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ABOUT CCADR

The Chanakya Centre for Alternative Dispute Resolution (CCADR) was established at Chanakya National Law University, Patna, in the year 2021, with the objective to promote academic research on themes pertaining to the resolution of disputes. Alternative Dispute Resolution is a new and emerging interdisciplinary field that is concerned with, inter-alia, the following themes: (a) the study of the causative structural factors and the subjective motives of the actors giving rise to disputes; (b) the study of the formal and informal institutions dedicated to the resolution of disputes; and (c) the study of the laws and regulations to produce fair outcomes of disputes.

THE YEAR IN REVIEW

THE OFFICIAL NEWSLETTER OF CCADR FOR ARBITRATION LAW UPDATES

GUEST EDITOR

This edition's Guest Author is R. S. Janwa, Advocate at VSP Legals, with a practice focused on white-collar criminal litigation, economic offences, and commercial disputes.

Mr. Janwa examines the evolving boundary between arbitration and criminal law, analysing whether arbitration clauses can shield parties accused of fraud and economic offences. Drawing on recent judicial developments, he argues that private dispute resolution cannot override the State's obligation to investigate and prosecute criminal conduct.

GUEST POST

WHEN THE ARBITRATION CLAUSE BECOMES A CRIME SCENE: CAN PRIVATE ADJUDICATION SHIELD A CRIMINAL?

Arbitration, at its philosophical core, is a creature of consent. Two parties, presumed to be of equal standing, agree to resolve their disputes outside the public court system before a neutral adjudicator of their own choosing. For decades, Indian courts and the legislature have worked to strengthen this mechanism, driven by the dual imperative of reducing judicial backlog and projecting India as an arbitration-friendly jurisdiction. But consent, however elegantly documented, cannot launder crime.

The question that has begun to press against the edges of India's arbitration jurisprudence is a discomfiting one: *Can a party invoke an arbitration clause to insulate itself from criminal liability, converting what is substantively a fraud or a money laundering scheme into a "contractual dispute" fit for quiet private resolution?* A recent January 2026 order on a Section 175(3) BNSS application by the Chief Judicial Magistrate at Tis Hazari Court, Delhi, in the matter of *DMI Finance Private Ltd. v. State and Ors., Ct. Case 1302/2025* answered that question with notable clarity.

By: R. S. Janwa

R. S. Janwa is an Advocate at VSP Legals, with a practice focused on white-collar criminal litigation, economic offences, and dispute resolution. He regularly advises and represents clients in matters involving the Prevention of Money Laundering Act (PMLA), the Prevention of Corruption Act (PC Act), financial frauds, and other complex criminal proceedings before various judicial forums.

His practice encompasses litigation and advisory work relating to economic offences, arbitration, and regulatory matters, with a particular emphasis on navigating intricate statutory frameworks and high-stakes disputes. In addition to courtroom advocacy, he is actively involved in legal research, drafting, and mentoring young legal professionals, contributing to the development of practical legal skills and strategic litigation approaches.

The Catalyst: DMI Finance v. State

In DMI *Finance*, the complainant, an NBFC alleged a massive ₹107.77 crore loan fraud. The accused borrowers had obtained loan facilities for a senior citizen housing project in Pune. However, instead of utilizing the funds for construction, the borrowers allegedly diverted the money to personal accounts and other business entities such as a separate motor company, simultaneously selling mortgaged properties without the mandatory No Objection Certificates. When DMI Finance approached the Economic Offences Wing ("EOW") to register an FIR, the police initially closed the complaint. Their reasoning was that the parties had already initiated arbitration proceedings before a former Supreme Court Judge.

The Magistrate Court firmly rejected this administrative closure, directing the immediate registration of an FIR under the Bharatiya Nyaya Sanhita, 2023 ("BNS") for offences akin to criminal breach of trust and cheating (Sections 316/318/336(3)/340/61 BNS). The Court observed that the allegations, deliberate suppression of material facts, falsification of records, and siphoning of public funds, went far beyond a mere contractual breach. The Court articulated a crucial legal boundary holding that *"permitting borrowers to evade criminal prosecution merely by initiating or relying upon arbitration proceedings would amount to granting immunity to economic offenders and would defeat the very object of criminal law."*

The Architecture of Arbitrability: What the Law Permits

The DMI *Finance* order is not an isolated judicial reaction but an order anchored in the evolving jurisprudence of "non-arbitrability." The Supreme Court, in landmark judgments like *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011)*, established that disputes having an *erga omnes* effect, i.e., creating or extinguishing rights against the world at large or requiring the exercise of a public law function cannot be privately arbitrated. belong to the state or the public and they cannot be surrendered to a private forum. Booz Allen recognised that arbitration is principally suited for disputes concerning *rights in personam*, whereas disputes involving *rights in rem*, i.e., rights enforceable against the world at large, ordinarily remain outside the arbitral sphere.

