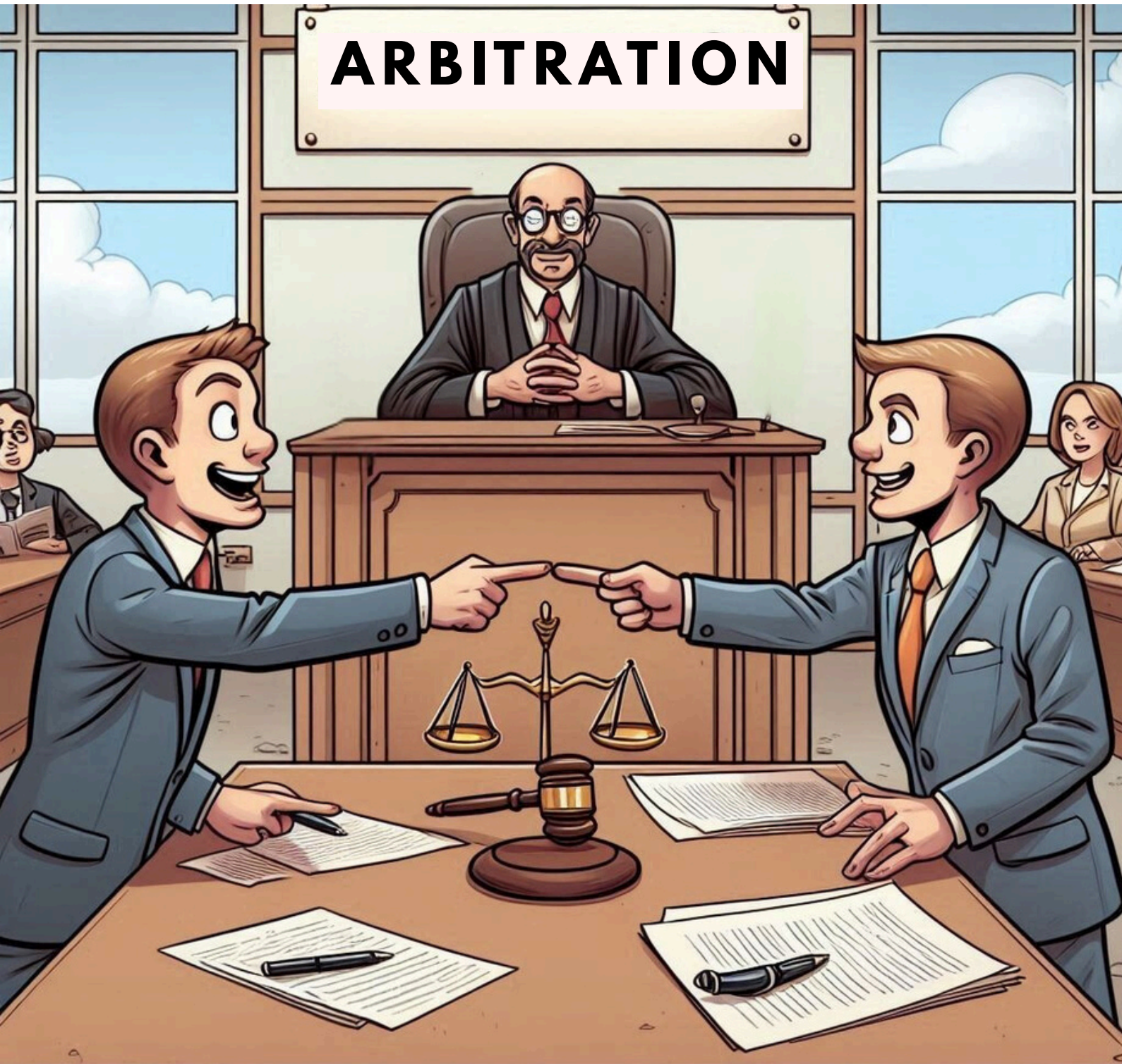


LAWBY WRITES

DECODING THE ACT SERIES

ARBITRATION



THE ARBITRATION AND CONCILIATION ACT, 1996

Why waste years in litigation when ADR gets the relief faster?



WHY SHOULD WE STUDY THE ACT?

