arbitration for the MSME Disputes" done by "Bureau for the Empowerment of Arbitration as Mediation- BEAM " on 17.09.2022 at 5 Pm, from Nagpur. The keynote speaker was Mr. Tariq Khan, Registrar-IAMC Hyderabad.

I also participated in the webinar on the topic "Interest aspect on Arbitration Awards" on 12.10.2022 in which Mr. Tariq Khan Advocate Delhi High Court and Supreme Court was the speaker.

I also participated in the webinar organized by Indian Institution of Technical Arbitrators, Hyderabad on the topic "One sided and unconscionable Clauses in

Contracts” on 23.12.2022 at 7 pm to be moderated by Mr. Rakesh Kumar Agarwal, Contract Management Specialist and Consultant World Bank.

In the FPTA 2<sup>nd</sup> Managing Committee meeting at Ahmedabad from 23<sup>rd</sup> to 24<sup>th</sup> Dec 2023 I presented my committee report in absentia.

The reference cases on Arbitration in various High Courts and the Supreme Court were sent to all members of the committee as well as Presidents and Secretaries of Affiliated Associations. They were enclosed in the end of my report as Annexure.1

I attended the Annual General body Meeting of our FPTA Affiliated Association member M/s. Erode District Paper and Stationary Merchants Association on 1 st January 2023 at 10 am at Erode and Spoke on starting Arbitration Proceedings in their Association.

On 9 th march 2023. I along with our FPTA President Shri Aseem Bordia and FPTA Vice –President Shri. Sreeraman attended the meeting at Hotel Vivera grande, Dindugul. The meeting was hosted by Dindugul Paper Merchants Association. I Stressed the need for Arbitration Procedure in the Association and if the association is small they can take the help of the local Chamber of Commerce.

Two New Associations were affiliated to FPTA ie. Hubli and Bhopal. I personally contacted both of them and requested them to start Arbitration procedure in their association. I have sent the Guidelines of Arbitration as well as the Copy of the book “The Arbitration and Conciliation Act, 1996” on 17.5.2023 to them.

I presented my committee Report in the FPTA 3<sup>rd</sup> Managing Committee meeting at Bengaluru from 10<sup>th</sup> to 11<sup>th</sup> June 23. The Reference cases sent were in Annexure.2

As per the suggestion of our FPTA President Shri. Aseemji in Benguluru MC Meeting I organised a webinar on Arbitration on 26<sup>th</sup> August 2023. More than 62 members participated in the Webinar. I thank Shri. A. Vankat and Shri. Bhavesh gala for their Support and Efforts.

On 24.7.23 I have sent my update report to FPTA for incorporation in the Annual Report for 2022-2023.

Now I am presenting this Consolidated Report to FPTA 4<sup>th</sup> MC and 62<sup>nd</sup> AGM at Lucknow Organised by Kanpur paper Merchants Association from 7<sup>th</sup> to 9<sup>th</sup> Oct 2023.

I have enclosed the Reference cases up to 16<sup>th</sup> sep 2023 in my Annexure.3.

I am in regular contact with our FPTA President Shri Aseem Bordia and FPTA Hony. Secretary Shri. Bhavesh Gala and our FPTA vice –President Shri. Sreeraman and updating the activities of our Committee. I thank all the three for their continuous support in discharging my duties as the Convener of the Arbitration Committee. I further thank our Sub – Committee members for their Co-operation.

Special thanks to our dynamic FPTA President for giving to importance and taking up the Arbitration in the agenda of Advisory Board and MC meetings of FPTA.

Copy To: 1. FPTA President, Nagpur.

2. FPTA Vice – President, Chennai.

( C.Balasubramanian)

### **Annexure-1**

- 3.10.22 The ban imposed U/s 69 of the Partnership Act can have no arbitration / Proceeding – Calcutta HC.
- 4.10.22 The claim once rejected constitute an award which cannot be reopened by MSME Council SC .
- 6.10.22 Limitation period for invoking Arbitration clause cannot be extended by consent -Delhi HC.
- 6.10.22 Arbitration – Court can undertake preliminary inquiry under sec II to ascertain if Dispute is Arbitrable : SC.
- 12.10.22 Invoking Arbitration in a consortium Agreement.
- 21.10.22 Interest Award – Factors to be considered by the Arbitral Tribunal.
- 29.10.22 All India Arbitration cases – Half yearly Digest. January to June 2022- Live Law.
- 31.10.22 The Court can conduct a preliminary inquiry to decide whether the dispute in question is arbitrable or not – Delhi HC.
- 1.11.22 Facilitation council under MSMED Act can act as arbitrator despite ban under section 80 of Arbitration Act – Supreme Court .
- 2.11.22 Jurisdictional issue under the MSME act can be decided by the Facilitation council or the canter acting as an arbitral tribunal – Supreme Court.
- 2.12.22 Arbitration clause in the Tax invoice is not valid as per section 7 of the Act- Bombay HC .
- 18.12.22 Latest developments in the Indian Arbitration Act - Delhi university Faculty of Law.
- 19.12.22 Arbitration clause contained in the agreement that was only signed by the claimant Madhya Pradesh HC.

