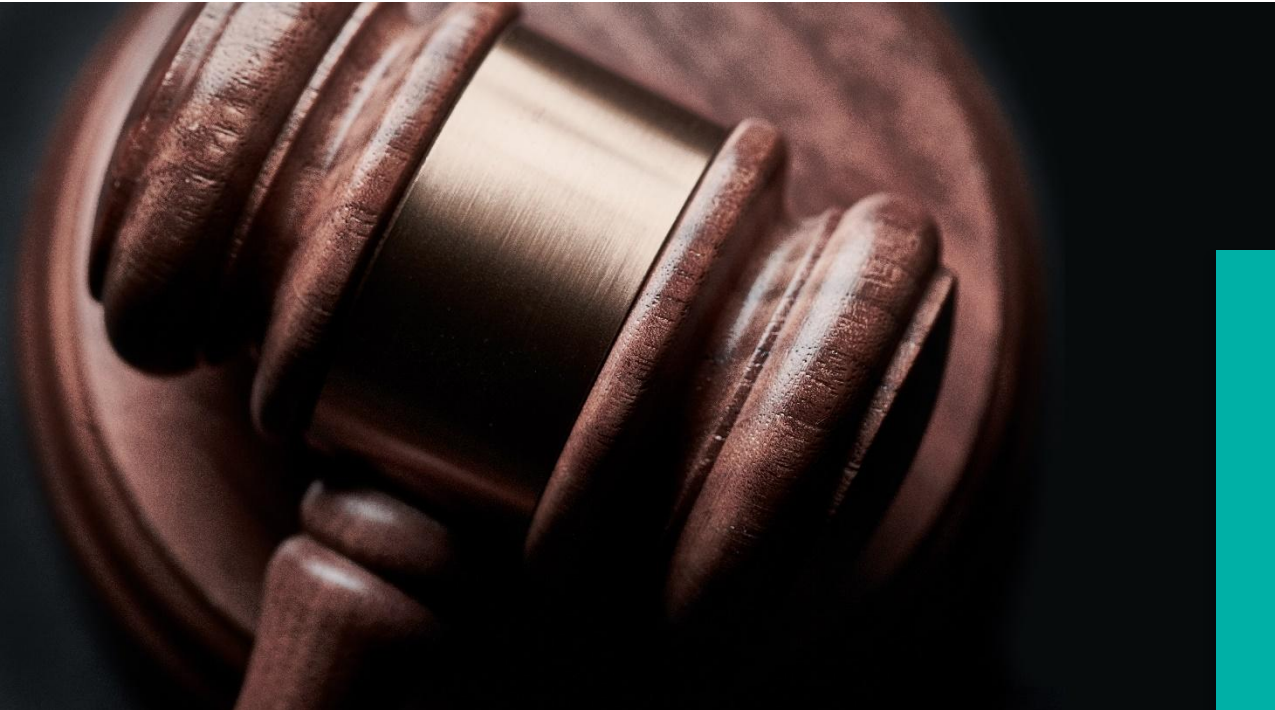


Dispute Resolution & Arbitration

Monthly Update
April 2026

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DISPUTE RESOLUTION AND ARBITRATION UPDATE



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In The High Court of Delhi

M/s JSW Ispat Steel Limited (Now known As JSW Steel Limited) [Appellant] Vs. M/s Gas Authority of India Limited [Respondents]

FAO (OS) (COMM) 4/2024

Background facts

- The dispute arose out of long-term gas supply agreements executed between the Appellant and the Respondent for supply of natural gas.
- A Primary Agreement dated 10.09.1991 was executed, under which the Respondent agreed to supply gas up to a specified quantity, subject to governmental allocation policies.
- A Supplementary Agreement dated 30.03.1998 was then executed which *inter alia* modified the payment structure, replacing variable transportation charges with fixed monthly transportation charges. Additionally, it was also specified that the appellant had a period of 14 days from the receipt of the gas supply invoice to raise any discrepancies or disputes with the invoice. Failure to raise such a dispute within this period was to be deemed a waiver of the right to raise claims or refer the matter to arbitration.
- To accommodate the appellant's increasing requirement for gas, a Tripartite Agreement dated 21.12.1999 was further executed, which enhanced gas allocation to the Appellant. The Appellant contended that despite this enhanced allocation, the Respondent failed to supply the additional quantity while continuing to levy fixed transportation charges.
- Disputes arose when the Respondent failed to supply the contracted quantity of gas. The Respondent contended that gas supply was subject to government control and scarcity. The Appellant further alleged that the Respondent wrongfully levied fixed transportation charges despite short supply. The Respondent stated that the fixed transportation charges were contractually agreed and independent of actual supply.
- The above disputes were referred to arbitration. Vide its award, the Arbitral Tribunal held that short supply was due to force majeure and that in case of gas allocations, the government's decisions

