



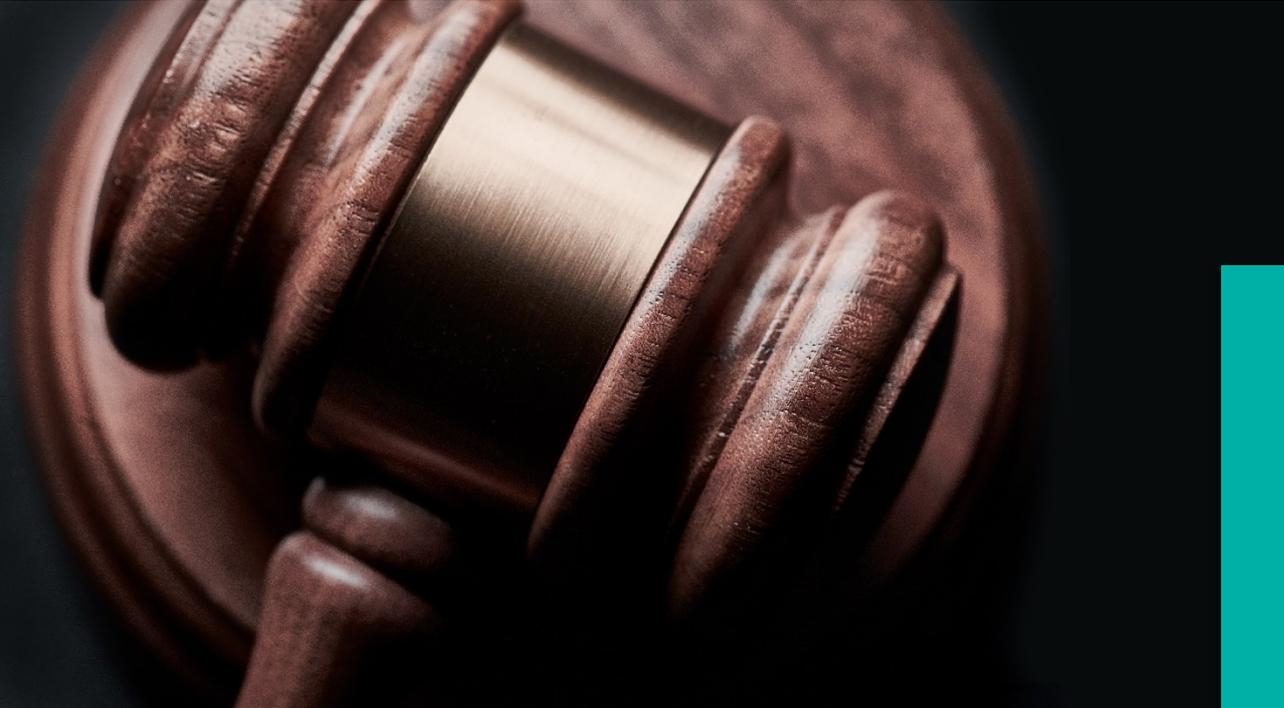
Dispute Resolution & Arbitration

Monthly Update

May 2025

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- In The Supreme Court of India Somnath (Appellant) vs. Ravinder Kumar (Respondent)
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DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Disortho S.A.S Versus Meril Life Sciences Private Limited

Arbitration Petition No.48 of 2023

Background facts

- Disortho S.A.S (Petitioner) and The Meril Life Sciences Private Limited (Respondent) are companies incorporated in Bogota, Columbia and Gujarat, India, respectively. The parties executed an International Exclusive Distributor Agreement, dated May 16, 2016, for the distribution of medical products in Colombia.
- The Agreement stipulated that it shall be governed by and construed in accordance with the laws of India. Additionally, the Agreement provided that all the matters arising as consequence of this agreement will be subject to jurisdiction of courts in Gujarat, India. The dispute settlement clause in the agreement mandates that the parties shall endeavour to resolve any disputes through conciliation in accordance with the Rules of the Arbitration and Conciliation of the Chamber of Commerce of Bogota, DC.
- Subsequently, disputes emerged between the parties, resulting the Petitioner to file a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Hon'ble Supreme Court of India (SC), seeking appointment of an arbitrator. The petition was opposed by the Respondent on jurisdictional grounds, contending that the Indian courts lacked the jurisdiction.