## Annexure-2

- 26.12.22 Best of 2012 – Important Supreme Court Judgements on Arbitration with parallel Citations – 40 nos.
- 26.12.22 Execution of arbitration awards section 47 of CPC not applicable –Tripura HC.
- 29.12.22 Quantum merit claim for the additional work carried out without the prior consent of The employer, not maintainable in Arbitration- Guwahati HC.
- 31.12.22 All India Annual digest of Arbitration Cases-2022- Supreme Court and High courts.
- 3.1.2023 Mandatory and Directory provisions under the Arbitration and conciliation Act. 1996.
- 4.1.23 As an Arbitration's order rejecting implement of a third party on Interim Award?
- 7.2.23 Recoveries under SARFESI Act will prevail over those under MSMED Act, Holds SC.
- 9.1.2023 ISSUE of Notice –Webinar on 10.1.23 by zoom, organized by Indian Institution of Technical Arbitrators.
- 21.1.23 30 Important Judgement on Arbitration by Indian courts - Bar and Bench News.
- 3.2.23 Whether a write petition is maintainable against the impugned award by MSME council - Telangana HC.
- 22.2.23 Council overrides arbitration agreement under MSMED Act –Law .Asia
- 26.2.23 Arbitration Tribunal has power of pass interim Awards on basis of Admission made before IR in CIRP Proceedings –Delhi HC.

- 28.2.23 Arbitral Tribunal holds the discretion to award interest to the Parties unless barred by the Agreement – Delhi HC .
- 3.3.23 When there is no perceived loss, liquidated damages cannot be levied- Madres HC.
- 11.3.23 Condonation of delay as pre Limitation Act will not apply to the setting aside petitions of the Arbitration Award –SC.
- 13.3.23 The Arbitration agreements is assignable and the assignee can invoke Arbitration -Bombay HC .
- 15.3.23 Securing amount under sec 9 of the Arbitration and conciliation Act 1996 – Pre and Post Arbitration- Bar and Bench.
- 16.3.23 Can Arbitrator allow Production of additional evidence at a late stage of proceeding?
- 17.3.23 Court assistance in taking evidence during the Arbitral proceedings –SC.
- 18.3.23 Arbitral Tribunals’ jurisdiction to recall its order terminating proceedings – SC.
- 19.3.23 Can an Arbitral Tribunal pass more than one Award ?
- 20.3.23 No Special treatment to be given to the Government entity in an Arbitral proceeding.
- 21.3.23 Compliance with section 21 of Arbitration Act (issuance of notice) is mandatory in nature and not a matter of choice – Delhi HC.
- 21.3.23 Arbitration cases weekly round – up March 12 to March 18, 2023.
- 22.3.23 The order passed for the disclosure is not appealable –Bombay HC.
- 24.3.23 Rejection of additional claims by impugned order have all trapping of an arbitral award- Delhi HC.

- 25.3.23 Webinar at 6 pm Zoom Topic: Limitation Act and its application to Arbitration.
- 27.3.23 Arbitration proceeding for the land acquisition are governed by the Arbitration Act- HC high court .
- 3.4.23 Where the “sum” awarded under section 31(7) of the Arbitration Act would include the interest pendente lite or not?
- 6.4.23 Limited scope of a remedy U/S 34 of the Arbitration Act is not a ground for invoking writ jurisdiction of the High court under Article 226 of the constitution – Bombay HC.
- 7.4.23 Location of Facilitation council under MSMED Act would remain the “venue” of Arbitration and not the seat.
- 9.4.23 Claim for loss of profit allowed by the Arbitral tribunal simpliciter based on the Hudson formula and not based on any evidence deserves to be set aside- Bombay HC.
- 11.4.23 Dispute under hypothecation agreement is Arbitrable - Bombay HC.
- 12.4.23 Whether they Supplier was registered as on MSME on the date of the contract would not disqualify the supplier from making reference to the MSEF council – Calcutta HC.
- 14.4.23 The cause of action freezes when the parties are attempting to amicably settle the dispute prior to the arbitration – Calcutta HC.
- 17.4.23 Twin test before exercising an attachment order by Arbitral tribunal – Delhi HC.
- 22.4.23 Practice of filing SLPs in order to side – step the Arbitration process should be discouraged - SC.
- 24.4.23 Whether the Arbitration Tribunal U/S 17 of the Arbitration Act is empowered

to attach properties – Madras HC.

