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## DELHI HIGH COURT ON RULES OF EVIDENCE IN ARBITRATION

### **A. Introduction**

The High Court of Delhi (“**HC**”), in the *Gannon Dunkerley and Co* case,<sup>1</sup> reiterated on August 8, 2023, that the rules of the Indian Evidence Act, 1872 are inapplicable to arbitral proceedings.

### **B. Brief Facts**

1. Gannon Dunkerley and Co Ltd., (“**GD**”) was awarded a contract by India Bulls Infrastructure Company Ltd. (“**IBI**”).
2. GD sub-contracted some work to Zillion Infraprojects Pvt. Ltd (“**ZI**”) under a memorandum of understanding (“**MOU**”).
3. The MOU stipulated that that the terms and conditions of the contract between GD and IBI would be applicable to ZI for the sub-contracted work.
4. All parties also entered into a tripartite agreement (“**Agreement**”) and ZI commenced work.
5. ZI was verbally instructed to stop the work after it had completed certain phases.
6. Even though GD had received the payments from IBI, its running bills remained unpaid by GD. It invoked the arbitration clause as per the Agreement.
7. The sole arbitrator heard ZI and GD on every claim and awarded in favour of ZI (“**Award**”).
8. GD approached the HC challenging the award on grounds of perversity.

### **C. HC’s Judgement and Reasoning**

The HC:

1. Held that there is no patent illegality found in the Award;<sup>2</sup>
2. Arbitrator followed a judicial approach in adjudication of disputes rather than an equitable approach to balance the equities between the parties;<sup>3</sup>
3. Commented that it is well-settled law that while hearing an application for setting aside an arbitral award,<sup>4</sup> the HC is not expected to act as an appellate court and re-appreciate the evidence;<sup>5</sup>
4. Observed that the sole arbitrator had committed no legal error as they had given their findings relying upon the evidence placed on record and after being satisfied with its quality and quantity;<sup>6</sup>
5. Reiterated that it is also settled position of law that the arbitral tribunal is the master of both quality and quantity of evidence that it may rely upon to evaluate claims. It observed: “*Since Indian*

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<sup>1</sup>*Gannon Dunkerley and Co Ltd. v. Zillion Infraprojects Pvt. Ltd.*, 2023 SCC OnLine Del 4815.

<sup>2</sup> Paragraph 46 of the Judgement.

<sup>3</sup> Paragraph 38 of the Judgement.

<sup>4</sup> Section 34 of the Arbitration and Conciliation Act, 1996.

<sup>5</sup> Paragraph 27 of the Judgement and *PSA SICAL Terminal (P) Ltd. v. Board of Trustee of V.O. Chidambranar Port Trust Tuticorin*, 2021 SCC OnLine SC 508.

<sup>6</sup> Paragraph 38 of the Judgement.

*Evidence Act does not apply to arbitral proceedings, it can't be insisted that the evidence produced by the parties must be tested on the rigorous rules of evidence laid down in the Indian Evidence Act;*<sup>7</sup> and

6. Dismissed GD's petition.

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<sup>7</sup> Paragraph 38 of the Judgement relying on *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49.  
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