Issue(s) at hand

- Whether the arbitration agreement is governed by Indian law when the agreement states that it is governed by Indian law, but a foreign location is designated as the venue?

Findings of the Court

- At the outset, the SC noted that there exists divergence of judicial opinions regarding the appropriate test to determine jurisdiction in case of trans-border arbitration, where distinct legal system come into play upon emergence of a dispute, particularly the law governing the substantive contractual issues, the law governing the arbitration agreement and the performance of this agreement; and the law governing the procedural aspects of arbitration.

- In determining the law that governs the arbitration agreement in the present case, the SC relied upon the decision laid down by UK Supreme Court in *Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb*¹, wherein it was held that law governing the substantive contractual issues should govern the arbitration agreement. *Enka Insaat* (supra) followed the principles enunciated in *Sulamérica Cia Nacional De Seguros S.A. and Others v. Enesa Engenharia S.A. and Others*² concluding that, in the absence of an express choice of law governing the arbitration agreement, the law governing the substantive contract will generally also govern the arbitration agreement, regarding it as an integral part of the substantive contract rather than an independent agreement.
- The SC reiterated that mere designation of a different country as seat of arbitration, such as London, is insufficient to infer an intention that a different law should govern the arbitration agreement, additional indica of such intention must be demonstrated. Accordingly, the SC inferred that the Arbitration Agreement is governed by the same law as the substantive agreement.
- The SC noted that the clauses of the Distributor Agreement stipulates that the Agreement shall be governed by and construed in accordance with laws of India. It was further stated that all matters arising from agreement shall be subject to the jurisdiction of the courts in Gujarat, India. The seat of arbitration was not expressly designated by the parties and Bogota DC was only specified as the venue for arbitration.
- The SC held that the designation of Bogota DC as the venue for arbitration, along with the choice of the Rules of the Arbitration and Conciliation of the Chamber of Commerce of Bogota DC does not derogate from the jurisdiction expressly conferred upon the Indian courts.
- Moreover, as the Agreement does not implicitly identify a separate law governing the arbitration agreement, the SC held that, by implication, Indian laws govern the Arbitration Agreement. SC further held that mere selection of 'place' does not suffice to imply that Columbian law would govern the arbitration agreement, rather, the applicability of Colombian law is limited to the arbitration proceedings and matters relating to the award.
- In view of the above, the SC allowed the arbitration petition.

HSA Viewpoint

In our view, the decision passed by the Hon'ble Bombay High Court strengthens the judiciary's pro-arbitration approach by dispelling the misconception that proceedings under Section 9 and Section 11 of the Act would constitute 'parallel proceedings'. While Section 9 provides interim measures to protect the subject matter of arbitration, ensuring no party undermines the arbitral process, whereas the non-compliance with the agreement to refer disputes to arbitration is the basis of filing a Section 11 application, which is a limited judicial intervention mechanism solely to examine the existence of an arbitration agreement. Furthermore, the Hon'ble Court has rightly reaffirmed an arbitral tribunal's autonomy, as envisaged in the Act, to deal on issues and objections relating to the jurisdiction of the arbitral tribunal.

¹ 2020 UK SC 38

² [2012] EWCA Civ 638

In The Supreme Court of India Somnath (Appellant) Vs. Ravinder Kumar (Respondent)

