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case in point .

July 2025

This Case in point half yearly arbitration round-up provides a summary of notable developments. We have attempted to cover developments both within India as well as beyond Indian shores which will significantly influence Indian stakeholders intending to pursue dispute resolution through domestic or international arbitration proceedings.

This round-up is divided into two segments for clarity. Part I examines judicial developments under the Arbitration and Conciliation Act, 1996 (**Arbitration Act**), focusing on domestic developments including significant rulings by the Supreme Court and various High Courts that shape India's arbitration framework. Part II is focused on international developments which underline a global drive towards increased clarity, procedural efficiency, and minimal judicial interference in arbitration.

Regards,

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Part I: Judicial Developments under the Arbitration Act:

A. Court's power to modify arbitral awards

In **Gayatri Balasamy v. M/S. ISG Novasoft Technologies Limited** (2025 INSC 605), the Hon'ble apex court held by a 4:1 majority that courts possess a limited power to modify arbitral awards. This decision was passed in a Special Leave Petition (SLP) challenging the judgment of the Madras High Court, which had held that courts in India have powers within the Arbitration Act to modify an arbitral award (**Madras High Court Judgment**). This view conflicted with the apex court's earlier ruling in *Project Director NHAI v. M. Hakeem*,¹ followed in *Larsen Air Conditioning and Refrigeration Company v. Union of India*,² and *SV Samudram v. State of Karnataka*.³

Given the divergence and question of law involved, the SLP filed before a three-judge bench of the apex court was referred to a larger five-judge bench. The five-judge bench comprised the then-Chief Justice Sanjiv Khanna, Justice B.R. Gavai, Justice Sanjay Kumar, Justice K.V. Viswanathan, and Justice Augustine George Masih. The majority upheld the view of the Madras High Court, clarifying that the courts have *limited* power to modify an arbitral award under the Arbitration Act.

For an easy analysis, we have divided the judgment into two parts: (i) Majority Judgment; (ii) Dissenting Opinion.

1. Majority Judgment

Severability of awards

The apex court observed that the proviso to Section 34(2)(a)(iv) holds particular significance in the context of the present discourse, insofar as the said proviso empowers the courts to segregate, sever, and preserve the "valid" part(s) of the award while setting aside the "invalid" ones. (The terms "valid" and "invalid", as used here, do not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the Arbitration Act.) Subsequently, the apex court held that:

*"The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award."*⁴

The apex court held that the most practical and pragmatic interpretation of the provisions of Section 34(2)(a)(iv) is that the authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. The apex court observed that an arbitral award cannot be set aside in part when the "valid" and "invalid" portions of the arbitral award are legally and practically inseparable.

¹ (2021) 9 SCC 1.
² (2023) 15 SCC 472.
³ (2024) 3 SCC 623.

⁴ Paragraph 33 of the judgement.

The permissibility and scope of the court's modification powers, within the parameters of Section 34 of the Arbitration Act

While dealing with the question of modification of an arbitral award, the apex court dealt with the following: (i) the difference between setting aside and modifying an arbitral award and (ii) whether courts can modify an arbitral award notwithstanding the powers expressly conferred under Sections 33 and 34(4) of the Arbitration Act.

Difference between setting aside and modification

While drawing a distinction between modification and setting aside of an arbitral award, the apex court clarified that modification only involves altering specific parts of an award, whereas setting aside results in its complete annulment.

Limited power of modification under Section 34 of the Arbitration Act

The apex court held that Section 34 of the Arbitration Act does not restrict the courts from granting various alternative reliefs, provided they remain within the contours of the statute and do not violate the guardrails of the power provided under Section 34 of the Arbitration Act. Referring to the principles of severability provided under Section 34(2)(a)(iv) of the Arbitration Act, it observed that where a portion of the award is severable, the courts are empowered with a limited and qualified jurisdiction to vary or modify a portion of the award.

Can courts modify an award despite the powers mentioned at Sections 33 and 34(4) of the Arbitration Act?

The apex court clarified that Section 34 of the Arbitration Act permits the courts to exercise inherent powers to rectify limited typographical errors, provided no merit-based review is involved. On the contrary, Section 33 of the Arbitration Act empowers an arbitrator to correct and/or re-interpret the arbitral award on limited grounds (e.g., correction of computational, clerical, or typographical errors) and make an additional award on claims presented before the arbitral proceedings but were omitted from the arbitral award. The apex court clarified that where re-evaluation on merits is required, the courts



must invoke its remedial powers under Section 34(4) of the Arbitration Act and remand the matter to the Tribunal.

Doctrine of Merger and the New York Convention

The apex court noted that once Section 34 of the Arbitration Act is reinterpreted to include a limited power to modify awards. This power will not affect the international commercial arbitration regime or the enforcement of foreign awards. The apex court's reasoning was based on the interpretation of Section 48(1)(e) of the Arbitration Act.

It interpreted Section 48(1)(e) of the Arbitration Act to state that the statutory framework recognises that the domestic law of the country where the award is made would prevail and will have supremacy, when the award needs to be enforced. Therefore, if the arbitral award requires any modification to meet this criterion, it cannot be said to be against the provisions of the New York Convention.

Post-award interest may be modified in some circumstances

Another issue the apex court dealt with was whether the courts would now possess the powers to declare or modify interest, especially post-award interest. As per the Arbitration Act, the tribunal is permitted to grant two types of interest, viz., (i) pendente lite interest under Section 31(7)(a) of the Arbitration Act and (ii) post-award interest under Section 31(7)(b) of the Arbitration Act.

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