Disputes are an inevitable aspect of commercial and contractual relationships. However, not every dispute needs to escalate into courtroom litigation. Recognising the need for a faster, more efficient, cost-effective, and confidential mechanism, the **Arbitration and Conciliation Act, 1996** was enacted as a comprehensive legal framework.

The journey began with the Indian Arbitration Act of 1899, followed by the 1940 Act, and finally culminated in the 1996 legislation, which was modelled on the **United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985**. As a signatory to the Model Law, India aimed to harmonise its arbitration regime with global standards. What sets the Act apart is its commitment to **limiting judicial intervention** and **enhancing party autonomy**-a vision that reflects UNCITRAL's foundational principles.

Over time, amendments have played a crucial role in strengthening the Act. Notably, the **2015 Amendment** empowered arbitral tribunals to grant enforceable interim measures under Section 17. In ***Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd. [AIRONLINE 2021 SC 718]***, the Supreme Court held that under Section 17(1), the arbitral tribunal has, unless the parties agree otherwise, the power to order any party to take interim protective measures as the tribunal deems just and convenient. The Court also stated that orders passed under Section 17(2) are enforceable as if they were decrees of a court. Subsequent amendments in 2019 and 2021 aimed at encouraging institutional arbitration, improving **transparency** and ensuring **time-bound proceedings**.

Yet, certain challenges remain as section 34 which allows for setting aside of arbitral awards, as a narrow remedy. However, expansive interpretations especially around the term "Public Policy" have led to several court interventions. In the landmark case of ***ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705]***, the Supreme Court significantly expanded the scope of judicial intervention by interpreting the expression "**public policy of India**" under Section 34(2)(b)(ii) to include "**patent illegality**" appearing on the face of the award. The Court held that an award that is contrary to the terms of the contract, the substantive law of India, or the provisions of the Act would be deemed to violate public policy. This interpretation marked a departure from the principle of minimal judicial interference and substantially widened the grounds for challenging domestic arbitral awards, thereby impacting the finality and efficacy of arbitration proceedings in India.

In recent years, efforts have been made to promote **institutional arbitration** in India. Establishments like the **India International Arbitration Centre (IIAC)** mark a positive shift, but greater awareness, capacity building, and infrastructural support are essential to match the standards of global arbitration hubs. In 2024, the **Mumbai Centre for International Arbitration (MCIA)** saw a 48% rise with 34 new cases, while the **Delhi International Arbitration Centre (DIAC)** registered 355 cases in 2023 (340 in 2022), representing an increase of approximately 4.4%. The Bar Council of India, in its notification dated 13th May, 2025, allowed foreign law firms and lawyers to participate in arbitrations, boosting international interest.

For legal professionals, students, and stakeholders in the commercial ecosystem, a sound understanding of the Arbitration and Conciliation Act, 1996 is increasingly becoming **indispensable**. With the evolving nature of **cross-border trade**, **complex commercial transactions**, and the demand for **time-bound dispute resolution**, arbitration is no longer a secondary option - it is becoming the preferred choice.

If you are committed to understanding dispute resolution in its modern form and wish to stay informed about legal developments in this field, do read our **Newsletter on Arbitration and Conciliation**.



HOW THE ACT EMPOWERS? -ARBITRATION

Scope and Application (Preamble, Section 2 & Parts I, II, III):

All forms of arbitration, whether international or domestic, fall under the purview of the Act, including **disputes of a civil, commercial, or contractual nature**. The Act also provides for conciliation and the enforcement of foreign awards, and also deals with the law relating to conciliation and matters connected therewith or incidental thereto.

Arbitration Agreement (Section 7, Part I)

An arbitration agreement is a **written agreement**-either as a clause in a contract or a separate agreement, where parties agree to submit current or future disputes related to a defined legal relationship (contractual or not) to arbitration. It is valid **if recorded in a signed document**, in exchanged communications (including electronic), or in pleadings where its existence is not denied. A written contract referring to a document with an arbitration clause **also qualifies** if the reference clearly includes the clause as part of the contract.

Number of Arbitrators (Section 10):

Section 10 provides that parties are free to decide the number of arbitrators, with the important condition that such number shall not be **even**. It is required to be an odd number. In the absence of an agreement between the parties regarding the number of arbitrators, the dispute shall be referred to a **sole arbitrator by default**.