override contractual provisions. Despite the force majeure, the Appellant's obligations to pay fixed transport charges were not suspended and rejected the claim for refund. Despite the legal claim rejection, the Arbitral Tribunal was of the opinion that the transportation charges included maintenance facilities but in light of force majeure event the said fixed charges should be proportionately reduced. Citing the 'business efficacy' principle, the Arbitral Tribunal opined that the interpretation was consistent with commercial realities. Applying the said principle and the partial 'failure of consideration' principle, it awarded a proportionate refund of transportation charges amounting to Rs. 14.67 crores. The respondent further argued that the invoices became final after 45 days, and any claim for refunds older than three years was time-barred and therefore not arbitrable. However, the tribunal held that since the invoices were provisional and never finalized, the limitation period for the appellant's claims did not commence.

- The Respondent challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"). The learned Single Judge observed that the tribunal's interpretation, although contentious, was a plausible and reasonable construction of the contract and accordingly, declined to reappraise the merits of the interpretation. However, the Arbitral Tribunal had failed to consider the provisions regarding limitation and waiver of claims, wrongly considered invoices provisional and awarded refund which was not pleaded in Statement of Claim. The learned Single Judge concluded that the arbitral award was legally flawed and inconsistent with the contractual stipulations, and therefore set aside the award.
- Aggrieved by the same, the Appellant filed an appeal under Section 37 of the Act before the Delhi High Court.

Issue(s) at hand

- Whether the arbitral tribunal can grant relief beyond the pleadings and contractual framework?
- Whether the scope of judicial interference under Sections 34 and 37 of the Act permits re-appreciation of contractual interpretation and factual findings by the arbitral tribunal?
- On what grounds can an award be set aside under Section 34 of the Act?

Findings of the Court

- The Hon'ble Delhi High Court reiterated the well-settled position that the scope of judicial interference under Sections 34 and 37 of the Act is delineated and restricted. It was emphasized that courts do not exercise appellate jurisdiction over arbitral awards and cannot re-appreciate evidence or substitute their own interpretation merely because an alternative view is possible.
- The Court referred to *MMTC Limited v. Vedanta Limited*¹ to stress that the jurisdiction under Section 37 is confined within the limits prescribed under Section 34. It was observed that the appellate court is only required to examine whether the award suffers from jurisdictional infirmities or patent illegality, and not to undertake a merits-based reassessment.
- Further, the Court drew support from *Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*² to reiterate that an arbitral award must be sustained if the interpretation adopted by the tribunal is a plausible one. The existence of an alternative or more preferable interpretation does not warrant interference by the Court.
- Coming to the order of the Learned Single Judge, the Hon'ble Court observed that although not expressly stated, the reasoning for setting aside the award seems to be 'patent illegality'. Relying on the case of *Ramesh Kumar Jain v. BALCO*³, it was asserted that 'patent illegality' may arise when the arbitrator has neglected to consider or ignore crucial evidence placed before it or arrived at a conclusion no fair or sensible person would have arrived at given the facts.
- On the facts of the case, the Hon'ble Court found that the arbitral tribunal had failed to consider a material contractual provision, namely the amended Article 12.03 of the Supplementary Agreement, which mandated that disputes in respect of invoices be raised within a period of 14 days. This omission was held to be significant, as it directly impacted the issue of waiver and the maintainability of the claims. Further, the classification of invoices as 'provisional' cannot defy statutory limitation. thereby constituting a jurisdictional error.
- Citing the judgment of *OPC Power Generation Pvt. Ltd. V. Enxi Power Cooling solutions India Pvt Ltd and anr*⁴ the failure of the arbitral tribunal to state reasons for deciding the issue of limitation made it susceptible to interference. In the absence of any intelligible reasoning, no fair-minded person could adopt the reasoning of the arbitral tribunal as proper or adequate.

