



ARBITRATION AND CONCILIATION

# Finality of Section 11 Determinations under the Pre-2015 Arbitration Regime: Supreme Court Reaffirms Res Judicata Principles

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## Introduction

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In a significant and clarificatory ruling in *M/s Eminent Colonizers Private Limited v. Rajasthan Housing Board*, the Supreme Court of India has reaffirmed the binding and conclusive nature of judicial determinations made under Section 11 of the Arbitration and Conciliation Act, 1996 in the pre-2015 amendment regime. The judgment addresses an important procedural question: whether the existence and validity of an arbitration agreement, once implicitly or expressly determined at the stage of appointment of an arbitrator, can be reopened during proceedings under Section 34. By setting aside the judgments of the courts below, the Supreme Court has reinforced the doctrine of *res judicata* within arbitration jurisprudence and highlighted the finality attached to Section 11 determinations prior to the 2015 Amendment.

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## Factual Background

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The disputes arose from construction contracts entered into between M/s Eminent Colonizers Private Limited (“the Appellant”) and the Rajasthan Housing Board (“the Respondent”). The contracts contained Clause 23, which provided for resolution of disputes through an Empowered Standing Committee. Upon disputes concerning escalation charges and penalty deductions, the Appellant invoked the dispute resolution mechanism. Alleging that the Standing Committee was not constituted in accordance with the contractual stipulations and that its claims remained unpaid, the Appellant approached the Rajasthan High Court under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator.

In 2014, prior to the coming into force of the Arbitration and Conciliation (Amendment) Act, 2015, the High Court appointed a sole arbitrator. The Respondent did not challenge the order of appointment. The arbitral proceedings culminated in awards in favour of the Appellant. However, the Respondent subsequently filed applications under Section 34 challenging the awards, primarily contending that Clause 23 did not constitute an arbitration clause at all. The Commercial Court accepted this contention and set aside the awards. The High Court affirmed this view, leading to the appeals before the Supreme Court.

## Issues for Consideration

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The principal issue before the Supreme Court was whether, in arbitral proceedings commenced prior to the 2015 Amendment, the validity and existence of an arbitration agreement, once determined at the Section 11 stage, could be re-examined during proceedings under Section 34. Closely allied to this question was whether the earlier Section 11 order operated as *res judicata* between the parties.

## Court's Observations and Legal Analysis

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The Supreme Court first clarified that the arbitral proceedings were governed by the legal position prevailing prior to the 2015 Amendment. Consequently, the law laid down by the Constitution Bench in *SBP & Co. v. Patel Engineering Ltd.* applied. In *SBP & Co.*, it was authoritatively held that the power exercised under Section 11 is judicial in nature and not administrative. The Chief Justice or designated Judge is required to determine, *inter alia*, the existence of a valid arbitration agreement and the jurisdictional prerequisites for appointment. Such determination attains finality under Section 11(7) and binds the parties at subsequent stages.

The Court observed that although the Section 11 order in the present case may not have contained an elaborate discussion on the validity of Clause 23, the very act of appointing an arbitrator necessarily implied a finding that a valid arbitration agreement existed. An appointment could not have been made in the absence of such satisfaction. Since the Respondent did not challenge the appointment order, it attained finality. The Supreme Court further relied upon *State of West Bengal v. Sarkar & Sarkar*,

wherein it was held that once an arbitrator is appointed under Section 11, the issue of existence or validity of the arbitration agreement cannot be reopened before the arbitral tribunal or in subsequent proceedings. The Court also referred to *State of Rajasthan v. Nemi Chand Mahela* and *Canara Bank v. N.G. Subbaraya Setty* to explain the distinction between the doctrines of precedent and res judicata.

The Court clarified that precedent operates in rem and lays down binding principles of law for future cases, whereas res judicata operates in personam and binds the same parties in subsequent stages of litigation. The Commercial Court had erred in holding that the Section 11 order lacked precedential value and therefore was not binding. The Supreme Court emphasized that even if the order did not constitute binding precedent for other cases, it operated as res judicata between the same parties. The correctness of the earlier determination was immaterial unless it pertained to jurisdictional incompetence, which was not the case here.

The Court also contrasted the legal position under the pre-2015 regime with that introduced by Section 11(6A) through the 2015 Amendment. Under the amended framework, the court's inquiry at the Section 11 stage is confined to a prima facie examination of the existence of an arbitration agreement, leaving deeper issues to the arbitral tribunal under Section 16. However, since the present disputes arose prior to the amendment, the broader adjudicatory scope under *SBP & Co.* applied, and the Section 11 determination was binding and conclusive.

## Judgment

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Allowing the appeals, the Supreme Court held that the Commercial Court and the High Court had erred in re-examining the validity of Clause 23 as an arbitration clause. The issue stood concluded at the Section 11 stage and operated as res judicata between the parties. Consequently, the setting aside of the arbitral awards on that ground was unsustainable. The Court remitted the matters to the Commercial Court for consideration of other objections under Section 34, excluding the issue of existence and validity of the arbitration agreement. Directions were also issued for expeditious disposal in light of the age of the awards.

## Conclusion

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The judgment in *M/s Eminent Colonizers Private Limited v. Rajasthan Housing Board* fortifies the principle of finality in arbitration proceedings governed by the pre-2015 regime. By reaffirming that Section 11 determinations operate as res judicata, the Supreme Court has curtailed the possibility of belated jurisdictional challenges aimed at unsettling arbitral awards. The decision ensures procedural discipline and protects the integrity of arbitration as an efficacious dispute resolution mechanism. For arbitration practitioners and contracting parties, the ruling highlighted the necessity of promptly challenging Section 11 orders, failing which such determinations attain binding finality. The judgment stands as a significant contribution to Indian arbitration jurisprudence, reinforcing certainty, consistency, and judicial coherence within the arbitral framework.

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