The modern framework governing arbitrability in India was laid down in *Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1*. The Court reiterated that a dispute is non-arbitrable when (i) it relates to actions in rem, (ii) affects third-party rights, (iii) involves sovereign or public functions of the State, or (iv) is expressly or necessarily rendered non-arbitrable by statute. Criminal offences generally fall within the third category because prosecution and punishment are sovereign functions of the State.

When a borrower siphons loan funds through a web of fabricated invoices and shell companies, it ceases to be a mere dispute about repayment. It becomes a crime against the financial system. The Supreme Court in *Avitel Post Studioz Ltd. v. HSBC PI Holdings (2020)* drew precisely this line that where the dispute involves allegations of fraud that go to the very root of the contract such as vitiating consent or constituting a criminal act, such matters are *non-arbitrable*. However, the Supreme Court's decision in *A. Ayyasamy v. A. Paramasivam (2016) 10 SCC 386* marked a shift away from the earlier assumption that every allegation of fraud excludes arbitration. The Court recognised that only serious and complex fraud involving public elements or criminality may justify refusal of reference to arbitration.

The Concealment Strategy

Understanding why sophisticated actors attempt to invoke arbitration clauses in the face of criminal allegations requires appreciating the structural advantages arbitration offers to a party with something to hide. Arbitral proceedings are strictly confidential. There is no public record, no open courtroom, and no judgment that becomes searchable. Arbitrators, often lacking the forensic investigative powers of a criminal court or the Enforcement Directorate, are constrained to civil standards of proof and civil outcomes. A party that manages to channel a fraud dispute into arbitration has, in effect, successfully de-escalated a criminal prosecution into a mere damages claim. This "concealment strategy" often involves raising the arbitration clause as an immediate objection the moment a counter-party moves toward an FIR, arguing that the dispute is purely commercial.

The Emerging Standard: Cognisability as the Watershed

So, at what point does a commercial dispute cross the threshold into criminal territory? The DMI *Finance* decision and broader case law point to a workable standard, that is, cognisability. If the conduct alleged constitutes a cognisable offence, such as criminal breach of trust, cheating, forgery, or offences under the Prevention of Money Laundering Act (PMLA), the matter triggers the state's statutory machinery. As laid down in *Lalita Kumari v. Government of Uttar Pradesh (2013)*, the registration of an FIR upon receipt of information about a cognisable offence is mandatory. The existence of an arbitration clause cannot dilute the statutory obligation of law enforcement authorities to act where information discloses a cognizable offence.

This standard provides clarity while preserving a legitimate space for arbitration in complex commercial disputes. A disagreement over inflated project costs might simply be a breach of a contractual valuation mechanism, properly suited for an arbitral tribunal. However, a deliberate, orchestrated diversion of funds to related-party shell companies crosses into the territory of the BNS and the PMLA, which involve the exercise of sovereign enforcement powers and therefore lie wholly outside the consensual framework of arbitration.

Conclusion: Private Contract Cannot Privatise Public Wrongs

The ambition to build India into a global arbitration hub is legitimate and necessary. However, that ambition requires a rigorous enforcement of the distinction between commercial disputes and criminal conduct. An arbitration ecosystem built on the premise that sufficiently well-drafted clauses can shield economic crime from public scrutiny will ultimately attract regulatory fraud rather than genuine foreign investment.

Ultimately, decisions like this do not weaken the arbitral regime but protect it. By firmly refusing to allow arbitration clauses to be weaponised as get-out-of-jail-free cards for economic offenders, the judiciary ensures that alternative dispute resolution remains a mechanism for resolving genuine commercial disagreements, rather than a sanctuary for fraud. While private parties are free to agree to arbitrate their commercial rights, they can never agree to privatise the state's sovereign obligation to prosecute a crime. When the contract becomes a crime scene, the private adjudicator must yield to the public investigator.

EDITOR BLOG

THE RIGHTFUL SUCCESSION OF CLAIMS: REAFFIRMING THE EXCLUSIVITY OF SECTION 34 FOR LEGAL REPRESENTATIVES

~ Amartya Patil

The framework of *the Arbitration and Conciliation Act, 1996* (the '**Act**') was meticulously drafted to establish a self-contained, exhaustive code for resolving commercial disputes in India. A fundamental cornerstone of this architecture is the intentional limitation of judicial intervention, designed to preserve the efficiency, party autonomy, and finality of arbitral awards. However, the intersection of arbitral finality and the substantive rights of non-signatories particularly the legal representatives of a deceased contracting party has historically presented profound jurisdictional conundrums. Litigants frequently attempt to bypass the strict statutory mechanisms and unforgiving limitation periods of the Act by invoking the revisional jurisdiction of High Courts under Article 227 of the Constitution of India or Section 115 of the Code of Civil Procedure, 1908.