¹(2019) 4 SCC 163

²(2023) 9 SCC 85

³2025 INSC 1457

⁴ 2024 INSC 711

- It was further held that the reasoning adopted by the tribunal for refunding transportation charges represents a misapplication of the business efficacy principle in a manner that no reasonable person could have adopted. Further, the arbitral tribunal exceeded its mandate and altered/re-wrote the terms of the contract, which could not be permitted. Additionally, the reasoning was found to be internally inconsistent, inasmuch as the tribunal accepted the existence of force majeure while simultaneously granting a pro-rata refund.
- The award was held to be perverse and patently illegal and was thus set aside.

HSA
Viewpoint

By relying on precedents, the Hon'ble Court has fortified that while the powers under section 34 and 37 are limited, patent illegality is a valid ground for setting aside awards. "Patent illegality" is a valid ground for setting aside a domestic arbitral award under Section 34(2A) of the Act. Patent illegality involves an error of law that is "on the face of the award," such as violating the statute, contract terms, or the constitution.

It has further reinforced that while arbitral tribunals enjoy wide autonomy in interpreting contracts, discretion is not unfettered and must operate within the confines of the legal parameters, contractual framework and pleadings.

The ruling highlights that failure to consider material contractual provisions constitutes a jurisdictional error warranting judicial intervention.

It also draws a clear distinction between permissible interpretation and impermissible rewriting of the basic understanding of contracts. By rejecting the tribunal's attempt to introduce a pro-rata adjustment mechanism contrary to fixed contractual terms, the Court has underscored the primacy of contractual certainty in commercial arbitration.

In The Supreme Court of India

Nagaraj V. Mylandla [Appellant] Vs. PI Opportunities Fund – I & Ors. [Respondents]

2026 INSC 298

Background facts

- Financial Software and Systems Private Limited ("**FSSPL**") is a Chennai-based digital payment services company *inter alia* engaged in electronic transaction processing and Point-of-Sale terminals. Its promoters are the Appellant, other members of the Mylandlas family and Respondent No. 4 (referred collectively to as Promoters where context requires) who collectively held 40.4% of its share capital.
- Vide Share Acquisition and Shareholders' Agreement dated 10.10.2014 ("**SASHA**"), venture capital/private equity investors i.e. Respondent Nos. 1 to 3 (referred collectively to as Promoters where context requires) together acquired approximately 51.76% shares of FSSPL.
- The SASHA obligated FSSPL and its promoters to ensure a Qualified Initial Public Offering ("**QIPO**") on or before 31.03.2016. In the event the QIPO did not materialise, the SASHA provided the Investors with a waterfall of exit mechanisms under Clause 19, including secondary sale, buy-back, IPO, and strategic sale. Failure to provide an exit constituted a "material breach" under Clause 24.4(c).
- The QIPO did not materialise. Between 2016 and 2022, notices for secondary sale were issued by the Investors; however, no exit was effectuated. On 11.04.2022, they issued notices for *inter alia* material breach and strategic sale.
- Accordingly, disputes arose between the parties and it led to a SIAC Arbitration before a 3-member Tribunal. The seat of arbitration was Singapore, with Indian law as the governing law per clauses 26 and 27 of the SASHA.
- By a unanimous award dated 05.07.2024 ("**Award**"), the Tribunal held that Clause 19.1 imposed an *absolute* obligation on FSSPL and its promoters to provide an exit, and accordingly awarded damages based on shares valued as of 18.09.2020 along with simple interest at 5.33% p.a. In the event damages were not paid within 90 days, the Investors would be entitled to implement a strategic sale under Clause 19.6(b). A correction order dated 22.08.2024 ("**Correction Order**") further clarified that the termination of Promoters' rights by Investors under Clause 24.6(c) fell away upon the grant of damages.
- The Appellant and other members of Mylandla family challenged the award before the General Division of the High Court of Singapore on two grounds namely: breach of the fair hearing rule by neglecting to hear (i) the waiver defence and (ii) the buy-back defence. Both grounds were rejected, and the challenge was dismissed on 21.02.2025. The order was appealable but no further appeal was preferred by the Parties.
- The Investors thereafter filed petitions under Sections 47–49 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") before the Madras High Court for enforcement of the Award read with the Correction Order. By a common order dated 22.09.2025 ("**Impugned Order**"), the High Court held the Award to be enforceable, deemed it a decree under section 49 of the Arbitration Act, and also imposed costs on Appellant and other promoters. Accordingly, the Appellant and other promoters filed the present Special Leave Petitions before the Supreme Court challenging the Impugned Order.

