



*Arbitration Newsletter*

*February 2025*

**My Preferred Transformation & Hospitality (P) Ltd. v. Faridabad Implements (P) Ltd., 2025 SCC OnLine SC 70 – *The Supreme Court raises concerns over the stringent applications of limitation laws.* – The Supreme Court observed that a stringent application can restrict the limited remedy available for the challenge of awards under the Arbitration and Conciliation Act, 1996. The Court further called for Legislature to intervene, clarify ambiguities that exist in the act, and ensure that arbitration remains an effective dispute resolution mechanism.**

The case revolved around an appeal filed by the Petitioners, challenging a Delhi High Court decision that dismissed their application to set aside an arbitral award on the ground of limitation. The dispute arose from lease agreements between the Petitioners and the Respondent, culminating in an arbitral award in favour of the Respondent on February 4, 2022. The Petitioners received the signed award on February 14, 2022, marking the commencement of the limitation period. The statutory three-month period to challenge the award expired on May 29, 2022, but an additional 30-day condonable period was available under the proviso to Section 34(3). This period ended on June 28, 2022, during the Delhi High Court's summer vacation. The Petitioners filed their application on July 4, 2022, the court's first

working day after reopening. However, the High Court dismissed the application as time-barred, and its division bench upheld this decision. The Petitioners argued before the Supreme Court that Section 10 of the General Clauses Act, 1897, which allows for filing on the next working day if a deadline falls on a holiday, should apply to the additional 30-day condonable period under Section 34(3). The Supreme Court disagreed, emphasizing that the Limitation Act governs such cases and dismissed the appeal.

The Court noted that Section 34(3) of the Arbitration and Conciliation Act prescribes a strict three-month limitation period for challenging arbitral awards, with an additional 30-day condonable period provided under its proviso. However, the Court observed that these provisions do not expressly or impliedly exclude the application of Section 4 of the Limitation Act, which allows filing on the next working day if the prescribed period expires on a court holiday. The Bench criticized the rigid interpretation of limitation provisions, which equates the "prescribed period" under Section 4 and Section 29(2) of the Limitation Act solely with the three-month period under Section 34(3), excluding the additional 30 days. Such a narrow interpretation effectively renders the condonable period meaningless and undermines the remedial purpose of the Arbitration Act.

The Court underscored the importance of adopting a liberal approach to limitation statutes in arbitration cases. Remedies under Sections 34 and 37 of the Arbitration Act, which allow parties to challenge arbitral awards and appeal decisions, are already limited by statutory design. A rigid application of limitation laws further curtails these remedies, discouraging parties from opting for arbitration as a dispute resolution mechanism. The purpose of applying the Limitation Act to the Arbitration Act is to facilitate the exercise of available remedies, not restrict them. Denying the limited remedy under Section 34 on stringent grounds could harm public policy and dissuade parties from pursuing arbitration.

The Court expressed concern over the judicial tendency to interpret the applicability of Sections 4 to 24 of the Limitation Act on a case-to-case basis, rather than relying on clear statutory prescriptions. For instance, while provisions like Sections 4 (expiry of prescribed period when the court is closed) and 14 (exclusion of time spent in *bona fide* litigation) have been deemed applicable to arbitration cases, others like Sections 5 (extension for sufficient cause) and 17 (effect of fraud or mistake) have been excluded through implied judicial interpretations. This inconsistency stems from the Supreme Court's earlier ruling in *Union of India v. Popular Construction Co., (2001) 8 SCC 470*, which held that the proviso to Section 34(3) "impliedly"

excludes Section 5 of the Limitation Act. Such implied exclusions create uncertainty, leaving the application of limitation provisions at the discretion of courts. The judgment called on Parliament to address these ambiguities and bring clarity to the legal framework.

The Court urged the legislature to revisit the provisions of the Arbitration Act and the Limitation Act to ensure consistency and avoid conflicting interpretations. The phrase "express exclusion" under Section 29(2) of the Limitation Act should be applied strictly, and the legislature must clarify the scope of limitation provisions to avoid over-intellectualization by courts. The lack of legislative clarity has made limitation laws in arbitration cases unnecessarily complex, thereby defeating the objective of promoting arbitration as an efficient dispute resolution mechanism.

The Supreme Court ultimately dismissed the appeal, holding that the Petitioners had filed their application beyond the permissible period. It clarified that Section 4 of the Limitation Act applies only to the initial three-month period under Section 34(3) of the Arbitration Act and not to the additional 30-day condonable period. While affirming the existing legal framework, the Court highlighted the need for a more flexible approach to limitation laws to preserve the limited remedies available to parties under the Arbitration Act. It concluded by calling for legislative action

to address these issues and ensure arbitration remains a viable and effective dispute resolution method.