In a clarifying judgment, the Supreme Court of India in *V.K. John v. S. Mukanchand Bothra and HUF (Died) Represented by LRs. & Ors. [2026 LiveLaw (SC) 398]* firmly shut the door on such parallel remedies. By harmonising the statutory definition of a legal representative with the Act's continuity provisions, the apex court reinforced the exclusivity of the arbitral process. This decision ensures the inevitable death of a signatory does not become a procedural loophole for endless litigation, thereby fortifying the pro-arbitration stance of the Indian judiciary.

The dispute in *V.K. John* stemmed from a 'Deed of Agreement for Sale' executed on April 20, 2007, between the Appellant's paternal uncle, Mr. Appu John, and Respondent No. 1, S. Mukanchand Bothra. Tragically, the uncle passed away shortly after the execution in July 2007. Years later, in 2011, the Respondent initiated arbitration against another individual, A. Philip, alleging him to be the legal representative of the deceased and claiming a violation of the sale agreement. This culminated in an *ex-parte* arbitral award in February 2011, directing the execution of the sale deed, swiftly followed by execution proceedings.

The Appellant, *V.K. John*, entered the fray claiming to be the rightful and sole surviving heir of his unmarried uncle. Relying on a preliminary decree for a 1/3rd share in the subject property obtained from a separate partition suit initiated in 1994 the Appellant sought to challenge the 2011 arbitral award. However, rather than approaching the commercial court under the Arbitration Act, he filed a Civil Revision Petition before the Madras High Court.

As a non-party who was unrepresented and unheard during the arbitral proceedings, he argued that the statutory remedy under Section 34 of the Act was unavailable to him. He posited that the arbitrator failed to inquire into the true legal heirship of the deceased, making his only viable recourse the constitutional and revisional jurisdiction of the High Court. The High Court dismissed this petition, holding that the appropriate statutory remedy lay strictly under the Arbitration Act, setting the stage for the Supreme Court to definitively settle the interplay between succession laws and arbitral challenges.

The core issue before the division bench comprising Justices Sanjay Karol and Vipul M. Pancholi addressed a persistent procedural gap in Indian arbitration: whether the appropriate remedy for legal heirs aggrieved by an arbitral award lies within the confines of Section 34 of the Act, or through a revision petition under Article 227 of the Constitution or Section 115 of the CPC. Recognizing the gravity of this legal question, the Court appointed *Amici Curiae* to assist, who highlighted the nuanced complexities of enforcing arbitral awards against successors-in-interest when binding agreements *inter se* might be contested.

The Supreme Court's analysis serves as a masterclass in purposive statutory interpretation, rooted in the principle of minimal judicial interference. The Court reiterated the foundational doctrine, echoing its holding in *Bhaven Construction v. Executive Engineer [(2022) 1 SCC 75],* that the Arbitration Act operates as a complete code in itself. The legislative use of the word 'only' in Section 34(1) which states that recourse against an arbitral award may be made *only* by an application for setting aside such award serves a dual purpose. It solidifies the enactment as an exhaustive code and lays down an exclusive procedure.

Consequently, the Court reaffirmed that judicial interference beyond the strictly enumerated scope of Section 34 must be exercised in 'exceptional rarity'. Permitting a legal heir to bypass Section 34 in favour of a constitutional remedy would unravel this statutory exclusivity, allowing parties to evade the rigorous 120-day maximum limitation period prescribed under Section 34(3).

The critical jurisprudential leap made by the Supreme Court was constructing a legislative bridge to interpret the term 'party' within Section 34 to seamlessly encompass legal representatives. To achieve this, the bench masterfully wove together three interconnected provisions of the Act.

First, the Court looked to Section 2(1)(g), which defines a 'legal representative' as a person who in law represents the estate of a deceased person. Second, it analysed Section 35, which explicitly extends the binding finality of an arbitral award not just to the immediate signatory parties, but expansively to "persons claiming under them". Third, and most crucially, the Court invoked Section 40, which expressly mandates that an arbitration agreement is *not* discharged by the death of any party thereto, remaining fully alive and enforceable by or against the legal representatives of the deceased.

By reading these provisions harmoniously, the Court logically deduced that the overriding scheme of the Arbitration Act envisions an unbroken continuity of arbitral proceedings. If the legal framework ensures the survival of the arbitration agreement (Section 40) and simultaneously enforces the resulting award against the inherited estate (Section 35), the corresponding statutory right to challenge that very award must naturally and inevitably devolve upon the legal representatives.

To hold otherwise, the Supreme Court reasoned, would create a paradoxical and highly unjust scenario. It would leave legal representatives remediless under the specialized statute governing the commercial dispute, forcing them into uncertain constitutional litigation. Simultaneously, it would leave the estate they inherited fully liable to fulfil the obligations dictated by the arbitral award. Quoting its precedent in *Ravi Prakash Goel v. Chandra Prakash Goel [(2008) 13 SCC 667],* the Court reaffirmed that legal representatives literally and legally "*step into the shoes of the deceased party for the purposes of the Act*".