Formation of Arbitral Tribunal (Section 10 & Chapter III – Chapter IV (Section 16)–27, Section 35 of Chapter VIII)

When two parties choose arbitration as their method of resolving a dispute, a tribunal (typically composed of one or more arbitrators) is constituted to adjudicate the dispute. Section 35, under Chapter VIII, explicitly states that "**an arbitral award shall be final and binding on the parties and persons claiming under them, respectively.**" Enforcement of the award is covered under Section 36, which the parties must comply with and is final.

Non-Arbitrable Matters

Disputes that involve rights in rem or matters of public interest-such as **criminal offences, matrimonial issues, guardianship, insolvency, testamentary matters, and tenancy** under special statutes-are considered non-arbitrable. These categories are excluded from arbitration as they require adjudication by courts or statutory tribunals having exclusive jurisdiction.

Appointments and Challenges (Sections 11, 12 ,13 & 34)

If the parties involved in arbitration are unable to successfully appoint arbitrators, the court may assist in the appointment process. The following are sufficient grounds for challenging an arbitrator:

- Not having **unilateral interests**
- Lack of required **qualifications**
- **Non-compliance** with mutually agreed qualifications under the arbitration agreement
- **Inadequate or non-disclosure** as required under **Section 12**

Parties may agree on a procedure for challenging an arbitrator. In the absence of such an agreement, a challenge must be made within **15 days** of becoming aware of the reason for challenge, and it must be supported by reasons. If the challenge is rejected, the arbitration proceedings will continue, and the arbitral award can later be challenged under **Section 34**.

Fair Arbitration Proceedings (Sections 18 & 19)

All parties are ensured **fairness** and **equal treatment** under the law. Each party is given a reasonable opportunity to present their **case, submit evidence, and cross-examine witnesses**. Unlike court proceedings, arbitration is not bound by the **Code of Civil Procedure or the Bharatiya Sakshya Adhiniyam, 2023**.

Powers and Duties of Arbitrators (Sections 17, 19, 26 & 31)

Arbitrators have jurisdiction to decide on their own competence and may grant interim measures. They have discretion in determining the **admissibility and relevance of evidence, appointing experts, and allocating costs**. Their key powers and duties include:

- Determining jurisdiction
- Appointing experts
- Admitting and evaluating evidence
- Allocating costs
- Delivering reasoned awards

Natural justice principles require that the arbitrator ensures a fair hearing, maintains impartiality, and bases decisions solely on the evidence presented.

Fast-track Arbitration (Section 29B)

Section 29B allows for **expedited arbitration proceedings** to be completed within **six months**, provided the dispute is resolved through written pleadings alone. However, if both parties agree, oral hearings may be conducted-but only in cases of necessity.





HOW THE ACT EMPOWERS?

-CONCILIATION

Application and Scope(Section 61)

The provisions of **Part III of the Arbitration and Conciliation Act, 1996**, apply to settling disputes through **conciliation**, for all kinds of legal matters; unless the law says otherwise, then these rules won't apply to those disputes.

Commencement of Conciliation Proceedings(Section 62)

If one party wants to start conciliation, they must send a **written invitation** to the other party, briefly explaining what the dispute is about. The conciliation process will only begin if the other party **accepts the invitation in writing**. The other party can also reject the invitation, but they must do that in writing as well. If no written reply is received **within 30 days** of sending the invitation (or within any time mentioned in the invite), the party who sent it can treat it as a rejection of their offer to start conciliation.

Number of Conciliators(Section 63)

There shall be **one conciliator** by default. However, if the parties agree, there may be **two or three conciliators**. In such cases, all conciliators must act jointly to resolve the dispute.

Appointment of conciliator(Section 64(1))

If one conciliator is appointed then the parties may agree on the **name of a sole conciliator**, and if there are 2 conciliator then each party can appoint **one conciliator** and if there are 3 conciliator then each parties may appoint one conciliator and the parties may agree to name the third conciliator who shall act as the **presiding conciliator** and as per Section 64(2), Parties can **seek assistance** from a suitable institution or person to appoint conciliators. The institution may recommend individuals or directly appoint them. In doing so, it must ensure the conciliator is **independent, impartial**, and, for a **sole or third conciliator**, ideally of a **different nationality** than the parties.