The aspect of Limitation with regards to Section 11 of the Arbitration Act was recently addressed to by the Supreme Court in the landmark case of **Arif Azim Co Ltd. v. Aptech Ltd.**, where the Court addressed the applicability of the Limitation Act, 1963, to applications for the appointment of arbitrators under Section 11(6) of the Arbitration and Conciliation Act, 1996. The Court held that Article 137 of the Limitation Act, which provides a three-year limitation period from the date the right to apply accrues, applies to such applications, underscoring the importance of timely action in Arbitration Proceedings.

**Shreegopal Barasia v. Creative Homes, 2025 SCC OnLine Bom 42 – The Bombay High Court clarifies the scope of judicial intervention under Section 11 of the Arbitration and Conciliation Act, 1996 – The Court clarified that substantive objections regarding the existence or validity of an arbitration agreement must be adjudicated by the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996, and not by Courts under Section 11 of the Act. The Judgment also emphasized the wide scope of powers vested in**

**Arbitral Tribunals, reinforcing the principle of *kompetenz-kompetenz*.**

The petition, filed under Section 11 of the Arbitration and Conciliation Act, 1996, sought to refer disputes to arbitration arising from two agreements: an agreement dated February 19, 2007, and a deed dated August 14, 2015, which cancelled the earlier agreement. The Petitioner requested the appointment of an arbitrator to resolve the disputes arising from these agreements. The Respondents opposed the referral of disputes to arbitration, raising substantive objections. They argued that Respondent No. 2, a partner of Respondent No. 1 (a partnership firm), lacked implied authority to bind the firm to an arbitration clause under the agreements. It was contended that under Section 19(2)(a) of the Indian Partnership Act, 1933, a partner cannot submit disputes to arbitration without explicit authorization. Additionally, the Respondents contended that the arbitration agreement did not expressly empower the Arbitral Tribunal to determine the existence or validity of the agreement, asserting that this determination falls outside the tribunal's jurisdiction.

The Court noted that Section 16(1) of the Arbitration and Conciliation Act allows the Arbitral Tribunal to rule on its own jurisdiction, including objections concerning the existence or validity of an arbitration agreement. The

arbitration clause is treated as an independent agreement, separate from the main contract. Consequently, even if the main contract is deemed void, the arbitration clause may remain valid. The Court emphasized that the scope of judicial intervention under Section 11 is limited to ensuring the existence of an arbitration agreement, while substantive objections concerning the agreement's validity or existence must be adjudicated by the Arbitral Tribunal under Section 16. The Court relied on the Supreme Court's judgment in *Ajay Madhusudan Patel v. Jyotrindra S. Patel, 2024 SCC OnLine SC 2597*, which held that courts under Section 11 must only determine the existence of an arbitration agreement as per Section 7 of the Act. The "validity" of an arbitration agreement under Section 11 is limited to ensuring formal requirements, such as the agreement being in writing, and substantive objections must be left to the Arbitral Tribunal.

The Court observed that Section 19(2)(a) of the Partnership Act restricts a partner from submitting disputes to arbitration without explicit authorization from other partners. This provision aims to protect partnership firms from being subjected to arbitration proceedings without consensus among partners. Historically, arbitration was viewed as inferior to litigation, and this provision ensured that partners did not compromise the firm's position without

consulting others. However, in modern times, arbitration is recognized as an effective dispute resolution mechanism. The Court noted that whether a custom or trade usage permitted arbitration would also need to be considered, emphasizing that these substantive issues should be determined by the tribunal. The Court referred to the Supreme Court's judgment in *Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1*, which held that the referral court under Section 11 must restrict its examination to the existence of an arbitration agreement.

After analysing the contentions and legal principles, the Bombay High Court concluded that the scope of judicial intervention under Section 11 is limited to ensuring the existence of an arbitration agreement, while substantive objections concerning the agreement's validity or existence must be adjudicated by the Arbitral Tribunal under Section 16. In the present case, the arbitration clause existed, and the Respondents' objections did not warrant the Court's intervention. The Court allowed the petition and appointed an arbitrator to adjudicate the disputes, leaving all substantive issues, including those under Section 19 of the Partnership Act, to the tribunal.

