NIRKA

LAW ADVISORY

Arbitration Newsletter

May 2025

Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025 SCC OnLine SC 986 – *The Constitution Bench clarifies scope of judicial intervention in arbitral awards, permits limited modification under Sections 34/37 and Article 142* – In a significant ruling on the permissible contours of judicial interference in arbitration, a Constitution Bench of the Supreme Court has clarified the powers of courts under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, and the extent to which Article 142 of the Constitution may be invoked to modify arbitral awards.

The case arose from a challenge to an arbitral award in a service-related dispute and escalated to the constitutional bench stage due to conflicting precedents on whether courts may modify arbitral awards while exercising their supervisory powers.

The factual background involved an arbitral award passed in a dispute between an employee and a former employer. The award was partially set aside by the High Court, and the matter reached the Supreme Court by way of a special leave petition. During the pendency, a bench comprising Justices Dipankar Datta, K.V. Viswanathan, and Sandeep Mehta referred the matter to a Constitution Bench in February 2024, citing divergence in prior rulings—some holding that courts could not modify awards (*Project Director NHAI v. M. Hakeem*, (2021) 9 SCC 1), while others had either modified or upheld modified awards.

The Constitution Bench, comprising Chief Justice Sanjiv Khanna and Justices BR Gavai, Sanjay Kumar, A.G. Masih, and K.V. Viswanathan (dissenting), rendered its judgment by a 4:1 majority. It held that while the Arbitration Act predominantly favours minimal judicial interference, courts are not entirely powerless to effect limited modifications to arbitral awards under Sections 34 and 37. The Court identified three specific situations where such modification may be permissible:

(i) where the award is severable, and an invalid portion can be cleanly separated from the valid portion;
(ii) to correct clerical, typographical, or computation errors apparent on the face of the record; and
(iii) to alter the post-award interest component in certain circumstances.

In terms of remand powers under Section 34(4), the Bench clarified that the provision does not permit a blanket remand of the matter back to the arbitral tribunal. Rather, it is a narrowly framed, discretionary mechanism that allows the tribunal to resume proceedings solely to cure curable

defects such as absence of reasoning or procedural irregularities. The Court stressed that this mechanism cannot be used to facilitate a reassessment of the merits or fundamentally restructure the award. The Bench also overruled the interpretation laid down in *Kinnari Mullick v. Ghanshyam Das Damani*, (2018) 11 SCC 328, which had held that a Section 34(4) request must be made in writing and before the award is set aside. The present ruling permits such a request to be made orally and even after the award has been partially or wholly invalidated.

Further, the Court clarified that the appellate courts under Section 37 enjoy the same latitude as courts under Section 34 when dealing with challenges to awards. Since Section 37 proceedings are appeals from orders under Section 34, the powers are coterminous, and the appellate courts too may remand or modify awards within the limited confines recognised.

The most debated aspect of the decision involved the role of Article 142 of the Constitution. The majority held that the Supreme Court, as the court of last resort, may in exceptional circumstances exercise its extraordinary constitutional power to modify arbitral awards in order to render complete justice. This view drew support from precedents like *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 14 SCC 231, and was rooted in the need to avoid repetitive litigation and bring finality to protracted disputes. However, the Bench cautioned that such power should be exercised sparingly, and only when modification would not amount to rewriting the award or violating the principles of party autonomy and minimal intervention.

Justice K.V. Viswanathan delivered a strong dissent on this point. He held that neither Section 34 nor Section 37 envisages any power of modification, and that reading such power into the statute would violate the principle that arbitral awards are to be respected save for limited grounds of annulment. He opined that allowing courts to modify awards effectively amounts to a merit-based review, which is antithetical to the Arbitration Act's framework. On the question of post-award interest, he disagreed with the majority's stance that courts may modify such components, reasoning that any modification—even of interest—ought to be remitted to the arbitral tribunal. He also took exception to the invocation of Article 142 for modifying arbitral awards, observing that constitutional powers cannot be used to bypass the statutory scheme laid down by the Arbitration Act.