Role of conciliator(Section 67)

The conciliator, unless the parties agree otherwise, **cannot act as an arbitrator** or as a **representative or counsel** for any party in an **arbitral or judicial proceeding** related to the same dispute being resolved through conciliation. Additionally, the conciliator cannot be presented as a **witness** in any such arbitral or judicial proceedings. This ensures that the conciliator maintains **neutrality** and does not take on roles that could create conflicts of interest. It also safeguards the confidentiality and impartiality of the conciliation process. The intention is to prevent any **overlap between the conciliator's role** and other legal proceedings related to the same dispute.

Settlement agreement(Section 73)

When a conciliator identifies potential settlement terms, they'll propose them to the parties for feedback and may revise based on their **observations**. If the parties agree, they can sign a written settlement agreement, with the conciliator's assistance if needed. Once signed, the agreement is final and binding. The conciliator will authenticate and provide copies to each party.





PENALTY UNDER THE ACT

1. Default of a Party (Section 25)

If a party fails to comply with procedural requirements during arbitration-

If the **claimant** fails to submit the statement of claim without sufficient cause:

Penalty/Consequence: The arbitral tribunal shall **terminate the proceedings**.

If the **respondent** fails to submit the statement of defence:

Penalty/Consequence: The tribunal shall **continue the proceedings**, but may **disallow the respondent from filing the defence later**. This failure does **not amount to admission** of the claimant's allegations.

If **either party** fails to appear at an oral hearing or produce evidence:

Penalty/Consequence: The tribunal may **proceed ex parte** and make the award based on available material.

2. Court Assistance in Taking Evidence (Section 27)

If the arbitral tribunal or a party (with the tribunal's approval) requires evidence assistance from the Court:

Penalty/Consequence:

- The Court may **summon witnesses, order production of documents, or inspect property** using its regular powers.

If any person refuses to appear, provide evidence, or disrespects the tribunal:

- The Court may **punish them in the same manner** as it would in a regular court case (e.g., contempt, fines, or other penalties).

This section empowers the Court to **enforce evidence collection**, ensuring cooperation with arbitration proceedings.

3. Regime for Costs (Section 31A)

In arbitration or court proceedings under this Act, if a party **loses** the case:

Penalty/Consequence: That party may be **directed to pay full or partial costs** of the winning party, unless the tribunal or court decides otherwise and gives reasons.

If a party **delays proceedings**, makes **frivolous counterclaims**, or **rejects a reasonable settlement offer**:

Penalty/Consequence: The tribunal may **increase cost liability** on that party.

Cost orders may include:

- Arbitrator fees
- Legal and witness expenses
- Administrative charges
- Interest on costs

Tribunal or court may also issue specific cost directions, such as awarding costs for certain timeframes, procedural steps, or case segments.

4. Deposits for Costs (Section 38)

The arbitral tribunal may ask parties to pay **advance deposits** for arbitration costs.

If **one party fails to pay their share** of the deposit:

Penalty/Consequence: The other party may be asked to **bear the full amount**.

If both parties fail to pay:

Penalty/Consequence: The tribunal may suspend or terminate the arbitration proceedings for the claim or counterclaim in question.

After the **conclusion** of the arbitration:

The tribunal must **return any unexpended balance** and provide an account statement of costs incurred.

5. Application for Setting Aside Arbitral Award (Section 34)

If a party wishes to challenge an arbitral award:

Penalty/Consequence (if grounds are met):

- The Court may **set aside the award** if any of the following is proved:
 - Party under incapacity
 - Invalid arbitration agreement
 - Lack of notice or opportunity to present case
 - Award beyond scope of arbitration
 - Violation of public policy or legal procedure

In other **than international commercial arbitration cases**, award may also be set aside for **patent illegality on its face**, but not merely for incorrect legal reasoning.

Time Limit Violation Penalty:

If application is made **after 3 months (plus 30 days with sufficient cause)**:

Penalty/Consequence: The application shall be **rejected as time-barred**.

Non-notification of other party:

If the applicant fails to notify the other party with an affidavit:

Penalty/Consequence: The application is **incomplete and may be dismissed**.

The Court must dispose of the application within **1 year** of notice service to the opposite party.





HOW THE COURTS HAVE INTERPRETED & ADJUDICATED?