Issue(s) at hand?

- Whether enforcement of the foreign arbitral award would be contrary to the public policy of India under Section 48(2)(b) of the Arbitration Act, on the grounds that: (i) the award directed a buy-back of shares in violation of Sections 66–68 of the Companies Act, 2013; (ii) the award violated the Specific Relief Act, 1963; (iii) the Investors had simultaneously invoked inconsistent remedies contrary to the doctrine of election; and (iv) the award was vitiated by denial of natural justice.
- Whether the doctrine of "*transnational issue estoppel*" is applicable in enforcement proceedings under Section 48 of the Arbitration Act, so as to bar the relitigation of issues already settled by the seat court.

Findings of the Court

- The core holding of the Court is that enforcement of foreign awards under Section 48 of the Arbitration Act is subject to a narrowly circumscribed public policy test, and neither re-litigation of issues decided by the seat court nor re-examination of the merits of the award is permissible. Further, it would not exercise its powers under Article 136 unless there was blatant disregard of

section 48, it would not want to circumvent the clear policy and scheme of the statute which is largely pro-enforcement of foreign awards. The Hon'ble Court primarily relied on the case of *Vijay Karia and ors. V. Prysmian Cavi E Sistemi SRL and ors.*¹

- The Court emphasised that the scope of refusal under Section 48(2)(b) restricts "*public policy of India*" to three categories only: (i) an award induced by fraud or corruption, or in violation of Sections 75 or 81 of the Arbitration Act; (ii) contravention of the fundamental policy of Indian law; or (iii) conflict with the most basic notions of morality or justice. Crucially, Explanation 2 of the same section further provides that assessing contravention of the fundamental policy of Indian law shall not entail any review on the merits of the dispute - a prohibition the Court stressed repeatedly throughout its analysis.
- The Court noted that there was no prior decision of the Supreme Court on the doctrine of transnational issue estoppel and undertook an extensive survey of academic writings and international jurisprudence, including the Singapore Court of Appeal's decision in *Republic of India v. Deutsche Telekom AG*², and decisions from the courts of England and Wales in cases such as *Good Challenger Navegante*³ and *Diag Human SE v. Czech Republic*.⁴
- The Court held that the doctrine of transnational issue estoppel is applicable in enforcement proceedings under Section 48 of the Arbitration Act. Where a seat court has conclusively rejected a factual or merits-based issue, the enforcement court cannot permit re-litigation of the same in the guise of a public policy challenge. Further, those objections may be considered which are already raised in the previous rounds of proceedings.
- The Court further held that parties cannot raise new objections at the enforcement stage which were not pursued before the arbitral tribunal or the seat court. Several grounds urged by the Appellant including violations of Sections 66–68 of the Companies Act and Section 16(b) of the Specific Relief Act had either not been raised before the Singapore High Court or were raised only belatedly. The Court treated such belated reliance as an abuse of process and declined to entertain those grounds.
- The substantial relief granted by the award was damages quantified at the contractual exit price. The strategic sale mechanism arose only if damages were not paid within 90 days and was a mode of *realising* awarded damages not an order of specific performance. In any event, a mere statutory infraction, without more, does not constitute a violation of the fundamental policy of Indian law for the purpose of Section 48(2)(b) of the Arbitration Act.
- The simultaneous invocation of remedies under Clauses 24.6(a) and 24.6(c) of the SASHA was a matter of contractual interpretation conclusively decided by the arbitral tribunal. The correction order dated 22.08.2024 further clarified that the termination of promoters' rights fell away upon the award of damages. A merits-based re-evaluation of such findings is impermissible under Section 48 of the Arbitration Act.
- The Supreme Court dismissed the Special Leave Petitions with costs of ₹25 lakhs to each Investor, affirming the Madras High Court's order in its entirety. The imposition of costs reflected the Court's disapproval of the dilatory tactics adopted by the Promoters in resisting enforcement on untenable grounds across multiple forums.

