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case in point

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This *Case in Point* yearly arbitration round-up provides a summary of notable developments in arbitration. We have attempted to cover developments both within India and beyond that will significantly influence Indian stakeholders intending to pursue dispute resolution through domestic or international arbitration proceedings.

This round-up is divided into two segments for clarity. Part I examines judicial developments under the Arbitration and Conciliation Act, 1996 (**Arbitration Act**), focusing on domestic developments including significant rulings by the Supreme Court and various High Courts that shape India's arbitration framework. Part II is focused on international developments that underline a global drive towards increased clarity, procedural efficiency, and minimal judicial interference in arbitration.

Regards,

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Part I: Judicial Developments under the Arbitration Act

A. Power of the Indian civil courts to pass injunction orders in foreign arbitration proceedings

In Engineering Projects (India) Limited v. MSA Global LLC (Oman) (2025 SCC Online Del 5072), the single judge of the Delhi High Court (**DHC**) held that Indian civil courts retain jurisdiction to grant anti-arbitration injunctions against foreign-seated arbitration where proceedings are vexatious and oppressive due to non-compliance with mandatory disclosure requirements under relevant institutional arbitration rules.

On June 29, 2015, Engineering Projects (India) Limited (**Plaintiff**) was appointed as the main contractor for a border security system at the Oman-Yemen border by MSA Global LLC (Oman) (**Defendant**).

On September 21, 2015, the Plaintiff entered into a sub-contract agreement in relation to specific sections of the border security system of the Oman-Yemen border (**Sub-Agreement**). This Sub-Agreement contained an arbitration clause providing for a Singapore-seated arbitration under the aegis of the International Chamber of Commerce (**ICC**), governed by the Rules of Arbitration of the ICC, 2021 (**ICC Rules**), with courts in New Delhi having exclusive jurisdiction with respect to disputes arising out of or in connection with the Sub-Agreement. The Sub-Agreement provided that any reference to

arbitration would be governed by and conducted in accordance with the ICC Rules.

A dispute arose between the parties concerning delays in the performance of contractual obligations. On April 12, 2023, the Defendant invoked arbitration clause under the Sub-Agreement.

On April 20, 2023, the Defendant's nominated arbitrator submitted a signed Statement of Acceptance, Availability, Impartiality, and Independence as well as his curriculum vitae as mandated under Article 11(2) of the ICC Rules, declaring that he had "*Nothing to disclose*" on any facts or circumstances that could give rise to justifiable doubts about his impartiality or independence (**Statement**).

On September 5, 2023, a three-member arbitral tribunal was constituted.

On December 17, 2024, the arbitral tribunal fixed the dates for hearings from January 20, 2025, to January 25, 2025.

During the preparation of the hearings scheduled in January 2025, the Plaintiff discovered the Defendant's nominated arbitrator had prior involvement, as an arbitrator, in a proceeding involving the Defendant's managing director, chairman, and promoter. The

information, learnt through a judgment of the Gujarat High Court, disclosed the Defendant's nominated arbitrator's prior professional engagement in a matter concerning the Defendant's managing director and his legal counsel.

On gaining knowledge about the prior involvement of the Defendant's nominated arbitrator in the Defendant's earlier case, on January 19, 2025, the Plaintiff filed a challenge application before the ICC Court alleging that Defendant's nominated arbitrator lacked impartiality or independence to conduct the present arbitration proceedings (**Challenge Application**).

The Defendant's nominated arbitrator, in response to the Challenge Application, submitted that he had been appointed as a co-arbitrator by the Defendant in or around November 2018, more than 4 (four) years prior to signing of the Statement. The Defendant's nominated arbitrator clarified that he wilfully chose not to disclose this information because it was nowhere near, and distant from, the matter set out in the orange list under Article 11(2) of the ICC Rules, and that it was unnecessary, unwarranted, and even possibly inappropriate to make any disclosure that he had previously been nominated/appointed arbitrator by the Defendant. The Defendant's nominated arbitrator further stated that he had not made this disclosure due to the possibility that the Appellant may challenge his impartiality in the present arbitration proceedings.

The ICC Court during its proceedings noted that the Defendant's nominated arbitrator had submitted during the nomination process a signed Statement in which he declared that he had "*Nothing to disclose*" regarding any facts or circumstances that could give rise to justifiable doubts about his impartiality or independence.

On February 28, 2025, the ICC Court held the Challenge Application to be admissible but rejected it on merits. The ICC Court acknowledged that the non-disclosure of previous arbitration by the Defendant's nominated

arbitrator was "*regrettable*" but stated that the circumstances did not establish justifiable doubts with respect to the Defendant's nominated arbitrator's impartiality or independence.

Aggrieved by the ICC Court's order, the Plaintiff approached the DHC by way of a civil suit seeking a declaration that the Defendant was not entitled to continue the arbitration proceedings with the present constitution of the arbitral tribunal because of justifiable doubts about the Defendant's nominated arbitrator's impartiality or independence. The Plaintiff further prayed for an anti-arbitration injunction restraining the Defendant from proceeding with the arbitration proceedings, as it was vexatious and oppressive due to justifiable doubts about the non-independence of the Defendant's nominated arbitrator, which is violative of the public policy of India including fundamental policy of Indian law, morality and justice.

The DHC, before analysing whether the Plaintiff could be granted an anti-arbitration injunction, decided upon the maintainability of the present suit. The Defendant had argued that the suit constituted an abuse of process, amounted to forum shopping, and was filed solely to stall arbitration proceedings already underway before a duly constituted arbitral tribunal. The Defendant contended that once the seat of arbitration had been contractually fixed, the appropriate remedy lay before the Courts at the seat (in this case, the Singapore Courts) and not the courts with exclusive jurisdiction.

Maintainability of the civil suit

The DHC, referring to Section 9 of the Code of Civil Procedure, 1908 (**CPC**), held that there exists a strong and statutorily entrenched presumption in favour of jurisdiction of the civil courts to try all civil suits except those expressly or impliedly barred.¹ The DHC held that *whilst* arbitral autonomy and minimal judicial interference are important principles, they do not create an unblemished embargo against civil courts entertaining suits seeking anti-arbitration injunctions.

¹ To reach to this conclusion, the DHC relied on the Supreme Court cases of *Dhulabhai v. State of Madhya Pradesh*, (2017) 5 SCC 262, *S. Vanathan Muthuraja v. Ramalingam @ Krishnamurthy Gurukkal & Ors.*, (1997) 6 SCC 143.

The DHC relied on *Union of India v. Dabhol Power Company*,² and made reference to *ONGC v. Western Co. of North America*,³ to hold that the Arbitration Act does not oust the jurisdiction of the Indian courts from issuing an injunction against the arbitration proceedings, if it can be proved that the arbitral proceedings against a party in a foreign country are oppressive and call for interference.

The DHC held that civil courts are empowered under the CPC to intervene and use its inherent powers against the misuse of the arbitral process, where the arbitral proceedings are shown to have been vexatious, oppressive, and intended to harass the opposite party.

“Vexatious” and “oppressive” nature of arbitration proceedings

On examining the definition of “vexatious” and “oppressive” as in the legal dictionaries, the DHC referred to the ICC Rules, which require arbitrators to make a series of mandatory disclosures to attest their impartiality and independence before their appointment or confirmation.

The DHC noted that Article 11 of the ICC Rules provides a mandatory mechanism enabling arbitrators to disclose any fact potentially questioning their impartiality and independence. The DHC held that this Article casts an unflinching duty on arbitrators to remain impartial and independent, and to disclose any facts or circumstances that may call into question their independence in the eyes of the parties. The DHC observed that the Defendant’s nominated arbitrator willingly chose not to disclose prior involvement in a previous arbitration with the Defendant in November 2018. The DHC took note of the Defendant’s nominated arbitrator’s response to the Challenge Application that stated, “...I came to the conclusion that the circumstances concerning my appointment in the previous arbitration by (Defendant) sic were nowhere near and indeed far away from the matters set out in the Orange List and it was unnecessary, unwarranted and even possibly

inappropriate for me to make any disclosure that I had previously been nominated/appointed arbitrator...” and “...Had I made the disclosure, the possibility of the Respondent seeking to challenge my impartiality could not be discounted.”

Against this backdrop, the DHC drew an inference against the Defendant’s nominated arbitrator, stating that ICC Rules’ standard for disclosure is pre-emptive and precautionary. It emphasised the question of disclosure is not determined by the arbitrator’s subjective perception, but by what the parties may reasonably perceive as a cause for concern “in the eyes of the parties”. The DHC found the arbitrator’s non-disclosure under the ICC Rules was calculated and deliberate, to avoid objection by the Plaintiff, thereby depriving it of its rightful opportunity to raise a challenge at the time of appointment, which is a defect that could not be cured.

The DHC noted that the ICC Court by its order dated March 14, 2025, while accepting that the non-disclosure of the Defendant’s nominated arbitrator was “regrettable” had concluded that it did not give rise to any reasonable doubts regarding impartiality. The DHC characterised this as a classic case of “*operation successful, but patient dead*”, observing that even though the ICC Court’s decision may appear sound on the surface and in adherence to the formal procedure, it does not heal the substantive loss of confidence in the neutrality of the arbitral process.

The DHC held that the Plaintiff cannot be compelled to have its rights adjudicated by an arbitrator who has admittedly failed to comply with mandatory requirements to its detriment, justifying the test of oppressiveness.

Interim injunction

The DHC applied the well-settled three-fold test for grant of interim injunction under Order XXXIX Rules 1 and 2 of CPC: (i) *prima facie* case, (ii) balance of

² 2004 SCC OnLine Del 1298.
³ (1987) 1 SCC 496.

convenience, and (iii) irreparable injury – all sine qua non conditions requiring concurrent satisfaction. Applying this three-fold test on the facts of this case, the DHC held the following:

- 7 **Prima facie case:** The deliberate concealment of mandatory disclosure acknowledged by the Defendant's nominated arbitrator was sufficient to oust him from appointment as arbitrator in the present arbitration proceedings and establish a *prima facie* case.
- 7 **Balance of convenience:** Continuation of arbitration would cause serious and irreparable prejudice to the Plaintiff and would be contrary to the larger interests of both parties, as any resultant award would be susceptible to challenge, rendering the arbitration futile. The balance tilted overwhelmingly in the Plaintiff's favour because the arbitration would entail substantial expenditure of public funds, as the Plaintiff is a public sector undertaking and deferment would cause no demonstrable prejudice to the Defendant.
- 7 **Irreparable injury:** Grave and irreparable harm would be caused to the Plaintiff, if arbitration continued during the pendency of the suit and parallel proceedings would render the suit *otiose* and create multiplicity of proceedings. The Defendant's conduct across various forums demonstrated *mala fides* and tactical manipulation and would have placed the Plaintiff in an untenable position of being compelled to participate before an arbitral tribunal whose impartiality was in serious doubt.

In light of these facts, the DHC held that it has the jurisdiction to entertain this civil suit and, finding the arbitration proceedings *prima facie* vexatious and oppressive in nature, allowed the Plaintiff's application and granted an anti-arbitration injunction on the arbitration proceedings before the ICC.

The Defendant filed an appeal before the DHC's division bench, seeking to set aside the order of the Court's single judge on the grounds of perversity, illegality, and



jurisdictional error. In *MSA Global LLC (Oman) v. Engineering Projects (India) Limited* (2025 SCC OnLine Del 9617), the DHC's division bench upheld the single judge's order holding that the single judge had correctly applied the settled principles governing interim injunctions and that all three requirements – existence of a *prima facie* case, balance of convenience, and likelihood of irreparable injury – stood satisfied. The division bench held that order of the single judge did not warrant any interference as there was no perversity, illegality, and jurisdictional error.

