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Every year, arbitration law evolves through a series of judicial decisions that quietly reshape the way commercial disputes are resolved in India. Some clarify long-standing ambiguities. Others redefine the limits of judicial intervention, strengthen arbitral autonomy, or influence the enforcement of awards. Together, they form the jurisprudential currents that practitioners must navigate. Lex Arbitri: Beyond the Bench Binder (2025 Edition) captures these developments in a single, meticulously curated volume. Bringing together significant decisions of the Supreme Court of India and various High Courts delivered during 2025, the book traces the emerging contours of Indian arbitration law through a structured, section-wise analysis of the Arbitration and Conciliation Act, 1996.

*From many minds, one vision*


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# LEX ARBITRI

## BEYOND THE BENCH BINDER



Key Judgments in Arbitration Law (2025)
Supreme Court of India & High Courts

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# LEX ARBITRI

## BEYOND THE BENCH BINDER

**Key Judgments in Arbitration Law (2025)**

**Hon'ble Supreme Court of India & Hon'ble High Courts**

**SUSSHIL DAGA**
Managing Partner
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## THE CURATOR OF CONCLUSIONS

# SUSSHIL DAGA

*Advocate, FCS*

Member - London Court of International Arbitration **(LCIA)**
Member - International Bar Association **(IBA)** | Member - Arbitration Bar of India **(ABI)**
Member - Young **SIAC** | Member - Supreme Court Bar Association **(SCBA)**
Fellow Member - **ICSI** | Member - Rajasthan High Court Bar Association **(RHCBA)**
Patron Member - Builders' Association of India **(BAI)**

Susshil Daga is an arguing counsel whose practice is centered around infrastructure arbitration and the resolution of high-value commercial disputes. He appears regularly before the Supreme Court of India, various High Courts, Commercial Courts, and domestic and international arbitral tribunals, and is engaged across the full lifecycle of disputes from pre-arbitral strategy and claim structuring through to final hearings and post-award enforcement.

His practice is predominantly focused upon disputes arising from infrastructure and public sector engagements, with particular depth in matters relating to railway and NHAI contracts, FIDIC-based frameworks, and large-scale government projects. He also advises private sector participants on complex arbitral matters involving multi-layered contractual structures, voluminous records, and substantial financial exposure, where issues of delay, variation, certification, and recovery are of central significance.

Mr. Daga is distinguished by his structured command over contractual frameworks and arbitral procedure, enabling the presentation of technically complex disputes as clear and decisive propositions for adjudication. He has, on several occasions, been appointed as Amicus Curiae by the Hon'ble High Court, an appointment that reflects the judicial confidence reposed in his ability to assist on complex questions of arbitral law and contractual interpretation.

A Fellow Member of the Institute of Company Secretaries of India (ICSI), Mr. Daga has held distinguished leadership positions within the Institute, serving as Chairman of the Northern Region of ICSI. Beyond his disputes practice, he is actively engaged in capacity building, regularly conducting lectures, workshops, and training programmes for government bodies, public sector undertakings, and institutional stakeholders across the areas of arbitration, contract management, and dispute strategy.

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# PREFACE

Arbitration in India today stands at a stage of uneasy transition. It was conceived as an efficient, expert-driven, and autonomous mechanism for dispute resolution, particularly in matters of commercial and infrastructural complexity. The legislative framework, especially in its post-amendment form, reflects a clear intent to minimise judicial intervention and to strengthen the credibility of the arbitral process. Courts, too, have in recent years shown a marked inclination towards restraint. Yet, the experience on the ground presents a more complex picture.

***Delay has not been eliminated; it has merely changed form.*** Procedural flexibility is, at times, mistaken for procedural indiscipline. Questions of jurisdiction intended to be addressed at the threshold are frequently deferred, only to resurface at a later stage. Interim measures, designed to preserve rights, occasionally assume a degree of finality that the process does not contemplate. More fundamentally, there is, in certain quarters, a perceptible dilution of role clarity.

***An arbitral tribunal is not a substitute for a civil court.*** Counsel is not expected to replicate the full adversarial rigour of traditional litigation. Parties cannot, on the one hand, insist upon autonomy, and on the other, seek intervention when outcomes appear uncertain.

***The strength of arbitration lies not merely in statutory design, but in disciplined adherence to its first principles.*** Where these principles are compromised, the process risks losing both efficiency and credibility.

It is in this backdrop that the present compilation has been undertaken. *Lex Arbitri: Beyond the Bench Binder* does not seek to offer a theoretical exposition of arbitration law. ***Its purpose is practical and defined.*** It presents, in a structured and accessible manner, a curated account of significant judicial decisions rendered in the year 2025 under the Arbitration and Conciliation Act, 1996.

***The judgements included in this volume have been selected for their practical relevance, doctrinal clarity, and precedential value.*** They address issues that arise routinely before arbitral tribunals and courts, including questions of jurisdiction, procedural conduct, interim relief, enforcement, and the permissible limits of judicial oversight. The compilation is organised provision-wise, aligned with the statutory framework of the 1996 Act.

***This structure is intended to facilitate immediate reference and efficient use in live matters.*** Each case note is self-contained, enabling focused consultation. At the same time, read collectively, they offer a broader insight into the evolving judicial approach towards arbitration in India during the relevant period.

***This work is intended to serve as a practical reference for practitioners, courts and arbitral tribunals, as well as for in-house legal teams, general counsel, chartered accountants, company secretaries, and contract management professionals engaged in commercial and public sector engagements.*** If it assists, even in a limited measure, in promoting a more disciplined and principled arbitral process, it would have served its purpose.



**SUSSHIL DAGA**
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# ACKNOWLEDGEMENT

This compilation is the result of a sustained and collective effort.

I would like to acknowledge the contribution of Ashish Sharma, who led the research and compilation process with diligence and consistency. His oversight ensured that the work remained accurate, coherent, and aligned with its intended purpose.

The research and preparation of case materials were carried out by Vidhi Pratap Singh, Subodh Asthana, Shraddha Joshi, Suhani Bardia, Faisal Feroz Khan and Daksha Bairwa. Their effort in identifying relevant decisions, analysing judicial reasoning, and distilling complex rulings into usable formats forms the foundation of this volume.

***This work reflects their discipline, commitment, and professional rigour.***

I would be failing in my duty if I did not acknowledge my revered mentor, **Shri Er. R. M. Gupta Sir.** My understanding of infrastructure projects, engineering complexities, and the technical dimensions of large-scale disputes has been shaped significantly by his guidance. His mentorship has enabled me to appreciate and analyse complex technical issues with clarity and confidence. I owe an immeasurable debt of gratitude to him, and his contribution to my professional journey remains one of the most defining influences of my life.



**SUSSHIL DAGA**

Justice Maneesh Sharma

सत्यमेव जयते

Judge
Rajasthan High Court
Jaipur

# FOREWORD

Arbitration in India has witnessed a steady and purposeful evolution, shaped by judicial interpretation that seeks to harmonise legislative intent with the practical realities of dispute resolution. Courts have consistently endeavoured to uphold the autonomy of the arbitral process while ensuring that the framework of law remains effective in addressing issues of fairness, legality, and procedural propriety.

The present work, **Lex Arbitri: Beyond the Bench,** brings together a selection of notable decisions rendered by the Supreme Court of India and various High Courts, including the Rajasthan High Court, during the year 2025. By organising these rulings in a systematic manner, the compilation offers a clear and structured understanding of the manner in which arbitration law continues to develop in India.

The compilation focuses on decisions that engage with significant aspects of arbitral law, including the scope and limits of judicial scrutiny, enforcement mechanisms, and procedural considerations under the Arbitration and Conciliation Act, 1996. The analysis remains concise and closely aligned with the reasoning adopted in the judgments, thereby ensuring both accuracy and practical utility.

The effort undertaken by Mr. Susshil Daga reflects a sound understanding of arbitration practice and a conscious attempt to present legal developments in an accessible format. The work serves as a useful reference point for those engaged in arbitration, whether in practice or in study.

Publications of this nature contribute to strengthening the legal framework by promoting clarity and informed engagement with evolving jurisprudence. This compilation is a noteworthy contribution and is likely to be of assistance to members of the legal community.

**Hon'ble Mr. Justice Maneesh sharma**
**High Court of Judicature for Rajasthan**

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## FOREWORD

It is well accepted that arbitration in India has been shaped as much by legislative reforms as by judicial exposition. The Arbitration and Conciliation Act, 1996 was intended to limit court interference, and yet, over the years, much of our arbitration jurisprudence has necessarily turned on where that line is to be drawn.

The decisions rendered in 2025, several of which are collated in this volume, reflect the Court's continuing attempt to bring doctrinal clarity to areas that remain contentious including the scope of Sec. 11, boundaries of Sec. 34 & 37 of the Act 1996 and also the role of institutional arbitration with the need of procedural discipline without excessive judicial supervision.

Mr. Susshil Daga Advocate along with his team has tirelessly undertaken the task of compiling these developments in a structured form. What invaluable is that primarily focus is on identifying the judicial reasoning which is gradually giving shape to the modern Indian arbitral framework.

For practitioners, such work provides as a ready reference and for the arbitrators, it serves as a reminder that awards must rest not on equity but on statutory fidelity and for younger members of the Bar, it offers an accessible entry into an area of law that continues to evolve with commercial reality of the field. The legal system is ultimately judged by the seriousness with which it treats Alternative dispute resolution outside the courtroom. In that context, this compilation is indeed a timely contribution.



**Justice Ajay Rastogi**

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J. SAI DEEPAK
SENIOR ADVOCATE

India's arbitration landscape today reflects far more than the bare text of the Arbitration and Conciliation Act, 1996; it bears the imprint of a judiciary that is steadily and consciously chiselling the contours of arbitral discipline. The decisions emerging in 2025 reveal a marked shift towards doctrinal clarity on foundational questions such as the limits of judicial intervention, the primacy of party autonomy, the role of referral courts, and the carefully circumscribed boundaries of post-award review. What is discernible in this evolution is not judicial activism, but judicial calibration, an approach that seeks to preserve the autonomy of arbitration while ensuring that it remains anchored in legality and procedural fairness.

This body of jurisprudence signals the maturation of India's arbitral framework. Courts have shown an increasing reluctance to intrude upon the arbitral process, coupled with a firm insistence on adherence to statutory discipline. Such restraint must not be mistaken for passivity; rather, it reflects a principled recognition that the legitimacy of arbitration rests equally on independence and accountability. In the context of an expanding commercial landscape, characterised by complex, and often cross-border, transactions, this balance is not merely desirable, it is indispensable. Arbitration, in this setting, is no longer a peripheral alternative to litigation, but an essential pillar of commercial certainty and governance.

It is against this backdrop that the work undertaken by Mr. Susshil Daga and his team assumes particular significance. This volume is not a mere compilation of decisions, but a thoughtful exercise in distillation, extracting principle from precedent, and coherence from what might otherwise appear as a disparate body of rulings. By foregrounding doctrinal developments over isolated outcomes, the authors have rendered a valuable service to the legal community. Their effort aids not only in understanding the trajectory of arbitration law in India, but also in engaging with it in a more structured and informed manner. Such contributions play a vital role in strengthening the intellectual and institutional foundations of arbitration. They do not merely chronicle the law as it stands; they facilitate its evolution.



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27th March, 2026

## FOREWORD

Arbitration today stands as a critical bridge between legal discipline and commercial necessity. It is no longer viewed merely as an alternative to litigation, but as a robust and reliable mechanism for resolving disputes arising from complex contractual arrangements. In such a framework, arbitration plays a vital role by offering a structured and efficient forum that aligns legal certainty with the practical requirements of project execution. It enables stakeholders to address disputes in a timely manner, thereby ensuring continuity and minimizing disruptions to project delivery.

This assumes particular importance in the context of large-scale urban rail infrastructure, especially within the mandate of Mumbai Railway Vikas Corporation Ltd (MRVC). As an organization entrusted with the planning and execution of critical railway infrastructure projects in Mumbai, MRVC operates in a highly dynamic environment shaped by dense urban conditions, technical complexities, multi-stakeholder coordination, and stringent timelines. Projects of this nature demand not only engineering precision but also effective mechanisms for managing and resolving disputes.

Lex Arbitri: Beyond the Bench Binder is a timely and valuable contribution in this regard. By compiling and presenting significant judicial pronouncements from 2025 in a structured and accessible format, it provides clarity on the evolving principles governing arbitration and their application to infrastructure and construction projects. The binder will serve as a practical reference for professionals navigating dispute resolution in complex project environments.

The efforts of Mr. Susshil Daga and his team in curating this volume are commendable. Their work will be of considerable value to legal practitioners, arbitrators, engineers, and project professionals associated with infrastructure development. Hence, on behalf of Mumbai Railway Vikas Corporation Ltd., I extend my best wishes to the author for this endeavour and am confident that this work will contribute meaningfully to strengthening dispute resolution practices and supporting the efficient execution of infrastructure projects.

***(Rajeev Kumar Srivastava)***
**Director (Projects)**
**Mumbai Railway Vikas Corporation Ltd.**

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**Ajit Kumar Mishra**
Director (Works)

## FOREWORD

Arbitration in India today is not tested in theory but in practice-on live projects, under commercial pressure, and often with significant financial consequences. For those engaged in infrastructure disputes, public sector contracts, and cross-border transactions, the real challenge is not the absence of law, but the ability to navigate an expanding and sometimes inconsistent body of judicial decisions.

In this environment, clarity and accessibility of jurisprudence become critical.

This work by Mr. Sushil Daga and his team serves precisely that purpose. By compiling recent decisions of the Supreme Court and various High Courts in a structured and usable format, the book provides a practical tool for practitioners. Whether one is dealing with appointment of arbitrators, challenges to awards, or questions of jurisdiction, the ability to quickly engage with current judicial trends is invaluable.

From a practitioner's standpoint, outcomes in arbitration increasingly turn on a precise understanding of how courts are interpreting the limits of interference, the scope of review, and the discipline expected of arbitral tribunals. A well-organised compendium such as this is therefore not merely a reference-it is a working aid in dispute strategy and decision-making.

Equally, the recent trajectory of Indian arbitration jurisprudence reflects a conscious attempt by courts to balance autonomy with accountability. Understanding this balance is essential for all stakeholders in the arbitral process.

I commend Mr. Daga and his team for this timely effort. The book will be of particular value to practitioners, in-house professionals, and those involved in the delivery and management of arbitration arising out of complex infrastructure projects.

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## FOREWORD

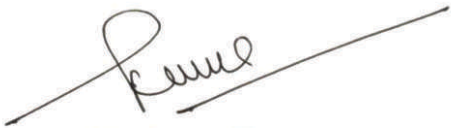
The Dedicated Freight Corridor Corporation of India Limited (DFCCIL) has been entrusted with the execution of one of the country's most significant infrastructure projects. Such projects, involving complex contractual frameworks, multiple stakeholders, and stringent timelines, inevitably require robust mechanisms for dispute resolution and contract governance.

In this context, arbitration has emerged as an essential component of modern infrastructure contracting. The continuous development of arbitration jurisprudence in India plays a critical role in ensuring predictability, commercial fairness, and efficiency in the resolution of disputes arising out of EPC and large-scale public projects.

Lex Arbitri: Beyond the Bench Binder is a valuable effort in compiling important judicial pronouncements delivered in the year 2025 on arbitration and allied issues. The volume captures key legal principles that directly impact the interpretation and enforcement of arbitration clauses, the conduct of arbitral proceedings, and the limited yet significant role of courts under the Arbitration and Conciliation Act, 1996.

Mr. Susshil Daga and his team have undertaken a commendable initiative in presenting these developments in a structured and accessible manner. Such a compilation will be useful not only for legal practitioners and arbitrators, but also for contract managers, engineers, public sector professionals, and all stakeholders engaged in the administration of large infrastructure contracts. I am confident that this work will contribute meaningfully towards strengthening arbitration as a credible and efficient dispute resolution mechanism in India's infrastructure ecosystem.

I wish the author every success in this endeavour.



**Mr. Pawan Kumar**

(Executive Director - Contract Management, DFCCIL)

Pankaj Saxena
पंकज सक्सेना

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RITES Ltd.
Former Director - Project Planning
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## FOREWORD

The increasing scale and complexity of infrastructure development in India have, over time, necessitated a corresponding evolution in the mechanisms for dispute resolution. Projects today involve multiple stakeholders, layered contractual structures, and significant public interest. In such a setting, arbitration has emerged as a vital institutional process for ensuring that disputes are addressed in a structured, time-bound, and commercially sensible manner.

In my experience with large public sector infrastructure projects, including my association with the Dedicated Freight Corridor Corporation of India Limited (DFCCIL), disputes often arise not merely from contractual interpretation, but from the dynamic interface between design, execution, and administration of contracts. Effective resolution of such disputes requires a balanced appreciation of both legal principles and project realities.

A key challenge for stakeholders whether within government organisations, public sector undertakings, or private participants has been access to reliable and current legal material in a form that is both comprehensive and practically usable. While judicial precedents continue to shape the contours of arbitration law in India, their utility is significantly enhanced when they are organised in a manner that facilitates quick reference and informed decision-making.

This compilation seeks to address that requirement by bringing together recent judicial developments in the field of arbitration. Its value lies in its structured presentation and its focus on usability for a wide range of stakeholders, including legal practitioners, arbitral tribunals, contract administrators, and officers involved in project management and dispute resolution.

Initiatives of this nature contribute meaningfully to strengthening institutional capacity in handling disputes and, in turn, support the broader objective of efficient project delivery and governance.

I appreciate the efforts of Mr. Susshil Daga and his team in preparing this compilation and placing it in the public domain for the benefit of all concerned.



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# FOREWORD

Arbitration today stands as a vital bridge between legal discipline and commercial necessity. It is not merely an alternative to litigation, but a structured mechanism designed to resolve disputes arising from complex contractual arrangements with efficiency, finality, and enforceability.

This assumes particular significance in the construction and real estate sector one of the key drivers of India's economic growth. Projects in this domain are inherently complex, involving multiple stakeholders, layered contracts, and strict timelines. Disputes, if not resolved efficiently, have the potential to disrupt execution, escalate costs, and undermine commercial confidence. Arbitration, in this context, has emerged as an indispensable tool, offering a forum that aligns legal rigor with the demands of project continuity.

The framework under the Arbitration and Conciliation Act, 1996 continues to be shaped by judicial interpretation, which has brought increasing clarity to issues of intervention, enforceability, and construction litigation. However, the effectiveness of arbitration depends not merely on statutory provisions, but on informed engagement through careful drafting, disciplined processes, and awareness of evolving jurisprudence.

*Lex Arbitri: Beyond the Bench Binder* is a timely and valuable contribution in strengthening this understanding. By compiling and presenting significant judicial pronouncements from 2025 in a structured manner, it provides clarity on principles governing arbitration and its interface with the construction ecosystem. It is a practical resource that will assist stakeholders in navigating disputes with greater foresight and precision.

The efforts of Mr. Susshil Daga and his team in curating this volume are commendable. This work will serve as a useful reference for legal practitioners, arbitrators, developers, and project professionals alike, reinforcing the vital nexus between arbitration and the construction industry. On behalf of the Builders' Association of India, I extend my best wishes to the author for this endeavour and trust that this work will contribute meaningfully to strengthening dispute resolution practices within the sector.

**Ravindra Tyagi**
**President**
**Builders Association of India**

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# Chapter I

## *General Provisions*

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# CHAPTER I – GENERAL PROVISIONS

## SECTION 2 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**2. Definitions.** — (1) In this Part, unless the context otherwise requires, —

(e) "Court" means—

i. in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

ii. in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.

1. *VERSATILE CONSTRUCTION VS. TATA MOTORS FINANCE LTD., IN (APOT NO. 389 OF 2024) DECIDED ON 15.01.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether the designated seat of arbitration confers exclusive jurisdiction on the courts of that place.**

The Calcutta High Court has held that once the "seat" of arbitration is designated in an agreement, it is to be treated as the exclusive jurisdiction for all arbitration proceedings. The Court referred to the 'Shashoua Principle', which propounds that when there is an express designation of a "venue" and no alternative seat is specified, the venue is considered the juridical seat of arbitration.

The clause in the loan agreement stated that "Arbitration to be held in Mumbai". The court noted that the Supreme Court in Bharat Aluminium Company v Kaiser Aluminium Technical Services Inc. (BALCO) opined that the legislature had intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and courts where the arbitration takes place. This was necessary as the agreement may have provided for a seat of arbitration at a place which was neutral to both the parties.

The Court held and observed as follows that:

> ***"Mumbai would be both the seat and the venue of arbitration, and that Bombay High Court or the principal civil court of original jurisdiction in Mumbai would have exclusive jurisdiction over the arbitral proceedings and any challenge to the arbitral award."***

Accordingly, the Calcutta High Court concluded that the designation of Mumbai as the place where "arbitration is to be held" amounted to an express designation of the juridical seat of arbitration. Applying the Shashoua Principle and the law laid down in BALCO, the Court held that such designation conferred exclusive supervisory jurisdiction on the courts at

Mumbai. Consequently, only the Bombay High Court or the principal civil court of original jurisdiction in Mumbai would have the authority to entertain all applications arising out of the arbitral proceedings, including any challenge to the arbitral award, to the exclusion of all other courts.

2. *SMT SOMURI RAVALI VS. SOMURI PURNACHANDRA RAO, (CIVIL REVISION PETITION NO.739 OF 2025), DECIDED ON 10.04.2025 BY TELANGANA HIGH COURT*

**Issue: Which court is competent to extend the mandate of an arbitrator appointed by the High Court under Section 11(6) of the Arbitration and Conciliation Act.**

In the instant case, the Telangana High Court examined whether the Commercial Court was competent to extend the mandate of an arbitrator whose appointment had been made by the High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996. Although the issue had become academic due to expiry of the mandate, the Court proceeded to decide the question of law, given its recurring significance.

The Court undertook a conjoint reading of Sections 2(1)(e), 11(6), and 29A of the Act, and emphasised that the definition of "Court" under Section 2(1)(e)(i) must be understood contextually. It was noted that where the High Court exercises its special and exclusive jurisdiction to appoint an arbitrator under Section 11(6), the statutory hierarchy envisages continuity of supervisory control at the same level. The Court categorically held that the power to extend or terminate the mandate of such an arbitrator cannot vest in a court subordinate to the appointing court. In this regard, the Court observed:

> ***"Section 2(1)(e) read with section 11(6) of the Act is hierarchy-sensitive for the purpose of determining the order of Courts for deciding issues of appointment, termination of Arbitrators and extension of their mandate."***

The Court further clarified that once the High Court acts as the appointing authority under Section 11(6), it alone retains exclusive jurisdiction over subsequent applications concerning the arbitrator's mandate. The Court held:

> ***"The High Court, as the appointing authority, also becomes the exclusive deciding authority in matters concerning the extension of the Arbitrator's mandate."***

Accordingly, it was held that where an arbitrator is appointed by the High Court under Section 11(6), the High Court alone is competent to entertain and decide applications for extension of the arbitrator's mandate under Section 29A, and any such extension granted by a subordinate court is without jurisdiction.

**Key Trends:** Courts used Section 2 to resolve threshold questions on whether the Act applied at all, particularly on what constitutes a "party" and whether a given clause falls within the Act's ambit.

## SECTION 5 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**5. Extent of judicial intervention. —** Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

*SUNEHRI BAGH BUILDERS PVT LTD VS. DELHI TOURISM AND TRANSPORTATION DEVELOPMENT CORPORATION LTD., (2025 DHC 1828) DECIDED ON 20.03.2025 BY DELHI HIGH COURT*

**Issue: Whether Courts Can Interfere in Arbitration Proceedings at Final Stage, when Sufficient Opportunity Has Been Given to Claimant to Inspect Documents.**

The Delhi High Court, in the present case, upheld the order passed by the Arbitrator dismissing an application seeking production of certain documents, holding that the claimant had been afforded sufficient opportunity but failed to avail the same. The Court reiterated that judicial interference in arbitral proceedings, particularly at an advanced stage, must be exercised with extreme restraint.

The Court emphasised that since the arbitral proceedings were already at the stage of final arguments, no ground was made out for interference with the procedural order passed by the Arbitrator, especially in view of the limited scope of judicial intervention in such matters.

Thus, the court cannot interfere with the order of the arbitrator at the final stage. It was observed as follows:

> ***"As already noted above, the case is at the stage of final arguments and, therefore, this Court does not find any requirement of interfering with the abovesaid order, particularly, when the scope of interference in such type of arbitral proceedings is very limited."***

Accordingly, the Court declined to interfere, reinforcing the principle that procedural orders of the Arbitral Tribunal should not be lightly interfered with by courts, particularly when the parties have been granted adequate opportunity and the proceedings are nearing culmination.

*M/S SINGARENI COLLIERIES COMPANY LIMITED VS. M/S H.B.T GMBH IN (COMCA NO. 3 OF 2025) DECIDED ON 27.02.2025 BY TELANGANA HIGH COURT*

**Issue: Whether civil suits seeking to restrain or pre-empt arbitral proceedings are barred by law.**

In the instant case, the Telangana High Court examined the maintainability of a civil suit filed solely to restrain the defendant from invoking and continuing arbitral proceedings under an existing arbitration agreement. The plaintiff sought a permanent injunction on the premise that the arbitration clause had ceased to operate and that recourse lay only before a civil court. The Court therefore considered whether such a suit was barred by law under Order VII Rule 11(d) of the CPC.

The Court reiterated that the Arbitration and Conciliation Act, 1996 embodies a clear legislative policy of minimal judicial intervention, with Sections 5 and 16 conferring exclusive jurisdiction on the Arbitral Tribunal to decide issues relating to the existence, validity, and invocation of the arbitration agreement. Emphasising the doctrine of kompetenz–kompetenz, the Court held that civil courts cannot be approached to obstruct or pre-empt arbitral proceedings. The Court observed:

> ***"The fetters to judicial interference are built into the Scheme of the 1996 Act. Section 5 of the Act curtails the powers of the Courts to intervene in matters governed by Part I of the Act relating to arbitrations anchored in India."***
>
> ***"The unimpeachable conclusion is that any question as to the existence or validity of the arbitration agreement or a doubt as to the invocation of the arbitration clause must inevitably be decided by the Arbitral Tribunal. The parties cannot approach the Civil Courts for thwarting the arbitral process..."***

Accordingly, it was held that a civil suit instituted with the object of restraining or pre-empting arbitral proceedings is barred by law, and that parties must pursue their remedies exclusively within the arbitral framework contemplated under the Arbitration and Conciliation Act, 1996.

**Key Trends:** Courts consistently deployed Section 5 as a shield against anti-arbitration injunctions, holding that all challenges must be raised within the statutory framework rather than through parallel writ or civil proceedings.

# Chapter II

## *Arbitration Agreement*

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## CHAPTER II - ARBITRATION AGREEMENT

### SECTION 7 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**7. Arbitration agreement.** — (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

**(2)** An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

**(3)** An arbitration agreement shall be in writing.

**(4)** An arbitration agreement is in writing if it is contained in—

a) a document signed by the parties;
b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or
c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

**(5)** The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

*GLENCORE INTERNATIONAL AG VS. SHREE GANESH METALS AND ORS., (2025 INSC 1036), DECIDED ON 25.08.2025 BY SUPREME COURT*

**Issue: Whether a binding arbitration agreement can be said to exist under Section 7, despite absence of a party's signature, when the parties' conduct and exchange of communications demonstrate acceptance and performance of the contract containing the arbitration clause.**

In the instant case, the Supreme Court of India examined the correctness of the decision of the Delhi High Court, which had declined to refer the disputes to arbitration on the ground that Respondent No. 1 had not signed the contract containing the arbitration clause. The Supreme Court, however, found that the exchange of emails between the parties and their subsequent conduct clearly established acceptance of the contractual terms, including the arbitration agreement, and that the absence of a formal signature was not determinative of the issue.

The Supreme Court while upholding the existence of an arbitration agreement between the parties observed the following:

> ***"Further, in Caravel Shipping Services Private Limited v. Premier Sea Foods Exim Private Limited 2018:INSC:1008 : (2019) 11 SCC 461, this Court affirmed and reiterated the legal position laid down in Jugal Kishore Rameshwardas v. Goolbai Hormusji (1955) 2 SCC 187***

***to the effect that an arbitration agreement needs to be in writing though it need not be signed. Noting the fact that the requirement of the arbitration agreement being in writing has been continued in Section 7(3) of the Act of 1996, it was observed that Section 7(4) only added that an arbitration agreement could be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4) but that did not mean that, in all cases, an arbitration agreement needs to be signed. It was held that the only pre-requisite is that it should be in writing, as pointed out in Section 7(3).***

***29. In the light of the aforestated settled legal position and given the admitted facts, which unequivocally demonstrate that Respondent No. 1 signified its consent to the terms spelt out in the Appellant's email dated 10.03.2016 that finally found place in Contract No. 061-16-12115-S which, in turn, was accepted and acted upon by Respondent No. 1, we are of the considered opinion that the arbitration agreement in Clause 32.2 thereof was very much available to the Appellant and invocation thereof Under Section 45 of the Act of 1996, by way of I.A. No. 4550 of 2017 in CS (Comm) No. 154 of 2017, was fully justified and required to be accepted and acted upon by the referral Court. The refusal by the referral Court of the learned Judge and the confirmation of such refusal by the Division Bench are, therefore, unsustainable on facts and in law."***

The Hon'ble Supreme Court set aside the decision of the Delhi High Court and allowed appeals disputes between the parties to be referred to arbitration. It emphasized that the arbitration agreement need not be signed if the conduct of the parties indicates acceptance.

6. *BGM AND M-RPL-JMCT (JV) VS. EASTERN COALFIELDS LIMITED, (2025 INSC 874) DECIDED ON 18.07.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether a contractual clause using permissive language such as "may be sought" constitutes a binding and enforceable arbitration agreement capable of unilateral invocation by one party.**

The Supreme Court held that an arbitration clause must evince a clear and mandatory intention of the parties to submit disputes to arbitration. The use of permissive expressions like "may be sought" signifies only an enabling provision, contingent upon fresh consensus between the parties, and not a binding arbitration agreement.

The Hon'ble Supreme Court observed that:

***"clause 13 does not bind parties to use arbitration for settlement of the disputes. Use of the words "may be sought", imply that there is no subsisting agreement between parties that they, or any one of them, would have to seek settlement of dispute(s) through arbitration. It is just an enabling clause whereunder, if parties***

> ***agree, they could resolve their dispute(s) through arbitration. In our view, the phraseology of clause 13 is not indicative of a binding agreement that any of the parties on its own could seek redressal of inter se dispute(s) through arbitration."***

Accordingly, the Supreme Court held that an arbitration clause must manifest a clear and mandatory intention to submit disputes to arbitration, and the mere use of permissive or enabling expressions, absent such intention, is insufficient to constitute a valid and enforceable arbitration agreement in law.

7. *AC CHOKSHI SHARE BROKER PRIVATE LIMITED VS. JATIN PRATAP DESAI & ANR., (2025 INSC 174) DECIDED ON 10.02.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether Oral Undertaking falls within scope of Arbitration Clause.**

The Supreme Court held that an oral contract undertaking joint and several liability falls within the scope of an arbitration clause and can validly bind a non-signatory. Affirming the arbitral award, the Court found the husband jointly liable for the award arising from a debit balance in a joint DEMAT account registered in his wife's name.

Rejecting the contention that the husband's liability constituted a "private transaction" beyond the scope of arbitration, the Court held that the arbitration clause extended to non-signatories and, coupled with the husband's active participation in transactions conducted through the account, gave rise to an implied oral agreement establishing joint and several liabilities on both parties.

The Apex Court held that:

> ***"Under Bye-law 248(a), the arbitral tribunal could have exercised jurisdiction over respondent no. 1 on the basis of an oral contract that he would be jointly and severally liable for the transactions undertaken in respondent no. 2's account. Such oral contract would not amount to a "private" transaction that falls outside the scope of arbitration."***

Accordingly, the Supreme Court held that an oral undertaking giving rise to joint and several liabilities can fall within the scope of an arbitration clause and validly bind a non-signatory who has actively participated in the underlying transactions.

8. *M/S ALCHEMIST HOSPITALS LTD. VS. M/S ICT HEALTH TECHNOLOGY SERVICES INDIA PVT. LTD., (2025 INSC 1289) DECIDED ON 06.11.2025 BY SUPREME COURT OF INDIA*

**Issue: Whether a dispute resolution clause that merely uses the term "arbitration", but lacks a clear and mandatory intention to finally and bindingly refer disputes to arbitration in terms of Section 7 of the Arbitration and Conciliation Act, 1996, can be construed as a valid arbitration agreement.**

In the instant case, the Supreme Court was called upon to determine whether Clause 8.28 of the Software Implementation Agreement constituted a valid arbitration agreement so as

to justify appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. Although the clause repeatedly employed the word "arbitration", it also provided that if the dispute was not resolved within fifteen days, the aggrieved party could "seek remedies through the courts of law". The appellant contended that the repeated use of the word "arbitration" and subsequent correspondence between the parties evidenced an intention to arbitrate.

The Court examined Section 7 of the Act and reiterated that party autonomy and a clear intention to submit disputes to arbitration lie at the heart of a valid arbitration agreement. It held that the mere use of the word "arbitration" is not determinative; what is decisive is whether the clause reflects an obligation to refer disputes to a private adjudicatory forum and an intention to be bound by its decision. Where a clause expressly negates finality or preserves a right to approach civil courts, it cannot be characterised as an arbitration agreement. The Court further held that subsequent correspondence between the parties cannot create an arbitration agreement where none existed originally, unless such correspondence unequivocally satisfies the test laid down under Section 7. The Court observed as follows:

> ***"What, therefore, follows from the above passage is that the mere use of the word 'arbitration' is not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing."***
>
> ***"The above rulings lead us to the irresistible conclusion that mere use of the word 'arbitration' in a clause of an agreement is not clinching or decisive. Section 7 presupposes an express intention of the dispute/difference being resolved through arbitration and mere reference to the term is not sufficient to meet this threshold."***
>
> ***"Upon a perusal of Clause 8.28, we are of the view that there is no indication that the proposed 'arbitration' was supposed to be final and binding... This suggests an attempt at amicable resolution inter se rather than a definitive submission to arbitration."***
>
> ***"When there has indeed been no arbitration agreement in the first place, therefore, subsequent correspondence between the parties cannot displace the original intention."***

Accordingly, the Supreme Court held that Clause 8.28 did not constitute a valid arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996, and that the mere use of the word "arbitration" or subsequent correspondence between the parties could not substitute for a clear and binding intention to refer disputes to arbitration.

9. *BANARAS HINDU UNIVERSITY, VARANASI THROUGH ITS REGISTRAR VS. M/S UMANG CURE PVT. LTD. AND OTHERS (2025 AHC 226641-DB) DECIDED ON 17.12.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether an arbitration clause survives expiry of the underlying agreement by efflux of time and can be invoked where the conduct of the parties indicates continuation of the contractual relationship.**

In the instant case, the Allahabad High Court considered the objection that the arbitration clause contained in the licence deed had perished upon expiry of the licence period and, therefore, could not be invoked. The appellant contended that once the licence expired by efflux of time, no arbitration agreement survived to sustain proceedings under the Act.

The Court rejected this submission, holding that mere expiry of the contractual term does not extinguish the arbitration clause where the conduct of the parties demonstrates continuation of the relationship. It noted that despite formal expiry, the licence was extended from time to time and even thereafter licence fees were tendered and consciously accepted by the appellant. Such conduct was held sufficient to indicate subsistence of the agreement for limited purposes, including dispute resolution. The Court reiterated that arbitration clauses are separable and survive termination or expiry of the main contract when disputes arise in connection with it.

The Court observed as follows:

> ***"A perusal of the above determination made by Hon'ble Supreme Court reveals that though the agreement may have come to an end on expiry of its term, the arbitration clause operated and for the purpose of determination of the disputes, the arbitration clause could be invoked and that the agreement had not come to an end by efflux time and the same got extended on account of conduct of the parties"***

Accordingly, the Court held that an arbitration clause survives expiry of the underlying agreement by efflux of time where the conduct of the parties reflects continuation of the contractual relationship, rendering disputes arising therefrom arbitrable.

10. *BROTHERS ENGINEERING & ERECTORS LTD. VS. ZORIN INFRASTRUCTURE LLP, (CMA NO. 623 OF 2024) DECIDED ON 28.01.2025 BY ANDHRA PRADESH HIGH COURT*

**Issue: Whether, after a full and final settlement of disputes between the parties, a claim arising solely from partial non-payment of the settled amount can be referred to arbitration under the original arbitration agreement.**

In the instant case, the Hon'ble High Court examined the survivability of an arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996, after the parties had entered into a full and final settlement of all disputes. The Court considered whether a subsequent claim limited only to partial non-payment of the settled amount could be referred to arbitration by invoking the original arbitration clause.

The Court held that once parties mutually settle their disputes and quantify the amount payable in full and final settlement, the original arbitration agreement stands exhausted, unless the settlement agreement expressly preserves or incorporates the arbitration clause. In the absence of such preservation, there remains no "dispute" under Section 7 capable of being referred to arbitration.

The High Court further observed and noted as follows that:

> ***"When an arbitration clause stipulates that 'any dispute' is arbitrable, it should be understood in line with section 8 of the Act, to mean 'any dispute' arising out of a contractual agreement. "....once it was mutually agreed that a particular amount would be given to the plaintiff and out of the said amount, Rs.30 lakhs was paid and the remaining amount of Rs.40 lakh and odd could not be paid for the reason as disclosed by the defendants in the written arguments and their reply to the notice of the plaintiff, there would be no dispute so as to be covered under the expression 'any dispute' under Clause 17 of the arbitration agreement. It has not been argued before us that with respect to the mutually agreed amount, also that in case of any dispute, the same arbitration clause in the arbitration agreement would get attracted nor that the plaintiff's notice, the reply contained any arbitration clause, with respect to any dispute for the mutually agreed amount as well. In our view, the subject matter of the suit is not a dispute so as to be covered under the agreement for being referred to the arbitration."***

Accordingly, the Court held that in the absence of an express stipulation preserving the arbitration clause in the settlement agreement, a claim arising solely from partial non-payment of the settled amount cannot be referred to arbitration under Sections 7 or 8 of the Arbitration and Conciliation Act, 1996.

11. *OM SWAYAMBHU SIDDHIVINAYAK VS. HARISCHANDRA DINKAR GAIKWAD & ORS., (ARBITRATION APPEAL NO. 21 OF 2025) DECIDED ON 04.11.2025 BY BOMBAY HIGH COURT*

**Issue: Whether applicability of an arbitration clause contained in a principal agreement aptly governs the disputes arising from a connected supplemental agreement lacking an independent arbitration clause.**

In the instant case, the Bombay High Court acknowledged the existence of a valid arbitration agreement contained in the Development Agreement and proceeded to examine whether disputes arising from the Supplemental Agreement stood excluded from arbitration on account of the absence of a separate arbitration clause therein. Upon such examination, the Court rejected the contention that the Supplemental Agreement fell outside the arbitral framework, observing that where parties undertake multiple reciprocal promises forming part of the same contractual consideration, any intention to exclude a particular class of disputes from arbitration must be expressly manifested through clear exclusionary language.

In the absence of such language, no such exclusion can be inferred. The Hon'ble Court observed as follows that:

> ***"If the parties have multiple reciprocal promises that form consideration in a contract, and they desired to keep one type of dispute out of arbitration, they would have used exclusionary language, which they have not."***
>
> ***"The prayer about the Supplemental Agreement is essentially a prayer about the flow of consideration under the Development Agreement, and therefore the Supplemental Agreement need not be out of the scope of the subject matter of the arbitration agreement contained in the Development Agreement."***

Accordingly, it was held that where a supplemental instrument merely records discharge of obligations under the principal agreement, disputes may still be governed by the arbitration clause in the main agreement, depending upon the contractual scheme and intent of parties.

12. *ILEAD FOUNDATION VS. STATE OF WEST BENGAL, IN ARBITRATION PETITION (COM. NO. 152 OF 2025) DECIDED ON 05.03.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an arbitration agreement is rendered invalid in the absence of an express stipulation as to the curial law, seat, or venue of arbitration.**

In the instant case, the Hon'ble Calcutta High Court examined the validity of an arbitration agreement which did not expressly specify the applicable law, seat, or venue of arbitration. The Court held that such omissions do not undermine the binding nature of an arbitration agreement, provided the clause otherwise reflects a clear and conscious agreement between the parties to submit their disputes to arbitration.

Relying upon settled principles laid down by the Hon'ble Supreme Court of India, the Court observed:

> ***"The Hon'ble Apex Court has held that for an arbitration agreement to be a binding clause, neither the law nor the seat or venue has to be mentioned. As long as the clause indicated that the parties had agreed and there was a meeting of minds to refer any dispute to a private tribunal for adjudication of the disputes, the said clause would constitute an arbitration clause."***

The High court further held and observed that:

> ***"as long as the clause indicates that the parties had agreed and there was a meeting of minds to refer any dispute to a private tribunal for adjudication of the disputes, the clause would constitute an arbitration clause and the 1996 Act does not prescribe a certain form of an arbitration agreement. The use or the absence of the word 'arbitration' is not conclusive and the intention of the parties***

***to resolve the disputes through arbitration should be clear from the terms of the clause."***

Accordingly, the Court held that an arbitration agreement does not fail merely because it does not specify the curial law, seat, or venue. What is determinative is the clear intention of the parties, as discernible from the clause as a whole, to refer disputes to arbitration, in conformity with Section 7 of the Arbitration and Conciliation Act, 1996.

13. *SUNIL KUMAR SAMANTA VS. SMT. SIKHA MONDAL (ARBITRATION PETITION NO. 15 OF 2022) DECIDED ON 07.04.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether the use of the expression "may" in an arbitration clause constitutes a binding and enforceable arbitration agreement evidencing a clear and mandatory intention of the parties to refer disputes to arbitration.**

In the instant case, the Hon'ble Calcutta High Court examined whether an arbitration clause employing the expression "may" could be construed as a binding arbitration agreement. The Court held that the use of permissive language signifies only a future possibility and does not reflect a mandatory obligation to arbitrate disputes.

The Hon'ble Calcutta High Court in this case observed and held that:

***"The use of the expression "may" indicates that the parties had agreed that, in future the parties may approach the arbitrator for settlement of disputes. The use of the expression "may" is a possibility and not a binding agreement. The meeting of minds of the parties to refer such dispute to arbitration is not available from the clause itself. Not only must an arbitration clause indicate that the parties had agreed that they 'shall' refer the disputes to arbitration, but the clause should also indicate that the parties agreed to refer the dispute to a private tribunal and would be bound by the decision of the said Tribunal."***

Accordingly, the Court held that in the absence of unequivocal and mandatory language such as "shall" and a clear indication that disputes are to be referred to a private tribunal with binding effect, the clause fails to qualify as a valid and enforceable arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996.

14. *M/S GREENBILT INDUSTRIES PRIVATE LIMITED VS. M/S A B DINESH CONCRETE PRIVATE LIMITED, IN ARBITRATION PETITION (COM. NO. 421 OF 2024) DECIDED ON 27.03.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an unsigned and incomplete Memorandum of Understanding (MoU) containing material blanks and lacking finalized particulars can be treated as a concluded and binding agreement between the parties.**

In the instant case, the Hon'ble High Court examined the legal status of the MoU relied upon by the parties and found that the document could not be regarded as a finalized or concluded agreement. The Court noted that the MoU lacked the correct date and month

and contained several unfilled blank spaces pertaining to vital and substantive terms, thereby indicating the absence of finality and consensus ad idem.

The Hon'ble High court observed and noted that:

> ***"the said MOU does not appear to have been finalized with the correct date and month. It was circulated, according to the petitioner, on February 9, 2022. The MOU contains various blank spaces, which were not filled in by the parties. These blank spaces were with regard to vital information relating to the identity of the representatives of the respondents, the approximate amount of loan which was availed of by the respondent, modalities of takeover, the outstanding liability, the consideration for purchase of assets, the bank liability, mode of payment in the first, second, third phase, etc."***

Accordingly, the Court held that where a document contains material omissions and leaves essential terms indeterminate, it cannot be construed as a concluded or binding agreement in law, as the requisite meeting of minds between the parties is conspicuously absent.

15. *ROSHAN AGARWAL VS. NATIONAL PROJECTS CONSTRUCTION CORPORATION LIMITED (ARBITRATION PETITION NO. 218 OF 2025) DECIDED ON 04.08.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether Contractual clause containing the expression "arbitration", clause in the absence of clear and unequivocal intent of the parties to submit dispute to arbitration, constitutes a valid and binding arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996.**

The Calcutta High Court examined whether the mere employment of the expression "arbitration" in a contractual clause, by itself, constitutes a valid arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996. The Court emphasised that the nomenclature or use of a particular expression is not determinative of the existence of an arbitration agreement. The Court thus held that the mere presence of the word "arbitration", absent a definite and discernible consensus ad idem to refer disputes to arbitral adjudication, does not give rise to a binding arbitration agreement. The Court categorically observed as follows:

> ***"Mere use of the expression 'Arbitration' in Clause 76.0, will not automatically make the clause a binding arbitration agreement as contemplated under Section 7 of the Arbitration Conciliation Act, 1996."***

> ***"The law is well-settled. The arbitration agreement does not have to be in any particular form. It is also well-settled that, words like "arbitrator or arbitration" were not required to be mentioned for a clause to be an arbitration clause. What is most important is that, either from the contract or from any other written document, telex or telecommunications or email, it should be evident that the parties***

***were ad idem that, in case there was any difference or dispute amongst them in the discharge of their contractual obligation, they shall refer such dispute for settlement by an arbitrator or by a private tribunal."***

Accordingly, the Court held that an arbitration agreement under Section 7 must unequivocally reflect the parties' intention to mandatorily refer disputes to arbitration, and such intention cannot be inferred merely from the use of the word "arbitration" in isolation.

16. *ELECTRO MECH ENGINEERS VS. NISHANT PROMOTERS PVT. LTD ,(2025 DHC 11160-DB), DECIDED ON 11.12.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitration clause contained in another document stands validly incorporated by reference under Section 7(5) of the Arbitration and Conciliation Act, 1996, where the contractual scheme reflects an unequivocal intention of the parties to adopt such clause as an integral part of their agreement.**

In the instant case, the Hon'ble High Court examined the scope and import of Section 7(5) of the Arbitration and Conciliation Act, 1996, with particular emphasis on whether a mere reference to another document is sufficient to effectuate incorporation of an arbitration clause. The Court held that a bare or casual reference is inadequate and that Section 7(5) mandates a conscious and deliberate acceptance of the arbitration clause contained in the referred document as forming part of the contract between the parties. The Hon'ble Court observed as follows:

***"A perusal of sub-section (5) of Section 7 of the Arbitration Act itself would reveal that it provides for a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties."***

Accordingly, the Court clarified that for incorporation by reference to be legally effective, the reference must unequivocally evince the intention of the parties to adopt and bind themselves to the arbitration clause contained in the other document.

17. *INTEC CAPITAL LIMITED VS. SHEKHAR CHAND JAIN, (2025 DHC 7730) DECIDED ON 04.09.2025 BY DELHI HIGH COURT*

**Issue: Whether a guarantor, though a non-signatory to the principal Loan Agreement, is bound by the arbitration clause contained therein by virtue of contemporaneously executed Deeds of Guarantee.**

In the instant case, the Hon'ble Delhi High Court examined whether a guarantor, despite not being a signatory to the Loan Agreement, could be bound by the arbitration clause contained therein. The Court considered the contractual scheme comprising a contemporaneously executed Loan Agreement and Deeds of Guarantee and held that where the intention of the parties to incorporate the Loan Agreement into the Deeds of

Guarantee is clear and unequivocal, the guarantor would be bound by the arbitration clause contained in the Loan Agreement. The court categorically observed that:

> ***"Applying this principle to the present case, it is seen that Clause 4 of the Deeds of Guarantee is not a mere general reference but expressly acknowledges that the Guarantor has read and understood the Loan Agreement, agrees to be bound by its terms and accepts the Guarantee to be an "integral part" of the Loan Agreement. The use of the phrase "integral part" is significant, as it denotes that the Guarantee is not intended to operate as an isolated instrument, but in conjunction with and subject to the terms of the Loan Agreement."***

Accordingly, the Court held that where contemporaneously executed agreements form part of a composite contractual arrangement, and the Deeds of Guarantee expressly incorporate and adopt the terms of the principal agreement, including its arbitration clause, a non-signatory guarantor can be validly bound by such arbitration agreement, consistent with Section 7 of the Arbitration and Conciliation Act, 1996.

18. *BELVEDERE RESOURCES DMCC VS. OCL IRON AND STEEL LTD & ORS, (2025 DHC 5128) DECIDED ON 01.07.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitration agreement can be validly constituted under Section 7(4)(b) of the Arbitration and Conciliation Act, 1996 through electronic communications such as emails and WhatsApp messages, evidencing consensus ad idem between the parties to submit disputes to arbitration.**

Arbitration agreement can be validly constituted through electronic communications, including emails and WhatsApp messages, within the meaning of Section 7(4)(b) of the Arbitration and Conciliation Act, 1996, such exchanges sufficiently evidence consensus ad idem between the parties to submit disputes to arbitration.

The Hon'ble Delhi High Court was dealing with a plea filed by a UAE based company, Belvedere Resources DMCC, seeking monetary security of approximately Rs. 23.34 Crores. The High Court after perusing Section 7(4)(b) of the Arbitration and Conciliation Act held and noted that:

> ***"The arbitration agreement was contained in the exchange of email and WhatsApp communications between the parties, and hence, there is an existence of a valid arbitration agreement between the parties."***
>
> ***"The above correspondence leaves no room for doubt that the arbitration agreement was contained in the exchange of email and WhatsApp communications between the parties, and hence, there is an existence of a valid arbitration agreement between the parties."***

Accordingly, it was held that the communications between the parties through WhatsApp and emails can constitute a valid arbitration agreement.

19. *TUSKER WORKSPACE PVT. LTD. VS. D-VOIS COMMUNICATIONS PVT. LTD., (WRIT PETITION No. 3430 OF 2025), DECIDED ON 08.07.2025 BY KARNATAKA HIGH COURT*

**Issue: Whether a dispute can be referred to arbitration when the arbitration clause employs discretionary language such as "may" and lacks unequivocal intent, thereby falling short of a mandatory and binding arbitration agreement.**

In the instant case, the Karnataka High Court examined the validity of a reference to arbitration where the arbitration clause used discretionary terminology. The Court held that the use of the word "may," as opposed to "shall," indicated that arbitration was optional and contingent, rather than mandatory. It further observed that the clause contemplated arbitration only as a possible recourse after failed managerial dialogue and did not reflect a clear, unequivocal intention of the parties to submit disputes to arbitration. In such lack of certainty, the High Court disentitled the clause from being treated as a binding arbitration agreement.

> ***"13. In the light of the judgments so rendered by the constitutional Courts and the clause being identical, what would unmistakably emerge is, that the parties did not agree unequivocally to get the dispute arbitrated, as the usage of the word is 'may' and not 'shall'. The respondent has placed reliance upon the judgment of the coordinate Bench and a judgment of the Apex Court. There can no qualm about the principles so laid down by the coordinate Bench in the case of M/s. AVESTHAGEN LIMITED v. YASMIN SHAH reported in 2015 SCC OnLine KAR 8019 and the Apex Court in the case of VIDYA DROLIA v. DURGA TRADING CORPORATION reported in 2020:INSC:697 : (2021)2 SCC 1. The same would not be applicable to the facts of the case at hand.***
>
> ***14. In the present case, the architecture of arbitration clause is not rigidly unambiguous. It offers arbitration as an eventual recourse, contingent upon a failed managerial dialogue and is couched in language that permits discretion. This flexibility, judicially interpreted in the judgments quoted supra, disqualifies the clause from attaining the stature of a definitive arbitration agreement. Therefore, the impugned order, which refers the matter for arbitration thus falters, as the threshold requirement of an unequivocal agreement was unmet. The impugned order, therefore, stands on infirm legal footing. The petition should thus succeed."***

Accordingly, the Court quashed the order of the lower court referring the dispute to arbitration and restored the commercial suit for adjudication on merits, holding that in the absence of a clear and mandatory arbitration agreement, reference to arbitration is unsustainable in law.

20. *SIGMATIC NIDHI LIMTED, VS. SURESH KUMAR AND OTHERS, (2025 KER 85293), DECIDED ON 10.11.2025 BY KERALA HIGH COURT*

**Issue: Whether an annexure document which contains the arbitration clause, not signed by any representative of the petitioner is valid and binding for referring the dispute for arbitration.**

In the instant case, the Kerala High Court was required to determine whether Annexure A2, an agreement signed only by the respondents but containing an arbitration clause, could nonetheless constitute a valid and binding arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996. The issue arose because the earlier arbitral award, rendered by a unilaterally appointed arbitrator, had been rendered unenforceable by the Execution Court, prompting the petitioner to seek a fresh appointment under Section 11. Although the respondents did not oppose appointment of an arbitrator, the Court considered it necessary to first examine the existence of a valid arbitration agreement.

The Court undertook a detailed analysis of Section 7 of the Act and reiterated that while an arbitration agreement must be in writing, the statute does not mandate that it must invariably be signed by all parties. Placing reliance on settled Supreme Court precedent, the Court noted that the legislative intent behind Section 7(4) is to recognise consensus ad idem even where such consensus is evidenced through conduct, correspondence, or non-denial, rather than through formal execution alone. In commercial dealings, the emphasis is on substance over form, and courts must lean in favour of giving effect to arbitration agreements where the intention of the parties to arbitrate is otherwise clear.

The Court observed:

> ***"Plain reading of sub-section (4) gives the impression that not only a document signed by the parties can be considered as an arbitration agreement 'in writing' and other communications as provided under clause (b) or even non-denial of existence of the agreement by an opposite party in its defence to a statement of claim can be construed as an arbitration agreement 'in writing'."***
>
> ***"On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication... If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement."***

The Court also emphasised the interpretative principle applicable to commercial documents containing arbitration clauses:

> ***"A commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it."***

On facts, the Court found that Annexure A2 was acted upon by both parties, the respondents had signed the document, and there was no denial of the arbitration clause

at any stage. The absence of the petitioner's signature, by itself, was therefore held not to be determinative of invalidity.

Accordingly, the High Court held that an annexure document containing an arbitration clause does not cease to be valid or binding merely because it is not signed by one party, so long as the agreement is in writing and the conduct of the parties establishes consensus to arbitrate. The arbitration request was therefore allowed, leaving all other objections to be raised before the arbitral tribunal.

**Key Trends:** Courts adopted an expansive construction of arbitration agreements, upholding clauses incorporated by reference and agreements forming part of composite transactions, firmly rejecting narrow technical objections to validity.

**SECTION 8 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**8. Power to refer parties to arbitration where there is an arbitration agreement. — (1)** A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]

**(2)** The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:
Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

**(3)** Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

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21. *HINDUSTAN CONSTRUCTION CO. VS. MUMBAI METRO ONE (P) LTD., (2025 BHC-OS 25300) DECIDED ON 18.12.2025 BY BOMBAY HIGH COURT*

**Issue: Whether an arbitration clause contained in a prior contract survives and can be invoked after the parties enter into a subsequent settlement agreement recording a full and final settlement of all claims, in the absence of an express incorporation of the arbitration clause in such settlement agreement.**

In the instant case, the Hon'ble Bombay High Court examined the maintainability of an application seeking reference to arbitration after the execution of a subsequent settlement agreement providing for a full and final settlement of all claims. The application was filed by Mumbai Metro, contending that the arbitration clause contained in the original contract continued to survive notwithstanding the settlement.

The Court rejected this contention and held that a settlement agreement, being a later and self-contained contract, supersedes the original contractual arrangement. In the absence of an express provision incorporating or preserving the arbitration clause from the prior contract, such clause cannot be impliedly read into the settlement agreement. The Hon'ble Bombay High Court observed that:

> ***"the arbitration clause in the prior Contract cannot be read into the terms of the Settlement Agreement unless expressly mentioned, dismissed an application seeking reference of a commercial summary suit to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996."***

> ***"The settlement agreement makes it abundantly clear that it is a full and final settlement irrespective of whatever claims were raised under the contract and work order. Therefore, if all the claims are dealt with and settled, no issues under the contract are left to be adjudicated upon in arbitration".***

Accordingly, the Court held that where a subsequent settlement agreement conclusively settles all claims and does not expressly incorporate the arbitration clause from the earlier contract, the arbitration clause does not survive, and no arbitral reference can be maintained thereafter.

*M/S. CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD. VS. SUJAN SEIKH (FMA NO. 251 OF 2025) DECIDED ON 12.06.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether, upon fulfilment of the statutory conditions under Section 8 of the Arbitration and Conciliation Act, 1996, a judicial authority retains any discretion to refuse reference to arbitration in the absence of a prima facie finding that no valid arbitration agreement exists.**

In the instant case, the Hon'ble Calcutta High Court examined the scope of judicial discretion under Section 8 of the Arbitration and Conciliation Act, 1996. The Court held that once the statutory preconditions for reference to arbitration are satisfied, the judicial authority is left with no discretion to retain the dispute, except where it finds, on a prima facie basis, that no valid arbitration agreement exists.

The Court emphasised that the legislative intent underlying Section 8 mandates minimal judicial intervention at the pre-reference stage, in furtherance of the pro-arbitration policy of the Act. The Court held as follows:

> ***"unless the Court or the concerned judicial authority finds that prima facie no valid arbitration agreement exists, the judicial authority/Court would have no choice but to relegate the parties to arbitration".***
>
> ***"In the present case, we have set out the arbitration clause above. It is nobody's case that the said clause is not an arbitration clause. The disputes forming the subject-matter of the suit filed by the respondent herein are squarely covered by the arbitration clause. In that view of the matter, the appellant's application under Sections 5 and 8 of the 1996 Act must be allowed and we allow that application upon setting aside the order impugned in this appeal."***

Accordingly, the Court held that judicial authorities are statutorily bound to refer parties to arbitration under Section 8 once the prescribed conditions are fulfilled, and any refusal to do so must be founded solely on prima facie finding of the non-existence of a valid arbitration agreement.

23. *SMT. GITARANI MAITY VS. MRS. KRISHNA CHAKRABORTY AND OTHERS, (FAT NO. 308 OF 2023) DECIDED ON 09.01.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether Application under Section 8 of the Arbitration and Conciliation Act must be filed Before or Simultaneously with Written Statement**

The Calcutta High Court held that held that when no application for reference to arbitration under Section 8 of the Arbitration Act is made by either party, the civil court may very well entertain the suit and proceed with the adjudication of the same on merits in accordance with law.

The Court observed that a bare perusal of Section 8 of the Act clearly shows that a judicial authority can only refer the matter to arbitration in view of the existence of an arbitration agreement or clause, if the party seeking such reference applies for such reference not later than the date of submitting his first written statement on the substance of the dispute.

Furthermore, the court noted that:

> ***"In view of the above discussions, the learned trial Judge committed a patent error of law on both counts: first, the suit could not have been dismissed under Section 8 of the 1996 Act and secondly, the Section 8 application, having not been filed before or even simultaneously with the written statement of the defendant, could not have been entertained at all by the learned trial Judge."***

Additionally, the Court affirmed that when no application for reference to arbitration under Section 8 of the 1996 Act is made by either party, the civil court may very well entertain the suit and proceed with the adjudication of the same on merits in accordance with law.

24. *SREI EQUIPMENT FINANCE LIMITED VS. WHITEFIELD PAPERMILLS LTD. (ARBITRATION PETITION COM. NO. 368 OF 2024) DECIDED ON 24.02.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether a referral court can refuse reference to arbitration in exceptional cases on allegations of fraud, when such plea does not, on a prima facie examination, render the arbitration agreement null, void, inoperative, or incapable of being performed.**

In the instant case, the Calcutta High Court examined the extent to which a referral court may scrutinise allegations of fraud, misrepresentation, or inducement at the stage of reference to arbitration. The Court held that such allegations ordinarily necessitate a detailed factual inquiry and appreciation of evidence, which lies exclusively within the domain of the arbitral tribunal and not the referral court.

The Court emphasised that the referral court's jurisdiction is limited to a prima facie examination of the existence and validity of the arbitration agreement, and it cannot undertake a roving or mini-trial on disputed questions of fact. The High court as observed aforesaid stated that:

> ***"Now, whether the agreement was induced by fraud or misrepresentation etc. will require a detailed enquiry and consideration of the evidence to be led by the parties. These issues***

***cannot be decided by the referral Court. Srei Infrastructure Private Limited and Srei Equipment Finance Limited had undergone a Corporate Insolvency Resolution Process. However, the company has come out of the resolution process. The petitioner company is now managed by a different entity. The change of management is the outcome of a successful insolvency resolution."***

***"Unless it is, prima facie, available from the record, that the agreement is null and void and/or inoperative or incapable of being performed on account of fraud, the 18 referral Court should not indulge into a roving investigation, which is within the domain of the learned arbitrator."***

Accordingly, the Court held that allegations of fraud do not, by themselves, justify refusal of reference to arbitration. Unless such plea, on a prima facie scrutiny, strikes at the very root of the arbitration agreement, the referral court must defer the issue to the arbitral tribunal in keeping with the principle of kompetenz–kompetenz and minimal judicial intervention.

25. *AVIRUP TALUKDAR VS. AVISHEK TALUKDAR & ANR. (ARBITRATION PETITION (COM) NO. 523 OF 2025) DECIDED ON 03.07.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether a non-signatory can seek reference of a dispute to arbitration, and the extent of scrutiny to be undertaken by the referral court at the pre-reference stage.**

In the instant case, the Hon'ble Calcutta High Court examined whether a non-signatory to the arbitration agreement could seek reference of the dispute to arbitration. The Court held that such determination depends upon the terms of the agreement, the surrounding circumstances, and the conduct of the parties.

The Court clarified that at the referral stage, the role of the judicial authority is limited to a prima facie assessment of whether the non-signatory is intrinsically connected to the arbitration agreement or to the underlying contract from which the disputes have arisen. A detailed or conclusive determination on such issue, the Court held, must be left to the arbitral tribunal.

The Hon'ble Calcutta High Court on the aforesaid issue in this case observed that:

***"The issue as to whether a non-signatory can seek reference of the dispute to arbitration has to be gathered from the agreement, circumstances and conduct. The law is also well settled that the referral Court is to, prima facie, assess whether the parties are intrinsically connected to the arbitration agreement or the contract out of which the disputes arose. Connection between the parties is, prima facie, available. Ultimately, the issue will be addressed by the learned arbitrator. The clauses in the deed provide that the heir of the deceased shall inherit the share and the partnership will continue."***

Accordingly, the Court held that where a prima facie intrinsic connection between the non-signatory and the arbitration agreement is established, reference to arbitration may be granted, with the final determination on the binding nature of the arbitration agreement being left to the arbitral tribunal.

26. *WTC NOIDA DEVELOPMENT COMPANY PVT. LTD VS. MS. ARTI KHATTAR & ORS. (2025 DHC 228 DB) DECIDED ON 16.01.2025 BY DELHI HIGH COURT*

**Issue: Whether dispute relating to an existence of an Arbitration Agreement can Be Decided Ex-Parte, without hearing other parties.**

In the instant case, the Hon'ble High Court examined whether the arbitration agreement between the parties had stood extinguished. Upon a careful perusal of the pleadings and material placed on record, the Court found that there was no factual or legal basis to conclude that the arbitration agreement had come to an end.