SLP (C)NO. 8801/2025

Background facts

- Som Nath (Appellant), owned the disputed premises and inducted Ravinder Kumar (Respondent), as a tenant in June 2007 at a monthly rent of ₹5,000.
- On 03.10.2007, an Agreement to Sell was executed, fixing October 31, 2007 for execution of the sale deed. This was later extended to 30.11.2007 via a fresh agreement on October 30, 2007.
- The respondent failed to perform his part and instead filed a suit for specific performance, which was conditionally decreed on 10.06.2008, requiring deposit of the balance amount within a month. He failed to comply, causing the decree to lapse
- The appellant then filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, citing non-payment of rent since August 2007. The respondent denied the landlord-tenant relationship, calling the petition mala fide
- The Rent Controller, after evaluating oral and documentary evidence, held on December 7, 2020 that a landlord-tenant relationship did exist, and the respondent had not paid rent as admitted by him. It was further observed that the agreement to sell and decree did not extinguish the tenancy, particularly since no sale deed was ever executed. The eviction petition was allowed.
- The Appellate Authority upheld the eviction order on October 22, 2012.
- The High Court, in Civil Revision No. 7550/2012, allowed the revision on September 27, 2018, holding that no tenancy existed due to the absence of a written agreement and existence of the sale agreement.
- Aggrieved with the High Court's Order, the appellant filed a Special Leave Petition on March 25, 2025, before the Supreme Court.

Issue(s) at hand?

- Whether a contract for the sale of immovable property creates any interest or charge over the property unless a sale deed is executed?
- Whether the absence of a written agreement negate a landlord-tenant relationship?

Findings of the Court

- The Supreme Court analysed the High Court decision and emphasised on tenancy existing without a written agreement.
- The Court observed that the High Court exceeded its jurisdiction by interfering with factual findings of the Rent Controller and the Appellate Authority which had established tenancy based on evidence.
- Subsequently, the court noted that the High Court overlooked that the tenancy could be based on oral arguments also and that the High Court (revisional court) made a mistake in disturbing the decision of the lower courts.
- The Supreme Court reasoned that as per Section 54 of the Transfer of Property Act, 1882, a contract for immovable property is an agreement, but it does not transfer ownership or any rights over the property unless a registered sale deed is executed.
- The Court clarified that the ownership rights are transferred only upon registration of the conveyance deed and an unfulfilled agreement for sale does not terminate the landlord-tenant relationship.
- The Court held that there was no termination of a landlord-tenant relationship between the parties as per Section 111(d) of the Transfer of Property Act, 1882. As the Respondent failed to fulfil the conditional decree, in such circumstances, there was no transfer of property from the Appellant to the Respondent. A contract for sale does not create ownership rights unless a valid sale deed is executed.
- Consequently, the Court set aside the High Court ruling and restored the eviction order passed by the Rent Controller and affirmed by the Appellate Authority. The appeal was allowed and the High Court judgment was set aside.

HSA Viewpoint

The judgment clarifies that a conditional decree for specific performance does not alter the legal relationship between parties unless its conditions are fulfilled. The Supreme Court rightly held that oral tenancy is valid under the East Punjab Urban Rent Restriction Act, 1949, and the absence of a written rent agreement is not fatal. Since the respondent failed to deposit the balance sale consideration, the decree lapsed and did not result in transfer of ownership, leaving the landlord-tenant relationship intact. The decision also reinforces that revisional courts should not interfere with concurrent findings of fact unless there is a clear legal error, thus strengthening judicial discipline in tenancy and property disputes.

In The High Court at Calcutta

Sri Arun Kumar Jindal and Anr. (Petitioner) Vs. Smt. Rajni Poddar and Ors. (Opposite Party)

Revision Application being No. C.O. 441 of 2023

Background facts

- Radha Kishan Poddar ("Decree Holder") had instituted an execution proceeding for executing an arbitral award dated December 12th 2001 passed in his favour.
- During the pendency of the execution proceeding the Decree Holder passed away.
- Smt. Rajni Poddar and Ors ("Opposite Party") were the legal heirs of the Decree Holder.
- Due to the death of the Decree Holder, the Hon'ble Court vide order dated October 30, 2014 substituted the name of the Decree Holder with the Opposite Party in the execution proceeding.
- In 2018, the Opposite Party realized that the executing court i.e. Civil Judge, Senior Division, Alipore lacked jurisdiction to try the said proceeding and hence they withdrew the execution proceeding and filed a fresh execution proceeding before the District Judge, Alipore, who in turn transferred the new execution proceeding to the Additional District Judge, 15th Court, Alipore.
- The new execution proceeding filed by the Opposite Party was subsequently transferred to Additional District Judge 6th Court, Alipore.
- During the pendency of the new execution proceeding, the Opposite Party filed an application under Order 21 Rules 37 & 38 read with Section 151 of Code of Civil Procedure, 1908 ("CPC").
- In the interim the Petitioner filed an application under Section 47 of CPC challenging the execution of the arbitral award.
- The Executing Court dismissed the application filed under Section 47 of CPC by the Petitioner application, holding that the Executing Court cannot go beyond the decree.
- Hence in view of the above the Petitioner filed the present proceeding.

