NOTES ON SOME OF THE RELEVANT PROVISIONS OF THE ARBITRATION AND CONCILIATION ACT, 1996 & SOME IMPORTANT CASE LAWS (DOMESTIC ARBITRATION)

BY

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FORMER CHIEF JUSTICE,

BOMBAY HIGH COURT

16th MARCH, 2026

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An arbitral award may be set aside on an application by a party defined under section 2(h) of the Arbitration and Conciliation Act, 1996 which provides that 'party' means a party to an arbitration agreement.

By 2019 Amendment, Sub-Section (ca) is inserted in Section 2(1)(c) which provides that the "arbitral institution" means an arbitral institution designated by the Supreme Court or a High Court under the Arbitration Act.

Application for setting aside an arbitral award can be filed only in the court defined under section 2(1)(e) of the Act which provides as under: -

> ***'(e) "Court" means—***
>
> ***(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;***
>
> ***(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other***

cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.'

Supreme Court in the case of ***BGS, SGS Soma JV vs. NHPC Ltd., (2020) 4 SCC 234*** considered the arbitration clause which provided that the arbitration proceedings shall be held at New Delhi/Faridabad and held that it indicates that the so-called venue is really the seat of arbitration proceedings. Proceedings were finally held at New Delhi. The awards were signed in New Delhi. Both the parties thus have chosen New Delhi as the seat of arbitration which would have exclusive jurisdiction over the arbitration proceedings. Merely because the part of cause of action had arisen at Faridabad would not be relevant. Where a seat has been chosen that would amount to an exclusive jurisdiction clause.

Supreme Court in the case of ***Hindustan Construction Company Ltd. vs. NHPC Ltd. & Ors., (2020) 4 SCC 310*** has held that parties had chosen New Delhi as seat of arbitration. Even if the application was first made to Faridabad Court, that application was made without jurisdiction. The Supreme Court transferred the petition filed under Section 34 before the Faridabad Court to the High Court at Delhi, New Delhi.

Supreme Court in the case of ***Brahmani River Pellets Limited vs. Kamachi Industries Limited, 2019 SCC Online SC 929*** has held that where the contract specifies the jurisdiction of the Court at a particular place then only such Courts will have the jurisdiction to deal with the matter and an inference be drawn that parties intended to exclude the other Courts. In that matter, it is held that since the parties had agreed that the venue of arbitration shall be at Bhubaneswar, the parties intended to exclude all other Courts. The Madras High Court did not have jurisdiction under Section 11(6) of the Arbitration Act to entertain an application for the appointment of an arbitrator.

Bombay High Court in the case of ***Prakash Askram Jain vs. State of Maharashtra 2021 SCC OnLine Bom 1254*** has held that the Court of Civil Judge, Senior Division cannot be considered to be a Court under Section 2(1)(e) so as to entertain and decide proceedings under Section 34 of the 1996 Act.

Bombay High Court in the case of ***United India Insurance Company Limited vs. Eastern Bulk Company Limited, 2019 SCCOnline Bom 1404***has held that the concept of seat of arbitration with the venue of arbitration cannot be mixed up. Learned arbitrators fixing the venue only for the purpose of conducting some of the arbitral proceedings could not be considered as seat of arbitration for the purpose of conferring jurisdiction on the Courts. There cannot be two or more seats of arbitration whereas the venue of arbitration may be more than one and may be fixed by the parties as well as the learned arbitrator considering the convenience of the learned arbitrator and the parties. The venue decided by the learned arbitrator to suit his convenience or convenience of the parties for the purpose of hearing of the arbitration proceedings cannot confer the supervisory jurisdiction of such Court within whose territorial jurisdiction such arbitral tribunal were held at the venue decided under Section 20(3) of the Arbitration Act.

WHEN DISPUTE ARISES

Supreme Court in the case of ***Mcdermott International Inc. vs. Burn Standard Co. Ltd. & Ors. (2006) 11 SCC 181*** has held that once a claim was made prior to invocation of the arbitration agreement, it became a dispute within the meaning of the provisions of the 1996 Act. It is further held that while claiming damages, the amount was not required to be quantified. Quantification of a claim is merely a matter of proof.

Bombay High Court in the case of the ***Board of Trustees, Port of Mumbai vs. Afcons Infrastructure Limited 2016 SCC Online Bom 10037*** has held that since the claimant had demanded various claims from time to time

which were not considered by the opponent or were not specifically rejected and a silence was maintained in respect thereto, the dispute/difference had arisen between the parties which were referred to the arbitration pursuant to the arbitration agreement arrived at between the parties.