The Court also engaged with the legislative origins of Section 34, tracing its roots to Article 34 of the UNCITRAL Model Law. The Solicitor General, appearing for the Union of India, argued that Section 34 provides only a power to set aside

awards and not to modify them, and that severability cannot be construed as an implied modification. Senior advocates for the Petitioners, however, contended that the term "recourse to a court" under Article 34 of the Model Law permits a broader interpretation, and that the Indian Arbitration Act need not be rigidly tethered to the UNCITRAL framework. They pointed to how jurisdictions like the UK, Singapore, and Canada had adapted the Model Law to suit domestic needs, and urged the Court to recognise the power of partial modification under Indian law, especially in egregious cases of error.

In resolving the tension across past decisions, the Court addressed five key issues, including the extent to which a modification may be permissible, the doctrinal basis for severability, and whether the power to modify is inherent in the broader power to set aside. The Court reaffirmed that modification and setting aside are conceptually distinct but may intersect in narrowly confined situations where judicial discretion is exercised judiciously and consistently with arbitral principles.

In sum, the Constitution Bench's ruling achieves a calibrated balance between respecting arbitral autonomy and acknowledging the need for judicial correction in limited, structured contexts. By recognising a narrow power of modification and clarifying the discretionary nature of remand under Section 34(4), the Court has harmonised conflicting lines of authority and laid down a more predictable framework for post-award challenges in Indian arbitration law.

Section 34(4) of the Arbitration and Conciliation Act, 1996—based on Article 34(4) of the UNCITRAL Model Law—empowers courts to adjourn proceedings and remit the matter to the arbitral tribunal for eliminating grounds for setting aside, provided such grounds are capable of correction without rewriting the award. This mechanism helps uphold the principle of minimal judicial intervention by salvaging arbitral awards that suffer from curable defects such as insufficient reasoning or procedural lapses.

Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd., 2025 SCC OnLine SC 806 – *Supreme Court clarifies that non-service of Section 21 notice or non-joinder in Section 11 application does not preclude arbitral tribunal from impleading parties* – The Supreme Court held, that in such instances, Arbitral Tribunal's jurisdiction hinges on party's consent to arbitration agreement, not procedural formalities.

In this matter, the Petitioners and Respondents entered into a Limited Liability Partnership (LLP)

agreement to execute a project. Disputes arose, leading the Petitioners to invoke the arbitration clause under the LLP agreement, issuing a Section 21 notice to Respondent No.1. Subsequently, the Petitioners filed a Section 11 application for the appointment of an arbitrator, naming only Respondent No.1. After the arbitrator's appointment, the Petitioners sought to implead Respondents No. 2 and 3 in the arbitral proceedings. Respondents No. 1 to 3 objected, citing the absence of a Section 21 notice and non-joinder in the Section 11 application. The arbitral tribunal upheld these objections, and the High Court affirmed this decision under Section 37 of the Arbitration and Conciliation Act, 1996.

The Hon'ble Supreme Court examined whether the absence of a Section 21 notice and non-joinder in a Section 11 application precluded the arbitral tribunal from exercising jurisdiction over parties. The Court emphasized that while a Section 21 notice is mandatory to commence arbitration, its non-service on certain parties does not automatically bar their impleadment in arbitral proceedings. The Court referred to *State of Goa v. Praveen Enterprises*, (2012) 12 SCC 581, noting that claims not included in the Section 21 notice can still be raised before the arbitral tribunal, albeit with different limitation considerations.

Regarding the Section 11 application, the Court clarified that the referral court's role is limited to appointing an arbitrator and does not conclusively determine the parties to the arbitration. The arbitral tribunal retains the authority to decide on its jurisdiction, including the impleadment of parties, under the doctrine of kompetenz-kompetenz as enshrined in Section 16 of the Act. This principle was reinforced in *Cox and Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1, where the Court held that the arbitral tribunal could determine the applicability of the arbitration agreement to non-signatories based on their conduct and relationship to the agreement.

The Supreme Court concluded that the arbitral tribunal's jurisdiction is derived from the parties' consent to the arbitration agreement, not merely procedural formalities like service of notice or joinder in applications. Therefore, if a party is found to be bound by the arbitration agreement, they can be impleaded in the proceedings, even if they were not served with a Section 21 notice or named in the Section 11 application. Consequently, the Court set aside the High Court's decision and directed the impleadment of Respondents No. 2 and 3 in the arbitral proceedings.