- 25.4.23 Arbitration Agreement in unstamped contract which is Eligible to Stamp duty not enforceable - Supreme Court.
- 2.5.23 A decision by an arbitrator having no jurisdiction is non est in law –Madres HC.
- 5.5.23 Consumer Court retains the power of handle complaints, even if there is arbitration clause in the Agreement – NCDRC.
- 7.5.23 Once the partnership at will is dissolved the arbitration clause gets extinguished – Gujrat- HC.
- 16.5.23 The Court cannot grant further relief by modifying the award after setting aside – Supreme Court.
- 19.5.23 Webinar on “ Waiver of Right to Challenge the Award: When and How can it be done” Zoom: 2.6.23 Friday 3 pm - 4 pm. Free.
- 23.5.23 Arbitration cases weekly round-Up 14<sup>th</sup> - 20<sup>th</sup> May 23 – Courtesy Live Law.
- 25.5.23 Effective Management of Arbitration – ICC Guide.
- 26.5.23 Does AI help fair, speedy and Comprehensive Arbitration ?
- 30.5.23 Zoom Meeting on” Contemporary Laws for ADR” at 6 P.M India’s First judgement on the liability of Third –Party funders for the Arbitration cost awarded to the respondents. The judgement does not question the validity of the Third –Part funding.
- 31.5.23 Hand Book in Arbitration Law - e book by Honble justice S.U . Khan, Former judge, Allahabad High Court. Based on 150 Supreme Court Judgements.
- 3.6.23 The issues that can be decided by courts and Arbitration tribunal regarding application for the Appointment of Arbitrator.

### **Annexure- 3**

- 5.6.23 Guidelines for drafting settlement in mediation.
- 6.6.23 An award that is not speaking shall be set aside by the court only in exception cases - Supreme Court.
- 7.6.23 Delhi court sets aside Rs. 90 lakh award in favour of BMW financial service after car Buyer Contests the Arbitration Proceedings.
- 8.6.23 Lack of due diligence by MSME council results in patent illegality- Madras HC.
- 10.6.23 Clause making Arbitration an options for resolution of dispute is not a valid Arbitration Agreement.
- 15.6.23 Union Government Constitutes an Expert Committee for Reforms in Arbitration and conciliation Act.
- 16.6.23 Provision of consumer protection Act are “ Supplementary” and not “ derogatory to any other existing law such as Arbitration Act – NCDRC.
- 17.6.23 Procedural irregularity during the Arbitral Proceeding.
- 19.6.23 The doctrine of election RERA vs Arbitration Act.
- 20.6.23 Mere initiation of insolvency process does not bar an application to appoint an Arbitrator – Bombay HC.
- 24.6.23 GOI, Ministry of Law and Justice Department of legal Affairs notice inviting comments from State holders Dt. 22.6.23.
- 24.6.23 The Arbitral Award is to be made available to the parties by the Arbitrator Himself and not by MSEFC- Calcutta HC.
- 1.7.23 Request for comments on the working of Arbitration Law in the country and Conciliation Act 1996.

- 4.7.23 Discretion in admission of the Application under section 7 of the insolvency of bankruptcy code, 2016: A win for Arbitration.
- 8.7.23 Point regarding Arbitration Act 1996 Sent to Government of India.
- 10.7.23 MSMED Act won't be Applicable to the services rendered by CA firms – Delhi HC.
- 12.7.23 Penal interest of the Award amount under MSMED act is not applicable to Medium Enterprise- Calcutta HC.
- 13.7.23 NHAI Act – Arbitration cause of action to refer a disputes to arbitrator arises on the date of the Award of Compensation – MP High Court.
- 17.7.23 Well – reasoned interim order of Arbitral Tribunal courts should not Interfere Under section 37 of the Arbitration and Conciliation Act -1996 : Delhi HC.
- 18.7.23 Section 29 A(4) Arbitration Act: Courts can extend Arbitrator's mandated Without parties Consent: Kerala High Court.
- 20.7.23 whether sec .29 A of the Arbitration Act is Applicable to Arbitrations under the MSME Act.
- 22.7.23 30 importance Judgement on Arbitration by Indian Courts.
- 23.7.23 Appointment of presiding Arbitrator it is untenable that Non –Legal persons Cannot be Appointed – Sup Court .
- 26.7.23 Arbitrators cannot decide claims on mathematical Derivations in absence of Evidence –Delhi High Court.
- 27.7.23 Objection at the stage of enforcement of the Arbitration award is permissible Only if the defect in the award is prima facia apparent.