The Court held that the issue of extinction of an arbitration agreement is a mixed question of fact and law, requiring proper pleadings, evidence, and opportunity of hearing. In the absence thereof, any ex-parte determination on such an issue would be impermissible. The Hon'ble Court observed as follows:

> ***"It was, therefore, premature for the learned District Judge to have determined this issue ex-parte without even calling upon the respondent to give its stand on the same. The above-referred pleadings of the appellant, in our view, do not in any manner justify a finding that the arbitration agreement between the parties stood extinguished. The learned District Judge has, therefore, fallen in passing the Impugned Order and dismissing the petition filed by the appellant in-limine."***

27. *R. SANTOSH VS. ONE97 COMMUNICATIONS LIMITED, (2025 DHC 4963-DB) DECIDED ON 12.06.2025 BY DELHI HIGH COURT*

**Issue: Whether right to seek Arbitration is lost after closure of the written statement.**

The Delhi High Court has held that once the right to file a written statement is closed, an application under Section 8 of the Arbitration and Conciliation Act seeking reference to arbitration is not maintainable. The court noted that the Respondent supported its claim through PW-1 affidavit and documentary evidence, including the Ticketing Agreement, Addendum Agreement and statement of accounts, and the termination notice. The Appellant did not cross-examine PW-1 on 12.12.2023, thus failing to contest either the testimony or the documents. This unchallenged evidence is deemed proved, indicating the absence of any credible defence by the Appellant.

The court further observed that:

> ***"Respondent supported its claim through PW-1's affidavit and documentary evidence, including the Ticketing Agreement,***

***Addendum Agreement and statement of accounts, and the termination notice. The Appellant did not cross-examine PW-1 on 12.12.2023, thus failing to contest either the testimony or the documents. This unchallenged evidence is deemed proved, indicating the absence of any credible defence by the Appellant."***

***"upon reviewing the plaint, the evidence presented, and the Appellant's lack of participation, it is evident that the Respondent has proved its case. The Appellant's failure to contest the evidence led by the Respondent and present a valid defence, leads to the conclusion that the Respondent's claims are substantiated."***

Accordingly, it was held that such an application is not maintainable once the right to file a written statement is closed.

28. *CANARA BANK VS. SANJEEV SHARMA & ORS., (2025 DHC 5640-DB) DECIDED ON 16.07.2025 BY DELHI HIGH COURT*

**Issue: Whether a party, having sought reference to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 in opposition to a civil suit, can subsequently contend that the arbitration agreement was intended to bind only specific respondents and not all parties to a composite commercial transaction.**

In the instant case, the Hon'ble Delhi High Court examined whether a party that had invoked Section 8 of the Arbitration and Conciliation Act, 1996 to oppose a civil suit could thereafter resile from its position by contending that the arbitration agreement was intended to bind only select respondents.

The Court held that such a contention is impermissible where the pleadings, read as a whole, demonstrate that the agreements in question formed part of a single, composite commercial transaction. Having sought reference to arbitration on that premise, the party cannot subsequently adopt an inconsistent stand to exclude certain parties from the arbitral process. The Court observed that:

***"the pleadings and the prayer, read holistically, indicate that the Appellant, in fact, confirms that all the Agreements are an integral part of the entire transaction and that is the reason why the Suit makes express reference to all the Agreements which formed a part of the Transaction, inter alia, the Tri-partite Agreement, which contained the Arbitration Clause."***

Accordingly, the Court held that a party invoking Section 8 is bound by its own pleadings and the transactional framework pleaded therein, and cannot subsequently contend that the arbitration agreement applies only to specific respondents when the transaction is pleaded and demonstrated to be composite and integrated.

**Key Trends:** Referral was treated as near-mandatory once a prima facie agreement existed. Courts held that a party invoking Section 8 is bound by its own pleadings and cannot selectively exclude parties from a composite transaction. Section 8 was also held unavailable once the right to file a written statement is closed.

**SECTION 9 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**9. Interim measures, etc., by Court. — (1)** A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court —

i. for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

ii. for an interim measure of protection in respect of any of the following matters, namely:—

a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

b) securing the amount in dispute in the arbitration;

c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

d) interim injunction or the appointment of a receiver;

e) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of and in relation to, any proceedings before it.

**(2)** Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

**(3)** Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]

29. *JINDAL STEEL & POWER LTD. VS. BANSAL INFRA PROJECTS (P) LTD., (2025 INSC 640) DECIDED ON 07.05.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether courts can grant interim protection restraining encashment of a bank guarantee to preserve the subject matter of arbitration during pendency of a Section 9 petition.**

In the instant case, the Supreme Court of India examined the propriety of interim protection granted by the High Court restraining the encashment of a bank guarantee during the pendency of arbitration-related proceedings. The Supreme Court upheld the interim order, holding that such restraint was merely temporary and equitable measure intended to preserve the subject matter of arbitration.

The Court observed that permitting encashment of the bank guarantee at this stage would have the effect of rendering the pending proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 wholly infructuous, thereby defeating the very purpose of seeking interim protection. Emphasising the need to maintain procedural balance between the parties, the Court observed that interim measures are designed not to adjudicate rights finally, but to ensure that the arbitral process is not frustrated by irreversible acts pending adjudication. It was further observed as follows:

> ***"However, it cannot be disputed that after hearing both sides and with the consent of the parties, the High Court disposed of the writ petition by the order impugned herein, inter alia stating that if the appellants were permitted to invoke the bank guarantee, the prayer made in the Section 9 arbitration petition would likely become infructuous."***
>
> ***"Thus, in view of the ongoing arbitration proceedings concerning the bank guarantee, it is imperative to maintain the existing position regarding the bank guarantee until the final outcome of the Section 9 arbitration petition".***

Accordingly, the Supreme Court held that where encashment of a bank guarantee would render arbitration proceedings or pending Section 9 applications nugatory, a temporary restraint may be granted to preserve the efficacy of the arbitral process, subject to the facts and equities of the case.

30. *LAW PUBLISHERS AND ORS. VS. VIRENDER SAGAR AND ORS., (2025 AHC 120505-DB), DECIDED ON 23.07.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, can be granted in the absence of a prima facie case, balance of convenience, or irreparable injury, particularly where the claimant asserts partnership rights after prolonged inaction.**

The Allahabad High Court upheld the Commercial Court's refusal to grant interim relief under Section 9, rejecting the appellant's claim of continuing partnership, noting that the claim had been raised after an unexplained delay of 27 years and was unsupported by any cogent material. It was held that in the absence of a prima facie case, balance of convenience, and irreparable injury, the grant of interim protection was wholly unwarranted. Accordingly, the appeal was dismissed, without prejudice to other pending or future proceedings.

The Court made the following observation dismissing the appeal:

> ***"34. Significance of a prima facie case, being the first and foremost pre-condition to claim interim injunction, has been explained by the Hon'ble Supreme Court from time to time. In Dalpat Kumar and another Vs. Prahlad Singh and others: 1991:INSC:341 : AIR 1993 SC 276 , the Hon'ble Supreme Court has clearly held that the burden is on the plaintiff to establish by evidence or affidavit or otherwise that***

***there is a prima facie case in his favour which needs adjudication at the trial. In the same judgment, importance of balance of convenience and irreparable injury has been emphasized holding that the phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice."***

Accordingly, it was held that interim relief under Section 9 cannot be granted in the absence of a prima facie case, balance of convenience, and irreparable injury, particularly where claims are raised after prolonged and unexplained delay, and that courts must exercise restraint in granting such relief in arbitral matters.

31. *BEIJING SPC ENVIRONMENT PROTECTION TECH CO. LTD. VS. UTTAR PRADESH RAJYA VIDHYUT UTPADAN NIGAM LTD. AND ORS., (2025 AHC-LKO 39541), DECIDED ON 11.07.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether bank guarantees, being separate contracts, can be restrained from invocation in the absence of proof of fraud or irretrievable harm.**

In this case, Beijing SPC Environment Protection Tech Co. Ltd., a foreign contractor, faced invocation of bank guarantees by the Uttar Pradesh power utility amid delays in a project. The applicant (Beijing SPC Environment Protection Tech Co. Ltd.) argued for interim relief under arbitration provisions by seeking an injunction to prevent Uttar Pradesh Rajya Vidhyut Utpadan Nigam Ltd. from invoking bank guarantees due to project delays, citing potential injustice. However, the Allahabad High Court dismissed the application and held that no fraud or irretrievable harm was established to justify restraint on encashment by emphasizing that bank guarantees are separate contracts and can be only restrained in cases of fraud or irretrievable harm.

***"14. In view of the law as cited, it is clearly well settled that the bank guarantee is a separate and distinct contract from the main contract and, the invocation of the bank guarantee, flows from the terms and conditions of the contract of bank guarantee inter se in between the parties. It is also equally well settled that for restraining one of the parties from invoking bank guarantee, it is incumbent to establish that there is a fraud played with regard to the issuance of bank guarantee, which is of such nature, which would vitiate the entire contract of bank guarantee, or there exist special equities, which would result in 'irreparable harm' or 'injustice' to one of the parties as held by the Supreme Court in the case of U.P. State Sugar Corporation vs. Sumac International Ltd. (supra).***

***15. In the present case there being absence of any allegation with regard to fraud, no material exists to demonstrate that if the bank guarantee is encashed, the same would result in 'irretrievable***

> ***injustice' or 'irretrievable injury' which cannot be compensated in terms of damages, which naturally have to be assessed after the arbitral proceedings commence. The judgment cited by the counsel for the applicant in the case of Rahee GPT (JV) (supra) would be of no avail for two reasons - firstly because the interim order, does not have any presidential value and secondly, the same was passed in the context of the facts of the said case, which are absent in the present case."***

Accordingly, it was held that in the absence of fraud or irretrievable harm, courts cannot restrain invocation of bank guarantees, as they are independent contracts enforceable according to their terms. The application seeking interim restraint was therefore dismissed.

32. *TUF METALLURGICAL (P) LTD. VS. BST HK LTD., (ICOMAA NO. 2 OF 2024) DECIDED 03.01.2025 ON BY ANDHRA PRADESH HIGH COURT*

**Issue: Whether courts must apply the basic principles of the Code of Civil Procedure while granting interim relief under Section 9 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Andhra Pradesh High Court examined the scope of judicial powers while adjudicating a petition under Section 9 of the Arbitration and Conciliation Act, 1996. The Court held that although the principles underlying the Code of Civil Procedure, 1908 (CPC) cannot be ignored, the exercise of jurisdiction under Section 9 is not straitjacketed by the strict procedural requirements of the CPC. The Court clarified that the power to grant interim relief under Section 9 is equitable and discretionary in nature, and while guided by CPC principles, the Court is not rigidly bound by every procedural provision thereof. The Court noted that Order XXXVIII Rule 5 CPC contemplates issuance of notice to the defendant within a specified time, either by furnishing such security as directed, producing and placing the property at the disposal of the Court when required, or by appearing and showing cause as to why security should not be furnished.

The Court thus observed as follows that:

> ***"in deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of the CPC. At the same time, the power of the Court to grant relief is not curtailed by the rigours of every procedural provision in the CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of the CPC".***

Accordingly, it was also observed that Order XXXVIII Rule 5 CPC does not bar the Court from passing an ex parte order of attachment where the Court is satisfied that such a course is necessary, particularly in circumstances where there is a likelihood of the defendant disposing of the property in the interregnum.

33. *ASHOKA BUILDCON LTD. VS. MAHA ACTIVE ENGINEERS INDIA (P) LTD., (COMMERCIAL ARBITRATION APPEAL NO. 10 OF 2024) DECIDED ON 30.04.2025 BY BOMBAY HIGH COURT*

**Issue: Whether delay in approaching the court can justify refusal of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Hon'ble Bombay High Court examined the parameters governing the grant of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. The Court held that an applicant seeking such relief must approach the Court with reasonable expedition, and that an unexplained delay extending over several years is a material and weighty factor militating against the grant of interim protection.

The Court observed that relief under Section 9 of the Act is discretionary in nature and is required to be governed by the settled principles applicable to the grant of interim relief, namely- the existence of a prima facie case, balance of convenience, and irreparable harm. It was further held that an Appellate Court may interfere with the discretionary order passed by the court below only where such discretion has been exercised arbitrarily, capriciously, or in ignorance of settled legal principles.

The Court observed that:

> ***"an applicant under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Act") must approach the court with reasonable expedition. Delay of several years without adequate explanation is a material factor that militates against the grant of such relief." The court observed that relief under Section 9 of the Act is discretionary and must be guided by the settled principles of interim relief, namely the existence of a prima facie case, balance of convenience, and irreparable harm. An appellate court can interfere with the discretionary order of the trial court only if such discretion has been exercised arbitrarily, capriciously, or in ignorance of settled legal principles."***

Accordingly, the Court held that unexplained delay is a significant factor against grant of interim relief under Section 9, and that appellate interference with discretionary orders is warranted only in exceptional circumstances where such discretion is shown to be manifestly flawed.

34. *DHANANJAI LIFESTYLE LTD. VS. SANVIE RETAIL (P) LTD., (AP-COM/980/2024) DECIDED ON 20.05.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an MSME can seek and invoke interim measures under Section 9 of the Arbitration and Conciliation Act, 1996, during the pendency of mandatory conciliation proceedings under the MSMED, 2006 Act.**

In the instant case, the Calcutta High Court examined the stage at which an MSME is entitled to invoke interim measures under Section 9 of the Arbitration and Conciliation Act, 1996. The Court held that recourse to Section 9 is available only after the mandatory conciliation proceedings before the MSME Facilitation Council have failed and the dispute

proceeds to arbitration either before the Council itself or before an arbitral institution to which the dispute is referred. Only at that stage do the provisions of the Arbitration Act become applicable.

The Court categorically held that seeking interim relief under the Arbitration Act during the pendency of conciliation proceedings is clearly barred under Section 77 of the Arbitration and Conciliation Act, 1996, which prohibits initiation of arbitral or judicial proceedings while conciliation is ongoing. The court observed as follows that:

> ***"the object is to minimise judicial intervention at the stage of conciliation. If this Court holds that even at the stage of mandatory conciliation, the protections envisaged under section 9 of A & C Act can be granted by entertaining this application, it will amount to the Court legislating, by incorporating equitable principles, which is not the intention of the legislature."***

Accordingly, the Court held that an MSME cannot invoke Section 9 of the Arbitration and Conciliation Act during the pendency of mandatory conciliation before the MSME Council, save in exceptional cases necessary to preserve rights, which were absent in the present case.

35. *SREI EQUIPMENT FINANCE LTD. VS. TRINITY ALTERNATIVE INVESTMENT MANAGERS LTD., (2025 CHC-OS 87) DECIDED ON 18.06.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an injunction or interim protection can be granted in arbitration-related proceedings in the absence of pleadings or material demonstrating a real risk of dissipation of assets or frustration of the arbitral award, particularly where the respondent is a going concern and adequate contractual security already exists.**

In the instant case, the Hon'ble Calcutta High Court examined whether interim injunctive relief could be granted in aid of arbitration in the absence of pleadings or evidence indicating a real apprehension of dissipation of assets or frustration of the prospective arbitral award.

The Court held that interim protection cannot be granted as a matter of course. It emphasised that the grant of such relief must be founded on specific pleadings and cogent material demonstrating a genuine risk that the respondent may dissipate assets or otherwise render the arbitral award a paper decree. In the present case, the Court noted as follows that:

> ***"The petitioner does not require any further protection. The petitioner at this stage is entitled to the security as mentioned in the schedule of the deeds of hypothecation agreement. The respondent is continuing its business activity, and is fully functional. The pleadings do not indicate that the respondent had tried to remove its assets or alienate its properties which would give rise to an apprehension that even if an award is passed in favour of the petitioner, the same will be a paper decree. The arbitration has***

***commenced and it is informed that the same has been fixed before the learned arbitrator in the end of June. The petitioner is always at liberty to pray for interim orders before the learned arbitrator. The observations made herein are tentative."***

The Court further stated and observed that:

***"As per the petitioner's estimation, the investments mentioned in the application was worth Rs. 12.41 crores. Further investments have been disclosed in this proceeding, which have been valued at Rs. 4104.08 lakhs. Although, those disclosures have been stated to be unreliable, in my opinion the petitioner has not been able to establish with proper calculations that such investments which have been disclosed are not worth Rs. 26 crores. A further deliberation and probe by this court would amount to a mini trial. The value of the investments depends on market conditions. The charge on investments was created consciously by the parties. The parties were both commercial entities and well versed in the subject. There is nothing on record to show that the alleged reduction in the value of the assets was attributable to any malafide conduct of the respondent."***

Accordingly, the Court held that in the absence of specific pleadings and credible material evidencing a real risk of asset dissipation or frustration of the arbitral award—and where the respondent is a going concern with adequate contractual security already in place—grant of injunctive or interim relief is unwarranted.

36. *NEOSKY INDIA LIMITED & ANR. VS. MR. NAGENDRAN KANDASAMY & ORS., (2025 DHC 6798) DECIDED ON 11.08.2025 BY DELHI HIGH COURT*

**Issue: Whether post-termination restrictive covenants in employment contracts are enforceable under Section 27 of the Indian Contract Act, 1872, and whether such covenants can be protected through interim relief under Section 9 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Hon'ble Delhi High Court examined the enforceability of post-service restrictive covenants contained in employment contracts and the permissibility of granting interim protection in aid thereof under Section 9 of the Arbitration and Conciliation Act, 1996.

The Court held that restrictive covenants which operate after cessation of employment are void and unenforceable under Section 27 of the Indian Contract Act, 1872, as they amount to an impermissible restraint of trade. The Court further held that such covenants also offend Article 19(1)(g) of the Constitution of India, which guarantees the fundamental right to practise any profession or to carry on any occupation, trade, or business.

In light of the above, the Court vacated the injunction earlier granted under Section 9 of the Arbitration and Conciliation Act, 1996, which had restrained the respondents from engaging in a competing business post-termination of their employment agreements. The

Court clarified that interim relief cannot be used to indirectly enforce contractual stipulations that are void in law.

> ***"In the present case, the reliefs sought are in the nature of injunctive reliefs aimed at preventing the frustration of rights arising from the contractual relationship between the parties. It is well settled that the scope of enquiry under Section 9 is confined to a prima facie assessment of the disputes and preservation of the subject matter of Arbitration. Issues such as the interpretation of contract terms and the scope of the underlying agreements fall squarely within the jurisdiction of the Arbitral Tribunal."***

Accordingly, the Court held that post-termination restrictive covenants in employment contracts are unenforceable under Section 27 of the Contract Act, and no interim protection under Section 9 of the Arbitration Act can be granted to give effect to such void restraints.

37. *RHINE POWER (P) LTD. VS. RAMPRASTHA PROMOTERS & DEVELOPERS (P) LTD., (2025 DHC 3075) DECIDED ON 28.04.2025 BY DELHI HIGH COURT*

**Issue: Whether a contempt court can reverse or nullify benefits and transactions obtained in violation of court orders.**

In the instant case, the Delhi High Court examined the scope of powers exercisable by a contempt court in cases of willful disobedience of interim orders passed under Section 9 of the Arbitration and Conciliation Act, 1996. The Court held that a contempt court is not only empowered to punish the contemnor but is also competent to issue appropriate directions to undo, neutralise, or reverse any benefit obtained in breach of the Court's interim orders, so as to ensure that no party gains an advantage from contumacious conduct.

Furthermore, the Court placed reliance on the judgment of the Hon'ble Supreme Court of India in Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor, wherein it was held that a contempt court possesses the power to declare a transaction entered into in violation of a court order as void, even though a transfer pendente lite may not be void ab initio under Section 52 of the Transfer of Property Act, 1882.

The Supreme Court clarified that in contempt proceedings, the court may declare such transactions void or direct their reversal to ensure that the contemnor does not derive any benefit from disobedience of judicial orders. This includes issuing appropriate directions to concerned authorities to nullify any advantage gained through such contumacious acts, thereby preserving the authority and majesty of law. In line of the aforesaid, the Court observed as follows that:

> ***"party cannot seem to benefit from disobedience of the Court orders and the contempt court was justified in passing directions for reversal of transactions or declare the said transactions to be void or proceed to pass appropriate directions to the concerned authorities."***

Accordingly, the Court held that where an interim order under Section 9 of the Arbitration and Conciliation Act is violated, the contempt court has ample jurisdiction to restore the status quo ante and to ensure that no benefit accrues to a party acting in defiance of the Court's orders.

38. *BLACK GOLD RESOURCES PRIVATE LIMITADA VS. INTERNATIONAL COAL VENTURESPVT. LTD. & ANR., (2025 DHC 11498) DECIDED ON 17.12.2025 BY DELHI HIGH COURT*

**Issue: Whether a court can restrain termination of a contract and invocation of an unconditional bank guarantee under Section 9 of the Arbitration and Conciliation Act, 1996, in the absence of irretrievable injury, fraud, or special equities.**

In the instant case, the Hon'ble Delhi High Court dismissed a petition filed by Black Gold Resources Private Limited seeking to restrain termination of its coal mining contract in Mozambique and the invocation of a USD 10.5 million Performance Bank Guarantee by International Coal Ventures Pvt. Ltd. and Minas De Benga Limitada. While vacating the earlier interim protection, the Court held that the petitioner had failed to establish the stringent requirements necessary to interdict an unconditional bank guarantee.

The Court observed that the petitioner had not demonstrated irretrievable harm, and that the disputes raised were contractual in nature and more appropriately suited for adjudication by an arbitral tribunal rather than for intervention by the Court under Section 9 of the Arbitration and Conciliation Act, 1996. The court as follows that:

> ***"in cases of unconditional and irrevocable bank guarantees, the Court may stay invocation only when there is egregious fraud, irretrievable injustice, or special equities".***

Accordingly, the Court held that in the absence of egregious fraud or irretrievable injustice, judicial interference with the invocation of an unconditional performance bank guarantee is impermissible, and contractual disputes must be relegated to arbitration in accordance with the agreed dispute resolution mechanism.

39. *RESCOM MINERAL TRADING FZE VS. RASHTRIYA ISPAT NIGAM LIMITED & ANR., (2025 DHC 7467) DECIDED ON 28.08.2025 BY DELHI HIGH COURT*

**Issue: Whether mere financial distress of a respondent is sufficient to grant interim measures under Section 9 of the Arbitration and Conciliation Act, 1996, to secure unadjudicated claims.**

In the instant case, the Hon'ble Delhi High Court examined the scope and parameters for grant of interim measures under Section 9 of the Arbitration and Conciliation Act, 1996. The Court categorically held that mere financial distress or strained financial condition of the respondent, by itself, does not warrant grant of interim protection to secure claims which are yet to be adjudicated.

The Court observed that the power under Section 9 is not unbridled and is governed by principles analogous to attachment before judgment under Order XXXVIII Rule 5 of the

Code of Civil Procedure, 1908. Accordingly, the applicant must establish a real and imminent risk of the respondent dissipating assets or acting in a manner that would defeat the enforcement of a prospective arbitral award. Furthermore, the Court observed that:

> ***"Hence, the amounts claimed by the petitioner at this stage are unadjudicated claims, which cannot be secured through interim relief merely because respondent No. 1 is in financial distress, as observed in Natrip Implementation Society (supra) and Noida Toll Bridge Company Limited (supra)."***

Accordingly, the Court held that interim relief under Section 9 cannot be granted merely on the ground of financial distress of the respondent, unless the stringent requirements akin to Order XXXVIII Rule 5 CPC namely, a clear apprehension of asset dissipation or frustration of the award are satisfied.

40. *FLEMINGO (DFS) PRIVATE LIMITED VS. AIRPORTS AUTHORITY OF INDIA, (2025 KER 31609), DECIDED ON 11.04.2025 BY KERALA HIGH COURT*

**Issue: Whether the petitioner entitled to maintain a writ petition under Article 226 of the Constitution of India against the order issued by the Commercial Court?**

In the instant case, the Kerala High Court was called upon to examine the maintainability of a writ petition challenging an order of the Commercial Court passed under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner had approached the Commercial Court seeking interim protection against invocation of bank guarantees. While such protection was initially granted, the Commercial Court later closed the proceedings on the premise that arbitration had already commenced. Aggrieved thereby, the petitioner invoked the writ jurisdiction of the High Court under Article 226.

The principal objection raised by the respondent was that the writ petition was barred in view of the statutory appellate remedy available under Section 37 of the Arbitration Act. The Court, therefore, examined whether the impugned order of the Commercial Court could be characterised as one "granting or refusing" interim measures so as to attract the appellate bar under Section 37. Upon analysing the nature of the order, the Court found that the Commercial Court had neither adjudicated upon nor refused the relief sought, but had merely closed the petition on an erroneous assumption regarding the commencement of arbitral proceedings. In that context, the Court held that the order did not fall within the category of appealable orders under Section 37.

The court observed that:

> ***"In the case at hand, by the order dated 20.07.2023, the Commercial Court has not "refused" to extend the measure under Section 9 of the Act. The Commercial Court has only "closed" the petition in view of the submission made by the learned counsel for the petitioner before the court that the arbitration proceedings have already been initiated. The order at Ext.P8 cannot be considered to be one "refusing to grant" the relief under Section 9. I am of the opinion***

***that the Commercial Court was proceeding on a wrong notion that the Arbitrator had already started to function and it is for the petitioner to seek its remedy under the provisions of Section 17 of the Act. Therefore, insofar as the order at Ext.P8, cannot be said to be one "refusing" the relief under Section 9, I am of the opinion that the same is not appealable under the provisions of Section 37 of the Act. 13. In such circumstances, I hold that the petitioner was justified in preferring W.P(C) No.24021 of 2023 in the peculiar facts and circumstances of the case."***

Accordingly, the High Court held that in the absence of an efficacious alternate statutory remedy, and having regard to the peculiar facts of the case, the petitioner was justified in invoking the writ jurisdiction under Article 226 to challenge the order of the Commercial Court.

41. *CBRE SOUTH ASIA PVT LTD VS. M.P. HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD (MPH AND IDB), (2025 MPHC-JBP 27582), DECIDED ON 25.06.2025 BY MADHYA PRADESH HIGH COURT*

**Issue: Whether an application for grant of interim relief permissible during the pendency of the application for appointment of an arbitrator.**

The High Court of Madhya Pradesh addressed the dispute between CBRE South Asia Pvt Ltd and the M.P. Housing and Infrastructure Development Board regarding the termination of a consultancy agreement and the subsequent request for arbitration by appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

The High Court observed that:

***"12. Also, heard on the applications I.A. No.8259/2025 and I.A. No.1335/2025 which are applications under Section 9 of the Act of 1996. It is submitted by the learned counsel for the applicant that since, the termination notice dated 14.11.2024 has already been issued by the non-applicant, therefore, by an interim measure, it is required to be stayed under Section 9 of the Act of 1996.***

***The said application has been replied by the non-applicant stating that this Court is not having jurisdiction to decide the application under Section 9 because as per the bare perusal of language of Section 9, it is clear that only the Court which is defined under the definition clause of Act of 1996 is Principal Civil Court of the District having the jurisdiction to decide the application under Section 9 of the Act. In support of his submission, learned counsel has relied upon the judgment passed by Hon'ble Supreme Court in the case of State of West Bengal and Others vs. Associated Contractors reported in MANU/SC/0793/2014 : 2014:INSC:619 : 2015(1) SCC 32 and has invited attention of this Court to para-25 ."***

The court dismissed applications under Section 9 for interim relief, citing lack of jurisdiction, and directed the parties to proceed with arbitration in Bhopal as per the agreement.

Accordingly, the court found that the arbitration clause in the agreement was valid and applicable, and thus appointed a retired judge as the arbitrator to resolve the dispute. The court dismissed applications under Section 9 for interim relief, citing lack of jurisdiction, and directed the parties to proceed with arbitration in Bhopal as per the agreement.

42. *BOBBY TOUCH GOLD UNIVERSAL PRIVATE LIMITED VS. RAVI MOHAN, (2025 MHC 1764), DECIDED ON 23.07.2025 BY MADRAS HIGH COURT*

**Issue: Whether, in a petition for interim measures under the Arbitration and Conciliation Act, 1996, the court can direct a party to furnish security for the claim amount based on prima facie breach and admitted liability, while leaving disputed defences to be adjudicated by the arbitral tribunal.**

In the instant case, the Madras High Court considered an application seeking interim protection by way of security for the claim amount. The Court found a clear prima facie breach of contract, noting that the agreement expressly stipulated refund of the advance amount upon termination and that the respondent had admitted such liability through written communications. The Court held that defences based on provisions of the Indian Contract Act, 1872, as well as other disputed issues, could not be conclusively examined at the interlocutory stage and were matters to be decided by the arbitral tribunal upon appreciation of evidence.

> ***"23. Reliance on Sections 2(b), 7 and 38 of the Indian Contract Act, 1872 has no bearing at this interlocutory stage. Only after the respondent(artist) lets in supporting evidence before the arbitral tribunal, the provisions of Section 2(b), Section 7 and Section 38 of the ICA as to whether the same will get attracted to benefit the respondent (artist) can be adjudicated upon and therefore, if at all, the said contentions can be adjudicated only by the arbitral tribunal after the respondent(artist) lets in evidence.***
>
> ***24. Though the learned counsel for the respondent(artist), during the course of his submissions, had submitted that the press reports and clippings submitted by the learned Senior Counsel appearing for the applicant(cinema production house) are not reliable one and based on the same, it cannot be inferred that the respondent(artist) is indebted to various creditors, this Court even without considering the press reports has to come to the conclusion that the applicant(cinema production house) is entitled for a direction to the respondent(artist) to furnish security to the extent of the claim amount, in view of the admitted fact that the respondent(artist) has admitted his liability to refund the advance amount of Rs.6 crores to the applicant through his communications dated 11.04.2025 and 29.04.2025 as well as from the terms and conditions of the contract which clearly stipulates that in case of termination of contract, the***

***respondent(artist) is liable to refund the advance amount to the applicant(cinema production house).”***

Accordingly, the court directed the respondent to furnish security for Rs.5,90,06,466/-, dismissed their interim relief applications, and left the merits to be decided in arbitration proceedings.

43. *VISHNUO INFRA PVT. LTD. VS. ENGINEERING PROJECTS INDIA LTD., (O.S.A.(CAD) NO.105 OF 2025), DECIDED ON 06.10.2025 BY MADRAS HIGH COURT*

**Issue: Whether invocation or encashment of a performance bank guarantee can be restrained by interim injunction in absence of fraud or special equities.**

In the instant case, the Madras High Court was seized of an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, arising out of an order passed in a petition under Section 9 seeking to restrain invocation of a performance bank guarantee. The learned Single Judge, while declining to grant an unconditional injunction, appointed a sole arbitrator and granted liberty to the parties to seek appropriate interim reliefs under Section 17 of the Act. Aggrieved thereby, the appellant approached the Division Bench contending that the respondent may invoke the bank guarantee even before the arbitral tribunal could consider the interim applications.

Upon consideration, the Division Bench declined to interfere with the order appointing the arbitrator, noting the limited scope of appellate scrutiny under Section 37. However, the Court took cognizance of the appellant’s apprehension and issued a protective clarification to preserve the efficacy of the arbitral proceedings, without adjudicating upon the merits of the dispute or the legality of invocation of the bank guarantee.

The Court observed as follows:

***"This Court, on considering the nature of the dispute and the order passed by the learned single Judge appointing sole arbitrator to resolve the dispute between the parties, finds no ground to interfere under Section 37 of the Arbitration and Conciliation Act, 1996, read with Clause 13 of the Commercial Courts Act, 2015. However, to allay the apprehension of the appellant, we make it clear that first respondent shall not proceed with invoking of bank guarantee till the sole arbitrator commences arbitration proceedings and decides on the applications, if any filed under Section 17 of the Arbitration and Conciliation Act, 1996, by the parties. Till then, there shall be a conditional injunction, restraining the first respondent herein from invoking the bank guarantee offered by the appellant.”***

Accordingly, the Court held that although invocation or encashment of a performance bank guarantee is ordinarily not to be restrained in the absence of fraud or special equities, a limited and conditional injunction may be granted to safeguard the arbitral process, enabling the arbitral tribunal to first consider interim relief under Section 17, without the court expressing any view on the merits of the dispute.

44. *K. BALA VISHNU RAJA VS. EMAAR HILLS TOWNSHIP PRIVATE LIMITED AND OTHERS, (C.R.P. NOS. 1014 AND 1184 OF 2024), DECIDED ON 19.08.2025 BY TELANGANA HIGH COURT*

**Issue: What degree of nexus is required for a non-signatory to be impleaded in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996?**

In the instant case, the Telangana High Court was called upon to examine whether non-signatory entities could be deleted from the array of parties in a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, solely on the ground that they were not formal signatories to the arbitration agreement. The Court undertook a fact-specific inquiry into the role and involvement of the non-signatory respondents in the underlying transaction, particularly their connection with the subject property and the flow of consideration arising from the Memorandum of Understanding containing the arbitration clause. It was found that the non-signatories were not peripheral actors but were deeply enmeshed in the commercial arrangement, having received substantial consideration and exercised control over the property which formed the subject matter of the interim reliefs sought.

The Court emphasized that proceedings under Section 9 are intended to preserve the subject matter of arbitration and are not confined by a rigid signatory-based approach. Noting the expansive nature of Section 9, the Court held that while the applicant must be a party to the arbitration agreement, the provision does not restrict interim measures only against signatories. In this context, the Court drew support from recent Supreme Court jurisprudence emerging from Cox and Kings Limited v. SAP India Private Limited, 2023 INSC 1051, recognising that non-signatories may, by virtue of their conduct and participation, be treated as bound by or sufficiently connected to the arbitration agreement.

The Court observed:

> ***"Section 9(1) of the 1996 Act does not limit the interim measure passed by the Court only to a 'party' … the power to grant interim relief is subject to a party–applicant but is party-indifferent with regard to the intended respondent."***

It further noted that:

> ***"In essence, the respondent Nos. 1 and 3 are indivisibly connected to the arbitration agreement having partaken of the benefit flowing therefrom in terms of receiving 95% of the consideration for the allotted plot in the project."***
>
> ***"The law has pushed the boundaries to pull in non-signatories to the arbitration agreement where the conduct of such parties reflects their intention to be bound by the arbitration agreement."***

Accordingly, the Court concluded that for a non-signatory to be impleaded in proceedings under Section 9, what is required is a proximate and live nexus with the arbitration agreement and the subject matter of the dispute, demonstrated through conduct, receipt of benefits, or control over the property in question. Where such an intimate and inseparable connection is established, the absence of a formal signature on the arbitration

agreement is not decisive, and the non-signatory may be treated as a necessary party for effective interim protection.

45. *M/S. CORVINE CHEMICALS AND PHARMACEUTICALS PRIVATE LIMITED VS. SRINIVASULU KANDAY, (COMCA NO. 40 OF 2024), DECIDED ON 27.02.2025 BY TELANGANA HIGH COURT*

**Issue: Whether a civil court can entertain and grant interim relief under Section 9 of the Arbitration and Conciliation Act after constitution of the Arbitral Tribunal?**

In the instant case, the Telangana High Court examined the permissibility of continued court intervention under Section 9 after the constitution of the Arbitral Tribunal. The appellants sought continuation of interim protection on the premise that the Commercial Court had sufficiently engaged with the Section 9 proceedings prior to the tribunal's constitution. The Court therefore analysed the scope of Section 9(3) and the circumstances under which the statutory embargo on court intervention may be lifted.

The Court reiterated that Section 9(3) creates a clear bar against the court entertaining an application for interim measures once the Arbitral Tribunal is constituted, save in exceptional situations where the remedy under Section 17 is shown to be inefficacious. Explaining the legislative intent, the Court emphasised that the provision seeks to ensure a smooth transition of interim jurisdiction to the arbitral forum and to prevent parallel adjudication after the arbitral process has commenced. The Court observed:

> ***"Section 9(3) conceives of a situation after constitution of the Arbitral Tribunal and contains an embargo on the Court from entertaining an application under Section 9(1) for interim measures unless the Court finds existence of circumstances which renders the remedy available to a party under Section 17 to be inefficacious."***

Applying this principle to the facts, the Court held that neither the Commercial Court nor the High Court had entertained the Section 9 application on merits prior to constitution of the Tribunal, and the appellants had failed to demonstrate any inefficacy in approaching the Tribunal under Section 17. In this context, the Court concluded:

> ***"In essence, neither the Commercial Court nor the High Court entertained the dispute between the parties... Therefore, the matter at hand falls squarely within the embargo in section 9(3) of the Act."***

Accordingly, it was held that once the Arbitral Tribunal is constituted, a civil court cannot entertain or grant interim relief under Section 9 unless a clear case of inefficacy of the remedy under Section 17 is established, and in the absence of such circumstances, parties must be relegated to the arbitral forum for interim protection.

**Key Trends:** Courts uniformly refused to restrain bank guarantee encashment absent egregious fraud, irretrievable harm, or special equities, with mere financial distress of the respondent held insufficient. The classical three-part test of prima facie case, balance of convenience, and irreparable harm governed all applications, with unexplained delay treated as a weighty factor against relief. Once a tribunal is constituted, Section 9 jurisdiction was strictly limited unless Section 17 was shown to be inefficacious. Courts additionally confirmed that a contempt court can reverse transactions entered into in violation of Section 9 orders.

# Chapter III

## *Composition of Arbitral Tribunal*

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## CHAPTER III – COMPOSITION OF ARBITRAL TRIBUNAL

### SECTION 10 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**10. Number of arbitrators. — (1)** The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

**(2)** Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.

46. *M/S BESCO VS. M/S HINDON CHEMICALS PVT. LTD. (F.M.A.T. (ARB.AWARD) NO.47 OF 2023) DECIDED ON 08.07.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether the prohibition on appointment of an even number of arbitrators under the Arbitration and Conciliation Act, 1996, applies to statutory arbitrations conducted under Section 18(3) of the MSME Act, 2006.**

The Court observed that Section 10(1) of the 1996 Act bars parties from determining an even number of arbitrators. The Court distinguished statutory arbitration under Section 18(3) (a statutory mandate to refer) from party-appointed arbitration: the restriction against even-numbered tribunals applies when parties determine number; a statutory arbitration under Section 18(3) is governed by the 2006 Act's scheme and the legal fiction applying the 1996 Act does not attract the party-determined fetter.

Therefore four Council members acting as arbitrators (an even number) did not per se vitiate the award in the context of Section 18 statutory arbitration.

Thus the Calcutta High Court held that the prohibition on appointing an even number of arbitrators under the 1996 Act does not apply to statutory arbitrations under Section 18(3) of the MSMED Act, 2006, where reference to arbitration is mandatory and the 1996 Act applies only by a statutory fiction.

The Hon'ble Calcutta HC held that:

> ***"the bar restricting the number of arbitrators to even numbers, which is applicable when the parties themselves appoint arbitrators under the 1996 Act, is not attracted to a statutory arbitration under Section 18 (3) of the 2006 Act, where the 21 reference to arbitration is mandated by statute in respect of micro, small scale and medium enterprises and the provisions of the 1996 Act are made applicable merely by legal fiction created under Section 18 (3) of the 2006 Act."***

Accordingly, the Calcutta High Court held that an arbitral award rendered by an even-numbered tribunal constituted under Section 18(3) of the MSMED Act is not invalid, as the bar under Section 10(1) of the Arbitration and Conciliation Act applies only to party-determined arbitrations and not to statutory arbitrations mandated by law.

**Key Trends:** The court clarified that the bar on even-numbered tribunals does not apply to statutory arbitrations under the MSMED Act, where the 1996 Act applies only by legal fiction and not by party agreement.

**SECTION 11 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**11. Appointment of arbitrators. — (1)** A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

**(2)** Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

**(5)** Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court].

**(6)** Where, under an appointment procedure agreed upon by the parties,—

a) a party fails to act as required under that procedure; or
b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court]to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

**(8)** The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

a) any qualifications required for the arbitrator by the agreement of the parties; and
b) the contents of the disclosure and other considerations as are likely to secure the
**c)** appointment of an independent and impartial arbitrator.

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47. *M/S ACTIVITAS MANAGEMENT ADVISOR PRIVATE LIMITED VS. MIND PLUS HEALTHCARE PRIVATE LIMITED (SLP (C) NO. 27714 OF 2024) DECIDED ON 05.08.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether only the High Court exercising territorial jurisdiction over the agreed arbitration venue is competent to entertain an application for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Hon'ble Supreme Court of India examined the question of territorial jurisdiction for entertaining an application seeking appointment of an arbitrator. The Court considered whether the specification of an arbitration venue in the contract implied exclusion of jurisdiction of all other courts.

The Supreme Court held that where parties, by agreement, designate a particular place as the venue of arbitration, such stipulation reflects their clear intention to confer jurisdiction exclusively on the courts exercising territorial jurisdiction over that place, thereby excluding all other courts. The Hon'ble Supreme Court on the aforesaid observation noted that:

> ***"Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference."***

Accordingly, the Supreme Court held that only the High Court having territorial jurisdiction over the agreed arbitration venue is competent to entertain and decide an application for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, and courts of other jurisdictions stand excluded by necessary implication.

48. *HINDUSTAN CONSTRUCTION COMPANY LTD. VS. BIHAR RAJYA PUL NIRMAN NIGAM LIMITED & ORS., (2025 INSC 1365) DECIDED ON 28.11.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether a High Court, after appointing an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, retains jurisdiction to review or reopen its own appointment order, or whether it becomes functus officio in light of the principle of minimal judicial intervention under Section 5 of the Act.**

In the instant case, the Hon'ble Supreme Court of India examined the legality of a High Court's attempt to reopen and reconsider its earlier order appointing an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 by entertaining a review petition. The Supreme Court strongly disapproved of such an exercise, holding that it is wholly alien to the statutory scheme of the Act.

The Court emphasised that the Arbitration and Conciliation Act, 1996 is founded on the principle of minimal judicial intervention, expressly embodied in Section 5 of the Act. The Court categorically held that once an arbitrator is appointed under Section 11, the appointing court exhausts its jurisdiction and becomes functus officio, leaving no residual authority to revisit, modify, or recall the appointment order. It was also observed that:

> ***"the High Court did not have the jurisdiction to reopen or review its earlier order passed under Section 11(6) of the A&C Act. Once the appointment was made, the court became functus officio and could not sit in judgment over the very issue it had already settled. The review order cuts against the grain of the Act, undermines the***

***principle of minimal judicial interference, and effectively converts the review into an appeal in disguise."***

Accordingly, the Court held that review or reconsideration of an order appointing an arbitrator under Section 11 is impermissible in law, and any challenge to the arbitral process must be addressed only in the manner expressly provided under the Act, and not by reopening concluded appointment proceedings.

49. *ADAVYA PROJECTS PVT. LTD. VS. M/S VISHAL STRUCTURALS PVT. LTD., (2025 INSC 507) DECIDED ON 17.04.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether non-issuance of notice under Section 21 or non-impleadment proceedings under Section 11 of Arbitration and Conciliation Act, bar an arbitral tribunal from impleading a signatory to the arbitration agreement.**

In the instant case, the Hon'ble Supreme Court of India examined the scope of an arbitral tribunal's jurisdiction vis-à-vis procedural objections relating to non-issuance of notice under Section 21 and non-impleadment of a party during proceedings under Section 11 of the Arbitration and Conciliation Act, 1996. The Court clarified that such procedural omissions do not curtail or extinguish the substantive jurisdiction of the arbitral tribunal.

The Apex Court held that the role of the Court under Section 11 is confined to the constitution of the arbitral tribunal and does not extend to conclusively determining all issues relating to parties or claims. Once constituted, the arbitral tribunal derives independent jurisdiction under the Act to rule on matters incidental and ancillary to the arbitral process, including impleadment of parties who are signatories to the arbitration agreement. It was observed as follows that:

***"A notice invoking arbitration under Section 21 of the ACA is mandatory as it fixes the date of commencement of arbitration, which is essential for determining limitation periods and the applicable law, and it is a prerequisite to filing an application under Section 11. However, merely because such a notice was not issued to certain persons who are parties to the arbitration agreement does not denude the arbitral tribunal of its jurisdiction to implead them as parties during the arbitral proceedings."***

Accordingly, the Supreme Court clarified that procedural lapses at the pre-reference or appointment stage cannot be used to defeat the arbitral tribunal's jurisdiction, and the tribunal retains the power to implead necessary parties and adjudicate disputes in accordance with the arbitration agreement and the scheme of the Act.

50. *BALAJI STEEL TRADE VS. FLUDOR BENIN S.A. & ORS., (2025 INSC 1342) DECIDED ON 21.11.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether Indian Courts can exercise jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint arbitrators when the parties have expressly chosen a foreign juridical seat along with foreign governing and**

**curial law in the principal ("mother") agreement, notwithstanding the existence of subsequent or ancillary agreements or performance of contractual obligations in India.**

The Hon'ble Supreme Court reaffirmed the primacy of the juridical seat of arbitration while determining the jurisdiction of Indian courts under Section 11 of the Act. The Apex Court held that where parties have expressly chosen a foreign seat of arbitration along with foreign governing and curial law, Indian Courts have no jurisdiction to appoint arbitrators under Part I of the Act.

The Court rejected the petitioner's attempt to rely on subsequent or ancillary agreements to invoke Indian jurisdiction, holding that such agreements merely facilitated performance and could not override the dispute resolution framework contained in the "mother" agreement. The Court noted and observed that:

> ***"On the facts as well, the BSA and its Addendum constitute the mother agreement, containing a clear and deliberate choice of Benin as the juridical seat of arbitration and Benin law as the governing and curial law. The subsequent Sales Contracts and HSSAs are merely ancillary, facilitating performance of isolated shipments, and cannot override the dispute resolution framework of the BSA. Thus, both in principle and in the factual circumstances of the case, the arbitration agreement in the BSA prevails. The disputes raised by the petitioner arise squarely from the BSA, and the parties' chosen forum for their adjudication is arbitration in Benin. Accordingly, the invocation of Part I and the present request under Section 11(6) of the 1996 Act is fundamentally misconceived, legally untenable, and contrary to the statutory scheme as well as the autonomy of the parties' contractual design."***

Accordingly, the judgment reinforces the territorial principle of arbitration and aligns Indian arbitration jurisprudence with international standards. It serves as a cautionary precedent against forum shopping and underscores that Section 11 cannot be invoked in India merely because one of the parties is Indian or because certain contractual obligations were performed within India.

51. *OFFSHORE INFRASTRUCTURES LIMITED VS. BHARAT PETROLEUM CORPORATION LIMITED, (2025 INSC 1196) DECIDED ON 07.10.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether an arbitration clause becomes unenforceable merely because the agreed procedure for appointment of an arbitrator has become inoperative.**

In the instant case, the Hon'ble Supreme Court of India examined the effect of Section 12(5) of the Arbitration and Conciliation Act, 1996 on an arbitration agreement where the contractual procedure for appointment of the arbitrator had become inoperative due to subsequent statutory amendments.

The Court held that invalidation or inoperability of the appointment mechanism does not strike at the root of the arbitration agreement itself. The legislative intent behind Section

12(5), the Court observed, is to ensure neutrality and independence of arbitrators, and not to nullify the parties' substantive agreement to resolve disputes through arbitration.

The Court categorically observed as follows that;

> ***"Merely because the procedure to appoint an arbitrator provided in the clause has become inoperative due to subsequent changes in statutory provisions, would not mean that the core of the contract referring the dispute for adjudication to arbitrator would be rendered nugatory."***

Accordingly, it was held that the arbitration clause constitutes the core of the contract and cannot be rendered nugatory merely because the appointment mechanism has become invalid or unworkable. Emphasizing purposive interpretation, the Court observed that legislative intent behind neutrality of arbitrators cannot be used to defeat the arbitral process itself. Consequently, the Court affirmed that recourse under Section 11(6) is fully maintainable to preserve the parties agreed dispute resolution mechanism.

52. *OKINAWA AUTOTECH INTERNATIONAL PRIVATE LIMITED VS. TIRUPATI SMART CITY CORPORATION LIMITED, (ARBITRATION APPLICATION NO. 25 OF 2024), DECIDED ON 21.03.2025 BY ANDHRA PRADESH HIGH COURT*

**Issue: Whether an arbitrator must be appointed through a designated technical institution under the contract in the absence of consensus between the parties that the dispute is technical in nature, while exercising jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Andhra Pradesh High Court examined the respondent's objection that the dispute, being technical in nature, required appointment of an arbitrator through the Indian Council of Arbitration, New Delhi, in terms of the contractual clause. The Court rejected this contention, holding that the relevant contractual provision contemplated such a mode of appointment only where the parties were ad idem that the dispute concerned a technical matter. In the absence of such consensus, the Court held that the designated technical institution could not be invoked for appointment of the arbitrator.

The Hon'ble AP High Court observed:

> ***"13. The objection raised by the learned counsel for the respondent is that the dispute being technical in nature, requires an arbitrator to be appointed through the Indian Council of Arbitration, New Delhi, in my opinion, is an argument which is untenable, for the simple reason that Clause GCC 24.2.1(b) clearly envisages that the parties have to agree that the disputes are one which concerns a technical matter.***
>
> ***14. In the present case, the applicant certainly does not agree to the assertion of the respondent that the dispute concerns a technical matter and unless there is a consensus ad idem among the parties,***

***the Indian Council of Arbitration, New Delhi, would have certainly no role in the appointment of an arbitrator to resolve the disputes.***

***Even otherwise, there is nothing placed on record in the shape of communications that the respondent ever considered the dispute as one having some technical character. Such an objection has also not been taken in the response filed by the respondent."***

Accordingly, it was held that in the absence of a clear consensus between the parties that the dispute is technical in nature, an arbitrator need not be appointed through a designated technical institution, and the Court is competent to exercise its jurisdiction under Section 11 of the Act to appoint an arbitrator.

53. *NISHA AJAY AGRAWL VS. BIG V TELECOM PRIVATE LIMITED, (2025 BHC-OS 9489), DECIDED ON 19.06.2025 BY BOMBAY HIGH COURT*

**Issue: Whether an ambiguous arbitration clause can be validated by subsequent correspondence evidencing clear consent of the parties.**

In the instant case, the Bombay High Court examined whether a binding arbitration agreement existed between the parties, notwithstanding ambiguity in the original arbitration clause contained in the Service Level Agreement.

The court found that a valid arbitration agreement had been concluded through exchange of correspondence although the initial clause was deficient and could not be independently qualify as a valid arbitration and appointed a sole arbitrator to adjudicate the disputes between the parties.

The court noted that after the ambiguity in the original clause was recognized, the applies

***"19. ... regardless of the invocation being effected on September 20, 2021, by which time the clause that has been held as not being an arbitration agreement alone was in place, it is clear that two days later, a conventional arbitration clause was proposed and two days after that, it was accepted. This is nowhere analysed in the two decisions of the Learned Single Judge pressed into service. Those rulings would hold good for interpreting only the clause in the SLA that purported to be an arbitration clause. However, the lacuna in that clause was noticed and the parties replaced it with an exchange of correspondence.***

***20. Based on this replaced arbitration clause, an invocation notice dated September 4, 2024 is seen on the record. The reply to this invocation notice from the Respondent is essentially that the matter had already been adjudicated by the Learned Single Judge and has been set at rest. I am not satisfied that such an objection, which is now reiterated in arguments made today, is worthy of acceptance for the reasons already articulated above.***

***21. As a last roll of the dice, Learned Counsel for the Respondent makes a unique submission. He would contend that the reference to "consent" in the letter dated September 24, 2021 from the Respondent accepting the arbitration clause proposed by the Applicant by his letter dated September 22, 2021 uses the phrase "equivocal consent". The upshot of this argument is that the consent no consent at all since it was equivocal and not unequivocal.***

***22. To my mind, this is evidently a typographical mistake by persons engaged in commercial correspondence. Even in legal drafting, normal mistakes are made by not using the word "not" when the context indicates the diametrically opposite thinking. In any case, ours is a society that functions in English despite English not being the mother-tongue. One cannot place any value to the usage of the phrase "equivocal consent" when consenting to the arbitration clause proposed in the letter dated September 22, 2021. That apart, an overall reading of the letter dated September 24, 2021, leaves no scope at all for any other meaning of what was being consented to and how it was consented to."***

The court found that although the original agreement's arbitration clause was ambiguous, subsequent correspondence between the parties on September 22 and 24, 2021, established a binding agreement.

54. *AIRPORT AUTHORITY OF INDIA VS. LITE BITE FOODS PRIVATE LIMITED, (ARBITRATION PETITION NO. 214 OF 2025), DECIDED ON 09.12.2025 BY BOMBAY HIGH COURT*

**Issue: Whether the Arbitration already been conducted and even culminated in an Arbitral Award, cannot be reagitated.**

The Bombay High Court observed that no arbitration agreement exists in form or in substance for a reference to arbitration to be made in relation to the disputes for which reference is now sought to be made. Taking any other approach would be hyper-technical, reductive and erosive of the integrity of the arbitral process. The Petition was disposed of without constituting an Arbitral Tribunal for the reason that the agreement does not subsist in relation to the subject matter for which this Petition has been filed.

The High Court held that:

***" ...in these proceedings, the Respondent had indeed raised computation of interest amounts that would be payable by the Petitioner. However, while filing the counter-claim in the earlier proceedings, the Petitioner for reasons best known to it, did not raise a claim on interest as part of its counter-claim. This Petition, it is contended, is an attempt to re-open a matter adjudicated long ago and is a second bite at the cherry to re-agitate issues that are incidental to the matters that have already been conclusively and comprehensively adjudicated.***

***Applying this principle to the existence of the arbitration agreement, in my opinion, it is difficult to hold that the arbitration agreement subsists in relation to the subject matter for which this Petition under Section 11 of the Act has been filed. While one could potentially argue that whether constructive res judicata applies is an issue that could be left to the Arbitral Tribunal to decide under Section 16 of the Act, in the evident factual matrix of the case, to my mind, when the issue was squarely meant to be covered in the earlier round of arbitral proceedings, the substratum of the existence of the arbitration agreement, insofar as it relates to the issue sought to be agitated afresh now, is evidently absent."***

Accordingly, the Court disposed of the petition without constituting an arbitral tribunal, holding that concluded arbitral proceedings cannot be reopened by seeking a fresh reference on issues that were, or ought to have been, adjudicated earlier.

55. *RAJURAM SAWAJI PUROHIT VS. THE SHANDAR INTERIOR PRIVATE LIMITED, (COMMERCIAL ARBITRATION APPLICATION (LODGING) NO. 25035 OF 2024) DECIDED ON 10.10.2025 BY BOMBAY HIGH COURT*

**Issue: Whether the pendency of an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, or objections relating to limitation, can bar a court from appointing an arbitrator under Section 11 when the existence of a valid arbitration agreement is not in dispute.**

In the instant case, the Bombay High Court considered whether a Section 11 application seeking appointment of an arbitrator could be defeated on the ground that appeals under Section 37 were pending from orders passed in the earlier round of arbitration and that the claims were allegedly barred by limitation. The respondent urged that permitting a second round of arbitration during pendency of the appeals would lead to multiplicity of proceedings and potentially conflicting outcomes.

Rejecting this objection, the Court reaffirmed the sharply circumscribed jurisdiction of a Section 11 court. It held that at the referral stage, the court is required to examine only the prima facie existence of a valid arbitration agreement and nothing more. Questions of limitation, res judicata, or the effect of prior proceedings are matters falling squarely within the arbitral tribunal's jurisdiction under Section 16. The pendency of a Section 37 appeal, therefore, cannot operate as a legal bar to appointment of an arbitrator once the arbitration agreement is admitted.

The Court further noted that the earlier award had already been set aside under Section 34 and that the Section 34 court itself had recorded that the parties would have to resort to a de novo arbitration. Subsequent developments in law did not alter the limited role of the Section 11 court, which cannot be expanded to decide contested factual or legal objections at the threshold.

The Court observed as follows:

***"The jurisdiction of Section 11 court is now limited. It is only required to examine the existence of an arbitration agreement. This Court cannot conduct an intricate evidentiary inquiry into questions of whether the claims raised by the Applicant are time barred or whether the issue is barred by principles of res judicata. Determination of these contested facts will have to be left to the arbitrator."***

***"The pendency of any proceeding mentioned hereinabove cannot be an impediment to appoint an arbitrator in this Application. All other issues must be agitated before the Arbitral Tribunal."***

Accordingly, the Court held that neither the pendency of a Section 37 appeal nor objections relating to limitation can prevent appointment of an arbitrator under Section 11, once the existence of a valid arbitration agreement is admitted, and all such objections must be left open for determination by the arbitral tribunal.

56. *STERLING AND WILSON PVT. LTD. VS. CENTRAL PUBLIC WORKS DEPARTMENT (AP COM. 434 OF 2025) DECIDED ON 09.07.2025 BY CALCUTTA HIGH COURT)*

**Issue: Whether it is mandatory for a pre-arbitral process to be held subsequent to the failure of earlier conciliation before invoking arbitration.**

In the instant case, the High Court of Calcutta examined an application seeking appointment of an arbitrator in a dispute arising under the modified General Conditions of Contract (GCC). The respondent opposed the application on the ground that the petitioner had not exhausted the pre arbitral conciliation mechanism and that the application for arbitration was therefore premature.

Rejecting the objection, the Court held that the modified GCC expressly permitted a party to invoke arbitration irrespective of the conciliation clause. The Court citing precedents like Visa International Ltd. and Demerara Distilleries, the court emphasized that further conciliation was unnecessary due to prior failed attempts. In such circumstances, insisting on a further round of conciliation would serve no purpose. The Court also rejected the contention that the petitioner was bound by a unilateral appointment mechanism under the GCC, holding that unilateral appointment of arbitrators is impermissible in law in view of settled Supreme Court jurisprudence.

The Court held:

***"11. The GCC has been modified. It permits a party to request for arbitration irrespective of the conciliation clause. The records also reveal that conciliation between the parties were attempted when they had sat across the table at different meetings. Thus, at this stage, it cannot be said that this application is premature. The existence of a dispute redressal clause, providing for settlement of dispute by a sole arbitrator is available.***

> ***12. The issues raised by Mr. Mookerjee with regard to non-arbitrability, admissibility, limitation etc. will be decided by the learned arbitrator. The learned arbitrator can rule on his own jurisdiction. He can also decide on the arbitrability of the dispute between the parties.***
>
> ***13. Further contention of Mr. Mookerjee that once the petitioner accepts the terms and conditions of the GCC and proceeds to request the authority for appointment of a redressal committee, the petitioner is bound by the terms and conditions of the said contract and in case of failure of conciliation or redressal of the grievance of the petitioner, the respondent/chief engineer will appoint the arbitrator, is erroneous. The contract provides for unilateral appointment, which is prohibited in law. Reference is made to the decisions of Perkins Eastman Architects DPC and Another vs. HSCC (India) Ltd.; MANU/SC/1628/2019; and Central Organisation for Railway Electrification vs. ECI SPIC SMO MCML (JV) A Joint Venture Company: MANU/SC/1190/2024."***

Accordingly, the court appointed Hon'ble Justice Debasish Kargupta as the sole arbitrator, subject to compliance with Section 12 of the Arbitration and Conciliation Act, 1996. The application was disposed of, holding that once conciliation has failed and the contract permits arbitration, a further mandatory pre-arbitral process cannot be insisted upon.

57. *BEST EASTERN BUSINESS HOUSE (P) LTD. VS. MINA PRADHAN, (2025 CHC-OS 190) DECIDED ON 23.09.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether a subordinate court has jurisdiction to extend the mandate of an arbitrator appointed by the High Court under Section 11(6) of the Arbitration and Conciliation Act.**

The High Court read sections 2(1)(e), 11 and 29A harmoniously, and concluded that where the High Court had appointed the arbitrator under section 11(6) there would be a jurisdictional overlap if an inferior principal civil court were permitted to substitute or remove an arbitrator appointed by the High Court. The Court considered such an outcome anomalous and inconsistent with hierarchical judicial organisation and the scheme of the Act. The extension of the mandate of the arbitrator by the subordinate court was challenged on the ground that it had no authority to pass such an order as the appointment of the arbitrator was made under section 11(6) by the High Court.

The Court held the following:

> ***"...The provisions of section 2(1)(e) in the context of Section 29A, cannot be interpreted to allow an inferior court to overrule or undo an order of the High Court. The Parliament could not have ever intended the district court to substitute an Arbitrator appointed by the High Court..."***

> ***"...It is difficult to comprehend how the power to substitute an arbitrator would lie with a court other than the court empowered to appoint the Arbitrator(s) under Section 11(6)..."***
>
> ***"... that can never take away the power of the court which appointed the arbitrator under section 11(6) to extend the mandate and such power of extension is not an empty formality. Several consequences may flow from the exercise of that power, including the power to reduce the fees of the arbitrator if the arbitrator is found responsible for the delay, substitute the arbitrator, direct the stage from which the proceeding should continue and also impose conditions and costs on the parties..."***

The High Court made it clear that in arbitral proceedings where the arbitrator was appointed by the High Court under section 11(6), only the High Court shall have the power to extend the mandate of such arbitrator under section 29A of the Act.

Accordingly, the Calcutta High Court held that where an arbitrator is appointed by the High Court under Section 11(6), the power to extend the arbitrator's mandate under Section 29A vests exclusively with the High Court, and a subordinate court lacks jurisdiction to grant such extension.

58. *RAKESH KUMAR CHAUDHARY VS. SAIL, (AP-COM 169 OF 2025) DECIDED ON 30.06.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether, upon a harmonious construction of the arbitration clause and in the absence of the parties opting for institutional arbitration, the petitioner was justified in invoking Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the arbitral tribunal.**

In the instant case, the High Court examined whether the petitioner had rightly invoked the jurisdiction of the Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the arbitral tribunal, in light of the arbitration clause agreed between the parties.

The Court held that an arbitration clause must be harmoniously construed so as to give full effect to the intention of the parties, ensuring that no part of the clause is rendered redundant or otiose. The Court observed that each component of the arbitration clause is presumed to have been consciously incorporated and must therefore be given meaningful effect. In light of the aforesaid the Court observed as follows:

> ***"The arbitration clause should be harmoniously construed, to give maximum meaning to the intention of the parties, by ensuring that none of the clauses are either redundant or rendered otiose. The parties had inserted each clause with a purpose. Hence, as the parties failed to choose institutional arbitration, section 11 would be applicable and the petitioner has rightly approached this court."***

Accordingly, the Court held that where parties have not opted for institutional arbitration or such mechanism has not been operationalised, invocation of Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the arbitral tribunal is legally maintainable and in consonance with the parties' contractual intent.

59. *HARMEET SINGH KAPOOR & ANR. VS. M/S NEO DEVELOPERS PVT LTD AND ORS., (FAO (COMM) NO. 237 OF 2025) DECIDED ON 18.09.2025 BY DELHI HIGH COURT*

**Issue: Whether buyers of commercial units can invoke arbitration after availing alternate remedies under RERA upon a subsequent change in circumstances.**

In the instant case, the Delhi High Court examined whether buyers of commercial units, having earlier invoked remedies under the RERA framework, were precluded from seeking recourse to arbitration. The Court held that while parallel or simultaneous remedies for the same cause of action are impermissible, a subsequent invocation of arbitration is not barred where it is founded on a material change in circumstances.

The Court clarified that the bar articulated by the Supreme Court of India in Ireo Grace Realtech operates only against simultaneous pursuit of remedies and does not prohibit a party from seeking arbitral relief at a later stage, provided the cause of action has evolved or circumstances have materially changed. The Court at the outset observed as follows that:

> ***"although the Supreme Court's judgment in Ireo Grace Realtech bars simultaneous remedies for the same cause of action but does not prohibit the party from seeking arbitration relief once the circumstances have changed. The RERA remedies were invoked before the issuance of the completion certificate, whereas the arbitration petitions were filed after the completion certificate was issued."***

Accordingly, the Court held that buyers of commercial units are not disentitled from invoking arbitration merely because RERA remedies were previously availed, where arbitration proceedings are initiated after a change in circumstances and are not concurrent with the statutory remedies pursued earlier.