The doctrine of kompetenz-kompetenz under Section 16 of the Arbitration Act ensures that an arbitral tribunal can rule on its own jurisdiction, including objections related to the existence, validity, or scope of the arbitration

agreement. This principle, adopted from Article 16 of the UNCITRAL Model Law, is crucial in preserving the autonomy of arbitral proceedings, especially in cases where technical objections—such as lack of formal notice under Section 21 or party impleadment disputes—are used to delay or derail the process.

Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, 2025 SCC OnLine SC 956 – *Courts must confine interference under Section 34 to statutory limits, re-appreciation of evidence impermissible, Arbitral award immune from judicial review if view is plausible and within jurisdiction* – The Supreme Court, while affirming the decision of a Division Bench of the Madras High Court, reiterated the limited scope of judicial interference under Section 34 of the Arbitration and Conciliation Act, 1996. The case concerned the interference of the Tribunal's Award by a Single Judge, which was challenged before the Supreme Court.

The dispute arose when the Single Judge interfered with an arbitral award by reinterpreting the terms of the contract and reappraising the evidence on record. This was despite the arbitrator having adopted a plausible interpretation of the contractual clause and rendered findings based on the evidence. The Division Bench reversed the Single Judge's decision, holding that such re-evaluation fell outside the scope of Section 34, which is confined to setting aside an award only for reasons such as patent illegality, public policy violations, or jurisdictional errors.

The Supreme Court upheld the Division Bench's view and reiterated that Section 34 is not an appellate provision. The Court emphasized that proceedings under Section 34 are summary in nature and not akin to a civil trial or appeal. It stated that the Single Judge had clearly exceeded the jurisdiction conferred by Section 34 by substituting the arbitrator's plausible interpretation with another possible view. It held that where two interpretations are possible, the one taken by the arbitral tribunal must ordinarily prevail.

The Bench emphasized that respecting arbitral autonomy is fundamental to the purpose of the Arbitration Act. Judicial intervention should be minimal to avoid defeating the objective of speedy and effective dispute resolution through arbitration. Accordingly, the Court concluded that the Single Judge's interference was unwarranted and affirmed the Division Bench's order restoring the arbitral award.

As a result, the Supreme Court dismissed the appeal and reiterated the settled principle that

courts cannot interfere with arbitral awards merely because another view is possible, as long as the arbitrator's decision is plausible and does not violate the limited grounds under Section 34.

The Supreme Court in *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163, reinforced that courts exercising powers under Section 34 of the Arbitration Act are not appellate forums and cannot re-examine facts or reassess evidence. Judicial interference is limited to narrow grounds such as patent illegality or perversity apparent on the face of the award. This reflects the legislative intent to grant finality to arbitral awards and limit protracted litigation, especially in commercial disputes.

Electrosteel Steel Ltd. v. Ispat Carrier (P) Ltd., 2025 SCC OnLine SC 829 – *Arbitral award for extinguished claims under IBC resolution plan cannot be enforced – The Supreme Court holds that MSEFC lacked jurisdiction post-approval of resolution plan* – The Supreme Court set aside the enforcement of an arbitral award passed by the Micro and Small Enterprises Facilitation Council (MSEFC) against a company under insolvency, holding that the claim forming the subject matter of the award stood extinguished upon approval of the resolution plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("IBC").

The case concerned a claim raised by Ispat Carrier Pvt. Ltd., a registered MSME, for supply of cranes and trailers under two purchase orders. Ispat Carrier initiated arbitration under the MSME Act after conciliation failed, but the proceedings were stayed following the declaration of moratorium under Section 14 of the IBC. Ispat Carrier's claim was only partly admitted by the interim resolution professional, and the approved resolution plan—submitted by Vedanta Ltd.—provided a nil value for all operational creditors, including Ispat Carrier. The plan was approved by the NCLT on April 17, 2018. Ispat Carrier neither challenged the plan nor sought inclusion of its claim. Following the lifting of the moratorium, the Facilitation Council resumed proceedings and passed an award on July 6, 2018. Although Electrosteel did not challenge the award under Section 34 of the Arbitration and Conciliation Act, 1996, it raised objections during execution.