The judgment reinforces the principle of kompetenz-kompetenz, which grants Arbitral

Tribunals the authority to decide on their own jurisdiction, including challenges to the arbitration agreement. By confining the role of courts under Section 11 to determining the existence of arbitration agreements, the judgment aligns with the pro-arbitration framework of the Arbitration and Conciliation Act, 1996. The Court's analysis of Section 19(2)(a) of the Partnership Act highlights the balance between protecting partnership firms from unauthorized arbitration agreements and respecting the evolving preference for arbitration as a dispute resolution mechanism.

The Bombay High Court's ruling underscores the limited role of courts in arbitration matters and affirms the expansive jurisdiction of Arbitral Tribunals. By emphasizing the importance of referring substantive objections to the tribunal, the judgment aligns with the legislative intent of promoting arbitration as a robust and efficient alternative to litigation. This decision strengthens India's pro-arbitration stance, ensuring that tribunals remain the primary forum for resolving disputes arising from arbitration agreements.

The principle of Kompetenz-Kompetenz empowers Arbitral Tribunals to rule on their own jurisdiction, including any objections regarding the existence or validity of the arbitration agreement. In India, this principle is enshrined in Section 16 of the Arbitration and

Conciliation Act, 1996. It ensures that tribunals can determine their jurisdiction without undue interference from courts, thereby promoting the autonomy and efficiency of the arbitration process.

This principle has been reinforced by various judicial pronouncements, emphasizing the tribunal's authority to decide on its own competence.

**Smt. Gitarani Maity v. Mrs. Krishna Chakraborty and others, 2025 Cal HC 308 – The Calcutta High Court clarifies the procedural requirements under Section 8 of the Arbitration and Conciliation Act, 1996 – The Court emphasized that civil courts are competent to entertain and adjudicate a suit on merits when no timely application for reference to arbitration is made under Section 8 by either party and explained the contours of Section 8 of the Arbitration Act.**

The appellant challenged the Trial Judge's judgment and decree, which allowed an application filed by the Respondent under Section 8 of the Arbitration and Conciliation Act, 1996, to refer the dispute to arbitration. The appellant contended that Section 8 does not provide for the dismissal of a civil suit but merely permits the court to refer the matter to arbitration upon a valid application. Additionally, the Respondent failed

to file the application under Section 8 either simultaneously with or prior to the submission of the written statement, violating the procedural requirement under Section 8. The Respondent relied on the judgment of the Delhi High Court in ***Madhu Sudan Sharma v. Omaxe Ltd., 2023 SCC OnLine Del 7136*** to argue that even if no formal application under Section 8 is filed, an objection to the jurisdiction of the civil court based on the existence of an arbitration clause, as raised in the written statement, is sufficient to warrant a reference to arbitration.

The Court emphasized that Section 8 requires a party seeking reference to arbitration to file an application before or simultaneously with the submission of their first written statement. This procedural safeguard ensures that parties do not delay invoking arbitration to frustrate or derail the adjudication process in civil courts. The Bench declined to follow the Delhi High Court's judgment in *Madhu Sudan Sharma*, which permitted a reference to arbitration based on jurisdictional objections raised in the written statement, even in the absence of a formal Section 8 application. Instead, the Court relied on the Supreme Court's judgment in ***Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531***, which unequivocally held that the application under Section 8 must precede or accompany the written statement.

The Court reiterated that civil courts are competent to entertain and adjudicate suits on merits unless a valid and timely application under Section 8 is made. When no such application is filed, the presence of an arbitration clause in the underlying agreement does not divest the civil court of its jurisdiction. The High Court identified two critical errors in the Trial Judge's approach: the Trial Judge dismissed the suit outright under Section 8, which is not contemplated by the provision. Section 8 merely provides for a reference to arbitration and not for the dismissal of the suit. Additionally, the Trial Judge entertained the Section 8 application even though it was filed after the Respondent's first written statement, contravening the procedural requirements of the Act.

The Calcutta High Court allowed the appeal filed by the appellant and dismissed the Section 8 application filed by the Respondent. In doing so, the Court reaffirmed the following principles: civil courts retain jurisdiction to adjudicate disputes on merits unless a party makes a timely and procedurally compliant application under Section 8 for reference to arbitration. An application under Section 8 filed after the submission of the first written statement cannot be entertained, and any reliance on subsequent jurisdictional objections raised in the written statement is misplaced. Section 8 does not contemplate the dismissal of a suit; it merely

enables a reference to arbitration where applicable.