B. Supervisory jurisdiction of Indian courts when only foreign venue is specified

In *Disortho SAS v. Meril Life Sciences* (2025 SCC OnLine SC 570), the Apex Court held that Indian courts would retain supervisory jurisdiction over an arbitration should the venue of arbitration proceedings be in a foreign jurisdiction.

In this case, Disortho S.A.S (**Disortho**) and Meril Life Sciences Private Limited (**Meril**) executed an International Exclusive Distributor Agreement (**DA**) for the distribution of medical products in Colombia. Disputes arose between the parties, following which, Disortho filed a petition under Section 11 of the Arbitration Act for the appointment of a sole arbitrator as per the dispute resolution clause under the DA. Meril opposed the petition on jurisdictional grounds

contending that Indian courts do not have the jurisdiction to appoint the arbitrators.

The DA had conferred exclusive jurisdiction on the courts in Gujarat regarding matters arising under it. The DA also contained a dispute resolution clause that provided for conciliation and arbitration in Bogotá, Colombia, under the rules of the Arbitration and Conciliation Centre of the Chamber of Commerce of Bogotá. The dispute resolution also mandated that the award shall be in conformity with Colombian law.

Given the peculiarity of the facts in this case, the Apex Court discussed the applicability of three distinct legal regimes that exist while determining the jurisdiction in trans-border arbitration: (i) *lex contractus*: the law governing the substantive contractual issues; (ii) *lex arbitri*: the law governing the arbitration agreement and the performance of this agreement; and (iii) *lex fori*: the law governing the procedural aspects of arbitration.

The Apex Court was of the view that the law governing the arbitration (*lex arbitri*) may differ from both the *lex contractus* and the *lex fori*. The Apex Court observed that “*Lex arbitri might be split into two components which can be split if the parties so desire - (i) law governing the agreement to arbitrate or the proper law of arbitration and (ii) the law governing the arbitration. While the former relates to validity, scope and interpretation of the arbitration agreement, the latter refers to the supervisory jurisdiction exercised by the courts.*” The Court referenced Martin Hunter and Alan Redfern, *International Commercial Arbitration*, which reads as “...*The law governing the arbitration comprises the rules governing interim measures (e.g. Court orders for the preservation or storage of goods), the rules empowering the exercise by the Court of supportive measures to assist an arbitration which has run into difficulties...*”

While the Apex Court underscored the difference in the law governing the arbitration agreement and the law governing the arbitration, it eventually considered both the proper law of arbitration agreement and the law governing the arbitration as *lex arbitri* (Para 11).

The Apex Court also referred to the UK Supreme Court’s case of *Sulamérica Cia Nacional De Seguros S.A. v. Enesa Engenharia S.A* (2012 EWCA Civ 638) in which the three-step test to determine the law governing the arbitration agreement was laid down by the UK Supreme Court. These steps are: (i) looking at the express choice of law; or (ii) considering any implied choice; or (iii) determining the closest and most real connection. Second step is applied when the first step is negative, and the third step is applied when the first and second steps are negative (Para 16).

The Apex Court ruled that Bogotá had only been designated as the venue for conciliation and arbitration, while the courts in Gujarat, India, retained exclusive jurisdiction over disputes. The Apex Court, thus, held that the parties had made an implied choice to be governed by the Indian laws.

The Apex Court ruled that the mere choice of “venue” was not sufficient to override the presumption that the parties wish to arbitrate their dispute under Indian laws. In conclusion, the Apex Court found that the location/venue designated in the arbitration agreement does not imply that laws of that place would govern the arbitration agreement and affirmed the applicability of the Arbitration Act to the arbitration.

The judgment notes that during the course of the hearing, the parties agreed to the arbitration being held in India and consented to the appointment of a sole arbitrator. The Apex Court, exercising its powers under Section 11 of the Arbitration Act, proceeded to appoint a sole arbitrator. It left the decision of the venue to the parties. It also stated that the arbitration would be governed by the rules of the Delhi International Arbitration Centre.

C. Seat of arbitration clause v. the exclusive jurisdiction clause in an arbitration agreement

In *Precitech Enclosures Systems Pvt. Ltd. v. Rudrapur Precision Industries* (2025 SCC OnLine Del 1609), the issue before the Delhi High Court (DHC) was to

determine whether the exclusive jurisdiction clause takes precedence over the seat of arbitration designated by the parties.

The dispute resolution clause provided for exclusive jurisdiction of the courts at Rudrapur, Uttarakhand, to determine any dispute between the parties, including applications made under the Arbitration Act. As disputes arose under the agreement, parties agreed on email to conduct the arbitration in Delhi. The DHC interpreted these correspondences to mean that Delhi was the seat and the venue of arbitration between the parties.

Relying on its previous decisions of *CARS 24 Services (P) Ltd. v. Cyber Approach Workspace LLP*⁴ and *Hunch Circle (P) Ltd. v. Futuretimes Technology India (P) Ltd.*,⁵ the DHC held that in instances where the parties had contractually conferred exclusive jurisdiction for applications relating to arbitration, that clause must be accorded due respect and jurisdiction would vest only on such courts and on no other court. The clause in question in the rent agreement between the parties specifically vested jurisdiction with courts at Rudrapur in respect of “any application to be made under the Arbitration and Conciliation Act, 1996”. Such specific conferral, where the exclusive jurisdiction clause covers and includes applications relating to the arbitral proceedings, predominates the designated seat of arbitration.

The DHC also commented on Precitech’s reliance on Section 42 of the Arbitration Act, which provides a supervisory jurisdiction over all arbitral proceedings to a single court exclusively. The DHC held that Section 42 requires every subsequent proceeding to be preferred before the court first approached in connection with the arbitration. The jurisdiction of the court under this section is dependent on the premise that the first court had the jurisdiction, i.e., the jurisdiction of the court, as decided by the parties. In this case, since the parties had already decided that the courts at Rudrapur had first jurisdiction, the DHC rejected Precitech’s arguments on

Section 42 and dismissed its application for the appointment of arbitrators.

D. Arbitral Tribunal’s competence to include third parties to arbitration despite the absence of said third party in the notice of arbitration and in the application for the appointment of arbitrators before a court of law

In *Adavya Projects Pvt. Ltd. v. M/s Vishal Structurals Pvt. Ltd. & Ors.*, (2025 SCC OnLine SC 806), the Apex Court held that an arbitral tribunal or court can include third parties to arbitration despite their non-inclusion in the notice invoking arbitration and application for appointment of arbitrators. The Apex Court clarified that the terms of the arbitration agreement are the governing/defining factor for the inclusion of third parties to an arbitration proceeding.

In this case, Adavya Projects Pvt. Ltd. (**Appellant**) and Vishal Structural Pvt. Ltd. (**Respondent 1**) entered into an agreement to incorporate Vishal Capricorn Energy Services LLP (**Respondent 2**). Only the Appellant and Respondent 1 were signatories to the LLP Agreement (**Agreement**). Clause 8 of the Agreement designated Mr. Kishore Krishnamoorthy (**Respondent 3**) as the Chief Executive Officer of the LLP, responsible for administration of business and execution of contracts, with Respondent 3 also being a director of Respondent 1.

By a letter of award, Oil India Limited awarded a contract for augmentation of storage capacity at ITF, Tenughat, Assam to a consortium of which Respondent 1 was a member, and by another agreement, the consortium sub-contracted this project to Respondent 1 (**ITF Project**). The Appellant and Respondent 1 entered into a Supplementary Agreement and a Memorandum of Understanding (**MoU**).

Disputes arose between the parties, following which the Appellant issued a notice invoking arbitration under Clause 40 of the LLP Agreement to Respondent 1

⁴ 2020 SCC OnLine Del 1720.

⁵ 2022 SCC OnLine Del 361.

through its Director, Respondent 3. The Appellant then filed a Section 11 application for the appointment of arbitrator before the Delhi High Court (DHC) impleading only Respondent 1 as a party. The DHC allowed the application by its order dated November 24, 2021, and appointed a sole arbitrator to adjudicate their disputes arising out of the Agreement read with Supplementary LLP Agreement and MoU.

When the Appellant filed its statement of claim, it impleaded Respondents 2 and 3 as parties to the arbitration but restricted the reliefs sought against Respondent 1 only. In response, Respondents 1 to 3 challenged the jurisdiction of the arbitral tribunal and filed an application under Section 16(3) of the Arbitration Act⁶ before the arbitral tribunal. The Respondents sought that Respondents 2 and 3 be excluded from the arbitration proceedings as they were not parties to the notice invoking arbitration or the application for appointment of arbitrator, and that the arbitration agreement in Clause 40 did not bind Respondent 2 or Respondent 3 in their individual capacity. The arbitral tribunal accepted the Respondent's application and ordered for amendments to be made to the Appellant's statement of claim by removing Respondents 2 and 3 as parties.

Aggrieved by the arbitral tribunal's order, the Appellant filed an application before the DHC under Section 34 of the Arbitration Act, through which the Appellant sought to set aside the order of the arbitral tribunal. The application was dismissed.

The Appellant then preferred an appeal against the order of the single judge of the DHC under Section 37 of the Arbitration Act. The division bench of the DHC held that since the notice invoking arbitration and the application for appointment of arbitrator did not raise any disputes against Respondents 2 and 3, the Appellant could not be permitted to implead them the arbitration proceedings. The division bench of the DHC upheld and affirmed the reasoning of the single judge.



Following the decision of the division bench of the DHC, the Appellant challenged the order before the Apex Court on the following grounds:

- a) non-service of a notice of arbitration under Section 21 of the Arbitration and Conciliation Act is not a precondition for filing an application under Section 11 of the Act for the constitution of an arbitral tribunal.
- b) such non-service does not curtail the jurisdiction of the arbitral tribunal to implead parties to the arbitration.

The Apex Court decided the matter on the following grounds:

Notice of arbitration is not a pre-requisite for impleadment of non-signatories

The Apex Court held that nothing in the wording of the Act indicates that Respondents 2 and 3 cannot be impleaded as parties to the arbitral proceedings merely because the notice of arbitration was not served on them. The Apex Court relied on *State of Goa v. Praveen Enterprises*,⁷ and held that the claims and disputes raised in the notice of arbitration do not restrict or limit the claims that may subsequently be raised before an arbitral tribunal. The Apex Court further held that the

⁶ Section 16(3) of the Arbitration Act provides that a party can file a plea before an arbitral tribunal challenging the arbitral tribunal's jurisdiction over a subject matter beyond its scope of authority, which are raised during the arbitral proceedings.
⁷ (2012) 12 SCC 581.

non-service of the notice of arbitration on Respondents 2 and 3, does not automatically bar their impleadment as parties to the arbitration proceedings.

Whether not mentioning the Respondents 2 and 3 in an application to constitute an arbitral tribunal limits the jurisdiction of an arbitral tribunal to implead parties to an arbitration

The Apex Court held that an application for constitution of an arbitral tribunal carries a limited scope of examination into the existence of the arbitration agreement and *prima facie* finding on who are parties to it. Further the Apex Court held that merely because Respondents 2 and 3 were not made parties in the application for constitution of an arbitral tribunal before the DHC, and disputes against them were not referred to the arbitrator, it does not mean that they cannot be impleaded at a later stage.