60. *JSW MG MOTOR INDIA PVT. LTD. V. TRISTAR AUTO AGENCIES (VIZAG) PVT. LTD., (2025 DHC 10164) DECIDED ON 18.11.2025 BY DELHI HIGH COURT*

**Issue: Whether, in proceedings under Section 11 of the Arbitration and Conciliation Act, 1996, the High Court can examine issues of maintainability such as territorial jurisdiction and res judicata.**

In the instant case, the Delhi High Court examined the scope of judicial scrutiny exercisable by the High Court while acting under Section 11 of the Arbitration and Conciliation Act, 1996. The Court held that proceedings under Section 11 are judicial in nature and that the High Court is competent to examine issues of maintainability, including objections relating to territorial jurisdiction and the applicability of the doctrine of res judicata.

The Delhi High Court stated and observed that:

> ***"The High Court while exercising judicial function under Section 11 can determine the issue of maintainability of a petition on any ground including on territorial jurisdiction/res judicata, etc. and the same is clear from the judgement of Anil v. Rajendra and that the principle of res judicata shall be applicable to a petition under Section 11."***

Accordingly, the Court held that maintainability objections, including those based on territorial jurisdiction and res judicata, are within the permissible scope of scrutiny under Section 11.

61. *MAY AND BAKER PHARMACEUTICALS LTD VS. RUNOS HEALTH CARES AND ORS., (2025 DHC 7252), DECIDED ON 22.08.2025 BY DELHI HIGH COURT*

**Issue: Whether, while exercising jurisdiction under Section 11(6), the court's scrutiny is confined solely to the prima facie existence of an arbitration agreement, excluding examination of accord and satisfaction or arbitrability of the underlying dispute.**

In the instant case, the Delhi High Court while relying on SBI General Insurance Co. Ltd. v. Krish Spinning and the Constitution Bench decision in In Re: Interplay, the Court reiterated that scrutiny at the stage of appointment of an arbitrator under Section 11(6) is confined strictly to the prima facie existence of an arbitration agreement. the Court reiterated that the referral court's inquiry at the Section 11 stage is strictly limited to ascertaining the prima facie existence of an arbitration agreement. It was held that issues relating to accord and satisfaction or ex facie arbitrability of disputes fall outside the court's jurisdiction at this stage and are matters to be decided by the arbitral tribunal.

The court relied upon the observation made in the Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt. Ltd. (ARB.P. 145/2025) while deciding this issue which stated:

> ***"The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. The Supreme Court in the case of SBI General Insurance Co. Ltd. v. Krish Spinning , while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re : 2023:INSC:1066 has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the extent of prima facie existence of the arbitration agreement and nothing else.***
>
> ***It has unequivocally been held in paragraph no.114 in the case of SBI General Insurance Co. Ltd that observations made in Vidya***

***Drolia v. Durga Trading Corpn.(2021) 2 SCC 1, and adopted in NTPC Ltd. v. SPML Infra Ltd. : 2023:INSC:334 : (2023) 9 SCC 385, that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would not apply after the decision of Re: Interplay. The above noted paragraph no.114 in the case of SBI General Insurance Co. Ltd reads as under:-***

***"In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under S 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra)."***

Accordingly, it was held that while exercising jurisdiction under Section 11(6), the court must confine itself to a prima facie examination of the existence of an arbitration agreement, and cannot adjudicate upon issues of accord and satisfaction or the arbitrability of disputes, which are to be left for determination by the arbitral tribunal.

62. *VIVA INFRAVENTURE (P) LTD. VS. NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY, (2025 DHC 5127) DECIDED ON 01.07.2025 BY DELHI HIGH COURT*

**Issue: Whether an exclusive jurisdiction clause relating to arbitration can override the designated seat of arbitration in determining supervisory court jurisdiction.**

While the general rule is that "Seat" determines the jurisdiction of the court in an arbitration proceeding, the Delhi HC made it clear that an exclusive jurisdiction clause, specifically in respect to arbitration, will prevail over the seat of arbitration. The Court held the following:

***"...where an agreement contains an exclusive jurisdiction clause covering the arbitration clause, the court identified in the exclusive jurisdiction clause will be deemed to have supervisory jurisdiction over the seat of arbitration..."***

***"...when parties agree to vest exclusive jurisdiction in a particular court for any dispute arising out of the arbitration clause, it must be presumed that they intended that court only to have supervisory control..."***

Accordingly, the Court held that absence of the word 'seat' does not dilute or negate exclusive jurisdiction where the arbitration agreement clearly confers jurisdiction on a

specific court, and such court alone is competent to exercise supervisory jurisdiction under the Arbitration and Conciliation Act, 1996.

63. *SNS ENGINEERING (P) LTD. VS. HARIOM PROJECTS (P) LTD., (2025 DHC 7868) DECIDED ON 09.09.2025 BY DELHI HIGH COURT*

**Issue: Whether, in the absence of an express "seat" in the arbitration agreement, a clause conferring exclusive jurisdiction on a court can determine the seat and supervisory jurisdiction of arbitration.**

In the instant case, the Hon'ble Delhi High Court examined a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator for adjudication of disputes arising out of the Work Order / Acceptance Letter dated 21.10.2021. The Court considered whether the absence of the express word "seat" in the arbitration clause would denude the court at Ahmedabad of exclusive jurisdiction.

The Court noted that Clause 14 of the Acceptance Letter unequivocally provided that any dispute arising out of or in connection with the Letter shall be decided by the Ahmedabad Court. On this basis, the Court held that the courts at Ahmedabad alone possessed the jurisdiction to entertain the Section 11(6) application and to appoint the arbitrator. The Court clarified that the determinative factor is not the use of the specific term "seat", but the clear and express intention of the parties to vest jurisdiction in a particular court. The Court observed as follows that:

> ***"While interpreting such exclusive jurisdictional clauses it must be borne in mind, that when parties agree in the arbitration clause/ agreement to vest exclusive jurisdiction in a particular Court for adjudication of any disputes thereof, it is to be presumed that they intended that Court only to have supervisory control."***

64. *JSW MG MOTOR INDIA PVT. LTD. VS. TRISTAR AUTO AGENCIES (VIZAG) PVT. LTD. (2025 DHC 10164) DECIDED ON 18.11.2025 BY DELHI HIGH COURT*

**Issue: Whether, in proceedings under Section 11 of the Arbitration and Conciliation Act, 1996, the High Court can examine issues of maintainability such as territorial jurisdiction and res judicata.**

In the instant case, the Delhi High Court examined the scope of judicial scrutiny exercisable by the High Court while acting under Section 11 of the Arbitration and Conciliation Act, 1996. The Court held that proceedings under Section 11 are judicial in nature and that the High Court is competent to examine issues of maintainability, including objections relating to territorial jurisdiction and the applicability of the doctrine of res judicata.

The Delhi High Court stated and observed that:

> ***"The High Court while exercising judicial function under Section 11 can determine the issue of maintainability of a petition on any ground including on territorial jurisdiction/res judicata, etc. and the same is clear from the judgement of Anil v. Rajendra and that the***

***principle of res judicata shall be applicable to a petition under Section 11."***

Accordingly, the Court held that maintainability objections, including those based on territorial jurisdiction and res judicata, are within the permissible scope of scrutiny under Section 11.

65. *SRI. RAMAKRISHNA HOUSE BUILDING CO OPERATIVE SOCIETY AND M/S SKILLETCH ENGINEERS AND CONTACTORS PVT LTD., (2025 KHC 47112), DECIDED ON 14.11.2025 BY KARNATAKA HIGH COURT*

**Issue: Whether the Statutory requirement under the Cooperative Societies Act would apply even when there is existence of arbitration clause in the agreement between the parties.**

In the instant case, the Karnataka High Court was called upon to determine whether disputes arising out of agreements executed by a cooperative society could be referred to arbitration under the Arbitration and Conciliation Act, 1996, notwithstanding the statutory dispute resolution mechanism provided under Section 70 of the Karnataka Cooperative Societies Act, 1959. The respondent resisted the Section 11 petitions on the ground that, since the petitioner was a cooperative society, all disputes were mandatorily required to be referred to the competent authority under the Cooperative Societies Act, thereby excluding arbitration.

The Court examined the interplay between the Arbitration and Conciliation Act, 1996 and the Cooperative Societies Act, 1959. It noted that the agreements between the parties expressly contained arbitration clauses and that disputes had arisen squarely within the scope of those clauses. Relying on the settled position that the Arbitration Act is a special enactment governing consensual dispute resolution, the Court held that the existence of a valid arbitration agreement would prevail over the general statutory mechanism under the Cooperative Societies Act. The Court further relied on the authoritative pronouncement of the Supreme Court in Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. v. Ajay Sales and Suppliers, which clarified that statutory remedies under cooperative laws do not override an agreed arbitration clause. The court noted:

***"It cannot be disputed that Arbitration Act is a special Act... Despite Section 58 of the Rajasthan Cooperative Societies Act, 2001, there is an agreement between the parties to resolve the dispute through arbitrator... Parties are bound by the agreement and the arbitration clause contained in the Agreement."***

Further, the court observed:

***"The Hon'ble Apex Court having categorically held that if an arbitration clause were to exist in an agreement between the parties and the dispute were required to be adjudicated by way of arbitration, then the statutory requirement under the Cooperative Societies Act would not apply."***

Accordingly, the High Court held that where parties to an agreement, including a cooperative society, have consciously agreed to resolve disputes through arbitration, the statutory dispute resolution mechanism under the Cooperative Societies Act does not operate as a bar. The existence of an arbitration clause would prevail, and disputes are liable to be referred to arbitration under the Arbitration and Conciliation Act, 1996.

66. *M.I. MOHAMMED VS. M/S. HLL LIFE CARE LTD. & ORS., (2025 KER 38884), DECIDED ON 03.06.2025 BY KERALA HIGH COURT*

**Issue: Whether the newly appointed arbitrator can continue the proceedings from the stage where evidence had already been concluded, or whether the arbitration must commence afresh.**

In the instant case, the Kerala High Court was confronted with a request for appointment of a fresh arbitrator after the earlier arbitral award had been set aside on the ground that the arbitrator's appointment itself was void ab initio. While there was no dispute regarding the need for a fresh appointment, the controversy centred on whether the newly appointed arbitrator could resume proceedings from the stage where evidence had already been concluded in the earlier arbitration.

The petitioner urged that considerable evidence had already been led before the earlier arbitrator, including examination of witnesses and production of voluminous documents, and that recommencing the proceedings would result in avoidable delay and prejudice. The respondent, however, opposed this plea by pointing out that the Commercial Court, whose order had been affirmed by the High Court, had categorically held the earlier arbitral proceedings to be non est, having arisen from an invalid appointment. On that premise, it was contended that the entire proceedings stood effaced in law.

Accepting the respondent's submission, the Court emphasised that once an arbitral appointment is declared void ab initio, the logical consequence is that all proceedings conducted pursuant thereto lose legal existence. The Court made it clear that such proceedings cannot be selectively revived merely on considerations of convenience or efficiency.

The Court observed that:

> ***"As rightly pointed out by the learned counsel for the respondents, there is an inter partes judgment binding on the parties, setting aside the Arbitration award finding that the appointment of the arbitrator is void ab initio; that the arbitral proceedings was non est and that the Arbitration award is non est/ void. In such a case, the entire proceedings, which already took place before the arbitrator, are effaced. The fresh Arbitrator has to initiate the proceedings afresh. The question whether the evidence already tendered before the earlier Arbitrator is admissible before the fresh Arbitrator or not, is a matter for the fresh Arbitrator to consider, when such evidence is produced before the Fresh Arbitrator. While considering an Application under Section 11(6) of the Arbitration and Conciliation***

***Act, this Court is not expected to give any direction with respect to the proceedings and admissibility of any document or evidence to the Arbitrator. Such questions are left open to be decided by the Arbitrator."***

Accordingly, the High Court held that where the earlier arbitral proceedings are declared void ab initio, the newly appointed arbitrator must necessarily commence the arbitration afresh, leaving it open to the arbitrator to independently decide, in accordance with law, whether and to what extent any earlier material may be looked into.

67. *P.K. CHANDRASEKHARAN NAIR & CO., VS. HINDUSTAN PETROLEUM CORPORATION LIMITED, (2025 KER 90639), DECIDED ON 26.11.2025 BY KERALA HIGH COURT*

**Issue: Whether an arbitration request under Section 11(6) of the Arbitration and Conciliation Act, by one partner is maintainable when the other partner of the firm has not given any express consent or authorization.**

In the instant case, the Kerala High Court examined the maintainability of an application under Section 11(6) of the Arbitration and Conciliation Act filed by one partner of a partnership firm, without the express consent or authorization of the other partner. While the existence of an arbitration clause in the dealership agreement was undisputed, the respondent raised a preliminary objection relying on Section 19(2)(a) of the Indian Partnership Act, 1932, which expressly excludes the implied authority of a partner to submit disputes relating to the business of the firm to arbitration.

The Court rejected the petitioner's contention that such objections fall outside the limited scope of enquiry under Section 11. It held that while the Court is not required to conduct a detailed examination of arbitrability or merits, it is competent to examine the maintainability of the request and the statutory competence of the applicant invoking its jurisdiction. The act of invoking Section 11(6), according to the Court, amounts to submitting a dispute to arbitration, which squarely attracts the bar under Section 19(2)(a) in the absence of express authority.

The Court observed:

***"When a partner of a partnership firm invokes Section 11 of the Act and seeks appointment of an arbitrator for deciding a dispute related to the business of the firm, he or she is definitely submitting a dispute relating to the business of the firm to arbitration. Therefore, it follows that implied authority under Section 19(1) is not sufficient for invoking the remedy under Section 11 of the Arbitration and Conciliation Act and express authority is indispensable."***

It further clarified the scope of judicial scrutiny by noting:

***"Scrutiny of the maintainability of an application under Section 11(6) of the Arbitration and Conciliation Act is well within the authority of the Court... Looking at the competency of the applicant***

***and satisfying about the same is well within the scope of the primary enquiry."***

Accordingly, the Court held that in the absence of express authorization from the other partner, the arbitration request was barred by Section 19(2)(a) of the Indian Partnership Act and was liable to be dismissed as not maintainable.

68. *GOKUL BANSAL VS. VIPIN GOYAL & OTHERS, (ARBITRATION CASE NO. 44 OF 2021), DECIDED ON 08.01.2025 BY MADHYA PRADESH HIGH COURT*

**Issue: Whether a dispute seeking partition of partnership property in metes and bounds during the subsistence of a partnership is arbitrable and liable to be referred to arbitration under Section 11 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Madhya Pradesh High Court was concerned with an application under Section 11 of the Act seeking appointment of an arbitrator based on an arbitration clause contained in a partnership deed. The applicant, a partner holding a 13% share, sought division of the partnership's immovable property in metes and bounds. The Court examined whether such a claim constituted an arbitrable dispute or was barred in law under the settled principles governing partnership property and arbitrability.

The Court reiterated that during the subsistence of a partnership, a partner does not acquire any specific or exclusive right over any portion of the partnership property. A partner's entitlement is confined to a share in profits and, upon dissolution or retirement, to the value of his share in the net partnership assets. A claim for physical partition of partnership property without seeking dissolution or retirement was held to be impermissible in law and incapable of being adjudicated by an arbitral tribunal. The Court further noted that the presence of third-party tenants, who were not signatories to the arbitration agreement, rendered the dispute non-arbitrable, as any adjudication would necessarily affect third-party rights.

The Court observed as follows:

***"Property belongs to partnership firm is for its benefit and the entitlement of the partners is to the profit in 'Proportion of his Share' and not to in 'Portion of such Property'."***

***"The relief of partition of subject property as sought by the applicant during subsistence of partnership firm is barred by law. Therefore, matter is non-arbitrable."***

***"Contention of non-applicant/respondent appear to be correct because the applicant cannot seek prayer for physical share (metes and bounds) in the property of partnership firm without praying for retirement from the firm or for dissolution, in that condition only entitlement of a partner upon severance of status of the partnership firm would be of money equivalent to the value of his share therein.***

***Therefore, demand of applicant is prohibited in law and appears to be a dead wood claim."***

Accordingly, the Court held that the dispute sought to be raised was demonstrably non-arbitrable and that the referral court, even at the Section 11 stage, is duty-bound to refuse reference where the claim is barred in law or affects third-party rights. The application for appointment of an arbitrator was therefore dismissed, leaving the applicant to pursue appropriate remedies in accordance with law.

69. *SOUTH GANGA WATERS TECHNOLOGIES (P) LTD, VS. VEDANTA LIMITED AND OTHERS, (2025 MHC 574), DECIDED ON 26.02.2025 BY MADRAS HIGH COURT*

**Issue: Whether the petition filed under Section 11 of the Act seeking for appointment of an Arbitrator by this Court is barred by limitation or not.**

In the instant case, the Madras High Court examined the objection that the petition under Section 11 was barred by limitation on the ground that the underlying contract had expired much earlier. The Court reiterated that the scope of enquiry at the referral stage is confined and that questions of limitation are not to be conclusively determined by the Court unless the claim is ex facie time-barred. It emphasised that the referral court must primarily concern itself with the existence of an arbitration agreement and compliance with the statutory preconditions under the Act.

The Court further clarified that, for the purpose of a petition under Section 11, limitation does not commence from the date of expiry of the contract, but from the date on which arbitration is validly invoked under Section 21 of the Act. Where the petition is filed within three years from such invocation, it cannot be rejected as barred by limitation, and all objections on limitation must be left open for adjudication by the arbitral tribunal.

The Court observed as follows:

***"It has been made clear that the limitation period for filing a petition under Section 11 of the Act can commence only when a valid notice invoking arbitration has been sent by the petitioner to the respondents. Therefore, as per the provisions of the Act, a party can seek for appointment of an Arbitrator by this Court under Section 11 of the Act only after he/she invokes arbitration by making a request to the other party in accordance with Section 21 of the Act. In the instant case, the petitioner invoked arbitration in accordance with the arbitration clause by issuing the arbitral referral notice to the respondent on 10.09.2024. Therefore, the 3 years' limitation period commences only from 10.09.2024 for the purpose of filing this petition under Section 11 of the Act."***

***"Whenever a party is approaching the Court for appointment of an Arbitrator under Section 11 of the Act and there arises a doubt in the mind of the Court as to whether the claim is barred by limitation or***

***not, the benefit of doubt should be given to the petitioner and not the respondent as the limitation issue is a mixed question of fact and law."***

Accordingly, the High Court held that the petition under Section 11 was not barred by limitation and proceeded to appoint an arbitrator, leaving all questions relating to limitation and merits to be decided by the arbitral tribunal in exercise of its jurisdiction under Section 16 of the Act.

70. *M/S PRAMILA MOTORS PVT. LTD. VS. M/S OKINAWA AUTOTECH INTERNATIONAL PVT. LTD., (REQ. CASE NO. 53 OF 2024), DECIDED ON 22.03.2025 BY PATNA HIGH COURT*

**Issue: Whether, in the absence of an express designation of the arbitral seat, the contractually specified venue of arbitration must be treated as the juridical seat conferring exclusive territorial jurisdiction**

In the present case, the Patna High Court examined a request under Section 11(6) of the Arbitration and Conciliation Act, 1996, arising out of a dealership agreement which provided for arbitration and expressly stipulated New Delhi as the "venue" of arbitration, without separately designating a "seat."

Upon failure of the respondent to appoint an arbitrator despite invocation of the arbitration clause, the petitioner approached the Patna High Court asserting jurisdiction based on execution of the agreement, location of the dealership, and conduct of business in Bihar.

The respondent opposed the petition on the ground that once the agreement specified New Delhi as the venue of arbitration, and in the absence of any contrary indicia, such venue must be construed as the juridical seat, thereby vesting exclusive supervisory jurisdiction in the courts at Delhi.

The court, relying on a Supreme Court precedent observed that:

***"In Brahmani River Pellets Limited vs. Kamachi Industries Limited, 2020 (5) SCC 462, it was held that where the contract specifies the jurisdiction of a Court at a particular place, only such Court will have the jurisdiction to deal with the matter and it would be presumed that the parties intend to exclude all other Courts. If the parties agree that the "venue of arbitration" shall be at a particular place, the intention of the parties is to exclude all other Courts."***

The Hon'ble High Court in its final observations held that:

***"25. In the absence of any clause in the agreement apart from Clause 36.3, which speaks of the "venue" being Delhi, cannot be any other inference or intention of the parties for the "venue" and the "seat" being different".***

Accordingly, it was held that in the absence of an express designation of the arbitral seat or any contrary indicia, the contractually specified venue of arbitration must be treated as the juridical seat, conferring exclusive territorial jurisdiction on the courts at that place. On

this reasoning, the Patna High Court declined to exercise jurisdiction under Section 11(6) and dismissed the request petition as not maintainable.

71. *GRN CONSTRUCTIONS PRIVATE LIMITED VS. THE SINGARENI COLLIERIES COMPANY LIMITED, (ARBITRATION APPLICATION NO.276 OF 2024), DECIDED ON 02.05.2025 BY TELANGANA HIGH COURT*

**Issue: Whether, at the referral stage under Section 11 of the Arbitration and Conciliation Act, the High Court can examine issues of limitation or is bound to refer the dispute to arbitration?**

In the instant case, the High Court was called upon to decide a Section 11 application seeking appointment of an arbitrator, which was resisted by the respondents primarily on the ground that the claims were barred by limitation, including on account of an alleged failure to invoke arbitration within the contractually stipulated period. The Court examined whether such objections could be conclusively adjudicated at the referral stage or whether they were matters falling within the domain of the arbitral tribunal. Relying on the post-amendment jurisprudence governing Section 11, the Court reiterated that its role at the referral stage is confined to a prima facie examination of the existence of an arbitration agreement and arbitrability of disputes, and that contentious issues requiring factual inquiry, including limitation, must ordinarily be left open for determination by the arbitral tribunal.

The Court observed as follows:

> ***"This Court being the referral Court under Section 11 of the Act, unless the dispute is manifestly non-arbitrable, this Court must refer the dispute to the arbitration. The limitation issue raised by the respondents requires a deeper factual inquiry, which should be left to the Arbitral Tribunal."***
>
> ***"While determining the issue of limitation in the exercise of powers under Section 11(6) of the Act, 1996, the referral court must only conduct a limited enquiry... it would not be proper for the referral court to indulge in an intricate evidentiary enquiry... Such a determination must be left to the decision of the arbitrator."***

Accordingly, the Court held that objections relating to limitation, which necessitate factual examination and appreciation of correspondence and conduct of parties, cannot be conclusively decided at the Section 11 stage, and must be adjudicated by the arbitral tribunal. On this basis, the Court rejected the respondents' plea of limitation at the referral stage and proceeded to appoint an independent sole arbitrator, leaving all defences open to be urged before the tribunal.

**Key Trends:** Courts consistently held that only the court at the agreed arbitration seat has jurisdiction to entertain Section 11 applications. Where a foreign seat was chosen, Indian courts declined jurisdiction entirely. Courts also confirmed that once an arbitrator is appointed, the court becomes functus officio and cannot recall or review its own appointment order.

**SECTION 12 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**12. Grounds for challenge. — (1)** When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances, —

a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

**(5)** Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

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72. *DAMODAR VALLEY CORPN. VS. AKA LOGISTICS (P) LTD., (AP-COM-166 OF 2025) DECIDED ON 23.09.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an advocate's prior professional engagement with a law firm in unrelated matters disqualifies or renders him ineligible to act as an arbitrator in disputes involving parties not previously represented by him, within the meaning of Sections 12 and 12(5) of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Hon'ble Calcutta High Court examined whether an advocate who had earlier accepted briefs from a law firm for unrelated clients incurs any disqualification to act as an arbitrator in arbitral proceedings where the parties were neither represented by him nor personally known to him, even though the same law firm appeared in the arbitration.

The Court analysed the scheme of Sections 12 and 12(5) of the Arbitration and Conciliation Act, 1996, along with the Fifth and Seventh Schedules, and held that mere professional engagement with a law firm in unrelated matters does not, by itself, give rise to justifiable doubts as to the arbitrator's independence or impartiality, nor does it attract any statutory ineligibility. The Court categorically observed that

> ***"a counsel/Advocate, having accepted briefs from a law firm for some other client/litigant, cannot be per se be said to be ineligible or disqualified to act as an arbitrator and adjudicate disputes between parties who were never represented by the learned Arbitrator in a court of law and who were not personally known him, even if the 8 lawyer/law firm representing a party may have briefed the learned Arbitrator, in his capacity of an Advocate in other matters."***

Accordingly, the Court held that in the absence of any relationship falling within the disqualifying categories under Section 12(5) read with the Seventh Schedule, or circumstances giving rise to justifiable doubts under Section 12(1), an advocate is not rendered ineligible to act as an arbitrator merely because of prior professional engagements with a law firm in unrelated matters.

73. *M.V. OMNI PROJECTS (INDIA) LTD. VS. UNION OF INDIA, THROUGH CHIEF ENGINEER, NORTHERN RAILWAYS & ANR., (2025 DHC 3814) DECIDED ON 15.05.2025 BY DELHI HIGH COURT*

**Issue: Whether a pre-emptive or blanket waiver under the proviso to Section 12(5) of the Arbitration and Conciliation Act, 1996, executed prior to the constitution of the arbitral tribunal and disclosure of the arbitrators' identities, is legally valid.**

In the instant case, the Delhi High Court examined the validity of a waiver purportedly executed under the proviso to Section 12(5) of the Arbitration and Conciliation Act, 1996. The Court held that such a waiver must be informed, specific, and executed only after the arbitral tribunal is constituted and the identities of the arbitrators are duly disclosed. The Court ruled that any blanket or pre-emptive waiver executed prior to disclosure of the arbitrators' identities is legally inefficacious and incapable of curing the ineligibility contemplated under Section 12(5) of the Act.

Relying upon the authoritative pronouncement of the Hon'ble Supreme Court of India in Bharat Broadband Network Ltd. v. United Telecoms Ltd., the Court observed that;

> ***"any waiver before the details of the Arbitrators/Arbitral Tribunal is known is no waiver in the eyes of law".***

Accordingly, the Court held that a valid waiver under the proviso to Section 12(5) can be executed only after the constitution of the arbitral tribunal and disclosure of the arbitrators' identities, and that any pre-emptive or blanket waiver is void and unenforceable in law.

74. *SHAKTI PUMP INDIA LTD. VS. APEX BUILDSYS LTD., (2025 DEL 1813) DECIDED ON 19.03.2025 BY DELHI HIGH COURT*

**Issue: Whether participation of the Petitioners in arbitration proceedings amounts to waiver of objections to the unilateral appointment of the Arbitrator under the proviso to Section 12(5) of the Arbitration Act.**

The Court held that mere participation by the Petitioner does not constitute waiver and that an express written agreement is necessary to waive ineligibility under Section 12(5). The Court also underscored the fundamental principles of independence and impartiality of arbitrators as essential to the arbitration process.

The Court found that the unilateral appointment of the Sole Arbitrator by the Respondent, who was statutorily ineligible, was void ab initio. There was no evidence of an express written waiver by the Petitioners. The Court also noted the statutory bar under the

Insolvency & Bankruptcy Code raised by the Petitioners but did not elaborate on this issue in detail in the judgment excerpt provided.

The Hon'ble Delhi High Court observed that:

> ***"mere participation of the parties without an unequivocal, written waiver after the dispute has arisen would not tantamount to acceptance of a unilateral appointment and the unilateral appointment of Arbitrator by the Respondent in this case being void ab initio, as held by the Apex Court, is liable to be terminated."***

Accordingly, the Delhi High Court held that participation in arbitral proceedings does not amount to a waiver of the statutory ineligibility under Section 12(5) of the Arbitration Act, and in the absence of an express written waiver, the unilateral appointment of the arbitrator being void ab initio was liable to be terminated.

75. *MAHAVIR PRASAD GUPTA AND SONS VS. STATE (NCT OF DELHI), (2025 DHC 4781-DB) DECIDED ON 31.05.2025 BY DELHI HIGH COURT*

**Issue: Whether unilateral appointment of a sole or presiding arbitrator renders the arbitral tribunal inherently without jurisdiction, thereby vitiating the proceedings and award as a nullity and open to challenge at any stage including under Sections 34 and 36.**

The Delhi High Court held that a party which has unilaterally appointed an arbitrator is not barred from subsequently challenging the arbitral award on the ground of ineligibility under Section 12(5) read with the Seventh Schedule of the Arbitration and Conciliation Act, 1996. Mere exercise of the contractual power to appoint an arbitrator does not amount to an express waiver in writing as contemplated under the proviso to Section 12(5).

The Court clarified that unilateral appointment of an arbitrator is impermissible in law, as it gives rise to justifiable doubts regarding the arbitrator's independence and impartiality. Such an appointment is void ab initio, and any award rendered by an ineligible arbitrator is a nullity and unenforceable.

It was further held that Section 12(5) overrides Section 4 of the Act, and waiver of ineligibility can be effected only through an express written agreement entered into after the disputes have arisen. Waiver by conduct, participation in proceedings, or consent to extension of the arbitrator's mandate under Section 29A(3) does not satisfy the statutory requirement. Relying on Bharat Broadband Network Ltd., the Court reiterated that ineligibility under Section 12(5) is de jure, leading to automatic termination of the arbitrator's mandate under Section 14(1)(a).

The Delhi High Court summarized the principles for setting aside arbitral awards in the event of an arbitrator's failure to disclose his conflict of interest as follows:

> ***"In view of the above discussion, the legal position on the unilateral appointment of the Sole and Presiding Arbitrator is summarized as under:***

***a) Mandatory Requirement: Any arbitration agreement providing unilateral appointment of the sole or presiding arbitrator is invalid. A unilateral appointment by any party in the arbitrations seated in India is strictly prohibited and considered as null and void since its very inception. Resultantly, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are also nullity and cannot result into an enforceable award being against Public Policy of India and can be set aside under Section 34 of the Act and/or refused to be enforced under Section 36 of the Act.***

***c) Award by an Ineligible Arbitrator is a Nullity: An award passed by a unilaterally appointed arbitrator is a nullity as the ineligibility goes to the root of the jurisdiction. Hence, the award can be set aside under Section 34(2)(b) of the Act by the Court on its own if it 'finds that' an award is passed by unilaterally appointed arbitrator without even raising such objection by either party.***

***d) Stage of Challenge: An objection to the lack of inherent jurisdiction of an arbitrator can be taken at any stage during or after the arbitration proceedings including by a party who has appointed the sole or presiding arbitrator unilaterally as the act of appointment is not an express waiver of the ineligibility under proviso to Section 12(5) of the Act. Such objection can be taken even at stage of challenge to the award under Section 34 of the Act or during the enforcement proceedings under Section 36 of the Act."***

The court ultimately held that the arbitrator's failure to disclose his conflict of interest renders him ineligible and the award a nullity.

Accordingly, the Delhi High Court held that unilateral appointment of a sole or presiding arbitrator strikes at the root of the tribunal's jurisdiction, rendering the proceedings and the resulting award a nullity, which can be set aside or refused enforcement at any stage under Sections 34 and 36 of the Arbitration and Conciliation Act, 1996.

76. *UNION TERRITORY OF J&K VS. SRM CONTRACTORS LTD, (CM(M) NO. 568 OF 2025, CM NO. 8559 OF 2025, CAVEAT NO. 2540 OF 2025), DECIDED ON 22.12.2025 BY JAMMU AND KASHMIR AND LADAKH HIGH COURT*

**Issue: Whether an Arbitrator becomes ineligible merely because he was employed by one of the parties in the past.**

The High Court held that the statutory bar applies only to persons who are current employees, consultants, advisors, or those who have a business relationship with a party. A person who has merely served the government in the past does not fall within these categories. The court observed that the government had not alleged that the arbitrator had any continuing relationship with it or had rendered any advice connected to the dispute.

The Hon'ble Court observed that:

> ***"22. Thus, merely because a person has been in employment of either of the parties in the previous past does not make him ineligible to be appointed as an Arbitrator. Entry-1 of the Schedule of the Act debars an employee of a party to be an Arbitrator. It also debars a consultant, advisor or a person who has any past or present business relationship with a party from acting as an Arbitrator. Er. Khalid Muzaffar is admittedly a former employee of the petitioner but he is neither a consultant nor an advisor of any party nor he has any past or present business relationship with the petitioner. Therefore, he does not fall either in Entry-1 or Entry-15 of the Seventh Schedule of the Act so as to be ineligible to act as an Arbitrator. The contention of the petitioner is, therefore, without any substance."***

Accordingly, the Court held that past employment with a party, by itself, does not render an arbitrator statutorily ineligible, in the absence of any continuing relationship or circumstances giving rise to justifiable doubts as to independence or impartiality. The petition was dismissed.

77. *BEEVEE ENTERPRISES & ORS. VS. L & T FINANCE LIMITED, (APOT 208 OF 2025), DECIDED ON 11.09.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether the unilateral appointment of a sole arbitrator by one party, without any participation of the counter-party, renders the arbitrator ineligible under Section 12(5) read with the Fifth Schedule of the Arbitration and Conciliation Act, 1996, thereby vitiating all proceedings conducted by such arbitrator.**

In the present case, the Calcutta High Court examined the validity of the appointment of the sole arbitrator in the context of the post-2015 statutory regime governing arbitrator independence and impartiality. The arbitration clause vested exclusive power of appointment in the lender, without providing any role to the borrower in the appointment process. The appellants assailed the jurisdiction of the arbitral tribunal on the ground that such unilateral appointment was impermissible in law, having regard to Section 12(5) of the Arbitration and Conciliation Act, 1996 and the binding precedents of the Supreme Court.

The Court analysed the arbitration agreement and found that it conferred absolute authority on the respondent to appoint the arbitrator, without naming any specific arbitrator or establishing a neutral appointment mechanism. In light of the statutory bar introduced by Section 12(5), read with the Fifth Schedule, the Court held that any person having a direct relationship with a party to the dispute is rendered ineligible not only to act as an arbitrator but also to appoint one. The Court reiterated that the ratio laid down in TRF Ltd. and Perkins Eastman squarely applies to such clauses, and any appointment made pursuant thereto is void ab initio.

The Court reasoned as follows:

> ***"It is apparent from the aforesaid arbitration agreement that the appointment of an arbitrator has to be exclusively by the Lender (respondent) and does not provide for any window for the borrower (appellants) to take part in the appointment procedure."***
>
> ***"In view of the provisions of Section 12(5) of the 1996 Act read with the fifth schedule thereto read in the light of the judgments in TRF (supra) and Perkins (supra) clearly demonstrate that any Principal Officer of the respondent company who had appointed the present Arbitrator had become ineligible to appoint being directly related to a party. The appointment of the Arbitrator is, therefore, void."***
>
> ***"Once it is held that the appointment of the Arbitrator is void, all subsequent proceedings before the Arbitrator is nullity."***

Accordingly, the Court held that the unilateral appointment of the sole arbitrator was hit by Section 12(5) of the Act, rendering the arbitrator ineligible and the proceedings coram non judice. The mandate of the arbitrator was therefore terminated, and a substitute arbitrator was appointed by the Court, reaffirming the mandatory nature of neutrality and independence in arbitral appointments under the 1996 Act.

78. *SUNDARAM FINANCE LIMITED, VS. S.M. THANGARAJ AND OTHERS, (C.R.P. NO. 5197 OF 2024), DECIDED ON 27.01.2025 BY MADRAS HIGH COURT*

**Issue: Whether the executing court can suo motu annul the award when a party to the agreement did not challenge the award on the ground of ineligibility of the arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Madras High Court examined the legality of an order passed by the executing court which, suo motu, dismissed the execution petition on the ground that the sole arbitrator had been unilaterally appointed and was therefore ineligible under Section 12(5) of the Arbitration and Conciliation Act. The executing court proceeded on the footing that such ineligibility amounted to an inherent lack of jurisdiction, rendering the award non est, notwithstanding the fact that the award had not been challenged by the judgment-debtor under Section 34 of the Act.

The High Court rejected this approach and clarified that the scheme of Section 12(5), read with its proviso, does not render every award passed by an ineligible arbitrator void ab initio. The Court emphasized that the statute itself permits waiver of the objection by express agreement in writing, thereby demonstrating that ineligibility under Section 12(5) is not an incurable defect that automatically nullifies the proceedings. Consequently, in the absence of a challenge under Section 34, the award attains finality and the executing court is bound to enforce it.

The Court observed:

> ***"The very proviso of sub-section (5) of Section 12 of the Arbitration and Conciliation Act, 1996 would indicate that a mere ineligibility does not make the entire arbitral proceedings void ab initio... If it***

> ***were to be so, it would be non est and could not exist in the eye of law. The bar of ineligibility partakes of a character of not being an absolute bar which would hit at the root of the very assumption of jurisdiction at the inception, rendering the award a nullity."***

Reiterating the limited scope of an executing court's powers, the Court further held:

> ***"Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)... As long as an aggrieved party did not challenge the award passed against him in the manner known to law, the arbitral award shall be final and binding on the parties... Therefore, the executing court cannot go into the validity of the arbitral award and the issue of ineligibility of the arbitrator cannot be raised during the pendency of the execution proceedings."***

Accordingly, the Court held that an executing court has no jurisdiction to suo motu annul or refuse execution of an arbitral award on the ground of ineligibility of the arbitrator under Section 12(5), when such objection was never raised in a challenge under Section 34, and set aside the order dismissing the execution petition.

**Key Trends:** The dominant trend was categorical invalidation of unilateral arbitrator appointments as void ab initio under Section 12(5) read with the Seventh Schedule. Waiver required an express, written, post-dispute agreement and participation in proceedings alone was held insufficient. Past employment, absent any continuing relationship, was held not to constitute ineligibility.

**SECTION 14 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**14. Failure or impossibility to act. — (1)** The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if—

a) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and
b) he withdraws from his office or the parties agree to the termination of his mandate.

**(2)** If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

**(3)** If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

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79. *MARVEL SIGMA HOMES PRIVATE LIMITED THROUGH ITS DIRECTOR VISHWAJEET SUBHASH JHAVAR VS. SANJAY JASUBHAI DESAI AND OTHERS (2025 BHC-OS 17470) DECIDED ON 03.10.2025 BY BOMBAY HIGH COURT*

**Issue: Whether an order terminating arbitral proceedings for non-payment of deposits under Section 38(2) can be challenged by invoking Section 14 as a residual remedy, when no specific statutory appeal is provided.**

In the instant case, the Bombay High Court examined the permissibility of assailing an order passed by the arbitral tribunal terminating the claimant's proceedings under Section 38(2) due to continued non-payment of arbitral fees. The Court held that the tribunal acted within its jurisdiction, noting that arbitrators' fees form part of "costs" under Sections 31(8) and 31A of the Act, and that repeated opportunities had been granted to the petitioner. In the absence of any breach of natural justice or jurisdictional error, the Court declined to exercise writ jurisdiction.

However, while dismissing the writ petition, the Court addressed the absence of a specific statutory remedy under the Act against an order terminating proceedings under Section 38(2). Relying on precedents dealing with termination under Section 32(2)(c), the Court recognised that Section 34 would not lie against such an order and that this legislative vacuum permits recourse to Section 14 as a residual remedy in appropriate cases.

The Court observed as follows:

> ***"Explanation to Section 31A(1) of the Arbitration Act makes it abundantly clear that costs referred to therein, which also have to be read with Section 31(8) of the Arbitration Act, include the fees and expenses of the arbitrators. Therefore, it is evident that the arbitral tribunal, while exercising power under Section 38(2) of the Arbitration Act, can certainly pass an order in situations where a party fails to deposit amounts towards fees of the arbitrators. Therefore, it cannot be said that the impugned order passed by the tribunal is without jurisdiction. Consequently, the petitioner is***

***unable to demonstrate why this Court should entertain the writ petition."***

***"A perusal of the provisions of the Arbitration Act indeed shows that in situations where the arbitral proceedings are terminated, a remedy of Section 34 of the Arbitration Act is evidently not available and there appears to be a vacuum in the Arbitration Act while providing remedies in such situations. The arbitral tribunal can also terminate arbitral proceedings under Section 32(2)(c) of the Arbitration Act... In such a situation, after taking note of the legislative vacuum in such circumstances, it was laid down that the aggrieved party ought to invoke Section 14 of the Arbitration Act to raise a grievance with regard to such an order terminating the arbitral proceedings... in the face of the fact that there is evidently no remedy available to the aggrieved party under the provisions of the Arbitration Act to challenge such an order under Section 38(2) of the Arbitration Act, the aggrieved party could knock the doors of the Court under Section 14 of the Arbitration Act."***

Accordingly, the Court clarified that although termination under Section 38(2) is not appealable under Section 34, an aggrieved party may invoke Section 14 of the Act as a residual statutory remedy, even as writ jurisdiction would remain unavailable absent exceptional circumstances.

80. *NATIONAL HIGHWAY INFRASTRUCTURE DEVELOPMENT CORPORATION LTD(NHIDCL) VS. NSPR VKJ JV & ORS., (2025 DHC 9161) DECIDED ON 15.10.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitrator's mandate can be terminated under Section 14 of the Arbitration and Conciliation Act, 1996, solely on the basis of unverified allegations or pendency of a complaint alleging corruption, absent any established de jure ineligibility.**

The Delhi High Court held that mere allegations of corruption or pendency of an unverified complaint against an arbitrator cannot justify termination of arbitrator's mandate under section 14 of the Arbitration and Conciliation Act, 1996.

The Hon'ble Court held that:

***"mandate of an Arbitrator cannot be terminated solely on the basis of unsubstantiated allegations or mere complaints.. De jure ineligibility is an inherent disability and mere allegations cannot meet this threshold. Terminating the mandate on a mere complaint, would be contrary not only to Section 14 of the 1996 Act,but would set a dangerous precedent where any party, unhappy with the course of arbitral proceedings, may refer to a complaint by a third party with unfounded and false accusations and seek termination of the mandate."***

**Key Trends:** Courts held that unsubstantiated allegations or pending complaints against an arbitrator cannot meet the de jure ineligibility threshold for termination. Section 14 was also recognised as a residual remedy where proceedings are terminated under Section 38(2) and no other statutory appeal is available.

# Chapter IV

## *Jurisdiction of Arbitral Tribunals*

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## CHAPTER IV - JURISDICTION OF ARBITRAL TRIBUNALS

### SECTION 16 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**16. Competence of arbitral tribunal to rule on its jurisdiction — (1)** The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, —

a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

**(2)** A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

**(3)** A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

**(4)** The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

**(5)** The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

**(6)** A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

81. *M/S VIDYAWATI CONSTRUCTION COMPANY VS. UNION OF INDIA, (2025 INSC 101) DECIDED ON 07.01.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether a jurisdictional challenge under Section 16(2) of the Arbitration and Conciliation Act, 1996 is barred once a party has filed its statement of defence before the arbitral tribunal, and whether such belated challenge can be entertained under Sections 34 or 37 of the Act.**

In the instant case, the Hon'ble Supreme Court of India examined the permissibility of raising a jurisdictional objection after submission of the statement of defence before the arbitral tribunal. The Court held that Section 16(2) of the Arbitration and Conciliation Act, 1996 mandates that any objection to the jurisdiction of the arbitral tribunal must be raised no later than the submission of the statement of defence, failing which such objection stands statutorily barred.

The Hon'ble Supreme Court while dealing with the aforesaid issue observed that:

> ***"Hence, there is a clear bar on raising a plea of the lack of jurisdiction of the Arbitral Tribunal after submission of the***

***statement of defence. Therefore, after 14th February, 2004, the respondent could not have objected to the jurisdiction of the sole Arbitrator. Hence, the objection raised by way of an application dated 24th April 2004 was rightly rejected by the learned Arbitrator by the order dated 20th October, 2004."***

***"In view of the respondent's conduct and sub-Section (2) of Section 16 of the Arbitration Act, Sections 34 and 37 Courts were not right in upholding the respondent's objection to the jurisdiction of the Arbitral Tribunal. Therefore, the impugned judgments cannot be sustained.".***

The Court clarified that once a party participates in the arbitral proceedings and submits its statement of defence without raising a jurisdictional objection, it is deemed to have waived its right to challenge the tribunal's jurisdiction at a later stage.

82. *GAYATRI PROJECT LIMITED VS. MADHYA PRADESH ROAD DEVELOPMENT CORPORATION LIMITED, (2025 INSC 698) DECIDED ON 04.03.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether an arbitral award rendered under the Act, 1996 can be set-aside or annulled solely on the ground of lack of jurisdiction, even when no such plea was raised before the arbitral tribunal in terms of Section 16(2) of the Act, 1996**

The Hon'ble Supreme Court of India held that an arbitral award cannot be annulled solely on the ground of lack of jurisdiction where no objection to jurisdiction was taken before the arbitral tribunal in terms of Section 16, particularly once the statement of defence has been filed. Rather than permitting parties to hold jurisdictional pleas in reserve, the Hon'ble Court insisted that such objections must be raised at the earliest, and can be allowed at the Section 34 stage only if a "strong and good reason" is shown for the earlier omission.

The Hon'ble Bench observed that:

***"no objection as to the jurisdiction of the arbitral tribunal had been taken at the relevant stage, then the arbitral award cannot be annulled by the High Court solely on the ground of lack of jurisdiction".***

Accordingly, the Supreme Court underscored the principle of procedural discipline in arbitration, holding that jurisdictional objections must be raised at the earliest stage under Section 16, and that failure to do so precludes parties from assailing the arbitral award on that ground at the Section 34 stage, save in exceptional circumstances supported by strong and cogent reasons.

83. *SHIVRANJAN TOWERS SAHAKARI GRIHA RACHANA VS. BHUJBAL CONSTRUCTIONS, (2025 BHC-AS 37175) DECIDED ON 04.09.2025 BY BOMBAY HIGH COURT*

**Issue: Whether a party can challenge the jurisdiction of the arbitral tribunal under Section 16 of the Arbitration and Conciliation Act, 1996, when its title, rights, and claims flow from agreements containing an arbitration clause.**

In the instant case, the Hon'ble Bombay High Court examined the validity of a jurisdictional challenge raised under Section 16 of the Arbitration and Conciliation Act, 1996. The Court upheld the finding of the learned Arbitrator, who had rejected the objection to jurisdiction on the ground that the Petitioner-society's title and rights emanated from individual agreements which expressly contained an arbitration clause.

The Court noted that the Petitioner-society was seeking to both assert rights and sustain counterclaims on the very same individual agreements, while simultaneously disputing the jurisdiction of the arbitral tribunal constituted thereunder. Such a position, the Court held, was legally untenable and it was observed as follows:

> ***"By the impugned order the learned Arbitrator was persuaded to dismiss the Application under Section 16 opining, inter alia, that the title of the Petitioner-society flowed through the individual Agreements and, thus, the Petitioner-society was bound by the terms, rights and responsibilities as incorporated in the individual Agreements. It was further observed that to sustain the counter claim, the Petitioner-society was relying upon the very same individual Agreements which contain the Arbitration Clause. Thus, the challenge to the jurisdiction of the Arbitrator was not sustainable."***

84. *BIMLA DEVI JAISWAL VS. INDUS TOWERS LTD., (AP-256 OF 2021) DECIDED ON 30.06.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether issues relating to misjoinder of parties and incorporation of an arbitration clause by reference fall within the jurisdictional competence of the arbitral tribunal.**

In the instant case, the Hon'ble High Court examined the scope of the arbitral tribunal's jurisdiction under the principle of kompetenz–kompetenz. The Court held that an arbitral tribunal is statutorily empowered to rule on its own jurisdiction, and such competence is not confined to a narrow inquiry but extends to all ancillary and connected jurisdictional issues.

The Court clarified that questions pertaining to the validity and existence of the arbitration agreement, incorporation by reference, joinder or misjoinder of parties, as well as the scope of disputes referable to arbitration, are matters squarely falling within the arbitral tribunal's domain. The Hon'ble High Court in the present judgment observed as follows:

> ***"...the law permits the arbitral tribunal to rule on its own jurisdiction. The issue of jurisdiction covers all questions, including the validity of the arbitration agreement, joinder of parties, scope of the disputes referable etc..."***

Accordingly, the Court held that objections relating to misjoinder of parties and incorporation by reference are jurisdictional issues that must ordinarily be determined by the arbitral tribunal itself, rather than being pre-empted at the threshold by a court.

85. *ECI-KEYSTONE (JV) VS. THE SUPERINTENDING ENGINEER NATIONAL HIGHWAY CIRCLE, P W D, GOVERNMENT OF CHHATTISGARH, (2025 CGHC 30607), DECIDED ON 04.07.2025 BY CHATTISGARH HIGH COURT*

**Issue: Whether the arbitration award can be annulled solely on jurisdictional grounds.**

The High Court of Chhattisgarh addressed a dispute between Eci-Keystone (Jv) and The Superintending Engineer, National Highway Circle, PWD, regarding the enforcement of an arbitral award.

The core issue was whether the arbitral award could be annulled due to a lack of jurisdiction, as the dispute should have been arbitrated under the Chhattisgarh Madhyasthan Adhikaran Adhiniyam, 1983, rather than the Arbitration and Conciliation Act, 1996. The court found that the respondent failed to raise jurisdictional objections at the appropriate stages and relied on precedents, including L.G. Chaudhary Engineers & Contractors, to conclude that the award could not be annulled solely on jurisdictional grounds.

The High Court stated that:

> ***"11. In the matter of M/s. Gayatri Project Limited Versus Madhya Pradesh Road Development Corporation Limited MANU/SC/0700/2025 : 2025:INSC:698, the Hon'ble Supreme Court framed the following issues for determination:-***
>
> ***I. Whether an arbitral award rendered under the Act, 1996 where the arbitration proceedings was to be governed by the MP Act, 1983, can be set-aside or annulled solely on the ground of lack of jurisdiction even when no such plea was raised before the arbitral tribunal in terms of Section 16 sub-section (2) of the Act, 1996?***
>
> ***II. Whether the decision of this Court in LG Choudhary (II) (supra) could be said to be per incuriam for not having taken into consideration the decision of this Court in Lion Engineering (supra)? In other words, whether there is any conflict between the decisions of this Court in Lion Engineering (supra) and LG Choudhary (II) (supra), insofar as the observations pertaining to the stage at which a plea of lack of jurisdiction may be raised under the Act, 1996, are concerned?***
>
> ***While dealing with issue No. (I), the Hon'ble Supreme Court held that a plea of lack of jurisdiction cannot be allowed to be raised in terms of Section 16 (2) of the Act, 1996 and the award cannot be annulled solely on such a ground. The Hon'ble Supreme Court restored the award and reiterated that the award could not have been annulled only on the ground of jurisdiction but clarified that all***

***other challenges to the award may be made in the appropriate proceeding under Section 34 of the Act, 1996. It was also held that where the execution proceedings for awards were pending, it was directed that such awards be treated to have been rendered under the Act, 1983."***

Applying the aforesaid principles, the High Court held that the Commercial Court had committed a manifest error in dismissing the execution petition solely on jurisdictional grounds. Since the objection as to jurisdiction was never raised before the arbitral tribunal, the award could not be annulled on that basis at the execution stage.

Accordingly, the court set aside the Commercial Court's order restored the arbitral award, and held that the execution proceedings were maintainable in law.

86. *MDD MEDICAL SYSTEMS (INDIA) PVT LTD VS. DELHI INTERNATIONAL ARBITRATION CENTRE AND ORS., (2025 DHC 6495-DB), DECIDED ON 01.08.2025 BY DELHI HIGH COURT*

**Issue: Whether objections relating to revival of arbitral proceedings and alleged procedural lapses under the MSMED Act raise jurisdictional questions that must be adjudicated by the arbitral tribunal under Section 16, rather than by courts in writ or appellate jurisdiction.**

In the instant case, the Division Bench of the Delhi High Court examined the permissibility of judicial interference in ongoing arbitral proceedings arising under the MSMED Act. Upholding the order of the learned Single Judge, the Court observed that the timeline prescribed under Section 18(5) of the MSMED Act is directory and not mandatory. It was further held that objections pertaining to the revival of arbitral proceedings and alleged procedural irregularities essentially go to the root of the arbitral tribunal's jurisdiction and must, therefore, be raised before the tribunal itself under Section 16 of the Arbitration and Conciliation Act.

While dismissing the appeal, the Court directed the appellants to avail the statutory remedy under Section 16 and observed as follows:

***"13. In so far as the aforesaid argument is concerned, we have perused para 11 of the impugned judgment and find that the question as to the revival of the proceedings was justified or not was left open by the learned Single Judge in order to be raised before the arbitrator on the premise that it essentially questions the jurisdiction of the Arbitral Tribunal itself. In order to arrive at the aforesaid opinion, the learned Single Judge relied upon the judgment of the Hon'ble Supreme Court in Vidya Drolia vs. Durga Trading Corporation: 2020:INSC:697 : (2021) 2 SCC 1 and Cox & Kings Ltd vs. SAP India (P) Ltd: 2023:INSC:1051 : (2024) 4 SCC 1. Apart from the fact that the aforesaid judgments of the Hon'ble Supreme Court are an enunciation of law in respect of the jurisdiction of the Arbitral Tribunal under Section 16 of the A&C Act,***

***the Hon'ble Supreme Court has in Bhaven Constructions vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Anr.: MANU/SC/0008/2021 : 2021:INSC:9 : (2022) 1 SCC 75, clearly held that once arbitral proceedings are commenced, Courts would ordinarily not exercise the power under Article 226 of the Constitution of India except in rare occasions. In other words, having regard to the fact that the arbitral proceedings have already commenced and the issued raised by the appellants appears to be intrinsically intertwined with the very jurisdiction of the tribunal, it would be appropriate to relegate the appellants to their remedies under section 16 of the A&C Act and refrain from interfering with the arbitration proceedings."***

Accordingly, it was held that challenges relating to revival of arbitral proceedings and procedural lapses under the MSMED Act raise jurisdictional issues which must be adjudicated by the arbitral tribunal under Section 16, and that courts ought to refrain from exercising writ or appellate jurisdiction once arbitral proceedings have commenced, save in exceptional circumstances.

87. *SURENDER KUMAR SINGHAL AND ORS. VS. ARUN KUMAR BHALOTIA AND ORS. (2021 DHC 1097), DECIDED ON 25.03.2021 BY DELHI HIGH COURT*

**Issue: Whether the High court can entertain writ petitions in challenges to order by an Arbitral Tribunal.**

In the instant case, the Delhi High Court after considering all the decisions, of the Supreme Court, Deep Industries Ltd. v. ONGC and Ors. (Civil Appeal No. 9106/2019 of Supreme Court); Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. (2022) 1 SCC 75; Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd. (2020) 17 SCC 93; Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd. 2022:DHC:693 and Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal 2021:DHC:2468 has crystallized the principles governing judicial interference at the interlocutory stage of arbitration.

The relevant portion of the said judgment reads as under:

***"24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:***

***...the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:***

***(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.***

***(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.***

***(iii) For interference under Articles 226/227, there have to be exceptional circumstances.***

***(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.***

***(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.***

***(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.***

***(vii) Excessive judicial interference in the arbitral process is not encouraged.***

***(viii) It is prudent not to exercise jurisdiction under Articles 226/227.***

***(ix) The power should be exercised in "exceptional rarity" or if there is, "bad faith" which is shown.***

***(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."***

Hence, The Court held that although arbitral tribunals are amenable to supervisory jurisdiction, interference is permissible only in rare and exceptional cases, such as where the tribunal clearly lacks inherent jurisdiction. In the present case, the Arbitral Tribunal had applied its mind and gave reasons for deferring the decision on the jurisdictional objection under Section 16 to a later stage, as the issues involved mixed questions of fact and law requiring evidence. Accordingly dismissed the petition under Article 227.

88. *K. MANGAYARKARASI & ANR. VS. N.J. SUNDARESAN & ANR., (2025 INSC 687) DECIDED ON 9.05.2025 BY SUPREME COURT OF INDIA*

**Issue: Whether objections to arbitrability founded on allegations of fraud or statutory violation are required to be adjudicated by the arbitral tribunal under Section 16 of the Arbitration and Conciliation Act, 1996, rather than by courts at the referral stage.**

In the instant case, the Supreme Court examined whether allegations of fraud, statutory violations, or non-arbitrability could justify refusal to refer parties to arbitration, despite the existence of an arbitration agreement. The challenge arose from an order referring the parties to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, which was affirmed by the High Court. The petitioners contended that the disputes, involving

trademark rights and allegations of fraud in execution of assignment deeds, were non-arbitrable and required adjudication by a civil court.

The Court reiterated the principle embodied in Section 16 of the Act, emphasising that the arbitral tribunal is competent to rule on its own jurisdiction, including objections relating to fraud, statutory violations, or validity of the contract. It held that allegations of fraud, by themselves, do not oust arbitral jurisdiction, unless such allegations have implications in the public domain or involve rights in rem reserved for adjudication by public fora. The Court further clarified that once an arbitration agreement exists, courts are under a positive obligation to refer parties to arbitration and cannot assume a discretionary role at the referral stage.

The Court observed as follows:

> ***"The law is well settled that allegations of fraud or criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the arbitral tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement."***
>
> ***"Once an application in due compliance with Section 8 of the Act of 1996 is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted."***
>
> ***"Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract."***

Accordingly, the Supreme Court held that objections relating to fraud or statutory violations do not, by themselves, render disputes non-arbitrable, and such objections must ordinarily be left to the arbitral tribunal for determination under Section 16 of the Arbitration and Conciliation Act, 1996, once the existence of an arbitration agreement is established.

89. *THE NATIONAL HIGHWAYS AUTHORITY OF INDIA VS. NIHAR RANJAN SAHU AND ORS., (WRIT PETITION (C) NOS. 27589 OF 2024 AND 28108 OF 2024), DECIDED ON 20.06.2025 BY ORRISA HIGH COURT*

**Issue: Whether writ jurisdiction of a High Court can be used to challenge arbitral awards unless there is manifest jurisdictional error or perversity.**

The High Court of Orissa addressed the legality of an arbitration award concerning land acquisition compensation, involving the National Highways Authority of India (NHAI) and Nihar Ranjan Sahu and others. The court examined whether NHAI's non-impleadment in the arbitration proceedings under Section 3-G (5) of the National Highways Act, 1956, invalidated the award. The court concluded that the Competent Authority for Land

Acquisition (CALA) adequately represented the Central Government, and NHAI's absence did not constitute a procedural defect.

> ***".....the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:***
>
> ***(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.***
>
> ***(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.***
>
> ***(iii) For interference under Articles 226/227, there have to be exceptional circumstances.***
>
> ***(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.***
>
> ***(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.***
>
> ***(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.***
>
> ***(vii) Excessive judicial interference in the arbitral process is not encouraged.***
>
> ***(viii) It is prudent not to exercise jurisdiction under Articles 226/227.***
>
> ***(ix) The power should be exercised in "exceptional rarity" or if there is, "bad faith" which is shown.***
>
> ***(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."***

The court emphasized that writ jurisdiction should not be used to challenge arbitral awards unless there is a manifest jurisdictional error or perversity. Consequently, both writ petitions were dismissed, affirming the arbitration award.

**Key Trends:** Jurisdictional objections must be raised no later than the statement of defence; failure permanently bars raising them at the Section 34 or 36 stage. Courts confirmed that the tribunal's competence under Section 16 extends to all ancillary jurisdictional questions including party joinder and incorporation by reference.

**SECTION 17 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**17. Interim measures ordered by arbitral tribunal. — (1)** A party may, during the arbitral proceedings, apply to the arbitral tribunal—

i. for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
ii. for an interim measure of protection in respect of any of the following matters, namely: —
   a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
   b) securing the amount in dispute in the arbitration;
   c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
   d) interim injunction or the appointment of a receiver;
   e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

**(2)** Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure,1908 (5 of 1908), in the same manner as if it were an order of the Court.

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*90.* *MAHENDRA KUMAR NANDLAL PATEL AND ORS. VS. SAMIR MAHENDRA SHAH AND ORS., (2025 BHC-OS 10161), DECIDED ON 01.07.2025 BY BOMBAY HIGH COURT*

**Issue: Whether expulsion of the partners without a hearing or explanation is legally tenable.**

In the instant case, the High Court of Bombay examined an appeal arising from disputes between partners of Alexis Hospitality LLP, wherein the appellants had been expelled without being issued any notice or explanation. The Court found that a prima facie case existed in favour of the appellants, as their removal had been effected without adherence to basic principles of fairness. It was noted that no material had been placed on record to demonstrate how the continued presence of the appellants as partners would be prejudicial to the LLP.

The Court upheld the interim order passed by the Arbitral Tribunal directing maintenance of status quo by restraining induction of new partners, thereby protecting the appellants' 6% ownership interest. At the same time, the Court permitted the appellants to approach the Arbitral Tribunal to seek access to information and financial records, holding that such

access was a legitimate incident of their ownership interest and necessary to safeguard their rights.

The High Court held:

> ***"14. Since the Respondents have not put the Petitioners to any notice as to how the Petitioners' continuance as a Partner would be prejudicial to the LLP, I see no problem in permitting the Petitioner to make out a case for a right to access to information, to request the Learned Arbitral Tribunal to consider this prayer specifically. To my mind, this is actually a facet that could have been taken up by an application to speak to the minutes of the impugned order before the Arbitral Tribunal rather than filing an appeal.***
>
> ***However, now that the appeal is before me, it would be appropriate to enable the Petitioners to approach the Arbitral Tribunal to make out a specific case as to what their entitlements to information are as a 6% owner of the LLP and what access to information that the Petitioners ought to have as a protection of the 6% ownership for which the standstill arrangement has been directed in the impugned order."***

Accordingly, the appeal was disposed of without interfering with the Arbitral Tribunal's interim order. The appellants were permitted to apply before the Arbitral Tribunal for access to financial statements and relevant information, while the protective directions preserving their ownership interest were allowed to continue.

*91.* *CREATIVELAND ADVERTISING PRIVATE LIMITED VS. WINZO GAMES PRIVATE LIMITED (2025 DHC 1811) DECIDED ON 18.03.2025 BY DELHI HIGH COURT*

**Issue: Whether the Arbitrator's refusal to grant an injunction under Section 17 restraining the use of the disputed tagline warrants interference by the Court.**

In the instant case, the Hon'ble High Court upheld the findings of the learned Arbitrator, who had declined to grant an injunction restraining Winzo Games Private Limited from using the tagline "Jeeto Har DinZo", which had been developed by Creativeland Advertising Private Limited. The Court reiterated the settled principle that judicial interference with orders passed by an arbitral tribunal under Section 17 must be minimal and warranted only in cases of manifest perversity or patent illegality.

The Court observed that the view adopted by the learned Arbitrator, upon a prima facie interpretation of the contractual terms, was a plausible and legally tenable view and did not call for interference. In particular, the Arbitrator's interpretation of Clauses 3 and 8 of the Agreement indicating that in the event of breach, the disclosing party would be entitled to claim actual as well as exemplary damages was held to be within the bounds of reasonable contractual construction. In line of the aforesaid, the Court observed as follows that;

> ***"the view taken by the learned Arbitrator while adjudicating an application under Section 17 is not so erroneous as to shock the conscience of the Court. The conclusion of the Arbitrator that the reading of Clauses 3 & 8 of the NDA gives an indication that in the event of such breach, the Disclosing Party will also be entitled to receive an award of actual and exemplary damages does not warrant any interference."***

Accordingly, the Court held that where the arbitral tribunal has exercised its discretion under Section 17 in a reasoned and plausible manner, courts must refrain from substituting their own view, thereby reinforcing the principles of arbitral autonomy and limited judicial intervention.

**Key Trends:** Courts upheld the co-extensive nature of the tribunal's interim powers with those of courts under Section 9, and confirmed that appellate interference with Section 17 orders under Section 37(2)(b) is confined to jurisdictional error or perversity, not a merits rehearing.