HSA Viewpoint

This judgment is a significant development in India's foreign arbitration award enforcement jurisprudence. It is the first Supreme Court decision to formally recognise and apply the doctrine of transnational issue estoppel in the context of Section 48 of the Arbitration Act, aligning India with other pro-arbitration jurisdictions such as Singapore, England & Wales, and the United States and curbing the re-litigation of settled issues before enforcement courts. It was held that where a seat court has conclusively rejected a factual or merits-based issue, the enforcement court cannot permit re-litigation of the same in the guise of a public policy challenge.

The ruling reinforces India's pro-enforcement posture toward foreign arbitral awards, consistent with the approach endorsed in *Vijay Karia* case. It is reinstated that Parties can challenge foreign awards only under the narrow grounds available under Section 48 and even then, they must cross the bar of transnational issue estoppel.

At the same time, the judgment preserves an important carve-out: the enforcement court retains independent jurisdiction to assess whether enforcement would offend India's specific public policy, as that question is unique to the forum and cannot have been decided by the seat court. This calibrated balance between comity and sovereign prerogative is likely to serve as the baseline framework for future enforcement litigation in India.

¹ (2020) 11 SCC 1

² (2023) SGCA (I) 10

³ (2003) EWCA Civ 1668

⁴ (2014) EWHC 1639 (Comm)

In The Supreme Court of India

M/s Bharat Udyog Ltd. [Petitioner] Vs. Ambernath Municipal Council through Commissioner and Anr. [Respondents]

Special Leave Petition (Civil) No. 1127 of 2017

Background facts

- The Ambernath Municipal Council (“Respondent”) issued a tender in March 1994 for the collection of octroi for a period of one year commencing from April 1, 1994, with a minimum reserve price of Rs. 6,74,00,000/-
- M/s Bharat Udyog Ltd. (formerly known as M/s Jai Hind Contractors Pvt Ltd) (“Petitioner”) participated in the tender and was declared the successful bidder, having submitted a bid of Rs. 6,75,00,000/-.
- Thereafter a contract was executed between the Respondent and Petitioner on March 30, 1994 for the collection of octroi.
- After commencing work, the Petitioner addressed a letter dated May 2, 1994, to the Chief Officer of the Respondent, requesting a reduction of Rs. 40,78,517/- from the minimum reserve price, contending that it was contrary to prescribed norms. This representation made by the Petitioner was rejected by the Respondent on May 27, 1994 stating that the minimum reserve price was fixed as per the guidelines issued by the Government of Maharashtra.
- Being aggrieved by the decision, the Petitioner approached the High Court vide a Writ Petition, however, later withdrew the same with the liberty to file appropriate proceedings which was allowed.
- Instead of invoking the dispute resolution mechanism under Clause 22 of the contract which provided for reference to the Collector, with appeals to the Divisional Commissioner and thereafter the State Government, the Petitioner directly approached the Urban Development Department of the State Government requesting for appointment of an Arbitrator to resolve the dispute raised by the Petitioner vide letter dated May 2, 1994.
- The State Government responded in favour of the Petitioner and appointed the Commissioner, Konkan Division, as Arbitrator vide a Government Resolution dated November 14, 1994.
- At the relevant time the Respondent was functioning under a State appointed Administrator.
- The Arbitrator called upon the Respondent to file its reply and appear in the arbitral proceedings.
- The Arbitrator passed an award on December 26, 1994, reducing the minimum reserve price to Rs. 6,20,89,843/-, which was even lower than the reduction sought by the Petitioner.
- The Petitioner filed a Miscellaneous Application before the Civil Judge, Senior Division, Thane, seeking that the award be made a rule of court.
- Thereafter, the Respondent addressed a letter to the Urban Development Department of the State Government stating that the Government Resolution dated November 14, 1994 vide which the Ld. Arbitrator was appointed was unilateral.
- The Respondent also raised the said objection before the Civil Judge, Senior Division, Thane.
- The Civil Judge Senior Division, Thane allowed the Miscellaneous Application filed by the Petitioner by order dated September 22, 2000. The Civil Judge Senior Division, Thane also held that the Respondent’s jurisdictional objections were barred by limitation.
- The Respondent challenged the order of the Civil Judge Senior Division, Thane before the Bombay High Court, which allowed the appeal and held that the dispute resolution clause in the contract did not constitute a valid arbitration agreement and that the State Government lacked jurisdiction to appoint an Arbitrator in regard to a concluded contract.
- Aggrieved by the order of the Bombay High Court, the Petitioner filed the present proceeding.