Furthermore, the Court astutely called out the Appellant's attempt to approbate and reprobate. The bench observed the Appellant's inherently contradictory stance: he aggressively claimed to be the sole surviving legal heir to assert substantive property rights and inherit the estate, while simultaneously arguing for the purposes of the arbitration that he did not represent the estate, solely to avoid the strictures and stringent timelines of Section 34. The Court categorically refused to entertain this strategic duality, affirming that one cannot claim the benefits of an estate while disavowing its liabilities under the Act.
By dismissing the appeal, upholding the High Court's directive, and granting the appellant a fresh limitation period to file his grievances under Section 34, the Supreme Court effectively dismantled a common "*guerilla tactic*" in Indian arbitration.

The transition from jurisdictional ambiguity to absolute clarity achieved by the *V.K. John* judgment signifies a vital strengthening of India's Alternative Dispute Resolution architecture. By confirming that the right to challenge an arbitral award is intrinsically linked to the liability of enforcement for legal representatives, the judiciary has neutralized a significant source of procedural delay. This ruling respects the legislative intent of the 1996 Act as a comprehensive mechanism and ensures that the death of a contracting party does not become a convenient pretext for derailing commercial justice through parallel litigation.

DOMESTIC CASES

Once a seat of arbitration is designated by the parties, it acts as an exclusive jurisdiction clause that remains immutable unless altered by an express mutual agreement. *[J&K Economic Reconstruction Agency vs. Rash Builders India Private Limited, 2026 INSC 368]*

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The parties entered into a contract for executing four infrastructure road projects in Jammu & Kashmir. Following contractual disputes, the Respondent filed applications under Section 11 of the Jammu & Kashmir Arbitration and Conciliation Act, 1997 ('**Act**') for appointment of a sole arbitrator, which was later substituted by the Supreme Court ('**Court**'). By an express order passed with the consent of both parties, the newly constituted Arbitral Tribunal fixed Srinagar as the 'Seat' of arbitration and New Delhi as the 'Venue'. After the demise of the substitute arbitrator, a new arbitrator was appointed to continue the proceedings who eventually delivered the final award at New Delhi. The Appellant challenged the award and order concerning one of the Projects under Section 34 of the Act before the J&K High Court ('**HC**'). However, the High Court returned the petition for lack of territorial jurisdiction, ruling that because the physical proceedings were conducted and the award was signed at New Delhi, the courts at New Delhi alone possessed supervisory control.

The Supreme Court allowed the appeal, quashed the impugned order of HC, and restored the Section 34 petition before the HC at Srinagar. The Court reinforced the doctrinal distinction between an arbitral seat and a venue, summarizing that the seat constitutes the juridical home or center of gravity of the arbitration, establishing the curial law and vesting exclusive supervisory jurisdiction in the courts of that designated place, to the exclusion of all other courts. The venue, conversely, is a mere geographical location chosen for convenience of the parties and does not alter the seat. Relying on the foundational rulings in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552*, *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. (2017) 7 SCC 678*, and *BGS SGS SOMA JV v. NHPC Ltd. (2020) 4 SCC 234* , the Court observed that the seat of arbitration is governed by the agreement of the parties and not by any stray recital in the award, meaning thereby that the physical signing of the award in New Delhi could not override the consensus on Srinagar. Applying the 'closest and most intimate connection' test, the Court emphasized that the contracts were executed, works were carried out, and the Section 11 proceedings were initiated in Jammu & Kashmir thereby irrefutably anchoring Srinagar as the valid and definitive juridical seat. It concluded that letting the place of hearing or signing determine jurisdiction would render the concept of a juridical seat completely otiose and violate party autonomy.

Any party to an arbitration agreement, including an unsuccessful party, can invoke Section 9 of the Arbitration & Conciliation Act, 1996 for post-award interim relief. *[Home Care Retail Marts Pvt. Ltd. & Anr. vs. Haresh N. Sanghavi 2026 INSC 415]*

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The substantial question of law before the Supreme Court of India (‘**Court**’) was whether a post-award petition for interim measures under Section 9 of the Arbitration and Conciliation Act, 1996 (‘**Act**’) is maintainable by a party that lost the arbitral proceedings and holds no enforceable award. The Appellant challenged a Bombay High Court order that relied on *Dirk India Pvt. Ltd. vs. Maharashtra State Electricity Generation Co. Ltd. 2013 SCC OnLine Bom 481* to hold that post-award interim relief is strictly confined to safeguarding the ‘fruits of arbitration,’ thereby leaving an unsuccessful party remedyless. The Appellants' case rested on a literal reading of Section 9, urging that the definition of a "party" under Section 2(h) does not change based on the outcome of the dispute, especially when interim safety nets are required against a fraudulent or modifiable award. On the other hand, the Respondent argued that post-award relief must be reserved solely to protect the fruits of the award, arguing that permitting losing parties to invoke Section 9 subverts the statutory rule under Section 36(3) of the Act and encourages vexatious litigation.

