IMC
Chamber of Commerce and Industry

IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

Table of Contents:

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

DISCLOSURE, CONTROL, COSTS: THE THREE PILLARS OF TPF FOR INDIA'S ARBITRAL FUTURE

I. Introduction

India wants to be a global business hub, so Arbitration here must be fast, affordable, and trustworthy. Third-party funding (TPF) helps: a non-party pays for a claim and, if the case succeeds, takes a share of the recovery. This lets cash-strapped parties pursue strong claims. But India's rules are unclear. The Arbitration and Conciliation Act, 1996 doesn't mention TPF, bar rules only stop lawyers from funding clients, and case law accepts TPF in principle without a full framework. The need is obvious; the rulebook is not.

II. Global Scenario

Leading seats have moved beyond the old doctrines of maintenance and champerty to pragmatic regulation. Singapore and Hong Kong pair statutory recognition with mandatory disclosure in institutional rules, while Australia blends licensing with institutional guardrails. These models converge on three principles: transparency about who pays, protection against funder control, and cost consequences that are predictable.[1]

[1] Ridhima Sharma, Third Party Funding in International Commercial Arbitration, 12 NUALS L.J. 61 (2018).

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

India, by contrast, leans on general contract law, a few state CPC tweaks that allow funding in litigation, professional conduct limits for advocates, and scattered judgments saying TPF isn't against public policy. This "soft acceptance" still leaves doubts about: enforcing funding contracts, handling conflicts of interest, protecting privilege during funder due-diligence, and who pays adverse costs. Practice varies across tribunals, so parties often choose foreign seats with clearer rules.[2]

III. What Indian Arbitral Institutions Can Do Now

While Parliament considers reform, institutions can close the gap with rule-level interventions that mirror best practices and fit Indian realities:[3]

a. **Disclosure (with confidentiality):** Parties must disclose that they are funded, the funder's identity, and whether the funder has a stake in the outcome. Tribunals may privately review key terms (control rights, termination, adverse-cost cover) only to manage conflicts.

b. **No funder control:** Make it explicit that case strategy, pleadings, witnesses, and settlement decisions rest with the party and its lawyers. Any funder vetoes have no effect before the tribunal.

c. **Security for costs & adverse costs:** Allow tribunals to order security where funding plus insolvency risk may block recovery, and where fair bind disclosed funders to adverse-costs directions.

[2] P. Siviganga, Third Party Funding: An Overview and the Way forward in India, 4 GNLU SRDC ADR MAG. 9 (January-March 2024).
[3] Kaira Pinheiro & Dishay Chitalia, Third-Party Funding in International Arbitration: Devising a Legal Framework for India, 14 NUJS L. Rev. 2 (2021)

d. **Privilege & data protection:** Say that sharing documents with a funder for diligence **does not waive privilege** against the other side. Require funders to give data-protection undertakings.
e. **Funding costs guidance:** Permit recovery of reasonable funding-related costs only if they were necessary, proportionate, and caused by the opponent's conduct so there are no windfalls.

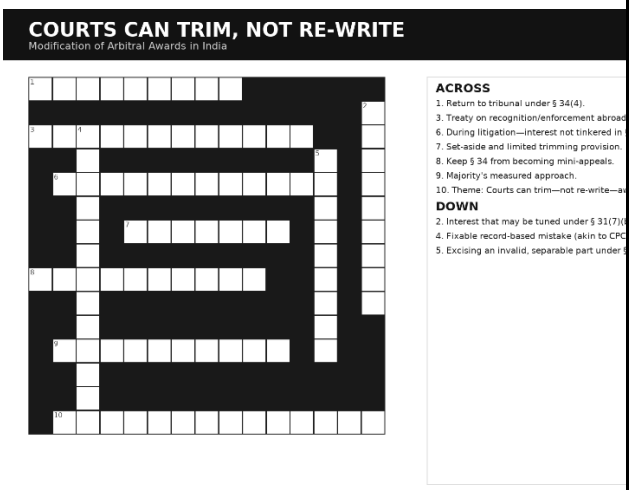
IV. Conclusion

TPF is now part of arbitration's core infrastructure worldwide. India's "allowed but undefined" stance pushes complex cases toward seats with settled rules. Institutions can fix a lot now: disclose the funding, keep control with the parties, make costs predictable, and protect privilege. These steps would cut satellite disputes, attract reputable funders, and expand access to arbitration without undermining party autonomy. Later, targeted amendments of the Arbitration and Conciliation Act, 1996 can lock in these principles and align court practice on security for costs, enforceability of funding agreements, and treatment of funding expenses. For the moment, Indian institutions can lead and turn today's patchwork into a competitive advantage.