Issue(s) at hand?

- Whether the execution proceeding for executing the arbitral award is barred by limitation?
- Whether the validity of the arbitration agreement and the appointment of the arbitrator could be challenged at the stage of execution under Section 47 of CPC?

Findings of the Court

- At the outset the Hon'ble Court held that the Judgement in the case of *Delhi Development Authority vs. M/s Durqa Construction Co.*¹ relied by the Petitioner deals with delay in refilling of application and hence is not at all identical to the present case.
- The Hon'ble Court further held that Title Execution Petition cannot be dealt by a Court in an execution of an arbitral award under the provision of the Arbitration and Conciliation Act, 1996 ("Act").
- The Hon'ble Court observed that the Opposite Party in their prayer for withdrawal of the earlier execution proceeding had clearly stated that they are withdrawing the same for filing the same before an appropriate forum. In view of the same the Hon'ble held that absence of express liberty in the order for filing an execution application cannot affect period of limitation.
- Additionally, the Hon'ble Court held that the time spent in bona fide proceedings before the wrong forum can be excluded while computing the limitation period as provided under Section 14 of the Limitation Act.
- The Hon'ble Court held that appointment of an arbitrator cannot be challenged for the first during an execution proceeding. The Hon'ble Court further stated that the Act provides specific timeline and procedure for challenging appointment of an arbitrator.
- The Hon'ble Court further held that a party can challenge the existence or validity of an arbitral agreement under Section 8 of the Act before a competent Court when submitting their first stamen on the substance of the dispute as well as under Section 16 of the Act before the Arbitral Tribunal at a stage not later than the submission of the statement of defence.
- Further, the Hon'ble Court held that the judgement in case of *Vidya Drolia vs. Durqa Trading Corporation*² as relied by the Petitioner is not applicable to the present case.

¹FAO (OS) 485-86/2011

² CIVIL APPEAL NO. 2402 OF 2019

- Accordingly, the Hon'ble Court held that it is unable to interfere with the order passed by the Executing Court and accordingly dismissed the revision application.

HSA

Viewpoint

This judgment clarifies that absence of express liberty in the withdrawal order to file a fresh execution application does not deny benefit of the same under Section 14 of the Limitation Act if the person had already filed a similar Bonafide proceeding within the limitation period.

The judgment further reaffirms the principle that the appointment of an arbitrator cannot be challenged for the first time during an execution proceeding. The judgment also clears all ambiguities and once again makes it clear that a party can dispute the existence or validity of an arbitration agreement either before a competent court under Section 8 of the Act while filing its first substantive response, or before the Arbitral Tribunal under Section 16 of the Act, provided the challenge is made by the party before submitting the statement of defence.