The Court allowed the appeals, holding that the plain language of Section 9 is unambiguous and cannot be contextually modulated or narrowly interpreted depending upon the outcome of the arbitral proceedings, as such modulation would amount to an impermissible judicial amendment of the statute. It observed that the Indian Parliament consciously departed from Article 9 of the UNCITRAL Model Law by adding a post-award phase, purposely omitting any text restricting this right solely to award-holders. The Court declared the foundational premises of *Dirk India Pvt. Ltd. vs. Maharashtra State Electricity Generation Co. Ltd. 2013 SCC OnLine Bom 481* and its lineage, including *Nussli Switzerland Ltd. vs. Organizing Committee Commonwealth Games, 2010, 2014 SCC OnLine Del 4834* to be untenable in law, particularly since the Constitution Bench in *Gayatri Balasamy vs. ISG Novasoft Technologies Limited 2025 SCC OnLine SC 986* recognized judicial powers to modify or sever awards. While clarifying that the threshold for granting interim relief will naturally be higher for a losing party, the Court concluded that absolute exclusion violates the doctrine of separation of powers and plain statutory interpretation and overruled the earlier High Court decisions in this regard.

Modification of a patently illegal arbitral award under Article 142 of the Constitution is permissible to effect substantial justice and prevent extreme hardship in lieu of relegating parties to fresh litigation *[Bhupesh Bhayana & Anr. v. Kunal Seth & Anr., 2026 SCC OnLine SC 950]*

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The Appellants entered into a reconstruction agreement with the late father of Respondent No. 1. The builder was to reconstruct the Appellants' building, retain the second floor, and pay Rs. 64,00,000 as earnest money and compensation. Clause 7 of the agreement stipulated a penalty of Rs. 10,000 per day payable to the Appellants for delay in construction, while Clause 13 provided for forfeiture of the earnest money in the event of a breach by the builder. The builder abandoned the construction in 2011, prompting the Appellants to terminate the agreement. In the ensuing arbitration, the Arbitrator awarded the Appellants Rs. 72,00,000 under Clause 7 but refused forfeiture under Clause 13, while upholding the builder's counter-claim for construction costs. The Single Judge of the Delhi

High Court modified the penalty period, reducing the Appellants' compensation. Subsequently, the Division Bench set aside the damages awarded to the Appellants entirely, stating they had failed to adduce independent evidence of actual damages suffered. Aggrieved thereby, the appellants approached the Supreme Court (the '**Court**').

The Court disposed of the appeals, holding that the Division Bench was manifestly erroneous in denying compensation to the Appellants. The Court observed that where a contract explicitly envisions a day-to-day penalty for delayed construction, the damage is implicit, and separate evidence proving actual loss is not strictly necessary. The Court recalculated the correct penalty period up to the date of termination, entitling the Appellants to Rs. 6,30,000. Furthermore, the Court noted that the Arbitrator committed a "patent illegality" under Section 34(2A) of the Arbitration and Conciliation Act, 1996, (the '**Act**') by granting relief under Clause 7 but arbitrarily denying the forfeiture under Clause 13. However, noting that the parties had been litigating since 2012, the Court declined to set aside the award entirely. Relying upon *Gayatri Balasamy v. ISG Novasoft Technologies Limited [2025 SCC OnLine SC 986]* , the Court invoked its inherent powers under Article 142 of the Constitution to modify the arbitral award, finalizing the exact amounts owed to effect substantial justice and avoid the unnecessary delays of a fresh round of litigation.

The appropriate remedy for a legal representative aggrieved by an arbitral award lies under Section 34 of the Arbitration and Conciliation Act, 1996, and not under Article 227 of the Constitution or Section 115 of the CPC *[V.K. John v. S. Mukanchand Bothra, 2026 INSC 393]*

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The dispute arose from an agreement for sale between the appellant's late paternal uncle and the respondent. Following the uncle's death, the respondent initiated arbitration proceedings against a third party, allegedly misrepresenting him as the deceased's legal representative. The sole arbitrator passed an award directing the execution of the sale deed. The appellant, claiming to be the actual legal heir with a decreed one-third share in the subject property, discovered the proceedings only at the execution stage. Contending that he was never made a party and was thus precluded from filing under Section 34 of the Arbitration and Conciliation Act, 1996 (the '**Act**'), the appellant challenged the award through a Civil Revision Petition under Article 227 of the Constitution. The Madras High Court dismissed the petition, ruling that the appropriate statutory remedy lay under the Act. Aggrieved thereby, the appellant approached the Supreme Court (the '**Court**').

The Court dismissed the appeal and upheld the High Court's order, ruling that the Arbitration Act is a complete code and judicial interference outside the purview of Section 34 is impermissible except in exceptional rarity. Analysing Sections 2(1)(g), 35, and 40 of the Act, the Court observed that the statutory scheme ensures the continuity of arbitral proceedings upon a party's death, with the legal representatives stepping into the shoes of the deceased. Relying upon *Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited, [(2022) 1 SCC 75]* and *Ravi Prakash Goel v. Chandra Prakash Goel, [(2008) 13 SCC 667]*, the Court reasoned that if an award is legally enforceable against the legal representatives of a deceased party, the concomitant right to challenge such an award under Section 34 must naturally flow to them. The Court concluded that denying this right would render legal representatives remediless while remaining liable to fulfil the award, thereby defeating the objective of the Act. Consequently, the appellant was directed to exercise his remedies under Section 34.