In this case, the Apex Court noted that Respondents 2 and 3 through their conduct, consented to perform contractual obligations under the Agreement. The Apex Court observed that Respondent 2 was carrying out its business and executed contracts and dealings with third parties, such as undertaking the ITF Project, based on the terms of the Agreement, and by way of its conduct, Respondent 2 had undertaken to be bound by the Agreement. Similarly, Respondent 3, who is the CEO of the LLP and was responsible for its administration and business, derived his position and duties from Clause 8 of the Agreement. His obligations as the CEO of the LLP were derived from the Agreement, and therefore, Respondent 3 was also bound by the arbitration clause contained in the Agreement, not in his individual capacity but as the CEO of the LLP.

The Apex Court thus held that Respondents 2 and 3 were parties to the Agreement through conduct and the arbitral tribunal had the power to implead them as parties to the arbitration proceedings while exercising its jurisdiction under the Arbitration Act.

Arbitral tribunal's duty

The Apex Court also remarked that an arbitral tribunal's approach in such situations should be to exercise its

jurisdiction in accordance with the principle of *kompetenz-kompetenz*, i.e., to analyse from the arbitration agreement and conduct of the parties if Respondents 2 and 3 agreed to be bound by the arbitration agreement.

In this case, the Apex Court noted that the arbitral tribunal's reasoning was flawed as it did not consider whether Respondents 2 and 3 were party to the LLP Agreement by their conduct and whether they could have been impleaded in the statement of claim.

The Apex Court allowed the appeal, set aside the impugned judgment of the High Court, and directed that Respondents 2 and 3 be impleaded as parties before the arbitral tribunal and the proceedings be continued from the stage of the last arbitral tribunal's order.

E. Non-signatories to an arbitration agreement can be made parties only in exceptional circumstances

In *Mrs. Lubna Shah v. B.M. Jayeshankar & Ors.*, CMP No. 155 of 2025, the Karnataka High Court (KHC) held that non-signatories cannot be made party to an arbitration unless "exceptional circumstances exist".

In this case, M/s. Varin Infra Project Pvt. Ltd. (**Respondent 3**) entered into a Joint Development Agreement (**Agreement**) with Mrs. Lubna Shah (**Petitioner**). Disputes arose between the parties following which the Petitioner issued a notice of arbitration. The notice of arbitration included the names of the directors of Respondent 3 as parties (the directors would be referred to as "Respondent 1" and "Respondent 2", respectively).

Respondent 3 sent a holding reply to the notice of arbitration, seeking time to file the reply to the said notice. At this stage, the Petitioner filed a petition for appointment of an arbitrator before the KHC stating that since there was no consent or concurrence on the appointment of an arbitrator, the KHC should appoint a sole arbitrator to resolve disputes arising under the Agreement.

The KHC framed two points for consideration: (i) Whether the petition under Section 11 of the Arbitration

Act could be taken up for consideration, even though, it was filed prematurely before the expiry of the 30-day limitation period as required under the Arbitration Act; and (ii) Whether there existed an arbitration clause requiring the parties to be referred to arbitration, and if so, whether Respondents 1 and 2 were also required to be made parties to the arbitration proceedings.

Whether the petition under Section 11 of the Arbitration Act could be taken up for consideration, even though, it was filed prematurely before the expiry of 30 days as required under Section 21 read with Section 11 of the Arbitration Act

The KHC observed that after a notice to arbitration has been issued under the Arbitration Act, the noticee is required to be provided 30 days from the date of receipt of the notice to respond. The KHC noted that the Respondent 3 failed to reply to the notice of arbitration within the stipulated timeframe. The KHC further observed that Respondent 3 in its reply, had not concurred with the appointment of the arbitrator, and, in fact, Respondent 3 had contended that there was no dispute between the parties that required to be referred to arbitration.

Since the Respondent 3 has contended that there was no dispute that required to be referred to arbitration, the KHC held that the present Petition would be valid, by virtue of such a rejection, despite being filed before the 30-day expiry period. The KHC further held that since the Respondent 3 had rejected the arbitration notice, during the pendency of the Petition, this reply of the Respondent 3 could be considered and an order for the appointment of an arbitrator could be made on the merits of the case.

Whether there existed an arbitration clause requiring the parties to be referred to arbitration, and if so, whether Respondents 1 and 2 were also required to be made parties to the arbitration proceedings

The KHC observed that the Agreement was entered into between the Petitioner and Respondent 3, with Respondent 2 representing Respondent 3. Therefore,

the KHC held that Respondent 1 was neither a signatory nor a party to the said agreement and that Respondent 2 was only a signatory to the Agreement and not a party to it.

The Petitioner argued that Respondent 3 was a shell company and a special purpose vehicle, which had been established solely for that project. The Petitioner further contended that Respondent 3 had no assets of its own apart from the subject matter of the present Agreement, due to which any order that may be passed, could not be enforced against Respondent 3.

The KHC rejected the Petitioner's aforementioned argument for a simple reason that a director and shareholder are distinct from a corporate entity by relying on the English case law of *Salomon v Salomon & Co Ltd.*, [1897] AC 22. The KHC held that a director and shareholder cannot be brought on a par with each other to make them party to an arbitration merely because of the possibility that a company may not be able pay the due amounts. The KHC further held that if at all Respondent 3 were unable to make payments of the awarded amounts, the Petitioner was entitled to initiate separate recovery proceedings against Respondent 2.

The KHC held that arbitration could be only between parties to the arbitration under the Agreement, and non-parties could not be made parties to the arbitration unless exceptional circumstances existed. In the present matter, the arbitration was to be between the Petitioner and Respondent 3, and Respondents 1 and 2 could not be parties to such arbitral proceedings.

At this stage, both the counsels submitted that the matter may initially be referred to mediation and thereafter an arbitrator could be appointed, to enable the parties to explore the possibility of amicable settlement before getting into the adjudicatory mechanism. The KHC allowed these prayers and referred the matter to mediation, directing the Director, Karnataka Mediation Centre to appoint a mediator to resolve the dispute between the parties. All contentions were kept open between the parties.

F. Parties are not left remediless after the termination of the arbitration proceedings by an arbitrator under Section 32(2)(c) on account on the non-payment of arbitral tribunal fees by one of the parties

In *Marvel Sigma Homes Pvt. Ltd. v. Sanjay Jasubhai Desai and Ors.* (WP No. 3319 of 2024), the Bombay High Court (BHC) held that in case an arbitral proceeding is terminated under Section 32(2)(c) on account of non-payment of arbitral fees, an aggrieved party may prefer an appeal against such a termination order under Section 14 of the Act.⁸

Referring to *Lalitkumar V. Sanghavi v. Dharamdas*⁹ and *Ramchandra Udaysinh Jadhavrao v. Girish Navnathrao Avhad*,¹⁰ the BHC observed that where arbitral proceedings are terminated under Section 32(2)(c) of the Act, the remedy to set aside the order under Section 34 of the Act is unavailable to the parties. Recognising this legislative vacuum, the BHC laid down that an aggrieved party may invoke Section 14 of the Act to file an application before a court of law challenging an order terminating the arbitral proceedings.

The remedies available to a party against the termination of the arbitral proceedings for non-payment of fees are further discussed in detail at paragraph L of this *Case in Point* – the case of *Harshbir Singh Pannu v. Jaswinder Singh* (2025 SCC OnLine SC 2741).

G. Can injunctions under the Arbitration Act interfere with statutory rights under Companies Act, 2013?

In *Drharors Aesthetics Private Ltd v. Debulal Banerjee & Rahul Shawel* (2025 SCC OnLine Del 5379) the Delhi High Court (DHC) held that courts should not preemptively restrain the convening of board meetings for the removal of directors; instead, the appropriate remedy lies in challenging the outcome of such meetings.



Drharors Aesthetics (Appellant) was formed pursuant to a Memorandum of Understanding dated September 23, 2023 (MoU), executed between Dr. Navnit Haror, Dr. Vineeta Pathak, and Mr. Debdulal Banerjee (Respondents). Mr. Debdulal Banerjee was appointed as a director of the Appellant under the Executive Employment Agreement dated October 19, 2023 (Agreement). Subsequently, disputes arose between the parties, whereupon the Respondents were served with short-notice communications convening board meetings with their removal from the directorship of the Appellant listed as an agenda item.

The Respondent after invoking arbitration under the MoU and the Agreement, approached the Commercial Court under the Arbitration Act, seeking interim protection by restraining the Appellant from convening the board meetings concerning their removal from the position of directors. The Commercial Court granted interim protection to the Respondents by observing that the proposed board meetings did not meet with statutory requirements under the Companies Act, 2013. The Appellant filed appeals under the Section 37(1)(b) of the Arbitration Act,¹¹ challenging the Commercial Court's decision before the DHC.

⁸ Section 14(2) of the Act allows an aggrieved party to apply to the Court to decide on the termination of the mandate of the arbitral tribunal.

⁹ (2014) 7 SCC 255.

¹⁰ 2023 SCC OnLine Bom 2470.

¹¹ Section 37(1)(b) of the Arbitration Act, provides an aggrieved party a right of appeal against an order granting or refusing to grant any measure for interim reliefs under Section 9 of the Arbitration Act.

The DHC observed that remedies of interim injunctions under Section 9 of the Arbitration Act are equitable and discretionary in nature and are primarily exercised to preserve the subject matter of arbitration or to prevent the frustration of an arbitration proceedings. The DHC relied on the decisions of *Life Insurance Corporation of India v. Escorts Ltd. & Others*,¹² *Jai Kumar Arya & Ors. v. Chhaya Devi & Anr*,¹³ and *Ravinder Sabharwal and Another v. XAD Inc. and Others*,¹⁴ to hold that interim reliefs under the Arbitration Act cannot be granted when they obstruct the functioning of corporate bodies, particularly, where the Companies Act, 2013, provides adequate statutory remedies for the same.

In this case, the DHC observed that the board meetings sought to be convened were for considering serious allegations pertaining to financial irregularities, breach of fiduciary duties, and obstruction of audit processes. In these circumstances, the DHC observed that the Companies Act, 2013, guarantees a director right to a reasonable opportunity of being heard prior to removal. It clarified that as the Companies Act, 2013, provides for adequate statutory remedies, the injunction granted by the Commercial Court effectively curtailed the statutory right of the Appellant to convene a board meeting and deliberate on serious governance issues, a matter squarely within the internal domain of corporate management and not amenable to injunctive interference. It further clarified that the appropriate remedy for the Respondents lay after the outcome of such a board meeting.

The DHC concluded that no findings had been recorded to establish the existence of a *prima facie* case, the balance of convenience, or the likelihood of irreparable harm to the Respondent, each of which is *sine qua non* for the exercise of equitable jurisdiction for a grant of interim protection under the Arbitration Act. Consequently, it dismissed the application filed by the Appellant.

H. The contract must be read strictly to determine whether it excludes claim for *pendente lite* interest

In *Oil and Natural Gas Corporation Ltd. v. M/s G & T Beckfield Drilling Services Pvt. Ltd.* (2025 SCC OnLine 1888), the Apex Court held that an arbitral tribunal can be denuded of its power to award *pendente lite* interest only if the agreement between the parties is so worded that the award is barred either explicitly or by necessary implication. A clause merely barring an award of interest on delayed payment/disputed claim by itself would not be readily inferred as a bar to award *pendente lite* interest by the arbitral tribunal.

In this case, the arbitral tribunal passed an award against Oil and Natural Gas Corporation Ltd. (**Appellant**) in favour of G & T Beckfield Drilling Services Pvt. Ltd. (**Respondent**). It awarded *pendente lite* interest at 12 per cent per annum on the awarded sum from the date the statement of claim was affirmed until the recovery of the amount by the Respondent.