1. Case insight: Letter of Comfort, Enforceability in Conciliation Proceedings

Case Title: *Mysore Cements Ltd. Vs. Svedala Barmac Ltd (2003(2) SCC 1028)*

Provision Involved: Sections 30, 36, 73, 74, 76, 77 of the Arbitration and Conciliation Act 1996

Legal Issue

Whether a Letter of Comfort, furnished on the same day as a Settlement arrived at during conciliation, signed by both parties and authenticated by the Conciliators, is enforceable in the same manner as an arbitration award under Section 74 read with Sections 30 and 36 of the Arbitration and Conciliation Act, 1996?

Context

Mysore Cements Ltd. (appellant) contracted with Svedala Barmac Ltd. (respondent) for rock-crushing machines. Following the machinery's failure, Mysore Cements served an arbitration notice. However, at Svedala's request, conciliation proceedings were held, resulting in a "Memorandum of Conciliation" and a "Letter of Comfort" on the same day, December 18, 1997. The appellant sought to enforce the Letter of Comfort, claiming it determined compensation, but the High Court dismissed the execution petition.

Final Verdict

The Supreme Court dismissed the appeal, **upholding the High Court's decision**. The Court found that the "**Memorandum of Conciliation**" and "**Letter of Comfort**," individually or together, did not satisfy the requirements of a settlement agreement under **Section 73** of the Act to be enforceable as an arbitral award. Specifically:

- There was **no formulation and reformulation** of settlement terms by the conciliator as per Section 73(1).
 - The documents did **not clearly state the quantum of compensation** or consequences of default within the Memorandum, nor did the Letter of Comfort **resolve disputes** regarding satisfactory completion of work.
 - The conciliation proceedings **were merely adjourned, not terminated** by a settlement agreement as required by Section 76(a).
 - An agreement or arrangement during conciliation must conform to the **stipulated manner and form, duly authenticated** under Section 73, to acquire the status of a settlement agreement.
-

2. Case Insight: Arbitral Award Extension Beyond Mandated Period

Case Title: *Rohan Builders (India) Private Limited Vs. Berger Paints India Limited. (2024 INSC 686, Civil Appeal No. of 2024 (Arising out of Special Leave Petition (Civil) No. 23320 of 2023) & Ors..)*

Provision Involved: Sections 29A(4) and 29(5) of the Arbitration and Conciliation Act, 1996

Legal Question

Whether an application for extension of time under Section 29A of the Arbitration and Conciliation Act, 1996, can be filed after the expiry of the period for making the arbitral award?

Context

The High Court at Calcutta, in *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Limited*, previously held that applications for extension of time under Sections 29A(4) and 29A(5) of the Arbitration and Conciliation Act, 1996 (A&C Act), must be filed before the arbitral tribunal's mandate expires. This implied that once the initial twelve-month period or the six-month consensual extension elapsed, the court could no longer extend time. A similar stance was taken by the High Court of Judicature at Patna. However, a conflicting view was adopted by several other High Courts, including Delhi, Bombay, Kerala, and Madras, which allowed such applications to be filed even after the expiry of the stipulated periods. The Supreme Court undertook to resolve this divergence of opinion.

Final Verdict

The Supreme Court held that an application to **extend the time** for passing an arbitral award under **Section 29A(4) and 29A(5)** is maintainable even after the expiry of the original or extended period.

It emphasized that the law permits extensions “**either prior to or after**” the deadline, and the tribunal’s mandate ends only if the court does not intervene. A restrictive view would create unwarranted hardship, judicial overreach, and undermine the efficiency intended by the **2015 Amendment**. The court also retains control by requiring “sufficient cause” and may penalize delays.

3. Case insight: Arbitration Appeals: Limiting Court Intervention in Awards

Case Title: *Punjab State Civil Supplies Corporation Limited & Anr. Versus M/S Sanman Rice Mills & Ors. (2024 INSC 742)*

Provisions Involved: Sections 5, 34, and 37 of the Arbitration and Conciliation Act, 1996

Legal Question

Whether the Appellate Court was justified in setting aside an arbitral award (dated 08.11.2012) that had previously been confirmed under Section 34 of the Act?