A subsequent application under Section 11 of the Arbitration and Conciliation Act, 1996 is barred under the principles of Order 23 Rule 1 of the CPC where the claimant has abandoned prior arbitral proceedings on the same cause of action *[Rajiv Gaddh v. Subodh Parkash, 2026 INSC 302]*

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The parties jointly purchased land in a bank auction and subsequently executed three agreements in 2013 to resolve internal disputes, which contained an arbitration clause. The respondent invoked arbitration in 2015, and a sole arbitrator was appointed by the High Court. However, during the proceedings, the respondent ceased participation and expressly communicated his refusal to accept the arbitrator's authority. Consequently, an award was passed dismissing his claims for non-prosecution, which he then challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (the '**Act**'). Later, the Supreme Court, in an independent civil appeal filed by the original landowners, upheld the validity of the bank auction in 2021. Asserting that this 2021 judgment constituted a fresh cause of action, the respondent issued a new notice for arbitration and filed a fresh application under Section 11 of the Act. The Punjab and Haryana High Court allowed the application, holding that the issue of *res judicata* need not be examined at the Section 11 stage. Aggrieved thereby, the appellant approached the Supreme Court (the '**Court**').

The Court allowed the appeal and set aside the High Court's order, holding that the fresh Section 11 application was not maintainable. Relying upon *HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad [2024 SCC OnLine SC 3190]*, the Court reiterated that the principles of Order 23 Rule 1 of the Code of Civil Procedure, 1908, which prohibit the institution of a fresh proceeding on the same cause of action without the court's leave upon abandonment, apply to proceedings under Section 11(6) of the Act. The Court observed that the respondent's explicit communication refusing to participate in the earlier arbitration clearly constituted an abandonment of those proceedings. Furthermore, the Court rejected the respondent's contention that the 2021 Supreme Court judgment created a fresh cause of action, noting that the inter-se dispute between the present parties was never the subject matter of that civil appeal. Concluding that a litigant cannot abuse the judicial process by repeatedly filing proceedings on the same cause of action, the Court held that the subsequent application was barred by public policy.

Arbitral mandate may be extended by tacit consent and Section 33 cannot be invoked to substantively modify an arbitral award *[Gujarat Water Supply and Sewerage Board v. Saryu Plastics (P) Ltd., 2026 SCC OnLine SC 944]*

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The dispute arose out of several rate contracts awarded by the Gujarat Water Supply and Sewerage Board to Saryu Plastics Pvt. Ltd. for the supply of PVC pipes between 1998 and 2002. Following allegations of excess payments and the subsequent blacklisting of the respondent, the parties executed an arbitration agreement in 2012, prescribing a six-month mandate for the sole arbitrator. The arbitral proceedings, however, continued for over three years owing largely to repeated delays, non-appearance, and failure of the Board to file timely replies and documents. The arbitrator ultimately passed an award partly allowing the respondent's claims with simple interest for the pendente lite period and compound interest post-award. The Commercial Court rejected the Board's challenge under Section 34 of the Arbitration and Conciliation Act, 1996 (the '**Act**') and, in review proceedings, modified the award by substituting simple interest with compound interest for the pendente lite period. The High Court affirmed these orders, whereupon the Board approached the Supreme Court (the '**Court**').

Partly allowing the appeals, the Court held that although the arbitrator had unilaterally extended his mandate on several occasions, the Board had never objected to such extensions and had continued to participate in the proceedings. In the absence of any statutory requirement, prior to the introduction of Section 29A, that extension of mandate be in writing, the Board had tacitly consented to the continuance of the proceedings and was estopped from challenging the award on the ground of expiry of mandate. The Court further held that the arbitral proceedings had been conducted in accordance with the principles of natural justice, as adequate opportunities had been afforded to the Board throughout the proceedings. However, relying on *State of Arunachal Pradesh v. Damani Construction Co. and Gyan Prakash Arya v. Titan Industries Ltd.*, the Court held that Section 33 of the Act permits correction only of computational, clerical or typographical errors and cannot be employed to effect substantive modifications of an award. Accordingly, the Court set aside the Commercial Court's order substituting simple interest with compound interest and restored the award granting simple interest for the pendente lite period.