Bombay High Court in the case of ***Patel Engineering Co. Limited vs. B.T. Patil & Sons Belgaum (Construction) Private Limited & Ors. 2016 SCC OnLine Bom 17*** has held that cause of action had arisen in view of notice of additional claims after the arbitral tribunal is constituted and if the arbitration agreement provides for following the procedure for appointment of an arbitral tribunal, such additional claims cannot be made directly before the arbitral tribunal in the statement of claim without following the requisite procedure for referring the dispute to the arbitration prescribed under the arbitration agreement. However, the parties can by consent refer such additional claims before the same arbitral tribunal by way of successive reference.

> **Section 4 of the Arbitration Act provides that a party who knows that any provision of Part-I from which parties may derogate or any requirement under the arbitration agreement has not been complied but still proceeds with the arbitration without stating his objection to such non-compliance without undue delay or if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.**

Bombay High Court in the case of ***The Indian Performing Right Society Ltd. vs. Entertainment Network (India) Ltd. (2016) SCCOnline Bom 589*** has held that declaration granted by the arbitral tribunal in respect of the copyright of the parties which was an action in rem and was not arbitrable. It is held that since the arbitral tribunal inherently lacked the jurisdiction to

adjudicate upon such a claim made by the claimant, it would not amount to a waiver under Section 4 of the Arbitration Act. It is held that a party even by consent cannot confer jurisdiction on the arbitral tribunal in case of action in rem which jurisdiction the arbitral tribunal did not have.

Bombay High Court in the case of ***Rajesh Pravinchandra Rajygor vs. Nitin Harjivandas Rajygor, (2015) SCC OnLine Bom 4180*** has held that filing of a statement of claim under Section 23 of the Arbitration Act is mandatory and the said requirement is not derogable. Objection not raised by the respondent about the claimant not filing of statement of claim by filing an application under Section 16 of the Arbitration Act would not amount to waiver. Such an objection can be raised for the first time in the application under Section 34. The arbitrator cannot collect evidence in the absence of one party. Such an award shows perversity and can be set aside under Section 34.

> **Section 5 of the Arbitration Act provides that notwithstanding contained in any other law for the time being in force, in matters governed by Part-I, no judicial authority shall intervene except where so provided in Part-I. Part-I provides for judicial intervention by the Court in the proceedings under Sections 8, 9, 11, 14, 15, 27, 29-A, 34, 36 and 37**.

Supreme Court in ***Narsi Creation Pvt Ltd vs. State of Uttar Pradesh 2023 SCC OnLine SC 441*** held that the provisions of the Arbitration and Conciliation Act,1996, as well as a catena of judicial pronouncements of the Supreme Court have time and again stated that the Courts normally ought not to interfere with Arbitral proceedings, especially till the time an Award is not passed.

Supreme Court in the case of ***Municipal Corporation of Greater Mumbai & Anr. vs. Pratibha Industries Limited & Ors., (2019) 3***

SCC 203 has held that the High Court has inherent powers under Article 215 of the Constitution of India to recall its order being a superior Court of record. Section 5 of the Arbitration Act is inapplicable in the absence of the arbitration agreement itself.

> **Section 7 provides as to what the arbitration agreement means. The arbitration agreement shall be in writing. The arbitration agreement is in writing if it is contained in the documents signed by the parties, exchange of letters, telex, telegrams, or other means of not be telecommunication including communication through electronic means which provide a record of the agreement or an exchange of statement of claim and defence wherein the existence of the agreement is alleged by one party and not denied by the other. If there is a reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract. Unless there is an arbitration agreement between the parties, the dispute cannot be referred to arbitration. An arbitration agreement however can be arrived at even in the pending court proceedings. If the parties have arrived at the arbitration agreement under Part-I, all rights and obligations of the parties would be governed by the provisions of the Part-I of the Arbitration & Conciliation Act, 1996.**

Supreme Court in case of ***BGM And M-RPL-JMCT(JV) Vs. Eastern Coalfields Ltd. – 2025 SCC OnLine SC 1471: 2025 INSC 874*** has held that mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement if it requires or contemplates further or fresh consent of the parties for reference to arbitration. Such clauses require the

parties to arrive at a further agreement to go to arbitration as and when disputes arise, and thus such a clause is not an arbitration agreement but an agreement to enter into an arbitration agreement in future.