# Chapter V

## *Conduct of Arbitral Proceedings*

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## CHAPTER V – CONDUCT OF ARBITRAL PROCEEDINGS

### SECTION 19 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**19. Determination of rules of procedure. — (1)** The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

**(2)** Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

**(3)** Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

**(4)** The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

92. *CENTRAL DEPOSITORIES SERVICES (INDIA) LTD. V. KETAN LALIT SHAH, (2025 BHC-OS 5459-DB) DECIDED ON 25.03.2025 BY BOMBAY HIGH COURT*

**Issue: Whether an arbitral tribunal can apply principles of the Civil Procedure Code, 1908, in determining procedure under Section 19 of the Arbitration and Conciliation Act, 1996, in the absence of party agreement.**

In the instant case, the arbitral tribunal permitted the petitioner to withdraw the existing arbitration proceedings with liberty to initiate fresh proceedings, in view of allegations of massive fraud, by drawing guidance from the principles underlying Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908. The permissibility of such procedural recourse was examined by the Bombay High Court.

The Court upheld the tribunal's approach, holding that Section 19 of the Arbitration and Conciliation Act, 1996 confers wide procedural autonomy on arbitral tribunals. While arbitral proceedings are not bound by the strict application of the CPC or the Indian Evidence Act, 1872, the tribunal is empowered to regulate its own procedure where the parties have not agreed otherwise.

The Court clarified that reliance on CPC principles as guiding norms does not amount to impermissible importation of the CPC into arbitral proceedings, but rather reflects a lawful exercise of discretion to ensure fairness and procedural justice.

The Bombay High Court held that:

> ***"...Section 19 of the Act provides for determination of rules of procedure. The Arbitral Tribunal undoubtedly is not bound by the CPC or the Evidence Act, 1872 however, failing any agreement on the procedure to be followed in conduct of the proceeding, the Arbitral Tribunal has the power to determine conduct of the proceeding in the manner it considers appropriate..."***

Accordingly, the Bombay High Court held that even though an arbitral tribunal is not bound by the CPC, in the absence of any procedural agreement between the parties, the tribunal is free to evolve and adopt an appropriate procedure.

93. *NATIONAL PROJECT CONSTRUCTIONS CORPORATION LTD. V. M/S S S SHARMA AND COMPANY, (2025 DHC 5344 DB) DECIDED ON 02 JULY 2025 BY DELHI HIGH COURT*

**Issue: Whether arbitral proceedings, though not strictly bound by the CPC and Evidence Act under Section 19(1) of the Arbitration and Conciliation Act, 1996, must adhere to the principles of natural justice.**

In the instant case, the Delhi High Court examined the scope and import of Section 19(1) of the Arbitration and Conciliation Act, 1996, which provides that arbitral proceedings are not bound by the strict application of the Civil Procedure Code, 1908 (CPC) and the Indian Evidence Act, 1872. The Court held that while Section 19(1) confers procedural flexibility upon arbitral tribunals, such flexibility does not operate to dilute or dispense with the fundamental requirement of adherence to the principles of natural justice.

The Court clarified that arbitral autonomy in procedure cannot be equated with procedural arbitrariness, and that fairness, equality of treatment, and a reasonable opportunity to be heard remain non-negotiable requirements of the arbitral process. In line of the aforesaid court stated and observed as follows that:

> ***"While Section 19(1) of the Act provides procedural flexibility and clarifies that the provisions of the Civil Procedure Code, 1908 and Indian Evidence Act, 1872 do not apply ipsissima verba to arbitral proceedings, it in no manner whatsoever dispenses with the requirement of adhering to the principles of natural justice..."***

Accordingly, the Court held that notwithstanding the non-applicability of the CPC and the Evidence Act, arbitral proceedings must strictly conform to the principles of natural justice, failing which the arbitral process would be vulnerable to judicial interference under the Arbitration and Conciliation Act, 1996.

**Key Trends:** Courts confirmed that while the tribunal is not rigidly bound by the CPC, it cannot ignore its foundational principles of natural justice and fairness when framing procedure.

**SECTION 20 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**20. Place of arbitration. — (1)** The parties are free to agree on the place of arbitration.

**(2)** Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

**(3)** Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at anyplace it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

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*94.* *DEVI PRASAD MISHRA V. NAYARA ENERGY LTD., (CIVIL MISC. ARBITRATION APPLICATION NO. 2 OF 2024) DECIDED ON 15.07.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether, in the absence of any contrary indicia, a place specified as the "venue" in an arbitration agreement can be construed as the juridical "seat" of arbitration where only a single place is mentioned.**

In the instant case, the Allahabad High Court examined the distinction between the "seat" and "venue" of arbitration and the legal consequences flowing therefrom. The Court held that where an arbitration agreement specifies only one place, even if described as the "venue" such place must be construed as the juridical "seat" of arbitration, unless the agreement or surrounding circumstances disclose a contrary intention.

The Court clarified that the designation of a single place reflects the parties' intention to anchor the arbitral proceedings to that jurisdiction, thereby conferring supervisory jurisdiction on the courts exercising territorial jurisdiction over that place.

The High Court further held that:

> ***"If the arbitration agreement mentions only one place and even if it is termed as the 'venue', then unless there is a contrary indicia the 'venue' is construed as the 'seat."***

Accordingly, the Court held that in the absence of any contrary indicia, the specification of a single place as the 'venue' of arbitration is determinative of the juridical seat, with all attendant jurisdictional consequences under the Arbitration and Conciliation Act, 1996.

*95.* *CHITTARANJAN LOCOMOTIVE WORKS V. ARIHANT ELECTRICALS, (AP-COM-910 OF 2024) DECIDED ON 02.12.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether, notwithstanding a designated "seat" in the arbitration agreement, parties may conduct arbitral proceedings at a different place by mutual intention under Section 20(3) of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Calcutta High Court clarified the interplay between the designated seat of arbitration and the parties' autonomy to choose a different place for conducting

arbitral proceedings. The Court held that while the seat specified in the arbitration agreement ordinarily governs supervisory jurisdiction, the parties retain the freedom to conduct proceedings elsewhere, provided their intention to do so is clearly manifested.

The Court observed that such flexibility is expressly recognised under Section 20(3) of the Arbitration and Conciliation Act, 1996, which permits the arbitral tribunal to meet at any place it considers appropriate for consultations, hearing witnesses, experts, or parties, or for inspection of documents, unless otherwise agreed by the parties. In light of the aforesaid the Court observed and held as follows:

> ***"Ordinarily, the seat mentioned in the contract governs jurisdiction. However, the parties enjoy autonomy to hold proceedings elsewhere by showing their intention to change the seat or the venue. This is in consonance with Section 20 (3) of the said Act."***

Accordingly, the Court held that even where a seat is contractually designated, the conduct of arbitral proceedings at another place is permissible where the parties' intention to do so is evident, without ipso facto altering the juridical seat or the court of supervisory jurisdiction, unless such intention is clearly established.

96. *BVG INDIA LTD. VS. NAGAR NIGAM JAIPUR GREATER AND ORS., (2025 DHC 5399), DECIDED ON 09.07.2025 BY DELHI HIGH COURT*

**Issue: What will be the venue of Arbitration in case of absence of a designated seat or venue of Arbitration.**

In the instant case, the High Court of Delhi addressed whether it had territorial jurisdiction to entertain a petition by Bvg India Ltd. seeking an extension of the mandate of an arbitrator in a dispute with Nagar Nigam Jaipur Greater and others. The court found that the arbitration agreement did not specify a seat or venue, but the parties had agreed to the exclusive jurisdiction of Jaipur courts for disputes arising from the agreement.

The court held:

> ***"23. In the present case, admittedly there is no designation of seat/place/ venue in the arbitration clause. Parties have consciously agreed to confer exclusive jurisdiction on the Courts at Jaipur on significant and extenuating factors such as issuance of tender and purchase orders in question at Jaipur; execution of the agreements at Jaipur; supervision and control of the entire work from the registered office of the Respondents situated in Jaipur. Moreover, the disputes referred to arbitration have emanated from decisions taken at Jaipur. Therefore, the entire cause of action has arisen at Jaipur and there is no contrary indicia to the exclusive jurisdiction clause. Parties consciously incorporated the exclusive jurisdiction clause conferring jurisdiction on the Courts at Jaipur in respect of all disputes emanating from the Agreement in question, thereby ousting the jurisdiction of all other Courts. Applying the principles laid down by the Supreme Court in Swastik Gases Private Limited***

***(supra), the jurisdiction will thus be determined by applying the provisions of Sections 16 to 20 CPC and so applied, there can be no doubt that this Court will have no territorial jurisdiction to entertain this petition."***

Accordingly, the court concluded that, in the absence of a designated seat or venue, the exclusive jurisdiction clause and the provisions of the Civil Procedure Code applied, conferring jurisdiction on Jaipur courts.

**Key Trends:** Courts reinforced that the designation of a juridical seat, as distinct from a mere venue, has decisive jurisdictional consequences in determining which court supervises the entire arbitration**.**

**SECTION 21 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**21. Commencement of arbitral proceedings. —** Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

97. *MS CIPHER ONCOLOGY PRIVATE LIMITED VS. M S UNIMED HEALTH CARE PRIVATE LIMITED, (ARBITRATION APPLICATION NO. 163/2024) DECIDED ON 04.04.2025 BY TELANGANA HIGH COURT*

**Issue: Whether a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 is maintainable in the absence of a valid notice invoking arbitration under Section 21 of the Act.**

In the instant case, the High Court examined whether the applicant had fulfilled the statutory requirement of invocation of arbitration under Section 21 before seeking appointment of an arbitrator under Section 11(6). While the existence of an arbitration clause was not in dispute, the determinative issue was whether the legal notice dated 30.08.2023 could be treated as a notice commencing arbitral proceedings.

The Court held that the notice did not satisfy the mandate of Section 21, as it merely demanded payment and indicated a future intention to appoint an arbitrator if the demand was not met. The Court emphasised that Section 21 serves a substantive purpose in the arbitral framework, particularly in facilitating consensus on the appointment of an arbitrator and formally commencing arbitral proceedings. In the absence of a clear invocation and proposal of an arbitrator's name, the statutory precondition for invoking Section 11(6) was held to be unfulfilled. The Court observed as follows:

> ***"The Act does not contemplate unilateral appointment of an arbitrator by one of the parties, there has to be a consensus for such appointment and as such, the notice under Section 21 of the Act serves an important purpose of facilitating such a consensus on the appointment of an arbitrator."***
>
> ***"It is necessary for the party making an appointment to let the other party know in advance the name of the person who it proposes to appoint as an arbitrator."***
>
> ***"In the instant case, admittedly, the applicant's notice mentioned hereinabove is not relating to a demand of appointment of an arbitrator, although it suggests so in the clause of 'subject'. Apart from this, the applicant has not suggested any name of the arbitrator to the other side."***

Accordingly, the Court held that non-compliance with Section 21 of the Arbitration and Conciliation Act, 1996 is fatal to an application under Section 11(6), and in the absence of a valid notice invoking arbitration, the Court could not exercise its jurisdiction to appoint an arbitrator.

98. *M/S. SAURYAJYOTI RENEWABLES PVT.LTD. VS VSL RE POWER PRIVATE LIMITED (ARBITRATION PETITION (COM) NO.63 OF 2025) DECIDED ON 27.03.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether disputes arising out of distinct purchase orders can be referred to arbitration through a composite reference under Section 21 of the Arbitration and Conciliation Act, 1996, when the parties' conduct indicates a single, integrated transaction.**

The Calcutta High Court held that a composite reference of disputes to arbitration arising out of distinct purchase orders and service orders is permissible where the conduct of the parties demonstrates that such transactions formed part of a single and integrated business arrangement. The Court further held that a composite invocation under Section 21 of the Arbitration and Conciliation Act, 1996, in respect of the petitioner's consolidated claims relating to the purchase and service orders as well as the challenge to their termination by the respondent, was valid, noting that the invocation clearly set out the particulars of the orders and the nature of disputes, and that the email correspondence between the parties evidenced their consistent treatment of the purchase and service orders as components of the same business relationship.

The court observed that:

> ***"It is also a settled proposition of law that the learned arbitral tribunal can rule on its own jurisdiction. With regard to the prayer for composite reference and objection raised by the respondent, this court, prima facie, finds that often, composite bills were raised by the petitioner. Composite notices were issued by the petitioner for payment of the outstanding."***
>
> ***"A composite invocation under Section 21 of the 1996 Act, pertaining to the consolidated claim of the petitioner in respect of the purchase orders and service orders and the challenge to the termination of the purchase and service orders, cannot be held to be invalid. The invocation notice clearly indicates the details of the purchase orders and the service orders and the nature of the disputes. The communications via email, with regard to the issues raised by the petitioner also indicate that, all along the parties had treated the purchase and service orders as a part of the same business relationship."***

Accordingly, the Calcutta High Court affirmed that where the parties' conduct reflects a single, integrated commercial relationship, disputes arising from multiple purchase and service orders can validly be referred to arbitration through a composite invocation under Section 21, and such reference cannot be defeated merely because the transactions arise from distinct contracts.

99. *NATIONAL RESEARCH DEVELOPMENT CORPN. VS. ARDEE HI-TECH (P) LTD., (ARB.P. 1494/2024) DECIDED ON 16.05.2025 BY DELHI HIGH COURT*

**Issue: Determination of essential ingredients that section 21 notice must contain to be considered legally valid.**

In the present case, the Delhi High Court examined the objection raised by the respondent that the letter dated 05.04.2024 was merely a demand letter and did not amount to a valid invocation of arbitration under Section 21 of the Arbitration and Conciliation Act, 1996. The Court was therefore required to determine the threshold requirements of a notice under Section 21 and whether the absence of a rigid or formal structure could invalidate the commencement of arbitral proceedings.

The Court reiterated that Section 21 does not prescribe any particular form or format for invocation of arbitration. What is material is the substance of the communication and whether it clearly manifests the intention of the party to refer disputes to arbitration in terms of the arbitration agreement. The Court emphasised that the commencement of arbitral proceedings is triggered once the respondent receives a request seeking reference of disputes to arbitration, and not by the use of any specific terminology or technical language.

In addressing the respondent's contention, the Court relied upon its earlier pronouncement and clarified the legal standard governing Section 21 notices. The Court reasoned as follows:

> ***"There is no fixed format of notice invoking arbitration."***
>
> ***"The requirement in law is that the party invoking arbitration must highlight the disputes between the parties and make a request that in case the disputes are not resolved, arbitration proceedings shall be commenced."***
>
> ***"The intention to invoke the redressal of disputes through the arbitral process must clearly spelt out in the notice."***

Accordingly, the Court held that the notice dated 05.04.2024 satisfied the statutory requirements of Section 21, as it clearly articulated the disputes, demanded resolution in terms of the arbitration clause, and unequivocally conveyed the intention to initiate arbitration upon failure of compliance. The objection to the maintainability of the Section 11 petition on the ground of defective invocation was therefore rejected, reaffirming that substance prevails over form in determining the commencement of arbitral proceedings under the 1996 Act.

100. *M/S SUPREME INFRASTRUCTURE INDIA LTD. V. FREYSSINET MEMARD INDIA PVT. LTD., (2025 DHC 3483) DECIDED ON 05.05.2025 BY DELHI HIGH COURT*

**Issue: Whether non-receipt of a notice under Section 21 of the Arbitration and Conciliation Act, 1996, vitiates invocation of arbitration and renders unilateral appointment of an arbitrator invalid.**

The Hon'ble Delhi High Court held that non-receipt of a Section 21 notice undermines party autonomy in the appointment of arbitrators. The Court categorically ruled that unilateral appointment of an arbitrator without proper invocation of arbitration is legally untenable. If a party fails to reply to the notice under section 21, then such inaction cannot lead to an inference as to implied consent or acquiescence of the party to appointment of the named Arbitrator. The Court held that in such a situation the only recourse available to the party is to invoke the jurisdiction of the Court for appointment of an arbitrator.

The Court held:

> ***"...the non-receipt of the notice under Section 21 also impacts another important facet in the arbitration regime which is party autonomy in appointing an Arbitrator to adjudicate the disputes as an alternate dispute resolution mechanism. It needs no debate that unilateral appointment of an Arbitrator is untenable in law".***

Accordingly, the Court held that without valid service of a Section 21 notice, arbitration is not lawfully invoked and any unilateral appointment of an arbitrator is unsustainable in law; in such cases, the only remedy is to approach the Court for appointment of an arbitrator.

101. *RAILTEL CORPORATION OF INDIA LIMITED VS. PRIMATEL FIBCON LIMITED, (2025 DHC 2831) DECIDED ON 22.04.2025 BY DELHI HIGH COURT*

**Issue: Whether a separate notice under Section 21 of the Arbitration and Conciliation Act, 1996, is required for raising counter-claims when arbitration has already been validly invoked under the same agreement.**

The Court observed that where the disputes between the parties are already subject matter of an earlier arbitral reference, a separate notice under Section 21 would not be necessary for separate proceedings to adjudicate counter claims.

The Court observed that while it is true that the notice under Section 21, ACA is a sine qua non of arbitration proceedings but where arbitration proceedings have been initiated by one party seeking for reference for the arbitration proceedings under Section 21 for adjudication of disputes, a separate notice under Section 21, would not be necessary only for the purposes of counter claim. This is not the mandate of ACA.

The Court held that:

> ***"the counter-claims as raised by the Petitioner is being looked into as a fresh reference, but since the dispute arises under the same agreement and the arbitration has already been initiated, for which a separate notice under Section 21 of the Act would not be necessary and the instant petition need not be dismissed only on the ground that further notice for the purpose of counter-claim has not been given."***

Accordingly, the Court held that once arbitration has been validly invoked under an agreement, no separate notice under Section 21 is required for raising counter-claims

arising from the same contract, and such claims cannot be rejected merely for want of a fresh notice.

102. *SMT. MANJULA & ANR. VS. SHRIRAM TRANSPORT FINANCE CO LTD & ORS., (2025 KHC 18406), DECIDED ON 27.05.2025, BY KARNATAKA HIGH COURT*

**Issue: Whether a person who is the named Arbitrator in a notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 can enter reference and pass orders without the other person consenting thereto, or without an order of appointment of Arbitrator by institution or a Court under Section 11 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Karnataka High Court was concerned with the legality of arbitral proceedings initiated by a person named as arbitrator in a notice purportedly issued under Section 21 of the Arbitration and Conciliation Act, 1996, who proceeded to enter reference and pass interim orders even before any consent was obtained from the opposite party or a valid appointment was made in accordance with Section 11 of the Act. The petitioners challenged the very jurisdiction of the arbitrator on the ground that there was neither mutual consent to the appointment nor a court-ordered or institutional appointment.

The Court examined the scheme of the Act and reiterated that issuance of a notice under Section 21 merely constitutes a request for reference to arbitration. Such notice does not, by itself, clothe the named individual with the authority to act as an arbitrator unless the other party expressly consents to such appointment or the appointment is made in accordance with the procedure prescribed under Section 11. The Court held that unilateral nomination, followed by assumption of jurisdiction and passing of orders, strikes at the root of the arbitral process and renders the entire proceedings void.

The Court observed as follows:

> ***"If the other party were not to respond to the request of Shriram favourably, it was for Shriram to approach this Court under Section 11 of the Act, seeking the appointment of any Arbitrator by this Court and not to appoint an Arbitrator by itself and proceed with the matter."***
>
> ***"The orders passed by an arbitrator not properly appointed are non est."***
>
> ***"A person who is the named Arbitrator in a notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 cannot enter reference and pass orders without the other person consenting thereto, or without an order of appointment of Arbitrator by institution or a Court under Section 11 of the Arbitration and Conciliation Act, 1996."***

Accordingly, the High Court held that mere issuance of a Section 21 notice naming an arbitrator does not confer jurisdiction on such person to enter reference or pass any orders in the absence of consent of the other party or a valid appointment under Section 11 of

the Act. The arbitral proceedings and all orders passed therein were therefore quashed as being without jurisdiction.

103. *LUBNA SHAH VS. B. M. JAYESHANKAR & OTHERS, (2025 KHC 46722), DECIDED ON 14.11.2025, BY KARNATAKA HIGH COURT*

**Issue 1: Whether the present petition can be taken up for consideration, though filed prematurely before the expiry of 30 days as required under Section 21 read with Section 11 of the Arbitration and Conciliation Act, 1996.**

**Issue 2: Whether non-parties i.e., Respondent No.1 & 2 to agreement can be made parties to the arbitration.**

In the instant case, the Karnataka High Court was seized of a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator under a Joint Development Agreement. Two objections were raised by the respondents: first, that the petition was premature as it had been filed before the expiry of 30 days from issuance of the notice invoking arbitration under Section 21; and second, that Respondent Nos. 1 and 2, who were directors of the contracting company but not parties to the agreement, could not be impleaded in the arbitral proceedings.

On the question of prematurity, the Court examined the scheme of Sections 21 and 11 of the Act and acknowledged that ordinarily, a party invoking arbitration must grant the noticee 30 clear days to respond to the request for appointment of an arbitrator. However, the Court held that premature filing would not automatically render a Section 11 petition non-maintainable. Where the noticee ultimately does not concur with the appointment or raises substantive objections to arbitration itself, the Court may proceed to decide the petition on merits rather than dismiss it on technical grounds.

The Court observed as follows:

> ***"That being the case, though the petition is premature, I am of the considered opinion that on technicalities the said petition may not be dismissed but taking into consideration the reply which had been addressed by respondents, an order on merits could be passed."***
>
> ***"If the proceedings are filed before the expiry of 30 days, in all cases the same would not be required to be dismissed... subject to the fact that hyper technicalities do not delay the initiation of arbitration."***

As regards impleadment of non-signatories, the Court reaffirmed the foundational principle of arbitration that only parties to the arbitration agreement can be compelled to arbitrate. It rejected the contention that directors or shareholders could be roped into arbitration merely because the corporate entity may lack assets or because one of them was a signatory representing the company. The Court emphasised the separate legal personality of a company and held that, absent exceptional circumstances warranting lifting of the corporate veil, non-parties cannot be made part of arbitral proceedings.

The Court observed as follows:

> ***"The sanctity of arbitration is required to be limited to the parties to the agreement, and even a signatory to the agreement could stand on a different footing and would not be a party to the agreement."***
>
> ***"Arbitration could be only between parties to the Arbitration Agreement; non-parties cannot be made parties to the arbitration unless exceptional circumstances exist."***

Accordingly, the Court held that a Section 11 petition filed before expiry of 30 days from issuance of a Section 21 notice is not liable to be dismissed solely on the ground of prematurity, provided the notice has not concurred with the appointment and disputes subsist. It further held that arbitration could proceed only between the petitioner and Respondent No. 3, the contracting party, and that Respondent Nos. 1 and 2, being non-parties to the arbitration agreement, could not be impleaded in the arbitral proceedings.

104. *AGRO INDUS CREDITS LIMITED VS. MANGALAN S @ JAGAN MANGALAN AND ORS., (2025 KER 97789), DECIDED ON 18.12.2025 BY KERALA HIGH COURT*

**Issue: Whether a new notice or request must be issued to the respondents to initiate a subsequent arbitral proceeding, as the previous arbitral award was annulled on the rationale that the appointment of the arbitrator was legally untenable.**

In the instant case, the Kerala High Court examined whether an arbitration request under Section 11 of the Arbitration and Conciliation Act, 1996 could be maintained without issuing a fresh notice under Section 21, where the earlier arbitral awards had been set aside on the ground that the arbitrator's appointment was unilateral and legally invalid. The applicant contended that since arbitral proceedings had already been commenced earlier pursuant to a valid notice, no fresh invocation was required for the second round. The respondents, on the other hand, argued that the earlier proceedings stood terminated upon the passing of the awards, and therefore a fresh request was a statutory prerequisite.

The Court undertook a detailed examination of the statutory scheme, particularly Sections 21, 32, and 43(4) of the Act, to determine the legal effect of setting aside an arbitral award and the requirements for recommencing arbitration. It emphasised that the Act consciously demarcates the commencement and termination of arbitral proceedings, and that these provisions cannot be diluted on considerations of convenience. The Court rejected the argument that the earlier notice could continue to operate despite the culmination of the first arbitral reference in an award.

The court emphasised that:

> ***"Section 43(4) of the Act deals with exclusion of the period between the commencement of arbitration and the date of the order of the court when an arbitral award is set aside by the court, in computing the time prescribed by the Limitation Act, for the 'commencement of the proceedings' with respect to the dispute. The words employed – 'commencement of the proceedings' in Section 43(4) has great significance. As held by Hon'ble Supreme Court in Adavya Projects***

***Pvt. Ltd. (supra), prime object of the request contemplated under Section 21 of the Act is to mark a point of time for calculation of limitation. As provided under Section 43(4) of the Act, exclusion of the period spent in an arbitral proceeding culminated with an award which was set aside is for computing the time prescribed by the Limitation Act for the commencement of the de novo proceedings. Therefore, marking the point of time of commencement of the subsequent arbitral proceedings is absolutely necessary. Hence, conjoint appraisal and analysis of the provisions of Sections 21, 32 and 43(4) of the Act shows that issuing a fresh notice/making another request is indispensable to initiate fresh arbitral proceedings, once an award is set aside by the court."***

The Court also clarified that even where an award is subsequently declared a nullity, the decisive factor is the factum of the award having been rendered, since:

***"Passing of the award by the Arbitral Tribunal is the vital aspect. Hence, the arbitral proceedings... were undoubtedly terminated with the passing of awards."***

Accordingly, the High Court held that once arbitral proceedings stand terminated by the passing of an award, a subsequent arbitral reference can only be initiated by issuing a fresh request under Section 21. In the absence of such a notice, an application under Section 11 is premature and not maintainable, notwithstanding that the earlier award was set aside for invalid appointment of the arbitrator.

105. *SAJID PASHA AND ORS. VS. ABDUNNASIR. P AND ORS., (2025 KER 96176), DECIDED ON 12.12.2025 BY KERALA HIGH COURT*

**Issue: Whether an email/communication containing a suggestion for appointment of arbitrator with no details of dispute or any reference to arbitration clause, constitute a valid "request for arbitration" under Section 21 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Kerala High Court was concerned with the threshold requirement of a valid invocation of arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, and whether such requirement was satisfied by an email merely suggesting the name of a proposed arbitrator. The applicants relied upon an email to contend that arbitral proceedings had been duly commenced, thereby enabling recourse to Section 11(6). The respondents disputed this contention, asserting that the communication did not amount to a statutory request for arbitration.

The Court reiterated that although Section 21 does not prescribe a rigid format for invocation, the statutory requirement that the request must relate to a "particular dispute" is not an empty formality. The function of a Section 21 request is to clearly trigger arbitration and mark the commencement of arbitral proceedings, which has direct consequences for limitation and for the court's jurisdiction under Section 11. A vague or

indeterminate communication, the Court held, cannot be elevated to the status of a statutory request.

In this context, the Court observed:

> ***"In view of the principles laid down in the various precedents referred above, it can be safely concluded that though no particular form or ingredients are prescribed for a request under Section 21 of the Act, it must contain minimum particulars of the 'particular dispute' as mentioned in Section 21 of the Act. The Hon'ble Supreme Court in Bharat Sanchar Nigam Ltd. (supra), laid down in paragraph 51 of the judgment that there must be a clear notice invoking arbitration, setting out the "particular dispute (including claims/amounts)" which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail. 26. The Delhi High Court, in the case of Alupro Building Systems Pvt. Ltd. (Supra), held that Section 21 performs an important function of forging consensus on several aspects, such as the scope of the disputes, the determination of which disputes remain unresolved, which disputes are time-barred, the identification of claims and counterclaims, and, most importantly, the choice of arbitrator."***

Applying the above principle to the facts before it, the Court found that the email relied upon by the applicants did not meet even this minimum statutory threshold. It neither referred to any specific dispute nor indicated which of the multiple partnership deeds containing arbitration clauses was being invoked. In a case where serious objections on limitation were raised, such lack of clarity was held to defeat the very purpose of Section 21.

Accordingly, the High Court held that an email merely suggesting the appointment of an arbitrator, without identifying the dispute or invoking the arbitration clause, cannot constitute a valid request for arbitration under Section 21. In the absence of such a request, the arbitration petition under Section 11 was premature and not maintainable.

106. *PRIKSHIT WADHWA AND OTHERS VS. VINOD K. WADHWA, (ARB-241-2022 (O&M)), DECIDED ON 07.01.2025 BY PUNJAB AND HARYANA HIGH COURT*

**Issue: Whether a notice invoking the arbitration clause served only by one partner and not by the other, is maintainable. Secondly, whether an arbitration clause can be invoked as the partnership firm stands dissolved.**

In the present case, the Punjab and Haryana High Court was called upon to examine two interconnected objections raised at the threshold to resist reference to arbitration under Section 11(6) of the Arbitration and Conciliation Act, 1996. The first objection was premised on the contention that the notice invoking arbitration was invalid as it had been issued only by one partner. The Court rejected this contention by interpreting Section 21 of the Act, holding that the statutory requirement is confined to the respondent's receipt of a request

to refer disputes to arbitration, and not the identity or number of parties issuing such notice. The Court clarified that service of notice by one of the parties to the arbitration agreement constitutes sufficient compliance, and that procedural technicalities cannot be imported so as to defeat the object of speedy dispute resolution.

> ***"Notice by one of the parties to the agreement would be a sufficient compliance of the statutory provision... Technicality cannot be attached with a notice served under Section 21 of the Arbitration Act."***

The second objection related to the alleged extinction of the arbitration clause upon dissolution of the partnership firm. Relying on the settled position of law laid down by the Supreme Court in Ravi Prakash Goel v. Chandra Prakash Goel, the Court reiterated that dissolution of a partnership does not bring the arbitration clause to an end. The Court further noted that even where civil or criminal proceedings are pending between partners, such pendency does not operate as a bar to invocation of the arbitration agreement, which survives for resolution of post-dissolution disputes.

> ***"Supreme Court held that on the dissolution of a partnership firm, the arbitration clause does not come to an end. It was further held that the dispute relating to the accounts of a partnership firm is a dispute, which touches the affairs of the firm and is clearly referable to an Arbitrator."***

Accordingly, the Court held that both objections lacked merit and that disputes between the partners were liable to be referred to arbitration, affirming the principle that arbitration clauses in partnership deeds survive dissolution and may be validly invoked through notice issued by even a single partner.

*107. SHEKHARCHAND SACHETI & ANR. VS. S.M.F.G. INDIA HOME FINANCE COMPANY LIMITED & ANR., (S.B. ARBITRATION APPLICATION NO. 81/2024), DECIDED ON 30.05.2025 BY RAJASTHAN HIGH COURT*

**Issue: Whether absence of a formal notice under Section 21 of the Arbitration and Conciliation Act renders a Section 11 application non-maintainable when the respondent had prior knowledge of invocation of arbitration?**

In the instant case, the Rajasthan High Court was called upon to examine whether non-issuance of a formal notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 would, by itself, defeat the maintainability of a petition under Section 11, despite the respondent being fully aware of the disputes and the applicant's intention to arbitrate. The Court noted that Section 21 serves important procedural purposes, including notifying the opposite party of the claims, enabling preliminary objections, and determining the commencement of arbitral proceedings. Ordinarily, failure to comply with this requirement may render a Section 11 application premature.

However, upon examining the factual matrix, the Court found that the respondents could not claim to be taken by surprise. The applicants had earlier instituted a civil suit in respect of the same dispute, which was returned under Order VII Rule 10 CPC at the express

instance of the respondents themselves, who had invoked Sections 8 and 5 of the Act and asserted that the dispute was arbitrable. The Court observed that this conduct clearly demonstrated the respondents' prior knowledge of both the dispute and the applicant's intent to pursue arbitration, thereby diluting the rigour of strict compliance with Section 21.

The Court observed as follows:

> ***"Perusal of Section 21 of the Act of 1996 indicates that it serves certain definite purposes; firstly, it notifies the opposing party of the nature of the claim... and finally, it marks the date of receipt of the notice, which is crucial for determining the commencement of the arbitration."***
>
> ***"it can safely be said that the respondents were not taken by surprise by the filing of this arbitration application, for the appointment of an arbitrator before this Court, especially given that no prior written notice was issued by the applicants. It is inconceivable to suggest that the respondents were unaware of the dispute concerning the partition of the property in question... Hence, the respondents were well versed with the entire dispute raised against them."***

Accordingly, the Court held that where the respondent is demonstrably aware of the dispute and has itself asserted the arbitrability of the matter in prior proceedings, the absence of a formal notice under Section 21 would not, in the peculiar facts of the case, render a Section 11 application non-maintainable.

**Key Trends:** A Section 21 notice was held mandatory to fix the date of commencement, which governs both limitation and applicable law. However, failure to issue notice to all parties does not deprive the tribunal of jurisdiction to subsequently implead them.

**SECTION 23 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**23. Statements of claim and defence. — (1)** Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

**(2)** The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

**(2A)** The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.

**(3)** Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

**(4)** The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.

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*108. ANEJA CONSTRUCTIONS (INDIA) LTD. VS. DOOSAN POWER SYSTEMS INDIA PRIVATE LIMITED AND ORS., (2025 DHC 6590), DECIDED ON 06.08.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitral tribunal has the discretion to condone delay of pleadings or counter-claims in the interest of justice, notwithstanding procedural timelines prescribed under arbitral rules.**

In the instant case, the Delhi High Court examined the scope of an arbitral tribunal's powers to condone procedural delays. The Court considered whether rigid adherence to timelines stipulated under arbitral rules could curtail the tribunal's authority to permit delayed filing of the Statement of Defence and counter-claims. Emphasizing that procedural rules are intended to facilitate, and not frustrate, the delivery of justice, the Court rejected a hyper-technical approach and affirmed the tribunal's discretion to condone delay where sufficient cause is shown.

The High Court observed as follows:

> ***"21. Arbitral Tribunal cannot be reduced to a powerless creature. Whenever it finds that any party was prevented by any sufficient cause, it has ample power to condone the delay in interest of justice, irrespective of the Rules in question which are, even otherwise, more of procedural nature. Need we emphasize, the rules of procedures are merely handmaidens of justice and cannot be permitted to govern and overpower the justice. Moreover, the procedural rules are meant to be interpreted liberally because any***

***narrow or rigid interpretation might render the entire arbitral process redundant."***

Accordingly, it was held that arbitral tribunals possess inherent discretion to condone delays in filing pleadings or counter-claims where sufficient cause is demonstrated, and that procedural timelines under arbitral rules must be applied in a liberal manner so as to advance, rather than obstruct, the ends of justice.

109. *NTPC LTD. V. STARCON INFRA PROJECTS INDIA (P) LTD., (2025 DHC 1572) DECIDED ON 07.03.2025 BY DELHI HIGH COURT*

**Issue: Whether an order allowing or rejecting an application under Section 23(3) of the Arbitration and Conciliation Act constitutes an interim award amenable to challenge under Section 34.**

The applicant made an application under section 23(3) to withdraw its large counter-claims, citing the clause limitation. The central legal point was whether the arbitrator's decision on this application (dismissing it or allowing it) was a mere procedural step or a more significant interim award challengeable under Section 34, to which the court held that:

***"...order dismissing an application under Section 23(3) of the Arbitration & Conciliation Act is only a procedural order and does not qualify as an 'interim award' amenable to challenge under Section 34 of the Arbitration & Conciliation Act...".***

The court observed that an order passed by the arbitrator in regards to an application made under section 23(3) is not an interim order and cannot be challenged under section 34. Further, for any order to be termed as an interim award, it must finally determine the rights of the parties and any order which does not give any imprimatur on the rights of the parties cannot be termed as an interim award.

Accordingly, the Delhi High Court clarified that an order passed on an application under Section 23(3) is purely procedural in nature and, since it does not finally determine any substantive rights of the parties, it cannot be treated as an interim award and is therefore not amenable to challenge under Section 34 of the Act.

**Key Trends:** Courts confirmed the arbitral tribunal's discretion in managing claims and defences, and reiterated that jurisdictional objections not raised in the statement of defence are thereafter permanently waived.

**SECTION 25 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**25. Default of a party. —** Unless otherwise agreed by the parties, where, without showing sufficient cause, —

a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant 3 and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.
c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

110. *MECWEL CONSTRUCTIONS PVT. LTD. VERSUS GE POWER SYSTEMS INDIA PVT. LTD., (2025 DHC 9326) DECIDED ON 14.10.2025 BY DELHI HIGH COURT*

**Issue: Whether an order terminating arbitral proceedings under Section 25(a) of the Arbitration and Conciliation Act constitutes an arbitral award amenable to challenge.**

The High Court of Delhi clarified the legal character of an order passed under Section 25(a) of the Arbitration and Conciliation Act, 1996. The Court held that such an order, which merely terminates arbitral proceedings due to the claimant's default in filing the statement of claim, is purely procedural in nature and does not amount to an arbitral award. Emphasizing the essential attributes of an award, the Court observed that for an order to qualify as an award under Section 32 (2), whether final or interim it must involve adjudication or determination of rights or obligations arising from the substantive dispute referred to arbitration. Since an order under Section 25(a) does not deal with the merits of the dispute or decide any issue forming part of the lies between the parties, it lacks the fundamental characteristics of an arbitral award and cannot be treated as such.

The Court held that:

> ***"the Award can only be considered to be an award once it adjudicates the rights of the parties. The order terminating the proceedings for non-filing of a statement of claim cannot be considered an award under Section 32(2)."***

Accordingly, the Delhi High Court held that an order terminating arbitral proceedings under Section 25(a) for default in filing the statement of claim is merely procedural, does not adjudicate any substantive rights, and therefore does not constitute an arbitral award amenable to challenge.

**Key Trends:** Courts held that fairness and adequate opportunity must precede any ex parte default proceedings, and that default does not relieve the tribunal of its obligation to examine the claim on merits.

# Chapter VI

## *Making of Arbitral Award and Termination of Proceedings*

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## CHAPTER VI – MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS

### SECTION 28 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**28. Rules applicable to substance of dispute. — (1)** Where the place of arbitration is situate in India, —

a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;
b) in international commercial arbitration, —
   i. the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;
   ii. any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;
   iii. failing any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

**(2)** The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

**(3)** While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.

111. *SEPCO ELECTRIC POWER CONSTRUCTION CORPN. V. KAMALANGA ENERGY LTD., (2025 INSC 1171) DECIDED ON 26.09.2025 BY THE SUPREME COURT OF INDIA*

**Issue 1: Whether the principle of party autonomy in choosing the law governing arbitral proceedings is absolute, or subject to compliance with the mandatory provisions of the law of the arbitral seat.**

In this case, the Hon'ble Supreme Court held that the principle of party autonomy to choose the law that governs the arbitration proceedings is not absolute. Their choices shall not conflict with the mandatory provisions in respect to the jurisdiction of the seat of the concerned arbitration. Any default in compliance of section 28(3) is to be considered as a Patent illegality.

> ***"...the principle of party autonomy does not vest absolutely. Although the parties have a great deal of discretion in choosing the governing law, their choices cannot conflict with the mandatory provisions in the jurisdiction of the seat of the concerned arbitration..."***
>
> ***"...direct omission of the mandate of Section 18 and Section 28 Sub-Section 3 of the 1996 Act is clearly patent through a skimming of Arbitral Award..."***

**Issue 2: Whether the Arbitral Tribunal could find an oral waiver or apply equitable estoppel to dispense with contractual notice requirements despite "No Waiver" and "No Oral Modification" clauses, and whether such a finding amounted to impermissible modification of the contract contrary to Section 28(3) of the 1996 Act.**

The Apex Court observed that the contractual terms do not allow waiver of notice for raising claims unless parties have agreed to it in written form. Thus arbitral tribunal had erred by re-interpreting contractual terms and departing from the agreed stipulations in violation of Section 28(3) of the Arbitration and Conciliation Act, 1996.

> ***"Numerous precedents laid down by this Court have often emphasized that an arbitrator lacks the power to deviate from or to reinterpret the terms of the contract while making an award. The awards must be within the parameters of the agreement entered between the parties."***

Accordingly, the Supreme Court held that while parties enjoy autonomy in choosing the governing law of arbitration, such autonomy is subject to the mandatory provisions of the law of the seat, and any departure from contractual stipulations—whether by implying waiver or applying equitable estoppel in the face of "no waiver" clauses amounts to impermissible modification of the contract and constitutes patent illegality under the Arbitration and Conciliation Act, 1996.

112. *SBI GENERAL INSURANCE COMPANY LTD. VS. SARAVANA GLOBAL ENERGY LTD., (2025 MHC 2936) DECIDED ON 18.12.2025 BY MADRAS HIGH COURT*

**Issue: Whether the arbitral tribunal, by departing from the express terms of the insurance policy and resorting to equity in the absence of authorisation, acted in violation of Sections 28(2) and 28(3) of the Arbitration and Conciliation Act, 1996, rendering the award patently illegal under Section 34(2A).**

In the instant case, the Madras High Court examined whether the arbitral tribunal had adhered to the mandatory statutory discipline governing adjudication of contractual disputes under the Arbitration and Conciliation Act, 1996. The challenge was premised on the allegation that the arbitral tribunal ignored the binding terms of the insurance policy and substituted them with equitable considerations, despite the absence of any express authorisation by the parties. The Court emphasised that Section 28(3) obliges the arbitral tribunal to decide disputes strictly in accordance with the terms of the contract, while Section 28(2) permits a decision based on equity or good conscience only where the parties have expressly conferred such power. Any deviation from these mandates would amount to patent illegality under Section 34(2A).

On scrutiny of the award, the Court found that the arbitral tribunal had repeatedly travelled beyond the policy terms. First, the tribunal permitted loss assessment on a part reinstatement value and part market value basis, despite the policy clearly mandating that, upon failure to complete reinstatement within the stipulated period, assessment could only be on a market value basis. Second, the tribunal adopted an interpretation of the term

"items" that fragmented the policy structure and resulted in an outcome wholly inconsistent with the contractual scheme. Third, and more fundamentally, while determining depreciation, the tribunal admittedly fixed the rate "to strike a balance" between competing figures, without any contractual or evidentiary foundation. This approach, in the Court's view, squarely amounted to an equitable determination prohibited by Section 28(2) in the absence of express consent. Finally, the tribunal awarded interest in disregard of binding IRDAI Regulations, thereby acting contrary to both the contract and statutory regime, in violation of Section 28(3).

The Court recorded, inter alia, the following findings:

> ***"The sole Arbitrator, without deciding the correct depreciation percentage to be applied by assigning proper reasons, eventually to strike a balance, fixed the depreciation value as 50 percent."***
>
> ***"The finding of the sole Arbitrator on the loss assessment-partly on RIV basis and partly on MV basis itself, is in violation of Section 28(2) of the Act and such a view is neither a possible view nor a plausible view and consequently suffers from perversity and patent illegality under Section 34(2A) of the Act."***
>
> ***"If the sole Arbitrator does not assign independent reasons while granting an award and acts in contravention of Section 28(2) of the Act, it will result in patent illegality, apart from the fact that it is in violation of Section 28(2) of the Act. While deciding the issue of depreciation, the sole Arbitrator has not assigned any reason and has indulged in the act of approximation to strike a balance and the same is clearly impermissible under the scheme of the Act. The third issue is answered accordingly."***

Accordingly, the Court held that the arbitral award was vitiated by patent illegality, having been rendered in breach of Sections 28(2) and 28(3) of the Act, and was therefore liable to be set aside under Section 34(2A). The award was consequently quashed in its entirety.

*ROGER SHASHOUA VS. MUKESH SHARMA., (2025 DHC 7560) DECIDED ON 01.09.2025 BY DELHI HIGH COURT*

**Issue: Whether the power of the arbitral tribunal under Section 28(2) of the Arbitration and Conciliation Act to decide disputes on equitable principles is mandatory or directory.**

In this case, the Hon'ble Supreme Court held that he court explained that even though section 28(2) provides that an Arbitral Tribunal shall decide 'ex aequo et bono' or as 'amiable compositeur' only if the parties have expressly authorised it to do so, there has been a shift in the approach towards ensuring that arbitral awards are not only legally sound but also commercially meaningful. Arbitral decision-making is increasingly expected to balance legal principles with commercial sensibilities, thereby reinforcing arbitration as an effective and realistic mechanism for dispute resolution. If arbitral tribunals cannot grant

effective relief, the same may even pose a threat to Arbitration being an effective Alternative Dispute Resolution Mechanism.

The Court Observed that:

> ***"...any recourse to equitable principles by the Arbitral Tribunal must remain within the framework of the agreement between the parties..."***
>
> ***"...the Arbitral Tribunal has the power to consider a dispute in accordance to what is fair and just, provided the parties to the agreement have expressly authorised it to do so and not otherwise..."***
>
> ***"...While the Tribunal continues to derive its authority from the arbitration agreement, there has been a growing recognition of the need for a more flexible approach in arbitral proceedings. This shift reflects a broader acceptance of equity and fairness in arbitral proceedings, so long as the Arbitral Tribunal does not stray from the legal framework of the A&C Act, 1996..."***

Accordingly, the Court held that while arbitral tribunals may adopt a more flexible and commercially sensitive approach, recourse to equity under Section 28(2) is not automatic and can be exercised only where the parties have expressly authorised such course, ensuring that fairness operates strictly within the boundaries of the arbitration agreement and the statutory framework.

114. *OIL AND NATURAL GAS CORPORATION LTD. VS. JSIW INFRASTRUCTURE PVT. LTD., (2025 DHC 4430-DB) DECIDED 27.05.2025 BY DELHI HIGH COURT*

**Issue: Whether internal aids of interpretation, such as prior correspondence, can be relied upon when the contractual clause is unambiguous.**

The Court found that Clause of the GCC was clear, unambiguous, and explicit regarding reimbursement of excise duty paid by the manufacturer for line pipes. Therefore, reliance on prior correspondence, as an internal aid of interpretation was impermissible under settled legal principles.

The arbitral awards were held to be patently illegal because they disregarded the explicit contract terms and relied improperly on prior correspondence to rewrite the contract's meaning. This approach amounted to manifest disregard of the contract and an impermissible re-interpretation of the terms.

The Hon'ble Delhi High Court observed that:

> ***"it is a settled position of law that the scope of Appeal under Section 37 of the Act is very limited and this Court cannot undertake an independent assessment of the evidence and merits of the award. The jurisdiction of this Court under Section 37 of the Act is circumscribed to only ascertaining whether the exercise of power***

***under Section 34 of the Act has been within the scope of the provision. The appeal under Section 37 of the Act cannot travel beyond the restrictions laid down under Section 34 of the Act. "Ignoring an explicit clause of the contract oracting contrary to the terms of the contract amounts to patent illegality".***

Accordingly, the Delhi High Court held that where contractual terms are clear and unambiguous, arbitral tribunals cannot resort to prior correspondence or internal aids to reinterpret or rewrite the contract, and that any award rendered in disregard of explicit contractual stipulations amounts to patent illegality warranting interference within the limited scope of Sections 34 and 37 of the Arbitration and Conciliation Act, 1996.

**Key Trends:** Courts confirmed that where parties have chosen a foreign substantive law, the tribunal must apply it faithfully, and addressed the role of equity clauses and trade usage in determining the applicable law in international arbitrations.

**SECTION 29A OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**29A. Time limit for arbitral award. — (1)** The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

**(4)** If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:
Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

**(5)** The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

**(6)** While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

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115. *MOHAN LAL FATEHPURIA VS. BHARAT TEXTILES., (2025 INSC 1409) DECIDED ON 10.12.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether the mandate of an arbitrator automatically terminates upon expiry of the statutory time limit under Section 29A, requiring substitution by the Court under Section 29A(6).**

The Hon'ble Supreme Court interpreted Section 29A(6), holding that an arbitrator's mandate automatically terminates under Section 29A(4) if they fail to pass an award within the statutory time limit of 18-month period. When no application for extension is made.Therefore, when an extension of time is granted by the Court after the mandate of thearbitrator is terminated, then the substitution of the arbitrator is mandatory underSection 29A(6) of the Arbitration and Conciliation Act, 1996.

It held the following:

> ***"... the fact remains that on expiry of initial period or extended period, the arbitrator cannot proceed with the arbitration proceeding and his mandate terminates, subject to an order which may be passed by the Court in a proceeding under Section 29A(4) of the Act..."***
>
> ***"...When mandate of arbitrator has expired, his continuation is impermissible. Section 29A(6) empowers and obligates the Court to substitute the Arbitrator..."***
>
> ***"...The substitution of a sole arbitrator is warranted, when his mandate ceases to exist, to effectuate the object of the Act, which mandates expeditious resolution of the dispute. In view of the statutory scheme and undisputed factual position, we are satisfied that the case warranted the exercise of jurisdiction under Section 29A(6) of the Act..."***

Accordingly, the Supreme Court held that once the statutory period under Section 29A expires without a valid extension, the arbitrator's mandate stands terminated by operation of law, and any subsequent extension of time necessarily requires the Court to substitute the arbitrator under Section 29A(6), as continuation of the same arbitrator is impermissible.

116. *RURAL INFRASTRUCTURE DEVELOPMENT PRIVATE LIMITED VS. THE LAND ACQUISITION OFFICER AND SUB - DIVISIONAL OFFICER, THANE AND ORS., (ARBITRATION PETITION NOS. 238 OF 2025, 239 OF 2025 AND 240 OF 2025), DECIDED ON 09.12.2025 BY BOMBAY HIGH COURT*

**Issue: Whether a court can substitute an arbitrator under Section 29A of the Arbitration and Conciliation Act, 1996, when the mandate of the Arbitral Tribunal has expired without an award being passed.**

In the instant case, the respondents contended that the provisions of the State Highways Act governed the arbitration and excluded the applicability of Section 29A.

Rejecting this contention, the Bombay High Court held that there was no conflict between the State Highways Act and the Arbitration Act insofar as the period of mandate of the arbitral tribunal was concerned. The Court observed that Section 29A of the Arbitration Act continued to apply and that the expiry of mandate would occur strictly in accordance with the timelines stipulated therein. It further clarified that, unlike substitution under Section 15 of the Act, substitution under Section 29A is not linked to the process of the original appointment of the arbitrator.

The Court emphasised that since the arbitral tribunal was not appointed by the High Court in the first instance, jurisdiction to entertain a petition under Section 29A lay with the principal civil court having jurisdiction over the juridical seat of arbitration, namely Navi Mumbai. The legislative intent behind Section 29A, read with the amendments to the State Highways Act introducing Sections 19B(8) and 19B(9), was to ensure expeditious resolution of compensation-related disputes through arbitration, and the power of substitution under Section 29A(6) squarely subserved this objective.

The High Court held that:

> ***"In the instant case, the Arbitral Tribunal that has failed to complete the arbitration within the statutory timeframe was not appointed by this Court. Therefore, clearly, the principal civil court having jurisdiction over the juridical seat of the arbitration i.e. over Navi Mumbai would have the jurisdiction to consider a Petition under Section 29A(4) and to substitute the arbitrator under Section 29A(6) of the Arbitration Act."***
>
> ***"(d) There is no conflict between the State Highways Act and the Arbitration Act in the matter of the period of mandate of the Arbitral Tribunal, and therefore the "subject to" provision in Section 19B(9) does not result in ouster of Section 29A of the Arbitration Act;***
>
> ***(e) The mandate of the Arbitral Tribunal would therefore expire in line with the timelines stipulated in Section 29A of the Arbitration Act;***
>
> ***(f) Unlike Section 15 of the Arbitration Act, the substitution under Section 29A of the Arbitration Act is not linked to the process of the original appointment, which is a reference consciously made by Parliament under Section 11 as well as Section 15(2) of the Arbitration Act, but has refrained from providing so under Section 29A of the Arbitration Act. Therefore, when the mandate of the Arbitral Tribunal expires, the arbitrator may indeed be substituted by the Court having jurisdiction under Section 29A of the Arbitration Act;***
>
> ***(g) The substitution under Section 29A of the Arbitration Act is well aligned with and subserves the conscious legislative policy choice made by amending the State Highways Act to introduce Section 19B(8) and Section 19B(9) to bring compensation-related disputes within the scope of expeditious resolution by way of arbitration;***
>
> ***(h) In the result, the power to substitute the Arbitral Tribunal by invoking the provisions of Section 29A(6) of the Arbitration Act remains intact in the "Court" with jurisdiction under Section 29A read with Section 2(1)(e) of the Arbitration Act."***

Accordingly, the Bombay High Court held that the court having jurisdiction over the seat of arbitration was empowered to substitute the arbitrator under Section 29A(6) upon expiry of the tribunal's mandate, and that such power was neither excluded nor curtailed by the State Highways Act.

117. *INDIABULLS INFRAESTATE LTD. VS. IMAGINE REALTY (P) LTD., (2025 BHC-OS 6783) DECIDED ON 23.04.2025 BY BOMBAY HIGH COURT*

**Issue: Whether the Court can substitute an arbitrator under Section 29A(6) of the Arbitration and Conciliation Act without the arbitrator becoming de jure or de facto ineligible under Sections 14 and 15.**

The High Court stated that Section 29A(6) does not confer unreasonable power upon the court to substitute an arbitrator. There must be a core reason for its substitution. It laid that:

> ***"The jurisdiction under Section 29-A of the Act is not one that would give me unbridled power to substitute an arbitrator lightly, without meeting the ingredients of Sections 14 and 15 of the Act. The learned Arbitral Tribunal ought to have become de jure or de facto ineligible to be an arbitrator…".***

It clarified that arbitrators cannot be terminated unless any of the conditions for the termination of its mandate provided under section 14 and section 15 of the Act, have been satisfied.

Accordingly, the Bombay High Court held that substitution of an arbitrator under Section 29A(6) is not automatic and can be ordered only when the conditions under Sections 14 or 15 are satisfied, reaffirming that courts cannot replace an arbitrator in the absence of de jure or de facto ineligibility.

118. *THE BOARD OF MAJOR PORT AUTHORITY VS. MARINECRAFT ENGINEERS PRIVATE LIMITED, (ARBITRATION PETITION COM NO. 296 OF 2024), DECIDED ON 13.06.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether the statutory timelines prescribed under the Arbitration and Conciliation Act, 1996, particularly Section 29-A, apply to arbitral proceedings conducted under the MSMED Act, 2006.**

In the instant case, the Calcutta High Court held that The principal challenge was founded on the contention that the award was a nullity owing to the alleged expiry of the mandate of the Micro and Small Enterprises Facilitation Council under Section 29-A of the 1996 Act and on alleged violation of principles of natural justice.

The Court rejected the challenge, holding that the arbitration conducted under the MSMED Act is a statutory arbitration emanating from Section 18 of the 2006 Act and not from the 1996 Act. It was emphasized that the MSMED Act is a special and beneficial legislation, and by virtue of the non obstante clause in Section 18, it would prevail over the general provisions of the 1996 Act in case of any conflict. The Court further held that the timeline under Section 18(5) of the MSMED Act is directory and not mandatory, and that Section 29-A of the 1996 Act has no application to arbitrations conducted under the MSMED framework.

The court also held that the Council did not violate natural justice as ample opportunity was given to the petitioner to present its case.

The Hon'ble Court observed as follows:

> ***"Bar under Section 29-A of the 1996 Act***
>
> ***21. This issue was dealt with at length in Porel Dass (supra), where it was held that the timeline stipulated under Section 29A of the 1996 Act are not applicable to an arbitral proceeding under the 2006 Act. Rather, the period stipulated under Section 18(5) of the 2006 Act is the relevant guiding factor. However, the latter period is directory and not mandatory.***
>
> ***22. It has to be noted here that the 2006 Act is a special statute insofar as MSME Enterprises are concerned and is a piece of beneficial legislation in aid of such units. The provisions of the Act, including the non obstante clause in Section 18 of the 2006, makes it abundantly clear that in case of conflict between two statutes, the 2006 Act would prevail.***
>
> ***23. The power of the Council to arbitrate disputes arising in respect of MSME units flows from Section 18 of the 2006 Act and not the 1996 Act. Sub- section (3) of Section 18 of the 2006 Act confers such power and enables the provisions of the 1996 Act to apply to such disputes. Thus, it has to be kept in mind that the arbitration contemplated under the 2006 Act emanates from the said statute (and not from the 1996 Act), and Section 18 the 2006 Act provides a complete eco-system of pre-arbitral conciliation, followed in case of failure of the same by arbitration.***
>
> ***24. A composite reading of Section 29A of the 1996 Act and Section 18 of the 2006 Act clearly shows that there is a direct conflict between the two provisions as to the respective timelines provided for completion of an arbitral proceeding under the two statutes.***
>
> ***... 29. The root of the power of the Council is in consonance with the object of the 2006 Act, which is the promotion and development and enhancing the competitiveness of MSME units, a part of which is early terminus to disputes relating to such units by alternative dispute resolution, first by conciliation and, if it fails, then followed by arbitration, by the Council or its designated arbitrator under the aegis of the 2006 Act itself."***

The Court further observed:

> ***"...It cannot be lost sight of that this Court, sitting in its jurisdiction under Section 34 of the 1996 Act, is not taking up a regular appeal or reassessing the evidence on record. The limited window within which the court can intervene has to be read on the anvil of the parameters set forth in Section 34 itself. I do not find any patent illegality or the violation of the fundamental policy of Indian Law and/or natural justice or for that matter any other provisions of the***

> ***1996 Act to justify interference under Section 34. As such, no case has been made out on merits of the case by the petitioner to interfere with the impugned award. In fact, the majority of the claims had been admitted by the petitioner itself in its several letters as well as submissions made before the Council itself. However, the Council took the pains of independently adjudicating on each of the said claims of the respondent on merits. The petitioner, by its several letters, agreed the settle the claim under all the heads in principle, although not on quantum, except the claims on the respondent on CENVAT and deduction on account of Kort Nozzle."***

Accordingly, it was held that once arbitral proceedings commence under Section 18(3) of the MSMED Act, the process cannot be reversed to reinitiate pre-arbitral conciliation, and that the statutory timelines under Section 29-A of the Arbitration and Conciliation Act, 1996 do not apply to such proceedings. The Court further held that no violation of natural justice was made out, as the petitioner was afforded adequate opportunity to present its case, and consequently, no interference with the arbitral award was warranted under Section 34.

119. *BOARD OF MAJOR PORT AUTHORITY FOR THE SYAMA PRASAD MUKHERJEE PORT VS. MARINECRAFT ENGINEERS (P) LTD., (A.P.-COM NO. 296 OF 2024) DECIDED ON 13.06.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether arbitral proceedings initiated under Section 18(3) of the MSME Act can be halted and reverted to conciliation, and whether the timelines under Section 29A of the Arbitration and Conciliation Act, 1996 apply to arbitration invoked under MSMED Act.**

In the instant case, the Hon'ble Calcutta High Court examined the statutory scheme governing dispute resolution under the Micro, Small and Medium Enterprises Development Act, 2006. The Court held that once arbitral proceedings are initiated under Section 18(3) of the MSME Act, the process cannot be reversed so as to reinitiate pre-arbitral conciliation.

The Court noted that in the present case, the MSME Facilitation Council itself did not revert the proceedings to conciliation. Instead, at the request of the petitioner, the Council merely explored additional avenues for mutual settlement alongside the ongoing arbitration. Upon failure of such efforts, the arbitration duly proceeded and culminated in a decision on merits.

The Court further examined the applicability of statutory timelines and held that the timelines prescribed under Section 29A of the Arbitration and Conciliation Act, 1996 are inapplicable to arbitral proceedings conducted under the MSME Act. The governing provision, the Court held, is Section 18(5) of the MSME Act, 2006, which prescribes a period of 90 days for resolution of disputes. The Court further observed as follows that:

> ***"once arbitral proceedings commenced under Section 18(3), the clock could not be set back by recommencing pre-arbitral conciliation...".***

> ***"...the timeline stipulated under Section 29A of the 1996 Act are not applicable to an arbitral proceeding under the 2006 Act. Rather, the period stipulated under Section 18(5) of the 2006 Act is the relevant guiding factor. However, the latter period is directory and not mandatory."***
>
> ***"...opposed to the timeline stipulated in Section 29A(1) of the 1996 Act, sub-section (5) of Section 18 of the 2006 Act independently stipulates a period of 90 days from the date of making the reference for the completion of the arbitral proceedings. On a proper reading of sub-section (5) of Section 18, it is seen that although the expression "shall" has been used, the provision is couched not in a negative way, debarring the Council from proceeding with the reference after the expiry of 90 days, in stark contradistinction with subsection (4) of Section 29A of the 1996 Act which stipulates that the mandate of the arbitrator itself terminates after the timeline stipulated in sub-Section (1) of Section 29A expires, unless the mandate is extended in terms of sub-Section (4) the said provision. As opposed thereto, Section 18 or, for that matter, any other provision of the 2006 Act, does not carry any sanction (such as termination of the mandate of the Council) or penalty for non-completion of the reference within the said period."***

Accordingly, the Court held that arbitral proceedings under the MSME Act, once commenced, cannot be rolled back to conciliation, and that delays beyond the 90-day period under Section 18(5) do not invalidate the proceedings or terminate the MSME Council's mandate.

120. *ROHAN BUILDERS (INDIA) PVT. LTD. VS. BERGER PAINTS INDIA LTD., IN (ARBITRATION PETITION (COM.) NO. 428 OF 2025) DECIDED ON 21.07.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether the Court can extend the mandate of Arbitrator multiple times if sufficient cause is shown under Section 29A(5) of the Arbitration and Conciliation Act.**

The court in the present case held that there is no prohibition under Section 29A(5) of the Arbitration and Conciliation Act, 1996 on extending the mandate of an arbitrator multiple times, provided sufficient cause is shown. Accordingly, the Court extended the arbitrator's mandate beyond the timeline earlier fixed by the Supreme Court. It was further held that the Court is not barred from granting such further extensions, even where the Supreme Court has prescribed a date for publication of the arbitral award, so long as sufficient cause is established.

> ***"The principle for extension of a mandate would be guided by the principle of showing sufficient cause for such extension and not by fixing a period of limitation in exercise of powers under Section 29A(4). When the legislature was conscious not to import any kind of period of limitation for filing an application for extension of the***

> ***mandate, the court should desist from prescribing a period within which the application for extension should be filed. The order of the Hon'ble Apex Court, if applied in the given context, clearly recognizes the principle of liberal interpretation of the provisions of Section 29A(4) to the extent that the Court was denuded of the power not only to prescribe a period of limitation to file an application under section 29A(4), but also of limiting the number of times the mandate can be extended. The legislature did not restrict the prayer for extension of mandate under section 29(4) only once. While the parties have been enabled to extend the mandate by consent, for a further period of six months, no such period has been prescribed under section 29A(4) for the court to extend the mandate. Even at a belated stage, if sufficient cause is shown for extension of the time within which the Arbitrator should make and publish the award, such application can be entertained."***

Accordingly, the Calcutta High Court reaffirmed that Section 29A permits repeated extensions of an arbitrator's mandate where sufficient cause is shown, and that courts retain the power to grant such extensions even beyond timelines earlier fixed by the Supreme Court since the statute neither prescribes a limitation period nor restricts the number of permissible extensions.

121. *SARVESH SECURITY SERVICES PVT. LTD. VS. INSTITUTE OF HUMAN BEHAVIOUR & ALLIED SCIENCES, (FAO (OS) (COMM) NO. 164 OF 2025) DECIDED ON 15.10.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitral award passed after expiry of the arbitrator's mandate, without any pending application for extension, is non est and unenforceable under the Arbitration and Conciliation Act, 1996.**

The Delhi High Court held that an award passed after expiry of the arbitrator's mandate is non-est and unforceable holding that the court has no power to extend the mandate post award if no application seeking extension of the mandate was pending before the award was passed. The court further observed that the award becomes operational only when it is written, signed and dated. Since all these actions occurred after the expiry of the mandate, the award was held to be invalid.