Context

The Punjab State Civil Supplies Corporation Ltd. (Corporation) entered an agreement with M/s Sanman Rice Mills (Rice Mill) to supply paddy for milling. A shortfall of 35110.39 quintals of rice occurred, valued at Rs. 7,16,15,716/-. The Rice Mill paid Rs. 5 crore, leaving a balance of Rs. 2,16,15,716/-. This dispute was referred to arbitration, resulting in an award of Rs. 2,67,66,804/- with 12% interest in favour of the Corporation. The Rice Mill's petition under Section 34 of the Act to set aside the award was dismissed. However, the High Court, in an appeal under Section 37, set aside both the Section 34 order and the arbitral award. The Corporation then appealed this decision to the Supreme Court.

Final Verdict

The Supreme Court **allowed the appeal**, setting aside the High Court's judgment and order dated 10.01.2017, and restored the arbitral award dated 08.11.2012. The Court reasoned that the High Court, acting under Section 37, committed a "**manifest error of law**".

It emphasised that the scope of interference under Section 37 is **strictly limited** to the grounds enumerated under Section 34, and is not akin to a **normal appellate jurisdiction** for reappraising evidence or **taking a different view**.

Since the arbitral award was found to be **based on evidence, reasonable, and not in conflict with public policy** or fundamental Indian law, it was correctly upheld under Section 34. The Appellate Court could not disturb it merely because it considered its own view to be "**a better view**".

4. Case Insight: Scope of Referral Court's Power in Appointing Arbitrators and Determining Limitation

Case Title: *Aslam Ismail Khan Deshmukh Vs. ASAP Fluids Pvt. Ltd. & Anr. (2024 INSC 849)*

Provisions Involved: Sections 43(1), 11(6) read with Section 11(12)(a) of the Arbitration & Conciliation Act, 1996, Section 22 and Article 137 of the Limitation Act, 1963

Legal Question

Whether the Supreme Court should decline to refer substantive claims to arbitration under Section 11(6) of the Arbitration & Conciliation Act, 1996, by examining if those claims are *ex facie* and hopelessly time-barred?

Context

The petitioner, Aslam Ismail Khan Deshmukh, a Non-Resident Indian with expertise in the drilling fluid industry, filed petitions under Section 11(6) of the Act, 1996, seeking the appointment of an arbitrator. Disputes arose under a Shareholders Agreement dated 25.07.2011 and a letter dated 22.09.2011 concerning the non-issuance of share certificates for 4,00,000 equity shares and the non-transfer of 2,00,010 equity shares respectively in Respondent No. 1 (ASAP Fluids Pvt. Ltd.). The petitioner had also entered into a Service Agreement and a Commercial Expertise Agreement, obligating him to work for a minimum of three years. The respondents contended that the petitioner violated a three-year lock-in period by resigning on 18.07.2013, thereby forfeiting his rights to the shares, and argued that the claims were time-barred. The High Court of Bombay had previously dismissed the petitioner's applications, holding that it constituted an "international commercial arbitration" and thus Section 11 applications were not maintainable before it.

Final Verdict

The Supreme Court allowed the petitions, appointing a **sole arbitrator** to adjudicate the disputes. The Court clarified that at the Section 11 stage, a referral court's enquiry into **limitation** should be limited to whether the Section 11(6) application itself is **time-barred** (i.e., filed within three years of the right to apply accruing).

It is not proper for the referral court to conduct an **intricate evidentiary enquiry** into whether the substantive claims raised by the petitioner are time-barred; this determination must be **left to the arbitral tribunal**.

The Court noted that the present petitions were filed within the **three-year limitation period** from the date of the respondents' failure to appoint an arbitrator. It further observed that if the arbitral tribunal ultimately finds the claims to be **time-barred**, it may direct the costs of arbitration for these claims to be borne solely by the petitioner.

5. Case insight: Conciliation Procedures - Settlement Agreements

Case Title: *Haresh Dayaram Thakur Vs. State Of Maharashtra And Ors. (2000 (3) SCR 1140)*

Provisions Involved: Part III: Conciliation Proceedings (Sections 61 to 81) of the Arbitration and Conciliation Act, 1996

Legal Question

Whether a conciliation "settlement agreement" is valid and binding if it was not signed by the parties and the conciliator failed to follow the mandatory procedural requirements of the Arbitration and Conciliation Act, 1996, particularly Section 73, for finalising a settlement?