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

COURTS CAN TRIM, NOT RE-WRITE: MODIFICATION OF ARBITRAL AWARDS IN INDIA



I. Introduction

On 30 April 2025, a five-judge Constitution Bench in *Gayatri Balasamy v. ISG Novasoft 2025 INSC 605* ("Balaswamy") settled a decades-old debate, i.e. Indian courts may modify arbitral awards, but only in narrowly defined situations. [4]

First, the Bench reaffirmed "severance" under Section 34. Accordingly, the courts can excise an invalid, separable part of an award while preserving the rest. Reading this limited power pragmatically, the majority said that where severance necessarily "varies" the result, it amounts to a limited modification and not a wholesale appellate re-write. The aim is to avoid needless re-arbitration and cost when a narrow defect can be cured on the face of the record.[5]

Second, courts may correct manifest clerical, computational or typographical errors apparent from the record (akin to CPC Section 152), again without re-assessing merits.[6]

Third, the Court drew a line on interest, pendente lite interest cannot be tinkered with in Section 34; but post-award interest under Section 31(7)(b) may be adjusted up or down,

[4] Gayatri Balasamy v. ISG Novasoft 2025 INSC 605

[5] *Ibid.*
[6] *Ibid.*

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

where the tribunal's rate is clearly unjustified in light of subsequent realities.[7]

Finally, the majority acknowledged the Supreme Court's Article 142 power ("complete justice") as a residual source for tailored modification, used sparingly, with caution, and never to convert Section 34 into an appeal on merits.[8]

II. The dissent's sharp warning

Justice Viswanathan rejected modification outright. In his view, Section 34, modelled on UNCITRAL permits only setting aside or remitting (especially via Section 34(4)); reading "modify" into the statute amounts to judicial legislation. He also opposed using Article 142 to bypass the Act's deliberate limits, and disagreed that courts may alter post-award interest.[9]

III. Why this matters?

The decision softens the "all-or-nothing" design of Section 34 without opening the door to an Appeal on merits. For users, it may reduce delay where an award suffers a narrow, non-merits defect or a plainly untenable post-award interest rate.[10] However, there are two risks:

i. Appellate Courts might stretch "manifest error" into mini-appeals;
ii. How will a "modified" India-seated award fare under the New York Convention abroad? The majority is sanguine that limited modification is part of the seat's domestic law and thus consistent with the Convention, the foreign court might be skeptical of this altered-award. [11]

[7] *Ibid*
[8] *Ibid*
[9] *Ibid.*
[10] Sugyan Kumar Singh, Modification of an Arbitral Award: An Analysis, 7 INT'l J.L. MGMT. & HUMAN. 2064 (2024).
[11] Vijayendra Pratap Singh, Abhijnan Jha & Ankitesh Ojha, India's Tryst with Modifying Awards—Pragmatic Recognition or a Catastrophe, GLOB. ARB. REV.: ASIA-PAC. ARB. REV. 2026 (2025).

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

IV. The road ahead

Resultantly, two practical guardrails emerge. First, is use remission when in doubt, i.e. if the defect isn't purely mechanical or severable, remand under Section 34(4) keeps the tribunal rather than the court in the driver's seat. Secondly, parties should resist invitations to relitigate merits under the guise of "modification." Courts, for their part, must police the boundary.

Balasamy nudges Indian arbitration toward measured pragmatism, allowing courts to trim or correct obvious edges of an award without re-hearing the case. Whether that balance holds in everyday Section 34 practice and in cross-border enforcement will depend on disciplined application by courts and, ideally, legislative clarification that codifies (and cabins) this new, limited power.

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

SEAT OR NO-SEAT? – ANALYSIS OF SNS ENGINEERING PRIVATE LIMITED V. HARIOM PROJECTS LIMITED AND ANOTHER[12]

INTRODUCTION:

Under the Arbitration and Conciliation Act, 1996, (*"Act"*), the word SEAT has gained traction and prominence, for it determines the territorial jurisdiction of its supervisory Court. However, whether absence of the word seat ousts the jurisdiction of the Court? is a question the Hon'ble Delhi High delved into, while decided the case mentioned above. The Author attempts to discuss the aforementioned case and tries to carve out the relevant focus of this Paper i.e., the title itself.