Supreme Court in the case of ***Glencore International A.G. Vs. Shri Ganesh Metal & another 2025 SCC OnLine SC 1815: 2025 INSC 1036*** after adverting to the Judgment in the case of Govind Rubber Ltd. Vs. Louis Drefus Commodities Asia Pvt. Ltd. and various Judgments holding that an arbitration agreement can be inferred from the exchange of letters or other forms of communication that provide a record of agreement and merely because the contract containing arbitration clause was not signed by one party does not invalidate the agreement after considering the parties' conduct showing their acceptance of the contract terms the Supreme Court appointed an arbitrator.

Supreme Court in the case of ***M/s. Alchemist Hospitals Ltd. Vs. ICT Health Technology Services India Pvt. Ltd. 2025 SCC OnLine SC 2354: (2025) INSC 1289*** has held that where an agreement provides that the decision of an authority is not final and binding or permits a party dissatisfied with such a decision to institute a civil suit, the clause cannot be characterised as an arbitration agreement. A mere reference to the term arbitration does not satisfy the requirement u/sec.7. It presupposes an express intention that disputes or differences shall be resolved through arbitration. It was held that there was no arbitration agreement between the parties.

Supreme Court in the case of ***South Delhi Municipal Corporation of Delhi Vs. SMS Ltd. 2025 SCC OnLine SC 1138: 2025 INSC 693*** has held that drafting of arbitration clauses in commercial agreements in India leaves much to be desired. Despite arbitration being introduced as a means of ensuring speedy and effective dispute resolution, it is evident and ironic that, in certain cases, the process has been misused to further complicate and prolong the resolution of disputes. The manner in which the ambiguity is embedded in such agreements raises serious concerns. It is held that it is high time that arbitration

clauses are worded with piercing precision and clarity and that they are not couched in ambiguous phraseology. This is a responsibility and onus that every legal counsel, adviser and practitioner must shoulder most dutifully.

Supreme Court in case of ***ASF Buildtech Pvt. Ltd. Vs. Shapoorji Pallonji & Co. Pvt. Ltd. – 2025 SCC OnLine SC 1016: 2025 INSC 616*** has held that mere non-service of a notice of invocation on a party would not nullify the arbitral tribunal's jurisdiction over such party and that such party can be impleaded and arrayed in the arbitration proceedings if any claim or counter-claim is made against such party by the Claimant in the Statement of Claims or Counterclaims or by even amending the memo of parties of the putative statement of claims, counterclaims filed by it provided that such party is found to be bound by the arbitration agreement either by virtue of it being a signatory or whether such party is a non-signatory in terms of the decision of ***Cox & Kings Ltd. Vs. SAP India Pvt. Ltd. – (2023) SCC online SC 1634.***

Supreme Court in the case of ***Balaji Steel Trade Vs. Fludor Benin S.A. and others 2025 SCC OnLine SC 2517: 2025 INSC 1342*** held that the group of companies doctrine, as recognised in Indian law, is not an automatic talisman for impleading every corporate entity of a group into arbitral proceedings. Intention may be inferred from direct participation in negotiation, performance of a contract or from the role played in the overall transaction. However, a mere overlap of shareholding or the fact that entities belong to the same corporate family is not by itself sufficient. The Supreme Court referred to the Judgment in the case of Cox & Kings, where it was held that the mere fact that the two companies have common shareholders or a common Board of Directors will not constitute a sufficient ground to conclude that they are a single economic entity. The statements or representations made by the promoters or directors in their personal capacity would not bind the company. Since the companies in a group have separate legal personality, the presence of common shareholders or directors cannot lead to the conclusion that the subsidiary company will be bound by the acts of the holding company.