This judgment underscores the importance of procedural rigor in arbitration-related litigation. By reiterating the mandatory nature of the procedural requirements under Section 8, the Calcutta High Court has emphasized the need for timely action by parties seeking to invoke arbitration. Additionally, the Court's rejection of the Delhi High Court's precedent signals a preference for stricter adherence to the Supreme Court's interpretation of Section 8. From a broader perspective, this judgment reaffirms the dual objectives of the Arbitration and Conciliation Act, 1996: promoting arbitration as an alternative dispute resolution mechanism while safeguarding the jurisdiction and authority of civil courts. By balancing these objectives, the Court has ensured that the procedural safeguards under the Act are not diluted.

In conclusion, the Calcutta High Court's judgment serves as a reminder to litigants and practitioners of the critical importance of procedural compliance in arbitration-related matters. The decision also highlights the need for judicial authorities to adhere strictly to the statutory framework of the Arbitration and Conciliation Act, thereby fostering greater clarity and predictability in the adjudication of such disputes.

**Section 8 of the Arbitration and Conciliation Act, 1996**, mandates that a judicial authority must refer parties to arbitration if a valid arbitration agreement exists and a party applies for such a reference no later than submitting their first statement on the substance of the dispute. This provision ensures that disputes are resolved through arbitration as agreed by the parties, thereby upholding the principle of party autonomy. The section also includes procedural safeguards, such as the requirement to submit the original arbitration agreement or a certified copy thereof.

**Versatile Construction v. Tata Motors Finance Ltd., 2025 Cal HC 15 – The Calcutta High Court clarifies the distinction between the "seat" and "venue" of arbitration – The Calcutta High Court has held that once the "seat" of arbitration is expressly designated in an agreement, it carries exclusive jurisdiction for all arbitration-related proceedings. The court drew upon the 'Shashoua Principle' and other landmark judgments to reinforce this position, emphasizing the jurisdictional implications for supervisory and post-arbitral proceedings.**

Versatile Construction (Appellant) entered into a hire-purchase agreement with Tata Motors Finance Ltd. (Respondent) for purchasing a Dumper vehicle. The Appellant received a loan of



INR 42,16,095 and repaid INR 28,23,796. The Respondent invoked the arbitration clause after sending a notice to the Appellant on June 19, 2022. The Appellant chose not to participate, leading to an ex-parte arbitral award on September 9, 2024. Subsequently, the Appellant filed an application under Sections 9 and 34 of the Arbitration and Conciliation Act, 1996, challenging the award. A single judge ruled that as per the agreement, Mumbai had exclusive jurisdiction, and the Calcutta High Court lacked territorial jurisdiction. The Appellant appealed this decision.

The Court referred to the Shashoua Principle, which states that an expressly designated "venue" in the absence of an alternative seat, combined with a supranational body of arbitration rules, establishes the venue as the juridical seat of arbitration. This principle formed the basis for interpreting the arbitration clause in the present case. The Court also relied on several Supreme Court precedents, including *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552, which held that the legislature intentionally gave jurisdiction to two courts: the one where the cause of action arose and the one where the arbitration takes place. However, when a seat is designated, it implies exclusive jurisdiction. In *Mankastu Impex (P) Ltd. v. Airvisual Ltd.*, (2020) 5 SCC 399, the Supreme Court held that the seat of arbitration

determines which court has supervisory authority over the proceedings. The *BGS SGS SOMA JV v. NHPC*, (2020) 4 SCC 234 judgment clarified that once the seat is selected, it amounts to an exclusive jurisdiction clause, overriding the concurrent jurisdiction theory of BALCO.

The Court observed that the arbitration clause (Clause 21.1) in the loan agreement stated that arbitration was to be held in Mumbai as per the Arbitration and Conciliation Act, 1996. Clause 22 vested jurisdiction in the competent courts and tribunals in Mumbai. Based on these clauses, the Court concluded that Mumbai was both the venue and the seat of arbitration. The principal civil court of original jurisdiction in Mumbai or the Bombay High Court would have supervisory jurisdiction under Sections 34 and 37 of the Act.

The Calcutta High Court reaffirmed that an express designation of the seat of arbitration in an agreement grants exclusive jurisdiction to the courts at the seat. By applying the Shashoua Principle and relying on Supreme Court judgments, the Court clarified that Mumbai courts—either the principal civil court or the Bombay High Court—would have exclusive jurisdiction over both arbitral proceedings and challenges to the arbitral award. This judgment underscores the importance of clear drafting in arbitration clauses and the binding nature of the designated seat for jurisdictional purposes.