Before delving into the issue and deliberation on law as discussed by the Hon'ble Delhi High Court, it may be pertinent to narrate the facts in a nutshell.

FACTS:

SNS Engineering was contracted by Hariom Projects for HVAC work at Uttarakhand Bhawan, New Delhi, under an Acceptance Letter dated 21.10.2021 valued at over ₹2.85 crore. Clause 14 of the contract conferred exclusive jurisdiction on Ahmedabad courts and mentioned the Managing Director's role in arbitration. When payment disputes arose, Hariom invoked arbitration through its MD, which SNS opposed, seeking a neutral arbitrator. Both parties filed Section 11(6) petitions—SNS in Delhi High Court—raising the central issue of whether Delhi High Court could assume jurisdiction despite the contract's Ahmedabad clause.

ISSUE:

[12] 2025 SCC OnLine Del 5836

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

Hence, the Hon'ble Delhi High Court was seized of the issue - Whether the Delhi High Court had territorial jurisdiction to entertain a Section 11(6) Arbitration Act petition for appointment of arbitrator, when the arbitration clause in the Acceptance Letter vested exclusive jurisdiction in courts at Ahmedabad?

LAW AND COURT'S OBSERVATION:

Clause 14, though silent on the term "seat," expressly vested exclusive jurisdiction in the courts at Ahmedabad. Relying on Supreme Court precedents, the Court construed this as the parties' unequivocal intention to designate Ahmedabad as the arbitral seat. The petitioner's contention that jurisdiction lay in Delhi, since negotiations, execution, billing, and performance occurred there, was rejected on the ground that party autonomy in choosing the seat prevails over considerations of cause of action. Consequently, the Delhi High Court held that it lacked jurisdiction, and that only the Ahmedabad courts could supervise the arbitral proceedings and appoint arbitrators.

CONCLUSION:

The Delhi High Court concluded that, by virtue of Clause 14, Ahmedabad stood designated as the seat of arbitration. Once the arbitral seat was fixed, exclusive supervisory jurisdiction vested in the courts at Ahmedabad, to the exclusion of all other forums. As a result, the Delhi High Court had no authority to entertain the matter, despite the petitioner's reliance on the fact that substantial parts of the transaction and performance had occurred in Delhi. Emphasizing the principle of party autonomy and the settled legal position that the choice of seat overrides considerations of cause of action, the Court held the Delhi petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 to be not maintainable, and accordingly dismissed it for want of territorial jurisdiction.

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

ARBITRATION – ELITE DISPUTE RESOLUTION MECHANISM

INTRODUCTION:

The Arbitration and Conciliation Act, 1996 ("Act") is a landmark legislation that transformed the dispute resolution framework in India by introducing structured mechanisms for arbitration and conciliation. One of the significant pillars of arbitration is its expeditious and cost-effective nature of resolution of disputes. However, arbitration is often regarded as an elite form of dispute resolution, not merely because it departs from the rigidities of conventional litigation, but also because it offers a more sophisticated, tailored, and confidential process, with entailing costs. Parties engaged in arbitration frequently include large corporations, multinational entities, and high-value commercial players who seek a forum that matches the complexity and gravity of their disputes. In many ways, arbitration represents an "elite adventure" as it involves multiple costs such as the cost of the venue, fees payable to Counsel, arbitrator etc.[13]

In contrast to traditional litigation, which tends to be more accessible to the wider public, arbitration is predominantly utilized by large corporations, high-stake commercial players, and parties involved in complex international disputes. Its aura of exclusivity

[13] SAC Attorneys LLP, https://www.sacattorneys.com/articles/the-advantages-and-disadvantages-of-arbitration/, (Last visited Sept. 27, 2025).

stems from several features—substantial costs, the reliance on highly specialized arbitrators, and the degree of procedural freedom granted to the parties. Moreover, the option to appoint arbitrators of global standing, ensure confidentiality in proceedings, and design flexible procedures makes arbitration particularly attractive to those seeking a refined and customized method of dispute resolution. Taken together, this exclusivity, expertise, and autonomy reinforce the perception of arbitration as an inherently elitist mode within the dispute resolution system.[14]

PROCEDURE INVOLVED IN ARBITRATION:

At times, a comparison between arbitration and the traditional court system reveals that arbitration, despite being conceived as an alternative, often involves multiple layers of proceedings. For instance, a party that anticipates adverse action from the other side is compelled to approach the civil court under Section 9 of the Act to obtain interim protection. Once such interim relief is granted, the party seeking arbitration must, within 90 days, issue a notice under Section 21 of the Act to formally commence arbitral proceedings. This is often followed by yet another step—moving the High Court for the appointment of arbitrators under Section 11. Only after navigating these preliminary hurdles do the parties finally reach the arbitral tribunal to address the substantive dispute.