Arbitral awards can be interfered with only on limited grounds under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, and a plausible interpretation of contractual terms by an arbitral tribunal cannot be reappreciated in appeal *[M.P. Road Development Corpn. Ltd. v. Jabalpur Corridor (P) Ltd., 2026 SCC OnLine SC 1001]*

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The dispute arose from a Concession Agreement executed between Madhya Pradesh Road Development Corporation Ltd. ('**MPRDC**') and Jabalpur Corridor Pvt. Ltd. ('**JCPL**'), a Special Purpose Vehicle incorporated by a Malaysian company for developing the Jabalpur-Sagar-Damoh Road Project on a Build-Operate-Transfer basis. Owing to delays in handing over vacant possession of land and other impediments in execution of the project, MPRDC terminated the Concession Agreement in 2007. JCPL challenged the termination and initiated arbitration proceedings, claiming, inter alia, reimbursement of the value of work done and termination payments under the agreement. The Arbitral Tribunal, by a majority award, held the termination to be unlawful and granted termination payments in favour of JCPL. The District Court and the High Court subsequently refused to interfere with the award under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 (the '**Act**').

Dismissing the appeal, the Supreme Court (the '**Court**') reiterated that judicial interference with arbitral awards is strictly confined to the limited grounds specified under Sections 34 and 37 of the Act and that courts cannot act as appellate forums by reappreciating evidence or substituting the arbitral tribunal's interpretation of contractual terms. The Court held that the finding of the Arbitral Tribunal that MPRDC had unlawfully terminated the Concession Agreement had attained finality and justified invocation of the termination payment clauses. It further held that the tribunal's interpretation of the concession agreement and its conclusion that termination payments formed part of the claims raised by JCPL constituted a plausible view that did not warrant interference. The Court also rejected the belated challenge based on the applicability of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, observing that such objections could not be permitted to unsettle a concluded arbitral process. Consequently, the Court affirmed the concurrent findings of the arbitral tribunal, the District Court, and the High Court and dismissed the appeal.

INTERNATIONAL CASES

Where a mortgage agreement specifically provides that execution may be levied immediately upon default, subject only to its own dispute resolution clause, enforcement proceedings brought under that clause do not breach a separate arbitration clause in a related facility agreement *[FH Holding Moscow Ltd v. AO UniCredit Bank & Anor, [2026] EWCA Civ 468]*

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The Appellant, FH Holding Moscow Ltd ('**FHM**'), a Cypriot company operating in Russia, was the borrower under a Facility Agreement governed by English law containing an arbitration clause seated in Vienna, secured by a Mortgage Agreement ('**Agreement**') governed by Russian law over its Moscow real estate, which conferred jurisdiction on the Moscow Commercial Court. When the Respondent, AO UniCredit Bank ('**AO**'), the Security Agent, commenced foreclosure proceedings in Moscow alleging an Event of Default, Appellant contended that AO was required to first obtain an arbitral award confirming the Event of Default before levying execution, and then applied to the English court for an anti-suit injunction against AO and its Italian parent, UniCredit S.p.A. ('**SPA**'). Mr Justice Henshaw dismissed the claim, holding there was no high probability that the Moscow proceedings breached the arbitration clause, that summary judgment should be granted to SPA, and that the English court lacked jurisdiction over AO.

The Appellate Court dismissed the appeal, holding that competing dispute resolution clauses must be construed applying the principles in *BNP Paribas SA v Trattamento Rifiuti Metropolitani SpA [2019] EWCA Civ 768*, under which each clause is presumed to govern its own subject matter unless the language shows a dispute falls within both. Applying that framework, the Court agreed with Justice Henshaw that the Agreement indicates that the lenders can commence the execution procedure immediately, with any dispute about entitlement being resolved by the Moscow Commercial Court rather than by a two-stage procedure requiring an arbitration followed by proceedings in the Moscow Commercial Court. The Court further reasoned that "by interpreting 'the occurrence of any Event of Default' in the Agreement as meaning 'the determination by a Vienna arbitral tribunal that there has been an Event of Default', FHM's submission substantially negates the lenders' ability to take such steps, and declined to find the Facility Agreement's arbitration clause rendered nugatory, since disputes could still arise outside the mortgage-enforcement context warranting separate arbitration. The Court also refused FHM's application to adduce fresh expert evidence on the translation of arbitration court in the Agreement, holding that the *Ladd v Marshall* criteria were unmet and that the point, even if accepted, would not affect the outcome.

The validity of the 1899 Arbitral Award fixing the boundary between Guyana and Venezuela and the definitive settlement of the land boundary dispute between the two States are pending final adjudication on merits before the International Court of Justice *[Arbitral Award of 3 October 1899 (Guyana v. Venezuela), ICJ Case No. 2026/11 Rev.]*

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On 29 March 2018, Guyana filed an Application before the International Court of Justice (the '**Court**') against Venezuela, concerning the legal validity and binding effect of the Arbitral Award of 3 October 1899, which had fixed the boundary between the Colony of British Guiana and Venezuela, invoking jurisdiction under Article IV(2) of the 1966 Geneva Agreement. Venezuela declined to participate in the proceedings, contending that the Court manifestly lacked jurisdiction. The Court, however, affirmed its jurisdiction by judgment dated 18 December 2020, and subsequently rejected Venezuela's preliminary objection by judgment dated 6 April 2023, holding that it could adjudicate upon the merits of Guyana's claims. Separately, Venezuela announced its intention to hold a consultative referendum on the creation of a new State, "Guayana Esequiba," over the disputed territory. Guyana thereupon filed a Request for provisional measures, prompting the Court to issue an Order on 1 December 2023 directing Venezuela to refrain from taking any action that would modify the situation currently prevailing in the territory, whereby Guyana administers and exercises control over the area.