The Respondent duly followed the enforcement procedures prescribed under the Arbitration Act, whereupon the arbitral award was upheld in its entirety by the respective High Court. Aggrieved by this High Court's order, the Appellant approached the Apex Court by way of a Special Leave Petition (**SLP**) on a limited ground as to whether or not the *pendente lite* interest on the total amount at the rate of 12 per cent could be awarded, considering the bar on award of *pendente lite* interest can be inferred from the terms of the agreement between the parties (The clause of the agreement relied upon by the Appellant read: *no interest would be payable by the Appellant in cases of delayed payment/disputed claim.*)

The Apex Court examined provisions of the Arbitration Act, which deals with award of interest when the arbitral award is for the payment of money. It noted that an arbitral tribunal has jurisdiction to award interest for three distinct periods: pre-reference, *pendente lite*, and

¹² (1985) 1 SCC 264.

¹³ 2017 SCC Online Del 11436.

¹⁴ 2018 SCC Online Del 1148.

future (post award). It further noted that an award of pre-reference and *pendente lite* interest is subject to the agreement between the parties, whereas post-award interest is statutorily governed and is not subject to the agreement between the parties.

In this case, the Apex Court noted that the agreement between the parties only provided for a bar on award on interest in cases of delayed payment/disputed claim. The Apex Court relied on its judgment in *Ferro Concrete Construction (India) Pvt. Ltd. v. State of Rajasthan*,¹⁵ to hold that an arbitral tribunal cannot award *pendente lite* interest, if the agreement between the parties explicitly or implicitly provides that *pendente lite* interest cannot be granted.

In this case, the Apex Court noted that agreement between the parties only contained a general clause that merely bars award of interest on delayed payment/disputed claim. The Apex Court held that this general clause by itself could not be readily inferred as a bar to award *pendente lite* interest by an arbitral tribunal.

Accordingly, the Apex Court found no error in the award of *pendente lite* interest that would have warranted interference with the arbitral award and dismissed the appeal.

I. Exclusive jurisdiction clause in the arbitration agreement determines seat and court competent to entertain an application for the appointment of an arbitrator, if the seat has not been provided for in the arbitration agreement

In *M/s Activitas Management Advisor Private Limited v. Mind Plus Healthcare Private Limited* (SLP (C) No. 27714 of 2024), the Apex Court held that when a contract specifies exclusive jurisdiction of a particular court in connection with disputes related to arbitration, such court alone will have jurisdiction to entertain an application under Section 11 of the Arbitration Act, and the exclusive jurisdiction clause determines the seat of arbitration.

In this case, M/s Activitas Management Advisor Private Limited (**Appellant**) was engaged by the Mind Plus Healthcare Private Limited (**Respondent**). The agreement between them contained an arbitration clause. Particularly, the terms of the clause read, “10. *Governing Law - This Letter shall be governed by and construed in accordance with Indian Law. Client hereby submits the exclusive jurisdiction of the Mumbai High Courts located in Mumbai in connection with any dispute related to this letter or any of the matters contemplated hereby. In case, any dispute arises between the parties with respect to above-mentioned agreement. Parties hereby agree to appoint sole Arbitrator by consent of either parties as per section 11 of Arbitration and Conciliation Act 1996 and can amicably resolve their dispute as per the procedure laid down in Arbitration and Conciliation Act 1996 before approaching appropriate court for the same.*”

In this case, the Apex Court held that though Clause 10 did not use the expression “seat” or “venue”, the word “jurisdiction” was mentioned in the context of resolution of the disputes through arbitration. As such, the agreement between the parties that the “client hereby submits to the exclusive jurisdiction of the Mumbai High Courts located in Mumbai” would be understood in the context of arbitration and therefore the seat of the arbitration must be taken to be Mumbai. The Apex Court allowed the appeal and entitled the Appellant to pursue its application for the appointment of an arbitrator under Section 11 of the Arbitration Act before the Bombay High Court.

J. Furnishing security by foreign parties in arbitration proceedings in India

In *Gail (India) Ltd. v. Focus Energy Ltd.*, (2025 SCC OnLine Del 5), the Delhi High Court decided on an application to secure the assets of foreign parties (who did not have any assets in India) in an arbitration. It held that in such cases, the foreign parties could be directed under Order XXXVIII Rule 5 of CPC to provide solvent security in the form of a bank guarantee or

¹⁵ 2025 SCC OnLine SC 708.

unencumbered immovable assets to the value of amounts in dispute. Such bank guarantee or unencumbered immovable assets would remain attached until the time the arbitral tribunal entered reference and adjudicated the dispute.

K. Divergent views on the applicable limitation period for the applications made for the appointment of arbitrators before a court

In *Offshore Infrastructures Ltd. vs M/s Bharat Petroleum Corporation Ltd.*, (2025 SCC OnLine SC 2147), the Apex Court held that the limitation period for filing an application for the appointment of an arbitrator before a court commences when the substantive cause of action arises.

In this case, Offshore Infrastructures Limited (**Appellant**), was awarded a contract for works by Bharat Petroleum Corporation Limited (**Respondent**). It raised the final bill on March 20, 2018, and subsequently issued a “No Claim Certificate” on October 3, 2018. The final bill was released on March 26, 2019. On April 26, 2021, the Appellant issued a consolidated claim for all outstanding dues.

When the Respondent failed to clear the dues, on June 14, 2021, the Appellant issued a notice to the Respondent’s managing director seeking appointment of an arbitrator as per the contract. On July 2, 2021, the Respondent rejected the Appellant’s claims. Aggrieved, the Appellant filed an application for appointment of an arbitrator before the Madhya Pradesh High Court on March 14, 2022.

Both the single bench and the division bench of the Madhya Pradesh High Court dismissed the Appellant’s petitions as time-barred by holding that the limitation period had commenced on October 3, 2018, i.e., the date of issue of the “No Claim Certificate”, and had, accordingly, lapsed on October 2, 2021.

On appeal, disagreeing with the High Court decisions, the Apex Court held that the cause of action for filing an arbitration application arises when the final bill handed over to the Respondent becomes due. The Apex Court



relied on *Geo Miller and Company Pvt. Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*, (2020 14 SCC 643) (**Geo Miller**), wherein it was held that the cause of action for bringing the substantive claims had arisen in 1983 when the final bill was raised. The arbitration notice was sent in 2002, and the application for the appointment of an arbitrator by a court was made in 2003. The Apex Court had refused to appoint an arbitrator, observing that the claims were clearly time-barred after a delay of nearly 20 years, since the final bill was raised in 1983.

In this case, the Apex Court determined that since the final bill became due on April 21, 2018, the three-year limitation period would ordinarily have expired on April 21, 2021. However, considering the COVID-19 extension order that had excluded the period from March 15, 2020, to February 28, 2022, for calculation of limitation, the Apex Court ruled that the Appellant’s application was within limitation. It nonetheless observed that in the normal course, it would have been hit by the statutory bar of three years.

In contrast to the above decision, in another judgment of *Arif Azim Company Limited v. Aptech Limited*, (2024) 5 SCC 313, the Apex Court had held examined in length regarding the question on the limitation period for filing an application for appointment of an arbitrator by a court. In this case, the Apex Court had held that that an applicant’s “right to apply” and the court’s “duty to appoint” accrue only after the completion of all the

preliminary steps necessary to institute an application for appointment of an arbitrator by a court. This includes invocation of arbitration by issuing a formal notice to the other party. The right to apply would accrue to an applicant only upon the other party's failure to act on such a notice.

In light of the preceding contrasting decisions, it remains unclear whether the limitation period for filing an application for the appointment of an arbitrator starts from when the substantive cause of action arises or after the completion of all the preliminary steps necessary to institute an application for appointment of an arbitrator by a court, i.e., by issuing a formal notice of commencement of arbitration to the other party.

L. Termination of arbitral proceedings for non-payment of fees and remedy available to an aggrieved party

In *Harshbir Singh Pannu v. Jaswinder Singh* (2025 SCC OnLine SC 2742), the Apex Court held that the appropriate remedy against an order of termination of arbitration proceedings, on account of non-payment of arbitrator's fees, would be first to file an application for the recall of such an order before the arbitral tribunal. If such a recall application is rejected/dismissed by the arbitral tribunal, the aggrieved party would then be empowered to approach the relevant court under Section 14(2) of the Arbitration Act,¹⁶ which allows courts to decide on the order for the termination of arbitral proceedings passed by an arbitral tribunal.

Harshbir Singh Pannu (**Appellant**) and Jaswinder Singh (**Respondent**) were partners under a Partnership Deeds dated March 31, 2013, and March 12, 2014 (**Partnership Deeds**), which contained an arbitration clause providing for arbitration by two arbitrators and, in case of disagreement between them, the appointment of an umpire.

Disputes arose between the parties, and the Appellant issued a notice to dissolve the Partnership Deed and refer disputes to arbitration and called upon the

Respondent to mutually appoint an arbitrator. Since, no reply was received from the Respondent, the Appellant proceeded to file an application for the appointment of an arbitrator before the Punjab and Haryana High Court (**PHC**) under Section 11 of the Arbitration Act. The PHC allowed the application and appointed a sole arbitrator on the direction that the arbitrator's fees would be as per the Fourth Schedule of the Arbitration Act¹⁷ or as mutually agreed between the parties.

The Appellant filed a claim for INR 13.65 crore and on January 5, 2021, the fees of the arbitrator was tentatively fixed at INR 17.02 lakh to be shared equally between the parties. Subsequently, the Respondent filed a counterclaim for INR 82.79 crore. On April 23, 2021, the arbitrator *vide* its order dated April 23, 2021, revised the fees payable to INR 37,50,000 (the ceiling amount under the Fourth Schedule), and payable equally by both parties.

Both parties challenged the arbitrator's fees fixed as per the order dated April 23, 2021, and preferred separate applications raising objections to the determination of fees by the arbitrator. On July 17, 2021, the objections were rejected by the arbitrator. Subsequently, the Appellant claimed inability to pay the arbitrator's fees. In the interest of continuation of the arbitration proceedings, the arbitrator asked the Respondent if he would cover the Appellant's share. The Respondent refused to cover the Appellant's share of the arbitrator's fees, although he was willing to pay his own share. On March 28, 2022, since neither party agreed to pay the full fees for the claim and counterclaim, the arbitrator terminated the arbitration proceedings exercising its powers set out in Section 38 of the Arbitration Act.

Aggrieved by the aforesaid order of termination, the Appellant filed a writ petition and a subsequent petition seeking the fresh appointment of an arbitrator under Section 11(5)/ (6) of the Arbitration Act. The PHC held that there was a distinction between the termination of proceedings under Section 38 for non-payment of arbitrator fees and the termination of the mandate

¹⁶ Section 14(2) of the Arbitration Act allows an aggrieved party to apply to the Court to decide on the termination of the mandate of the arbitral tribunal.
¹⁷ Fourth Schedule of the Arbitration Act entitles and caps the fees of an arbitrator at the rates mentioned under the schedule.

under Section 32(2)(c) where the arbitral tribunal considers the continuation of the proceedings to have become impossible or unnecessary. The PHC, while rejecting the application, observed that the arbitrator had acted within the powers conferred by Section 38 of the Arbitration Act in terminating the proceedings and the appropriate remedies were either to file an application for the recall of the termination order before the arbitrator or to challenge the legality of the termination of the mandate under Section 14(2) of the Arbitration Act.