Advaya Project Pvt. Ltd. vs M/S Vishal Structural Pvt. Ltd. & Ors

Hon'ble Supreme Court Judgment dated 17.04.2025, 2025 SCC OnLine SC 806

Background facts

- The Advaya Project Pvt. Ltd. ("Appellant") and Vishal Structural Pvt. Ltd. ("Respondent No.1") entered into the agreement on 01.06.2012 to form a Limited Liability Partnership named Vishal Capricorn Energy Services LLP ("Respondent No. 2") for executing oil and gas sector projects. Clause 8 of the LLP Agreement designated Mr. Kishore Krishnamoorthy ("Respondent No. 3") as the CEO of the LLP. Respondent No.3 is also the director of the Respondent No.1 will be responsible for the company's administration and execution of the contracts.
- By letter of award dated 31.12.2012, Oil India Ltd. awarded a contract for augmentation of storage capacity at ITF, Tenughat, Assam to a consortium, of which Respondent No. 1 was a member. By agreement dated 08.01.2013, the consortium sub-contracted the ITF Project to Respondent No. 1. Pursuantly, the Appellant and Respondent No. 1 entered into a Supplementary Agreement and a Memorandum of Understanding ("MoU"), both dated January 29, 2013, for execution of the ITF Project through Respondent No. 2.
- A dispute arose in 2018 when Appellant sought access documents and information to audit account of the Respondent No. 2 in relation to the ITF Project. The Appellant then issued demand notices dated October 11, 2019 and December 20, 2019 to Respondent No. 1 for payment of Rs. 7.31 crores towards reconciliation of accounts of the LLP. Subsequently, on November 17, 2020, the Appellant issued a notice invoking arbitration under Clause 40 of the LLP Agreement. This notice was issued only to Respondent No. 1 through its Director, Respondent No. 3.
- The Appellant then filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), for appointment of arbitrator, impleading only Respondent No. 1 as a party. The High Court vide order dated November 24, 2021, appointed a sole arbitrator.
- After the arbitrator entered reference, the Appellant filed its Statement of Claim, impleading Respondent Nos. 2 and 3, although relief was sought only against Respondent No.1. Subsequently, Respondent Nos. 1 to 3 filed an application under Section 16 of the Arbitration Act, challenging the Arbitral Tribunal's jurisdiction. The principal objection raised was that the arbitration was not maintainable against Respondent Nos. 2 and 3, as they were neither parties to the notice invoking arbitration under Section 21 nor to the Section 11 application for appointment of the arbitrator. It was further contended that Clause 40 of the LLP Agreement, which contains the arbitration agreement, does not bind Respondent No. 2, being an entity constituted under the LLP Agreement, nor Respondent No. 3, who was not a party to the LLP agreement in his individual capacity.
- Arbitral Tribunal vide order dated December 15, 2024 allowed the application under section 16 of Arbitration Act and held that the proceeding against Respondent No.2 and Respondent No.3 is not maintainable.
- The Appellant's appeal under Section 37(2)(a) of the Arbitration Act against the Arbitral Tribunal's order was dismissed by the High Court's order dated July 8, 2024. The Delhi High Court held that since the Section 21 notice and Section 11 Application do not raise any disputes against Respondent No.2 and Respondent No.3, and they are not included as the parties therein, the Appellant cannot be permitted to subsequently raise disputes against them in the Statement of claim.
- Aggrieved by the Impugned Judgment, Appellant filed Civil Appeal against the Impugned order before Hon'ble Supreme Court of India.

Issue(s) at hand?

- Whether service of a Section 21 notice and joinder in a Section 11 application are prerequisites to implead a person/entity as a party to the arbitral proceedings?
- What is the source of jurisdiction of an Arbitral Tribunal over a person/entity who is sought to be impleaded as a party to the arbitral proceedings? What is the relevant inquiry that the Arbitral Tribunal must undertake when determining its own jurisdiction under Section 16 of the Arbitration Act?

Findings of the Court

- The Hon'ble Supreme Court of India held that a notice invoking arbitration under Section 21 of the Arbitration Act is mandatory as it fixes the date of commencement of arbitration, which is essential for determining limitation periods and the applicable law, and it is a prerequisite to filing an application under Section 11 of the Arbitration Act. However, the absence of such notice to

certain parties to the arbitration agreement does not preclude the Arbitral Tribunal from impleading them during the arbitral proceedings.