However, the process does not necessarily conclude with the arbitral award. Parties frequently return to civil courts, whether to challenge interim awards, seek extensions of time, or question other procedural orders. When the arbitral tribunal delivers its final

[14] Charles Russel Speechlys, https://www.charlesrussellspeechlys.com/en/insights/expert-insights/dispute-resolution/2023/arbitration-is-cheaper--myth-or-reality/, (Last visited Sept. 27, 2025).

award, the losing party commonly invokes Section 34 to have it set aside. Even then, the matter may not rest, as orders under Section 34 are themselves subject to appeal under Section 37. In exceptional cases, the jurisdiction of the Supreme Court is invoked—though access to the apex court often remains a privilege of the few who can afford the prohibitive costs.

Thus, while arbitration is projected as a streamlined alternative to litigation, in practice it often mirrors, and sometimes even compounds, the procedural rigmarole of traditional courts. The cycle of proceedings is not only time-consuming but also financially draining, making arbitration an arduous and expensive pursuit—one that, in many ways, underscores its elitist character.

CONCLUSION:

Arbitration is an excellent alternative dispute resolution mechanism. However, at times, space for judicial intervention increases the cost of resolving dispute. The very fact that actual dispute resolution starts after climbing over proceedings under Section 9 and Section 11 of the Act. In reality, arbitration has become affordable by the elite. In the considered opinion of the Author, the process may be made faster in cutting down the procedure involved in appointment of arbitrators, which in turn shortens the time in attempting to secure an interim measure, without actually having to approach the Civil Court.[15]

[15] ITA in Review, https://itainreview.org/articles/2025/Vol7/Issue1/future-of-cost-effective-arbitration-in-india.html, (Last visited Sept. 27, 2025).

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

NO AUTOMATIC STAY – SUPREME COURT CLARIFIES THAT EXECUTION OF ARBITRAL AWARDS CANNOT BE DEFERRED SIMPLY DUE TO PENDING SECTION 37 APPEALS

Background of the Dispute

The dispute arose between **Chakardhari Sureka (Appellant / Decree-Holder)** and **Prem Lata Sureka through SPA & Ors. (Respondents / Judgment-Debtors)** concerning the execution of an arbitral award.

The Respondents had earlier challenged the award under **Section 34 of the Arbitration and Conciliation Act, 1996**. Their objections were dismissed. Against this dismissal, the Respondents filed an **appeal under Section 37**, which was pending before the High Court.

In the meantime, the Appellant initiated **execution proceedings** to enforce the award. However, the **Delhi High Court**, acting as the Executing Court, adjourned the matter on **May 9, 2025**, citing the pendency of the Section 37 appeal even though no stay order had been granted in that appeal.

Judicial Journey and Contentions

The Appellant, dissatisfied with the deferment, approached the **Supreme Court of India**, contending that:

- The **dismissal of Section 34 objections** had rendered the award executable.

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

- The pendency of a **Section 37 appeal does not, by itself, operate as a stay** on execution.
- Unless an **express interim order** is passed by the appellate court, the award-holder must be allowed to pursue execution.

On the other hand, the Respondents argued that since the appeal was pending, the Executing Court was justified in adjourning the proceedings. They also raised fresh objections regarding the **executability of the award itself**.

Analysis & Verdict

A bench of **Justices Manoj Misra and Ujjal Bhuyan** delivered the judgment on **September 15, 2025**.

The Supreme Court emphasized that:

- The **pendency of a Section 37 appeal** does not automatically prevent execution of an arbitral award.
- Only an **express interim order staying enforcement** can restrict the decree-holder's right to execution.
- Execution Courts must not defer applications solely because an appeal is pending.

The Court clarified:

> "*In our view, the question of executability of the award can be gone into by the Execution Court in accordance with law while addressing objections as and when raised. However, it would not be proper for the Execution Court to defer consideration of the*

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

> *execution application and the objections thereto only because an appeal is pending under Section 37 when there is no interim order operating against the award against which objection under Section 34 of the Act stands rejected*."