Context

The dispute involved Flat No. 16/199 in Mumbai, initially leased by MHADA to N.H. Krishnan, whose rights were eventually purchased by the appellant, Haresh Dayaram Thakur. MHADA regularised the flat in the appellant's name after initial eviction proceedings. Subsequently, the appellant's brother, Respondent No. 3, filed a writ petition claiming a contribution to the flat's purchase. After MHADA rejected his claim, Respondent filed another writ petition asserting title and seeking possession. The Bombay High Court appointed a conciliator, Shri H. Suresh (Retired Judge), by consent of the parties, stating that the conciliator's decision would be final and binding. The conciliator held meetings, suggesting a settlement involving payment for the flat and relinquishment of a claim to another ancestral flat. The conciliator then sent a "report/proposals" directly to the High Court in a sealed cover, which was not signed by the parties, nor were its terms disclosed to them. The High Court summarily rejected objections to this report, treating it as the final order in the writ petition.

Final Verdict

The Supreme Court **allowed the appeal**, setting aside the Bombay High Court's order dated 6 October 1999 and the "settlement agreement" dated 31 August 1999.

The Court found the High Court's order "**wholly unsupportable**" because the conciliator failed to **follow the procedure** prescribed under Part III of the Arbitration and Conciliation Act, 1996.

A **successful conciliation requires a settlement agreement signed by the parties**, which was absent here.

6. Case Insight: Chief Justice's Role In Arbitrator Appointment

Case Title: *M/s S.B.P. & Co. vs. M/s Patel Engineering Ltd. & Anr. (Appeal (Civil) 4168)*

Provisions Involved: Sections 11(6), 11(7), 11(8) of the Arbitration and Conciliation Act, 1996

Legal Question

What is the nature of the function of the Chief Justice or his designate under Section 11 of the Arbitration and Conciliation Act, 1996?

Context

The Arbitration and Conciliation Act, 1996 ('the Act') replaced the Arbitration Act, 1940, aiming to minimise judicial intervention and streamline the arbitral process. Section 11 of the Act deals with the appointment of arbitrators. Prior decisions had concluded that the Chief Justice's function under Section 11(6) was purely administrative, meaning no contentious issues between parties could be decided at that stage. This view was questioned in the present appeals.

Final Verdict

The **Supreme Court** overruled the decision in *Konkan Railway Corpn. Ltd. & Anr. v. Rani Construction Pvt. Ltd.*, **(2002) 2 SCC 388**, and held that the power exercised by the **Chief Justice** or his **designate** under **Section 11(6)** of the **Arbitration and Conciliation Act, 1996** is a **judicial power**, not an administrative one.

The rationale included:

- The **Chief Justice**, when approached under **Section 11(6)**, must decide several **preliminary issues**, such as:
 - His own **jurisdiction** to entertain the request
 - Existence of a **valid arbitration agreement** (under **Section 7**)
 - Whether the **applicant is a party** to such agreement
 - Whether there is a **live claim** (not dead or time-barred)
 - Whether the **conditions under Section 11(6)** are fulfilled
 - The **qualifications of the arbitrator(s)**
 - These determinations involve an **adjudicatory process**, as they resolve disputes affecting **parties' rights**, and hence require **notice** and an **opportunity to be heard**. The decision of the Chief Justice or their designate is **final** under **Section 11(7)**.
 - An **appeal** against an order of the **Chief Justice of a High Court** (or their designate) lies **only under Article 136** of the **Constitution** to the **Supreme Court**. There is **no appeal** against an order passed by the **Chief Justice of India** or a **Supreme Court designate**. The Court also **disapproved interference** by **High Courts** under **Articles 226 or 227**, except where specifically allowed under **Sections 34 or 37** of the Act.
-

7. Case Insight: Arbitral Award Modification and Judicial Review

Case Title: Gayatri Balasamy v. M/s. ISG Novasoft Technologies Limited (2025 INSC 605)

Provisions Involved: Sections 5, 31, 33, 34, 37, 43, 48 of the Arbitration and Conciliation Act, 1996, Article 142 of the Constitution of India, Sections 151, 152 of the Code of Civil Procedure, 1908, UNCITRAL Model Law on International Commercial Arbitration, 1985

Legal Question

Whether the powers under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, include modifying an arbitral award, and whether *Project Director, NHAI v. M. Hakeem* (AIR 2021 SC 3471) has been overruled?