The Court observed that:

> ***"the award becomes enforceable/operational only when it is written, dated and signed by the arbitrator giving reasons on which it is based and the place of the Arbitration where it was made. All these acts were not done on or before 01.11.2024, but on 04.11.2024."***

Accordingly, the Delhi High Court held that an arbitral award rendered after the expiry of the arbitrator's mandate without any pending application for extension is a nullity in law,

and cannot be cured by a post-award extension, since the award becomes legally operative only upon being written, signed and dated within the subsisting mandate.

122. *CHENNAI METRO RAIL LIMITED VS. JOINT VENTURE M.S, TRANSTONNELSTROY - AFCONS JV AND OTHER, (A. NO. 1941 OF 2025), DECIDED ON 23.04.2025 BY MADRAS HIGH COURT*

**Issue: Whether the Court can extend the mandate of the Arbitral Tribunal under Section 29A of the Arbitration and Conciliation Act, 1996, when adjudication of the remaining claims is stalled due to pendency of related proceedings before the Supreme Court and the delay is not attributable to the Tribunal.**

In the instant case, the Madras High Court was concerned with an application seeking extension of the arbitral tribunal's mandate under Section 29A, in circumstances where only part of the claims had been adjudicated and the remaining claims could not proceed owing to the pendency of connected civil appeals before the Supreme Court. The applicant contended that the tribunal had already rendered an award on certain claims, but continuation of the remaining claims was effectively stalled due to objections raised by the respondent, who asserted that adjudication was dependent on the outcome of proceedings before the Supreme Court.

The Court noted that the arbitral tribunal had actively attempted to balance procedural efficiency with judicial propriety. It had explored the possibility of proceeding at least to the extent of recording evidence, but ultimately deferred further adjudication in view of persistent objections and the pendency of the related appeals. Importantly, the delay was neither occasioned by inaction nor by inefficiency on the part of the tribunal, but arose from external circumstances beyond its control.

Against this backdrop, the Court examined whether "sufficient cause" was made out for extension of the mandate. It held that where arbitral proceedings are stalled due to pendency of proceedings before a superior court, and where the tribunal has otherwise acted diligently, the statutory power under Section 29A can be exercised to prevent frustration of the arbitral process. The Court emphasised that the object of Section 29A is to ensure timely completion of arbitration, not to penalise tribunals or parties for delays attributable to bona fide legal impediments.

The Court observed as follows:

> ***"Considering the object of arbitration and to utilise time effectively until the outcome of the said Civil Appeals pending before the Hon'ble Supreme Court, the Arbitral Tribunal envisioned to continue with Claim No.8A proceedings... However, since the respondent is objecting even to the extent possible, the Arbitral Tribunal decided to continue with the adjudication after disposal of / direction in the Civil Appeals by the Hon'ble Supreme Court."***

> ***"This Court is of the considered view that sufficient cause has been shown by the applicant for seeking extension of time for the Arbitral Tribunal to pronounce the Arbitral Award."***

Accordingly, the High Court extended the mandate of the arbitral tribunal by a further period of twelve months, holding that delays occasioned by pendency of related proceedings before the Supreme Court, and not attributable to the tribunal, constitute sufficient cause under Section 29A for extension of time.

123. *M/S.POWERGEAR LIMITED, CHENNAI VS. M/S. ANU CONSULTANTS, HYDERABAD, (2025 MHC 332), DECIDED ON 05.02.2025 BY MADRAS HIGH COURT*

**Issue: Whether a party is barred from seeking a second or subsequent extension of the arbitral tribunal's mandate under Section 29A(5) of the Arbitration and Conciliation Act, 1996, after having already obtained an earlier extension, and what constitutes "sufficient cause" for granting such further extension.**

In the instant case, the Madras High Court was faced with an objection that once an extension of the arbitral tribunal's mandate had been granted under Section 29A, a subsequent application seeking further extension was impermissible in law. The respondent argued that Section 29A contemplates only a single extension and that permitting repeated applications would defeat the object of time-bound arbitration.

The Court rejected this restrictive reading of Section 29A. It held that the statutory scheme does not prescribe any numerical bar on the number of applications that may be filed for extension of the tribunal's mandate. Instead, the legislative focus is on whether "sufficient cause" exists for granting such extension. The Court reasoned that reading an implied prohibition into Section 29A would amount to judicial legislation and could lead to grave injustice, particularly in cases where delay is not attributable to the claimant or the tribunal.

On facts, the Court undertook a detailed examination of the procedural history and found that the arbitration had progressed substantially, with delays largely occasioned by the respondent's conduct, including non-participation, repeated objections, and initiation of collateral proceedings seeking recall of the earlier extension order. The arbitral tribunal, far from being inactive, had continued proceedings whenever possible and had proceeded with evidence and cross-examination once obstacles were cleared. In such circumstances, denying a further extension would result in termination of the tribunal's mandate despite the absence of any fault on its part.

The Court observed as follows:

> ***"As seen from Section 29A of the Act, there is no prohibition for this Court to entertain more than one application under Section 29A of the Act seeking extension of time for the arbitrator to pronounce arbitral award. The only criteria that has been specified is that the applicant will have to show sufficient cause for granting extension of time."***

> ***"A restrictive interpretation of Section 29A will cause disservice to the objects of introducing such a provision by the legislature... The only requirement for a party seeking extension of the Arbitrator's mandate is to show sufficient cause for filing such an application."***

Accordingly, the High Court held that a second or subsequent application under Section 29A(5) is maintainable, provided sufficient cause is demonstrated, and extended the mandate of the arbitral tribunal, reaffirming that Section 29A is a facilitative provision aimed at advancing, not stifling, the arbitral process.

124. *UNION OF INDIA VS. M/S VALECHA SHIVALAYA – INTERDRIL (JV), (ARB. A. NO. 03 OF 2024), DECIDED ON 08.05.2025 BY SIKKIM HIGH COURT*

**Issue: Whether the amended Section 29A of the Arbitration and Conciliation Act, 1996 applies retrospectively to arbitration proceedings that were pending on the date the 2019 Amendment came into force?**

In the instant case, the High Court of Sikkim was called upon to examine whether the arbitral award had been rightly set aside on the premise that the arbitrator had become 'functus officio' under Section 29A as it stood prior to the 2019 Amendment. The Commercial Court had proceeded on the footing that the unamended provision governed the proceedings and, consequently, that the award was rendered beyond the permissible time.

The appellate court, however, undertook a detailed examination of the statutory scheme post the 2019 Amendment and the nature of Section 29A, particularly in the context of arbitrations that were already pending when the amendment came into force. The Court noted that the arbitral proceedings were admittedly ongoing as on 30.08.2019 and that Section 29A primarily prescribes the procedure to be followed by the arbitral tribunal, without conferring substantive rights on either party. Placing reliance on authoritative precedents, including the approval accorded by the Supreme Court, the Court concluded that the amended provision, being procedural and remedial in nature, would apply to pending arbitrations and that the Commercial Court had erred in applying the pre-amendment regime.

The Court observed as follows:

> ***"Section 29-A(1) of the Arbitration Act is a procedure to be followed by the arbitral tribunal and does not confer any right or impose any obligation on the parties. It is also remedial in nature."***
>
> ***"It is held that since the 2019 Amendment which was brought into force on 30.08.2019, when the arbitration proceeding was pending, would govern the procedure and as such, the arbitral award was within the twelve months timeframe provided in section 29-A(1)."***

Accordingly, the High Court held that Section 29A as amended by the 2019 Amendment applies to arbitration proceedings that were pending on the date of its enforcement, and

that the arbitral award could not be invalidated by applying the pre-amendment timeline, the provision being procedural and remedial in character.

**Key Trends:** Courts applied the mandatory timeline strictly, holding that awards passed without jurisdiction after time expiry are void, and grappled with the retrospective applicability of Section 29A to pre-amendment proceedings.

**SECTION 30 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**30. Settlement. — (1)** It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

**(2)** If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

**(3)** An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

125. *EXCLUSIVE CAPITAL LTD. VS. CLOVER MEDIA PRIVATE LIMITED, (2025 DHC 6513) DECIDED ON 04.08.2025 BY DELHI HIGH COURT*

**Issue: Whether a pre-litigation mediation settlement under Section 12A of the Commercial Courts Act is enforceable as an arbitral award on agreed terms under Section 30 of the Arbitration and Conciliation Act.**

The Hon'ble Delhi High Court considered the legal status and enforceability of a pre-litigation mediation settlement under Section 12A of the Commercial Courts Act, read with Section 30(4) of the Arbitration and Conciliation Act, 1996. The Court held that such a settlement has the same status and effect as an arbitral award on agreed terms. The Court observed that once a settlement is successfully arrived at through pre-litigation mediation, it is no longer a mere private compromise but acquires statutory finality and enforceability, akin to an arbitral award. Consequently, such a settlement can be executed directly and does not require fresh adjudication or endorsement by a court.

Accordingly, the Delhi High Court affirmed that a settlement arrived at through pre-litigation mediation under Section 12A of the Commercial Courts Act enjoys the same legal status as an arbitral award on agreed terms under Section 30 of the Arbitration and Conciliation Act, and is therefore directly enforceable without the need for any further judicial confirmation.

**Key Trends:** Courts confirmed that where parties reach a settlement during arbitral proceedings, the tribunal is obliged to record it as a consent award, which carries the same finality and enforceability as a contested award.

**SECTION 31 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**31. Form and contents of arbitral award. — (1)** An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

**(3)** The arbitral award shall state the reasons upon which it is based, unless—

a) the parties have agreed that no reasons are to be given, or
b) the award is an arbitral award on agreed terms under section 30.

**(5)** After the arbitral award is made, a signed copy shall be delivered to each party.

**(7)**

a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

*Explanation.* — The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).

126. *INTERSTATE CONSTRUCTION VS. NATIONAL PROJECTS CONSTRUCTION CORPN. LTD., (2025 INSC 699) DECIDED ON 15.05.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 permits an arbitral tribunal to award interest for distinct sub-periods (pre-reference and pendente lite) within the overall span from the cause of action to the date of award.**

The Court held that the clause permits an arbitral tribunal to award interest "for the whole or any part of the period" from the cause of action to the award. Hence, subdividing that span into a pre-reference phase and a pendente lite phase with distinct rates and exclusions is statutorily sanctioned.

The court clarifies that arbitral tribunals may (i) segment the pre-award period for interest with different rates and exclusions, and (ii) award post-award interest on the aggregate of principal and accrued interest. It affirms modern jurisprudence overriding earlier constraints on "interest on interest," reinforcing party compensation within the framework of Section 31(7) of the 1996 Act without setting a new precedent beyond these interpretative clarifications.

The Hon'ble Supreme Court, gave an interpretation to clause (a) and (b) of section 31(7) of the act to prevent any ambiguity in future, laying down:

> ***"A careful and minute reading of this provision will make it clear that the arbitral tribunal has the discretion to include in the sum awarded***

***interest at such rate as it deems reasonable on the whole or any part of the money awarded for the whole or any part of the period from the date on which the cause of action arose till the date on which the award is made. We may exclude that part of the sentence 'on the whole or any part of the money' from our analysis since this is not relevant to the controversy. If we exclude this portion, what then becomes discernible is that the arbitral tribunal has the discretion to include in the sum awarded: firstly, interest at such rate as it deems reasonable; and secondly, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. This would mean that the arbitral tribunal can exclude a period from the date on which the cause of action arose till the date on which the award is made for the purpose of grant of interest, as has been done in the present case. It would also mean that the arbitral tribunal can grant interest for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. It can be a composite period or the said period can be further sub-divided, as done in the present case i.e. from the date of cause of action to filing of the claim and from the date of filing of the claim till the date of the award excluding the period when the appellant was found to be remiss. It would also mean that there can be one rate of interest for the whole period or one or more rates of interest for the sub-divided periods as has been done in the instant case. In our opinion, this would be the correct approach to interpret Section 31(7)(a), given the scheme of the 1996 Act."***

***"It has been held that the sum awarded would mean the principal amount plus the interest awarded from the date of cause of action up to the date of the award. The sum awarded in Section 31(7)(a) would mean principal amount plus the interest awarded. Thereafter, as per Section 31(7)(b) of the 1996 Act, the sum (principal amount + interest) would carry further interest at the rate of 2 per cent higher than the current rate of interest prevalent on the date of the award to the date of payment."***

Accordingly, the Supreme Court affirmed that Section 31(7)(a) empowers arbitral tribunals to segment the pre-award period and award interest for distinct sub-periods with differing rates or exclusions, while Section 31(7)(b) permits post-award interest on the aggregate of principal and accrued interest, thereby clarifying the statutory scheme without expanding it beyond its intended scope.

127. *M/S. MOTILAL AGARWALA VS. STATE OF WEST BENGAL & ANR. (CIVIL APPEAL NO. 4480 OF 2016) DECIDED ON 28.08.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether Service of an arbitral award on an unrelated government official does not constitute valid service on the State.**

The Supreme Court held that where the Government or one of its departments is a party to an arbitration, delivery of the arbitral award to an official who was neither connected with nor aware of the arbitral proceedings does not constitute valid service for the purpose of triggering the limitation period for filing a challenge to the award.

The Hon'ble Supreme Court observed that:

> ***"This Court has held that the award should be received in the context of huge organisations by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award as also to take a decision in the matter of moving appropriate applications."***
>
> ***"Applying the dictum in Tecco Trichy Engineers & Contractors (supra) a delivery to the Assistant Engineer who was not "a party to the arbitration" and who was not in a decision-making capacity to take further recourses on the award would not be a valid service of the award."***

Accordingly, the Supreme Court held that service of an arbitral award on a government official unconnected with the arbitral proceedings and lacking decision-making authority does not amount to valid delivery to the State, and such service cannot trigger the limitation period for challenging the award.

128. *FERRO CONCRETE CONSTRUCTION (INDIA) VS. STATE OF RAJASTHAN, (2025 INSC 429), DECIDED ON 02.04.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether a contractual clause barring payment of interest on arrears or balance amounts prevents an arbitrator from awarding pendente lite interest in the absence of an express prohibition.**

The Supreme Court held that a contractual bar on payment of interest on any arrears or balance does not prevent an arbitrator from awarding pendente lite interest with the arbitral award unless expressly stated in the contract.

In an arbitration proceeding arising out of a work contract between Ferro Concrete Construction and the Rajasthan Government, the arbitrator awarded 15 percent pendente lite interest to Ferro Concrete. A district court set aside the award of pendente lite interest, citing a clause in the contract that barred payment of interest on any arrears or balance. The Rajasthan High Court dismissed appeals against the district court's order.

The Supreme Court found that the contract did not expressly state that an arbitrator cannot grant pendente lite interest. It upheld the arbitrator's award. The Court relied on Union of India v Ambica Construction (2016) and Reliance Cellulose Products v ONGC (2018), which both held that arbitrators can grant pendente lite interest under the Arbitration Acts of 1940 and 1996 unless it was expressly barred by the court.

> ***"From the above extracted paragraphs, the decision of the 3- judge bench in the First Ambica case (supra) can be stated as follows. The arbitrator's power to grant interest would depend on the contractual***

***clause in each case, and whether it expressly takes away the arbitrator's power to grant pendente lite interest. This would have to be determined based on the phraseology of the agreement, clauses conferring powers relating to arbitration, the nature of claim and dispute referred to the arbitrator, and on what items the power to award interest is contractually barred and for which period. Further, a bar on award of interest for delayed payment would not be readily inferred as an express bar to the award of pendente lite interest by the arbitrator.***

***14. We find that the position of law laid down in paragraph 24 of Reliance Cellulose (supra) is in line with the position of law laid down in the First Ambica case. Both decisions emphasise the need for an express contractual bar on the payment of pendente lite interest to create a bar on the arbitrator from awarding interest. They also emphasise that a bar on the arbitrator's power would depend on the phraseology of the contractual clause in that case. In this light, Ms. Pathak's submission regarding the correctness of Reliance Cellulose (supra) ought to be rejected. We do not find any reason to unsettle the position of law, when it has been clearly enunciated and followed. It is not sufficient to lay down a precedent, but it is equally important to follow and apply them as well."***

Accordingly, the Supreme Court upheld the arbitrator's award of pendente lite interest, holding that in the absence of an express contractual prohibition, a clause merely barring interest on arrears or balance amounts does not restrict the arbitrator's power to grant pendente lite interest. The judgments of the District Court and the Rajasthan High Court were set aside.

129. *BPL LIMITED VS. MORGAN SECURITIES AND CREDITS PRIVATE LIMITED (2025 INSC 1380) DECIDED ON 04.12.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether contractually agreed interest rate is binding and whether the arbitrator can later alter it as exorbitant.**

The Supreme Court dismissed the appeals filed by BPL Limited and upheld the arbitral award enforcing interest at the rate of 36% per annum on the outstanding dues payable to Morgan Securities and Credits Private Limited. The Court held that a corporate entity, having voluntarily agreed to contractual terms, cannot subsequently assail those terms as being "unconscionable" merely because they operate harshly against it.

The Hon'ble Supreme Court observed that:

***"Once the parties by mutual consent agreed to a particular rate of interest to be charged and the same is included in the terms of the contract there is no escape thereafter. The party concerned would be bound by the rate of interest as prescribed in the agreement. The rate of interest once agreed and forms part of a written contract***

***between the parties the borrower after availing the finance cannot turn around and question the rate on the ground of being unconscionable or opposed to Public policy"***

Accordingly, the Supreme Court affirmed that a contractually agreed rate of interest is binding on the parties, and an arbitral tribunal cannot subsequently alter or dilute such rate on the ground that it is exorbitant or unconscionable, once the agreement has been voluntarily entered into and acted upon.

130. *M/S. INTERSTATE CONSTRUCTION VS. NATIONAL PROJECTS CONSTRUCTION CORPORATION LTD. (2025 INSC 699) DECIDED ON 15.05.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether Section 31(7)(a) of the Arbitration and Conciliation Act, 1996 permits an arbitral tribunal to award interest for distinct sub-periods (pre-reference and pendente lite) within the overall span from the cause of action to the date of award.**

The Court held that the clause permits an arbitral tribunal to award interest "for the whole or any part of the period" from the cause of action to the award. Hence, subdividing that span into a pre-reference phase and a pendente lite phase with distinct rates and exclusions is statutorily sanctioned. Relying on the discretionary language ("whole or any part"), the Court approved the tribunal's decision to deny interest from 1 January 2009 to 31 December 2016 due to the appellant's inaction.

The Hon'ble Supreme Court observed that:

***"A careful and minute reading of this provision will make it clear that the arbitral tribunal has the discretion to include in the sum awarded interest at such rate as it deems reasonable on the whole or any part of the money awarded for the whole or any part of the period from the date on which the cause of action arose till the date on which the award is made."***

***"the arbitral tribunal can exclude a period from the date on which the cause of action arose till the date on which the award is made for the purpose of grant of interest, as has been done in the present case. It would also mean that the arbitral tribunal can grant interest for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. It can be a composite period or the said period can be further sub-divided, as done in the present case i.e. from the date of cause of action to filing of the claim and from the date of filing of the claim till the date of the award excluding the period when the appellant was found to be remiss. It would also mean that there can be one rate of interest for the whole period or one or more rates of interest for the sub-divided periods as has been done in the instant case. In***

***our opinion, this would be the correct approach to interpret Section 31(7)(a), given the scheme of the 1996 Act."***

Accordingly, the Supreme Court affirmed that Section 31(7)(a) vests arbitral tribunals with discretion to segment the pre-award period and award or deny interest for distinct sub-periods based on the conduct of parties, and such calibrated exercise of discretion is fully consistent with the statutory scheme.

131. *ONGC LTD. VS. G & T BECKFIELD DRILLING SERVICES (P) LTD., (2025 INSC 1066) DECIDED ON 02.09.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether the clause restricting interest on delayed payments by itself bars the arbitral tribunal to award pendente lite interest under Sections 31(7)(a) of the Arbitration and Conciliation Act.**

Hon'ble Supreme Court held that under Section 31(7) of the Arbitration and Conciliation Act, 1996, an arbitral tribunal's power to grant pendente lite interest can be curtailed only by an express or necessarily implied contractual prohibition, and that a clause merely excluding interest on delayed or disputed payments by the employer does not amount to such a bar.

Clause 18.1, which stated that no interest would be payable by ONGC on delayed or disputed claims, was held to be limited in scope, did not refer to the arbitral tribunal, and lacked language wide enough to exclude pendente lite interest. Consequently, the tribunal acted within its statutory discretion in awarding pendente lite interest at 12% per annum, and since no contractual bar existed, the arbitral award, as affirmed by the High Court, was upheld.

The court held that:

***"However, if the agreement is silent on award of interest, the arbitral tribunal can award interest in terms of clause (a) of sub-section (7) of Section 316. As far as clause (b) of sub-section (7) of Section 31 is concerned, it deals with post-award interest. Prior to the 2015 amendment, clause (b) mandated payment of interest on the sum awarded at the rate of 18% per annum from the date of the award to the date of payment, unless the award directed otherwise. Interestingly, clause (b) is not subject to an agreement between the parties and, therefore, if the arbitral award is with regard to payment of money, it would carry interest at such rate as the arbitral award directs and if it is not so directed, it would carry statutorily prescribed rate of interest from the date of the award till the date of payment. In a nutshell, the arbitral tribunal has jurisdiction to award interest for three distinct periods, namely, pre-reference, pendente lite, and future i.e., post-award. Award of pre-reference and pendente-lite."***

Accordingly, the Supreme Court reaffirmed that an arbitral tribunal's statutory discretion to award pendente lite interest under Section 31(7)(a) can be excluded only by a clear and

express contractual prohibition, and that a clause merely denying interest on delayed or disputed payments by one party does not operate as such a bar. In the absence of any explicit or implied restriction, the tribunal was justified in granting pendente lite interest, and the arbitral award was therefore rightly sustained.

132. *HLV LTD. VS. PBSAMP PROJECTS (P) LTD., (2025 INSC 1148) DECIDED ON 24.09.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether an award specifying interest "until repayment" bars the award-holder from claiming additional or compound interest at the execution stage under Section 31(7) of the Arbitration and Conciliation Act.**

Hon'ble Supreme Court held that if an arbitral award specifies interest "until repayment", the award holder cannot later claim additional compound interest at the execution stage, as the award already covers the full period, overriding the general statutory provision for post-award interest under Section 31(7)(b) of the Arbitration Act.

Section 31(7)(b) of the Act provides for post-award interest at 18% from the date of the award until payment. However, if the arbitral award specifies a composite rate of interest, the award holder cannot claim additional 18% compound interest under this provision. In such cases, the interest is governed solely by the rate in the award, as Section 31(7)(b) applies "unless the award otherwise directs." In this case, the award expressly set interest at 21% until repayment, therefore the question of awarding post-award interest would not arise, the court said.

It laid down the following:

> ***"We have also noted that this Court had observed that the provision in Section 31(7) (a) of the 1996 Act begins with the expression 'unless otherwise agreed by the parties', thereby highlighting the legislative stance that the parties possess the autonomy to determine pre-award interest on the payment of money that may be awarded by the arbitral tribunal. However, no such discretion is available to the parties under Section 31 (7)(b) of the 1996 Act though such discretion is available to the arbitral tribunal."***
>
> ***"...power of the tribunal to award interest would operate if it is not otherwise agreed by the parties. If there is an agreement between the parties to the contrary, the arbitral tribunal would lose its discretion to award interest and will have to be guided by the agreement between the parties..."***
>
> ***"...It was held that in the absence of any provision for interest upon interest in the contract, arbitral tribunals do not have the power to award interest upon interest or compound interest either for the pre-award period or for the post-award period..."***
>
> ***"...The sum awarded would mean the principal amount plus the interest awarded from the date of cause of action up to the date of***

***the award. Thereafter, as per Section 31(7)(b) of the 1996 Act, the sum (principal plus interest) would carry interest @ 18% from the date of the award to the date of payment...”***

Accordingly, the Supreme Court clarified that where an arbitral award expressly stipulates a specific rate of interest payable “until repayment,” such direction constitutes a complete and final determination of interest liability, leaving no scope for the award-holder to invoke Section 31(7)(b) of the Arbitration and Conciliation Act to claim additional or compound post-award interest at the execution stage. In such cases, the statutory default provision yields to the express terms of the award, which alone govern the grant of interest.

133. *STATE OF U.P. AND 2 OTHERS VS. M/S SATISH CHANDRA SHIV HARE-BROTHERS, (2025 AHC 146428) DECIDED ON 25.08.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether post-award interest under Section 31(7)(b) follows as a statutory mandate in the absence of any interest rate fixed by the arbitral tribunal.**

In the present case, the Allahabad High Court was required to consider whether, where an arbitral tribunal has not fixed any rate of post-award interest, the executing court is bound to apply the statutory rate prescribed under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996. The petitioners contended that since the arbitral tribunal had awarded interest only for a specific pre-award period and had rejected the claim for post-award interest, no further interest could be imposed at the execution stage.

The Court rejected this submission and held that Section 31(7)(b) operates by way of a statutory mandate. It clarified that while the arbitral tribunal has discretion to determine the rate of post-award interest, the accrual of post-award interest itself follows automatically unless the award expressly directs otherwise. In the absence of any rate being fixed by the tribunal, the statutory rate prescribed under Section 31(7)(b) would apply, and the executing court would be justified in enforcing the award accordingly.

The Court relied on and adopted the reasoning articulated in recent precedent, observing as follows:

***"..the interpretation of Clause (b) of Section 31(7) of the Act is no more res-integra. The grant of post-award interest under Section 31(7)(b) is mandatory. The only discretion which the Arbitral Tribunal has is to decide the rate of interest to be awarded. Where the Arbitrator does not fix any rate of interest, then statutory rate, as provided in Section 31(7)(b), shall apply...”***

***"Section 31(7)(b) of the Act specifically states that the Arbitral award shall carry an interest unless the award otherwise directs.”***

The Court further held that the executing court, while enforcing the award under Section 36, was competent to give full effect to this statutory consequence:

***"The Tribunal's determination of interest for 2000 to 2007 did not foreclose the statutory entitlement to interest for the balance***

***period; the executing court correctly calculated interest for the period 17.12.2010 to 17.12.2022 at 18% p.a., and ordered recovery thereof."***

Accordingly, it was held that post-award interest under Section 31(7)(b) follows as a matter of statutory mandate in cases where the arbitral tribunal has not fixed any rate of post-award interest, and the executing court commits no illegality in applying the statutory rate while enforcing the award.

134. *UNION OF INDIA VS. FORWARD AGENCIES, (2025 BHC-AUG 17824), DECIDED ON 04.07.2025 BY BOMBAY HIGH COURT*

**Issue: Whether claim for loss of profit based on conjecture is legally tenable.**

The High Court of Bombay addressed the dispute between Union of India and Forward Agencies regarding an arbitration award for a contract related to railway track work. The core issue was whether the arbitrator erred in awarding pre-reference and pendente lite interest and compensation for unexecuted work.

The Court Held that:

***"8. The second component of compensation on which the appellant has raised an objection pertains to loss of profit on the unexecuted quantity of work. The learned arbitrator has held that the total contract value was Rs. 15,16,907.32/- out of which the respondent - contractor has executed work to the extent of Rs. 4,85,124.89/-. The learned arbitrator has held that the respondent - contractor is entitled to 10% amount towards the loss of profit on the unexecuted quantity of work. However, since the respondent - claimant had claimed Rs. 96,691/- only under this Act the said amount is awarded. Perusal of the award will demonstrate that the learned arbitrator has held that the contract was terminated by the appellant unlawfully. However, there is no reason mentioned for arriving at such conclusion. The learned arbitrator has also not considered the letter dated 24.05.1994 issued by the contractor making a request to stop the work on 'as is where is basis'. It will also be pertinent to mention that even after issuance of letter dated 24.05.1994 issued by the respondent - contractor calling upon the appellant to stop the work as also the 'No Claim Certificate' dated 23.09.1994, the appellant had issued letter dated 01.12.1995 calling upon the respondent to execute the balance work. There is no material on record to explain the reason why the respondent did not complete the work thereafter. The findings recorded by the learned arbitral tribunal are not based on any material and therefore, the foundation of such finding is only based on conjectures. The findings and observations by the learned arbitrator with respect to termination of contract, to say the least are perverse."***

Accordingly, the court found that the arbitrator wrongly awarded interest contrary to Section 31(7)(a) of the Arbitration and Conciliation Act, 1996, and that the claim for loss of profit was based on conjecture. Consequently, the court quashed the award for interest and loss of profit, partially allowing the appeal, and ordered the return of the deposited amount to the appellant.

135. *DAULAT SHETKARI SAHAKARI SAKHAR KARKHANA LTD. VS. THE STATE OF MAHARASHTRA AND ORS., (2025 BHC-AS 1321) DECIDED ON 13.01.2025 BY BOMBAY HIGH COURT*

**Issue: Determination of whether the deposit of auction proceeds in this Court amounts to payment in discharge of debt relieving the Petitioner from the liability of interest payment at contractual rate from the date of deposit.**

The Hon'ble Bombay High Court interpreted the word "Payment" mentioned under section 31(7)(b), stating that it shall mean "Extinguishment of liability". The Hon'ble Court held that:

***"...in context of Section 31(7)(b) of Arbitration and Conciliation Act, 1996, the expression "payment" occurring in sub- clause (b) of Section 31 of the Arbitration Act would mean the extinguishment of liability arising out of award and signifies the satisfaction of the award as the deposit of the award amount in the Court is nothing but payment to the credit of the decree-holder. The Apex Court was considering whether the deposit of the amount in the Court can be equated with the date of the payment. Pertinently, the Apex Court has held that the word "payment" may have different meaning in different context, however, in the context of Section 37 of the Arbitration Act, the Apex Court held the same to mean extinguishment of liability. In facts of that case, the amount was deposited in the Court in satisfaction of the award amount and therefore, the Apex Court held that the same amounts to "payment" as envisaged under Section 31(7)(b) of the Arbitration Act."***

136. *HEALTH CARE, MEDICAL & GENERAL STORES VS. AMULYA INVESTMENT, (2025 BHC-OS 616-DB) DECIDED ON 15.01.2025 BY BOMBAY HIGH COURT*

**Issue: Whether serving the signed copy of the arbitral award under Section 31(5) of the Arbitration and Conciliation Act, 1996, to the employee of the concerned party constitutes a valid service**

Section 31(5) of the act requires that after the arbitral award is made, a signed copy shall be delivered to each party. "Party" under Section 31 (5) means the party itself and not an agent/advocate. Under this case, the Bombay High Court discussed the mandatory nature of this sub-section and decided upon whether serving the copy of the award to an employee will be considered a valid service, declaring it to be improper. The court held that:

> ***"...The said provision is held to be mandatory in nature and it is only after compliance of this requirement that the period of limitation for challenging the award would commence. In our view, the acknowledgments signed by Mr Shivaji Govind Botekar stated to be an employee of the partnership firm would not amount to service of the arbitral award on the parties to the arbitration proceedings as required under the Act of 1996..."***

Accordingly, the Bombay High Court held that service of a signed arbitral award on an employee does not satisfy the mandatory requirement of delivery to the "party" under Section 31(5), and until such proper service is effected, the limitation period for challenging the award does not commence.

137. *BWL LIMITED. VS. BHARAT SANCHAR NIGAM LTD., (2025 DHC 10174) DECIDED ON 19.11.2025 BY DELHI HIGH COURT*

**Issue: Whether post-award interest under Section 31(7)(b) of the Arbitration and Conciliation Act is to be calculated on the principal amount as well as on the lump sum awarded as pendente lite interest, or only on the principal amount.**

The Court held that post-award interest in the present case was payable only on the principal amounts specifically identified by the Division Bench and not on the lump-sum amount awarded towards pendente lite interest. While Section 31(7)(a) empowers an arbitral tribunal to include pre-award interest in the "sum" for which the award is made and Section 31(7)(b) mandates post-award interest on such sum unless otherwise directed, the Court found that the Division Bench had consciously awarded pendente lite interest as a separate lump sum and had expressly confined post-award interest to the two principal amounts, to run from a specified date. The Supreme Court, when approached earlier, merely expanded the period for which statutory interest was payable and did not disturb the Division Bench's express directions on the heads or components on which post-award interest would run. Consequently, applying the principle in Hyder Consulting, the Court concluded that the lump-sum pendente lite interest did not form part of the "sum directed to be paid" for the purposes of Section 31(7)(b) and therefore did not carry post-award interest beyond what was expressly ordered.

It was held that:

> ***"... under section 31(7)(a) of the act, it is the discretion of the Arbitral Tribunal to 'include in the sum for which the award is made interest, at such rate as it deems reasonable'. In the present case, while modifying the Award, since pendente lite interest was specifically not added to the principal sum on which post-award interest was directed to be paid by the Division Bench, it cannot be included in the 'sum directed to be paid by an arbitral award' as provided under Section 31(7)(b) of the Act."***

Accordingly, the Delhi High Court held that post-award interest under Section 31(7)(b) was payable only on the principal sums expressly identified in the award, and not on the lump-

sum pendente lite interest, since the latter was consciously kept outside the "sum directed to be paid" for the purpose of attracting post-award interest.

138. *M.A. ZAHID VS. JINDAL SAW LTD., (2025 DHC 6380), DECIDED ON 04.08.2025 BY DELHI HIGH COURT*

**Issue: Whether a court can interfere with the rate of post-award interest granted by an arbitral tribunal under Section 31(7), in the absence of an express contractual bar.**

In the instant case, the Delhi High Court examined whether the post-award interest granted by the arbitral tribunal at the rate of 12% for the initial period of 90 days and 16% thereafter was excessive and warranted judicial interference. The Court declined to interfere with the award, holding that the arbitral tribunal enjoys wide discretion under Section 31(7) to grant interest, including post-award interest, in the absence of any express contractual prohibition. It was noted that the arbitrator had assigned cogent reasons for awarding interest, including the petitioner's admitted liability and the financial prejudice suffered by the respondent.

The court made the following observation while upholding the arbitrator's decision:

> ***"22. It is a settled law that in the absence of an express bar in the contract between the parties, it is the Arbitrator who enjoys absolute discretion and has the jurisdiction to award interest including post-award interest. [Ref.: State of Rajasthan and Another v. Ferro Concrete Construction Private Limited, (2009) 12 SCC 1; and Indian Railway Construction Company Limited v. National Buildings Construction Corporation Limited, (2023) 7 SCC 390]. Clearly, the Deed of Settlement contains no express bar regarding interest and it was thus open to the Arbitrator to award the interest. Once interest is awarded by the Arbitrator, Section 37(1)(b) comes into play where the phrase 'unless the award otherwise directs', qualifies the rate of post-award interest, which means that once the award grants interest, award-debtor cannot claim any other rate of interest, save and except, where the rate of interest is so excessive or unreasonable that it shocks the conscience of the Court, which is not the case here."***

Accordingly, it was held that courts ought not to interfere with the rate of post-award interest awarded by an arbitral tribunal under Section 31(7) unless the rate is so excessive or unconscionable as to shock the conscience of the court, and in the absence of any express contractual bar, the arbitrator's discretion in this regard deserves deference.

139. *KIRAN SURAN VS. SATISH KUMAR, (2025 DHC 2365 DB) DECIDED ON 07.04.2025 BY DELHI HIGH COURT*

**Issue: Whether Delivering Arbitral Award to Power of Attorney Holder satisfies Requirement of 'Delivery' under Section 31(5) of the Arbitration and Conciliation Act, 1996.**

The Court examined the facts: after the death of the original claimant, the appellant's mother applied for substitution and was allowed; the mother thereafter represented the appellant in the arbitral proceedings. There was no contest that the mother received a signed copy of the award. The Court held that delivery of the signed award to a person who was representing the party in the arbitration (the Power of Attorney holder) constituted delivery to the party and complied with Section 31(5). The Court relied on Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel & Ors., (2018) 15 SCC 178 to support that service on the representative is due service. The Hon'ble Delhi High Court observed that:

> ***"Section 31(5) of the A&C Act requires the Arbitral Tribunal to deliver a signed copy of the Award to the party, however, if from the facts it is apparent that the party has a copy of the Award delivered through her Power of Attorney, further proof of such delivery need not be insisted upon. The delivery of a copy of the Award to the Power of Attorney holder, who has also represented the party in the arbitral proceedings, shall be a due compliance with Section 31(5) of the A&C Act"***

Accordingly, the Delhi High Court held that delivery of a signed arbitral award to a duly authorised Power of Attorney holder who represented the party in the arbitral proceedings constitutes valid delivery under Section 31(5), thereby triggering the limitation period for challenging the award.

140. *UNION OF INDIA & ANR. VS. SUDHIR TYAGI (2025 DHC 2621) DECIDED ON 17.04.2025 BY DELHI HIGH COURT*

**Issue: Whether Grant of Post-Award Interest under Section 31(7)(B) of the Arbitration and Conciliation Act, 1996 is mandatory or the arbitrator's discretion is limited to the Rate of Interest.**

The Court held that the grant of post-award interest under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 is mandatory. The only discretion which the Arbitral Tribunal has is to decide the rate of interest to be awarded. Where the Arbitrator does not fix any rate of interest, then statutory rate, as provided in Section 31(7)(b), shall apply.

It noted that the section consists of two distinct parts: Clause (a) addresses pre-award interest: the arbitral tribunal may include interest at such rate as it deems reasonable on the whole or any part of the money for the period between cause of action and the date of the award; this clause is subject to party agreement. Clause (b) deals with post-award interest: a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at 18% per annum from the date of the award to the date of

payment. The court explained the legislative intent behind the two clauses: pre-award interest compensates the claimant for loss suffered prior to the award and incentivizes expedition of arbitral proceedings; post-award interest discourages delay in making payments after the award.

The Hon'ble Delhi High Court held that:

> ***"the interpretation of Clause (b) of Section 31(7) of the Act is no more reintegrate. The grant of post-award interest under Section 31(7)(b) is mandatory. The only discretion which the Arbitral Tribunal has is to decide the rate of interest to be awarded. Where the Arbitrator does not fix any rate of interest, then statutory rate, as provided in Section 31(7)(b), shall apply"***

Accordingly, the Delhi High Court clarified that post-award interest under Section 31(7)(b) is mandatory, and the arbitral tribunal's discretion is confined solely to determining the rate; in the absence of any such determination, the statutory rate prescribed by the Act shall automatically apply.

141. *APTEC ADVANCED PROTECTIVE TECHNOLOGIES AG VS. UNION OF INDIA (2025 DHC 111-DB) DECIDED ON 13.01.2025 BY DELHI HIGH COURT*

**Issue: Whether Arbitrator's Order Determining Substantive Rights of Parties Constitutes "Award" amenable to challenge under Section 34 of Arbitration and Conciliation Act, 1996.**

The Court held that any order passed by an arbitral tribunal during the pendency of arbitral proceedings which conclusively determines substantive rights of the parties constitutes an interim arbitral award and is amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996. Noting that the Act does not define the expression "interim award," the Court relied on the Supreme Court's decision in IFFCO Ltd. v. Bhadra Products, which clarified that an arbitral tribunal is empowered under Section 31(6) to make an interim award on any "matter" on which it may ultimately render a final award, the term "matter" encompassing any point of dispute requiring adjudication. The Supreme Court had further held that while arbitral proceedings culminate in a final award, the tribunal may render one or more interim awards prior thereto, each of which finally and conclusively decides specific issues between the parties and is therefore subject to challenge under Section 34.

The Hon'ble Delhi High Court held that

> ***"...Though these findings are given in answer to the applications filed by the appellant seeking discovery of documents, they are substantial and final findings on facts determining a dispute and substantive rights of the parties. The decision dated 18.11.2010 of the learned Sole Arbitrator, therefore, on merits disposes of a substantive claim of the appellant and would, therefore, applying the above-extracted principle of law, amount to an interim Arbitral Award on the said issue."***

Accordingly, the Delhi High Court held that any order of an arbitral tribunal which conclusively determines substantive rights of the parties amounts to an interim arbitral award under Section 31(6) and is amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

142. *C.I.S.C.-S.R.S.C. (JOINT VENTURE) VS. CENTRAL COALFIELDS LIMITED, (2025 JHHC 12307-DB), DECIDED ON 25.04.2025 BY JHARKHAND HIGH COURT*

**Issue: Whether in exercise of the jurisdiction conferred on this Court under Article 227 of the Constitution of India, the judgment passed by the Commercial Court, Ranchi with regard to award of interest is liable to be set aside or not?**

In the instant case, the Jharkhand High Court examined the limits of its supervisory jurisdiction under Article 227 of the Constitution while considering a challenge to an order passed by the Commercial Court in execution proceedings relating to computation of interest awarded under an arbitral award. The petitioner contended that the Commercial Court had travelled beyond the arbitral award by applying the provisions of the Interest Act, 1978 and had thereby committed a jurisdictional error warranting interference.

The Court noted that the arbitral award had expressly dealt with the question of interest by directing payment of "interest at prevalent rates" from the date the claim became due till payment. It observed that where the arbitrator has exercised discretion and issued a specific direction on interest, the executing court is bound to give effect to such direction and the statutory default rate under Section 31(7)(b) would apply only in the absence of any direction in the award. The Court further reiterated that Article 227 does not confer appellate powers and cannot be invoked merely because another interpretation is possible.

The Court observed as follows:

> ***"Since the Award in para 25 did mention about the interest awarded to the petitioner, petitioner cannot claim 18% interest awarded, because the Award directs otherwise, and can only get what the Award decrees."***
>
> ***"Only if there was no direction in the arbitral award regarding the rate of interest would the petitioner be entitled to the rate at the rate of 18% per cent per annum."***
>
> ***"We agree with the Commercial Court when it interpreted the words 'prevalent rate of interest' as 'current rate of interest', since it is a probable view. It cannot therefore be said that the said view is a perverse view."***
>
> ***"In the facts and circumstances of the instant case, we are satisfied that the view taken by the Commercial Court is a possible view which cannot be said to be perverse or falling within the scope of interference by this Court under Article 227 of the Constitution of India."***

Accordingly, the Court held that no case for supervisory interference was made out, as the Commercial Court had adopted a plausible and legally sustainable interpretation of the arbitral award. The judgment under challenge did not suffer from perversity or jurisdictional error, and therefore did not warrant interference under Article 227 of the Constitution of India.

**Key Trends:** Post-award interest under Section 31(7)(b) was consistently held mandatory, with the tribunal's discretion confined to the rate alone, and the statutory 18% applying where no rate is specified. Pendente lite interest requires an express contractual bar to be excluded, as a clause merely restricting interest on delayed payments is insufficient. A composite interest rate specified in the award displaces Section 31(7)(b) entirely. On delivery, service on an employee was held invalid while service on a duly authorised Power of Attorney holder was held valid.

**SECTION 31A OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**31A. Regime for costs. — (1)** In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure,1908 (5 of 1908), shall have the discretion to determine—

a) whether costs are payable by one party to another;
b) the amount of such costs; and
c) when such costs are to be paid.

**(2)** If the Court or arbitral tribunal decides to make an order as to payment of costs, —

a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

**(3)** In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—

a) the conduct of all the parties;
b) whether a party has succeeded partly in the case;
c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings; and
d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

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143. *INDIA MEDIA SERVICES PRIVATE LIMITED VS. SBPL INFRASTRUCTURE LIMITED, (2025 CHC OS 198) DECIDED ON 24.09.2025 BY CALCUTTA HIGH COURT*

**Issue: Determination of what is the Scope of Arbitral Discretion in Awarding Costs under Section 31A of the Arbitration and Conciliation Act, 1996**

In interpreting Section 31A, the Court held that while the arbitral tribunal enjoys discretion in determining costs, such discretion must be exercised judicially, on the basis of evidence and reasons, and ordinarily in favour of the successful party. The Court cautioned that fixation of costs in an extravagant or exorbitant manner, without proper reasoning, may amount to misconduct and can constitute a valid ground for setting aside the award. The arbitrator is therefore duty-bound to record reasons justifying the quantum and allocation of costs. The Hon'ble Calcutta High Court observed:

> ***"The calculating of costs may be done with discretion vested in the Arbitrator, to be exercised judicially and based on evidence. Cost should be awarded in favour the successful party and if the costs are fixed in an extravagant or exorbitant manner, that may amount to misconduct sufficient for setting aside the award. Arbitrator should record his reasons for the same."***

Accordingly, the Calcutta High Court held that while arbitral tribunals have discretion to award costs under Section 31A, such discretion must be exercised judiciously, supported

by reasons and evidence, and ordinarily in favour of the successful party, failing which the award on costs may be liable to be set aside.

144. *LLOYDS ENGINEERING WORKS LTD. VS. TRANSPARENT ENERGY SYSTEMS PRIVATE LTD., (2025 BHC-OS 24964), DECIDED ON 10.12.2025 BY BOMBAY HIGH COURT*

**Issue: Whether the arbitral tribunal's award of costs, without due regard to the principles and limitations prescribed under Section 31A of the Arbitration and Conciliation Act, 1996, warranted modification by the Court in exercise of jurisdiction under Section 34.**

In the present case, the Bombay High Court was required to examine the scope of judicial interference with an arbitral tribunal's award of costs under Section 31A of the Arbitration and Conciliation Act, 1996. While reaffirming that the determination of costs lies primarily within the discretion of the arbitral tribunal, the Court underscored that such discretion is neither unfettered nor immune from scrutiny. Section 31A introduces a structured regime for costs, mandating adherence to the "costs follow the event" principle, subject to reasons being recorded and due consideration of the factors enumerated under sub-section (3). The Court therefore examined whether the arbitral tribunal had exercised this discretion in conformity with the statutory framework.

On scrutiny of the award, the Court noted that although the arbitral tribunal was correct in proceeding under Section 31A, the quantum of costs awarded required closer examination. The Court observed that the tribunal was statutorily obliged not only to apply the general rule under Section 31A(2)(a) but also to demonstrate consideration of the relevant circumstances under Section 31A(3), coupled with a reasoned justification as mandated by Section 31(3). Where such an exercise results in an award of costs that is disproportionate or inadequately reasoned, the Court held that limited interference is permissible, including modification of the costs component, without disturbing the remainder of the award.

In this context, the Court observed as follows:

> ***"The Arbitral Tribunal is required to fix costs of Arbitration in accordance with Section 31A of the Arbitration Act. The general rule under Section 31A(2)(a) of the Arbitration Act is that unsuccessful party needs to be ordered to pay costs of successful party. However, the Court or Arbitral Tribunal can make a different order for reasons to be recorded in writing. In determining the costs, the Arbitral Tribunal needs to have regard to all circumstances enumerated in sub-section (3) of Section 31A of the Arbitration Act which are not exhaustive in nature. Section 31(3) of the Arbitration Act mandates that Arbitral Tribunal must state the reasons upon which it is based."***

Accordingly, the Court held that while the award of costs per se did not suffer from patent illegality, the quantum awarded was liable to be modified to bring it in line with the statutory discipline under Section 31A. Exercising its power of severance, the Court reduced the costs to a reasonable figure while upholding the remainder of the arbitral award,

thereby reaffirming that judicial intervention under Section 34, though limited, extends to correcting disproportionate or insufficiently reasoned awards of costs.

**Key Trends:** Courts confirmed that costs fall within the tribunal's broad discretion and include arbitrator's fees. Non-payment of such fees was held a valid ground for the tribunal to terminate proceedings.

**SECTION 32 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**32. Termination of proceedings. — (1)** The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

**(2)** The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,
b) the parties agree on the termination of the proceedings, or
c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

**(3)** Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

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145. *M/S TIRVEN STEELS LTD. VS. M/S IVREL ASSETS AND HOLDING LIMITED, (O.P.NO.528 OF 2020 AND A.NOS.2874 & 3801 OF 2021), DECIDED ON 18.09.2025 BY MADRAS HIGH COURT*

**Issue: Whether an order passed by an arbitral tribunal terminating arbitral proceedings, in circumstances where insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 have intervened, is amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Madras High Court was confronted with a challenge to an order passed by the Sole Arbitrator terminating the arbitral proceedings, which was initially assailed under Section 34 of the Act. The Court examined the true nature of the impugned order and the maintainability of the challenge, particularly in light of subsequent developments including initiation of CIRP against the respondent company and appointment of a Liquidator. The Court noted that the impugned order was not an arbitral award deciding the merits of the dispute, but an order terminating the proceedings owing to multiple intervening factors, including proceedings before the NCLT.

The Court further considered the effect of the insolvency proceedings on the continuation of arbitration and the practical utility of reviving arbitral proceedings at a stage when the corporate debtor was already under liquidation. Emphasis was placed on the fact that even if arbitration were to recommence and culminate in an award, enforcement and further remedies would remain uncertain in view of the IBC framework. The Court therefore balanced the procedural correctness of the arbitral termination against the realities imposed by insolvency law, ultimately declining to revive the arbitration and instead moulding relief to protect the petitioner's substantive rights.

The Court observed as follows:

> ***"In the considered view of this Court, in light of the stand that has now been taken by the Liquidator, even if this Court permits the arbitration proceedings to continue and an award is also passed in***

***favour of the petitioner, it is not certain as to what subsequent remedy can the petitioner seek even after obtaining the award. In this situation, it may even be a wasteful exercise for the petitioner to go before the Arbitrator and start the proceedings all over again."***

Accordingly, the Court disposed of the petition by granting liberty to the petitioner to submit its claim before the Liquidator, holding that such claim could be considered on its own merits in accordance with law under the IBC regime. The Court thus declined to interfere with the arbitral termination order under Section 34, while ensuring that the petitioner was not left remediless in the insolvency process.

**Key Trends:** Courts recognised an interplay with the IBC, noting that where a corporate debtor is in liquidation, revival of terminated arbitral proceedings may be declined, with courts moulding relief to protect substantive rights instead.

**SECTION 33 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**33. Correction and interpretation of award; additional award. — (1)** Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

**(3)** The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

**(4)** Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

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146. *GEOJIT FINANCIAL SERVICES LTD. VS. SANDEEP GURAV, (2025 INSC 1021) DECIDED ON 19.08.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Interplay Between Sections 33 and 34 - Commencement of Limitation for Setting Aside Arbitral Award**

The Supreme Court examined the interplay between Sections 33 and 34 of the Arbitration and Conciliation Act, 1996, particularly in relation to the commencement of limitation for filing a challenge to an arbitral award. The Court held that once a request under Section 33 is made, the limitation period under Section 34(3) does not begin to run until that request is finally decided by the arbitral tribunal. Importantly, the Court clarified that for limitation purposes, it is immaterial whether the Section 33 request ultimately succeeds or even strictly falls within the scope of Section 33. What matters is that the request complies with the procedural requirements of Section 33—namely, that it is filed within thirty days of receipt of the award and with notice to the other party. Until such request is disposed of, the arbitral award does not attain finality capable of being challenged under Section 34.

This judgment settles the law on "when the clock starts ticking" for Section 34 challenges and prevents premature or parallel proceedings, thereby reinforcing procedural certainty and fairness in post-award remedies.

Accordingly, the Supreme Court held that where a request under Section 33 is duly made, the limitation period for filing a challenge under Section 34 commences only upon disposal of such request, irrespective of its merits, thereby ensuring procedural certainty in post-award remedies.

147. *TEFCIL BREWERIES LTD. VS. ALFA LAVAL INDIA PVT. LTD., (2025 DHC 8865-DB) DECIDED ON 08.10.2025 BY DELHI HIGH COURT*

**Issue: Whether date of receipt of corrected award would be taken as disposal date under Section 34(3) of the Arbitration and Conciliation Act, 1996 even when the application under Section 33 has been filed.**

In this case, the Delhi High Court held that treating the date of receipt of a corrected award as the starting point for limitation, instead of the date of disposal of an application under Section 33 of the Arbitration and Conciliation Act, 1996, would be contrary to the plain language of Section 34(3).

The Court clarified that Section 34(3) consciously prescribes two distinct starting points for limitation: where no application under Section 33 is filed, limitation commences from the date of receipt of the arbitral award; however, where a Section 33 application is filed, limitation begins from the date on which such application is disposed of. Accordingly, even in cases involving a corrected award pursuant to Section 33, the date of disposal of the Section 33 application alone governs the computation of limitation under Section 34(3).

Accordingly, the Delhi High Court held that where an application under Section 33 is filed, the limitation period under Section 34(3) commences only from the date of disposal of the Section 33 application, and not from the date of receipt of a corrected award.

148. *DELHI METRO RAIL CORP. LTD. VS. HCC SAMSUNG JV, (2025 DHC 1224) DECIDED ON 20.02.2025 BY DELHI HIGH COURT*

**Issue: Whether the limitation period under Section 34(3) of the Arbitration & Conciliation Act starts from (a) the date of receipt of the arbitral award, or (b) the date of disposal of an application under Section 33 when such an application had been filed.**

The Delhi High Court held that the petitioner's application under section 33 went "far beyond" correction of typographical errors and was, in substance, a request for review/modification.

The Court also emphasised policy considerations: allowing misuse of Section 33 to delay f iling under Section 34 would subvert the statutory purpose of an efficient arbitration regi me and encourage vexatious delay. The Court Observed that the Petitioner's Section 33 application was an attempt to review the award and therefore fell outside Section 33's limited ambit. Consequently, the Court held that the statutory terminus a quo for filing a Section 34 petition in this case remained the date of receipt of the arbitral award, not the date of disposal of the Section 33 application.

The Court under this case held that:

> ***"A reading of the Application shows that the grievances sought to be raised by the Respondent actually challenge the findings of the Arbitral Tribunal on the merits and effectively amount to asking for a review of the findings in the arbitral award. The Respondent is in effect seeking a modification of the award. Aside from the fact that the Claimant has stated that the alleged errors in the award as alleged by the Respondent do not exist, it is important to note at the preliminary stage itself that these allegations cannot be considered by the Arbitral Tribunal in the limited jurisdiction under Section 33( 1 )(a) of the Arbitration and Conciliation Act, 1996."***

Accordingly, Court dismissed the Section 33 application. The Court held that where a Section 33 application travels beyond the limited scope of correction and effectively seeks review or modification of the arbitral award, it does not suspend or extend the limitation period under Section 34(3), which continues to run from the date of receipt of the arbitral award.

149. *NAYEEM NOOR MOHAMED & ANR. VS. NAZIM NOOR MOHAMED & ANR., (COMMERCIAL APPEAL NO. 302 OF 2024), DECIDED ON 16.07.2025 BY KARNATAKA HIGH COURT*

**Issue: Whether an arbitral tribunal can reopen concluded arbitral proceedings or permit additional adjudication by invoking Section 33 of the Arbitration and Conciliation Act, 1996, beyond the limited statutory scope prescribed therein.**

The Karnataka High Court held that Section 33 of the Arbitration and Conciliation Act, 1996 does not permit reopening of arbitration or any form of additional adjudication.

It emphasized that the Act deliberately restricts challenges to arbitral awards to prevent arbitration from becoming as protracted as ordinary litigation. The Court reiterated that an award can be set aside only on the grounds specified under Sections 34(2) and 34(2A), with appellate scrutiny limited under Section 37.

The Court after hearing the arguments observed that:

> ***"It is clear from a reading of the provisions of the Act as well as the decisions of the Apex Court and the various High Courts considering the provisions of the said Act that the strict language limiting the nature and scope of the challenge to an arbitral award or the proceedings in arbitration are intended to see that arbitral proceedings do not become long drawn out proceedings as in the case of conventional litigations. The purpose of such strict provisions relating to challenge to arbitral awards and the strict interpretation given by Courts of law is to prevent unnecessary delays in the process of dispute resolution through Arbitration."***

It held that a party which chose not to challenge the award cannot later expand the scope of arbitration by invoking Section 33(4).

> ***"In the above circumstances, we are of the opinion that the order passed by the Arbitrator in the instant case amounts to an interim award and the validity of the said order deserves a consideration, if not in the Section 34 proceedings, at least before this Court in the Section 37 proceedings. In the above view of the matter, we are of the opinion that the exercise of reopening of the Arbitration and calling for fresh claims, documents etc., by the Arbitrator is completely unwarranted. The Arbitrator can act at best only within the confines of the statute as warranted under Section 33(4) of the Act."***

Accordingly, the arbitrator's act of reopening proceedings and calling for fresh claims was held to be unwarranted and beyond statutory authority.

**Key Trends:** Section 33 cannot be used as a disguised review of the merits. Only a bona fide, procedurally valid Section 33 request suspends the Section 34 limitation clock, as requests that travel beyond permissible correction do not have that effect.

# Chapter VII

## *Recourse against Arbitral Award*

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## CHAPTER VII – RECOURSE AGAINST ARBITRAL AWARD

### SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**34. Application for setting aside arbitral award. — (1)** Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

**(3)** An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

**(4)** On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

150. *SANJIT SINGH SALWAN AND ORS. VS. SARDAR INDERJIT SINGH SALWAN AND ORS., (2025 INSC 988), DECIDED ON 14.08.2025 BY SUPREME COURT*

**Issue: Whether a party which has accepted and acted upon an arbitral award and a consent decree can subsequently challenge the validity of the award on ground of non-arbitrability, or whether such challenge is barred by the doctrine of estoppel arising from approbation and reprobation.**

In the instant case, the Supreme Court of India examined whether respondents, having accepted the arbitral award and derived benefits therefrom culminating in a consent decree, could later contend that the award was a nullity on the ground of non-arbitrability. The Court held that such conduct squarely attracted the doctrine of estoppel, as a party cannot approbate and reprobate by first accepting an award and thereafter challenging its validity. The Court observed that permitting such a challenge would result in grave injustice and allow the respondents to unjustly benefit from inconsistent stands.

While setting aside the orders of the courts below and permitting revival of execution proceedings, the Supreme Court observed as follows:

> ***"20. It can be seen from the order passed by the Commercial Court on 24.05.2024 and thereafter by the High Court on 30.08.2024 that the effect of the compromise deed resulting into a decree has not been given its due importance. The conduct of the Respondents of approbation by first accepting the award and having the appeal disposed of on that basis and thereafter of reprobation by setting up its invalidity has been lost sight of. The compromise deed was not***

***challenged at any point of time by the Respondents. The Appellants sought to execute the decree as passed initially by filing execution proceedings on 23.11.2023. The same were however withdrawn on 08.12.2023. Thereafter jurisdiction Under Section 9 of the Act of 1996 was invoked by the Appellants. In our view, non-suiting the Appellants on the ground that the award dated 30.12.2022 was a nullity in view of the objection raised by the Respondents has resulted in grave injustice to the Appellants. If the impugned adjudication is accepted, the Respondents would reap benefit from their act of approbation and reprobation. The Respondents having succeeded in having a decree being passed on the strength of the arbitral award dated 30.12.2022 now cannot be permitted to contend that the award itself was a nullity. The justice of the case therefore requires that the Appellants ought to be permitted to revive the execution proceedings that they had filed being Miscellaneous Case No. 122 of 2023. These proceedings were withdrawn shortly after being filed to enable the Appellants to file the application Under Section 9 of the Act of 1996 and there was no adjudication of the same on merits. In our view, the Appellants cannot be left remediless especially in the backdrop of the fact that the compromise decree was passed in the Respondents appeal which remained unchallenged by them."***

Accordingly, the Supreme Court held that a party which has accepted and acted upon an arbitral award and a consent decree is estopped from subsequently challenging the award on grounds of non-arbitrability. The doctrine of approbation and reprobation was applied to prevent grave injustice, and revival of execution proceedings was permitted.

151. *SRI LAKSHMI HOTEL PVT. LTD. & ANR. VS. SRIRAM CITY UNION FINANCE LTD. & ANR., (2025 INSC 1327) DECIDED ON 18.11.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether the contractual interest rate of 24% per annum, as provided in the loan agreements and awarded (including as post-award interest) by the arbitrator, is contrary to the public policy of India so as to warrant setting aside or modifying the award.**

The Court reproduced the proviso to Section 34(2A), which expressly prohibits setting aside an award merely for erroneous application of the law or re-appreciation of evidence. Court relied upon Swan Gold Mining, P.R. Shah, Ssangyong, and PSA Sical Terminals, the Court reiterated that the scope of interference under Sections 34 and 37 is narrow; courts cannot reassess factual findings or contractual interpretation by the arbitrator under the guise of "patent illegality". Accordingly, the Supreme Court refused to reopen the factual issues surrounding the interest clause or the authenticity of the documents.

The Court held that disputes on interest rates ordinarily fall outside the scope of public policy. The Court observed:

> ***"A difference or controversy as to the rate of interest clearly falls outside the scope of challenge on the ground of conflict with the public policy of India unless the rate of interest is so unreasonable as to shock the conscience of the Court."***

Accordingly, the Supreme Court affirmed that contractual stipulations on interest, even if high, do not per se offend the public policy of India, and that in the absence of a rate so unconscionable as to shock the conscience of the Court, arbitral awards granting agreed interest cannot be interfered with under Sections 34 or 37 of the Act.

152. *M/S. LANCOR HOLDINGS LIMITED VS. PREM KUMAR MENON AND OTHERS (2025 INSC 1277) DECIDED ON 31.10.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether inordinate and unexplained delay in pronouncing arbitral award is a ground for setting aside.**

The Hon'ble Supreme Court clarified that while mere delay in pronouncing an arbitral award does not invalidate it, an inordinate and unexplained delay making the decision ineffective or unworkable can render the award void. The Court further held that an award lacking consequential relief and forcing parties to seek redress again in court is contrary to public policy and therefore unenforceable.

While the 1996 Act, pre-2015 amendment, set no express deadline for awards, High Court decisions diverged on whether delay per se vitiates an award. The Court distilled the principle that delay alone is not an enumerated Section 34 ground; however, undue and unexplained delay can vitiate an award when it demonstrably affects the tribunal's decisional process and findings, undermines fairness, and shakes confidence in the process. Section 14(2) (termination for failure to act without undue delay) exists, but is not a practical precondition for Section 34 challenges given the risk of bias if the request fails. The 2015 insertion of Section 29A (retrospectively effective) reflects legislative intent to curb delay, but the present dispute predates it.

The Hon'ble Supreme Court observed that:

> ***"Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. However, each such case would have to be examined on its own individual facts to ascertain whether that delay had an adverse impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996 or Section 34(2A) thereof, as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition***

***precedent to lay a challenge to that delayed and tainted award under Section 34 thereof."***

***"The very basis and public policy underlying the process of arbitration is that it is less time-consuming and results in speedier resolution of disputes between the parties. If that premise is not fulfilled by an unworkable arbitral award that does not resolve the disputes between the parties, on one hand, leaving them with no choice but to initiate a fresh round of arbitration/litigation but the arbitrator, in the meanwhile, also changed their positions, irrevocably altering the pre-existing balance between the parties prior to the arbitration, then such an arbitral award would not only be in conflict with the public policy of India but would also be patently illegal on the face of it. It would therefore be liable to be set aside under Section 34(2)(b)(ii) and/or Section 34(2A) of the Arbitration and Conciliation Act, 1996. Further, if the necessary conditions for exercise of power by this Court under Article 142 of the Constitution of India are made out, in terms of the Constitution Bench decision in Gayatri Balasamy vs. ISG Novasoft Technologies Limited (supra), this Court would be justified in exercising such jurisdiction."***

Accordingly, the Supreme Court held that while mere delay in pronouncing an arbitral award does not vitiate it, an inordinate and unexplained delay that adversely affects the tribunal's decision, undermines fairness, or renders the award unworkable can constitute a ground for setting aside under Sections 34(2)(b)(ii) and 34(2A) of the Arbitration and Conciliation Act, 1996.

153. *M/S R. K. TRANSPORT COMPANY VS. M/S BHARAT ALUMINUM COMPANY, (2025 INSC 438) DECIDED ON 03.04.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether limitation under Section 34 is to be construed as three calendar months or 90 days.**

The Hon'ble Supreme Court held that the three-month limitation period under Section 34(3) of the Arbitration & Conciliation Act, 1996("Arbitration Act") for challenging an arbitral award should not be rigidly interpreted as exactly 90 days, rather it should be interpreted as three calendar months. The Court upheld the filing of an application under Section 34 of the Arbitration Act on 11.07.2022 to set aside an arbitral award passed on 09.04.2022, despite it being beyond the 90-day period. It noted that the limitation period ended on 09.07.2022, which was a court holiday (second Saturday), followed by Sunday. Therefore, the application filed on the next working day, Monday (11.07.2022), was held to be within limitation.