The situation escalated further when Venezuela announced its intention to hold elections in the disputed territory, which Guyana characterised as a violation of the Court's Order of 1 December 2023 and of fundamental norms of international law, prompting Guyana to file a further Request for provisional measures on 6 March 2025. In its Order of 1 May 2025, the Court concluded that the changed circumstances warranted a modification and further reaffirmed its prior directions and additionally ordered that Venezuela must refrain from conducting elections, or preparing to conduct elections, in the territory in dispute, which Guyana currently administers and over which it exercises control. The case eventually proceeded to the merits stage, with public hearings scheduled before the Court at the Peace Palace, The Hague, from 4 to 11 May 2026, wherein Guyana and Venezuela had each presented two rounds of oral arguments. The Court's eventual judgment on the merits will determine the legal validity of the 1899 Award and settle the long-standing land boundary dispute between the two States definitively.

The doctrine of forum non conveniens is not a valid ground for dismissal in proceedings to confirm a foreign arbitral award *[Blasket Renewable Investments, LLC v. Kingdom of Spain, Case No. 22-cv-02403 (APM)]*

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The Energy Charter Treaty (the '**ECT**') is a multilateral investment treaty among 53 contracting parties, including Spain and Germany, established to promote long-term cooperation in the energy field. Spain offered financial incentives to encourage investments in renewable energy production within its territory. A company named BayWa, incorporated in Germany, invested in Spain wind farms based on these financial incentives. However, after a decade, Spain removed the subsidies it had previously given as incentives. BayWa considered it as violation of Spain's commitments under the ECT and therefore, it sought arbitration with Spain before the International Centre for Settlement of Investment Disputes (the '**ICSID**') tribunal.

The ICSID tribunal determined that the tribunal had jurisdiction over the dispute and Spain had breached its obligation to BayWa under the ECT and awarded BayWa €22,006,000 with interest. In turn, Spain applied for annulment of the award before the ICSID arguing that

ICSID tribunal lacked jurisdiction to issue the award. Meanwhile, BayWa filed a petition in the U.S. D.C. for the enforcement of the award, and Spain again applied for dismissal or for stay pending its annulment application before the ICSID tribunal. Later on, BayWa assigned title to the award to Blasket, who was substituted as the petitioner in this action.

The ICSID tribunal denied Spain's application for annulment. Then, the D.C. in the enforcement petition, referred to *NextEra Energy Global Holdings B.V. v. Kingdom of Spain, 112 F.4th 1088* (D.C. Cir. 2024) and observed that federal district courts have jurisdiction under the Foreign Sovereign Immunities Act (the '**FSIA**') to enforce ICSID awards arising out of ECT arbitrations and *forum non conveniens* is not available in proceedings to confirm a foreign arbitral award. Moreover, even if Spain continues to disagree with the ICSID tribunal's jurisdictional determination, a judgment is entitled to full faith and credit, when the second court's enquiry states that such a question has been fully and fairly litigated and finally decided in the court which rendered the original judgment. Furthermore, neither the foreign sovereign compulsion doctrine nor its underlying principles of comity bar the court from enforcing the ICSID's arbitral award against Spain. For the above reason, Spain's motion to dismiss the petition or to stay the proceedings was denied.

ICSID Tribunal rejects Sanitek's claim against Armenia over the Yerevan waste management crisis. *[Sanitek S.a.r.l., Sari Haddad and Elias Doument v. The Republic of Armenia, ICSID Case No. ARB/21/17]*

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The Lebanese company 'Sanitek' was engaged in providing waste collection and sanitation services in Yerevan under a contract with Armenia. However, the Yerevan City Hall terminated its contract with Sanitek due to its improper performance of the contractual obligation resulting in creating a waste management crisis in the city. In response to this, Sanitek initiated arbitration before International Centre for Settlement of Investment Disputes (the '**ICSID**') tribunal, alleging that Armenia had violated the 'Agreement between the Government of the Republic of Armenia and the Government of the Republic of Lebanon on the Promotion and Reciprocal Protection of Investments,' and sought approximately USD 36 million in compensation.

The ICSID tribunal ruled in favour of Armenia as Sanitek had failed to fulfill its contractual obligation for waste collection in Yerevan, despite receiving payment for these services under the contract from Armenia. The tribunal observed that waste management is a critical public sector and inadequate waste management poses a risk to public health. The court determined that Armenia's decision to terminate the contract was reasonable and justified for fulfilling its public duty.

SAMVAAD

APRIL - MAY 2026

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