Context

A three-Judge Bench referred this matter to a larger five-Judge Bench due to **divergent judicial opinions** on courts' power to modify arbitral awards, as Section 34 of the 1996 Act primarily grants the power to set aside. An authoritative pronouncement was needed to clarify the law, particularly regarding Project Director NHAI vs. M. Hakeem's holding against modification.

Final Verdict

The five-Judge Bench delivered that a **limited power to modify** exists under Sections 34 and 37. This includes: **severing** "invalid" from "valid" portions where an award is severable, correcting **clerical, computational, or typographical errors**, modifying **post-award interest** in specific circumstances, and exercising **Article 142 of the Constitution** (with caution) to conclude litigation.

This judgment rejected the *Kinnari Mullick* written request requirement for Section 34(4), allowing oral requests and *suo motu* remand for curable defects and also stated that courts under Section 34 and appellate courts **have no power to "modify" an award**.

The **only exception for modification** is for computational, clerical, or typographical errors, based on *actus curiae neminem gravabit* (an act of the court shall prejudice no man). This judgment explicitly disagreed with modifying post-award interest or using Article 142 for general modification. It upheld *M. Hakeem*'s core ruling against modification.



CASE TITLE	LEGAL QUESTION	FINAL VERDICT	RELEVANT PROVISIONS
1. Mysore Cements Ltd. vs. Svedala Barmac Ltd. [(2003) 2 SCC 1028]	Whether a “Letter of Comfort” executed during conciliation proceedings can be enforced as a settlement agreement under Section 74 read with Sections 30 and 36?	SC held that the documents did not meet the requirements of a valid conciliation settlement under Section 73. No clear terms or termination of proceedings; not enforceable as an arbitral award.	Sections 30, 36, 73, 74, 76, 77 of the Arbitration and Conciliation Act, 1996
2. Rohan Builders (India) Pvt. Ltd. vs. Berger Paints India Ltd. [2024 INSC 686]	Can an application for extension of arbitral award time under Section 29A be filed after expiry of the original or extended period?	SC ruled it is maintainable even after expiry. Mandate ends only if the court does not intervene. Court emphasized flexibility to avoid hardship.	Sections 29A(4), 29A(5) of the Arbitration and Conciliation Act, 1996
3. Punjab State Civil Supplies Corp. Ltd. vs. Sanman Rice Mills [2024 INSC 742]	Can the Appellate Court under Section 37 set aside an arbitral award already upheld under Section 34?	SC restored the arbitral award. Held that appellate intervention under Section 37 is limited and not meant for re-evaluation of evidence.	Sections 5, 34, 37 of the Arbitration and Conciliation Act, 1996
4. Aslam Ismail Khan Deshmukh vs. ASAP Fluids Pvt. Ltd. & Anr. [2024 INSC 849]	Should courts decline reference to arbitration under Section 11(6) if the claims appear ex facie time-barred?	SC held that only the application under Section 11 should be tested for limitation, not the substantive claims – which is for the tribunal to decide.	Sections 11(6), 11(12)(a), 43(1) of the Arbitration and Conciliation Act, 1996; Section 22 & Article 137 of the Limitation Act, 1963
5. Haresh Dayaram Thakur vs. State of Maharashtra & Ors. (2000) 3 SCR 1140	Is a conciliation “settlement agreement” valid if not signed by parties and not finalized per Section 73?	SC quashed the HC order. Held that absence of party signatures and non-compliance with Section 73 made the settlement invalid.	Sections 61–81 (Part III), esp. Section 73 of the Arbitration and Conciliation Act, 1996
6. SBP & Co. vs. Patel Engineering Ltd. & Anr. <i>Appeal (Civil)</i> 4168/2003	Is the Chief Justice’s power under Section 11(6) judicial or administrative?	SC held that the Chief Justice’s role is judicial, not administrative. CJ must determine foundational legal issues before appointing arbitrators.	Sections 11(6), 11(7), 11(8) of the Arbitration and Conciliation Act, 1996
7. Gayatri Balasamy vs. ISG Novasoft Technologies Ltd. 2025 INSC 605	Can courts modify arbitral awards under Sections 34 or 37?	SC clarified courts cannot modify awards except for minor/clerical errors. M. Hakeem upheld on core principle. Article 142 may be used with restraint.	Sections 5, 31, 33, 34, 37, 43, 48 of the Arbitration and Conciliation Act, 1996; Sections 151 & 152 CPC

LAWBY WRITES

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