The Hon'ble Court observed that:

***"At this stage, it is necessary to reiterate that the statutory language of Section 34(3) clearly stipulates the limitation period as "three***

***months", as opposed to the condonable period as "thirty days". This difference in language unambiguously demonstrates the legislative intent that the limitation period is 3 calendar months as opposed to 90 days. Therefore, we reject the argument taken by the appellant in its written submissions that 3 months must be read as 90 days in the context of Section 34(3).",***

***"In the present case, the respondent received a signed copy of the award on 09.04.2022. Since Section 12(1) applies, this date must be excluded and the 3-month limitation period must be reckoned from 10.04.2022. This expires on 09.07.2022, which happened to be a second Saturday when the court was not working. Hence, the benefit of Section 4 of the Limitation Act will inure to the benefit of the respondent.",***

***"Therefore, the respondent's application under Section 34, which was filed on 11.07.2022, i.e., the next working day of the court, must be considered as being filed within the limitation period. Consequently, there was no delay in filing the application and sufficient cause need not be shown for condonation of delay. The High Court therefore rightly allowed the Section 37 appeal and held that the respondent's Section 34 application was filed within the limitation period."***

Accordingly, the Supreme Court conclusively held that the limitation period under Section 34(3) of the Arbitration and Conciliation Act is to be computed as three calendar months and not as a rigid ninety-day period, and that where the last day falls on a court holiday, the benefit of Section 4 of the Limitation Act applies, rendering the filing on the next working day well within limitation.

154. *GAYATRI BALASAMY VS. ISG NOVASOFT TECHNOLOGIES LIMITED, (2025 INSC 6050) DECIDED ON 30.04.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether an Arbitral Award can be modified by Court under Section 34 of the Arbitration and Conciliation Act, 1996.**

In a landmark Constitution Bench decision, the Hon'ble Supreme Court held that Courts do not possess a general power to modify arbitral awards, but recognised a very limited power of modification in exceptional circumstances, such as severance of an invalid portion of a severable award, correction of clerical or computational errors, or modification of post-award interest. Emphasising arbitral autonomy, the Hon'ble Court reiterated that reappreciation of evidence or correction of factual errors is impermissible. The Hon'ble Supreme Court categorically observed:

***"The arbitral tribunal is the master of evidence. The scope of judicial intervention under Section 34 is confined to the limited grounds expressly provided therein. The Court does not possess the power to***

***correct errors of fact or engage in a review of the merits of the arbitral award."***

Accordingly, the Supreme Court held that while courts lack a general power to modify arbitral awards under Section 34, a narrowly circumscribed power of modification exists only in exceptional cases, without permitting any reappreciation of evidence or review on merits.

155. *CONSOLIDATED CONSTRUCTION CONSORTIUM LIMITED VS. SOFTWARE TECHNOLOGY PARKS OF INDIA, (2025 INSC 574) DECIDED BY 28.04.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether the courts can go beyond the scope of Section 34 of the Arbitration & Conciliation Act, 1996 while deciding an application for setting aside of an award.**

The Hon'ble Supreme Court reiterated that the courts cannot go beyond the scope of Section 34 of the Arbitration & Conciliation Act, 1996 while deciding an application for setting aside of an award. The Hon'ble Court upheld the Madras High Court Division Bench's ruling, which had overturned the Single Judge's interference with the tribunal's decision based on a re-evaluation of the evidence.

Reiterating that Section 34 provides a restrictive remedy, the Bench emphasised that courts may not re-appraise evidence or substitute alternative interpretations unless the award violates the specific grounds in Sections 34(2) or 34(2-A).

The Hon'ble Court observed that:

***"We are afraid learned Single Judge had clearly gone beyond the grounds provided in Section 34 of the 1996 Act to set aside the arbitral award. Learned Single Judge exceeded the jurisdiction under Section 34 of the 1996 Act. There was no justification for setting aside the arbitral award by taking a different view. View taken by the arbitral tribunal is certainly a possible and plausible view. A different interpretation of clause 26 other than the one taken by the arbitral tribunal is possible but that will not bring the challenge to the arbitral award within the four corners of Section 34. In any view of the matter, mere 34 setting aside of the arbitral award did not confer any benefit to the appellant. In the circumstances, the Division Bench was justified in reversing the order of the learned Single Judge under Section 37 of the 1996 Act."***

***"Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is***

***erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement."***

Accordingly, the Supreme Court reaffirmed that the power of courts under Section 34 is strictly limited, and that arbitral awards cannot be set aside through reappraisal of evidence or alternative interpretations; interference is permissible only on the specific grounds enumerated in Sections 34(2) and 34(2A), preserving the finality and summary nature of arbitral proceedings.

156. *S. JAYALAKSHMI VS. THE SPECIAL DISTRICT REVENUE OFFICER & ORS. (CIVIL APPEAL NO.192 OF 2025) DECIDED ON 07.01.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether Courts lack power under Sections 34 and 37 to modify arbitral awards.**

The Hon'ble Supreme Court affirmed the principle laid down in National Highways Authority of India vs. M. Hakeem & Another that the jurisdiction of the Courts under Sections 34 and 37 of the Arbitration & Conciliation Act, 1996 (1996 Act) will not extend to modifying an arbitral award. The Hon'ble Court dissatisfied with the Arbitral Tribunal's decision to award land acquisition compensation at the rate of ₹495/sq. m, the Appellant preferred application before the District Court under Section 34, which had modified the award and enhanced the compensation to be payable @ ₹4,500/sq. m with 9% interest.

The Hon'ble Court observed that:

***"the High Court could not have exercised the discretion which the Supreme Court exercised in granting the same compensation to the Appellant as was granted to the Respondents in M. Hakeem's case (supra). To this extent, the High Court is correct in following the judgment of this Court in M. Hakeem's case (supra).", the court observed.***

***"However, in order to maintain parity and grant to the Appellant(s) the same benefits as were extended to similarly placed claimants in M. Hakeem's case (supra), we deem it appropriate to exercise our power under Article 142 of the Constitution of India to direct that***

***the Appellant(s) shall be paid the same compensation as was granted by the Principal District Judge, Vellore."***

Accordingly, the Supreme Court held that courts have no power under Sections 34 or 37 to modify an arbitral award, and any adjustment of the award can only be effected under constitutional powers, such as Article 142, in exceptional cases to ensure equity and parity among similarly situated parties.

157. *LARSEN AND TOUBRO LTD. VS. PURI CONSTRUCTION PVT. LTD. & ORS. (2025 INSC 523) DECIDED ON 21.04.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether time limit Needs to Be Imposed on Long Submissions in S.34/37 Arbitration Act Proceedings.**

The Hon'ble Supreme Court expressed its displeasure over the prolonged arguments and submissions made by members of the Bar in arbitration proceedings under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 and observed that excessively long oral submissions force judges to invest significant time in reviewing extended arguments, often supported by a large volume of case law, regardless of their relevance. This practice, particularly in high-stakes matters, leads to unnecessarily lengthy judgments and ultimately undermines the efficiency and growth of arbitration as an effective dispute resolution mechanism in India. The Hon'ble Supreme Court observed that:

***"We have noticed that there is a tendency on the part of senior members of the bar to argue as if these proceedings were regular appeals under Section 96 of CPC. In this case, while making submissions, we learned counsels for both the parties have gone into minute and factual details..."***

***"The high monetary stakes involved in the proceedings should not result in unnecessary long oral submissions or concurrent submissions. All these results in criticism about arbitrations in India. There is a need to impose a time limit for oral submissions in such cases:."***

***"As members of the bar are aware of the limited tradition of the courts in position under Sections 34 and 37, they must show restraint. Similarly, we observed a tendency on the part of members of the bar to rely upon large number of decisions, whether relevant or irrelevant, while arguing Section 34 petitions and Section 37 appeals, as well as appeals arising therefrom...The courts have to devote page after page for dealing with many submissions. They shall not be made considering the limited tradition under Section 34 of the Arbitration Act. This results in very lengthy judgments."***

Accordingly, the Supreme Court emphasized the need for procedural discipline in arbitration-related court proceedings, urging the imposition of reasonable time limits on oral submissions under Sections 34 and 37 to preserve the summary nature of such

proceedings and to ensure that arbitration remains an efficient and effective dispute resolution mechanism.

158. *PARSVNATH FILM CITY LTD. VS. CHANDIGARH ADMINISTRATION & OTHERS, (CIVIL APPEAL NO. 6162 OF 2016) DECIDED 20.03.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether modification can be done of Arbitral Award on compensation and interest due to authority-attributable delay.**

The Hon'ble Supreme Court upheld an arbitral award passed in favor of a company engaged by the Chandigarh Administration to establish a Multimedia-cum-Film City in the Union Territory, holding the authorities liable to refund a forfeited bid amount of Rs.47.75 crores. The Hon'ble Court opined that though time was of the essence to the project sought to be developed, there was a clear and unreasonable delay (of over 16 months) attributable to the authorities in handing over encumbrance-free land to the appellant-Company. The Hon'ble Court observed that:

> ***"we find that the appellant herein is entitled to the sum of Rs.47.75 crores, being the initial deposit and Rs.46,20,715/- being the actual expenses incurred...Having regard to payment of interest, we find that having regard to the fact that payment of interest has been ordered both with regard to initial deposit as well as on the actual expenses, the award of compensation for loss of Rs.47,75,000/- was not in order."***
>
> ***"the demarcation plan was issued just before half the period of 36 months was complete. The appellant could not have anticipated that there would be a delay of such duration in the mere issuance of a demarcation plan."***
>
> ***"about 22 months had passed since the development agreement was signed between the parties, and the development period would have completed in another 14 months, had the respondents completed their obligations on time. In such a scenario, the appellant cannot be held to have shown unwillingness to carry on with the work, as held in the impugned judgment."***
>
> ***"It was only when no progress took place despite a month having passed since the meeting that the appellant declared the development agreement to have been frustrated."***

Accordingly, the Supreme Court upheld the arbitral award granting refund of the forfeited bid amount while modifying the compensation and interest components, holding that delays squarely attributable to the authorities justified relief in favour of the appellant, but that overlapping or excessive compensation could not be sustained in law.

159. *RAMESH KUMAR JAIN VS. BHARAT ALUMINIUM COMPANY LIMITED (BALCO), (2025 INSC 1457) DECIDED ON 18.12.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether an arbitral award can be set aside under Sections 34 or 37 of the Arbitration and Conciliation Act, 1996, on the ground of errors of law, misappreciation or insufficiency of evidence, or alleged arbitrariness in the arbitrator's approach.**

In the instant case, the Supreme Court examined the permissibility of interference with a reasoned arbitral award which had been upheld by the Commercial Court under Section 34 but was subsequently set aside by the High Court in appeal under Section 37. The High Court had re-examined the evidentiary basis of the claims, questioned the arbitrator's assessment of damages, and characterised the award as suffering from patent illegality on account of alleged guesswork and erroneous application of law.

The Supreme Court emphatically reiterated that arbitral awards are not open to challenge merely because a court may perceive errors of law, insufficiency of evidence, or adopt a different view on facts. It reaffirmed that Sections 34 and 37 do not confer appellate jurisdiction and do not permit re-appreciation of evidence or substitution of the court's assessment for that of the arbitrator. Even where evidence is scant or the arbitrator has adopted a "rough and ready" approach to quantification, interference is impermissible so long as there is some material on record and the view taken is a plausible one.

The Court further clarified the contours of "patent illegality", holding that it does not encompass erroneous application of law, reassessment of evidence, or disagreement with the arbitrator's reasoning. Patent illegality must go to the root of the matter, such as findings based on no evidence, decisions beyond the contract, or outcomes that no reasonable person could have arrived at. The High Court, by scrutinising the award as if sitting in appeal, was held to have clearly exceeded its jurisdiction under Section 37.

The Court observed as follows:

> ***"It is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous application of the law or alleged misappreciation of evidence... re-assessment or re-appreciation of evidence lies outside the contours of judicial review under Sections 34 and 37."***
>
> ***"Even an award which is based on little or no evidence would not be held to be invalid on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair, therefore award should not be overridden... on the ground that the approach of the arbitrator was arbitrary or capricious."***
>
> ***"The High Court, unfortunately, re-appreciated the evidence and came to a different view, which is impermissible... Arbitrators are not bound by strict rules of evidence and the court should not interfere simply because it would have arrived at a different conclusion."***

Accordingly, the Supreme Court held that arbitral awards cannot be set aside under Sections 34 or 37 on grounds of alleged errors of law, insufficiency or misappreciation of evidence, or perceived arbitrariness, so long as the award is based on some evidence, reflects a plausible view, and does not suffer from patent illegality or jurisdictional infirmity.

160. *M/S. C & C CONSTRUCTIONS LTD. VS. IRCON INTERNATIONAL LTD., (2025 INSC 138) DECIDED ON 31.01.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether a party can raise a new challenge to the validity of a contractual clause for the first time at the appellate stage, without having urged it under Sections 34 or 37 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Supreme Court examined whether the appellant could assail the validity of Clause 49.5 of the General Conditions of Contract for the first time before the Supreme Court, when no such challenge had been raised either before the arbitral tribunal or in proceedings under Sections 34 and 37 of the Act. The appellant sought to contend that the clause was unenforceable under Sections 23 and 28 of the Contract Act and contrary to public policy, despite having acted upon the clause throughout the execution of the contract and arbitration.

The Court rejected this belated challenge and reiterated that the arbitral and post-award challenge framework under the Act is structured and sequential. Grounds not raised before the arbitral tribunal or the Section 34 court cannot ordinarily be introduced for the first time at the appellate stage. The Court emphasised that permitting such a course would defeat the principle of finality, undermine the limited scope of judicial intervention under the Act, and allow parties to approbate and reprobate after having consciously accepted and acted upon contractual terms.

The Court also noted that the appellant had repeatedly invoked Clause 49.5 to seek extensions of time and had furnished undertakings not to raise claims beyond escalation. Having accepted the clause and derived benefits under it, the appellant was estopped from challenging its validity at a later stage. The Court further clarified that even otherwise, the scope of interference under Section 37 does not extend to entertaining entirely new legal challenges which were never urged before the appropriate fora.

The Court observed as follows:

> ***"Now, in this appeal, a contention has been raised that the validity of Clause 49.5 ought to have been examined in the light of Sections 23 and 28 of the Contract Act, but the High Court has not examined the said issue. Careful perusal of the judgment of the learned Single Judge shows that the contention that the validity of Clause 49.5 was not raised before the learned Single Judge in a petition under Section 34 and the said contention was not raised even before the Division Bench in appeal under Section 37. Therefore, it is not open to the appellant to raise the said contention in this appeal for the first time."***

> ***"The contention was raised for the first time in appeal under Section 37 that Clause 49.5 was waived by the respondent. Apart from the fact that the said contention could not have been raised for the first time in appeal under Section 37 of the Arbitration Act, the appellant had repeatedly sought extension of time more than once on the conditions mentioned under Clause 49.5."***
>
> ***"As the appellant had acted upon Clause 49.5 and sought extension of time on more than one occasion, the appellant was estopped from challenging the validity of Clause 49.5."***

Accordingly, the Supreme Court held that a party cannot raise a fresh challenge to the validity of a contractual clause for the first time at the appellate stage, having failed to urge such a plea before the arbitral tribunal or in proceedings under Sections 34 and 37, particularly when the party has acted upon and accepted the clause during the subsistence of the contract.

161. *MY PREFERRED TRANSFORMATION & HOSPITALITY (P) LTD. VS. FARIDABAD IMPLEMENTS (P) LTD., (CIVIL APPEAL 336 OF 2025) DECIDED ON 10.01.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether the interpretation of limitation provisions under Section 34 of the Arbitration and Conciliation Act, 1996 unduly restricts the right of parties to challenge arbitral awards.**

The Hon'ble Supreme Court clarified the applicability of the Limitation Act to challenges under Section 34(3). Court examined the definition of "prescribed period" in Section 2(j) Limitation Act, the Court held that only the initial three-month period under Section 34(3) is the "prescribed period." The additional 30 days is a discretionary grace period, not part of the period of limitation. Consequently, Section 4 can extend time only when the primary three-month period ends on a holiday, not when the condonable period so ends.

By virtue of Section 29(2) Limitation Act and Section 43(1) of Arbitration and Conciliation Act, the Limitation Act applies to arbitration matters unless expressly or impliedly excluded.

The Court held:

> ***"There is no wholesale exclusion of the provisions of the Limitation Act in calculating the period of limitation under Section 34(3). Each provision's applicability has to be tested on a case-to-case basis."***

Accordingly, the Supreme Court clarified that the Limitation Act is not excluded from proceedings under Section 34, but its provisions apply only to the extent they are compatible with the statutory scheme of the Arbitration and Conciliation Act, and that the additional thirty-day period under Section 34(3) is merely a discretionary condonable window and not part of the prescribed period of limitation.

162. *LIFE INSURANCE CORPORATION OF INDIA VS. HIMALAYA ADVERTISING INDUSTRIES AND ORS., (2025 AHC 108026-DB), DECIDED ON 08. 07. 2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether condonation of delay can be used as a ground for challenging an Arbitration Petition.**

The Allahabad High Court examined the issue of whether to condone a 182-day delay in filing an appeal by the LIC of India against a judgment by the Commercial Court, Kanpur Nagar.

The court found that the appellant failed to act with urgency and treated the appeal as secondary to other tasks, such as annual financial closing. Citing precedents from the Supreme Court, the court emphasized that condonation of delay is an exception, not a rule, and should not be granted for government bodies without a reasonable explanation.

The High Court held that:

> ***"19. In the present case, it would be seen that the delay is of 182 days, which cannot be said by any stretch of imagination to be a 'short delay' and as would be seen from the above discussion the appellant has acted in a most negligent manner.***
>
> ***Hon'ble Supreme Court has laid down that condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.***
>
> ***22. As noticed in the present case, the conduct of the appellant is writ large wherein sanction itself was granted after the limitation for filing the appeal had expired and thereafter also it has taken the appellant five months in filing the appeal, which is result of nothing but inaction, negligence and laches."***

Accordingly, the Court held that no sufficient cause was made out for condonation of delay. The application seeking condonation was dismissed, and as a consequence, the appeal itself was also dismissed as barred by limitation.

163. *NORTHERN RAILWAY VS. H.R. CONSTRUCTIONAL COMPANY, (2025 AHC 109167-DB), DECIDED ON 09.07.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether the provisions of MSMED can override conflicting contractual terms, including an arbitration clause and confer jurisdiction on the MSEFC.**

In the instant case, the High Court of Allahabad addressed the appeal questioning the jurisdiction of the Micro and Small Enterprises Facilitation Council (MSEFC) in proceedings initiated by H.R. Constructional Company. The principal contention of the appellant was that the claimant could not be treated as a "supplier" under the MSMED Act as its registration as a small enterprise post-dated the issuance of the Letter of Acceptance. It was further contended that the arbitration clause contained in the contract excluded the jurisdiction of the MSEFC.

Rejecting these contentions, the Court held that the relevant date for determining supplier status under the MSMED Act is the date of execution of the contract and not the date of the Letter of Acceptance. Since the claimant was registered as a small enterprise prior to the execution of the contract and before raising its first bill, the MSEFC rightly assumed jurisdiction. The Court further reiterated that the provisions of the MSMED Act, being a special and beneficial legislation, override the Arbitration and Conciliation Act, 1996 and any inconsistent contractual stipulations.

The High Court observed that:

> ***"31. In the present case, it is not in dispute that the award of Letter of Acceptance is dated 07.02.2017 and the contract agreement has been executed between the parties on 15.12.2017 and the first bill has been raised by the respondent on 30.12.2017 and the respondent was registered as a small enterprise under the provisions of the MSMED Act, 2006 on 14.02.2017.***
>
> ***The reliance placed on the Letter of Acceptance being prior to the date of the registration under the provisions of the MSMED Act, 2006 for the purpose of claiming that the respondent is not a supplier, in view of the law repeatedly laid down by Hon'ble Supreme Court noticed herein before, wherein the date of contract has been indicated as the relevant date for the said purpose, the submissions made in this regard also have no substance.***
>
> ***32. Insofar as the objection raised pertaining to the arbitration clause in the agreement between the parties is concerned, as laid down by Hon'ble Supreme Court as noticed herein before, the provisions of the MSMED Act, 2006 override the provisions of the Act, 1996 and therefore, the plea raised in this regard also apparently has no substance."***

Accordingly, the Court upheld the Commercial Court's decision, affirming that the MSEFC had jurisdiction as the claimant was registered on the contract date. The appeal was dismissed, with the court emphasizing that objections to jurisdiction must be timely and that the MSMED Act's provisions override conflicting terms.

164. *UCM COAL COMPANY LTD. V. ADANI ENTERPRISES LTD., (APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 NO. 52 OF 2023), DECIDED ON 23.11.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether an arbitral award rendered in separate proceedings can be relied upon as credible evidence in another arbitration involving the same or connected parties.**

In the instant case, the Allahabad High Court examined the challenge to an arbitral award on the ground that the Tribunal had relied upon arbitral proceedings and an award rendered in a separate dispute between the respondent and its consultant, PMC Projects (India) Pvt. Ltd., while adjudicating claims arising under the mining contract between the

appellant and the respondent. The appellant contended that such reliance amounted to accepting claims without independent proof and on the basis of extraneous material, thereby rendering the award perverse and vulnerable to interference under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996.

The Court rejected this contention, holding that the Tribunal had not treated the separate arbitral award as determinative of the appellant's liability, but had considered the connected arbitral proceedings as corroborative material while appreciating the evidence placed before it. It was noted that the disputes arose from the same contractual matrix and that the Tribunal had independently examined work orders, milestones achieved, progress reports, pleadings and documentary evidence. The Court reiterated that an arbitral tribunal enjoys wide latitude in evaluating the quality and sufficiency of evidence and is entitled to draw support from contemporaneous proceedings involving connected parties, so long as such material is not treated as conclusively binding.

The Court observed as follows:

> ***"It was also pointed out that one of the consultants namely PMC had also instituted arbitral proceedings against the respondent and the pleadings relating to the said arbitration was also placed on record before the Arbitral Tribunal, dealing with the dispute between the appellant and the respondent."***
>
> ***"The Tribunal has clearly drawn out the distinction between a sub-contractor and a consultant and it also took note of the evidences of the respective parties and thereupon it gave its finding."***
>
> ***"If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. The Arbitral Tribunal is the ultimate master of the quality and quantity of evidence."***

Accordingly, the Court held that an arbitral award rendered in separate but connected proceedings may be relied upon as credible and corroborative evidence in another arbitration, provided the tribunal independently evaluates the material on record and does not treat such award as binding. Such reliance does not amount to perversity or patent illegality and does not warrant interference under Sections 34 or 37 of the Act.

165. *SANJAY GANDHI POST GRADUATE INSTITUTE OF MEDICAL SCIENCES VS. S.C. AGARWAL PURANA QILA, (2025 AHC-LKO 41514-DB), DECIDED ON 21.07.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether an arbitral award directing reimbursement of service tax can be interfered with on the ground of patent illegality when the arbitrator's interpretation of a contract stating rates as inclusive of levies is supported by the parties' prior conduct and statutory liability of the service recipient.**

In the instant case the Allahabad High Court held that despite contract rates being stated as inclusive of levies, the arbitrator correctly relied on statutory liability and the appellant's

consistent past practice of reimbursing service tax. In the absence of patent illegality or perversity, the Court reaffirmed the limited scope of judicial interference with arbitral awards.

> ***"34. In the overall fact situation, as noticed hereinbefore, it is apparent that besides the fact that the liability to pay service tax statutorily is that of the recipient of service, unless the charge is under reverse charge mechanism, in view of the circumstances taken into consideration by the Arbitrator, and as discussed hereinbefore, the previous conduct of the appellant in making payment of service tax, despite identical terms in the contract and specific order dated 16.06.2011 passed, which was never rescinded or withdrawn, the interpretation to the terms of the contract cannot be faulted and consequently, the plea raised pertaining to patent illegality has no substance."***

Accordingly, it was held that where an arbitrator's interpretation of contractual terms is supported by statutory liability and consistent prior conduct of the parties, the award does not suffer from patent illegality or perversity, and no interference is warranted under Section 34 of the Arbitration and Conciliation Act, 1996.

166. *SUPTD. ENGINEER PUBLIC HEALTH NELLORE VS. H S BHATT AND ORS. (CIVIL REVISION PETITION NO. 4055 OF 1993 AND CIVIL MISCELLANEOUS APPEAL NO. 1251 OF 1993) DECIDED ON 02.07.2025 BY ANDHRA PRADESH HIGH COURT*

**Issue: Whether determination of new rates by the Arbitrator, for the long haulage is legally tenable.**

The High Court upheld the arbitrator's decision to award compensation for work that exceeded the contract's scope, such as moving materials over greater distances and using heavier equipment than specified. The court found the arbitrator's conclusions reasonable and consistent with legal precedents, dismissing the employer's appeal and affirming the trial court's decision to uphold the arbitration award. Haulage of materials in the infrastructure projects warrant varying rates as per the distance or otherwise heavy price will have to be paid during the dispute resolution.

The High Court stated:

> ***"20. The contention of the employer is that, the scope of work was set out and the consideration to be paid was also set out, in terms of the rate fixed, under the agreement. The contractor should have been awarded additional consideration, if any, for additional work at the rate fixed under the agreement. Variation of the rate would amount to change in terms of the agreement and the same is not permissible as the Arbitrator, as a creature of the agreement cannot go against the terms of the agreement. However, the Arbitrator took the view that the work done by the contractor was not additional work, but work done beyond the agreement.***

***The Arbitrator took the view that it was not extra material which was excavated or transported, but material being transported beyond the distance fixed under the agreement. He therefore held that the contractor is entitled to additional rates for the work done. This Court, after going through the material placed before this Court, including the contract, the award of the arbitrator, as well as the judgment of the trial Court, is of the view that the findings given by the arbitrator are a reasonable view of the facts and law.***

***Once this Court holds that a view of the arbitrator is a reasonable view which does not violate the terms of the agreement, it would not be permissible for the Court to interfere with any part of this award."***

Accordingly, the Court dismissed the employer's challenge and affirmed the trial court's decision upholding the arbitral award, reiterating that where the arbitrator adopts a reasonable view consistent with the contract and prevailing legal principles, particularly in relation to long-haulage and infrastructure works, judicial interference is unwarranted.

167. *RELIANCE DEFENCE AND ENGINEERING LIMITED VS. AFCONS INFRASTRUCTURE LTD., (ARBITRATION PETITION NO. 1755 OF 2015), DECIDED ON 17.12.2025 BY BOMBAY HIGH COURT*

**Issue: Whether the rights of an arbitration award holder may be extinguished by the terms of the corporate debtor's insolvency resolution plan.**

The Hon'ble Bombay High Court observed that cash deposited in court by the corporate debtor continued to remain its asset despite being in the court's custody, and therefore, if the corporate debtor was admitted into CIRP while the related challenge was pending, such asset had to be preserved and returned to the custody of the resolution professional as part of the insolvency estate; further, the court clarified that upon approval of a resolution plan the asset would be dealt with in accordance with that plan, and if the resolution process failed, the deposited amount would form part of the liquidation estate of the corporate debtor.

The Hon'ble Bombay High Court held that:

***"the cash deposited in court by the corporate debtor was an asset to which the corporate debtor had title, even while such asset was held in the custody of the court. If, pending hearing of the challenge under the court's consideration, the corporate debtor were to be admitted to CIRP, then during the CIRP, it was held, the assets of the corporate debtor deserved to be conserved. Therefore, the assets belonging to the corporate debtor were held to be liable to be returned to the custody of the resolution professional. If a resolution plan were to be approved, it would abide by the approved resolution plan, and if the resolution were to fail, the assets in question would form part of the liquidation estate of the corporate debtor"***

168. *IQBAL TRADING COMPANY VS. UNION OF INDIA & ORS., (ARBITRATION APPEAL NO. 27 OF 2012) DECIDED ON 10.11.2025 BY BOMBAY HIGH COURT*

**Issue: Whether an arbitral award is liable to be set aside under Section 37 of the Arbitration and Conciliation Act, 1996, where denial of inspection of relevant material prevented effective presentation of the case and vitiated the award for breach of natural justice and public policy.**

The Bombay High Court, while exercising appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996, examined the sustainability of an arbitral award which had been upheld by the District Court. The core grievance of the appellant was that the arbitral tribunal had denied inspection and disclosure of crucial documents forming the very foundation of the claim for damages, thereby disabling the appellant from effectively defending the proceedings. The Court was thus required to assess whether such denial amounted to a violation of principles of natural justice and rendered the award vulnerable under Sections 34(2)(a)(iii) and 34(2)(b)(ii) of the Act.

Upon review of the arbitral record, the Court noted that the claim before the arbitral tribunal was essentially one for damages, requiring examination of market prices, mitigation of loss, and actual expenditure incurred by the respondent. However, repeated requests by the appellant for inspection of quotations, purchase orders, vouchers, and market data were declined by the arbitral tribunal on the ground of irrelevance. The Court further observed that the arbitral award was entirely bereft of any reasoning or analysis on quantification of damages, despite a contractual stipulation mandating a reasoned award for claims exceeding the prescribed threshold. Such conduct, according to the Court, reflected a complete absence of judicial approach.

> ***"Therefore, applying the standard of review provided for in Section 34 of the Act, in exercise of the jurisdiction under Section 37, which is an appellate jurisdiction over decisions of the Section 34 Court with the scope of review being identical to the Section 34 jurisdiction, the Arbitral Award deserves to be set aside. Iqbal has been able to prove that it was unable to present its case with the denial of basic factual ingredients that would be necessary to adjudicate the dispute, thereby attracting Section 34(2)(a)(iii) of the Act."***

The Court further observed that:

> ***"I also find that the Arbitral Award is in conflict with public policy for being in conflict with fundamental principles of natural justice by denying inspection of relevant material that would have assisted the Learned Arbitral Tribunal in conducting a fair assessment of a fact- intensive question of assessment of damages. By failing to do so, the Learned Arbitral Tribunal has simply rendered a summary judgement by awarding whatever had been claimed against Iqbal by GOI."***

> ***"In the process, the Arbitral Award indeed betrays a lack of judicial approach in the adjudication entrusted to it. Assessment of damages necessarily involves adjudication of facts relating to the damage purportedly suffered. The information sought and denied, as set out above, and the summary judgement on a question of damages, has resulted in the Arbitral Award being unsustainable and untenable."***

Accordingly, it was held that where an arbitral tribunal denies inspection of material documents essential for adjudication, leading to an inability of a party to effectively present its case, the arbitral award stands vitiated for breach of natural justice and lack of judicial approach. Such an award is in conflict with the fundamental policy of Indian law and is liable to be set aside even at the stage of appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

169. *AMIT ENGINEERS VS. UNION OF INDIA AND ORS., (COMMERCIAL ARBITRATION PETITION NO. 847 OF 2024), DECIDED ON 08.12.2025 BY HON'BLE BOMBAY HIGH COURT*

**Issue: Whether an Arbitrator's undue delay, failure to conduct proper hearings constitute misconduct and violation of principles of natural justice.**

In the instant case, the Bombay High Court set aside the arbitral award on the ground that it was rendered without affording the parties a reasonable opportunity of being heard. Although hearings were scheduled in April and May 2021, none were actually conducted, and the award was silent on any hearing prior to its pronouncement on 31 May 2021.

The Court noted that the award recorded hearings only on three earlier dates in 2016 and 2017 and held that proceeding to pass the award thereafter, without any effective hearing, constituted a clear violation of the principles of natural justice. The Court further observed that the award contained material discrepancies and misstatements regarding the conduct of proceedings, reinforcing the conclusion that the arbitral process was fundamentally flawed.

The Court observed that:

> ***"However, no hearing was actually conducted on 28 April 2021 and the Arbitral Tribunal changed the date to that of 20 May 2021. Petitioner has specifically averred in the Petition that even on 20 May 2021, no hearing took place. The Arbitral Award is silent as to whether any hearing was conducted on 20 May 2021. The Arbitral Award reflects hearings only on 13 September 2016, 27 October 2016 and 7 June 2017. Thus, no hearing was admittedly held on 20 May 2021.***
>
> ***Without hearing the parties, the Arbitral Tribunal straightaway proceeded to make Award dated 31 May 2021. Thus, the Award is made without conducting any hearing and without affording any opportunity of hearing to the parties. This in my view is sufficient ground for setting aside the impugned Award.***

> ***The impugned Award is also riddled with discrepancies where the arbitrator appears to have twisted the factual details about conduct of proceedings. In paragraph 2A of the Award, the learned Arbitrator has held that 'hearings were held on many occasions i.e. 13 September 2016, 27 October 2016, 7 June 2017'. Describing three dates of meetings when no real business was conducted as 'many occasions' by the learned Arbitrator exposes his unfair mind and non-judicious approach, again constituting a valid ground for setting aside the Award."***

Accordingly, the Bombay High Court allowed the petition and set aside the arbitral award, holding that the arbitrator's failure to conduct hearings and afford an opportunity of hearing amounted to misconduct and a gross violation of natural justice. The Court also noted that a new arbitral tribunal had already been constituted pursuant to an earlier judicial order.

170. *BATLIBOI ENVIRONMENTAL ENGINEERING LTD. VS. HINDUSTAN PETROLEUM CORPORATION LIMITED, (2025 BHC 4031) DECIDED ON 11.03.2025 BY BOMBAY HIGH COURT*

**Issue: Whether the parties can be referred to a fresh arbitration without it amounting to an impermissible re-adjudication on merits, after an arbitral award is set aside under Sections 34 and 37.**

The Bombay High Court examined whether initiation of a fresh arbitration, following the setting aside of an arbitral award under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 and its affirmation by the Supreme Court, would amount to a re-adjudication of disputes already decided on merits. The respondent contended that extensive observations made by the appellate courts amounted to a final adjudication, thereby barring a second reference on principles of res judicata.

Rejecting this contention, the Court held that proceedings under Sections 34 and 37 are confined to a limited supervisory review and do not entail an appellate determination on merits. It was emphasised that once an award is set aside, parties are ordinarily restored to their pre-award position, unless the claims have been conclusively decided on merits. The Court clarified that observations made while testing the sustainability of an award cannot be equated with a substantive adjudication of rights.

> ***"That the setting aside of an arbitral award would place parties to the arbitration in the original position that they were in, before the proceedings began, leaving it open to them to arbitrate again, is an essential feature of the legislative design and structure of the Act. When parties opt for arbitration and that leads to an arbitral award, the Act disallows Courts to conduct an appellate review of arbitral awards, choosing instead, to limit the scope of judicial review of arbitral awards, to the contours of the jurisdiction available on limited grounds set out in Section 34 of the Act. Judicial review of an arbitral award is framed in a binary position – the award is either upheld or set aside on the grounds available in Section 34. No Court***

***is permitted to modify the Arbitral Award, and to substitute its judgement for the judgement of the Arbitral Tribunal."***

Accordingly, it was held that referring parties to a fresh arbitration after an award is set aside under Sections 34 and 37 does not amount to impermissible re-adjudication on merits, where the award was invalidated for want of reasons or perversity, and not on a final determination of the substantive disputes.

171. *THERMAX LIMITED VS. RASHTRIYA CHEMICALS & FERTILIZERS LTD., (COMMERCIAL ARBITRATION PETITION NO. 394 OF 2023), DECIDED ON 09.12.2025 BY BOMBAY HIGH COURT*

**Issue: Whether the Arbitral award based on no evidence is perverse and patently illegal.**

The Bombay High Court observed that the arbitrator had disregarded Siemens' Final Root Cause Analysis (RCA), which made it clear that "the filters were not replaced on time" and that the damage "would have never occurred" if a compressor wash had been carried out as recommended. The Bench noting that the arbitrator incorrectly imposed liability on Thermax, held that there was "no evidence" to support the award and that the arbitrator had not given sufficient justification for dismissing Thermax's arguments.

The High Court held:

***"It is clear from a reading of the impugned Award that the learned Arbitrator has completely ignored and/or disregarded the submissions, and oral and documentary vital evidence in support of these submissions" and hence is liable to be set aside.***

The Bench determined that the findings of the arbitral tribunal were "perverse, patently illegal and based on no evidence" as it did not take the operational failure of Rashtriya Chemicals & Fertilizers Ltd.'s (RCF) into consideration.

172. *LARSEN AND TOURBO LIMITED VS. HINDUSTAN PETROLEUM CORPORATION LTD AND ORS., (2025 BHC-OS 13004-DB), DECIDED ON 08.08.2025 BY BOMBAY HIGH COURT*

**Issue: Whether an arbitral award can be set aside under Section 34 of the Arbitration and Conciliation Act, 1996, where the tribunal grants claims contrary to the contractual terms and in absence of supporting evidence, amounting to perversity rather than a plausible interpretation of the contract.**

In the instant case, the Division Bench of the Bombay High Court considered cross-appeals filed by Larsen and Toubro Limited and Hindustan Petroleum Corporation Limited challenging the judgment of the learned Single Judge, who had set aside substantial portions of the arbitral award. The Court upheld the Single Judge's decision, holding that the arbitrator had awarded several claims despite expressly noting that they were not contractually admissible and without any supporting evidence on record. Such an approach, the Court held, did not amount to a plausible interpretation of the contract but instead reflected perversity warranting interference under Section 34.

The court observed the following while deciding this issue:

> ***"55. What remains now in L&T's appeal is to deal with the judgments relied on by Mr. Wagle. In support of the contention that Section 34 Court cannot interfere in interpretation of the contract by the Arbitrator based on plausible view Mr. Wagle has relied on Apex Court judgment in U.P. Hotels. In the present case the issue is not about interpretation of clauses of contract in a particular manner. For awarding most of the claims, the Arbitrator has noted that the same were not contractually admissible. Reliance on judgment in Associate Builders in support of contention that a construction contract must be read as a whole, does not make case of L&T any better, once it is found that most of the claims awarded by the Arbitrator are outside the terms of contract. In support of the contention that the Courts must always support Arbitral Award, reliance is placed on judgments in Santa Sila Devi and Bijendra Nath Srivastava (Dead) through LRs. However, the findings recorded above would indicate that the Arbitrator had thrown the contractual clauses to the wind and had awarded various sums as per his whims by use of his so called technical knowledge. The Award was thus unsupportable and has rightly been set aside by the learned Single Judge qua the claims, except claim No. 19. In support of the contention that findings of fact cannot be disturbed in exercise of jurisdiction under Section 34 of the Act, reliance in placed on the judgment in Venkatesh Construction Company. In the instant case however, the learned Arbitrator has no evidence before him and had recorded few findings in total absence of evidence. The case involves element of perversity and not the exercise of re-appreciation of evidence on record."***

Accordingly, it was held that where an arbitral tribunal grants claims contrary to the express terms of the contract and in the absence of any supporting evidence, the award suffers from perversity and is liable to be set aside under Section 34. The Court clarified that such interference does not amount to re-appreciation of evidence but is justified where the award is patently unsustainable in law.

173. *STATE OF WEST BENGAL & ORS. VS. M/S. S.K. MAJI, (FMA NO. 573 OF 2024) DECIDED ON 05.03.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether damages for loss of profit can be sustained in arbitration on the basis of reasonable expectation arising from the employer's breach, and the extent to which courts may interfere with the arbitrator's assessment of such claims.**

In the instant case, the Calcutta High Court considered whether an arbitral award granting loss of profit for unexecuted work could be sustained where the employer was found to have breached the contract by illegally terminating it. The Court clarified the distinction

between loss of profitability claims arising from delay, which require strict proof of actual loss, and loss of profit claims arising from wrongful termination, where a reasonable expectation of profit is inherent in a works contract. Once breach by the employer is established, the contractor is not required to prove loss with mathematical precision.

The Court found that the arbitrator had recorded specific findings on the employer's failure to discharge its contractual obligations and had reasonably assessed loss of profit by reducing the claimed rate from 15% to 10% on the unexecuted value of work. Such assessment, based on contractual context and settled principles, was held to be a plausible view. The Court reiterated that under Sections 34 and 37 of the Act, it cannot reappreciate evidence or substitute its own view for that of the arbitrator.

The Hon'ble Calcutta High Court observed that:

> ***"To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence."***
>
> ***"However, if the contract is delayed due to breaches on the part of the employer the contractor would be entitled to recover his profit on the basis of reasonable expectation of profits which could be earned if not for the illegal termination of the contract", the court stated.***
>
> ***"It is not for the court to sit as an ordinary court of appeal over an arbitral award because the arbitrator has taken a view of law or of fact which a court of law may not have taken if such court were trying the dispute", the court stated."***

Accordingly, the Court held that loss of profit awarded on the basis of reasonable expectation flowing from the employer's breach was legally sustainable, and that judicial interference with the arbitrator's quantified assessment was unwarranted in the absence of perversity or patent illegality.

174. *DEEPAK BHARGAVA & ORS. V. JAGRATI TRADE SERVICES PVT. LTD. & ORS., (AO (COM) NO. 38 OF 2024) DECIDED ON 05.03.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an arbitral award directing refund of consideration with interest, despite rejection of specific performance, can be interfered with under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, in the absence of patent illegality or lack of jurisdiction.**

In the instant case, the Calcutta High Court was concerned with the permissibility of judicial interference with an arbitral award which rejected the relief of specific performance under a Share Purchase Agreement, yet directed refund of the consideration admittedly received by the appellants along with interest. The principal challenge was that such a direction

amounted to granting relief beyond the pleadings and despite findings adverse to the claimant on the authenticity of the agreement.

The Court held that the arbitral tribunal's direction for refund was neither inconsistent with its refusal of specific performance nor beyond jurisdiction. It emphasised that refund was granted not on the basis of enforcement of the agreement but on the admitted receipt of monies and the equitable principle against unjust enrichment. The Court further reiterated that the jurisdiction under Sections 34 and 37 is supervisory and not appellate, and that once the arbitrator's view is a plausible one grounded in law, no interference is warranted merely because an alternative view is possible.

The Court observed as follows:

> ***"The retention of the part consideration by one of the parties to the agreement when specific performance has been refused to the other party would amount to unjust enrichment. The refund directed by the learned Arbitrator stands on a footing independent of the relief of specific performance and is based on the admitted receipt of money. Such direction cannot be said to be beyond the scope of the reference or contrary to law."***
>
> ***"Refund stands on a different footing than specific performance. The said claim was allowed on the admitted fact that the amount was paid by the claimant and not as a relief flowing from the authenticity or otherwise of the agreement relied upon for seeking specific performance. The Arbitrator was justified in preventing unjust enrichment of one party at the cost of the other."***
>
> ***"The scope of interference under Section 34 and more particularly under Section 37 of the Arbitration and Conciliation Act is extremely limited. Once the view taken by the learned Arbitrator is a possible and plausible view, the Court cannot substitute its own interpretation merely because another view is possible."***

Accordingly, the Court held that an arbitral award directing refund of consideration with interest, notwithstanding rejection of specific performance, does not suffer from patent illegality or jurisdictional error and therefore does not warrant interference under Sections 34 or 37 of the Act.

175. *UNION OF INDIA VS. RAHUL KUMAR THAKUR IN ARBITRATION PETITION, (AP-COM NO. 657 OF 2024) DECIDED ON 05.03.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an arbitral award can be set aside on allegations of fraud or corruption in the absence of prima facie evidence of wilful illegality, concealment, or abuse of process by the arbitrator or the successful party.**

In the instant case, the Calcutta High Court examined whether allegations of fraud or corruption, founded essentially on dissatisfaction with the arbitrator's appreciation of evidence and reliance on a policy circular, were sufficient to warrant interference with the

arbitral award. The Court reiterated that fraud or corruption must be established at a prima facie level through material demonstrating deliberate deception, concealment of material facts, or abuse of the arbitral process, and cannot be inferred from mere errors of interpretation or adverse factual findings.

The Court underscored that the statutory threshold for invoking fraud or corruption is exacting. Unless there is prima facie evidence of a wilful illegal act which deprives the other party of its legitimate rights, the award cannot be invalidated on such grounds.

The Court reasoned as follows:

> ***"In the present case, this Court does prima facie, find that there was either any omission or any concealment by the respondent or any act of undue influence in the making of the award. There had to be, prima facie, evidence of a wilful illegal act on the part of either the arbitrator or the respondent, which amounted to depriving the petitioners from their legitimate dues or legitimate rights."***
>
> ***"The expression 'making of the award' would mean that, the award must have been obtained by a party to the arbitration upon suppressing material evidence or by making false statements before the learned arbitrator in order to take an unfair advantage over the other party."***
>
> ***"An honest mistake or erroneous appreciation of law may not appear to be reasonable to the court, but such defects in the award, cannot be an act of corruption on the part of the arbitrator."***

Accordingly, the Court held that in the absence of prima facie evidence of wilful illegality, concealment, or abuse of process by the arbitrator or the successful party, an arbitral award cannot be set aside merely on allegations of fraud or corruption.

176. *M/S BESCO VS. M/S HINDCON CHEMICALS PVT. LTD., (F.M.A.T., ARB. AWARD NO. 47 OF 2023), DECIDED ON 08.07.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether a petition challenging an arbitral award can be filed in the absence of mandatory pre-deposit under Section 19 of MSMED Act, 2006.**

In the instant case, the Calcutta High Court examined the maintainability of a petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an arbitral award rendered by the Micro and Small Enterprises Facilitation Council, in the absence of a prior deposit of 75% of the awarded amount as contemplated under Section 19 of the MSMED Act. The Court clarified the scope and effect of the statutory requirement of pre-deposit, particularly the distinction between the filing and entertainment of an application.

The Court held that Section 19 merely bars the entertainment of an application for setting aside an award unless the stipulated deposit is made; it does not prohibit the filing of such an application. The expression "entertained," the Court observed, signifies the stage at which the court applies its mind and passes substantive orders. Accordingly, a Section 34

application filed without the requisite deposit is not liable to be dismissed but must remain in abeyance until compliance with the deposit requirement.

The High Court observed that:

> ***"Insofar as the mandatory prior deposit of 75 per cent of the awarded amount is concerned, Section 19 of the MSMED Act merely provides that no application for setting aside an award made by the Council shall be "entertained" unless such amount is deposited. The expression "entertained" cannot be equated with "filed." An application is only entertained when substantive orders are passed thereon.***
>
> ***....even if an application under Section 34 challenging an award of the Council is filed without such deposit, the application shall merely be kept in limbo until the deposit is made. Only after such deposit is made, substantive orders can be passed on the application."***

Accordingly, it was held that non-deposit of 75% of the awarded amount (including interest) at the time of filing does not render a Section 34 application non-maintainable or liable to dismissal. The application may be filed, but it cannot be entertained or adjudicated upon until the mandatory pre-deposit under Section 19 of the MSMED Act is complied with.

177. *AIRPORTS AUTHORITY OF INDIA VS. EAST INDIA CONSTRUCTION COMPANY LTD., (2025 DHC 775), DECIDED ON 03.02.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitral award which overlooks material contractual clauses suffers from patent illegality warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996.**

In the instant case the Delhi High Court examined the arbitral award concerning encashment of the performance bank guarantee and termination of the contract for runway resurfacing.

The court found that the arbitrator failed to consider relevant contract clauses, leading to a decision based on irrelevant factors, thus constituting patent illegality. Consequently, the court set aside the award concerning the encashment of the bank guarantee and remanded the matter back to the arbitrator for reconsideration in light of the contract's provisions.

The High Court held that:

> ***"In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., 2020:INSC:403 : (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] A "finding" based on no evidence at all or an award which ignores vital evidence in arriving at its decision***

> ***would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice."***

The Court held that an arbitral conclusion arrived at by overlooking express contractual terms and by relying on irrelevant considerations clearly suffers from patent illegality.

178. *UNITED INDIA INSURANCE CO. LTD. VS. VALLEY IRON AND STEEL CO. LTD, (2025 DHC 8291), DECIDED ON 18.09.2025 BY DELHI HIGH COURT*

**Issue: Whether a consent letter for settlement, if obtained under economic duress, is void and unenforceable.**

In the instant case, the Delhi High Court upheld the tribunal's findings that the consent was obtained under economic duress, the surveyor's report was unreliable, and the insurer failed to act in good faith.

The High Court observed that:

> ***"Keeping in mind the above letters and appeals of the Respondent and the non-response of the Respondent or the Surveyor on behalf of the Respondent, it is clear that the insured's reinstatement efforts were at a standstill owing to severe financial constraints which only the Respondent could rectify, if it had admitted liability and made an interim payment as sought for in writing by the Claimant. This could have been easily done by the Respondent as it was in possession of the Interim Report dated 10.09.2011, which was received by the Respondent on 16.09.2011."***

Accordingly, the court dismissed the petition, affirming the award of Rs. 33.26 crores plus interest to Valley Iron & Steel Co. Ltd., and allowed the enforcement of the award.

179. *NATIONAL HIGHWAYS AUTHORITY OF INDIA VS. SOUTH INDIAN BANK LTD AND UNION BANK OF INDIA LTD AND ORS., (2025 DHC 5126), DECIDED ON 01.07.2025 BY DELHI HIGH COURT*

**Issue: Whether Arbitrator is empowered to order the termination payment to be transferred to an escrow account.**

The core issue was whether the arbitral tribunal had jurisdiction to order NHAI to deposit termination payments into an escrow account following the termination of a concession agreement.

The court upheld the tribunal's decision, affirming that the concession agreement was part of the escrow and substitution agreements, thus granting the tribunal jurisdiction. The court found no merit in NHAI's arguments and dismissed the petitions, maintaining the arbitral award.

> ***"157. The Tribunal notes that this argument is also brought up for the first time, and is not backed by any pleadings. The Tribunal also notes that all calculations of the Termination Payment were duly provided by the Claimant, backed by documentation and evidence, and none of this was challenged at any stage by Respondent No. 2. The Tribunal further notes that Respondent No. 2 also offers no alternative calculation for the quantum of the Termination Payment itself, and merely states that this value can be determined only by all three parties. The Tribunal additionally notes that this question of calculation of Termination Payment is a matter of merit, and has nothing to do with the question of jurisdiction."***

Accordingly, the Court upheld the arbitral award and dismissed the petitions filed by NHAI, holding that the arbitral tribunal was competent to direct deposit of the termination payment into an escrow account and that no jurisdictional infirmity or legal error warranting interference was made out.

180. *LARSEN AND TOUBRO LIMITED VS. RAIL VIKAS NIGAM LIMITED, (2025 DHC 5132), DECIDED ON 01.07.2025 BY DELHI HIGH COURT*

**Issue: Whether failure to raise a plea before the arbitral tribunal amounts to a clear case of waiver or abandonment, precluding the party from subsequently agitating the same under Section 34.**

In the instant case, the High Court of Delhi considered a petition seeking to set aside an arbitral award whereby the claimant's demand for compensation towards idling of resources which were allegedly caused by delays attributable to Rail Vikas Nigam Limited had been rejected. The petitioner sought to assail the award by contending that certain contractual clauses were invalid and ought not to have been applied by the arbitral tribunal.

The Court rejected the challenge, holding that the arbitral tribunal is the final judge of facts and that the scope of interference under Section 34 does not extend to reappreciation of evidence or substitution of the tribunal's interpretation of contractual clauses with that of the court. Crucially, the Court noted that the petitioner had not raised any challenge to Clauses 2.2 and 8.3 of the General Conditions of Contract before the arbitral tribunal. Consequently, the tribunal had no occasion to examine their validity. Raising such pleas for the first time at the Section 34 stage was held to be impermissible and barred by the doctrine of waiver.

While dismissing the petition, the High Court observed as follows:

> ***"22. There is no ambiguity in law with respect to the AT being the best judge of the facts, and the parties cannot ask the Court to re-appreciate evidence under a Section 34 petition.***
>
> ***The AT has the power to interpret the provisions of a contract and accordingly give a decision on the prevalent factual matrix. According to this Court, it will be legally impermissible for it to***

***interfere with the award on the interpretative differences of the contract clauses.***

***The Supreme Court in Union of India v. Susaka (P) Ltd. {(2018) 2 SCC 182} also noted that if a plea was not raised before the AT, the same amounts to clear case of waiver and / or abandonment of a plea at the initial stage. It made the following observations:***

***25. In the light of the aforementioned factual scenario emerging from the record of the case, we cannot grant any indulgence to the appellant (Union of India) to raise such plea for the first time here. In our view, it is a clear case of waiver or/and abandonment of a plea at the initial stage itself.***

***26. Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy.***

***27. If a plea is available, whether on facts or law, it has to be raised by the party at an appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case."***

***23. Since, the AT was never seized of any challenge to Clauses 2.2 and 8.3 of the GCC, it never had the opportunity to give any finding in respect of their validity. In such a scenario, this Court would refrain from entering into a detailed exercise into the claim of the Petitioner as to the validity of these clauses. Reliance on a different award between the parties would also be of no avail to the Petitioner, as each case has to be dealt with within its own factual matrix and the said award was in any case, subsequently passed."***

The court found no grounds under Section 34 of the Arbitration & Conciliation Act, 1996, to interfere with the award, as the petitioner had not challenged these clauses before the tribunal; hence, was deemed to have been waived or abandoned them. Consequently, the petition was dismissed.

181. *ALCON BUILDERS AND ENGINEER PVT LTD VS. UNION OF INDIA AND ORS., (2025 DHC 5306-DB), DECIDED ON 02. 07. 2025 BY DELHI COURT*

**Issue: Whether the arbitrator's award of costs in relation to the arbitration's duration is legally tenable in the absence of detailed reasoning.**

The High Court of Delhi addressed the appeal by Alcon Builders and Engineer Pvt Ltd against the Union of India, challenging a Single Judge's order that partially set aside an arbitral award. The core issue was whether the arbitral tribunal's award of Rs. 4,00,000 in

costs to Alcon was justified without detailed reasoning. The court found that the arbitrator's decision was implicitly supported by the arbitration's duration and costs incurred, thus reversing the Single Judge's order and reinstating the original award. The appeal was disposed of, with the court noting that any further disputes regarding recovered amounts must be pursued separately.

The High court states:

> ***"Given these facts, in our view, the learned Single Judge has erred in interfering with the Impugned Award while demanding further reasons from the learned Arbitrator for the award of the cost and the quantification thereof in favour of the appellant.***
>
> ***17. We, accordingly, set aside the Impugned Order of the learned Single Judge in so far as it, in turn, sets aside the Arbitral Award on the aspect of award of costs in favour of the appellant and against the respondents. The Arbitral Award to that extent shall stand revived."***

Accordingly, the appeal was disposed of by reinstating the arbitral award insofar as it related to the award of costs in favour of the appellant. The Court clarified that any further disputes relating to recovery or adjustment of amounts pursuant to the award would have to be pursued in appropriate proceedings separately.

182. *TPF GETINSA EUROESTUDIOS SL IN ASSOCIATION WITH SEGMENTAL CONSULTING AND INFRASTRUCTURE ADVISORY P LTD VS. NATIONAL HIGHWAYS AUTHORITY OF INDIA, (2025 DHC 5588), DECIDED ON 08.07.2025 BY DELHI HIGH COURT*

**Issue: Whether a Consultancy agreement can be terminated due to the anomalies in certifying excess payments and whether such termination upheld by an arbitral tribunal warrants interference under Section 34.**

The High Court of Delhi addressed the validity of the termination of a contract between the parties. It reviewed an arbitral award that upheld the termination due to the Petitioner's alleged financial misconduct in certifying excess payments. The Petitioner assailed the award on merits, contending that the termination was unjustified and that the arbitral tribunal had erred in appreciating the evidence.

The Court rejected the challenge, holding that the arbitral tribunal's interpretation of the contractual provisions was reasonable and in consonance with the language and intent of the agreement. It was observed that the termination clause expressly empowered the respondent to terminate the contract in cases of misconduct, gross negligence, or loss of confidence, particularly where public funds were involved. The Court reiterated that its jurisdiction under Section 34 is extremely limited and does not permit reappreciation of evidence or substitution of the court's view for that of the tribunal.

The Court observed:

> ***"33. This Court is of the view that the Petitioner has been unable to make out a case that would fit within the four corners of Section 34***

***of the Arbitration Act. The jurisdiction of this Court under Section is extremely circumscribed and this Court is not required to re-adjudicate the disputes and supplant its view over that of the Arbitral Tribunal. The Arbitral Tribunal's decision is final and binding on the parties unless it established that the same is in conflict with the public policy of India or is vitiated by perversity or patent illegality on the face of the award.***

***34. The issues raised by the Petitioner before this Court go into the matters of evidence, re-appreciation which is not permitted under Section 34 of the Act. The interpretation given by the Tribunal is consistent with the language and intent of the contractual provisions of the agreement. It clearly notes that Clause 2.9.1(g) bestows the Respondent with the power to terminate the contract in case of misconduct, gross negligence, or any act that leads to loss of confidence. Given that public money was at stake the clause allowed the Respondent to take immediate and prompt action in case of breach of integrity."***

Accordingly, the Court held that no ground was made out for interference with the arbitral award under Section 34. The petition was dismissed, reaffirming that courts cannot re-evaluate evidence or substitute their judgment for that of the arbitral tribunal where the award is based on a plausible and reasonable interpretation of the contract.

183. *M/S BRIJ LAL & SONS VS. UNION OF INDIAN, (2025 DHC 2075) DECIDED ON 28.03.2025 BY DELHI HIGH COURT*

**Issue: Whether delay in publication invalidate Award unless it is shown that the Award has materially affected rights of Parties**

The Hon'ble Delhi High Court considered whether delay in publication of an arbitral award vitiates the award itself. The Hon'ble Court held that delay alone is insufficient unless prejudice is demonstrated. The Hon'ble Court observed that:

***"There is no issue of any proceeding being unfair or violative of the principles of natural justice in the course of arbitration proceedings. Although, there was a delay in passing the impugned award, but there was no prejudice suffered by the appellant in any manner. The delay in publication of award does not invalidate the award unless it is shown that the award has materially affected the rights of the parties."***

The Court further observed the scope of the expression "the public policy of India" contained in Section 34(2)(b)(ii) of the Act. The Court placed reliance on the decision of the Supreme Court in the case of ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705 wherein it was observed that:

***"However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such***

***award/judgment/decision is likely to adversely affect the administration of justice".***

The Hon'ble Court held that it was unable to find any illegality, perversity in the impugned award passed by the arbitrator. A perusal of the record indicated that the parties were heard at length and the claims were duly considered. There was no issue of any proceeding being unfair or violative of the principles of natural justice in the course of arbitration.

Accordingly, the Delhi High Court held that mere delay in the publication of an arbitral award does not vitiate its validity in the absence of demonstrable prejudice or material impact on the rights of the parties, and that where the arbitral process is fair and free from illegality or perversity, no interference is warranted under Section 34 on grounds of public policy.

184. *NISHA MANGLA AND ORS. VS. TVS LOGISTRICS SEVICES LTD., (FAO 515 OF 2019 & CM APPL. 55292 OF 2019), DECIDED ON 30.06.2025 BY DELHI HIGH COURT*

**Issue: Whether the arbitration clause in an unregistered and unstamped agreement is enforceable.**

In the instant case, the High Court of Delhi addressed an appeal by Nisha Mangla and others against TVS Logistics Services Ltd., challenging a district court's dismissal of their objections to an arbitration award.

The core issue was whether the arbitration clause in an unregistered and unstamped agreement was enforceable. The court upheld the arbitral tribunal's decision, which found the agreement inadmissible for affecting the premises but valid for arbitration, thus treating the tenancy as month-to-month.

***"39. The Impugned Order has rightly observed that the finding of fact cannot be challenged under Section 34 of the Act, unless it is wholly perverse. As each finding of fact in the Award was based upon evidence, the Petition was rightly dismissed by the learned District Court.***

***40. In any event, the issue with regard to the stamping of the arbitration agreement has been conclusively settled in In Re: Interplay between Agreements under Arbitration and Conciliation Act, 1996 : Neutral Citation: MANU/SC/1325/2023 : 2023 INSC 1066, where the Supreme Court had held that the Agreement that are not stamped are inadmissible in evidence and not rendered void or void ab initio or unenforceable. Non-stamping is a curable defect and any objection in relation to the stamping of the agreement fall within the arbitral tribunal. Hence, the learned Arbitral Tribunal had the jurisdiction to pass the Award.***

***41. Hence, there was no perversity in the Award and the Impugned Order has rightly dismissed the Petition under Section 34 of the Act."***

Accordingly, the appeal was dismissed, affirming the tribunal's award for refunding the security deposit with interest, referencing the Supreme Court's stance that non-stamping is a curable defect.

185. *UNION OF INDIA VS. RELIANCE INDUSTRIES LIMITED & ORS., (2025 DHC 915-DB) DECIDED ON 14.02.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitral award permitting extraction of natural resources without express State consent is liable to be set aside for patent illegality and violation of public policy under the Arbitration and Conciliation Act, 1996.**

The Delhi High Court upheld the setting aside of an arbitral award on the ground of patent illegality and violation of public policy, holding that the arbitral tribunal's failure to consider critical material, including the D&M 2003 Report and constitutional obligations under Article 297 vitiated the award. The Hon'ble Court observed that non-consideration of material evidence central to the dispute amounts to patent illegality, thereby justifying judicial interference under Section 34. The judgment delineates the fine balance between arbitral autonomy and the court's duty to intervene where the award strikes at the root of public policy.

The Court observed that:

> ***"Accordingly, in view of the factual position involved we find sufficient reasons to interfere with the impugned order dated 09.05.2023 i.e., specifically after the finding(s) of the learned AT in the Arbitral Award qua the proceedings inter se the UOI and the RIL being an International Commercial Arbitration as also since it is held in the impugned order passed by the learned Single Judge that the learned AT has taken a 'possible view'. In any event, as elaborately discussed hereinabove, we have found 'patent illegality' on the face of the Arbitral Award worthy of interference by us in the present appeal under Section 37 of the Act."***

Accordingly, the Delhi High Court reaffirmed that while arbitral autonomy must be respected, courts are duty-bound to intervene where an award suffers from patent illegality or undermines constitutional mandates and public policy, particularly due to non-consideration of material evidence central to the dispute, thereby warranting interference under Sections 34 and 37 of the Act.

186. *HINDUSTAN HYDRAULICS PVT. LTD VS. UNION OF INDIA, (2025 DHC 4927) DECIDED ON 09.06.2025 BY DELHI HIGH COURT*

**Issue: Whether inconsequential errors can vitiate a reasoned Arbitral Award.**

The Delhi High Court held that the petitioner cannot take advantage of apparent inconsequential errors and fumbles to challenge the award. Inconsequential errors in the award cannot be a ground to challenge otherwise judicious and reasoned award. The court observed that the respondent did not outrightly reject the machine, when it discovered the

basic design deviation, which was pointed out by the RCF in its earliest deficiency list. However, the said deviation was called out consistently in several letters, over the trial run of the machine. Also, the court noted that the respondent expected the petitioner to rectify the defects raised, including the basic design deviation mentioned above, but the same could not be achieved.

The Court explained that while the award contained in articulations, cryptic passages and some incorrect factual recitals, those inconsequential errors did not affect the core reasoning leading to the decision (the Petitioner's admission of a material design deviation). Consequently, the errors were insufficient to render the award vulnerable under Section 34.

Accordingly, the Delhi High Court held that minor inaccuracies or inconsequential errors in an arbitral award do not vitiate its validity, and that where the core reasoning and findings are sound and supported by the record, such trivial defects cannot justify interference under Section 34 of the Arbitration and Conciliation Act, 1996.

