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Does a Satisfied Contingency Tantamount to ‘Determinability’ in a Contract?: An Unanswered Question

A recent Delhi High Court ruling confirmed the sanctity of Long Stop Dates in M&A agreements. But it adds to a worrying trend of Indian courts expounding on private and contract law concepts through arbitration proceedings only.



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A COLUMN ON PRIVATE AND COMMERCIAL LAW

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TWO MONTHS AGO, a Division Bench of the Delhi High Court in [JLT Energy 9 SAS v. Hindustan Clean Energy Limited & Ors.](#) (2026), affirmed the sanctity of long stop dates in Mergers & Acquisitions ('M&A') agreements as 'self-collapsing' mechanisms, such that if conditions precedent in a share/security purchase agreement are not met or waived by the other party, the agreement stands terminated. The Division Bench confirmed the decision of the Single Judge in O.M.P.(I) (COMM.) 464/2025.

While these judgments confirm the validity of another typical M&A mechanism under Indian law, it adds to a worrying trend of Indian courts expounding on private and contract law concepts through arbitration related proceedings only, and not through civil trials and appeals.

What was the case about?

JLT Energy 9 SAS ('JLT'), a French entity, executed two interlinked Security Purchase Agreements dated December 31, 2024 ('SPA(s)') with Hindustan Cleanenergy Limited and Peridot Power Ventures Pvt. Ltd. for the acquisition of solar power project companies in Tamil Nadu and Bihar. The closing of the Tamil Nadu SPA was a contractual condition precedent ('CP') to closing of the Bihar SPA. The Tamil Nadu SPA required conversion of project land to non-agricultural use by the Closing Long Stop Date ('CLSD') of April 30, 2025. But this conversion was never obtained, even after an extension of the CLSD to May 31, 2025. Clause 5.6 of the SPA provided that non-fulfilment of the CPs by the CLSD would result in automatic termination.

JLT contended that subsequent correspondence and a draft amendment had varied this position by permitting closing against a holdback in escrow and relegating the conversion of the land to a condition subsequent ('CS'). It also argued that the sellers' own default in failing to procure conversion should not be allowed to benefit them.

JLT obtained an Emergency Award from a Singapore International Arbitration Centre ('SIAC') emergency arbitrator that granted a prohibitory injunction against creating third party rights in securities of the said solar power project companies. It then sought to confirm this via a petition under Section 9 of the [Arbitration and Conciliation Act](#) ('Arbitration Act') (interim measures by court in support of arbitration) before the Delhi High Court.

Both the Single Judge, and subsequently the Division Bench (in appeal by JLT) held that the SPAs had stood automatically terminated by operation of the self-executing Clause 5.6, that the draft amendment was a non-binding discussion draft,

that Section 9 jurisdiction is ancillary and cannot revive a contract that has died its natural death, and that the SIAC emergency award (founded on a lower, provisional evidentiary standard) could not override the Court's fuller assessment.

What are 'Long Stop Dates' in M&A agreements?

A general M&A agreement typically manifests as a share purchase agreement in which a buyer/investor enters into a contract for purchase of securities of the target company(ies). There are two major dates of interest in such agreements —the signing date and the closing date.

The signing of the agreement is when parties enter into the contract. The closing date is when the majority of the consideration for the transaction passes from the buyer to the seller and the securities from the seller to the buyer. In the period between the signing and closing, both parties need to perform certain tasks known as 'conditions precedent' or CPs.

Most CPs are usually to be performed by the seller group. The CPs may be regulatory approvals, business reorganisation, or legal and financial regularisation by the seller which are identified as imperative during the due diligence process that precedes the signing of the SPAs. The 'long stop date' is the outer limit by which the parties must fulfil the CPs to the satisfaction of the other party, failing which the contract terminates automatically.

However, this requirement to fulfil a CP by the long stop date can be waived by the other party, or relegated to a 'condition subsequent' to the closing of the SPA. The long stop date can also be extended. This is usually achieved by an amendment of the SPA which records such extension or waiver, along with further indemnities or hold back amounts.



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Determinability of contracts on a contingency and specific performance

In *JLP Energy 9 SAS*, the Delhi High Court, in both rounds of the litigation, held that the parties had never finalised the amendment that would have relegated the conversion condition to a CS, what merits closer scrutiny is how the High Court *did* —or rather *did not*—engage with the concept of determinability of the contract.