Accordingly, the Supreme Court **set aside the Delhi High Court's order** and directed that execution proceedings may continue, subject to any interim orders that might be passed in the pending Section 37 appeal.

Implications

This ruling provides much-needed clarity on the interplay between **Section 34, Section 37, and execution proceedings** under the Arbitration and Conciliation Act, 1996:

- **Award-holders** gain protection against undue delays in enforcement caused merely by filing appeals.
- **Execution Courts** are reminded that they cannot defer proceedings unless there is a specific stay order.
- The decision reinforces India's arbitration-friendly stance by **ensuring speedier enforcement of arbitral awards**.

Conclusion

The Supreme Court has reaffirmed a crucial principle: **mere pendency of a Section 37 appeal does not paralyze the execution of an arbitral award**. Unless an explicit stay is granted, decree-holders are entitled to proceed with execution.

This decision in **Chakardhari Sureka v. Prem Lata Sureka through SPA & Ors.**[16]

[16] Civil Appeal No. 11840/2025

strengthens confidence in arbitration as an effective mechanism for dispute resolution, striking a balance between the rights of appellants and the legitimate expectation of decree-holders for timely enforcement.

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

FROM WRIT TO APPEAL – ALLAHABAD HIGH COURT ALLOWS CONVERSION OF PETITION TO SECTION 37 ARBITRATION APPEAL

Background of the Dispute

The case arose from a long-pending arbitration dispute between the **Union of India** and **Bhular Construction Company & Others**.

The Petitioner had filed **objections under Section 34 of the Arbitration and Conciliation Act, 1996 (ACA)** seeking to set aside an arbitral award dated **27.05.2002**. These objections were rejected by the District Judge, Agra on **25.03.2010**.

Initially, the Petitioner approached the High Court under **Article 226 of the Constitution of India**. Later, on **21.07.2022**, the Court allowed an amendment, converting the petition into one under **Article 227 of the Constitution**.

When the matter was finally taken up, the Respondents objected to the maintainability of the writ petition, arguing that the correct remedy was an **appeal under Section 37 of the ACA**, not a writ petition.

Judicial Journey and Contentions

- **Respondents' Case:**
    i. Cited *U.P. Awas Vikas Parishad v. M/s Universal Contractors and Engineers Ltd.*[17] (03.10.2024), where the

[17] 2024 SCC OnLine All 5887

Court had held that petitions under Article 227 challenging arbitral orders are not maintainable.

ii. Argued that since a **statutory appeal under Section 37** was available, the present petition could not be entertained.

iii. Stressed that the Petitioner should withdraw the writ petition and file a fresh Section 37 appeal, seeking condonation of delay under Section 5 read with Section 14 of the Limitation Act.

- **Petitioner's Case:**

i. Acknowledged that the proper remedy lay under **Section 37 ACA**.

ii. Submitted that since the writ petition had already been entertained, the Court may permit **conversion into a Section 37 appeal**.

iii. Pointed out that the jurisdiction to hear both writs and arbitration appeals vests with the High Court.

Analysis & Verdict

Justice **Manish Kumar Nigam** of the **Allahabad High Court** analyzed whether conversion was legally permissible.

The Court referred to its earlier decision in **Kailash Chandra v. Ram Naresh Gupta**[18], where it was held that conversion of a revision petition into a writ petition under Article 226/227 was permissible.

On principle, the Court observed:

- If a particular proceeding is not maintainable, but another type of

[18] 1982 All. CJ 608

proceeding lies in respect of the same matter, the Court has the jurisdiction to **convert one into the other**, subject to compliance with the law on limitation and payment of court fees.

- There was no legal bar to conversion, provided it caused no prejudice to the respondents.

Accordingly, the Court **converted the writ petition under Article 227 into an appeal under Section 37 of the ACA**.

Implications

This ruling is significant for arbitration-related litigation:

- It underscores the High Court's **flexible approach** in ensuring substantive justice over procedural rigidity.
- Litigants who mistakenly invoke writ jurisdiction, instead of the statutory remedy under Section 37, may still seek **conversion** instead of outright dismissal.
- The decision also strikes a balance between procedural discipline and fairness, while reminding litigants to carefully choose the correct statutory route.

Conclusion

The Allahabad High Court's decision in **Union of India v. Bhular Construction Company & Others (Matters under Article 227 No. 8841 of 2023)**[19] reiterates that courts are empowered to **convert non-maintainable proceedings into the correct statutory remedy**, provided such conversion does not prejudice the respondents and

[19] 2025 SCC OnLine All 5448

complies with limitation and fee requirements.

