

Toyota loses to a local prior user of Trademark 'PRIUS'

This is probably one of the most important development in the law relating to Intellectual Property in India, a Judgment delivered by the Supreme Court of India holding that the mark 'Prius' (trademark) owned by Toyota Jidosha Kabushiki Kaisha (Toyota), a global car manufacturer sought a decree of permanent injunction for infringement by Prius Auto Industries Ltd. (Prius) on the grounds that (i) that Toyota had acquired registration of 'Prius' in India in the year 2009, and (ii) that "Prius" was first launched by Toyota as the world's first hybrid car in Japan in the year 1997 and subsequently in other countries during 2000-2001. Against the said contention of Toyota, Prius defended the same stating i) that Prius was using the trademarks "Toyota", "Toyota Innova", "Toyota Device", only for the purposes of identification of the auto parts that are manufactured by them and sought protection on honest use in an industrial matter under Section 30 of the Trademarks Act; ii) that the mark "Prius" had been in use by the Defendants since 2001 and that a registration for the same had been obtained in the year 2002 prior to that by Toyota. The matter was initiated before the trial court, which granted the injunction in favour of Toyota. This injunction stood reversed by the division bench of High Court of Delhi. Finally, the Judgment of Delhi High Court was challenged before the Supreme Court of India, whereby the Supreme Court of India, upholding the view of the division bench.... [Read More.](#)

Supreme Court of India upholds the validity of two-tier arbitration

A difference of opinion regarding two/multi-tier arbitration proceedings, between two judge Bench has been finally decided by a three judge bench of the Supreme Court. The issue that has been decided by the three judge Bench was formulated as:

Whether a settlement of disputes or differences through a two-tier arbitration procedure as provided for in Clause 14 of the contract between the parties is permissible under the laws of India?

Clause 14, being the arbitration clause provided for resolution of disputes through an arbitration panel of the Indian Council of Arbitration and in accordance with the Rules of Arbitration of the Indian Council of Arbitration. In case of disagreement with the arbitration result in India, the clause provided a right to appeal to a second arbitration in London in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The Apex Court held the 'arbitration result' under the clause to mean an arbitration award given by the arbitral panel of the Indian Council of Arbitration.

It was observed that the parties to an arbitration agreement have the autonomy to decide not only on the procedural law to be followed but also the substantive law. The choice of jurisdiction is also left to the contracting parties. The main issue was identified as the interplay between public policy and party autonomy and therefore whether embracing the two-tier arbitration system is contrary to public policy. Relying up judgment passed in *Associate Builders v. Delhi Development Authority* [(2015) 3 SCC 49], it was observed that an award could be set aside if it is contrary to:

- fundamental policy of Indian law; or
- the interest of India; or
- justice or morality, or
- if it is patently illegal.

The three judge bench has observed that there is nothing fundamentally objectionable in accepting the two-tier arbitration system. It has been held that there is nothing in the Arbitration and Conciliation Act, 1996 that prohibits the contracting parties from agreeing upon a second instance or appellate arbitration - either explicitly or implicitly. No such prohibition or mandate can be read into the Act except by an unreasonable and awkward misconstruction and by straining its language to a vanishing point. The Court observed that it is not concerned with the reasoning for parties agreeing to second instance arbitration. However, the fact that they did agree to the same, the parties are bound by the agreement entered into between them. You can access the complete judgement [here](#)

Division Bench of Delhi High Court clarifies applicability of the amended Arbitration Act

Division Bench of Delhi High Court recently noted that the amended Arbitration and Conciliation Act, 1996 is silent on those categories of cases where the arbitral proceedings commenced or where the award was made or where either a petition under Section 34 was under contemplation or was already pending on 23.10.2015, that is, the effective date of the amending Act. Consequently, it has been held that the amended provisions pertaining to those categories would apply only if they were merely procedural and did not affect any accrued right...[Read More...](#)

Foreign patent owners can challenge domestic judgments under international investment arbitration

International Centre for Settlement of Investment Disputes (ICSID) in its 159-page judgment, discussed a range of issues dealing with patent laws. The ICSID held that it has jurisdiction to hear the patent dispute which sought to challenge the domestic court's interpretation of the domestic patent law, thereby opening up new areas of challenge of patent laws. Though ICSID has observed that it is not an appellate court and it will only interfere in certain egregious circumstances, in the near future, there can be many more companies dragging states to foreign arbitration alleging that their intellectual property rights are not given sufficient protection in the respondent's territory... [Read More...](#)

Employee of a party allowed as 'ARBITRATOR' in proceedings initiated prior to 2015 amendment to the Arbitration and Conciliation Act.

Justice UU Lalit, Supreme Court of India has observed that in cases governed by Arbitration and Conciliation Act, 1996 as it stood before the Arbitration and Conciliation (Amendment) Act, 2015 came into force, the fact that the named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality or lack of independence on his part.... [Read More...](#)

Supreme Court Clarifies Scope of Challenge to the arbitral tribunal under the Arbitration and Conciliation Act, 1996 post 2015 Amendment

The Supreme Court acknowledging a dichotomy made by the After the 2016 Amendment Act, between persons who become "ineligible" to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality, clarified the separate possible way forwards in these circumstances.... [Read More...](#)

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