By way of an appeal against the aforesaid order of the PHC, the Appellant approached the Apex Court. The Apex Court framed the following issues for determination:

- a) The meaning of “termination of arbitral proceedings” across the Arbitration Act;
- b) The nature and effect of termination of arbitration proceedings vis-à-vis Section 38 and Section 32 of the Arbitration Act; and
- c) The remedy available against an order terminating proceedings.

In brief, the Apex Court’s analysis and holding are provided below:

a) The meaning of “termination of arbitral proceedings” across the Arbitration Act

The Apex Court observed that only four provisions under the Arbitration Act speak of termination of arbitral proceedings by an arbitrator, namely, Section 25 sub-section (a), Section 30 sub-section (2), Section 32 and Section 38, respectively.

- i. On circumstances of termination under Section 25(a), the Apex Court observed that an arbitral tribunal may exercise its power to either terminate the arbitral proceedings or forfeit the right to file a statement of defence or pass an award *ex parte* or *sans* the production of any piece of evidence upon its satisfaction that no sufficient cause existed for such default.

- ii. On circumstances of termination under Section 30, the Apex Court observed that an arbitral tribunal is required to terminate the arbitral proceedings upon settlement of the dispute by the parties, as nothing remains for the arbitral tribunal to adjudicate upon.
- iii. On circumstances of termination under Section 38, the Apex Court observed that when both the parties fail to make the deposit as required by the arbitral tribunal in respect of a claim or a counterclaim, then in such a situation, the tribunal would be empowered to either suspend or terminate the proceedings *qua* such claim or counterclaim.

The Apex Court observed that while the aforementioned provisions create situations that may trigger termination, ultimately the power of the arbitral tribunal to pass an order terminating the arbitral proceedings lay under Section 32 of the Arbitration Act. The Apex Court clarified that Section 25 (a) of the Arbitration Act stipulates that if the claimant fails to communicate the statement of claim “*the arbitral tribunal shall terminate the proceedings*”. Similarly, Section 30 (2) provides that if the parties settle the dispute during the arbitral proceedings “*the arbitral tribunal shall terminate the proceedings*”. The Second Proviso to Section 38 also states that where none of the parties pays the deposit as required by the arbitral tribunal, in respect of a claim or a counterclaim, then “*the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counterclaim, as the case may be*”.

The Apex Court further held that the words “*shall*” and “*or*” in Section 32(1) “*The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2)*” clearly show that the arbitral proceedings can come to an end in only two distinct ways, as specified in sub-section (1) of Section 32.

b) *Effect of termination of arbitration proceedings vis-à-vis Section 38 and Section 32 of the Arbitration Act*

The Apex Court analysed the statutory design of Section 38 of the Arbitration Act and observed that when an arbitral tribunal terminates an arbitration proceeding in respect of a particular claim or counterclaim, it does not mean that the entire proceedings have terminated. Instead it only signifies the end of the proceedings for that particular claim or counterclaim, as the case may be. The Apex Court further observed that there could be situations where the proceedings may be terminated in respect of one particular claim, but in respect of the other claims and counterclaims, the proceedings could continue. In such circumstances, the mandate of the arbitral tribunal would also continue to survive *de hors* the termination in respect of a particular claim or counterclaim, as the case may be.

The Apex Court clarified that an arbitration is built upon the principle of procedural self-responsibility. Its edifice is the idea that each party must advance its case diligently, without dependence on judicial paternalism. Sections 25 and 38 of the Arbitration Act, insofar as they empower the termination of proceedings on account of default by a party, crystallise this principle. The Apex Court held that a party cannot by its own contumacious conduct be allowed to proceed carelessly, miss deadlines, cause disruption, and if the proceedings are terminated then simply restart them once again.

Observing a lacuna within the rigors of the Arbitration Act, the Apex Court held that the termination of proceedings under Section 38 of the Arbitration Act, is to be construed as an order for the termination of proceedings within the meaning of Section 32(2) of the Arbitration Act.

c) *The remedy available against an order terminating proceedings*

The Apex Court held that the Arbitration Act does not provide any remedy against an order for the



termination of arbitration proceedings. The Apex Court analysed a plethora of diverging opinions expressed in different judgments and concluded that the following hierarchical remedies available to the parties:

- 1) Filing an application for recall of the termination order before an arbitral tribunal: The arbitral tribunal has inherent procedural power to recall a termination order. Parties should file an application before an arbitral tribunal and seek recall of the termination order.
- 2) Filing an application under Section 14(2) before the High Court of relevant jurisdiction: If the recall application is refused by an arbitral tribunal, an aggrieved party may move the High Court of relevant jurisdiction under Section 14(2) of the Arbitration Act to decide whether the mandate was legally terminated. The High Court of the relevant jurisdiction may set aside the termination order and remit the matter back to the arbitral tribunal or appoint a substitute arbitrator under Section 15 of the Arbitration Act.¹⁸
- 3) Challenge on the order on an application for recall of the termination order lies after final award: If recall application is allowed by the arbitral tribunal, any challenge to such order lies after the final award is rendered by seeking to set aside the award under Section 34 of the Arbitration Act.

Applying the aforementioned ratio to the facts of this case, the Apex Court noted that since both parties declined to pay their requisite shares (the Appellant refused to pay even its own claim's share), the arbitrator was empowered to terminate proceedings under Section 38. This, per the Apex Court's construction, constitutes an order for termination under Section 32(2) of the Arbitration Act. The Apex Court found no infirmity in the termination, emphasising the equal deposit obligations and noting that parties had the possibility of requesting suspension under Section 38(2) of the Arbitration Act till the time such fees could be arranged by the parties.

The Apex Court partly allowed the appeal and remanded the matter to the PHC to appoint a substitute arbitrator within two weeks from the date of the Apex Court's order. The substitute arbitrator was granted liberty to conduct de novo hearings, with parties having the liberty to amend their claims and counterclaim.

M. Court's power to modify arbitral awards

In *Gayatri Balasamy v. M/S. ISG Novasoft Technologies Limited* (2025 INSC 605), the Apex Court held by a 4:1 majority that courts possess a limited power to modify arbitral awards. This decision was passed in a Special Leave Petition (SLP) challenging the judgment of the Madras High Court, which had held that courts in India have powers within the Arbitration Act to modify an arbitral award (**Madras High Court Judgment**). This view conflicted with the Apex Court's earlier ruling in *Project Director NHAI v. M. Hakeem*,¹⁹ followed in *Larsen Air Conditioning and Refrigeration Company v. Union of India*,²⁰ and *SV Samudram v. State of Karnataka*.²¹

Given the divergence and question of law involved, the SLP filed before a three-judge bench of the Apex Court was referred to a larger five-judge bench. The five-judge

bench comprised the then Chief Justice Sanjiv Khanna, Justice B. R. Gavai, Justice Sanjay Kumar, Justice K. V. Viswanathan, and Justice Augustine George Masih. The majority upheld the view of the Madras High Court, clarifying that the courts have limited power to modify an arbitral award under the Arbitration Act.

For easy analysis and comprehension, we have divided the judgment into two parts: (i) Majority Judgment; (ii) Dissenting Opinion.

1. Majority Judgment

Severability of awards

The Apex Court observed that the proviso to Section 34(2)(a)(iv) relating to the setting aside of an arbitral award holds particular significance in the context of the present discourse, insofar as the said proviso empowers the courts to segregate, sever, and preserve the "valid" part(s) of the award while setting aside the "invalid" ones. (The terms "valid" and "invalid", as used here, do not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the Arbitration Act.) Subsequently, the Apex Court held that:

"The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award."⁴

The Apex Court held that the most practical and pragmatic interpretation of this proviso is that the authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. The Apex Court observed that an arbitral award cannot be set aside in part when the "valid" and "invalid" portions of the arbitral award are legally and practically inseparable.

¹⁸ Section 15 of the Arbitration Act provides circumstances in which mandate of an arbitral tribunal would terminate and provides for appointment of a substitute arbitrator according to the rules that were applicable to the erstwhile arbitral tribunal. This section also provides that the substitute arbitrator may begin the arbitration proceedings de novo or restart the arbitration proceedings from the time when the mandate of the erstwhile arbitral tribunal ended.

¹⁹ (2021) 9 SCC 1.4 Paragraph 33 of the judgement.

²⁰ (2023) 15 SCC 472.

²¹ (2024) 3 SCC 623.

Difference between setting aside and modification

While drawing a distinction between modification and setting aside of an arbitral award, the Apex Court clarified that modification only involves altering specific parts of an award, whereas setting aside results in its complete annulment.

Limited power of modification under Section 34 of the Arbitration Act

The Apex Court held that Section 34 of the Arbitration Act does not restrict the courts from granting various alternative reliefs, provided they remain within the contours of the statute and do not violate the guardrails of the power provided for setting aside an award under Section 34 of the Arbitration Act. Referring to the principles of severability provided under Section 34(2)(a)(iv) of the Arbitration Act, it observed that where a portion of the award is severable, the courts are empowered with a limited and qualified jurisdiction to vary or modify a portion of the award.

Can courts modify an award despite the powers mentioned at Sections 33 and 34(4) of the Arbitration Act?

The Apex Court clarified that Section 34 of the Arbitration Act permits the courts to exercise inherent powers to rectify limited typographical errors, provided no merit-based review is involved. On the contrary, Section 33 of the Arbitration Act empowers an arbitrator to correct and/or re-interpret the arbitral award on limited grounds (e.g., correction of computational, clerical, or typographical errors) and make an additional award on claims presented before the arbitral proceedings but were omitted from the arbitral award. The Apex Court clarified that where re-evaluation on merits is required, the courts must invoke its remedial powers under Section 34(4) of the Arbitration Act and remand the matter to the Tribunal.

Doctrine of Merger and the New York Convention

The Apex Court noted that once Section 34 of the Arbitration Act is reinterpreted to include a limited power to modify awards. This power will not affect the

international commercial arbitration regime or the enforcement of foreign awards. The Apex Court's reasoning was based on the interpretation of Section 48(1)(e) of the Arbitration Act which relates to conditions for enforcing foreign awards.

It interpreted Section 48(1)(e) of the Arbitration Act to state that the statutory framework recognises that the domestic law of the country where the award is made would prevail and will have supremacy, when the award needs to be enforced. Therefore, if the arbitral award requires any modification to meet this criterion, it cannot be said to be against the provisions of the New York Convention.

Post-award interest may be modified in some circumstances

Another issue the Apex Court dealt with was whether the courts would now possess the powers to declare or modify interest, especially post-award interest. As per the Arbitration Act, the tribunal is permitted to grant two types of interest, viz., (i) *pendente lite* interest under Section 31(7)(a) of the Arbitration Act and (ii) post-award interest under Section 31(7)(b) of the Arbitration Act.

With regard to *pendente lite* interest, the Apex Court held that in cases where the courts feel that requisite interest has not been awarded or interest beyond the terms of the agreement has been awarded, they may either (i) set aside such interest or (ii) remand the matter back to the tribunal to re-evaluate.

With regard to post-award interest, the Apex Court stated that the courts would retain the power to modify the interest rate where the facts justify such modification and in the absence of the same having been awarded by the tribunal, the courts possess powers to grant it. powers to grant post-award interest in the.

To substantiate its stance, the Apex Court referred to UNCITRAL Model Law on International Commercial Arbitration (Model Law) – upon which the Indian Arbitration Act is based – and compared the

modification powers of post-award interest rates to Section 31 of the Model Law.

The Apex Court described Section 31(7) of the Arbitration Act as a unique creation of the Indian legislature, wherein the legislature devised a standard rate of interest to guide the arbitrator's discretion when determining the post-award interest rate. Thus, any post-award interest rates provided by the arbitrator can be scrutinised by the courts against the standards prescribed under Section 31(7) of the Arbitration Act.