187. *DIRECT NEWS (P) LTD. VS. DTS TRAVELS (P) LTD.,( FAO (COMM) 53/2025 & CM APPL. 12360-61/2025) DECIDED ON 03.03.2025 BY DELHI HIGH COURT*

**Issue: Whether, while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, the court can reappreciate evidence or re-evaluate factual findings of the arbitral tribunal, notwithstanding the inapplicability of the Indian Evidence Act, 1872 to arbitral proceedings.**

The Delhi High Court considered the scope of judicial interference under Section 34 of the Arbitration and Conciliation Act, 1996, in the context of a challenge premised on alleged improper appreciation of evidence by the arbitral tribunal. The appellant contended that the arbitral tribunal had erroneously relied upon photocopies of invoices and other documents, contrary to the principles embodied in the Indian Evidence Act, 1872, and that the award therefore warranted interference. The Court was thus required to determine whether such objections invited a reappreciation of evidence impermissible under Section 34.

The Court noted that the arbitral tribunal had assessed the documentary material, oral evidence, admissions, and reconciliation statements placed on record and had returned findings based on such evaluation. It was observed that the award was not founded on absence of evidence, but on appreciation of the material produced, and that objections raised by the appellant essentially invited the court to substitute its own view on facts, an exercise impermissible under Section 34. The Hon'ble Delhi High Court in the present case held that:

> ***"It is well settled that the court is not required to reappreciate or reevaluate the evidence and reagitate the disputes. The scope of examination under Section 34 of the Arbitration & Conciliation Act is confined to determining whether the arbitral award is required to be set aside on the grounds as set out under Section 34(2) and 34(2)(a) of the A&C Act"***

> ***"the provisions of Indian Evidence Act, 1872 are not applicable to the arbitral proceedings. Section 1 of the Indian Evidence Act, 1872 as well as the Section 19 of A&C Act expressly stipulate that the Indian Evidence Act, 1872 is not applicable to arbitral proceedings. However, its trite that the fundamental principles of the said enactment would serve as a guide for the Arbitral Tribunal to evaluate the material and draw its conclusions."***

Accordingly, it was held that while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, the court cannot reappreciate evidence or re-evaluate factual findings of the arbitral tribunal, even though the Indian Evidence Act, 1872 is inapplicable to arbitral proceedings. So long as the arbitral tribunal's view is a plausible one based on the material before it, the award is immune from interference under Section 34.

188. *UNION OF INDIA VS. M/S G.R. GAWA R(J.V.), (2025 DHC 3374) DECIDED ON 24.04.2025 BY DELHI HIGH COURT*

**Issue: Whether initial Filing Without Essential Documents would be Non Est In Law and Limitation can't be circumvented by curing defects**

The Delhi High Court examined whether a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, without annexing the impugned arbitral award and suffering from multiple serious defects, could be treated as a valid filing for the purpose of stopping limitation. The Court undertook a detailed scrutiny of the nature, extent, and timing of defects in the initial filing and the subsequent rectifications, and considered whether such filing could be categorised as merely "defective" or legally non est.

The Court further added that the skeletal nature of the original filing, lacking essential pleadings and annexures, reflects an attempt to bypass the limitation law. Such a filing cannot be regarded as a bona fide institution of proceedings under Section 34 of the Arbitration Act. The Hon'ble High Court held that:

> ***"in view of the cumulative defects and the substantial nature of the corrections and additions made post-limitation, this Court is satisfied that the initial filing was merely an attempt to stop the running of limitation and was not a bona fide invocation of Section 34 of the Act of 1996. Accordingly, the filing must be held to be non est in law."***

Accordingly, the Court held that where the initial filing is bereft of essential documents, particularly the arbitral award, and is accompanied by multiple substantive defects which are cured well beyond the permissible statutory period, such filing is non est in law. Limitation, therefore, continues to run, and subsequent rectification cannot retrospectively validate an invalid filing or circumvent the strict timelines prescribed under Section 34(3) of the Act.

189. *PRAGATI CONSTRUCTION CONSULTANTS VS. UNION OF INDIA AND ORS. (2025 DHC 717 FB) DECIDED ON 07.02.2025 BY DELHI HIGH COURT*

**Issue: Whether failure to attach Impugned Arbitral Award along with Section 34 Application would render filing Non-Est.**

The Hon'ble Delhi High Court in a reference made by a single judge bench held that if the party challenging an award u/s 34 of the A&C Act does not attach the impugned arbitral award with the Section 34 application, the filing will be considered "non-est." The Court further held that the filing of the arbitral award along with the Section 34 application is an essential requirement.

The Court observed that the arbitral award can be set aside by the Court u/s 34(2)(a) of the Arbitration and Conciliation Act, 1996, if the applicant establishes on the basis of the record of the arbitral tribunal that any of the grounds mentioned in the said section were violated during arbitral proceedings. An award can also be set aside u/s 34(2)(b) of the Arbitration and Conciliation Act, 1996, if the subject matter of the dispute was not capable of being settled by arbitration, or if the award was in conflict with the public policy. Furthermore, an award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court u/s34(2A) of the A&C Act, if the award is vitiated by patent illegality appearing on the face of the award. It would be impossible to satisfy the conditions given u/s 34 of the A&CAct, if the arbitral award is not placed on record. The Hon'ble Court held that:

> ***"The Court may under Section 34(2)(b) of the A&C Act, also set aside an Arbitral Award if it finds that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being enforced, or the Arbitral Award is in conflict with the public policy of India." Further the Court said, "filing of the Arbitral Award under challenge along with the application under Section 34 of the A&C Act is not a mere procedural formality, but an essential requirement. Non-filing of the same would, therefore, make the application "non-est" in the eyes of the law"***

Accordingly, the Delhi High Court held that attaching the impugned arbitral award to a Section 34 application is an essential requirement, and failure to do so renders the filing "non-est," as the court cannot assess the validity of the award or grounds for challenge without the award on record.

190. *BHARAT HEAVY ELECTRICALS LIMITED VS. XIAMEN LONGKING BULK MATERIAL SCIENCE AND ENGG. CO. LTD., (2025 DHC 7139), DECIDED ON 21.08.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitral award is liable to be set aside for violating the fundamental policy of Indian law and principles of natural justice where the arbitrator disregards mandatory contractual preconditions and grants monetary claims based on conjecture rather than cogent evidence.**

The Delhi High Court held that the arbitrator's decision to allow payment through a third party's bank account and award costs for unapproved drawings lacked evidentiary support

and violated the contract's terms. The Court emphasized that rewriting contracts or imposing unilateral alterations by an arbitral award breaches fundamental justice and warrants judicial interference under Section 34.

The court observed that:

> ***"76. In Satluj Jal Vidyut Nigam Ltd. v. Jaiprakash Hyundai Consortium & Ors., 2023:DHC:4692, this Court underscored the need for caution in entertaining financial claims without proper evidentiary basis. The relevant paragraph reads as under:***
>
> ***"57. Entertaining financial claims based on novel mathematical derivations, without proper foundation in the pleadings and/or without any cogent evidence in support thereof can cause great prejudice to the opposite party. Especially in the context of construction contracts where amounts involved are usually astronomical, any laxity in evidentiary standards and absence of adequate diligence on the part of an arbitral tribunal in closely scrutinizing financial claims advanced on the basis of mathematical derivations or adoption of novel formula, would cast serious aspersions on the arbitral process. The present case is an example where substantial liability has sought to be fastened on one of the contracting parties based on specious paper calculations. It cannot be overemphasized that arbitral tribunals must exercise due care and caution while dealing with such claims."***
>
> ***77. Hence, in the present case, the award of Rs. 13,65,000/- is not the outcome of a reasoned evaluation based on cogent evidence but is instead a conclusion based on guesswork and not supported by any evidence. Thus, it is in conflict with the most basic notions of justice."***

Accordingly, the Delhi High Court set aside the award citing a breach of fundamental policy and natural principles of justice. Court held that an arbitral award founded on conjecture, unsupported by cogent evidence, or rendered in disregard of mandatory contractual stipulations violates the fundamental policy of Indian law and principles of natural justice, thereby warranting setting aside under Section 34 of the Arbitration and Conciliation Act, 1996.

For the above reasons, the Court constrained to set aside the award on the only ground that there has been an inordinate and unexplained delay in passing the award. This Original Petition was allowed.

191. *RAMCHANDER VS. UNION OF INDIA & ANR., (2025 DHC 1804) DECIDED ON 11.03.2025 BY DELHI HIGH COURT*

**Issue: Whether the High Court ought to exercise its writ jurisdiction under Article 226 of the Constitution when a complete statutory remedy is available,**

**absent exceptional circumstances such as absence of remedy or demonstrable bad faith.**

In the instant case, the Delhi High Court was called upon to decide the maintainability of a writ petition seeking refund of amounts allegedly paid in excess, after the arbitral award rejecting such claim had been set aside under Section 34 of the Arbitration and Conciliation Act, 1996. The petitioner invoked Article 226 contending that, upon setting aside of the award, the Court ought to enforce the natural consequences thereof by directing refund, and that no efficacious remedy remained available.

The Court rejected this contention and reiterated the settled principle that the existence of a complete statutory framework for redressal ordinarily bars invocation of writ jurisdiction. It emphasised that while Article 226 is a constitutional remedy which cannot be ousted, its exercise is governed by self-imposed restraint, particularly where parties have already availed and exhausted remedies under a special statute. The Court noted that the arbitration regime provides a comprehensive mechanism not only for adjudication of disputes but also for challenge, enforcement, and further remedies, and that writ jurisdiction cannot be used to bypass or short-circuit this statutory scheme.

The Court further clarified that writ intervention may be justified only in cases of "exceptional rarity", such as where a party is left remediless under the statute or where clear bad faith or lack of jurisdiction is demonstrated. In the facts before it, the petitioner had repeatedly invoked statutory remedies, suffered dismissal of an appeal on limitation, and thereafter sought to invoke writ jurisdiction as a substitute for remedies not pursued or lost. Such conduct, the Court held, did not constitute an exceptional circumstance warranting interference.

The Hon'ble High Court held that:

> ***"In Deep Industries (supra),....It is settled law when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation, held that it is prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure under the enactment and this power under Article 226 needs to be exercised in exceptional rarity, wherein one party is left remediless under the Statute or a clear 'bad faith' is shown by one of the parties."***

Accordingly, the Court held that where a complete statutory remedy is available and no exceptional circumstances such as absence of remedy or demonstrable bad faith are shown, the High Court ought not to exercise its writ jurisdiction under Article 226, and dismissed the writ petition as not maintainable.

192. *RAHEJA DEVELOPERS LIMITED VS. AHLUWALIA CONTRACTORS INDIA LTD., (2025 DHC 5133) DECIDED ON 01.07.2025 BY DELHI HIGH COURT*

**Issue: Whether the amendment to bring additional grounds u/s 34 of Arbitration & Conciliation Act, 1996 is maintainable if objections are not beyond judicial scrutiny of Court.**

The Court first took up the respondent's preliminary objection that the application to amend the Section 34 petition (to place additional grounds and documents) is time-barred under Section 34(3). The Court observed that the question of the maintainability of the amendment is threshold in nature and therefore should be addressed first.

The Court relied principally on the Supreme Court decision in State of Maharashtra v. Hindustan Construction., which (a) recognise that an application under Section 34 must be made within the prescribed time but (b) allow a limited window for amendments where the original application was filed within time and peculiar circumstances warrant it. The Court emphasised that the threshold for such amendments is high and that amendments which introduce wholly new grounds and material that have no foundation in the original petition would not be permitted.

Applying those principles, the Court analysed whether the additional grounds sought by the petitioner (chiefly the legal ground that the AT was functus officio and therefore lacked jurisdiction to pass the award) were:

- Legal in character rather than being based on new factual material, and
- Supported by foundational facts already present in the original Section 34 petition.

The Court concluded that (i) if the original Section 34 petition has been filed within the prescribed time, an amendment to add legal grounds may be permissible under the narrow exception recognised in Hindustan Construction; (ii) the additional grounds in this case are legal and are supported by foundational facts that were already before the Court in the original petition; and (iii) the question of jurisdictional competence of the AT under Section 29A is a legal question that the Section 34 Court would naturally examine when such an objection is raised.

The Court further analysed the nature of Section 29A and observed that extension of the AT's mandate beyond the initial periods is within the supervisory jurisdiction of the courts and not dependent entirely on party consent, particularly for the period beyond the first six months. Consequently, any alleged waiver of mandatory procedure under Section 29A would not necessarily preclude the Section 34 Court from examining whether an award was rendered by an AT that had become functus officio.

The Court held that omission to plead the functus-officio ground in the original petition (filed within limitation) does not place the objection beyond judicial scrutiny under Section 34: where foundational facts are already pleaded, the legal ground can be raised by amendment and fall within the exception carved out in Hindustan Construction.

The Court held that:

> ***"According to this Court, omission to plead the ground in question in the original Section 34 petition- filed within limitation (condonable) period, will not put the objection beyond the judicial scrutiny under Section 34. Certainly, the amendment does fall within the exceptions carved out in Hindustan Construction (Supra). Foundational facts in the nature of bare dates of events and arbitral stages, which is the basis of the ground of challenge in question, are already before Court in the original petition."***

Accordingly, the Delhi High Court held that an amendment to a timely filed Section 34 petition to raise additional legal grounds is maintainable, provided the new grounds are supported by foundational facts already pleaded, and that such omissions do not place the objection beyond judicial scrutiny under Section 34.

193. *MAHANAGAR TELEPHONE NIGAM LTD VS. MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL AND OTHERS, (2025 DHC 102) DECIDED ON 08.01.2025 BY DELHI HIGH COURT*

**Issue: Whether a party can invoke writ jurisdiction under Article 226 to challenge an arbitral award or the arbitrator's jurisdiction when an efficacious statutory remedy is available under the Arbitration and Conciliation Act, 1996.**

The Delhi High Court considered the maintainability of a writ petition filed under Article 226 challenging an arbitral award rendered pursuant to a reference under Section 18 of the MSMED Act, 2006, on the ground that the arbitrator had exceeded the scope of reference and lacked jurisdiction. The petitioner sought to assail the arbitral tribunal's rejection of its jurisdictional objections directly in writ proceedings.

The Court declined to entertain the writ petition, holding that once objections as to jurisdiction had been raised before and decided by the arbitral tribunal, the petitioner was required to avail the statutory remedies provided under the Arbitration and Conciliation Act, 1996. The Court emphasised that the Act constitutes a self-contained code, specifically providing for challenge to jurisdictional determinations under Section 16 and to the award itself under Section 34. Invocation of writ jurisdiction in such circumstances would run contrary to the legislative mandate of minimal judicial interference in arbitral proceedings.

The Hon'ble Delhi HC observed that:

> ***"...it is impermissible for the petitioner to agitate these issues in the present petition under Article 226 of the Constitution of India. The impugned award dated 15.10.2024 having been rendered by the learned sole arbitrator, and the objections as regards (lack of) jurisdiction having been rejected by the learned sole arbitrator, the appropriate remedy for the petitioner is to assail the same by taking recourse to the remedies under the Arbitration and Conciliation Act, 1996..."***

Accordingly, the High Court held that a party cannot invoke writ jurisdiction under Article 226 to challenge an arbitral award or the arbitrator's jurisdiction when an efficacious statutory remedy is available under the Arbitration and Conciliation Act, 1996, and dismissed the writ petition with liberty to pursue remedies under Section 34 of the Act.

194. *JAGDISH KAUR VS. JASBIR SINGH SANDHU & ORS., (2025 DHC 10446-DB) DECIDED ON 26.11.2025 BY DELHI HIGH COURT*

**Issue: Whether courts exercising jurisdiction under Sections 34 and 37, can correct manifest computational errors apparent on the face of an arbitral award without re-examining the merits or re-appreciating evidence.**

The Delhi High Court examined whether an evident computational error in the arbitral award arising from non-adjustment of an admitted excess payment could be corrected in proceedings under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. The Court reaffirmed that while the scope of interference under Sections 34 and 37 is limited and does not permit re-appreciation of evidence or review of merits, such limitation does not extend to patent mathematical or clerical errors apparent on the face of the award.

The Court distinguished between impermissible appellate scrutiny and permissible correction of manifest errors, holding that where the arbitral findings themselves disclose a clear computational mistake, its correction would not amount to modification on merits. The Court further observed that the mere fact that such an error was not specifically urged before Section 34 Court cannot operate as a bar where the error is self-evident and undisputed from the record.

> ***"This inconsistency arises not from any interpretative exercise or re-appreciation of evidence but from a manifest error, with regard to the computation of the resulting liability, that is self-evident upon comparing the numerical findings recorded in the Award. Such a computational discrepancy, being objectively demonstrable from the Award itself, constitutes an error apparent on the face of the record."***

Accordingly, the High Court held that courts exercising jurisdiction under Sections 34 and 37 are empowered to correct manifest computational errors apparent on the face of an arbitral award, provided such correction does not involve re-examination of evidence or the substantive merits of the dispute.

195. *NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI) VS. SOUTH INDIAN BANK LTD AND UNION BANK OF INDIA LTD. & ANR., (2025 DHC 5126) DECIDED ON 01.07.2025 BY DELHI HIGH COURT*

**Issue: Whether the arbitral award is liable to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 on the grounds of conflict with the public policy of India, patent illegality, or violation of the principles of natural justice, warranting judicial interference within the limited and supervisory jurisdiction of the Court.**

The Delhi High Court reiterated that the scope of judicial interference under Section 34 of the Arbitration and Conciliation Act, 1996 is narrow, limited, and circumscribed by the statutory framework. The Court emphasised that an arbitral award is not amenable to being set aside merely because an alternative view is possible or because the court may have arrived at a different conclusion on facts or law.

The Court observed that interference under Section 34 is permissible only on the specific grounds expressly provided under the Act, including where the award is in conflict with the public policy of India, suffers from patent illegality apparent on the face of the award, or is vitiated by a violation of the principles of natural justice. The Court further underscored

that reappreciation of evidence or reassessment of merits is wholly impermissible within the limited jurisdiction under Section 34 and observed as follows that:

> ***"It has time and again been reiterated that the challenge to an Arbitral Award is only to be seen through the limited and specific grounds provided under section 34 of 1996 Act. The Arbitral Award can be set aside on the ground, inter alia, being in conflict with the public policy of India, patent illegality, violation of principles of natural justice."***

Accordingly, the Court reaffirmed that judicial review under Section 34 is supervisory and not appellate in nature, and that arbitral awards must be accorded due deference in furtherance of the legislative intent of minimal judicial intervention.

196. *INCITE HOMECARE PRODUCTS PVT. LTD. VS. R K SWAMY PVT. LTD. ERSTWHILE R K SWAMY BBDO PVT LTD. (FAO NO. 46 OF 2025) DECIDED ON 27.02.2025 BY DELHI HIGH COURT*

**Issue: Whether exclusion of time under Section 14 of the Limitation Act, 1963, can be applied while computing limitation for a challenge under Section 34, notwithstanding the bar on review of arbitral awards and the restrictive scheme of Section 34(3).**

The Delhi High Court held that while computing the limitation period of three months for filing an application under Section 34(1) of the Arbitration and Conciliation Act, 1996, the time spent by the applicant in bona fide prosecuting the application before a court lacking jurisdiction is liable to be excluded. The Court clarified that such exclusion is permissible only where the proceedings before the wrong forum were pursued with due diligence and in good faith.

The Court observed that the District Judge erred in failing to consider the applicability of Section 14 of the Limitation Act, 1963, which provides for exclusion of time spent in proceedings before an incompetent court. In this context, reliance was placed on the Supreme Court's decision in Consolidated Engineering Enterprises V. Principal Secretary, Irrigation Department, wherein the distinction between the scope of Section 5 and Section 14 of the Limitation Act was elucidated, and it was held that Section 14 operates independently to exclude such time from the computation of limitation.

The Hon'ble Delhi High Court. In this case stated that:

> ***"it is manifest that the impugned order dated 18.01.2025 cannot be sustained due to the fact that the learned District Judge failed to consider the aspect of exclusion of time in accordance with Section 14 of the Limitation Act, 1963."***
>
> ***"...reference may also be made to the decision by the Supreme Court in the Kirpal Singh v. Government of India, wherein the proposition***

***of law was reiterated that the relief can also be claimed under Section 14 of the Limitation Act, 1963, despite an appeal/application/objection being barred by virtue of Section 34(3) of the Act."***

The Court further observed that:

***"A review of the Award is unequivocally proscribed by the Act. Such an approach subverts the purpose of Section 33, rendering the application ineligible for the benefit of an extended limitation period under Section 34(3)."***

Accordingly, the Delhi High Court held that while the strict timelines under Section 34(3) of the Arbitration and Conciliation Act must be adhered to, the benefit of exclusion of time under Section 14 of the Limitation Act is available where the applicant has bona fide and diligently prosecuted proceedings before a court lacking jurisdiction, and failure to consider such exclusion would vitiate the order dismissing the Section 34 petition on limitation.

197. *KGF COTTONS PVT LTD V. HALDIRAM SNACKS PVT LTD, (2025 DHC 2097-DB) DECIDED ON 08.01.2025 BY DELHI HIGH COURT*

**Issue: Whether an application u/s 34 without Award Copy or Vakalatnama is merely Filed to save limitation**

The Delhi High Court examined whether an initial filing of a petition under Section 34 of the Arbitration and Conciliation Act, 1996, bereft of the arbitral award and vakalatnama, could be treated as a valid institution in law for the purpose of arresting limitation. The Court was called upon to determine whether such a filing constituted a bona fide invocation of jurisdiction or was a perfunctory act aimed solely at safeguarding limitation, with substantive compliance deferred beyond the statutory period.

Upon scrutiny of the filing history and Registry records, the Court noted that the petition was initially filed within the prescribed limitation period but admittedly without annexing the impugned arbitral award and without a vakalatnama. The Court observed that the defects were notified on the same day and remained uncured for a substantial period, with the petition being effectively re-filed only after the expiry of the maximum permissible period under Section 34(3). The Court rejected the petitioner's contention that the initial filing, though defective, was sufficient to stop the clock of limitation.

The Hon'ble court held that:

***"...It cannot be said that a challenge to an Award filed without the Award itself would be a valid filing. Without the Award, the challenge would become meaningless because unless the Award is perused by the Court, it cannot adjudicate upon the appropriateness and correctness of the Award. An application under Section 34 of the Act filed without an Award and admittedly without a vakalatmana can only be a stack of papers filed only to save the limitation."***

Accordingly, the Court held that an application under Section 34 filed without the arbitral award and vakalatnama does not amount to a valid filing in the eyes of law and is non est. Such a filing cannot be recognised as stopping limitation, and subsequent curing of defects beyond the statutorily prescribed period cannot revive or validate an otherwise time-barred challenge. The petition was therefore dismissed as barred by limitation.

198. *HARSHVARDHAN METALS LTD. & ANR. V. ISF COMMODITIES (P) LTD., (2025 DHC 3499) DECIDED ON 02.05.2025 BY DELHI HIGH COURT*

**Issue: Whether Pre-Deposit of Awarded amount through Bye-Laws for entertaining plea under Section 34 of Arbitration Act is permissible.**

The Court observed that Bye-Law requires deposit of the awarded amount with the Exchange before filing an "appeal", a provision intended to ensure a financial stake in the appeal. However, the Court found the term "appeal" to be potentially misleading in the arbitration context because the remedy under Section 34 of the Arbitration and Conciliation Act, 1996 is a statutory challenge to set aside an award rather than a conventional appellate remedy.

The Court noted that Bye-Law explicitly contemplates that awards may be set aside or modified by the court under the Act and that matters will be disposed of according to the court's directions. This provision supports the petitioners' position that a party may approach the court under the Act without the precondition of depositing the awarded amount with the Exchange.

The Court held that statutory remedies cannot be curtailed by procedural bye-laws. The Court observed that:

> ***"A petition under Section 34 is a statutory remedy and not an appeal, and therefore no mandatory pre-deposit can be imposed as a condition precedent."***

Accordingly, the Delhi High Court held that procedural bye-laws cannot override or restrict the statutory right to challenge an arbitral award under Section 34, and that imposing a mandatory pre-deposit of the awarded amount as a condition for entertaining such a petition is impermissible in law.

199. *UNISON HOTELS PVT. LTD. VS. KNM CHEMICALS PVT. LTD., (O.M.P. (COMM) 53/2025), DECIDED ON 20.02.2025 BY DELHI HIGH COURT*

**Issue: Whether an arbitral award rendered pursuant to statutory arbitration under the MSMED Act can be interfered with under Section 34 of the Arbitration and Conciliation Act, 1996, on grounds of alleged misappreciation of evidence, rejection of counterclaims, or erroneous application of law.**

In the instant case, the Delhi High Court examined a challenge under Section 34 of the Arbitration and Conciliation Act, 1996 to an arbitral award passed by an Arbitral Tribunal constituted under Section 18(3) of the MSMED Act. The petitioner sought to assail the award primarily on the ground that the Tribunal had wrongly rejected its counterclaims,

ignored evidence relating to alleged substandard supply of goods, and erred in awarding interest under the MSMED Act.

The Court reiterated that the jurisdiction under Section 34 is supervisory and narrowly circumscribed, and does not permit reappreciation of evidence or substitution of the Court's view for that of the Arbitral Tribunal. It noted that the Tribunal had examined the material placed before it, including the alleged test report and claims of defective supply, and had returned findings based on the evidentiary record. The Court further held that the Tribunal's reliance on statutory provisions governing acceptance of goods and its rejection of the counterclaims could not be characterised as perverse or patently illegal.

The Court observed as follows:

> ***"The scope of interference under Section 34 of the A&C Act being well defined and the challenge to an award being confined to it being patently illegal and/or against the public policy, this Court sets out to deal with the contentions raised on behalf of the petitioner....The Arbitral Tribunal rightly observed that this contention was not supported by any oral or documentary evidence."***

Accordingly, the Court held that no ground under Section 34 of the Arbitration and Conciliation Act, 1996 was made out to interfere with the arbitral award, and that alleged errors relating to appreciation of evidence or rejection of counterclaims fall outside the permissible scope of judicial review.

200. *IRCON INTERNATIONAL LIMITED VS M/S PNC-JAIN CONSTRUCTION CO (JV) (FAO (OS) (COMM) NO. 54 OF 2023) DECIDED ON 11.03.2025 BY DELHI HIGH COURT*

**Issue: Whether the application u/s 34 of Arbitration Act is not maintainable if not filed with copy of Arbitral Award.**

The Hon'ble Delhi High Court held that an application under Section 34 of the Arbitration and Conciliation Act, 1996 is non-maintainable if it is not accompanied by a copy of the impugned award. The court held that the filing of the award is not a mere procedural requirement but a mandatory prerequisite for invoking the court's jurisdiction under Section 34. The Division Bench referred to its decision in Pragati Construction Consultants v. Union of India analyzed that a challenge to an arbitral award is maintainable only on limited grounds. The Full Bench held that none of these conditions can be assessed unless the arbitral award itself is placed before the court. It held that the filing of the award along with the application under Section 34 is not a mere procedural formality but an essential requirement.

The Hon'ble court held that:

> ***"filing of the copy of the Impugned Award, which is under challenge, is a bare minimum, rather, mandatory requirement for an application under Section 34 of the A&C Act. Further, non-filing of the same would make such an application "non-est" in the eyes of law, thereby, not stopping the period of limitation from running."***

Accordingly, the Delhi High Court held that filing a copy of the arbitral award is a mandatory prerequisite for maintaining an application under Section 34, and failure to do so renders the petition non-maintainable and does not suspend the running of the limitation period.

201. *SATISH BUILDERS VS. UNION OF INDIA, (2025 DHC 135), DECIDED ON 10.01.2025 BY DELHI HIGH COURT*

**Issue: Whether damages can be awarded when delay in execution of a construction contract is attributable to both parties, and whether such findings warrant interference under Section 34 of the Arbitration and Conciliation Act, 1996.**

The Delhi High Court examined the arbitral findings on delay attribution and noted that contemporaneous correspondence revealed repeated complaints by the respondent regarding slow progress of work and inadequate deployment of manpower by the petitioner. Even the Extension of Time relied upon by the petitioner recorded that, despite justification of delay, adequate manpower and machinery were not provided.

The Court held that:

> ***"Once the learned Arbitrator has gone through entire record and has come to a finding that the delay is attributable to both parties, this court under the limited jurisdiction of section 34 of the Arbitration and Conciliation Act, 1996 cannot substitute the view taken by the learned Arbitrator if the same is a plausible view and is based upon material available before the learned Arbitrator."***

The Court reiterated that under the limited jurisdiction of Section 34, it cannot reappreciate evidence or substitute the arbitrator's view where the conclusions are reasonable and supported by the record.

202. *HIMACHAL PRADESH STATE ELECTRICITY BOARD LTD. VS. HCL INFOTECH LTD., (OMP(M) NO.55 OF 2024 IN CARBC NO.13 OF 2025), DECIDED ON 10.10.2025 BY HIMACHAL PRADESH HIGH COURT*

**Issue: Whether bureaucratic delays, internal approvals, or administrative reasons constitute 'sufficient cause' for condonation of delay beyond the statutory period under Section 34 of the Arbitration Act.**

In the instant case, the Himachal Pradesh High Court was called upon to consider an application seeking condonation of delay in filing objections under Section 34 of the Arbitration Act, where the objections were admittedly filed beyond the statutory period of three months but within the further grace period of thirty days. The petitioner sought to justify the delay on the ground of election duties of departmental officials, movement of files through multiple administrative levels, procurement of legal opinions, and non-availability of senior officers for granting approval. The Court examined whether such institutional and bureaucratic explanations could meet the threshold of "sufficient cause" contemplated under the proviso to Section 34(3).

Upon scrutiny of the sequence of events, the Court found that the reasons advanced reflected administrative lethargy rather than any circumstance that genuinely prevented timely filing. The Court emphasised that once the limitation period is known, it is incumbent upon a litigant, including a State instrumentality, to act with diligence and organise its internal affairs accordingly. Routine explanations such as non-availability of particular officials, internal consultations, or hierarchical approvals were held to be inadequate, especially when alternative officers were available and the signatory to the agreement himself was competent to initiate proceedings.

The Court observed, inter alia, that:

> ***"The applicant herein is not just required to show sufficient cause for the period of twenty two days beyond the prescribed period of three months, rather it is mandated by the proviso to Section 34(3) of the Act to explain as to why the objections could not be preferred within the prescribed period of three months."***
>
> ***"This Court has no hesitation to conclude that no plausible explanation has been rendered on record qua delay in filing the accompanying objections under Section 34 of the Act."***
>
> ***"Examining facts of the present case in light of provisions of Section 34 of the Act and the law laid down on the subject, this Court has no hesitation to conclude that applicant/objector has not been able to furnish any cause much less sufficient cause for condoning the delay in filing the objections against the award beyond the prescribed period of three months. Explanation otherwise attempted to be placed on record cannot be said to be 'sufficient explanation', enabling this Court to condone the delay in filing objections."***

Accordingly, the Court held that bureaucratic delays, internal approvals, and administrative processes, without anything more, do not constitute "sufficient cause" under Section 34(3). Reiterating that limitation under the Arbitration Act must be applied with strictness, the application for condonation of delay was dismissed, resulting in the rejection of the Section 34 objections as time-barred.

203. *RANCHI MUNICIPAL CORPORATION VERSUS M/S A2Z WASTE MANAGEMENT (RANCHI) LIMITED, (2025 JHHC 13549-DB), DECIDED ON 06.05.2025 BY JHATKAHND HIGH COURT*

**Issue: Whether the Commercial Court, while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, exceeded its limited scope of interference by setting aside the entire arbitral award on the basis of a finding of fraud relating to one distinct and unrelated claim.**

In the instant case, the Jharkhand High Court examined the correctness of the Commercial Court's decision to set aside the entire arbitral award by applying a finding of fraud recorded in relation to one specific claim to all other claims adjudicated by the arbitral tribunal. The arbitral tribunal had rejected the contractor's claim concerning procurement of vehicles on the ground of fraud, while independently allowing other claims such as tipping fees,

nominal damages, and costs. Despite the severable nature of these claims, the Commercial Court nullified the entire award under Section 34.

The High Court held that such an approach was wholly impermissible within the limited jurisdiction under Section 34. It reiterated that even where a finding of fraud is sustained in relation to a particular claim, the court cannot mechanically extend such finding to unrelated claims which are founded on separate factual matrices and contractual obligations. The Court emphasised that interference under Section 34 must be claim-specific and proportionate, and wholesale invalidation of an award without examining severability amounts to a jurisdictional error.

The Court observed as follows:

> ***"When the claims are unrelated to each other, on the basis of a fraud with regard to the claim regarding procurement of vehicles, the Commercial Court could not have interfered with the arbitral award with regard to the award of the claim to the Contractor regarding tipping fee."***
>
> ***"In our opinion, this is a perverse approach."***
>
> ***"We are therefore satisfied that the award of the arbitral tribunal, in so far as the Contractor is concerned, was erroneously interfered with by the Commercial Court in a perverse manner."***
>
> ***"Therefore to the extent the Commercial Court interfered with the award of the arbitral tribunal in favour of the Contractor, its judgment is set aside."***

Accordingly, the High Court held that the Commercial Court had exceeded the narrow confines of Section 34 by setting aside the entire arbitral award on the basis of a finding of fraud confined to one distinct and severable claim. The interference was held to be perverse, and the arbitral award was restored insofar as it related to claims unconnected with the alleged fraud.

204. *BIHAR STATE MINERAL DEVELOPMENT CORPORATION LIMITED AND ORS. VS. ENCON BUILDERS (I) PVT. LTD., (ARBITRATION APPEAL NO. 16 OF 2011), DECIDED ON 28.03.2025 BY JHARKHAND HIGH COURT*

**Issue: Whether arbitrator's decision on delay attribution, unsupported by evidence amounts to perversity warranting interference.**

In the instant case the High Court examined the legality of an arbitral award which attributed breach and delay to the appellant corporation and granted idling charges in favour of the respondent contractor. The Court found that the arbitrator's conclusions were not supported by any documentary evidence, particularly with respect to alleged delays caused by non-availability of explosives or requisitions therefor. It was held that the burden of proving such delay squarely lay on the contractor, which remained undischarged.

The Court further held that the award of idling charges was expressly barred under Clause 18 of the agreement and that the arbitrator had ignored the mandatory requirement under Clause 29, which obligated the contractor to maintain proper records substantiating deployment of manpower and machinery. In the absence of any such supporting documentation, the award was found to be perverse and contrary to the contractual terms.

The Hon'ble Court observed as follows:

> ***"Further, the manner in which damages under the heading of idling charges has been awarded, without any attributable fault on the part of the appellant corporation, smacks of bias on the part of the learned Arbitrator. The said assessment of loss was beyond the express term of agreement..."***
>
> ***"Further, the assessment of loss to the tune of Rs 20,69,760/- on account of idling of manpower and machine, is bereft of any supporting evidence, except for the statement made in the claim petition. It was incumbent on the part of the respondent to have maintained documentation with regard to deployment of men and machines at the work site, as per Clause-29 of the agreement."***
>
> ***"Without going further, for the reasons discussed above this Court is of the view that breach of contract was on the part of the respondent and, therefore, the impugned Arbitral Award and Judgment passed by the learned Arbitrator and the Court below is not sustainable and is, accordingly, set aside."***

Accordingly, it was held that an arbitral finding on delay attribution unsupported by evidence, and an award of damages contrary to express contractual prohibitions, suffers from perversity and is liable to be set aside. The arbitral award and the judgment of the court below were consequently quashed.

205. *BRUHAT BENGALURU MAHANAGARA PALIKE VS. M/S. ASHOKA BIOGREEN PVT. LTD. (ARBITRATION PETITION COM NO. 427 OF 2024) DECIDED ON 23.01.2025 BY KARNATAKA HIGH COURT*

**Issue: Whether permitting double payment for the same claim under an arbitral award is in conflict with the Public Policy of India under Section 34.**

In the instant case the High Court In the instant case, the Karnataka High Court examined a challenge to an arbitral award on the ground that it effectively allowed double payment for the same claim. The Court noted that although the Arbitral Tribunal had considered the Committee's report assessing the liability at ₹6,01,42,502/-, it failed to adequately examine the effect of an admitted payment of ₹3,50,00,000/- which had been made pursuant to the Committee's recommendation. The Tribunal, the Court observed, ought to have rendered a clear and specific finding as to the purpose of the said payment and its adjustment against the claimed amount before allowing the claim in full.

The Court further found that the Commercial Court, while exercising jurisdiction under Section 34, committed a material error by not recording any finding on the admitted payment of ₹3,50,00,000/-. A scrutiny of the statement of payments revealed that the said amount had been paid in relation to the very same job work which formed the subject matter of the arbitral claim. Failure to consider this aspect resulted in serious illegality going to the root of the award.

The Hon'ble Court held as follows:

> ***"The issue of double payment for the same claim would undoubtedly be in direct conflict with the Public Policy of India and would violate the Fundamental Policy of Indian Law, as well as the basic principles of morality and justice."***

Accordingly, it was held that an arbitral award which permits double payment for the same claim is contrary to the Public Policy of India and suffers from a fundamental infirmity warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996.

206. *THE UNION OF INDIA AND ANR. VS. SRI. KOTHARI SUBBARAJU, (2025 KHC 10507), DECIDED ON 12.03.2025, BY KARNATAKA HIGH COURT*

**Issue: Whether the Court of District Judge is vested with the power to modify or alter the arbitral award as it could be done in appeal.**

In the instant case, the Karnataka High Court examined whether the District Judge, while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, could modify the arbitral award by enhancing amounts awarded under certain claims. The District Judge had partly allowed the Section 34 application by altering claim Nos. 3, 4 and 5, thereby assuming a role akin to that of an appellate court.

The High Court reaffirmed the settled legal position that proceedings under Section 34 are supervisory and not appellate in nature. Relying on the authoritative pronouncement of the Supreme Court in *S.V. Samudram v. State of Karnataka*, the Court emphasised that the power of a court under Sections 34 and 37 is limited to either setting aside the arbitral award on the statutorily prescribed grounds or upholding it. The Supreme Court has consistently held that the scheme of the 1996 Act does not permit courts to correct, vary, or modify an arbitral award on merits, and that any such exercise would amount to transgressing the clearly demarcated limits of judicial interference in arbitral matters.

The Court observed as follows:

> ***"The position as to whether an arbitral award can be modified in the proceedings initiated under Ss. 34/37 of the A&C Act is no longer res integra... any court under Sec. 34 would have no jurisdiction to modify the arbitral award... any attempt to 'modify an award' under Sec. 34 would amount to 'crossing Lakshmen Rekha'."***
>
> ***"There is no power vested with the Court of District Judge to modify or alter the arbitral award as if could be done in the appeal."***

Accordingly, the High Court held that the District Judge had acted beyond the jurisdiction conferred under Section 34 by modifying the arbitral award as though exercising appellate powers. The impugned order was therefore set aside, and the Section 34 application was dismissed, reiterating that courts cannot alter or rework arbitral awards under the guise of limited judicial review.

207. *M/S. MAHARASHTRA APEX CORPORATION LTD VS. SRI. P.K. MOHAMMED AND ORS., (2025 KHC 9796), DECIDED ON 07.03.2025 BY KARNATAKA HIGH COURT*

**Issue: Whether the District Judge, Madikeri was justified in setting aside the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 without summoning and examining the arbitral records.**

In the instant case, the Karnataka High Court examined the legality of an order passed by the District Judge, Madikeri, whereby an arbitral award was set aside under Section 34 of the Arbitration and Conciliation Act, 1996 without calling for or examining the arbitral records. The challenge before the High Court was premised on the contention that the District Court had proceeded to interfere with the award without undertaking the minimum judicial exercise mandated under Section 34, thereby rendering its order procedurally and jurisdictionally flawed.

The High Court reiterated that proceedings under Section 34 are not appellate in nature, but they nevertheless require the court to examine whether the grounds enumerated in the provision are made out on the basis of the material that was before the arbitral tribunal. While the scope of interference is narrow, the court cannot adjudicate a challenge to the award in vacuum or on mere pleadings, without reference to the arbitral record. The Court emphasised that summoning and perusal of the arbitral record is integral to determining whether the award suffers from perversity, patent illegality, or violation of fundamental principles of law.

The Court observed as follows:

> ***"Without summoning the arbitral records, the District Court could not have arrived at a conclusion that the arbitral award suffers from infirmities warranting interference under Section 34 of the Act."***
>
> ***"The exercise of jurisdiction under Section 34 necessarily requires examination of the arbitral proceedings and the materials placed before the Arbitrator; in the absence of such examination, the findings of the Court below cannot be sustained."***
>
> ***"Setting aside an arbitral award without even calling for the arbitral records amounts to a patent procedural irregularity and defeats the statutory scheme of minimal judicial interference."***

Accordingly, the High Court held that the District Judge, Madikeri was not justified in setting aside the arbitral award under Section 34 without summoning and examining the arbitral records. The impugned order was therefore set aside, and the matter was remitted to the

District Court for fresh consideration of the Section 34 application in accordance with law, after calling for and perusing the arbitral record.

208. *M/S.BHAGEERATHA ENGINEERING LTD. VS. STATE OF KERALA, (2025 KER 337), DECIDED ON 07.01.2025 BY KERALA HIGH COURT*

**Issue: Whether it is possible for the arbitral tribunal to pronounce upon its decision on a point which has not been referred for adjudication before it.**

In the instant case, the Kerala High Court examined whether the arbitral tribunal had exceeded its jurisdiction by adjudicating disputes that were never referred to it for arbitration. While only one specific dispute was referred to arbitration at the instance of the State, the arbitral tribunal proceeded to decide all disputes arising under the contract, including those which were neither invoked by a notice under Section 21 of the Arbitration and Conciliation Act, 1996 nor consented to by both parties.

The Court held that an arbitral tribunal derives its jurisdiction strictly from the scope of reference and cannot enlarge it unilaterally. It rejected the contention that once arbitration is triggered in respect of one dispute, all disputes automatically stand referred. The Court emphasised that where the scope of reference is disputed, the tribunal must first rule on its jurisdiction under Section 16, and any adjudication beyond the reference would amount to a jurisdictional excess.

The Court observed as follows:

> ***"It is a settled legal proposition that special tribunals like Arbitral Tribunals... get jurisdiction to proceed with the case only from the reference made to them. Thus, it is not permissible for such tribunals to travel beyond the terms of reference. Powers cannot be exercised by the Tribunal so as to enlarge materially the scope of reference itself."***
>
> ***"The arbitral tribunal was appointed... to adjudicate on dispute no. (1) alone... the arbitrator can decide only such dispute referred before him and not otherwise. To hold otherwise will certainly do violence to the statute."***

Accordingly, the High Court held that an arbitral tribunal cannot pronounce upon or decide issues that were not referred to it for adjudication, and any award rendered beyond the scope of reference amounts to a jurisdictional overreach warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996.

209. *ICICI SECURITIES LIMITED VS. KARIABETTAN SUGUMAR (ARB. O.P. COM. DIV. NO.361 OF 2024) DECIDED ON 03.07.2025 BY MADRAS HIGH COURT*

**Issue: Whether a party can invoke two-tier arbitration to evade the limitation period.**

In the instant case, the High Court held that once a party chooses to challenge an arbitral award by invoking the statutory appellate remedy under the National Stock Exchange bye-laws, and such appeal is dismissed as barred by limitation, the party is precluded from subsequently maintaining a petition under Section 34 of the Arbitration and Conciliation Act, 1996. Having consciously opted for a two-tier arbitral mechanism, the party is bound by the outcome thereof. Its failure to file the statutory appeal within the prescribed period, particularly without seeking condonation of delay, cannot subsequently be cured by invoking proceedings under Section 34.

The Court further clarified that pleas of ignorance of law or alleged procedural lapses on the part of the Appellate Tribunal do not revive or preserve the right to invoke Section 34, whose limited scope cannot be used to bypass statutory limitation or the finality attached to dismissal of the appeal on the ground of delay.

The High Court Stated:

> ***"Therefore, ignorance of law is no excuse and the petitioner cannot claim that they were not put on notice by the Appellate Tribunal about the fact that their appeal is barred by limitation. As a share broker, having a large clientele, they cannot blame the Appellate Tribunal for not having informed them that the appeal cannot be entertained on the ground that the appeal is barred by limitation.***
>
> ***13. Having chosen to file the appeal instead of directly approaching this Court under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the arbitral award, the petitioner cannot wriggle out of the two- tier arbitration, by stating that they were not given an opportunity by the appellate Tribunal to prosecute the appeal by filing the condone delay application, seeking to condone the delay in filing the statutory appeal as per the bye-laws."***

Accordingly, it was held that a party cannot invoke a two-tier arbitration framework to circumvent limitation and, upon failure before the appellate forum on grounds of delay, seek to reopen the challenge under Section 34. The petition was thus held to be not maintainable.

*210. UNIQUE BUILDERS, VS. UNION OF INDIA AND OTHERS, (O.P. NO. 21 OF 2020), DECIDED ON 10.01.2025 BY MADRAS HIGH COURT*

**Issue: Whether an arbitral award can be challenged under Section 34(1) of the Arbitration and Conciliation Act, 1996 to set it aside in its entirety in the Arbitration proceedings, on ground of delay.**

In the instant case, the Madras High Court examined whether an arbitral award could be set aside solely on account of inordinate and unexplained delay in its pronouncement. The petitioner contended that although arguments were concluded and the matter was reserved for orders as early as January 2017, the award was pronounced only in September 2019, and that such delay, without any explanation from the Arbitrator, vitiated the award itself. While the respondent argued that the arbitration commenced prior to the 2015

Amendment and therefore Section 29A had no application, the Court held that even under the pre-amendment regime, arbitrators were required to render awards within a reasonable time.

Upon examining settled precedent, the Court observed that prolonged delay in delivery of an award undermines the very object of arbitration and causes serious prejudice to parties, particularly where no reasons are furnished to explain such delay. The Court further noted that the award was pronounced only after the petitioner initiated proceedings seeking termination of the Arbitrator's mandate, reinforcing the conclusion that the delay was neither incidental nor justified.

The Court observed:

> ***"When there is a huge gap between the last date of hearing and the date on which the award has been made... the Arbitral Tribunal had to explain the delay and when there is no satisfactory explanation, it would cause serious prejudice to the aggrieved party."***

It further held:

> ***"Not only there is an inordinate delay, but the delay is also unexplained... The delay would certainly prejudice the parties and as held in the various decisions discussed herein above, there is strong likelihood of the Arbitrator forgetting the arguments and relevant facts with passage of long intervals of time. Therefore delay certainly affects the rights of the aggrieved party and the same is clearly against public policy."***

Accordingly, the Court held that an arbitral award can be set aside in its entirety under Section 34(1) on the ground of inordinate and unexplained delay in its pronouncement, even where statutory timelines under Section 29A are inapplicable, and allowed the petition without examining the merits of the award.

211. *TAMIL NADU HOUSING BOARD, VS. N.C.C. LTD., (ARB O.P(COM. DIV.) NO. 35 OF 2022 AND A. NOS. 376 & 1619 OF 2022), DECIDED ON 08.12.2025 BY MADRAS HIGH COURT*

**Issue: Whether an arbitral award can be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 on the ground of undue and unexplained delay in pronouncement of the award, coupled with award of interest for the period attributable to such delay.**

In the instant case, the Madras High Court was called upon to examine whether an arbitral award pronounced after an inordinate lapse of time from the conclusion of hearings could be sustained under Section 34 of the Act. The Court noted that although delay per se is not an independent statutory ground for setting aside an award, an unexplained and exorbitant delay may vitiate the award if it demonstrably impacts the fairness of the arbitral process or the reasoning underlying the decision. Applying the principles laid down by the Supreme Court, the Court assessed whether the delay had a direct bearing on the validity

of the award and whether it rendered the award contrary to the public policy of India or patently illegal.

The Court observed that the arbitral proceedings had concluded in 2013 and the award came to be passed only in 2020, without any cogent explanation for the prolonged interregnum. It was further found that the award was passed without effective oral or written submissions from either side and that interest was levied even for the period during which the proceedings remained dormant, notwithstanding that such delay was not attributable to the parties. The Court held that this combination of unexplained delay and consequential prejudice struck at the very foundation of arbitral fairness and efficiency.

The Court recorded as follows:

> ***"The Public Policy underlying resorting to arbitration is to make it a time saving mechanism for resolving disputes and while so, an Award passed with an unexplained and exorbitant delay of more than seven years, certainly is in conflict with the Public Policy of India."***
>
> ***"The arguments that were advanced in the year 2013, certainly cannot be recollected in the year 2020... In a way, it also tantamounts to the petitioner not being able to present their case effectively."***

Accordingly, the Court held that the award stood vitiated by patent illegality and was in conflict with the public policy of India, warranting interference under Section 34(2)(b)(ii) and Section 34(2A) of the Act. The award was set aside, with liberty to the parties to have the matter reheard by a fresh arbitrator limited to final submissions and pronouncement of a reasoned award.

212. *FELGUERA GRUAS INDIA PRIVATE LIMITED VS. THIRAVIAM ENGINEERING PVT. LTD. (WRIT PETITION NO. 13409 OF 2024 AND WRIT PETITION NO. 13420 OF 2024) DECIDED ON 04.07.2025 BY MADRAS HIGH COURT*

**Issue: Whether the abuse of MSME Act is liable for imposition of heavy costs.**

The High Court of Madras addressed the challenge by Felguera Gruas India Private Limited against the Arbitral Award favouring the respondent, questioning the Arbitral Tribunal's jurisdiction due to the respondent's MSME registration date. The Court found that the petitioner had not raised any such jurisdictional objection before the Arbitral Tribunal and had sought to invoke the writ jurisdiction only after realising that the statutory requirement of depositing 75% of the awarded amount under Section 19 of the MSMED Act would impede prosecution of its Section 34 application.

The Court held that a writ petition against an arbitral award under the MSMED Act would be maintainable only in exceptional circumstances, such as where the award is non est in the eyes of law. Since the jurisdictional objection raised by the petitioner was found to be unsustainable and had not even been urged before the Tribunal, the Court held that the

writ petitions were not maintainable. It further observed that the petitioner's attempt to circumvent the statutory mandate amounted to a clear abuse of the process of law.

The High Court observed as follows:

> ***"23. The judgement relied upon by the learned counsel for the petitioner to establish the maintainability of a writ petition against the Award passed under the Act which has been referred to a Larger Bench, will not come to the aid of the petitioner. If the petitioner had established that the very Award passed is non est in the eye of law, certainly this Court would have entertained the writ petitions.***
>
> ***However, since the issue of lack of jurisdiction raised by the petitioner is found to be unsustainable and that ground was not even raised before the Arbitral Tribunal, this Court holds that the present writ petitions are not maintainable.***
>
> ***The ingenuity of the petitioner is quite apparent, since the petitioner found that they will not be able to prosecute the application filed under Section 34 of the Arbitration Act without fulfilling the requirement under Section 19 of the Act. Hence, the petitioner found a new method of challenging the Award on the ground which was not even raised before the Arbitral Tribunal.***
>
> ***24. This Court finds that both these writ petitions are clearly an abuse of process of Court and there are absolutely no merits in these writ petitions and hence, both these writ petitions are dismissed by imposing cost of Rs. 1 Lakh payable by the petitioner to the Chief Justice Relief Fund (payable in Accounts Section of the High Court Registry), within a period of four weeks from the date of receipt of copy of this order and file a photocopy of the receipt along with a memo reporting compliance in the Registry."***

Accordingly, the Court dismissed both writ petitions, holding that the petitioner had attempted to misuse the writ jurisdiction to circumvent the statutory pre-deposit requirement under Section 19 of the MSMED Act. Considering the lack of merit and abuse of process, the Court imposed costs of Rs. 1,00,000/-, payable to the Chief Justice Relief Fund, thereby sending a clear message against procedural misuse of the MSME framework.

213. *GSCO (GURMEET SINGH AND COMPANY) INFRASTRUCTURE PVT. LTD. VS. MAHANADI COALFIELDS LIMITED AND ORS., (WRIT PETITION NO. 12707 OF 2024), DECIDED ON 20.06.2025 BY ORISSA HIGH COURT*

**Issue: Whether the seat of Arbitration signifies the jurisdiction for filing a challenge petition under Section 34.**

In the instant case, the High Court of Orissa addressed the jurisdictional challenge raised by GSCO Infrastructure Pvt. Ltd. against Mahanadi Coalfields Limited's Section 34 petitions filed in Sundargarh. The petitioner contended that since Cuttack was the designated seat

of arbitration, only the courts at Cuttack had jurisdiction to entertain any application arising out of the arbitral proceedings.

The court emphasized the importance of the arbitration seat, citing precedents like Bharat Aluminium Co. v. Kaiser Aluminium and Indus Mobile Distribution, which establish that the seat confers exclusive jurisdiction.

The court found that the District Judge, Sundargarh, lacked jurisdiction and that the petitions were time-barred under Section 34(3) of the Arbitration and Conciliation Act.

> ***"For the foregoing reasons, this Court finds that the learned District Judge, Sundargarh lacked jurisdiction to entertain the Opposite Party's Section 34 petitions, owing to the arbitration's seat being at Cuttack and the mandate of Section 42 of the Act which tied all subsequent proceedings to the court first approached.***
>
> ***The attempted reliance on a contract clause for Sundargarh and on cause-of-action factors is unavailing in light of settled law giving primacy to the seat of arbitration. Moreover, the petitions were filed beyond the period of limitation prescribed under Section 34(3) and therefore could not have been entertained on that ground as well."***
>
> ***"Accordingly, the impugned order of the learned District Judge, Sundargarh, which rejected the petitioner's objections and assumed jurisdiction, is unsustainable in law. It is hereby quashed. The Section 34 petitions filed by the Opposite Party before the learned District Judge, Sundargarh are held to be not maintainable for want of jurisdiction and are liable to be dismissed as time-barred."***

Accordingly, it was held that the seat of arbitration confers exclusive jurisdiction for filing a challenge under Section 34, and courts at any other place lack jurisdiction to entertain such petitions, which must also conform strictly to the limitation prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996.

214. *RAJDHANI COIR VS. MICRO, SMALL ENTERPRISES FACILITATION COUNCIL, NAGPUR, MAHARASHTRA, (W.P.(C) NO.22514 OF 2022), DECIDED ON 17.01.2025 BY ORISSA HIGH COURT*

**Issue: Whether a writ petition under Articles 226 and 227 of the Constitution is maintainable against an arbitral award passed under the MSMED Act without first availing the statutory remedy of challenge under Section 34 of the Arbitration and Conciliation Act, 1996?**

In the instant case, the High Court dismissed the writ petition on the ground that the petitioner had approached the Court under Articles 226 and 227 of the Constitution without first availing the efficacious statutory remedy available under Section 34 of the Arbitration and Conciliation Act, 1996. In view of this omission, the Court declined to exercise its discretionary writ jurisdiction.

The Court further observed that:

> ***"violation of any provision of the arbitration act and/or of the MSMED Act can be effectively adjudicated by competent court in an application under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act."***

Accordingly, the Orissa High Court dismissed the writ petition, holding that a writ under Articles 226 and 227 is not maintainable against an arbitral award passed under the MSMED Act when an efficacious statutory remedy under Section 34 of the Arbitration and Conciliation Act has not been exhausted.

215. *M/S ODISHA MINING CORPORATION LIMITED VS. UNION OF INDIA, MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES AND ORS., (W.P.(C) NO.22236 OF 2014), DECIDED ON 18.06.2025 BY ORISSA HIGH COURT*

**Issue: Whether orders or jurisdictional determinations of the MSME Facilitation Council, after commencement of arbitration, can be challenged under Article 227 of the Constitution, or only through an application under Section 34 of the Arbitration and Conciliation Act, 1996.**

The High Court, in a decision held that once the MSME Council proceeds to arbitration upon the failure or termination of conciliation, any determination made by the Council regarding its jurisdiction can be assailed only by way of an application under Section 34 of the Arbitration and Conciliation Act, 1996. An aggrieved party cannot invoke the supervisory jurisdiction of the High Court under Article 227 of the Constitution to challenge an award passed under the MSMED Act.

Relying on settled judicial precedent, the Court reiterated that where a statute creates a substantive right and prescribes a specific forum and mechanism for its enforcement, recourse must be confined to the remedy provided under that statute. The Court further noted that the MSMED Act, being a special enactment, prevails over the general provisions of the Arbitration and Conciliation Act.

The Court also observed that where a claim is covered by the MSMED Act, the supplier is entitled to approach the designated statutory authority, and any contractual stipulation to the contrary is rendered inoperative. This position, the Court noted, has also been affirmed by the Allahabad High Court, which held that MSME registration operates prospectively and cannot be applied retrospectively. Consequently, contractual clauses conferring jurisdiction, including Clause 9.20 of the agreement, stand overridden by the provisions of the MSMED Act.

The High court observed that:

> ***"....since award under Annexre-10 has already been passed in the IFC Case, the Writ Petition in the present form is not maintainable. Legality of the decision with regard to issue of jurisdiction as well as merit of the award (Annexure-10) can only be challenged under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act, 2006. The Petitioner was afforded with ample opportunity by the Council as would be apparent from the documents along with***

***additional affidavit filed by Opposite Party No.3. The grievance, if any, with regard to termination of the conciliation proceeding can only be challenged in a properly constituted petition under Section 34 of the Arbitration Act, 1996 and not in the present Writ Petition."***

***"... The MSMED Act being a special statute overrides the Clause more particularly Clause 9.20 of the contract under Annexure-2. The provisions under MSMED Act confers jurisdiction on the Council to entertain and proceed with the dispute. The Opposite Party No.3 being the Supplier, which is situated and ordinarily carries on its business within the State of Maharashtra. Thus, the Council at Thane had territorial jurisdiction to entertain and adjudicate the proceeding."***

Accordingly, the Orissa High Court dismissed the writ petition, holding that challenges to jurisdictional determinations and awards passed by the MSME Facilitation Council after commencement of arbitration must be pursued only through an application under Section 34 of the Arbitration and Conciliation Act, 1996, and not under Article 227 of the Constitution.

216. *CONTINENTAL ENGINEERING CORPORATION LIMITED VS. JAIPUR METRO RAIL CORPORATION, (D.B. SPECIAL APPEAL (CIVIL) NO. 4/2022), DECIDED ON 21.08.2025 BY RAJASTHAN HIGH COURT*

**Issues: Whether an application filed under Section 10 of the Commercial Courts Act can be treated as a valid application under Section 34 of the Arbitration and Conciliation Act despite the absence of an express reference to Section 34 in its title?**

In the instant case, the Division Bench of the Rajasthan High Court examined whether the challenge to the arbitral award was liable to be rejected on the ground that the application before the High Court was styled as one under Section 10(1) of the Commercial Courts Act, 2015, rather than being expressly titled as an application under Section 34 of the Arbitration and Conciliation Act, 1996. The Court traced the procedural history and noted that the appellant had originally filed a Section 34 petition before the Commercial Court, which was returned on jurisdictional grounds owing to the dispute being an international commercial arbitration. Upon refiling before the High Court, objections raised by the Registry compelled the appellant to move an application under Section 10(1) of the 2015 Act, annexing the original Section 34 petition.

The Division Bench held that such procedural developments could not obscure the true nature of the proceedings. It emphasised that courts are required to look beyond the nomenclature or heading of an application and examine its substance, contents, and the reliefs sought. On a plain reading of the pleadings, it was evident that the appellant was seeking to set aside the arbitral award and had consistently pursued that remedy, albeit before different fora due to jurisdictional objections.

In this context, the Court made the following observation:

> ***"It is settled law that merely mentioning a wrong heading of provision on the application would not defeat the cause of justice. The contents of the application are required to be seen and not the provision mentioned on it. The court can understand by a bare reading of the application as to under which provision the same has been filed and what the litigant (here, the appellant) means to plead before the court. From a perusal of the application moved by the appellant it is apparent that the application filed by the appellant was of the nature of raising objections against dismissal of the award by the Tribunal."***

The Court further noted that the respondent itself had repeatedly raised technical objections at every stage, including before the Commercial Court, which resulted in the return of the petition. In such circumstances, the appellant could not be non-suited for having followed the procedural course necessitated by those objections. The Single Judge, therefore, erred in holding that no application under Section 34 was before the Court and in declining to examine the matter on merits.

Accordingly, the Division Bench held that an application styled under Section 10 of the Commercial Courts Act does not lose its character as a Section 34 challenge merely due to an incorrect or incomplete reference in its title, so long as the substance of the pleadings clearly discloses an intention to assail the arbitral award. Procedural nomenclature, the Court held, cannot override the substantive rights of a litigant, and such applications must be treated as valid Section 34 petitions and decided on merits.

217. *SUNIL KUMAR BHAKOO VS. SMT. VARISHA, (CIVIL MISCELLANEOUS APPEAL NO.2157/2024), DECIDED ON 08.05.2025 BY RAJASTHAN HIGH COURT*

**Issue: Whether an arbitral award can be set aside solely on the ground that the underlying agreement was insufficiently stamped, without granting the party an opportunity to cure the defect under the Stamp Act?**

In the instant case, the Rajasthan High Court examined whether the Commercial Court was justified in setting aside an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, merely on the ground that the agreement to sell forming the basis of arbitration was insufficiently stamped. The arbitral tribunal had rejected the objection relating to stamping and proceeded to pass the award. However, at the Section 34 stage, the Commercial Court held the agreement to be insufficiently stamped and, without deciding the appellants' pending application seeking impounding and payment of stamp duty and penalty, set aside the award on the ground of invalidity of the arbitration agreement.

The High Court held that such an approach was contrary to the settled legal position governing the Stamp Act. Relying on precedent, the Court reiterated that non-stamping or insufficient stamping does not render an agreement invalid, but only affects its admissibility in evidence until the defect is cured. The Court emphasised that when, for the first time, a court comes to the conclusion that an agreement is insufficiently stamped, it must follow

the procedure under the Stamp Act and afford the concerned party an opportunity to cure the defect, instead of treating the defect as fatal to the arbitral award.

The Court observed as follows:

> ***"The settled position of law is that non stamping or insufficient stamping of the agreement does not affect validity of document but bar is that it cannot be admitted in evidence till due stamp duty is paid."***
>
> ***"The view taken by court if taken to the logical end is contrary to settled position of law and shall affect validity of document. The settled position of law is that non stamping or insufficient stamping of the agreement does not affect validity of document but bar is that it cannot be admitted in evidence till due stamp duty is paid."***

Accordingly, it was held that an arbitral award cannot be set aside solely on the ground of insufficiency of stamp duty without granting the party an opportunity to cure the defect in accordance with the Stamp Act, and the matter was remitted for fresh consideration after following the prescribed procedure.

218. *JAVED MOHAMMAD AND ANR. VS. KOTAK MAHINDRA BANK LTD AND ORS., (D.B. CIVIL MISCELLAENOUS APPEAL NO. 3306/2019), DECIDED ON 28.04.2025 BY RAJASTHAN HIGH COURT*

**Issue: Whether limitation under Section 34(3) of the Arbitration and Conciliation Act, 1996 runs from the date of receipt of the arbitral award or from the date of knowledge?**

In the instant case, the Rajasthan High Court examined a challenge to the dismissal of a Section 34 petition on the ground of limitation. The appellants contended that they acquired knowledge of the arbitral award only upon receipt of notice from the executing court and, therefore, limitation ought to run from the date of such knowledge. The Court rejected this contention, holding that Section 34(3) unequivocally prescribes limitation from the date of receipt of the arbitral award, and not from the date of knowledge.