By allowing this conversion, the Court ensured that **form did not triumph over substance**, thereby strengthening the efficiency and fairness of arbitration-related adjudication in India.

IMC
Chamber of Commerce and Industry

IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

HIGH COURT OF DELHI APPOINTS ARBITRATOR UNDER MSME ACT: KEY TAKEAWAYS FROM *M/S VALLABH CORPORATION V. SMS INDIA PVT LTD*, ARB.P. 1119/2024

On 17th March 2025, the High Court of Delhi, presided over by Justice Jasmeet Singh, delivered a significant ruling in *M/s Vallabh Corporation v. SMS India Pvt Ltd* (ARB.P. 1119/2024), highlighting the interplay between the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) and the Arbitration and Conciliation Act, 1996 (Arbitration Act, 1996)[20]. The judgment reinforces the statutory framework for the resolution of disputes involving micro and small enterprises while clarifying the procedural obligations of the parties under Section 18 of the MSME Act[21].

Background

The Petitioner, M/s Vallabh Corporation, a registered Micro, Small and Medium Enterprise (MSME), entered into a Service Order dated 31/12/2018 and a Purchase Order dated 08/01/2019 with the Respondent, SMS India Pvt Ltd, for civil and associated works for the construction of a New Flash Butt Weld Engineering Workshop at Sabarmati. Both orders contained an arbitration clause (Clause 34) designating the Managing Director of the purchaser as the sole arbitrator in case of disputes[22].

Despite completion of the contracted work and issuance of a Provisional Completion Certificate on 25/03/2021, the Respondent delayed payment of outstanding dues amounting to Rs. 37,20,31,671. Attempts at amicable settlement failed, prompting the petitioner to invoke arbitration and propose five arbitrators for the respondent's selection.

[20] M/s Vallabh Corporation v SMS India Pvt Ltd, ARB.P. 1119/2024 (Delhi HC, 17 March 2025).

[21] Micro, Small and Medium Enterprises Development Act 2006, s 18

[22] ibid

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

When no response was received from the MSME Facilitation Council regarding the appointment of an arbitrator or mediation, the petitioner approached the Delhi High Court under Section 11(6) of the Arbitration Act, 1996[23].

Did you know?

India has 63 million MSMEs, contributing nearly 30% of GDP and 48% of exports.

Contentions of the Parties

Mr. Ramesh Singh, senior counsel for the Petitioner, argued that the Respondent neither disputed the arbitration clause nor questioned the arbitrability of the subject matter. He emphasized that the Petitioner had complied with the mandatory mediation process under Section 18 of the MSME Act, and the Court's intervention was justified under Section 11(6) of the Arbitration Act, as the Facilitation Council failed to act[24].

Conversely, counsel for the Respondent contended that the Petitioner, having invoked the MSME Act, was required to pursue the process before the Facilitation Council to its logical conclusion. They relied on *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*,[25] , arguing that statutory mechanisms under the MSME Act should take precedence over parallel proceedings under the Arbitration Act.

Legal Analysis

Justice Jasmeet Singh examined the statutory provisions governing the resolution of MSME disputes. Section 18 of the MSME Act empowers the Facilitation Council to conduct mediation and, upon failure, to refer the dispute to arbitration, either by itself or through a recognized arbitration institution. Section 11(6) of the Arbitration Act allows a party to approach the High Court for the appointment of an arbitrator where the agreed

[23] Arbitration and Conciliation Act 1996, s 11(6)
[24] ibid; MSME Act 2006, s 18
[25] (2023) 6 SCC 401

procedure is not followed or a designated institution fails to perform its duties.

The Court relied on Supreme Court precedents, including *Gujarat State Civil Supplies*[26] and *Silpi Industries v. Kerala SRTC*[27], to emphasize that the MSME Act, being a special statute aimed at ensuring timely payments to MSMEs, overrides the Arbitration Act to the extent of any inconsistency. However, the provisions of Section 11(6) of the Arbitration Act harmoniously operate with Section 18 of the MSME Act to fill procedural lacunae, particularly where the Facilitation Council fails to act.

Decision and Directions

The Court held that the MSME Facilitation Council failed to initiate the mediation process as required under Section 18 of the MSME Act. Accordingly, the petitioner was entitled to invoke Section 11(6) of the Arbitration Act for the appointment of an arbitrator.