The Apex Court held that this limited power of modification of post-award interest rates is significant as it allows for adjusting the interest rate rather than setting aside the entire award because of an erroneous interest rate.

Conclusion

The Apex Court clarified the law regarding judicial powers over arbitral awards. It recognised a limited modification power to avoid repeated arbitrations, contingent on clear separability of valid and invalid portions and the absence of substantive factual disputes requiring fresh determination.

2. Dissenting Opinion

Justice K.V. Viswanathan delivered a dissenting opinion and held that courts do not possess a general authority to alter or modify arbitral awards (hereinafter referred to as the **Dissenting Opinion**). The Dissenting Opinion placed heavy reliance on a previous judgment of the Apex Court in *Project Director, National Highways No. 45 E and 220 National Highways Authority of India v. M. Hakeem and Another* (2021) 9 SCC 1.

Statutory interpretation

The Dissenting Opinion laid emphasis on the wordings of Section 34 of the Arbitration Act. Usage of words like “only if” and “recourse” in the context makes it clear that powers of the courts are limited to annulment and not an appellate-like review of the arbitral awards.



Therefore, reading words such as “modify” and “vary” would amount to judicial legislation, which contradicts the statute's plain text and the intention of the legislature.

Distinction drawn between “set aside” and “modify”

The Dissenting Opinion clarified that “setting aside” an arbitral award only entails annulling it on specific statutory grounds, while “modification” is a substantively different process of altering its terms, something not expressly conferred by the Arbitration Act.

The Dissenting Opinion came to this conclusion after analysing the law laid down by the Apex Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* (2006) 11 SCC 181. The Apex Court had held that it does not have any powers to correct the arbitrators' errors and could only quash the arbitral award. It also laid emphasis on the Dr. T. K. Viswanathan Committee Report, in which the Committee had recommended powers of modification of an arbitral award. Yet, the legislature did not include this under the statutory framework of the Arbitration Act.

In light of this omission, the Dissenting Opinion emphasised that reading the words of Section 34 to include “modification” of an arbitral award would be incorrect and amount to judicial legislation.

Hardship arguments

Rejecting the parties' arguments that lack of modification powers leads to hardship as it would force expensive re-arbitration for minor changes, the Dissenting Opinion emphasised that the legislative choice to maintain minimal judicial interference is deliberate and in line with the Model Law. According to the Dissenting Opinion, the legislative intent provides for an option to re-commence of arbitration proceedings if the court sets aside an arbitral award. Therefore, since the Arbitration Act expressly contemplates the recommencement of arbitration proceedings, wherever legally maintainable, it cannot be brushed aside on the grounds of causing hardship to the parties.

Alternative remedies already provided under the Arbitration Act

The Dissenting Opinion highlighted that the Arbitration Act already contains two safety valves under Section 34(4) and Section 33 of the Arbitration Act, clarifying that any apparent errors in the arbitral award can be corrected according to the provisions of Section 33. But this power does not extend to making substantive modifications to the arbitral award.

Similarly, the Dissenting Opinion appreciated the powers of the court enshrined under Section 34(4) of the Arbitration Act and stated that the powers of the court are limited to adjourning the setting-aside proceedings and remitting the award to the arbitral tribunal to "eliminate grounds for setting aside" (e.g., providing missing reasoning). This provision does not empower the court itself to alter the arbitral award's substance and is not in line with the previous judicial precedents, which lay down that the power to remit under Section 34(4) can be exercised for undoing curable defects.

Complications due to modification in the New York Convention awards

The Dissenting Opinion held that no explicit power is mentioned in Section 34 of the Arbitration Act under which a court could modify an arbitral award. Therefore, if an arbitral award is modified by a court in India under

Section 34 of the Arbitration Act, any enforcement brought abroad will run into complications following objections that what is sought to be enforced is not the award itself, but the judgment of the court.

The Dissenting Opinion also noted that the statutory framework in India lacks an express provision under which a court-modified award would be read and recognised as the final arbitral award. In absence of such express provision, serious complications may arise in the enforcement of New York Convention awards, constituting a serious threat to India-seated arbitrations under the New York Convention.

Severability doctrine

While acknowledging that provisions under Section 34(2)(a)(iv) of the Arbitration Act and other related provisions provide for severability in an arbitral award, the Dissenting Opinion differentiated between "severance" and "modification". "Severance" relates to a court's power to partially set aside distinct, severable portions of the award that are invalid or exceed tribunal's jurisdiction, leaving valid segments intact. "Modification" involves altering the contents of an arbitral award, a power not falling under the provisions of Section 34(2)(a)(iv).

Post-award interest

Addressing the issues of interest, the Dissenting Opinion stated that the courts under Section 34 cannot modify the interest rate provided in an arbitral award. The only recourse for parties is to remit the arbitral award back to the arbitral tribunal to make the necessary correction, as the statutory framework does not grant courts the power to modify interest rates.

Conclusion

By upholding the "no-modification" stance, the Dissenting Opinion upheld the view of the court in *M. Hakeem (supra)*, which clarified that Indian courts have powers limited only to upholding an arbitral award or setting it aside or remitting limited issues back to the arbitrator, wherever permissible.

N. Reviving arbitration claims post-corporate insolvency resolution process

In *Electrosteel Steel Limited v. Ispat Carrier Private Limited* (2025 INSC 525), the Apex Court pronounced an authoritative judgment concerning the interplay between arbitration proceedings and the Insolvency and Bankruptcy Code, 2016 (IBC). It reinforced the legal position that once the adjudicating authority approves a resolution plan under Section 31 of IBC, all claims not forming part of the resolution plan stand extinguished, including claims that are subject to pending legal proceedings.

The Apex Court's reasoning relied heavily on its earlier landmark rulings in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2020) 8 SCC 531, *Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.* (2021) 9 SCC 657, and *Ajay Kumar Radheshyam Goenka v. Tourism Finance Corporation India Ltd.* (2023) 10 SCC 545, in which the following principles were laid down:

- a) Successful resolution applicant acquires the corporate debtor on a clean slate and, therefore, cannot be saddled with undecided legacy claims.
- b) All claims against the corporate debtor must be submitted to the resolution professional. Claims not included in the resolution plan, whether submitted or not, admitted or not, pending adjudication, etc., are all deemed to be extinguished.

In this ruling, the Apex Court reiterated these principles with clarity and added that even when an arbitral award is passed post moratorium, it is a nullity if the underlying claim is not recognised in the resolution plan.

O. Challenge to an arbitral award under Civil Procedure Code, 1908

In *Hyderabad Metropolitan Development Authority v. Cyberabad Expressway Limited* (2025 SCC OnLine TS 256), the High Court of Telangana (THC) considered a civil revision petition filed against an order of the

Commercial Court at Hyderabad (**Commercial Court**), which had refused to stay the enforcement of an arbitral award. The Commercial Court had rejected an application filed by the petitioner under Section 47 of the Civil Procedure Code, 1908 (**CPC**), which deals with questions to be determined by the Court executing decrees.

The THC observed that the Arbitration Act is a complete code, which provides for recourse against the arbitral award and an appeal from that decision. Referring to enforcement provision of Section 36(1) of the Arbitration Act, it clarified that the CPC applies only to the manner of enforcing an arbitral award, treating it as if it were a decree of the court. This reference does not incorporate substantive provisions of the CPC such as Section 47 into arbitration enforcement proceedings.

The THC distinguished the objections/grounds available to a judgment-debtor under Section 47 of the CPC from those available to an award-debtor under Section 36 of the Arbitration Act, noting that a judgment passed by a court of law and an award made by an arbitral tribunal arise from different sources of conflict, procedures, and the parties' willingness to adjudicate their dispute in a forum of their choice, which culminates in an award. The THC, while rejecting the petition, affirmed the Commercial Court's view that an arbitral award is not a decree as defined under Section 2(2) of the CPC and that the Petitioner had failed to justify bypassing the appellate mechanism provided under Section 37 of the Arbitration Act.

The judgment of the Delhi High Court (**DHC**) in *Anglo American Metallurgical Coal (P) Limited v. MMTC Limited* (2025 SCC OnLine Del 3201) further reinforced this view. The question under consideration before the DHC was whether the judgment debtor is entitled to move objections under Section 47 of CPC against the execution of the arbitral award under Section 36 of Arbitration Act, which states that an award shall be enforced "as if it were a decree of the court". Answering in the negative, the DHC echoed a similar view that an award cannot be termed a "decree" as defined under Section 2(2) of the CPC and as such provisions of Section

47 of the CPC cannot be invoked. The DHC further observed that if the objections under Section 47 of CPC were allowed to be entertained during the enforcement proceedings of an arbitral award, it would effectively open a second round of challenge to the arbitral award, which was not the intention of the legislature, as it would undermine the provisions of setting aside an award under Section 34 of the Arbitration Act.

P. Requirements of a notice of arbitration under Section 21 of the Arbitration Act

In *Shekharchand Sacheti v. S.M.F.G. India Home Finance Company (2025:RJ-JP:21684)*, the Rajasthan High Court, while deciding an application seeking the appointment of an arbitrator under Section 11 of the Arbitration Act, dealt with the objection raised by the Respondent that the Petitioner had failed to provide notice, as required under Section 21 of the Arbitration Act (**Notice**), before filing the Section 11 application.

The High Court affirmed that service of a valid Notice is a statutory prerequisite for the commencement of arbitral proceedings and cited the Apex Court's judgment in *Arif Azim Co. Ltd. v. Aptech Ltd. (2024 (5) SCC 313)*, which underscored the significance of a Notice in both initiating arbitration and computing limitation.

Notwithstanding this principle, the High Court delineated an exception to the statutory requirement, where the Respondent cannot demonstrate that the invocation of the arbitration came as a surprise due to the non-service of Notice invoking arbitration.

In this case, the Court noted that in a previous civil suit the Respondent had objected to its maintainability, contending the existence of valid arbitration agreement between the parties, based on which the civil suit had been disposed of. Given the Respondent's prior acknowledgment of the arbitration agreement, the non-service of a Notice could not have come as a surprise to the Respondent. Accordingly, the Section 11 application was held to be maintainable despite the absence of a formal Notice under Section 21.



In another case before the Delhi High Court (**DHC**), *National Research Development Corporation & Anr. v. M/s. Ardee Hi-Tech Pvt. Limited (2025:DHC:3939)*, the Respondent advanced a contention that a proper Notice of arbitration had not been served. The High Court observed that as long as a notice of arbitration states the intention to invoke the redressal of disputes through the arbitral process, it will be considered as a valid Notice. The DHC further set out following essential elements that must be present in such a Notice:

- a. The identification of the dispute subsisting between the parties;
- b. The demand for resolution of the disputes in accordance with the contemplated arbitration clause;
- c. In the event that the disputes remain unresolved, the manifest intention to resort to the arbitral process; and
- d. The requisite service of the Notice upon the respondent.

Q. Option of restarting arbitration post setting aside of the arbitral award

In *Batliboi Environmental Engineering Ltd. v. Hindustan Petroleum Corporation Limited (2025 SCC*

OnLine Bom 580), the Bombay High Court (**BHC**) decided on an application for the appointment of arbitrators under Section 11 of the Arbitration Act. This application was filed for the fresh appointment of an arbitrator after the Apex Court had set aside an arbitral award in favour of the applicant. The question before the BHC in the application was whether the observations made by the Apex Court while upholding an order of a division bench of the BHC setting aside an arbitral award would constitute a ruling on merits of the case, disabling arbitration being conducted afresh.