Under Section 14(d) of the [Specific Relief Act, 1963](#) ('SRA'), both pre and post the 2018 amendment, a contract which, in its nature, is determinable cannot be specifically enforced. In [Turnaround Logistics \(P\) Ltd. v Jet Airways \(India\) Ltd.](#) (2006), the Delhi High Court had held that a determinable contract is one which can be put to an end.

However, different High Courts have expressed different views on whether contracts that become terminable on the happening of an event are determinable. For example, the Bombay High Court in [Narendra Hirawat v. Sholay Media](#) (2020) held that the word 'determinable' means "at the sweet will of a party", without any breach, eventuality, or circumstance, *i.e.*, a unilateral right to termination without assigning or having any reason to terminate. The Bombay High Court also held that if a contract's determination depends on an eventuality, then it is clearly not in its nature determinable.

However, in *Turnaround Logistics*, the Delhi High Court had held that contracts which provide that they are terminable on a particular event would be determinable. Further, there does not seem to be a Supreme Court pronouncement on this issue. The Bombay High Court's ruling in *Narendra Hirawat* was appealed to the Supreme Court, but the latter did not answer the question on determinability (Civil Appeal Nos.18671868/2022).

In *JLT Energy SAS 9*, the Delhi High Court sidestepped the question of determinability entirely. As recorded by the Delhi High Court, Senior Advocate Rajshekhar Rao, representing JLT Energy, *did* produce the *Narendra Hirawat* judgment to support his contention that the contract was not determinable and hence specific performance should be allowable. However, both the Single Judge and the Division Bench held that the question of determinability did not arise because no party was given the option to terminate the agreement, but rather the contract terminated automatically by operation of Clause 5.6 which stipulated termination upon the CPs not being completed by the CLSD.

Further, the High Court, citing [Puravankara Projects Ltd. v. Hotel Venus International and Ors.](#) (2007), held that it was impermissible to order specific

performance because it would be tantamount to compelling a government agency which isn't privy to the agreement to grant the change in land use permission.

The Division Bench also held that certain cases cited were inapplicable because they concerned materially different contractual arrangements, none concerning a self-operative automatic termination mechanism tied to a long stop date. In doing so, however, the High Court assumed, without citing any authority, that a contract is “determinable” only where its termination requires the exercise of a contractual right by one of the parties, and not where the contract terminates automatically upon the occurrence of a stipulated event.

Interestingly, the Single Judge decision in *para* 46, states that JLT Energy was not remediless. It had the option of seeking specific performance before the automatic termination in Clause 5.6 was triggered. This implicitly endorses the position that specific performance can be sought for before the trigger event for termination (whether automatic or not). While the Single Judge does not cite any English cases, this position seems to be consistent with other common law jurisdictions.

The legal question of whether only contracts terminable at the unilateral option of a party are “determinable”, or whether the expression also extends to contracts that terminate upon the occurrence of a specified event, remains unresolved. A more coherent approach may be to treat the latter category as becoming determinable only upon the occurrence of the terminating event, rather than from the moment the contract is executed. Such an approach is consistent with the Single Judge's observation that JLT could have sought specific performance before Clause 5.6 was triggered, while also avoiding the anomalous consequence of denying specific performance throughout the life of a contract merely because it contains a conditional termination mechanism.



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Is India's contract law jurisprudence in a damaged state?

In March 2016, Lord Thomas of Cwmgiedd, then Lord Chief Justice of England and Wales, made the famous annual speech at the British and Irish Legal Information Institute, where he lamented that arbitration was hindering the development of the

common law by taking cases away from national courts and allowing commercial claims to be decided behind closed doors without any right of appeal on the law. He argued that the common law derives its strength from a publicly accessible system of precedent, which provides legal certainty, adapts to evolving commercial realities, and facilitates public scrutiny and debate. In Lord Thomas' view, arbitration threatens this process because its confidential nature limits the development of precedent, impedes public understanding of the law, and curtails informed debate over its application. This is the future Lord Thomas fears in the UK—where a fair share of commercial cases still go to court and domestic law sometimes grants parties to an arbitration the right to appeal on a point of law.