The Shashoua Principle arises from the case of **Roger Shashoua v. Mukesh Sharma, 2009 EWHC 957 (Comm)**, where the England and Wales High Court held that an expressly designated "venue" in the absence of an alternative seat, combined with a supranational body of arbitration rules, establishes the venue as the juridical seat of arbitration. This principle has been influential in Indian arbitration jurisprudence, helping to clarify the distinction between the "seat" and "venue" of arbitration.

The principle was further reinforced in the case of **BGS SGS SOMA JV v. NHPC Ltd.**, where the Supreme Court of India held that once the seat is designated, it confers exclusive jurisdiction on the courts at the seat, overriding the concurrent jurisdiction theory. The Shashoua Principle underscores the importance of clear drafting in arbitration agreements to avoid jurisdictional ambiguities and ensures that the designated seat dictates the applicable jurisdiction and curial laws.

**Center for Research Planning and Action v. National Medicinal Plants Board Ministry of AYUSH Government of India, 2025/DHC/0042 – The Delhi High Court emphasizes the limited scope of judicial interference under Section 34 of the Arbitration and Conciliation Act, 1996 – The court upheld that arbitral awards by**

**expert tribunals, unless patently illegal or against public policy, cannot be set aside, reinforcing the principle of minimal court intervention in arbitration proceedings.**

The appellant, a data service provider, was engaged by the respondent—an organization under the Government of India—to collect, organize, and analyse data related to Ayurveda, Sidha, and Unani (ASU) drug manufacturers. After an amendment to the Drugs and Cosmetics Rules, 1945, ASU drug manufacturers were required to maintain records of raw materials used and submit them to State Drug Licensing Authorities. The respondent contracted the appellant for this data collection. While the respondent undertook to provide a list of 8,000 units to commence work, it later emerged that no such list had been maintained. The appellant had to independently identify approximately 31,000 potential units, incurring significant additional expenses. Disputes arose over delays and additional costs, leading to arbitration proceedings. The Arbitrator ruled in favor of the appellant, finding that the respondent's failure to provide the necessary information had frustrated the contract. The respondent challenged the arbitral award under Section 34 of the Arbitration Act, claiming it was patently illegal. A single judge set aside the award, prompting the appellant to appeal under Section 37 of the Act.

The Court reiterated that an arbitral award can only be set aside on specific grounds under Section 34(2) and Section 34(3) of the Arbitration Act, such as contravention of public policy, fraud, corruption, or fundamental violations of Indian law. In *MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163*, the Supreme Court clarified that courts cannot re-evaluate evidence or substitute their views for that of the arbitrator. Referring to *NHAI v. M. Hakeem, (2021) 9 SCC 1*, the Court emphasized that Section 34 does not empower courts to modify an arbitral award. Judicial interference must not extend beyond the scope defined by the Act. The arbitral tribunal's decision was based on a detailed examination of the evidence and the principle of unjust enrichment. The tribunal found that the appellant's work, despite delays, had fulfilled the respondent's requirements. The Court observed that a tribunal's findings, especially when based on expert knowledge, should not be lightly interfered with. The Court held that the award was not in conflict with public policy or the fundamental principles of Indian law. It emphasized that alternative interpretations of evidence do not justify setting aside an award.

The Delhi High Court allowed the appeal under Section 37, reinstating the arbitral award. It held that the tribunal's findings were well-reasoned and did not suffer from patent illegality or unconscionability. The judgment reinforces the

principle of minimal judicial interference in arbitral awards, underscoring the autonomy of the arbitration process and the need to respect expert adjudication.

**Section 34** of the Arbitration and Conciliation Act, 1996, provides the grounds for setting aside an arbitral award. These grounds include incapacity of a party, invalidity of the arbitration agreement, lack of proper notice, and the award being in conflict with public policy. The section emphasizes minimal judicial interference, allowing courts to set aside awards only on specific, well-defined grounds. This provision aims to uphold the finality and binding nature of arbitral awards while ensuring that they comply with fundamental legal principles.

Additionally, Section 34(2A) was introduced through the Arbitration and Conciliation (Amendment) Act, 2015, which specifically addresses the ground of "patent illegality" for domestic awards. This amendment further narrows the scope of judicial review, ensuring that courts do not re-evaluate the merits of the case or the evidence presented before the arbitral tribunal. The intent is to maintain the efficiency and effectiveness of arbitration as a dispute resolution mechanism, ensuring that Awards are final and binding, unless needed.