Batliboi Environmental Engineering Limited (**Batliboi**) and Hindustan Petroleum Corporation Limited (**HPCL**) entered into a turnkey contract for commissioning a sewage treatment plant. Disputes arose between the parties, and an arbitral tribunal was constituted, which passed an award (**Arbitral Award**) in favour of Batliboi. Aggrieved by the Arbitral Award, HPCL filed a petition before the BHC to set aside the Arbitral Award on the ground that the award was against the public policy of India, as the damages computed by the arbitral tribunal lacked clear justification. The single bench of the BHC rejected this contention and upheld the Arbitral Award (**Section 34 Judgment**).

HPCL then preferred an appeal under Section 37 of the Arbitration Act to the division bench of the BHC. The division bench set aside the Section 34 Judgment stating that the arbitral tribunal had completely overlooked care and caution required and taken a one-sided view towards the calculation of damages and thereby ended up inflating the amount awarded in the Arbitral Award (**Section 37 Judgment**).

Aggrieved by the Section 37 Judgment, Batliboi preferred a special leave petition before the Apex Court. The Apex Court dismissed Batliboi's appeal as it did not see any merits in the petition (**SC Judgment**). Pursuant to this, Batliboi invoked arbitration afresh on the premise that the Arbitral Award had been set aside, and its claims were not dismissed on merits. HPCL, contended that Batliboi's claims had already been adjudicated on merits and the same disputes could not be re-adjudicated in arbitration, which led to the filing

of the application for the appointment of an arbitrator before the BHC (Section 11 Application).

Deciding on the Section 11 Application, the BHC observed that the Apex Court's primary concern in the SC Judgment was the arbitral tribunal's approach to computing damages. The Apex Court reasoned that the Hudson's, Emden's, or Eichleay's formulae for computing damages, yielded differing results, and the arbitral tribunal should apply the appropriate formula based on the facts and circumstances surrounding the case. Finding that the Arbitral Award lacked a clear reasoning for applying the Hudson formula for computation of damages, the Apex Court set aside the Arbitral Award on the grounds of patent illegality and being against public policy.

The BHC noted that the Apex Court did not conduct its own assessment of merits, other than upholding the finding of the Section 37 Judgment that the Arbitral Award was perverse.

Accordingly, the BHC held that setting aside of an arbitral award would place the parties to their pre-arbitral award position. The BHC allowed the Section 11 Application filed by Batliboi and appointed a sole arbitrator to adjudicate upon the dispute afresh.

R. Setting aside of arbitral awards because of patent illegality

In *Union of India (through the Ministry of Petroleum & Natural Gas) v. Reliance India Limited and Ors.* (2025 SCC OnLine Del 841), the division bench of the Delhi High Court (**DHC**) considered an appeal filed by the Union of India (through the Ministry of Petroleum and Natural Gas of the Government of India) (**Uoi**) against a decision of the single judge of the DHC rejecting the setting aside of the arbitral award.

Uoi entered into a Production Sharing Contract (**PSC**) with M/s Reliance Industries Limited (**RIL**). The PSC related to exploration and extraction of natural gas located in the Krishna-Godavari Basin off the coast of Andhra Pradesh in India (**Reliance Block**). The Oil and

Natural Gas Corporation Limited (**ONGC**) held adjoining blocks to the Reliance Block by virtue of another PSC entered with UoI (**ONGC Block**). Disputes arose when ONGC alleged that the gas reservoirs of the Reliance Block and the ONGC Block were interconnected, and due to the resultant migration of natural gas, RIL was unjustly enriched by exploring and selling this migrated gas. UoI raised a demand notice on RIL on account of the said unjust enrichment. In response, RIL initiated arbitration proceedings as per the terms of the PSC.

The arbitral tribunal ruled in favour of RIL and held that there is no express prohibition from extracting the migrated gas within its contracted area and, therefore, RIL was not unjustly enriched (**Arbitral Award**). UoI challenged the Arbitral Award on the grounds that the Arbitral Award suffered from patent illegality and conflicted with India's public policy. The main contention raised by UoI was that the arbitral tribunal did not consider an important piece of evidence, which answered the contentions raised by RIL, and that it was not given an opportunity to be heard about this piece of evidence. The single judge of the DHC rejected UoI's contentions.

Aggrieved, the UoI preferred the present appeal against the order passed by the single judge of the DHC.

Dealing with the UoI's objections, the DHC reiterated that only those arbitral awards that shock the conscience of the court could be set aside on the grounds of patent illegality and being against the public policy of India. The DHC observed that under the PCS, RIL was obligated to appoint M/s. DeGolyer & MacNaughton as consultants to track and report on how much gas RIL was extracting from its allotted block. The Court held that RIL's failure to disclose the M/s. DeGolyer & MacNaughton Report (**D&M 2003 Report**) was a clear violation of the PSC. The DHC held that this amounted to concealment and suppression, which was material and not of a trivial nature. Since the Arbitral Award did not consider the disclosure of D&M 2003 Report which was material to the PSC, the DHC held that the Arbitral Award was patently illegal.

The DHC elaborated that a private entity, such as RIL, to whom this State duty has been delegated, is invariably bound by the provisions of Article 297 of the Constitution of India and "...will be constrained with the same restraints as the Union and governed by the Col."²² The DHC observed that RIL had violated its obligations under Article 297 of the Constitution by extracting substantial quantities of migrated gas from the ONGC Block, thereby unjustly enriching itself and causing losses to the Union of India and infringing upon Union's rights to utilise the resources for the benefit of the nation's populace. As the arbitral tribunal had failed to consider RIL's breach of the duties enshrined under the Constitution of India, the High Court held the Arbitral Award to be contrary to the public policy of India.

Accordingly, the DHC set aside the Arbitral Award on the grounds of (a) patently illegal due to the non-consideration of the D&M 2003 Report and (b) for being contrary to the public policy of India, due to the non-consideration RIL's constitutional breach of obligations.

S. Continuation of arbitration proceedings against legal representatives of the partners

In *Rahul Verma and Ors. v. Rampat Lal Verma and Ors.* (2025 SCC OnLine SC 578), the Apex Court clarified the position that legal representatives of partners in a partnership deed can invoke or continue the arbitration as per the arbitration clause in the partnership deed. It referred to an already settled position of law laid down in *Jyoti Gupta v. Kewalsons*, (2018 SCC OnLine Del 7942), to hold that an arbitration agreement does not stand discharged on the death of a partner and it can be enforced by/against the legal heirs of the deceased partner. It held that merely because the dispute was between the partners under a partnership deed, it cannot bar the legal heirs from seeking remedies by virtue of the arbitration agreement, as they are covered under the definition of "parties" under the scheme of the Arbitration Act.

²² Paragraph 99 of the judgement.

T. Applicability of Section 5 of the Limitation Act, 1963, to appeals under the Arbitration Act

In *My Preferred Transformation & Hospitality (P) Ltd. v. Faridabad Implements (P) Ltd.*, (2025 SCC OnLine SC 70), the issue before the Apex Court was whether the provisions of the Limitation Act, 1963 (Limitation Act), are applicable to an application filed beyond the condonable period of 30 days set out in Section 34(3) of the Arbitration Act for challenging an award on account of the condonable period lapsing during court vacation/holidays. The Court, relying on *Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Limited* (2012 2 SCC 624), held that while Section 4 of the Limitation Act (allowing filing of proceedings on the next day after Court reopens) is applicable to the Arbitration Act, it only applies to the initial period of 3 months to challenge an arbitral award as prescribed under Section 34 of the Arbitration Act. The Court held that Section 4 or other provisions of the Limitation Act would not apply when a party challenging

an award is already trying to take benefit of the extra condonable period of 30 days under Section 34(3) of the Arbitration Act.

U. Furnishing security by foreign parties in arbitration proceedings in India

In *Gail (India) Ltd. v. Focus Energy Ltd.*, (2025 SCC OnLine Del 5), the Delhi High Court decided on an application to secure the assets of foreign parties (who did not have any assets in India) in an arbitration. It held that in such cases, the foreign parties can be directed under Order XXXVIII Rule 5 of CPC (which are powers of the courts to direct arrest and attachment before judgment) to provide solvent security in the form of a bank guarantee or unencumbered immovable assets to the value of amounts in dispute. Such bank guarantee or unencumbered immovable assets would remain attached till the time the arbitral tribunal enters reference and adjudicates the dispute.



Part II: Arbitration Developments beyond the territory of India

A. Vice President of India's speech on arbitration process in India

On March 1, 2025, the Vice President of India gave a keynote address at a colloquium on “International Arbitration: Indian Perspective”, organised by the India International Arbitration Centre, in New Delhi. His speech touched on the topics of the arbitral process in India and its current state. Following are some points raised in his speech:

i. *The arbitral process requires to be supplemented by domain experts*

The Vice President highlighted that the whole arbitration process was becoming an “old boys club”, with only retired judges participating in the arbitral process. He emphasised the need for domain experts’ participation in arbitration. His point stemmed from the fact that disputes in varied sectors being referred to arbitration include “oceanography, maritime, aviation, infrastructure and what not...”. These sectors are technical in nature and require certain amount of expert assistance to come to a logical order.

When it comes to arbitrations, Section 27 of the Act allows the arbitral tribunal to make an application to the courts for obtaining evidence from an expert

witness. This section also provides for the parties to file an application to the courts for obtaining evidence from an expert witness after obtaining approval from the arbitral tribunal. Therefore, the arbitration framework is well set to include evidence from an expert witness in an arbitration proceeding.

ii. *Misuse of Article 136*

The Vice President drew attention towards the impact of Article 136 of the Indian Constitution on the arbitral process. He highlighted that Article 136 was supposed to be a “narrow slit”, however, currently the Apex Court has been taking *suo motu* cognizance for “anything and everything under the sun, including what a magistrate has to do, what a Session Judge has to do, what a District Judge has to do, what a High Court Judge has to do.”

While there are instances of arbitral awards being challenged under Article 136 of the Constitution of India, the Apex Court has maintained its minimum interventionist stance and used this power sparingly. For example, in *Mohd. Arif alias Ashfaq v Registrar, Supreme Court of India* (2014 (9) SCC 737), it restricted its power under this Article and held that curative powers under Article 136 could not be used to review the materials already on record and re-open already settled questions decided by the

arbitral tribunal. Previously as well, the Apex Court in *Madnani Construction Corporation Private Limited v Union of India* (AIR 2010 SC 383), in an application made under Article 136 of the Constitution of India, had refused to interfere with the arbitral award, holding that parties making such application must make out a case that the interpretation of the evidence was perverse by the arbitral tribunal.

iii. *Domestic arbitration v. international arbitration*

The Vice President underscored the differences between domestic and international arbitration, highlighting that India does not have the infrastructure or the credibility of arbitration institutions like Dubai and Singapore. He further stated, “We are not in the mind of people who are having commercial relationship with us if it is international commercial arbitration.”

Unlike in countries like Dubai and Singapore, the arbitral awards in India are enforced by making a separate application to the courts. The Indian courts have the power to set aside the arbitral awards on certain grounds such as patent illegality, public policy of India, fraud, etc., which makes enforcement of awards in India a complicated and time consuming process.²³ However, the minimum interventionist stance that the courts have now been taking will certainly help reduce the time taken to enforce arbitral awards and help towards making India a hub for global arbitration.