The Supreme Court rejected the findings of both the Executing Court and the Jharkhand High Court, holding that the award was a nullity since it was based on a claim extinguished by the resolution plan. The Court reiterated that claims not forming part of a resolution plan are barred from being pursued further, citing decisions in *Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531*, *Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss*

Asset Reconstruction Co. Ltd (2021) 9 SCC 657, and *Ajay Kumar Radheshyam Goenka v. Tourism Finance Corporation of India Ltd (2023) 10 SCC 545)*. It held that a successful resolution applicant must have certainty regarding liabilities and cannot be confronted with post-plan claims through arbitral or judicial proceedings. The Court emphasized that the lifting of moratorium under the IBC does not revive extinguished claims.

On the issue of jurisdiction under Section 47 of the Code of Civil Procedure, the Court held that execution courts are competent to reject enforcement of awards that are nullities, regardless of whether the award was challenged under Section 34. It rejected the High Court's view that the absence of a Section 34 challenge precluded objections under Section 47.

In conclusion, the Court held that the MSEFC lacked jurisdiction to pass an award for a claim extinguished by the resolution plan and that the award was non-executable. Accordingly, it quashed the execution proceedings pending before the Commercial Court, Bokaro.

As clarified in Essar Steel, once a resolution plan under Section 31 of the Insolvency and Bankruptcy Code (IBC) is approved by the adjudicating authority, it becomes binding on all stakeholders, including creditors, guarantors, and claimants. This includes claims arising from arbitral awards—whether pending enforcement or final—unless the resolution plan expressly preserves them. The SC laid down that the successful resolution applicant must be allowed to start on a "clean slate," free from past liabilities that could undermine the revival of the corporate debtor, reinforcing the overriding effect of the IBC under Section 238 and curtailed parallel enforcement mechanisms, including those under the A&C Act, thereby affirming the supremacy of insolvency resolution over individual recovery actions.

Larsen & Toubro Ltd. v. Puri Construction (P) Ltd., 2025 SCC OnLine SC 830 – *The Supreme Court criticizes lengthy submissions in arbitration challenges under Sections 34 and 37 Calls for imposition of time limits to preserve efficiency and purpose of arbitration* – In a strongly worded observation, the SC expressed dissatisfaction with the manner in which arbitration-related proceedings under Sections 34 and 37 of the A&C Act, 1996 are conducted, particularly criticizing prolonged oral arguments and excessive reliance on judgments. The Bench stressed the need for self-restraint from members of the Bar and proposed the imposition of time limits on oral

submissions in arbitration challenges to preserve the efficiency of the arbitral process.

The observations were made in proceedings arising from a dispute between Larsen and Toubro Ltd. and Puri Construction Pvt. Ltd., where the parties engaged in exhaustive oral submissions and cited a large volume of case law—many of which were repetitive or tangential. The Court noted a growing tendency among senior advocates to argue these matters as if they were full-blown appeals under Section 96 of the CPC, rather than restricted judicial reviews.

The Bench emphasized that proceedings under Sections 34 and 37 are narrowly tailored statutory remedies meant to safeguard against limited categories of arbitral misconduct, such as bias, fraud, or patent illegality. The Court lamented that advocates often lose sight of this restricted scope, instead turning hearings into protracted exercises that require courts to draft unnecessarily voluminous judgments.

The Court stated that *"high monetary stakes involved in arbitration matters should not be used to justify extended or concurrent oral arguments"* and that such practices contribute to growing criticism regarding the arbitration ecosystem in India. It also flagged the duplication of authorities cited for the same proposition, which wastes judicial time and further burdens the system.

Calling the matter one of "serious concern and introspection," the Court reminded the Bar that the judiciary is also responsible for dispensing justice in civil and criminal matters affecting the common man. It asserted that excessive judicial time spent on arbitration challenges—particularly those styled like full-fledged appeals—detracts from this broader constitutional mandate.

The decision echoes earlier warnings from the Court regarding the inefficiencies introduced into arbitration by over-lawyering and bulky pleadings. The present remarks may serve as a precursor to a more structured judicial approach that could include formal guidelines or rules limiting oral argument time in arbitration-related proceedings.

In the case of M. Hakeen cited above, the SC held that Sections 34 and 37 of the Arbitration Act confer no power on courts to modify arbitral awards, distinguishing sharply between setting aside and altering an award. The judgment cautioned against judicial overreach that could undermine arbitral finality, clarifying that any change to the arbitral outcome must either come from the tribunal itself or be legislatively provided—not judicially inferred.

www.nirkalawadvisory.com
business.operations@nirkalawadvisory.com