

Dispute Resolution Hotline

September 23, 2022

SUPREME COURT OF INDIA—ARBITRAL TRIBUNAL CANNOT REJECT COUNTER-CLAIMS ARISING OUT OF THE DISPUTE, DUE TO RESPONDENT'S FAILURE TO NOTIFY CLAIMS PRIOR TO COMMENCEMENT OF ARBITRATION (NATIONAL HIGHWAY AUTHORITY OF INDIA V TRANSSTROY (INDIA) LTD)

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SUMMARY

This case preserves a respondent's valuable right to file a counter-claim under section 23(2A) of the Indian Arbitration & Conciliation Act 2015 (A&C Act 2015), without the need to follow the pre-arbitration procedure in an arbitration clause and to make a separate or new reference, as long as the counter-claim falls within the scope of the arbitration agreement. The court held that once any dispute, difference or controversy is notified by a claimant under the arbitration clause, the entire subject matter including counter claim/set off would form subject matter of arbitration as a dispute arising out of the arbitration clause. In view of A&C Act 2015, s 23(2A), there is no reason for and additionally requiring a respondent to make a new reference and curtailing a respondent's right to make the counter claim. Dis-allowing the counter claim in proceedings arising out of the claims made by a claimant may lead to parallel proceedings before various fora. Written by Adimesh Lochan, member, International Dispute Resolution Practice and Kshama A Loya, leader, International Dispute Resolution Practice at Nishith Desai Associates.

For the complete article, please click [here](#).

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You can direct your queries or comments to the authors

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