- The purpose of an application under Section 11 of the Arbitration Act is for the court to appoint an arbitrator, to enable dispute resolution through arbitration when the appointment procedure in the agreement fails. The court's role at this stage is confined to a prima facie assessment of the existence of an arbitration agreement. Hence, merely because a court does not refer a certain party to arbitration in its order does not denude the jurisdiction of the Arbitral Tribunal from impleading them during the arbitral proceedings as the referral court's view does not finally determine this issue.
- The relevant consideration to determine whether a person can be made a party before the Arbitral Tribunal is if such a person is a party to the arbitration agreement. The Arbitral Tribunal must determine this jurisdictional issue in an application under Section 16 of the Arbitration Act by examining whether a non-signatory is a party to the arbitration agreement as per Section 7 of the Arbitration Act.
- In the facts of the present appeal, Respondent Nos. 2 and 3 are parties to the arbitration agreement in Clause 40 of the LLP Agreement despite being non-signatories. Their conducts in accordance with and in pursuance of the terms of the LLP Agreement, and hence, they can be made parties to the arbitral proceedings.
- Relying on the Constitution Bench judgment in *Cox & Kings Ltd. v. SAP India Pvt. Ltd.*, the Hon'ble Supreme Court reiterated that non signatories can be impleaded in the arbitration if their conduct shows that they are veritable parties to the Arbitration Agreement.
- Accordingly, the Hon'ble Supreme Court allowed the appeal, set aside the impugned judgment of the Hon'ble Delhi High Court dated 08.07.2024 in Arb. A (Comm.) 24/2024 and directed that Respondent Nos. 2 and 3 be impleaded as parties before the Arbitral Tribunal.

HSA Viewpoint

The Hon'ble Supreme Court's judgment is a progressive reaffirmation of the Kompetenz-Kompetenz doctrine under Section 16 of the Arbitration Act, advancing the autonomy and jurisdictional authority of Arbitral Tribunals in India. By holding that non-service of a Section 21 notice or non-joinder in an Application under Section 11 of the Arbitration Act does not automatically preclude impleadment in arbitration proceedings.

Gayatri Balaswamy vs. ISG Novasoft Technologies Ltd.

2024 SCC OnLine SC 1681

Background facts

A Constitution Bench of the Supreme Court was constituted to resolve conflicting decisions on whether Indian courts can modify arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 (“Act”). The issue arose in the light of divergent rulings—most notably *Project Director, NHAI v. M. Hakeem* (2021) 9 SCC 1, which disallowed modification, and earlier judgments like *McDermott International Inc. v. Burn Standard Co. Ltd. and Others* (2006) 11 SCC 181, where awards had been modified without clarity on the legal basis. The Supreme Court’s ruling marks a pivotal development in Indian arbitration jurisprudence.

Issue(s) at hand?

Do Indian courts have jurisdiction to modify or vary arbitral awards under the Act, or are they limited to setting them aside in whole or part?

Findings of the Court

- **The Majority View:** The Apex Court held that in limited circumstances, courts can modify arbitral awards under Sections 34 and 37. It clarified that setting aside and modification are distinct remedies, with the latter permissible when (i) the invalid parts of the award are severable, (ii) patent clerical/calculation errors exist, (iii) post-award interest under Section 31(7)(b) requires correction, or (iv) in rare cases, under *Article 142* to bring the dispute to an end. The Court emphasised that modification should not involve reappraisal of merits, and remand should be avoided unless necessary.
- **Dissenting View:** Justice K.V. Viswanathan dissented, holding that Section 34 does not contemplate modification. While endorsing severability and minor corrections under *actus curiae neminem gravabit*, he warned against using Article 142 to circumvent statutory limitations, reaffirming the position in *M. Hakeem*.

HSA Viewpoint

This decision is a landmark development in Indian arbitration. It balances strict legal interpretation with the need to ensure equity and procedural efficiency. The judgment does not allow full-scale re-writing of arbitral awards but gives courts limited room to intervene when necessary to avoid injustice or redundant proceedings. This should help mitigate unnecessary repetitive arbitrations and protracted litigation, further bolstering arbitration as a more reliable and efficient method of adjudicating disputes. The dissenting view, however, favours a more restrained judicial role, cautioning against exceeding the statutory limits of *Section 34* of the Act.

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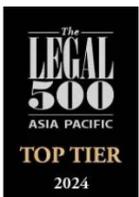
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