- 29.7.23 The failure of a Senior Lawyer and Arbitrators to disclose about neutrality Under Sec.12 – Calcutta HC.
- 31.7.23 Letter copy to the Expert Committee on Arb and Con Act 1996 by MR. Tariq Khan, Advocate, Delhi High Court.
- 2.8.23 Mediation act 2023 . (yet to be Notified).
- 6.8.23 Did the Arbitration have jurisdiction to adjudicate a claim for unjustified enrichment?
- 7.8.23 Written consent by parties need not be in writing for extending Arbitral Period - Himachal High Court .
- 11.8.23 Disqualification for appointment as an arbitrator would be applicable to any Person, including a retired judge –Madras HC.
- 13.8.23 Court has no power to modify award U/sec 34 Arbitration and Conciliation Act - Supreme Court.
- 14.8.23 Arbitration clause cannot be incorporated by reference, without clear Intention of parties: Calcutta HC.
- 21.8.23 Loan recovery / bank can invoke simultaneous proceedings under SARFAESI Act and Arbitration Act : Andhra Pradesh High Court.
- 22.8.23 Can a party compel an arbitrator to be a witness in a case seeking to Challenge the arbitral award ?
- 26.8.23 FPTA webinar on Arbitration at 4.30 pm addressed by shri . Prasanna Venkatesh , Senior Advocate , Madras High Court .
- 28.8.23 Sending scanned copy of a signed Arbitral award through E mail constitute a valid delivery under section 31 ( 5 )\_or the A and C act : Delhi High Court .
- 30.8.23 Court under sec 34 can partially set aside separate, complete and self – Contained claims Delhi HC .

- 31.8.23 Sending scanned copy of A signed Arbitral Award through E -mail  
Constitutes a valid Delivery Under Section 31 ( 5 ) of the A and C Act  
– Delhi High Court.
- 2.9.23 Courts under section 34 can partially set aside separate, complete and self  
-Contained claims – Delhi HC.
- 6.9.23 Arbitration Monthly Digest – August 2023.
- 9.9.23 Interest is compensatory in nature and is parasitic on the principal amount.  
The Arbitrator is empowered to award interest despite Contractual  
Restrictions -High Court, New Delhi.
- 11.9.23 Arbitration –Different time lines docx.
- 16.9.23 Mandate of the Arbitral tribunal is held to terminated U/S. 249 of the  
Arbitration Act, unless the same is extended during its Subsistence  
Calcutta High Court.
- 21.9.23 Section 11 Application based on Unstamped Arbitration Agreement – Court  
Can decide Stamp Duty- Bombay HC.
- 21.9.23 Invitation sent to all members for opening of Arbitration Center in  
Coimbatore Chamber.
- 22.9.23 The orders passed by a court other than a Commercial Court in an Execution  
Petition would be nullity in the eyes of law – AP HC.
- 23.9.23 Arbitration Center in the Indian Chamber of Commerce and Industry ,  
Coimbatore inaugurated by Hon’ble Mr. Justice K.Murali Sundar, Madras High  
Court. A panel of Retired Judges will be a part of the Center.

- 26.9.23 *Doctrine of severability can be applied to Arbitral Awards- Allahabad HC.*
- 26.9.23 *Arbitration clause in unstamped Agreement Enforceable ? Supreme Court.*
- 30.9.23 *Allowing loss of profitability in the Arbitration Award without reasoning is patently illegal-  
Supreme Court of India.*
- 30.10.23 *HC Court remands back the Arbitration Award rendered by MSEFC due to procedural  
lacunae*
- 9.10.23 *Top 10 Arbitration Judgements – Jan to Sep 2023.*
- 11.10.23 *Interpretation of delay letters is the prerogative of the Arbitrator and Court can't  
interfere*  
*-Delhi HC.*
- 13.10.23 *Absence of a contract would not deprive the contract from the reasonable remuneration  
for the work performed –Delhi HC.*
- 14.10.23 *Extension of time to the contract duration **without** determining material breach does not  
entitle compensation –Delhi HC.*
- 17.10.23 *Arbitrators failure to decide on Interest claim amount to a “ Decision” and the Award can  
be*  
*Challenged – Calcutta HC.*
- 28.10.23 *When notice is returned as ‘ Unclaimed’ it shall be deemed to be duty served*  
*- Supreme Court.*
- 3.11.23 *Arbitration Award for liquidated damages doesn't attract stamp Duty – Karnataka HC.*
- 3.11.23 *Interest for Pre –Reference period under section 31(7) (a) of Arbitration and conciliation  
Act.*
- 17.11.23 *Write petition against an Award passed by a MSEFC not Maintainable – Supreme Court.*
- 13.12.23 *Arbitration clauses in Unstamped Agreements Enforceable –Supreme Court 7 judge  
Bench.*
- 20.12.23 *GST liability of an Arbitration Award.*
- 20.12.23 *Disputes pertaining to amounts paid or payable to petitioner is beyond the scope of Sec.9  
of the Arbitration Act.*