

Pendency of parallel investigations by the CBI or ED into allegations of fraud does not bar the arbitrator from adjudicating the dispute

The Delhi High Court in the case of **Lata Yadav vs Shivakriti Agro Pvt Ltd [CM(M) 53/2025 & CM APPL. 1854/2025]** dated May 19, 2025, has held that the mere reference to certain assets in a provisional attachment order does not, by itself, oust the jurisdiction of the arbitral tribunal. Similarly, the pendency of parallel investigations by the CBI or ED into allegations of fraud does not bar the arbitrator from adjudicating the dispute. Arbitration proceedings can continue independently, even when some aspects of the subject matter are under criminal investigation.

Briefly put, the impugned order which is under challenge, is the order whereby the Arbitrator had dismissed the petitioner's application under Section 16(3) read with Section 32(2)(c) of the Arbitration and Conciliation Act, 1996 (Arbitration Act), seeking termination of the arbitral proceedings on the ground that the contract was void ab initio and the assets involved had been provisionally attached by the Enforcement Directorate under Section 5 of the Prevention of Money Laundering Act, 2002 (PMLA).

The High Court noted that the scope of interference under Article 227 of the Constitution is limited and must be exercised sparingly. Though courts can review orders passed in arbitral proceedings, such interference is justified only in exceptional cases where glaring perversity is evident. Merely alleging fraud does not render a dispute non-arbitrable. In case of *Rashid Raza v. Sadaf Akhtar* [(2019) 8 SCC 710], the Apex Court laid down two tests: (1) whether the allegation of fraud permeates the entire contract, including the arbitration clause, and (2) whether the fraud pertains solely to internal affairs without public domain implications. Only when these tests are satisfied does the matter become non-arbitrable.

The High Court observed that the mere fact that certain assets involved in the arbitral proceedings are also mentioned in a provisional attachment order does not oust the arbitral tribunal's jurisdiction. It is well-settled that the same transaction can give rise to both civil and criminal proceedings, which may proceed simultaneously without affecting each other. Thus, while there may be some overlap considering that the arbitral proceedings as well as the criminal proceedings stem from the same germane facts, however, the remit of both the proceedings cannot be said to be similar to such an extent that it would render the jurisdiction of the Sole Arbitrator untenable.

The Court therefore concluded that the arbitral proceedings operate in a distinct domain from those under PMLA. While some attached assets overlap, such overlap does not oust the tribunal's jurisdiction. If any findings conflict with PMLA proceedings, the latter will prevail, as the Arbitrator is limited to civil issues not barred by Section 41. Since the arbitration is nearing completion, any overreach can be challenged under Sections 16 and 34 of the Act. At this stage, pre-emptive termination of the proceedings is unwarranted.