Issue(s) at hand?

- Whether a valid arbitration agreement existed between the parties?
- Whether the mere participation of the Respondent in the arbitration proceedings operated as a waiver or estoppel, to bar it from challenging the jurisdiction of the Arbitrator and the resulting award after conclusion of the Arbitration?
- Whether the State Government had jurisdiction to appoint an Arbitrator under Section 143-A(3) of the Maharashtra Municipal Councils Act, 1965?

Findings of the Court

- The Hon'ble Court further held that Section 143-A(3) of the Maharashtra Municipal Councils Act, 1965, which empowers the State Government to issue directions regulating the collection of octroi, does not confer upon it the power to appoint an Arbitrator between the Respondent and its agent under a concluded contract. The Hon'ble Court accordingly held that the Government Resolution of November 14, 1994, was without jurisdiction.
- The Hon'ble Court further held that Clause 22 of the contract did not constitute an arbitration agreement within the meaning of Section 2(a) of the Arbitration Act, 1940 ("Act"), as it provided only for a departmental dispute resolution mechanism through the Collector, Divisional Commissioner, and State Government and left no room for private arbitration. The Court further observed that there was an absence of consensus ad idem between the parties to refer disputes to arbitration.
- The Hon'ble Court held that the Respondent's participation in the arbitral proceedings did not amount to consent and could not operate as an estoppel against it for raising jurisdictional objections. The Court observed that the Respondent had been compelled to participate by the unilateral act of the State Government and that the Respondent had raised jurisdictional objections before the Civil Court as well as the High Court at the earliest available opportunity.
- The Hon'ble Court held that since the Arbitrator lacked inherent jurisdiction due to the absence of an arbitration agreement, the entire proceedings were a nullity (coram non iudice) and the resulting award was non-est.
- The Hon'ble Court also noted the perfunctory nature of the arbitral proceedings for the award having been delivered within forty-two days of the appointment of the Arbitrator as a circumstance further undermining the legitimacy of the process.
- The Hon'ble Court also held that the judgments relied upon by the Petitioner in the cases of N Chellappan v. Secretary, Kerala State Electricity Board and Anr.¹ and Inder Sain Mittal v. Housing Board, Haryana and Ors.², are not applicable to the present case.
- In view of the above the Hon'ble Court held that there is no error in the judgment passed by the High Court in the First Appeal and accordingly dismissed the present petition.

HSA Viewpoint

The judgment clarifies that arbitration can arise only from a valid agreement between the parties, and that jurisdiction of the Arbitrator to decide on the dispute cannot be created merely through conduct, participation, or unilateral State action. It further removes any ambiguity by holding that mere participation in arbitration does not amount to consent to arbitrate.

Accordingly, doctrines such as estoppel or waiver cannot be invoked to cure the absence of a valid arbitration agreement.

The judgment further clarifies that the State has no authority to impose arbitration on a concluded contract under the guise of statutory or regulatory powers. Such an attempt amounts to a jurisdictional overreach.

The judgment reaffirms that an award passed by an Arbitrator without jurisdiction is void ab initio (non est). It has no legal effect, creates no rights, and can be challenged at any time.

Overall, the judgment reinforces that arbitral jurisdiction must strictly arise from agreement and cannot be imposed or assumed.

¹ (1975) 1 SCC 289

² (2002) 3 SCC 175

In The High Court of Bombay

L & T Finance Ltd. [Applicant] Vs. Sangeeta Bhansali (Borrower) And Anr. [Respondents]

Commercial Execution Application (L) No. 5277/2022 along with Interim Application No. 1950/2022 in Commercial Execution Application (L) No. 5277/2022

