

## **Arbitrators can be removed if they refuse to accept the Arbitrator Fees agreed by the parties in the Arbitration Agreement – Delhi High Court**

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In a Judgment dated 20<sup>th</sup> July 2018, in the matter of **National High Ways Authority Limited Vs Gammon Engineers and Contractors Pvt Limited**, Delhi High Court held that the Arbitral tribunal is bound by the Arbitration agreement between the parties. It further held that if fees of the arbitrators also form part of the arbitration agreement and if the arbitrators refuse to accept the fees agreed by the parties in the arbitration agreement, they can be removed by the High Court exercising its powers under S.14 of the Arbitration and Conciliation Act,1996.

In India, many Arbitrators are not aware of the fundamental structure of arbitration and hence they are not able to understand the importance of Administering Arbitral Institution Rules and the importance of the terms of the Arbitration agreement. Once an arbitrator gives consent to be an arbitrator in an arbitration, administered by an arbitral institution, the arbitrator should conduct the proceedings as per the rules of the institution and receive the fees as per the terms of the institution. In the same way parties have the autonomy and authority to incorporate various conditions to the arbitration agreement and the arbitrators as well as courts should respect them. For Example, if there is a qualification prescribed by the parties, then even courts cannot change the same while appointing an arbitrator. Hence Party autonomy and the Supremacy of institution rules must be respected by the arbitrators.

**Facts of the case:** A petition under Section 14 of the Arbitration and Conciliation Act, 1996 (herein after referred to as the “Act”) was filed by the petitioner in the above said case, seeking termination of the mandate of the Arbitral tribunal that was handling the disputes arisen between the parties in relation to the agreement dated 07.02.2006 for widening of a section of NH-57 National High ways. The said agreement had an arbitration clause which also provided for Fees of the Arbitrator. During the arbitration proceedings, the arbitration tribunal fixed a different fees structure, other than the fees prescribed in the arbitration agreement vide its order dated 23.08.2017. The Petitioner sought for a review of the above said order fixing fees, dated 23.08.2017 but the said application was dismissed by the Arbitral tribunal vide its order dated 30.01.2018. Hence the petitioner contended that the arbitral tribunal is de jure and de facto unwilling to perform its functions in terms of the arbitration agreement and hence they should be removed. The Respondent argued that the Arbitrators have followed the fee schedule provided under Schedule IV of the Act and hence cannot be said to be unreasonable.

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**Decision of the Court:** The Court held that the Arbitration agreement is the source of power to Arbitrators and the arbitrators are bound by the conditions specified in the arbitration agreement. In the case of **Sanjeev Kumar Jain Vs Raghbir Saran Charitable Trust and others (2012)1SCC 455**, the Supreme Court of India held that the word “appoint” is wide enough to stipulate the terms of such appointment including the fees payable to Arbitrators. More over, Delhi High Court in **National High ways Authority of India Vd Mr K.K.Sarin and others MANU/DE/0798/2009** held that the arbitration tribunal is fully bound by the terms of the Arbitration agreement.