The Court noted that the award had been dispatched by registered post to the appellant's admitted address and stood delivered. In the absence of any pleading disputing service or asserting that the recipient was not a family member residing with the appellants, the statutory presumption of service under Section 27 of the General Clauses Act, 1897 was attracted. Once such receipt was established, the clock for limitation stood triggered, leaving no scope to compute limitation from a later date of alleged knowledge.

The Court observed that Section 34(3) prescribes a strict timeline of three months from receipt of the award, with a limited discretion to condone delay only up to a further period of thirty days, beyond which the court is rendered functus officio.

The Court observed as follows:

> ***"The contention is that the limitation shall start running from the date of knowledge, lacks merit."***
>
> ***"Sub-section (3) of Section 34 of the Act stipulates filing of an appeal within ninety days of receipt of the arbitral award. The proviso to the sub-section empowers the court to condone the delay upto thirty days."***

Accordingly, it was held that limitation under Section 34(3) commences from the date of receipt of the arbitral award, and not from the date of knowledge, and where receipt is duly proved, a belated challenge beyond the statutorily permissible period is liable to be dismissed as time-barred.

**Key Trends:** Courts maintained an extremely narrow scope of review, refusing to re-appreciate evidence or substitute findings. A petition filed without the award annexed was held non est and not merely defective, with subsequent curing beyond limitation held insufficient to validate it. Inordinate unexplained delay in making an award was held a potential public policy ground for setting aside, and a party that accepts and acts upon an award was held estopped from subsequently challenging it.

# Chapter VIII

## *Finality and Enforcement of Arbitral Awards*

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## CHAPTER VIII – FINALITY AND ENFORCEMENT OF ARBITRAL AWARDS

### SECTION 36 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**36. Enforcement. — (1)** Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

**(2)** Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

219. *POPULAR CATERERS VS. AMEET MEHTA & ORS. (2025 INSC 1354) DECIDED ON 18.11.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether unconditional stay on execution of arbitral award is permissible in exceptional circumstances**

The Supreme Court examined the correctness of an order passed by the Bombay High Court granting an unconditional stay on the execution of a money award pending disposal of petitions under Section 34 of the Arbitration and Conciliation Act, 1996. While acknowledging that courts possess discretionary power under Section 36(3) of the Act to grant stay of an arbitral award, the Court emphasised that such discretion must be exercised in consonance with the legislative intent of discouraging automatic or routine stays on enforcement. The Court noted that although the High Court had extensively commented on the alleged perversity of the arbitral award, such an exercise was premature and more appropriately undertaken at the stage of final adjudication under Section 34.

The Hon'ble Court observed that:

> ***"it is not even the case of the judgment-debtor, i.e., respondents before us that the making of the award was induced or effected by fraud or corruption. Even if we have to apply the general principles of CPC in the present case, the High Court should have considered the matter asking a question whether the respondents herein (award-debtors) could be said to have made out an "exceptional case" for the purpose of granting benefit of unconditional stay of the execution of the award which is in the form of a money decree. In Lifestyle Equities (supra), we said in so many words that for the purpose of granting of benefit of unconditional stay of the execution of money-decree, it has to be established more than prima facie that:***
>
> ***(i) The decree is egregiously perverse,***
>
> ***(ii) is riddled with patent illegalities,***

***(iii) is facially untenable; and/or***

***(iv) such other exceptional causes similar in nature.***

***We are of the considered view that the case in hand does not fall in any of the aforesaid categories so as to seek the benefit of unconditional stay of the arbitral award which is in the form of a money-decree."***

Accordingly, the Supreme Court held that unconditional stay on execution of an arbitral award is not impermissible per se, but can be granted only in exceptional circumstances, which were found to be absent in the present case. The impugned order was set aside, and conditional stay was directed upon deposit of the principal award amount, reaffirming the principle that enforcement of arbitral awards should not be lightly interdicted.

220. *ELECTROSTEEL STEEL LIMITED (NOW M/S ESL STEEL LIMITED) VS. ISPAT CARRIER PRIVATE LIMITED, (2025 INSC 525) DECIDED 21.04.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether an arbitral award granting claims outside the approved IBC resolution plan is unenforceable.**

The Hon'ble Supreme Court allowed an appeal challenging the enforcement of an arbitral award passed by the Micro and Small Enterprises Facilitation Council (MSEFC) against Electrosteel Steels Ltd., holding that the award was non-executable in view of the resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code(IBC), 2016. The Hon'ble Court held that:

***"it is by now well settled that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, all claims which are not part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. In fact, this Court in Essar Steel India Ltd. (supra) had categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise, this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant"***

***"we have no hesitation to hold that upon approval of the resolution plan by the NCLT, the claim of the respondent being outside the purview of the resolution plan stood extinguished. Therefore, the award dated 06.07.2018 is incapable of being executed"***

Accordingly, the Court reiterated that once are solution plan is approved by the National Company Law Tribunal (NCLT) under Section 31(1) of the IBC, any claim that is not part of the plan stands extinguished and cannot be pursued further.

221. *LR PRINT SOLUTIONS V. EXFLO SANITATION (P) LTD., (MATTERS UNDER ARTICLE 227 NO. - 8387 OF 2024) DECIDED ON 28.03.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether filing an application under Section 34 after the 2015 amendment results in an automatic stay of enforcement of the arbitral award.**

The Court examined the effect of the 2015 amendment to the Arbitration and Conciliation Act, 1996 on the enforceability of arbitral awards upon filing of a petition under Section 34. The principal contention advanced was that initiation of proceedings under Section 34 ought to operate as an automatic stay on enforcement of the award.

The Court rejected this contention, reiterating that the statutory position post-amendment clearly disentitles a party from claiming an automatic stay merely upon filing a Section 34 application. It was observed that Section 36, as amended, consciously departs from the earlier regime and mandates a separate and specific application for stay, to be considered on its own merits. The Court emphasized that enforcement is the rule, and stay is the exception, subject to judicial discretion and conditions.

It was further held that:

> ***"In the present case, the application under Section 34 of the Arbitration Act was filed by the petitioner in the year 2017, which is much after the enforcement of the amended Act in the year 2015, therefore, the argument of the counsel for the petitioner that merely on filing of the application under Section 34 of the Arbitration Act, against the award in question was automatically stayed, is misplaced and cannot be accepted."***

Accordingly, it was held that post-2015, an arbitral award remains enforceable notwithstanding the pendency of a Section 34 application, unless a specific order of stay is granted under Section 36, thereby reinforcing the legislative intent to discourage dilatory tactics and uphold the efficacy of arbitral awards.

222. *M/S. REAL FAB INDIA PVT.LTD. VS. M/S. RASHTRIYA ISPATH NIGAM LIMITED, (CIVIL REVISION PETITION NO.2936 OF 2024) DECIDED ON 21.03.2025 BY ANDHRA PRADESH HIGH COURT*

**Issue: Whether the first execution petition seeking enforcement of an arbitral award is dismissed on merits, a subsequent execution petition cannot be entertained.**

The Andhra Pradesh High Court examined the maintainability of a second execution petition filed for enforcement of the same arbitral award, after an earlier execution petition had been rejected on merits. The Court determined whether filing a fresh execution petition could revive enforceability when the earlier proceedings had culminated in a final adjudication holding the award to be inexecutable.

The Court traced the procedural history and noted that the first execution petition had been closed during the pendency of proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, and a subsequent application seeking its restoration was dismissed

by a detailed order holding that there was no executable award. This order, having attained finality, formed the basis for rejecting the later execution petitions as not maintainable. The Court rejected the contention that production of a signed copy of the award at a later stage could undo the effect of the earlier dismissal, observing that the prior rejection was not merely procedural but founded on substantive findings regarding the illegality and inexecutable nature of the award.

> ***"So, if the first execution petition is dismissed in default, the second execution petition would be maintainable, if it is filed within the period of limitation and in accordance with law. In the present case, the dismissal of the E.A. No.11 of 2019, in the previously instituted execution case on 05.08.2024 was not for default. Such dismissal was on the merits observing that, the award was not executable. We have referred to the aforesaid judgment in Shivashankar Prasad Shah (supra) to state the legal position that it is in case of dismissal of execution case in default that the second Execution Petition may be maintainable, but not where the Order is on merits."***

Accordingly, it was held that where the first execution petition is dismissed on merits holding the arbitral award to be inexecutable, a subsequent execution petition seeking enforcement of the very same award is not maintainable. Permitting such successive execution proceedings would amount to re-agitating issues already finally decided and would defeat the doctrine of finality in judicial proceedings.

223. *MUMBAI METRO RAIL CORPORATION VS. L&T-STEC JV MUMBAI, (2025 BHC-OS 19481) DECIDED ON 10.10.2025 BY BOMBAY HIGH COURT*

**Issue: Whether arbitral awards issued after a detailed pre-arbitral process deserve greater judicial deference and credibility, and whether mere disagreement with the tribunal's findings can justify an unconditional stay on execution.**

The Hon'ble Bombay High Court has held that arbitral awards passed after a detailed pre-arbitral process contractually agreed upon by the parties deserve a higher degree of credibility and judicial deference. The Court refused to grant an unconditional stay on the execution of an arbitral award in favour of the contractor, holding that mere disagreement with the arbitral tribunal's findings does not establish perversity warranting such relief. The Hon'ble Court also observed that the dissenting award did not take an extreme stand as taken by the corporation in the proceedings. It observed that when the arbitration is done after a detailed pre-arbitral process, a higher credence has to be given to the arbitral award, and finely nuanced points do not constitute grounds for interference.

The Hon'ble Bombay High Court held that:

> ***"When parties proceed to arbitration and that too after a detailed pre-arbitral process being contracted, there has to be a higher credibility and credence given to the arbitral award. The contentions sought to be raised on both counts (tax impact and additional work)***

***fall in the realm of purporting to raise finely nuanced points that are best made in the final hearing. They do not constitute grounds to infer perversity based on any reasonable review on the face of the record, to warrant an unconditional stay. Taking a holistic view of the matter and the relative strengths of the prima facie case canvassed by each side, I am not satisfied that a case for an unconditional stay is made out."***

***"In these circumstances, it is directed that subject to the amount awarded, along with interest as awarded till date, being deposited with the Registry of this Court within a period of eight weeks from today, execution proceedings shall remain stayed."***

Accordingly, the Bombay High Court held that arbitral awards rendered after a detailed pre-arbitral process merit higher credibility and judicial deference, and that minor or nuanced disagreements with the tribunal's findings do not constitute perversity warranting interference or an unconditional stay of execution.

224. *KARUR VYASA BANK VS. SREI EQUIPMENT FINANCE LIMITED, (ARBITRATION PETITION (COM) NO. 947 OF 2024) DECIDED ON 06.03.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an arbitral award can be stayed or interfered with on allegations of fraud or corruption in the absence of prima facie proof of unethical conduct by the arbitrator, and without securing the entire awarded amount.**

The Calcutta High Court considered an application under Section 36(2) of the Arbitration and Conciliation Act, 1996 seeking unconditional stay of an arbitral award on allegations that the making of the award was induced by fraud and corruption. The petitioner alleged bias, unfair conduct, and deliberate disregard of evidence by the learned arbitrator, contending that such conduct vitiated the award and justified unconditional stay without securing the awarded sum.

The Court rejected the petitioner's contention, holding that allegations of fraud or corruption must meet a high threshold and require prima facie material demonstrating unethical conduct attributable to the arbitrator. It was observed that mere dissatisfaction with the reasoning of the award, erroneous appreciation of evidence, or adverse findings cannot be elevated to allegations of fraud or corruption. The Court further reiterated that the second proviso to Section 36(3) mandates prima facie satisfaction of fraud or corruption before granting unconditional stay, failing which the award debtor must secure the entire awarded amount.

The court stated as follows:

***"this court holds that the petitioner has failed to discharge the onerous duty to, prima facie, satisfy from the records that, the making of the award was vitiated by fraud and corruption. The threshold to prove fraud and corruption on the part of the learned Arbitrator in the making of the award would be much higher than a criticism of the findings of the learned Arbitrator. The petitioner***

***would have to demonstrate unethical behaviour of the Arbitrator, which surpassed all moral standards."***

***"The law is well settled. An award debtor will have to secure the entire amount awarded, which includes the principal as also interest. This court does not find any reason to grant unconditional stay of the award."***

Accordingly, the High Court held that in the absence of prima facie proof of fraud or corruption in the making of the award, an arbitral award cannot be stayed merely on allegations of bias or illegality, and unconditional stay cannot be granted without securing the entire awarded amount.

225. *PCL STICCO (JV) VS. NATIONAL HIGHWAYS AUTHORITY OF INDIA, (2025 DHC 3296-DB) DECIDED ON 05.05.2025 BY DELHI HIGH COURT*

**Issue: Whether interest on the awarded amount continues to accrue after the Judgment Debtor deposits the decretal sum with the Court pursuant to an order in enforcement proceedings under Section 36 of the Arbitration and Conciliation Act, 1996, once the Award Holder has notice of such deposit.**

In the instant case, the Delhi High Court addressed the legal consequence of deposit of the awarded amount with the Court Registry during enforcement proceedings under Section 36 of the Arbitration and Conciliation Act, 1996. The determinative question was whether interest would continue to run on the deposited amount until its actual release to the Award Holder, or whether such deposit amounted to partial satisfaction of the award, thereby stopping further accrual of interest.

The Court's reasoning turned on the settled principle that deposit of money in court places the amount beyond the control of the Judgment Debtor and operates as discharge of the decree to the extent of the amount deposited. The Court further held that once the Award Holder has knowledge of such deposit, it cannot insist on continued accrual of interest merely because the amount has not yet been withdrawn.

The Court observed as follows:

***"It is well settled that it was not necessary for the Judgment Debtor to deposit or pay the entire decretal amount for the interest as awarded to stop running. Even if a part of the decretal amount is deposited in the court or tendered to the decree holder, the same would discharge the decree to the extent of the amount deposited or tendered."***

***"Clearly, once the decree holder is made aware that the deposit has been made, the decree holder cannot take advantage of the fact that a formal notice was not served. The deposit of the amount in court must, therefore, be construed as partial payment of the amounts awarded in favour of the Award Holder."***

Accordingly, the Court held that upon deposit of the awarded amount with the Court and notice thereof to the Award Holder, interest on the deposited sum ceases to accrue, and interest can thereafter be claimed only on the remaining outstanding amount, if any.

226. *THE DIRECTOR GENERAL, NATIONAL LIBRARY, MINISTRY OF CULTURE, GOVERNMENT OF INDIA VS. EXPRESSION 360 SERVICES INDIA PRIVATE LIMITED (NOW KNOWN AS EXPRESSION AD AGENCY PVT. LTD.), (ARBITRATION PETITION (COM) NO. 860 OF 2025) DECIDED ON 22.01.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether the Government is entitled to any special or exceptional consideration while seeking stay of an arbitral award under Section 36, in the absence of prima facie fraud or corruption.**

In the instant case, the Calcutta High Court examined a plea by a Central Government authority seeking unconditional stay of an arbitral award on the footing that, being the Government, it was entitled to automatic protection from execution and exemption from securing the award amount. The Court was required to determine whether such a claim of special treatment could be sustained under the statutory framework of Section 36, particularly in light of the second proviso to Section 36(3).

The Court rejected the contention that Order XXVII Rule 8-A of the Code of Civil Procedure could be invoked to grant preferential treatment to the Government in arbitral matters. Relying on settled precedent, the Court reiterated that the Arbitration and Conciliation Act is a self-contained and special statute which mandates equal treatment of parties, and that no distinction is drawn between the Government and private parties when considering stay of an arbitral award. The reference to the CPC under Section 36 is only to guide the nature of conditions that may be imposed and cannot override the scheme of the Act.

The Court further clarified that unconditional stay under the second proviso to Section 36(3) is available only where a strong prima facie case of fraud or corruption is made out in relation to the arbitration agreement or the making of the award. Allegations touching upon non-performance, erroneous appreciation of evidence, or excess of jurisdiction by the arbitrator pertain to the merits of a Section 34 challenge and do not meet the high threshold required to invoke the proviso.

The Court observed as follows:

> ***"Keeping the aforesaid in consideration and also the provisions of Section 18 providing for equal treatment of parties, it would, in our view, make it clear that there is no exceptional treatment to be given to the Government while considering the application for stay under Section 36 filed by the Government in proceedings under Section 34 of the Arbitration Act."***

The court concluded that:

> ***"Under such circumstances, there is no ex facie indication before this Court that either the agreement or the award were perpetrated***

***by fraud and corruption. So, the question of unconditional stay does not arise."***

Accordingly, the Court held that the Government is not entitled to any special or exceptional consideration while seeking stay of an arbitral award under Section 36, and in the absence of prima facie fraud or corruption, stay can be granted only subject to securing the awarded amount in accordance with law.

227. *W.B. INDUSTRIAL DEVELOPMENT CORPN. LTD. VS. TATA MOTORS LTD., (AP-COM/88/2024 AND IA NO. GA NO. 1 OF 2025) DECIDED ON 16.06.2025 BY CALCUTTA HIGH COURT*

**Issue: Whether an unconditional stay of an arbitral award under Section 36(2) of the Arbitration and Conciliation Act, 1996, can be granted without the court forming a prima facie view of fraud or corruption within the meaning of Section 36(3).**

In the present case, the Calcutta High Court examined the scope of the court's power to grant an unconditional stay of an arbitral award at the enforcement stage under Section 36. The award-debtor sought an unconditional stay primarily on allegations of bias against the Presiding Arbitrator, contending that such bias amounted to fraud within the meaning of the second proviso to Section 36(3).

The Court rejected this approach and drew a clear distinction between the enquiry under Section 34 and the limited jurisdiction exercised under Section 36(2) and (3). It held that an unconditional stay is not automatic and can be granted only if the court first arrives at a prima facie satisfaction that the making of the award was induced or effected by fraud or corruption, as statutorily contemplated. Allegations of bias, by themselves, do not dispense with this requirement at the Section 36 stage.

The Court reasoned as follows:

> ***"When an application has been filed under Section 36 (2) praying for an unconditional stay of an award, the applicant must satisfy the court that there is a ground of fraud or corruption on the part of the tribunal within the meaning and scope of sub-Section (3) to Section 36 of the Arbitration Act. At that stage the setting aside court in exercise of its power under Section 36 (2) and (3) of the Arbitration Act, shall first has to arrive at a prima facie view that there has been an element of fraud or corruption as defined under sub-Section (3) to Section 36 of the Act."***
>
> ***"Unless this court arrives at a prima facie finding of fraud or corruption or even bias as alleged by the award-debtor in the facts of this case, the question of impleadment of the concerned member of the arbitral tribunal does not and cannot arise."***

Accordingly, the Court held that an unconditional stay of an arbitral award under Section 36(2) cannot be granted in the absence of the court forming a prima facie view that the

award was induced or affected by fraud or corruption as envisaged under Section 36(3), and that such satisfaction is a mandatory precondition for invoking the exceptional relief of unconditional stay.

228. *ANGLO AMERICAN METALLURGICAL COAL (P) LTD. VS. MMTC LIMITED, (2025 DHC 3495) DECIDED ON 09.05.2025 BY DELHI HIGH COURT*

**Issue: Whether objections under section 47 of CPC can be entertained against the enforcement of an arbitral award under section 36 of the Arbitration and Conciliation Act, 1996 Act on grounds of alleged fraud involving officials of the judgment debtor and decree holder.**

The Court held that objections under section 47 CPC, which apply to execution of decrees, cannot be extended to challenge the merits of an arbitral award during enforcement proceedings. Such challenges must be made under section 34 of the 1996 Act within the prescribed time. The judgment debtor's attempt to raise fraud and collusion allegations at enforcement stage was therefore barred.

The Hon'ble Court observed:

> ***"Entertaining objections under Section 47 of the CPC at the enforcement stage would effectively open a second round of challenge to the arbitral award, which is impermissible."***

Accordingly, the Delhi High Court reinforced the finality of arbitral awards by holding that enforcement proceedings under Section 36 cannot be used as a backdoor to assail the award on merits, and that allegations such as fraud or collusion must be raised, if at all, within the framework and limitation prescribed under Section 34 of the Act.

229. *NATIONAL HIGHWAYS AUTHORITY OF INDIA VS. YEDESHI AURANGABAD TOLLWAY LIMITED, (2025 DHC 424), DECIDED ON 16.01.2025 BY DELHI HIGH COURT*

**Issue: Whether NHAI committed a material breach of the Concession Agreement by failing to provide the project site free from encumbrances, and whether stay of the arbitral award could be granted subject to deposit.**

The Court noted that, at the prima facie stage, NHAI had failed to meaningfully dislodge the Arbitral Tribunal's finding of material breach and default.

The Court observed that Yedeshi could not reasonably be expected to carry out construction on land suffering from hindrances or obstructions. NHAI's arguments based on a restrictive interpretation of the term "encumbrance" were held to be matters requiring consideration at the final stage of the Section 34 proceedings.

The Court observed that:

> ***"On a holistic appreciation of all the material on record and the submissions advanced by the NHAI by way of contest to the impugned arbitral award, I am of the opinion that, keeping in view the judgments of the Supreme Court in Toyo Engineering and Manish, there shall be a stay of execution of the impugned award***

***subject to the NHAI depositing, with the learned Registrar General of this Court, the entire awarded amount within a period of six weeks from the date of uploading of this judgment on the website of this Court. In order, however, to protect the interests of NHAI, the release of the said amount to the respondent shall be subject to the respondent furnishing a bank guarantee/corporate guarantee, to the satisfaction of the learned Registrar General for an equivalent amount. This would also be in sync with the view expressed by the Supreme Court in Manish. On such bank guarantee/corporate guarantee being furnished, the deposited amount would be released to the respondent, subject to the outcome of the OMP."***

Accordingly, execution of the impugned arbitral award was stayed subject to NHAI depositing the entire awarded amount with the Registrar General of the Court within six weeks. The respondent was permitted to withdraw the deposited amount upon furnishing a bank guarantee or corporate guarantee of an equivalent value, subject to the final outcome of the pending Section 34 proceedings.

230. *M/S. JAIPRAKASH HYUNDAI CONSORTIUM VS. M/S. SJVN LIMITED, (2025 DHC 4460-DB) DECIDED ON 27.05.2025 BY DELHI HIGH COURT*

**Issue: Whether recommendations of a Dispute Review Board under a contract constitute an arbitral award enforceable under Section 36.**

The Delhi High Court considered whether recommendations issued by a Dispute Review Board (DRB) under a contractual dispute resolution mechanism could be treated as an arbitral award for the purpose of enforcement under Section 36 of the Arbitration and Conciliation Act, 1996. The Court examined the structure of Clause 67 of the contract, which provided that in disputes involving claims up to ₹5 crores, the decision of the DRB would be final and binding between the parties, without any further recourse to arbitration.

The Court held that where the contract itself accords finality to the DRB's determination and does not envisage any subsequent adjudicatory forum, such recommendations possess all the essential attributes of an arbitral award. The binding nature of the DRB's decision, coupled with the exclusion of a civil suit as a remedy, brings such recommendations within the fold of the Act and renders them enforceable as decrees.

The Court reasoned as follows:

***"In terms of the dispute resolution clause, the DRB's decision in respect of any dispute involving claims up to Rupees fifty million (₹5 crores) would be final and binding between the parties."***

***"Such a decision rendered by the DRB in respect of disputes of a value less than ₹5 crores is required to be construed as an arbitral award under the A&C Act and the same could not be challenged by an aggrieved party by filing a suit."***

Accordingly, the Court held that recommendations of a Dispute Review Board, rendered under a contractual framework that accords finality to such decisions, constitute an arbitral award enforceable under Section 36 of the Act.

231. *HYDERABAD METROPOLITAN DEVELOPMENT AUTHORITY VS. CYBERABAD EXPRESSWAY LIMITED, (CIVIL REVISION PETITION NO. 787 OF 2025) DECIDED ON 02.05.2025 BY TELANGANA HIGH COURT*

**Issue: Whether, while enforcing or staying an arbitral award under Section 36, the provisions of the Civil Procedure Code apply only procedurally and do not import substantive remedies such as objections under Section 47 CPC.**

In the present case, the Telangana High Court examined whether a judgment-debtor could invoke Section 47 of the Civil Procedure Code to resist execution of an arbitral award that was sought to be enforced under Section 36 of the Arbitration and Conciliation Act, 1996. The Court analysed the scheme of the 1996 Act and the limited extent to which the CPC is incorporated at the post-award stage.

The Court held that the Arbitration Act is a complete code in itself, providing an exhaustive mechanism from commencement of arbitral proceedings till enforcement of the award. While Section 36 refers to the CPC, such reference is confined to the manner of enforcement and does not elevate an arbitral award to the status of a decree for all purposes. Consequently, substantive remedies available under the CPC, including objections under Section 47, cannot be imported into arbitral enforcement proceedings.

The Court reasoned as follows:

> ***"Section 36 of the 1996 Act refers to the Code of Civil Procedure to the extent of enforcement of the arbitral award in accordance with the provisions of the CPC. The first proviso to section 36(3) of the 1996 Act authorises the Court to impose conditions for stay of operation of the Award, having due regard to the provisions for grant of stay of a money decree under the CPC."***
>
> ***"A careful reading of Section 36 of the Act would make it clear that the CPC only has a limited role in the matter of enforcement and stay of the Award."***
>
> ***"The reference to the CPC is restricted to the manner in which the award is to be enforced. The reference to the CPC does not spill over to the award itself for the purpose of equating the award with a decree as defined under section 2(2) of the CPC."***

Accordingly, the Court held that while enforcing or staying an arbitral award under Section 36, the CPC applies only in a procedural sense, and substantive objections such as those under Section 47 CPC are not available to an award-debtor.

232. *INDIAN OIL CORPORATION LTD. VS. ADARSH NOBEL CORPORATION LTD., (W.P.(C) NO. 20210 OF 2025), DECIDED ON 10.10.2025 BY ORISSA HIGH COURT*

**Issue: Whether objections under Section 47 of the Code of Civil Procedure, 1908 are maintainable in execution proceedings for enforcement of an arbitral award under Section 36 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Orissa High Court examined the permissibility of entertaining objections under Section 47 CPC in proceedings initiated for enforcement of an arbitral award under Section 36 of the Arbitration and Conciliation Act, 1996. The Court was called upon to determine the true scope of the legal fiction created by Section 36, which mandates that an arbitral award be enforced "as if it were a decree of the Court." The central question was whether this deeming fiction permits the judgment-debtor to invoke the full panoply of objections available against a civil decree, including objections under Section 47 CPC.

The Court undertook a doctrinal analysis of Section 36 and clarified that the expression "as if it were a decree" is a limited legal fiction, intended solely to facilitate enforcement through the machinery of the CPC. It does not elevate an arbitral award to the status of a decree within the meaning of Section 2(2) CPC. The Court emphasised that permitting Section 47 objections would effectively reopen issues that could and ought to have been raised under Section 34 of the Arbitration Act, thereby undermining the finality and efficiency of arbitral awards. The executing court's jurisdiction, therefore, remains confined to enforcement, and not to adjudication on the validity or merits of the award, save in cases of patent lack of jurisdiction.

The Hon'ble Court observed as follows:

> ***"Under Section 36 of the Act, the phrase "as if it were" conveys the idea of treating the arbitral award in a manner analogous to a court decree, despite the fact that it is not actually a decree issued by a court. By employing this language, Section 36 of the Act establishes a legal fiction or presumption, whereby the arbitral award is deemed to possess certain characteristics and legal effects akin to those of a court decree. Essentially, it means that once the time limit for challenging the arbitral award has expired, the award is to be enforced through the same procedures and mechanisms as a court decree under the CPC, 1908."***
>
> ***"It is relevant to note that having regard to Section 36(1) of the Act of 1996, the award passed under the provisions of the said Act is required to be construed as a decree only for the purpose of enforcement of the same and it is not open to the petitioner to invoke Section 47 of the CPC before the executing Court."***
>
> ***"The objections available under Section 47 of the Code of Civil Procedure, 1908 will therefore not be available under Section 36 of the Act since an arbitral award is not in reality a decree of the court but is merely treated as one for the limited purpose of enforcement."***

> ***"Allowing objections under Section 47 of the CPC, 1908 to be raised against arbitral awards would undermine the finality and binding nature of arbitration awards. It would subject arbitral awards to same procedural complexities and delays associated with court proceedings, defeating the purpose of choosing arbitration as an alternative dispute resolution mechanism."***

Accordingly, the Court held that objections under Section 47 CPC cannot be entertained in execution proceedings under Section 36 of the Arbitration and Conciliation Act, 1996, as an arbitral award is not a decree in the strict sense but is only deemed to be one for the limited purpose of enforcement. The judgment reinforces the principle that challenges to arbitral awards must be confined to the statutory mechanism under Section 34, and that execution proceedings cannot be converted into a collateral forum for reopening the validity of the award.

**Key Trends:** Unconditional stay of enforcement requires a high threshold, as mere filing of a Section 34 application is insufficient. The fraud threshold for stay demands cogent material and not mere allegations, and executing courts have no jurisdiction to suo motu annul awards on grounds not raised before them.

# Chapter IX

## *Appeals*

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## CHAPTER IX – APPEALS

### SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**37. Appealable orders. — (1)** Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely: —

a) refusing to refer the parties to arbitration under section 8;
b) granting or refusing to grant any measure under section 9;
c) setting aside or refusing to set aside an arbitral award under section 34.

**(2)** Appeal shall also lie to a court from an order of the arbitral tribunal—

a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16;
b) granting or refusing to grant an interim measure under section 17.

**(3)** No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court.

233. *SOM DATT BUILDERS-NCC-NEC (JV) VS. NATIONAL HIGHWAYS AUTHORITY OF INDIA, (2025 INSC 113) DECIDED ON 27.01.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether an appellate court, while exercising jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996, can re-appreciate contractual interpretation or merits of an arbitral award that has already been upheld or substantially upheld under Section 34.**

In the instant case, the Supreme Court examined the limits of appellate interference under Section 37 in a situation where an arbitral award had been affirmed by the Dispute Review Board, the Arbitral Tribunal, and thereafter by the Single Judge of the High Court while exercising jurisdiction under Section 34. The Division Bench, however, reversed these concurrent findings by re-interpreting the contractual clauses and substituting its own view of the merits. The core question before the Court was whether such an exercise was permissible under Section 37.

The Court reaffirmed that Section 37 confers an even narrower jurisdiction than Section 34 and does not permit a rehearing on merits or a fresh interpretation of contractual terms merely because another view is possible. It held that once the arbitral tribunal's interpretation is a plausible one, and the Section 34 court has declined to interfere, the appellate court cannot reassess the contract or evidence under the guise of public policy or patent illegality. The Court cautioned that expanding the scope of Section 37 would undermine the finality of arbitral awards and defeat the legislative intent of minimal judicial intervention.

The Court observed as follows:

> ***"According to us, learned Single Judge had adopted the correct approach and had rightly declined to interfere with the award of the Arbitral Tribunal... If that be the position, there was no justification***

***at all for the Division Bench of the High Court to set aside the award under Section 37 of the 1996 Act."***

***"Interpretation given by the Division Bench to the plain language of Clauses 51 and 52 is not at all a plausible one... and, therefore, committed a manifest error in interfering with an arbitral award in a proceeding under Section 37 of the 1996 Act when the learned Single Judge did not find any justification at all to interfere with the arbitral award within the limited scope under Section 34."***

***"As far as interference with an order made under Section 34 by the court under Section 37 is concerned... the court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision."***

Accordingly, the Supreme Court held that an appellate court exercising jurisdiction under Section 37 cannot re-appreciate contractual interpretation or revisit the merits of an arbitral award that has already been upheld under Section 34, and that such interference is permissible only within the same narrow confines governing Section 34.

234. *JAIPRAKASH ASSOCIATES LIMITED VS. HIGH TECH TYRE RETREADERS PVT. LTD. AND ANOTHER (MATTERS UNDER ARTICLE 227 NO. 479 OF 2019) DECIDED ON 25.02.20222 BY ALLAHABAD HIGH COURT*

**Issue: Whether dismissal of a Section 34 appeal on jurisdictional grounds, without indicating an alternate remedy, amounts to refusal to set aside the award.**

The Allahabad High Court examined the maintainability of an appeal under Section 37 where the Commercial Court had closed the Section 34 proceedings for lack of jurisdiction and ordered return of the application, without indicating any alternate forum for redressal. The respondents contended that such an order did not amount to "refusal to set aside" the arbitral award and was therefore not appealable.

The Court rejected this contention by applying the "effect doctrine", holding that the true test lies not in the form or wording of the order, but in its practical effect. It was observed that where an order effectively puts an end to the challenge against the arbitral award and leaves the aggrieved party remediless, such an order would amount to refusal to set aside the award under Section 34, thereby attracting appellate jurisdiction under Section 37.

***"it would be seen that the effect of the order passed by the Court under Section 34 of the Act is required to be seen for the purpose of examining the maintainability of the appeal under Section 37(1)(c) of the Act as to whether the order passed leaves any other avenue for the applicant to seek redressal against the award or the order passed puts an end to the challenge laid to the award passed by the Arbitral Tribunal, which in the present case is the Council."***

Accordingly, the High Court held that dismissal or closure of a Section 34 application on jurisdictional grounds, without preserving or indicating an alternate remedy, amounts to refusal to set aside the arbitral award, rendering the appeal under Section 37 maintainable.

235. *UNION OF INDIA VS. BHULAR CONSTRUCTION CO., 2025 SCC ONLINE ALL 5448 DECIDED ON 02.09.2025 BY ALLAHABAD HIGH COURT*

**Issue: Whether a petition filed under Article 227 of the Constitution can be permitted to be converted into an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, subject to limitation and court fees, when the former remedy is found to be not maintainable.**

In the instant case, the Allahabad High Court considered the permissibility of converting a petition under Article 227 into a statutory appeal under Section 37 of the Arbitration and Conciliation Act, once it was found that supervisory jurisdiction could not be invoked in the face of an efficacious alternative remedy. The Court noted that while a challenge to an order passed under Section 34 ordinarily lies by way of an appeal under Section 37, the mere invocation of Article 227 does not permanently foreclose the statutory appellate remedy.

The Court examined the settled practice of permitting conversion of proceedings where justice so demands, particularly to avoid multiplicity and technical defeat of substantive rights. It distinguished between impermissible "treatment" of one proceeding as another and permissible "conversion", provided procedural requirements such as limitation and court fees are duly complied with.

The Hon'ble court observed:

> ***"In view of the case law discussed above, I am of the opinion that there is no impediment in case a particular kind of proceeding is not maintainable and a different kind of proceeding lies in respect thereof, the Court has jurisdiction to convert one into other subject to limitation and court fees as the case may be. Thus, following the earlier decisions of this Court as well as of the Supreme Court and the established practice of permitting one particular type of proceedings to be converted into another, I permit the petitioner to convert this petition under Article 227 into an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and grant him three weeks time to do so."***

Accordingly, the Court held that where a petition under Article 227 is found to be not maintainable owing to the availability of a statutory appeal under Section 37, the High Court may permit conversion of the proceedings into such appeal, subject to compliance with limitation and court-fee requirements.

236. *GURUNANAK INDUSTRIES VS. EXECUTIVE ENGINEER AND ORS., (2025 BHC-AUG 17264), DECIDED ON 27.06.2025 BY BOMBAY HIGH COURT*

**Issue: Whether Appellate court can reappreciate the evidence when proceedings challenging an arbitral award are considered under Section 34 and 37 of the Arbitration and Conciliation Act, 1996.**

In the instant case, the Bombay High Court examined appeals filed under Section 37 of the Act wherein the contractor contended that the learned District Judge, while deciding objections under Section 34, had exceeded the statutorily limited jurisdiction by reappreciating evidence and recording findings on merits instead of confining the scrutiny to the grounds permissible under Section 34 or remitting the matter where appropriate.

The High Court agreed with the contention and held that the District Judge had clearly transgressed the boundaries of Section 34 by reassessing evidence and substituting the arbitral tribunal's findings with its own. It was reiterated that Section 34 does not permit reappreciation of evidence or a merits-based review, and any such exercise would amount to jurisdictional error warranting appellate interference under Section 37.

While distinguishing the authorities relied upon by the respondent, the Hon'ble Court observed as follows:

> ***"9. As regards the judgment in the matter of Kinnari Mullick (supra) relied upon by the learned counsel for the respondent the said judgment will not be applicable to an appeal under Section 37 where the matter is remitted back to the learned District Judge for deciding the 34 objections fresh. The judgment deals with Section 34 (4) of the Act which speaks about opportunity to the Arbitral Tribunal to resume the arbitration proceedings and take other action as is necessary to eliminate the grounds of challenge. This power is be exercised by District Judge where it is of the opinion, either on its own or an application made by a party that any defect in the award is capable of being cured. The Judgment is clearly inapplicable.***
>
> ***10.As regards the judgment in the matter of Prabhubhai Jadhavji Rathod (supra), the said judgment is also inapplicable in as much as the claim was decided by the Arbitral Tribunal on merits and the District Judge deciding the application under Section 34 did not find any reason to interfere with the award. In this backdrop, this Court has held that in exercise of appellate jurisdiction under Section 37, this Court should not normally interfere with concurrent findings by the Arbitral Tribunal and the District Judge. In the present case, the judgment delivered by the learned District Judge is being set aside on the ground that it has exceeded its jurisdiction under Section 34 in re- appreciating the evidence and recording findings on merits for the first time. The said judgement is therefore clearly inapplicable."***

Accordingly, the High Court set aside the impugned judgment of the District Judge and remitted the matter for fresh consideration in accordance with the limited scope prescribed under Section 34. The appeal was partly allowed, with a clear reiteration that courts must

strictly adhere to the statutory mandate and refrain from reappreciating evidence while examining challenges to arbitral awards.

237. *M/S AZURE HOSPITALITY PRIVATE LIMITED VS. AMIT BHASIN, PROPRIETOR OF RETAIL INDIA SOLUTIONS, (2025 DHC 7855-DB) DECIDED ON 08.09.2025 BY DELHI HIGH COURT*

**Issue: Whether, in an appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996, the court can uphold interim measures restraining use of brand names post-termination of franchise agreements to prevent public confusion pending arbitration.**

In the instant case, the Delhi High Court examined the permissibility of interim protection under Section 37(1)(b) restraining the respondent from continuing use of the appellant's brand names after termination of the franchise agreements. The Court noted that the licence to use the trade names was expressly limited to the subsistence of the agreements and ceased upon termination. Continued use thereafter was prima facie unauthorised and carried a real risk of misleading the public into believing an ongoing association between the parties.

While exercising appellate jurisdiction, the Court confined itself to preserving the subject matter of arbitration and balancing equities, without adjudicating the merits of the underlying disputes. Given the likelihood of public confusion and the proprietary nature of the rights involved, the Court held that interim protection, including tailored arrangements pending arbitration, was justified.

The Court observed as follows:

> ***"Prima facie, this Court is of the view that once the agreements are terminated, the use of the names could create enormous confusion to the public who may think that the Respondent's outlets are still connected with the Appellant, when in fact they are not."***
>
> ***"Since the petitioner is the owner of trade mark and had permitted the respondent to use the same during the tenure of Agreement, which has now been terminated by the petitioner, in considered opinion, a prima facie case is made out in favour of the petitioner. The balance of convenience also lies in favour of petitioner."***

Accordingly, the Court held that interim measures restraining post-termination use of brand names can be upheld in an appeal under Section 37(1)(b) where such restraint is necessary to prevent public confusion and protect proprietary rights pending arbitration.

238. *DELHI DEVELOPMENT AUTHORITY VS. HARJINDER BROTHERS (2025 DHC 11225) DECIDED ON 11.12.2025 BY DELHI HIGH COURT*

**Issue: Whether Revaluation of Evidence is permissible under Section 37 of the Arbitration and Conciliation Act, 1996.**

The Court reiterated that Section 37 appellate powers are limited to the scope of Section 34 and cannot be used to reappraise evidence or substitute the Court's view for that of the Arbitrator. Court dismissed the appeal filed under Section 37, holding that revaluation of evidence is wholly impermissible at the appellate stage. Relying on case of Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills, 2024 SCC OnLine SC the Court underscored that arbitral awards cannot be interfered with merely because an alternative view is possible.

The Hon'ble Court observed that:

> ***"The appellate power under Section 37 is limited within the domain of Section 34. The Appellate Court has no authority to reappraise evidence or sit in appeal over the arbitral tribunal's decision as if it were an ordinary civil court."***

Accordingly, the Delhi High Court reaffirmed the narrow contours of judicial interference in arbitral matters, holding that an appeal under Section 37 cannot be converted into a forum for revaluation of evidence or reconsideration of factual findings, and that arbitral awards must be respected unless they fall within the limited grounds expressly provided under Section 34 of the Act.

239. *UNION OF INDIA VS. M/S RAJIV AGGARWAL (ENGINEERS AND CONTRACTORS), (2025 DHC 4684-DB) DECIDED ON 28.05.2025 BY DELHI HIGH COURT*

**Issue: Whether administrative delays such as internal file movement or change of counsel constitute "sufficient cause" for condoning inordinate delay in filing an appeal under Section 37.**

In the instant case, the Delhi High Court examined an application filed by the Union of India seeking condonation of an inordinate delay of 613 days in preferring an appeal under Section 37 against dismissal of its Section 34 petition. The explanation offered was that the delay occurred due to internal administrative processes, including movement of files across departments, obtaining approvals, and change of counsel.

The Court rejected the explanation and reiterated that appeals under Section 37, read with Section 13 of the Commercial Courts Act, are governed by strict timelines in furtherance of the legislative objective of expeditious resolution of arbitral disputes. Relying on the law laid down by the Supreme Court in *Borse Brothers*, the Court held that "sufficient cause" is not elastic enough to condone long and unexplained delays, and that administrative inefficiencies or routine procedural formalities cannot justify departure from statutory timelines. The Court emphasised that condonation beyond the prescribed period is an exception, not the rule, and requires demonstration of bona fide conduct and absence of negligence, which was conspicuously lacking in the present case.

The Court observed as follows:

> ***"In Borse Brothers (Supra),...Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression 'sufficient***

***cause' is not elastic enough to cover long delays beyond the period provided by the appeal provision itself."***

***"The reasons given in the application for condonation of delay would not constitute sufficient cause... There was no reason as to why such a long period of delay ought to be condoned inasmuch as mere file movement is not a sufficient cause in such matters"***

Accordingly, the Court held that administrative delays such as internal file movement or change of counsel do not constitute "sufficient cause" for condoning inordinate delay in filing an appeal under Section 37, and dismissed the appeal as barred by limitation.

240. *PAUL DEEPAK RAJARATNAM AND OTHERS. VS. SURGEPORT LOGISTICS PRIVATE LIMITED AND ANOTHER., (2025 DHC 6137) DECIDED ON 28.07.2025 BY DELHI HIGH COURT*

**Issue: Whether an appellate court, in an appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996, can interfere with an interim order passed by an arbitral tribunal under Section 17 in the absence of perversity, patent illegality, jurisdictional error, arbitrariness, or violation of public policy.**

In the instant case, the Delhi High Court examined the scope of appellate interference under Section 37(2)(b) while considering a challenge to an interim protective order passed by the arbitral tribunal under Section 17. The appellants sought interference on merits, urging the Court to reassess the tribunal's interpretation of the Shareholders' Agreement and the necessity of interim injunctive relief.

The Court reiterated that an appeal under Section 37(2)(b) is not a rehearing on merits. The legislative scheme of the Act, read with Section 5, mandates minimal judicial intervention, particularly at the interlocutory stage. Interim orders under Section 17 are discretionary and intended to preserve the subject matter of arbitration and balance equities pending final adjudication. Consequently, the appellate court cannot substitute its own assessment merely because another view is possible or because it may disagree with the tribunal's reasoning.

The Court emphasised that interference is permissible only on narrowly circumscribed grounds, namely where the impugned order is perverse, patently illegal, arbitrary, contrary to the fundamental policy of Indian law, or where the arbitral tribunal has acted in excess of jurisdiction. Absent these defects, the appellate court must exercise restraint and respect the autonomy of the arbitral process.

The Court observed as follows:

***"Under Section 37(2)(b) of the Act, the jurisdiction of an appellate court to interfere with an interim order passed by an arbitral tribunal under Section 17 is limited. Judicial intervention is warranted only when the order is perverse, arbitrary or unreasonable, contrary to the fundamental policy of Indian law, or where the arbitral tribunal has exceeded or failed to exercise its jurisdiction. The appellate***

***court is not required to substitute its views with the view taken by the Arbitral Tribunal merely because another possible view exists."***

Accordingly, the Court held that an appellate court exercising jurisdiction under Section 37(2)(b) cannot interfere with an interim order passed under Section 17 in the absence of perversity, patent illegality, jurisdictional error, arbitrariness, or violation of public policy, and must refrain from re-examining the merits of such interlocutory orders.

241. *JAMIA HAMDARD DEEMED TO BE UNIVERSITY VERSUS ASAD MUEED AND OTHERS, (2025 DHC 8143) DECIDED ON 16.09.2025 BY DELHI HIGH COURT*

**Issue: Whether an appellate court, while exercising jurisdiction under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996, can re-examine the merits of an interlocutory order passed by an arbitral tribunal under Section 17, or is confined only to correcting jurisdictional error, patent illegality, or perversity.**

In the instant case, the Delhi High Court considered the limits of appellate scrutiny under Section 37(2)(b) while examining a challenge to an interim protective order passed by the arbitral tribunal under Section 17. The appellant sought a merits-based review of the tribunal's directions by urging a detailed re-examination of contractual obligations and factual circumstances.

The Court reaffirmed that an appeal under Section 37(2)(b) is not in the nature of a first appeal and cannot be treated as an opportunity to re-argue the merits of the interim order. It emphasised that orders under Section 17 are discretionary and interlocutory, aimed at preserving the arbitral process and balancing equities until final adjudication. Consequently, appellate interference is narrowly confined to cases of jurisdictional error, patent illegality, or perversity, and not mere disagreement with the tribunal's reasoning.

The Court observed as follows:

***"Acute awareness of this legal position is expected of the appellate court exercising jurisdiction under Section 37(2)(b) of the 1996 Act. It cannot proceed to interfere with interlocutory protective orders passed by the arbitral tribunal under Section 17 by sifting through the contract and its covenants with a toothcomb... The scope of judicial review under Section 37(2)(b) cannot be likened to appellate jurisdiction in the classical sense, the order under challenge being interlocutory, discretionary and one rendered by an arbitral tribunal, entitled to the proscriptive protections which attach to the arbitral process."***

***"It is essential that a Court, while exercising appellate jurisdiction under Section 37(2)(b) of the Act, over an interlocutory order of the Arbitral Tribunal, particularly one passed under Section 17 of the Act, keeps in mind the distinct limits of the Arbitral Tribunal's jurisdiction and the appellate court's power. The Court's role is limited to examining whether there is any jurisdictional error or***

***patent illegality or perversity in the order, and not to re-evaluate the merits of the decision."***

Accordingly, the Court held that an appellate court under Section 37(2)(b) cannot re-examine the merits of an interlocutory order passed under Section 17 and must restrict itself to correcting jurisdictional error, patent illegality, or perversity, if any.

242. *M/S KISHORE VIDYANIKETAN SOCIETY (R) VS. ARBITRATION AND CONCILIATION CENTRE, (2025 KHC 40255-DB), DECIDED ON 13.10.2025, BY KARNATAKA HIGH COURT*

**Issue: Whether an appeal is maintainable under Section 13(1A) of the Commercial Courts Act, 2015 against an order passed by a Commercial Court under Section 39(2) of the Arbitration and Conciliation Act, 1996, when such an order is not appealable under Section 37 of the Arbitration and Conciliation Act or Order XLIII of the CPC.**

In the instant case, the Karnataka High Court examined the maintainability of a commercial appeal filed under Section 13(1A) of the Commercial Courts Act, 2015 against an order of the Commercial Court passed under Section 39(2) of the Arbitration and Conciliation Act, 1996. The appellant sought to challenge an order directing compliance with a prior writ order while refusing relief under Section 39(2), contending that an appeal would lie under the expanded appellate provision of the Commercial Courts Act.

The Court rejected this contention by undertaking a plain and purposive reading of the proviso to Section 13(1A). It held that Section 13(1A) does not create an independent or overarching right of appeal; rather, it confines appellate jurisdiction to only those orders that are expressly appealable either under Order XLIII of the Code of Civil Procedure, 1908 or under Section 37 of the Arbitration and Conciliation Act, 1996. Since an order under Section 39(2) of the Arbitration Act is not enumerated in either provision, no appeal would lie. The Court further relied on the authoritative pronouncement of the Supreme Court in Kandla Exports Corporation v. OCI Corporation, which clarified that the proviso to Section 13 operates as a limitation, not an enlargement, of appellate remedies.

The Court observed as follows:

***"A plain reading of proviso to Sub Section (1A) of Section 13 of the Act, 2015 specifies that an appeal is maintainable either from the orders of the Commercial Court, which are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 or under Section 37 of the A&C Act. Neither Order XLIII of the CPC nor Section 37 of the A&C Act provides for an appeal against the order passed under Section 39(2) of A&C Act."***

***"It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made..."***

> ***"Clearly, where there is no specific appeal provided from an order contemplated under the A&C Act, an appeal from such an order would not be maintainable under Section 13 of the Act 2015."***

Accordingly, the High Court held that an appeal under Section 13(1A) of the Commercial Courts Act, 2015 is not maintainable against an order passed under Section 39(2) of the Arbitration and Conciliation Act, 1996 when such an order is not appealable under Section 37 of the Arbitration Act or Order XLIII CPC. The commercial appeal was therefore dismissed as not maintainable, while leaving it open to the appellant to pursue any other remedy available in law.

243. *M/S. JAYCEE HOUSING PRIVATE VS. NEELACHAL BUILDTECH & RESORTS PVT., (ARBA NO.7 OF 2024), DECIDED ON 08.01.2025 BY ORISSA HIGH COURT*

**Issue: Which forum constitutes the competent "court" under the Commercial Courts Act, 2015 for adjudication and appellate review of arbitration-related commercial disputes?**

The High Court held that a plain and harmonious reading of Sections 6 and 10(3) of the Commercial Courts Act, 2015 clearly indicates that the competent "court" for adjudicating a commercial dispute, even where such dispute arises under the Arbitration and Conciliation Act, 1996, is the Commercial Court. The court further held that:

> ***"Section 37 of 1996 Act provides that an appeal shall lie to the court authorised by law to hear appeals from original decrees of the court passing the order, inter alia, refusing to set aside an arbitral award under section 34. Section 13(1) of the 2015 act provides that any person aggrieved by the judgement and order of the commercial court below the level of a district judge may appeal to the commercial appellate court within a period of 60 days from the date of the judgement or order."***

In light of the forgoing the Court concluded that the appeals against impugned order passed by the learn it commercial court ought to be filed before the commercial appellate court and not before the High Court.

244. *PARADIP PORT TRUST (PPT) VS. M/S MODI PROJECT LIMITED, (ARBA NO. 8 OF 2023), DECIDED ON 26.08.2025 BY ORISSA HIGH COURT*

**Issue: Whether Clause 18 of the Vivad se Vishwas II (Contractual Disputes) Scheme mandates compulsory acceptance of claims below ₹500 crore by the procuring entity, thereby excluding administrative discretion?**

The Hon'ble High Court while hearing an appeal under Section 37 of the Arbitration and Conciliation Act alongside a writ petition filed by the Respondent seeking directions to the Appellant to consider an offer made under appeal, examined the Vivad se Vishwas II (Contractual Disputes) Scheme ("the Scheme") and held that Clause 18 thereof is mandatory in nature.

The Bench observed that once a contractor opts to resolve disputes under the Scheme, the procuring entity cannot refuse to accept the claim as the same would amount to defeating the legitimate expectation created by the policy framework.

Elaborating on Clause 18, the Court noted that where the claim amount is ₹500 crore or less, the Scheme expressly provides that the procuring entity "will have to accept" the claim, provided it satisfies the prescribed guidelines. The structure and intent of the Scheme leave no scope for discretion: once a claim is made in conformity with the stipulated parameters, the procuring entity is bound to accept it.

The Court further held:

> ***"Ultimately, the obligation created by the scheme is mandatory in nature, not directly. Once the twin conditions are satisfied – Lada what is Monterey in nature and the amount is below 500 crore – the procuring entity shall accept the claim. This language leaves no room for discussion, and therefore, in the present case, the claimant must be considered and settled in accordance with the scheme."***

Accordingly, the Orissa High Court held that Clause 18 of the Vivad se Vishwas II (Contractual Disputes) Scheme mandates compulsory acceptance of eligible claims below ₹500 crore by the procuring entity, thereby excluding any residual administrative discretion once the conditions under the Scheme are fulfilled.

245. *THE STATE OF BIHAR VS. M/S BABA HANS CONSTRUCTION PVT. LTD., (MISCELLANEOUS APPEAL NO.679 OF 2023), DECIDED ON 08.01.2025 BY PATNA HIGH COURT*

**Issue: Whether internal administrative delays within government departments constitute "sufficient cause" for condonation of delay in filing appeals?**

The High Court held that administrative or procedural delays within government machinery do not, by themselves, constitute "sufficient cause" for condonation of delay in filing an appeal.

It was observed that the power to condone delay must be exercised judiciously and in light of the specific facts and circumstances of each case.

The court held that:

> ***"the rules of limitation are not meant to destroy the rights of the parties. The meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is founded in public policy. It is in enshrined in the maximum interest republicae up sit finis litium (it is for the general welfare that period be put to litigation)."***

The expression "sufficient cause" cannot be construed liberally where the record discloses negligence, inaction, or lack of bona fides on the part of the applicant. Accordingly, the

Court clarified that "sufficient cause" postulates diligent conduct, and excludes situations where the delay is attributable to negligent or non-bonafide conduct of the petitioner.

246. *THE STATE OF RAJASTHAN, THROUGH DISTRICT COLLECTOR PALI. & ORS. VS. SANWARIYA INFRASTRUCTURE PRIVATE LIMITED, (D.B. CIVIL MISCELLANEOUS APPEAL NO. 5302/2024), DECIDED ON 28.05.2025 BY RAJASTHAN HIGH COURT*

**Issue: Whether an arbitral award granting reliefs contrary to or beyond the explicit terms of the contract amounts to patent illegality warranting interference under Section 37 of the Arbitration and Conciliation Act?**

In the instant case, the Rajasthan High Court, while hearing an appeal under Section 37, examined whether the arbitral tribunal had exceeded the limits of the BOT concession agreement by awarding monetary compensation and interest that were not contemplated by the contract. While the Court upheld the arbitrator's findings on commencement of the concession period and limitation, it closely scrutinised whether the arbitrator had transgressed the contractual framework while awarding monetary compensation and interest. The Court reiterated that although arbitral interpretation of contractual terms ordinarily commands deference, such deference ceases where the award travels beyond the contract and grants reliefs not contemplated by the parties.

On examining the concession agreement, the Court found that it did not contain any clause permitting cash compensation for losses allegedly suffered due to delay in handing over the project site or non-closure of the level railway crossing. The contractual scheme envisaged compensation, if any, through extension of the concession period, which had in fact been granted and availed by the respondent. In this backdrop, the award of substantial damages and compound interest was held to be contrary to the express terms and commercial structure of a BOT contract, thereby attracting the ground of patent illegality.

The Court observed as follows:

> ***"An arbitrator cannot go beyond the terms of the contract between the parties. In the guise of doing justice he cannot award contrary to the terms of the contract."***
>
> ***"An award passed beyond terms and conditions agreed between the parties comes within the teeth of grounds available u/s 37 of the Act of 1996 for interference."***
>
> ***"The claim for losses and interest for delay in start of collection of toll have been awarded beyond the terms and conditions and the award suffers from vice of patent illegality."***

Accordingly, the High Court held that where an arbitral tribunal grants damages or interest not sanctioned by the contract, such an award is vitiated by patent illegality and warrants interference under Section 37, notwithstanding the limited scope of appellate review. While the award was upheld insofar as it related to retention of toll collections, the portions granting damages and interest beyond the contractual terms were severed and set aside.

**Key Trends:** Appellate courts cannot re-examine contract interpretation or merits already upheld under Section 34. Administrative internal delay by government bodies was consistently rejected as sufficient cause for condoning inordinate filing delays. A petition under Article 227 found non-maintainable in the face of a Section 37 remedy can be converted into a Section 37 appeal, subject to limitation and court fees.

# Chapter X

## *Miscellaneous*

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## CHAPTER X – MISCELLANEOUS

### SECTION 40 OF THE ARBITRATION AND CONCILIATION ACT, 1996

**40. Arbitration agreement not to be discharged by death of party thereto. — (1)** An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event been forceable by or against the legal representative of the deceased.

**(2)** The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

**(3)** Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

247. *RAHUL VERMA AND OTHERS VS. RAMPAT LAL VERMA AND OTHERS, (PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 4330 OF 2025) DECIDED ON 21.02.2025 BY THE SUPREME COURT OF INDIA*

**Issue: Whether the death of a partner extinguishes the arbitration agreement or the right to seek rendition of accounts, or whether such rights survive and bind the legal heirs and representatives under Section 40 of the Arbitration and Conciliation Act, 1996.**

The Court examined clause 2 of the partnership deed, which expressly states that the partnership shall not dissolve upon a partner's death and may continue with "one of the heirs" of the deceased partner. Clause 15 provides that any dispute concerning the partnership, including dissolution, "shall be referred to arbitration."

Court relied on Section 40 of the Arbitration and Conciliation Act, 1996, and reiterated that arbitration agreements survive the death of a party and bind legal representatives. The Court held that by virtue of Section 40 of the Arbitration and Conciliation Act, 1996, an arbitration agreement and the right to seek rendition of accounts survive the death of a partner, binding and enabling enforcement by legal heirs or representatives.

Further, the term "partners" in the arbitration clause logically extends to their legal heirs, consistent with statutory definitions of "legal representative" and prior case law of Jyoti Gupta v. Kewalsons & Ors., 2018 SCC OnLine Del 7942.

The Hon'ble Supreme Court observed that:

> ***"It is a well-established position of law that the term 'partners' extends to and would include their legal heirs, representatives, assigns or legatees, etc. Persons claiming under the rights of a deceased person are the representatives of the deceased party, and therefore, both the parties to the agreement and their legal heirs are entitled to enforce an arbitral award and are bound by it. In light of Section 40 of the Act of 1996 the existence of an arbitration agreement is not affected by the death of a party to the arbitration agreement. As a consequence, the right to sue for rendition of***

***account also survives, ensuring that the legal representatives can assert or defend claims arising from the partnership agreement."***

Accordingly, the Supreme Court held that the death of a partner does not extinguish the arbitration agreement or the right to seek rendition of accounts, and such rights and obligations continue to subsist and are enforceable by and against the legal heirs or representatives under Section 40 of the Arbitration and Conciliation Act, 1996.

**SECTION 42 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**42. Jurisdiction. —** Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

248. *HARIRAM & ORS. VS NATIONAL HIGHWAY AUTHORITY OF INDIA, (2025 DHC 2436) DECIDED ON 04.04.2025 BY DELHI HIGH COURT*

**Issue: Whether a writ petition can be treated as an "earlier application" under Section 42 of the Arbitration and Conciliation Act, 1996 for the purpose of conferring exclusive jurisdiction on a court in arbitral proceedings.**

The Court analyzed Section 42 and authoritative exposition and concluded that Section 42 applies to applications made under Part I to courts as defined in Section 2(1)(e). A writ petition challenging administrative action does not qualify as an "earlier application" under Section 42 because it is not an application made under Part I to a court as defined for arbitration purposes.

The Court observed that:

> ***"It is apposite to state that a writ petition cannot be construed as an "earlier application" under Section 42 of the Arbitration Act to decide jurisdiction as the very nature of a writ petition is to challenge an administrative action or a legal decision, not to initiate arbitration proceedings; Section 42 specifically refers to an "application made in a Court with respect to an arbitration agreement," which implies an initial application to commence or regulate arbitration, rather than a challenge to an existing decision."***

Accordingly, the Delhi High Court held that a writ petition does not constitute an "earlier application" under Section 42 of the Arbitration and Conciliation Act, 1996, and therefore cannot confer exclusive jurisdiction on a court for subsequent Part I applications and arbitral proceedings arising out of the same arbitration agreement.

249. *PRECITECH ENCLOSURES SYSTEM PVT. LTD. VS. RUDRAPUR PRECISION INDUSTRIES AND ANOTHER, (OMP (I) (COMM.) NO. 305 OF 2023) DECIDED ON 17.03.2025 BY DELHI HIGH COURT*

**Issue: Whether Section 42 can confer exclusive jurisdiction on a court that lacked jurisdiction when it was first approached in connection with the arbitral proceedings.**

The Hon'ble Delhi High Court held that Section 42 presupposes that the first court approached had jurisdiction. The Court observed that section 42, no doubt, requires every subsequent application, or petition, to be preferred before a court which is first approached in connection with the arbitration, but is dependent on the obvious premise that the first

court had jurisdiction. It would be absurd to interpret Section 42 as clothing a court which is coram non judice and which is nonetheless moved by an application in connection with the arbitral proceedings as, by the mere fact of the filing of such a misguided application, becoming clothed with the jurisdiction to entertain all applications in connection with the arbitration in perpetuity and for ever more.

Accordingly, the Delhi High Court held that Section 42 of the Arbitration and Conciliation Act operates only where the court first approached had competent jurisdiction, and it cannot be invoked to confer exclusive jurisdiction on a court that was coram non judice at the inception.

**Key Trends:** Courts held that Section 42 cannot confer exclusive jurisdiction on a court that lacked competent jurisdiction at the inception. A writ petition challenging administrative action was held not to qualify as an earlier application under Section 42, as it is not an application made under Part I of the Act.

**SECTION 43 OF THE ARBITRATION AND CONCILIATION ACT, 1996**

**43. Limitations. — (1)** The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.

**(2)** For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.

**(3)** Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

**(4)** Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

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250. *LAGUNA RESORT PVT. LTD VS. CONCEPT HOSPITALITY PVT LTD (2025 BHC OS 25034) DECIDED ON 17.12.2025 BY BOMBAY HIGH COURT*

**Issue: Whether time spent in arbitral proceedings can be excluded under Section 43(4) for limitation purposes when a severable part of an arbitral award is set aside and the claimant pursues an alternate remedy in respect of that part.**

The Court examined the purpose and text of Section 43(4) (which excludes the period between commencement of arbitration and the court order setting aside the award when computing limitation for proceedings "with respect to the dispute so submitted"). The Court observed that Section 43(4) is not confined to cases where the same arbitral tribunal or identical agreement is involved; it uses the phrase "commencement of the proceedings (including arbitration)" and permits the claimant to institute fresh proceedings (including a suit or fresh arbitration) when the earlier award is set aside. The Court held that the provision aims to avoid depriving a claimant of a remedy where an earlier tribunal erred, and that the second proceeding need not be an arbitration under the same agreement.

The Court held that Section 43(4) of the Arbitration and Conciliation Act allows exclusion of such time as long as the dispute formed part of the earlier arbitration.

> ***"The concept of 'similarity in dispute' envisaged under Section 43(4) would apply even to a 'part of dispute'. Where the Award comprising of multiple claims is severed, and bad part of the Award is set aside, and if right to sue in respect of severed bad part of the Award continues, the Claimant can exercise alternate remedy in respect of that bad part".***

***"When claimant in such a case institutes a suit, the same cannot be thrown out on the ground of limitation as Section 43(4) would come to the aid of such Claimant for exclusion of time spent in arbitral proceedings while computing period of limitation in filing of suit."***

Accordingly, the Bombay High Court held that Section 43(4) permits exclusion of the time spent in arbitral proceedings for limitation purposes even where only a severable part of an arbitral award is set aside, provided the subsequent proceedings relate to the same dispute or part thereof, thereby preserving the claimant's right to pursue an alternate remedy without being defeated by limitation.

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