Background facts

- The dispute between the parties arose out of loan agreements executed between the Applicant (“Lender”) and Respondent Nos. 1 and 2 (“Borrower and Co-Borrower”).
- Upon disputes arising under the loan agreement, the Applicant invoked the arbitration clause contained in the loan agreement and appointed a Sole Arbitrator to adjudicate the disputes.
- The Respondents (“Judgment Debtors”) challenged the unilateral appointment of the Sole Arbitrator by filing applications under Sections 12 and 16, read with ground no. 22 of the Fifth Schedule of the Arbitration and Conciliation Act, 1996 (“Act”).
- The said applications filed by the Judgment Debtors were rejected by the Sole Arbitrator vide its order dated 23rd July 2019.
- The Judgment Debtors also filed an application under Section 13(2) of the Act seeking termination of the Sole Arbitrator’s mandate. The said application was also rejected by the Sole Arbitrator vide its order dated July 30th 2019.
- After deciding the applications, the Sole Arbitrator proceeded with the arbitration hearing and passed an Arbitral Award dated 7th August 2019, directing the Judgment Debtors to pay a sum of Rs. 1,01,12,482/- and Rs. 1,57,559/- in respect of two loan accounts, to the Applicant along with interest, costs, and fees of the Sole Arbitrator.
- The Judgment Debtors did not challenge the arbitral award under Section 34 of the Act.
- The Applicant thereafter initiated Commercial Execution Proceedings before the Bombay High Court seeking enforcement of the award along with an Interim Application for disclosure of assets.
- In the execution proceedings, the Judgment Debtors once again raised the issue that the unilateral appointment of the Sole Arbitrator rendered the award void.
-

Issue(s) at hand?

- Whether an Arbitral Award passed by a unilaterally appointed Sole Arbitrator is void ab initio?
- Whether the objection regarding unilateral appointment of Sole Arbitrator can be raised at the stage of execution, despite the Arbitral Award not being challenged under Section 34 of the Act?

Findings of the Court

- At the outset the Hon’ble Court placed reliance on the judgment of the Supreme Court in the case of Bhadra International (India) Pvt. Ltd. v. Airport Authority of India (2026)¹, wherein it was categorically held that unilateral appointment of an arbitrator is impermissible and renders the arbitrator de jure ineligible. Consequently, any award passed by such an arbitrator is non-est in law, being vitiated by lack of inherent jurisdiction. It was also held that party autonomy under Section 11(2) of the Act is not absolute and must operate within the framework of mandatory statutory provisions. It was also held that a jurisdictional objection strikes at the root of the matter and can be raised at any stage, including at the stage of execution, even if no challenge under Section 34 has been preferred.
- The Hon’ble Court further relied on the judgment of the Delhi High Court in the case of Kotak Mahindra Bank v. Narendra Kumar Prajapati² wherein it was held that since the Sole Arbitrator was unilaterally appointed, he was ineligible to be appointed as an Arbitrator by virtue of Section 12(5) of the Act.
- The Hon’ble Court also relied on the judgment of the Gujarat High Court in the case of Samunnati Finance Pvt. Ltd. v. Ramdev International Castor Products Pvt. Ltd.³ wherein it was held that an award passed by an Arbitrator appointed by only one party is void ab initio and cannot be enforced.

¹ Civil Appeal No. 37-38 of 2026

² 2023 SCC Online Del 3148

³ Civil Revision Application No. 471 of 2025

- The Hon'ble Court further held that the judgment of the Madras High Court in the case of Sundaram Finance Ltd. v. S.M. Thangaraj⁴ *is not applicable in the present case.*
- Applying the aforesaid principles, the Hon'ble Court held that the arbitral award dated August 7th 2019 was void ab initio and incapable of enforcement.
- Accordingly, the Hon'ble Court set aside the arbitral award and dismissed the Commercial Execution Application along with the Interim Application.
- The Court granted liberty to the parties to initiate fresh arbitration proceedings in accordance with law and directed exclusion of the period spent in prior proceedings for limitation purposes.

HSA
Viewpoint

The present judgment is a significant reaffirmation of the evolving jurisprudence on the invalidity of unilateral appointment of Arbitrators. By extending the applicability of this principle to the stage of execution, the Hon'ble Bombay High Court has strengthened procedural fairness and the principle of equality and fairness in arbitral proceedings.

The ruling underscores that jurisdictional defects, particularly those affecting the constitution of the arbitral tribunal, go to the root of the matter and cannot be cured by procedural waiver or inaction. This approach ensures that arbitration remains consistent with principles of natural justice and statutory safeguards under the Arbitration and Conciliation Act, 1996.

Importantly, the judgment aligns with the Supreme Court's recent pronouncements and eliminates any residual ambiguity by clarifying that such awards are not merely voidable but void ab initio and non-enforceable.

⁴ 2025 SCC Online Mad 5428

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