Key directions issued by the Court included:

Did you know?

Globally, MSMEs face similar payment delays, over 60% of small businesses wait more than 3 months to get paid. Singapore's arbitration model allows statutory bodies to trigger arbitration, but India's MSME Councils are unique in requiring mediation first.

1. Appointment of Ms. Justice Rekha Palli (Retd.) as Sole Arbitrator.
2. Arbitration to be conducted under the aegis of the Delhi International Arbitration Centre (DIAC), with provisions of the MSME Act applicable.
3. Arbitrator's remuneration to follow DIAC Rules, 2018.

[26] (2022) 2 SCC 516 (SC)

[27] (2021) 9 SCC 727 (SC)

4. Arbitrator to furnish a declaration under Section 12 of the Arbitration Act prior to assuming office.
5. All rights and contentions of parties, including preliminary objections and claims/counterclaims, remain open for adjudication.
6. Parties directed to approach the arbitrator within two weeks.

Significance of the Judgment

This ruling underscores the legal protection afforded to MSMEs in the recovery of contractual dues. It clarifies that while the MSME Act provides a statutory mechanism for mediation and arbitration, parties are not left without recourse if the Facilitation Council fails to act. The decision also reaffirms that statutory provisions for MSMEs prevail over general arbitration law to ensure timely resolution and payment, without undermining the parties' contractual rights.

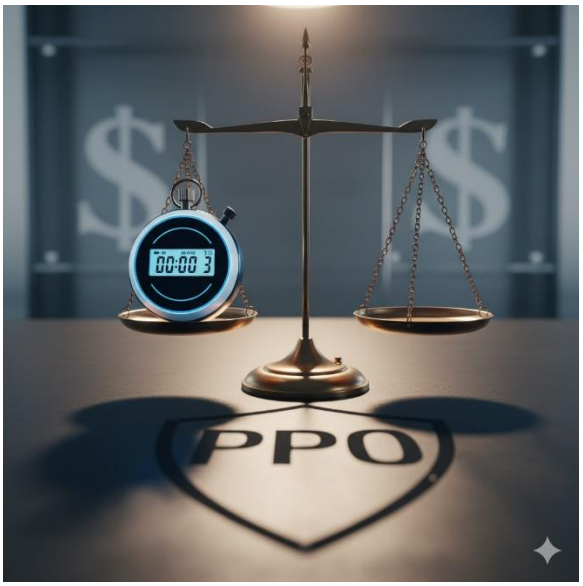
In conclusion, the judgment strengthens the enforcement of MSME rights and highlights the synergy between the MSME Act and the Arbitration Act, providing a robust legal pathway for dispute resolution in the context of MSME contracts.

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

SIAC RULES 2025 & EMERGENCY ARBITRATION:

IS INDIA READY FOR THE CHANGE?



INTRODUCTION

Emergency arbitration has emerged as one of the most dynamic developments in modern arbitral practice. With the 2025 SIAC Rules (7th edition) introducing the concept of Protective Preliminary Orders (PPOs) and tightening the timelines for emergency relief, questions arise as to how national legal systems will interact with these innovations. For India, where parties are among the largest users of SIAC, the debate has particular urgency. This article explores emergency arbitration under the SIAC Rules 2025, the Indian position, comparative perspectives from other jurisdictions, and the potential implications of the Arbitration and Conciliation (Amendment) Draft Bill 2024.

Emergency Arbitration under SIAC Rules 2025

The SIAC Rules 2025 codify a robust procedure for emergency arbitration.[28] A party may file an application for emergency relief even before filing the Notice of Arbitration. The President of SIAC must appoint an Emergency Arbitrator (EA) within 24 hours of receipt of the application. The EA, in turn, must issue an order within 24 hours of appointment, including on an ex parte basis if necessary.

[28] Singapore International Arbitration Centre, SIAC Rules 2025 (7th edn, 1 January 2025)

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

Notably, if an ex parte order is issued, the Rules require the applicant to inform the respondent within 12 hours, with a full hearing scheduled at the earliest possible date. This compressed timeframe is intended to preserve rights in truly urgent situations, while balancing concerns of fairness.

The most significant innovation is the Protective Preliminary Order (PPO). A PPO is an interim, short-lived ex parte order designed to prevent a respondent from frustrating the purpose of an emergency relief application, for example by dissipating assets before the tribunal can hear both sides.