Lord Thomas need only have looked at India to see his fears already realised: here, the common law is not merely hindered, but damaged. Anecdotally, a nearly ten-year timeframe for courts to fully resolve a trial, not even counting appeals, naturally drives litigants away. Even the High Courts on the civil side have been reduced to forums that only have the time to undertake cases involving summary adjudication, such as writ petitions.

However, it is not arbitration itself that is the culprit in India, but rather the inefficient courts that have pushed parties toward it. It is not so much the "pull factor" of arbitration attracting commercial parties, but the "push factor" of the judicial system driving them away. It has become increasingly common for parties to choose a foreign seat of arbitration, such as Singapore, for contracts governed by Indian law to sidestep Indian courts even for arbitration-related proceedings.

As a result, most complex issues of modern commercial law – such as M&A concepts of long-stop dates, valuations, conditions precedent and subsequent, closings, tag-along and drag-along rights, rights of first refusal, and material adverse effects – play out almost exclusively in arbitration rather than in court. Because of this resulting dearth of Indian jurisprudence on commercial concepts, practitioners frequently must rely on English case law when arbitrating these matters.

However, there is a worrying trend of Indian courts delving into these substantive concepts through arbitration-related proceedings. For instance, in *JLT Energy 9 SAS*, a case concerning interim relief, the court ventured into a full analysis of whether the contract stood terminated. Arguably, the court's inquiry went far beyond the prima facie assessment required to determine interim relief.

Similarly, in proceedings under Section 34 of the Arbitration and Conciliation Act, the court's remit is strictly limited to determining whether any of the statutory

criteria to set aside an award are satisfied. Yet, it is not uncommon to see courts expounding upon the award through a legal lens and commenting on the correctness of the arbitrator's reasoning.

There are critical issues with this approach.



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Overstepping a Narrow Remit

Firstly, the court's function in arbitration-related proceedings is inherently narrow. In Section 9 proceedings, they only need to establish a prima facie case to grant or confirm interim relief (along with balance of convenience and irreparable harm). By wading into detailed substantive reasoning, courts expend unnecessary time on unrequired issues, which only adds to the criticism that India is not an arbitration-friendly jurisdiction.

The Futility of Detailed Review

Secondly, even when courts undertake the exercise of detailed legal analysis, they are highly restricted in their ability to act on disagreements with the award. Under Section 34, courts cannot review the factual record, nor can they set aside an award simply because they feel the arbitrator applied the law incorrectly. The thresholds of "public policy" and the "fundamental policy of Indian law" remain notoriously steep hills to climb.

Spurious Precedential Value

Lastly, and perhaps most importantly, the precedential value of a court's contractual interpretation in these proceedings is highly questionable. Such comments may merely be *obiter dicta*, given that a deep interpretation of the contract is not strictly necessary to conclude a Section 9 or Section 34 petition. Robust precedent is built when courts deeply examine a factual record, developing principles over generations that offer certainty to the state of law and adapt to shifts in commerce.

The unresolved question

Until India's civil courts regain the capacity to decide commercial disputes within reasonable timelines, the development of Indian contract law is likely to remain fragmented, with important doctrinal questions resolved only incidentally rather than through considered adjudication in ordinary civil litigation. Practitioners will continue to derive the content of Indian contract law from judgments rendered in arbitration-related proceedings, notwithstanding the limited precedential value of the observations (as discussed in the previous section).

For what it is worth, the Delhi High Court's judgment in *JLT Energy 9 SAS* is a welcome affirmation of the commercial function of long stop dates in M&A transactions. It provides comfort to investors that Indian courts will respect contractual allocations of transactional risk and recognise self-operative termination mechanisms. At the same time, the judgment missed an opportunity to clarify the law on whether a contract providing for automatic termination upon the occurrence of a specified event is "determinable" within the meaning of Section 14(d) of the SRA from the moment it is executed, or only once the terminating event has occurred.

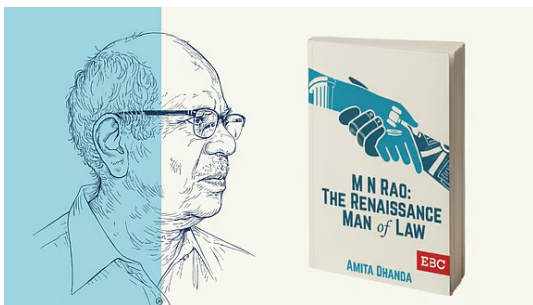
Until next time,

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