B. Key Amendments to the United Kingdom’s Arbitration Act, 2025

On February 24, 2025, the United Kingdom amended its Arbitration Act to refine and clarify certain existing provisions. Following are certain pivotal reforms that may also impact Indian parties who opt for London as the seat of arbitration. Where possible, we have juxtaposed the amendments under the United Kingdom’s Arbitration Act, 2025, to the law of arbitration in India:

i. *Summary awards*

The amendment has given arbitral tribunals the power to pass summary awards and dismiss such defenses or claims that lack merit. It has been introduced as an opt-in option in which a party seeking such a summary disposal can make an application for the same to the arbitral tribunal. No specific procedure has been prescribed with this amendment, which provides flexibility to the arbitral tribunal to hear such applications.

The concept of summary disposal is not alien to India, with such a provision existing under Order 13A of the Commercial Courts Act, 2015. Under this provision, the courts have the power to grant summary judgment, when deemed necessary. Similarly, Section 29B of the Arbitration Act provides the parties an option to opt for a fast-track procedure. This enables them to make a request to the arbitral tribunal for deciding their dispute based on only the written pleadings, documents, and submissions, without any oral hearing, unless they specifically requested for it. The award under this procedure is made within 6 months from the date the arbitral tribunal enters upon the reference.

ii. *Third-party inclusion*

Clause 9 of the new amendment extends the scope of Section 44 of the UK Arbitration Act, 1996, to third parties to allow the UK courts to issue orders to third parties on taking witness evidence, securing evidence, etc.

In India, under Section 9 of the Arbitration Act, the courts can grant interim measures against third parties affecting the subject matter of the arbitration. Through various judicial interpretations, the current position limits such power only to secure the interests/claims under the disputes. For example, in *Arun Kapoor v. Vikram Kapoor* (AIR 2002 Del 420), the court observed that an application under Section 9 of the Arbitration Act can be initiated against a third party and cannot be limited to the

²³ Sanjeev Kapoor, Sneha Janakiraman, Madhav Khosla, “Enforcement of Interim Measures and Interim awards of foreign seated arbitral tribunals in India,” ICC India Arbitration White Paper, April 6, 2022: available at: <https://www.iccindiaonline.org/ICC-India-Arbitration-White-Paper.pdf>.

parties to the proceedings. It also observed that Section 9 is distinct from Section 17 in that the remedy under Section 9 may lie against a person who is not a party to the arbitration agreement.

In 2010, the Bombay High Court in *Girish Mulchand Mehta v. Mahesh S. Mehta* (AIR Online 2009 BOM 1) took a liberal view and held that interim measures affecting a third party is not an impediment to its jurisdiction, and that it is empowered to do so for the protection or preservation of the subject matter of the arbitration agreement.

iii. Restriction of judicial powers

Section 67 of the UK Arbitration Act, 1996, was amended to restrict the court's power to admit new evidence or re-hear the case already decided by the arbitral tribunal. The primary aim of this amendment was to reduce the costs to the parties due to re-hearings before a judge of the already decided claims.

iv. Codification of arbitrator's duty of disclosure

This amendment codifies an already established practice at the London Court of International Arbitration, which would now extend to other major arbitral institutions like the London Maritime Arbitrators Association and other domestic arbitrations where the seat is in the United Kingdom. The amendment was introduced to ensure consistency of an arbitrator's disclosure across United Kingdom-seated arbitrations and promote fair dispute resolution.

Under the Indian Arbitration Act, Section 12(1), read with the Schedules V to VII, already provides for a codification of arbitrator's disclosure on independence and impartiality. The Arbitration Act also provides for recourse under Section 13/Section 14 under which the aggrieved party can make an application to the court for the removal of arbitrators who *prima facie* does not appear to be independent or impartial.



v. Clarification on the start date for the correction of awards

This amendment clarifies the 28-day time limit for the parties to request the arbitral tribunal to make any material corrections to the award passed by such a tribunal or to challenge the arbitral award before the English Courts under Section 67 of the UK Arbitration Act, 1996. The clock for the 28-day time limit starts from the day on which an award has been made by an arbitral tribunal under Section 57 of the UK Arbitration Act, 1996.

Under the Indian Arbitration Act, Section 33 provides a 30-day time limit for the parties to request the arbitral tribunal to make any material corrections to the award passed by such tribunal or a challenge to the arbitral award under Section 34 of the Act. The Arbitration Act clarifies that the limitation period starts from the date of the issue of the arbitral award.

vi. Arbitrator's power to award costs even when lacking substantive jurisdiction

The amendment in Section 61 of the UK Arbitration Act, 1996, clarifies that in cases where the arbitral tribunal lacks jurisdiction to resolve a dispute, the tribunal can still award the costs of the arbitration proceedings till that point.

The power of the arbitral tribunal to award costs is enshrined under Section 31A of the Indian Arbitration Act. This power is linked to the arbitral tribunal's substantive jurisdiction. The arbitral tribunal does not have the power to award costs, if they lack substantive jurisdiction over the disputes.²⁴

An amendment in the Indian law, akin to the one in the United Kingdom concerning costs, will certainly keep the parties mindful of the proper basis of jurisdiction at the time of commencement of an arbitration.

vii. Expanded the arbitrator immunity (resignation and removal applications)

Under the new amendment, an arbitrator cannot be held liable for resignation, unless it is proven to be unreasonable and shifts the burden of proof onto the complaining party. This amendment was aimed to increase the legitimacy of the arbitral proceedings by removing the fear of reprisal from the disappointed party in an arbitration.

In India, the arbitrators enjoy immunity from civil liabilities under Section 42B of the Arbitration Act. Under this section, an arbitrator cannot be tried in the courts for the actions done in good faith or intended to be done in good faith. Further, Section 42B of the Arbitration Act does not provide for any exceptions to the general immunity. The immunity under the Arbitration Act depends upon the courts' interpretation of "good faith".

C. Key changes to the rules governing an arbitration in the Singapore International Arbitration Centre

On January 1, 2025, the Singapore International Arbitration Centre (SIAC) published new rules which came into effect on January 1, 2025 (2025 Rules). These succeeded the erstwhile rules published in 2016, which had come into effect on August 1, 2016 (2016 Rules). Following are certain additions made through the 2025 Rules:

i. Comprehensive rules for emergency arbitration procedure

One of the most notable changes effected through the 2025 Rules is the introduction of *ex parte* protective preliminary orders, which was previously kept outside the domain of arbitrators. The 2025 Rules now allow a party to make a request for the appointment of an "Emergency Arbitrator" to consider a request for an interim measure together with an application for a preliminary order, without giving prior notice to the opposing party. This addresses situations where giving a notice could undermine the effectiveness of the relief sought, providing a more robust tool for urgent scenarios. This marks a significant departure from the usual practice and reduces the dependency on courts to seek interim reliefs. (Rule 12 read with Schedule 1).

ii. Introduction of preliminary determination procedure

The 2025 Rules introduce a new "Preliminary Determination" procedure, which allows a party to apply for a final and binding determination of a specific issue within the broader realm of the arbitration. The process can be invoked upon (a) an agreement between parties, or (b) if it leads to saving of time and costs, and efficient and expeditious resolution of the dispute, or (c) where the circumstances of the case otherwise warrant a preliminary determination. This is a time-bound procedure and requires the tribunal to make a determination within 90 days of filing of the application. (Rule 46).

iii. Streamlined Procedure

The 2025 Rules introduces a streamlined arbitration procedure for claims up to SGD 1,000,000 prior to the constitution of the arbitral tribunal. The streamlined procedure mandates the appointment of a sole arbitrator and requires the final award to be issued within 3 months from the tribunal's constitution. This procedure removes time-consuming steps such

²⁴ Skanska Cementation India Ltd. v Bajranglal Agarwal and Ors., 2002 SCC OnLine Bom 1190.

as document production, fact or expert witness evidence, and hearings (unless deemed necessary). The parties can choose to exclude the application of this process by an agreement in writing. Designed for small-value disputes, this amendment aims to provide a cost-effective alternative to standard arbitration. (*Rule 13 read with schedule 2*).

iv. **Coordinated Procedure**

The 2025 Rules introduce the mechanism of “Coordinated Procedure” to manage multiple arbitrations between the same parties with overlapping issues when consolidation is not possible. This mechanism allows coordination of cases before the same tribunal deciding on common legal or factual questions while keeping them separate. The available options include conducting the arbitrations concurrently or sequentially or hearing the arbitrations together and aligning procedural aspects or suspending any of the arbitrations pending determination of any of the other arbitrations. (*Rule 17*).

v. **Expedited Procedure**

The 2025 Rules retain the “Expedited Procedure” from the 2016 Rules with certain changes, extending it to parties with disputes up to SGD 10 million (previously SGD 6 million). This swift process aims to complete the arbitral proceedings within 6 months. Larger disputes may also qualify if circumstances of the case warrant application of this procedure replacing the erstwhile standard of “exceptional urgency”. Applications for expedited procedure must be made before the tribunal is constituted. (*Rule 14 read with Schedule 3*).

vi. **Security for costs**

The 2025 Rules codify the tribunal’s powers regarding passing directions towards the deposit of security for legal costs and expenses and the costs of the arbitration, which were previously inherent but not explicitly provided for in the 2016 Rules. Key updates include (a) allowing tribunals to issue



consequential orders, such as staying proceedings or dismissing claims for non-compliance; (b) requiring parties to promptly disclose material change in circumstances on which the order for security was granted; and (c) permitting tribunals to modify or revoke orders directing deposit of security as needed. (*Rule 48 and Rule 49*).

vii. **Third-party funding**

The 2025 Rules establish a mandatory disclosure framework for third-party funding in arbitration, addressing concerns relating to transparency and conflict of interest. Tribunals can order filing of disclosures, assess the funder’s interest, and consider funding agreements when apportioning costs. Non-compliance with these rules may result in sanctions, reflecting the growing role of third-party funding in international arbitration. (*Rule 38*).

viii. **Challenge to arbitrators**

A new provision has been added that allows for a challenge to the arbitrator due to their *de jure* or *de facto* incapacity to perform their functions, to address situations where an arbitrator, after having been appointed, becomes incapacitated or unable to perform their duties. (*Rule 26.1.C*).

ix. **Nomination of arbitrators**

Under the 2025 Rules, the process for appointing arbitrators takes place after the filing of the

arbitration notice, unlike under the 2016 Rules where nominations were made in the notice and response. For a sole arbitrator, parties have 21 days to jointly nominate one arbitrator, failing which SIAC will appoint the arbitrator. For a three-member tribunal, the claimant must nominate an arbitrator within 14 days of the arbitration notice, and the respondent has 14 days after receiving the claimant's nomination to choose their nominee. (*Rule 21 and Rule 22*).

x. *Scrutiny of award*

Tribunals are required to submit draft awards to the SIAC Secretariat for scrutiny. Under the 2016 Rules, tribunals had more flexibility in terms of when to submit the draft award since Rule 32.3 allowed them 45 days from the date they “declared the proceedings closed”. Thus, as long as the proceedings were not declared closed by the tribunal, the 45-day timeline was not triggered. The 2025 Rules, on the other hand, fixes a timeline of 90

days from the “date of the last directed oral or written submission” for the tribunal to submit the draft award to the SIAC Secretariat. This helps reduce the laxness in arbitrators' approach towards rendering awards and enhances the efficiency of the process. (*Rule 53*).

Concluding Remarks

This *Case in Point* yearly arbitration round-up sets the stage for a continuing dialogue on the dynamic developments in arbitration law. In future editions, we will continue to cover significant legal developments in arbitration law. We look forward to bringing you our insights and keeping you ahead of the curve in this fast-changing space.

This yearly roundup has been made for informational purposes only and is intended merely to highlight issues. The information and/or observations contained in this roundup do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice.

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