India and Emergency Arbitration

India's journey with emergency arbitration has been shaped by the Supreme Court's decision in Amazon NV Investment Holding LLC v Future Retail Ltd[29]. The Court recognised that orders of an Emergency Arbitrator seated in India are enforceable under section 17 of the Arbitration and Conciliation Act 1996, equating such orders to those of a duly constituted arbitral tribunal. The judgment placed India among the few jurisdictions where emergency arbitration has judicial support.

However, challenges remain. Section 17 relief is only available "during the arbitral proceedings." Courts have been called upon to determine whether an emergency arbitration commenced prior to the constitution of a full tribunal falls within this scope. While Amazon adopted a pro-arbitration approach, procedural fairness and party consent remain live issues.

The introduction of PPOs compounds these questions. Indian courts have not yet ruled on the enforceability of ex parte arbitral orders, and judicial restraint may demand that

[29] Amazon NV Investment Holding LLC v Future Retail Ltd (2021) 4 SCC 714

respondents have a meaningful opportunity to be heard. Consequently, Indian parties may continue to rely heavily on section 9 (court-ordered interim relief), treating PPOs as complementary rather than a substitute.

Judicial Restraint: Consent and Procedural Fairness

Emergency arbitration represents a tension between party autonomy and due process. While arbitration is consensual, most parties do not specifically negotiate the emergency procedure; instead, they adopt institutional rules wholesale. The party consent theory thus meets a reality where emergency arbitration can impose obligations that were never explicitly contemplated.

Courts in India have shown judicial restraint in interfering with arbitral procedures, but they remain sensitive to procedural fairness. Ex parte measures, even if temporary, sit uncomfortably within this framework. The balance between urgency and fairness will likely determine how Indian courts approach PPO enforcement.

Comparative Perspectives

Singapore: SIAC's home jurisdiction has embraced emergency arbitration, and PPOs are explicitly recognised under the 2025 Rules. Singaporean courts have traditionally supported institutional innovation and are expected to uphold PPOs.

United States of America: The Federal Arbitration Act 1925 does not expressly recognise emergency arbitration, though some federal courts have enforced EA orders where the parties' agreement incorporated institutional rules. Enforcement is inconsistent across circuits.

United Kingdom: The Arbitration Act 1996 contains no statutory recognition of emergency arbitration. Relief is generally sought through the courts or through the

IMC
Chamber of Commerce and Industry
IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

LCIA Rules 2020, which provide for EA but with limited judicial backing.[30]

This comparative landscape illustrates that while SIAC is at the cutting edge, global practice is fragmented. For Indian users, enforcement risks vary significantly depending on where counterparty assets are located.

The Arbitration and Conciliation (Amendment) Draft Bill 2024

The Draft Bill[31] introduces provisions that would align Indian law more closely with SIAC practice. It suggests that an "arbitral proceeding" should expressly include emergency arbitration, thereby extending section 9 jurisdiction to cover EA proceedings. If enacted, this would give Indian courts statutory authority to enforce EA and PPO orders directly.

Critics caution, however, that creating a parallel system with both arbitral PPOs and judicial interim relief available may invite duplicative applications and forum shopping. Nonetheless, the Draft Bill signals India's pro-arbitration trajectory.

Conclusion

The SIAC Rules 2025 mark a watershed in emergency arbitration practice.[32] The compressed timelines, PPO mechanism, and streamlined procedures enhance SIAC's appeal but also raise significant enforcement questions.

For India, Amazon v Future Retail has already laid the foundation for judicial recognition of EA orders. Yet, the enforceability of ex parte PPOs remains untested. Judicial restraint, combined with the Draft Bill's proposals, may provide a

[30] Gary Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021)
[31] Arbitration and Conciliation (Amendment) Draft Bill 2024 (Ministry of Law and Justice, India)
[32] Lucy Reed, 'The SIAC 2025 Rules: A New Era of Emergency Relief' (Kluwer Arbitration Blog, 3 January 2025)

IMC
Chamber of Commerce and Industry

IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

framework that balances urgency with fairness.

Ultimately, India's readiness for the change will depend not only on legislative reform but also on the judiciary's willingness to adapt to SIAC's innovative procedures while safeguarding due process.

(*Please send in your entries to legal@imcnet.org.*)

****

Note from the editorial: Credits to all the members for encouraging and offering suggestions for this bulletin. Thank you for making this possible. Though the issue is being circulated in May 2025, we have covered recent developments from previous months.