Supreme Court, in the case of ***Hindustan Petroleum Corporation Ltd. Vs. BCL Secure Premises Pvt. Ltd. 2025 SCC OnLine SC 2746: 2025 INSC 1401*** after referring to the Judgment of **Cox & Kings,** held that the Referral Court should be prima-facie satisfied that there exists an arbitration agreement and as to whether the non-signatory is a veritable party. Even if the Referral Court arrives at the conclusion that the non-signatory is a veritable party, the Arbitral Tribunal is not denuded of its jurisdiction to decide whether the non-signatory is indeed a party to the arbitration agreement on the basis of actual evidence and the application of legal doctrine. The question as to whether the non-signatory is bound would be for the Arbitral Tribunal to decide. The Supreme Court also adverted to the Judgment in the case of Interplay and also Ajay Madhusudan Patel Vs. Jyotindra S. Patel and others (2025) 2 SCC 147, ASF Buildtech Pvt. Ltd. Vs. Shapoorji Pallonji & Co. Pvt. Ltd. (2025) 9 SCC 76 and held that even if the Court holds that prima-facie a party is a veritable party, that will not foreclose the arbitral tribunal from concluding to the contrary after an intensive enquiry, that does not mean that where the Referral Court finds prima-facie a party is not a veritable party, still the matter is left to the Arbitral Tribunal. The Supreme Court gave an illustration that it could happen that one party having undertaken a contract from the other, may engage one or more third-parties like in that case, if there is nothing even prima-facie to show that there was any semblance of an intent to effect legal relationship between that party and the party originally granting the contract and/or to indicate that such a third party was a veritable party, such parties cannot be found to be veritable parties. It is held that copies of group emails being marked to the Petitioner or creation of an escrow account on account of the contract between the principal contractor and the Respondent to the Petition, fall far short of making out a prima facie case. The Supreme Court set aside the Judgment of the High Court allowing the application U/Sec 11 filed by a non-signatory to the arbitration agreement.

Supreme Court in the case of ***M/s. Andhra Pradesh Power Generation Corporation Ltd. Vs. M/s. Tecpro Systems Ltd. 2025 Supreme (SC)***

2063: 2025 INSC 1447 has held that the question as to whether a member of a consortium can itself invoke section 11 of the Arbitration Act will necessarily depend on an enquiry into the terms of the principal contract, as well as the consortium agreement. The Reference Court will confine its enquiry only to the prima facie satisfaction as to whether a member of a consortium qualifies as a "party" to the arbitration agreement. It is for the Arbitral Tribunal to undertake the detailed enquiry as to whether a member of the consortium is in fact a veritable party to the arbitration agreement or not.

Bombay High Court in the case of ***Sanjiv Manmohan Gupta Vs. Sai Estate Consultants Chembur Pvt. Ltd. - 2025 SCC OnLine SC 2354: (2025) INSC 1289*** has held that if parties have acted upon the invoices and there was no denial of the invoices raised by the Applicant, the clause contained in the invoice, which stipulates a reference to an arbitration, deserves to be construed as an arbitration clause. A similar view is taken by the Bombay High Court in the case of Benett Coloman & Co. Vs. MAD (India) Pvt. Ltd. – 2022 SCC Online Bom 7807. Bombay High Court appointed an Arbitrator.

Supreme Court in the case of ***Ajay Madhusudhan Patel v. Jyotindra S. Patel & Ors. 2024 SCC OnLine SC 2597*** while dealing with Section 7 has held that an Arbitration Agreement is not necessarily non-binding on a party not signatory to the Agreement. Such party though not a signatory, may have intended to be bound through its conduct or relationship with the signatory to the Agreement.

Supreme Court in case of **Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co., 2024 SCC OnLine SC 3219**, while dealing with Section 7 has held that while PSU can maintain a panel of potential Arbitrators, they cannot compel the other party to select its Arbitrator from the panel. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution of India.

Supreme Court in the case of **NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd., (2024) 7 SCC 174** while dealing with Section 7(5) has held that the dispute cannot be referred to arbitration based on the arbitration clause contained in another contract unless a specific reference was made in the main contract to incorporate the arbitration clause into the main contract.

Supreme Court in the case of ***Sushma Shivkumar Daga vs. Madhurkumar Ramkrishnaji Bajaj (2023) SCC OnLine SC 1683*** has held that whether it is a suit for cancellation of a deed or a declaration of rights arising from the deed, it would only be an action in personam and not in rem. The Court further held that a relief sought under the Specific Relief Act, 1963 is nothing but an action in personam. While dealing with the issue of Fraud, the Court held that a plea of fraud must be serious to oust the jurisdiction of an Arbitrator.

Supreme Court in the case of ***Cox and kings Ltd vs. SAP India Pvt Ltd (2023) SCC OnLine SC 1634*** held that the definition of parties under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both signatory as well as non-signatory parties. Conduct of the non-signatory parties could be an indicator of the consent to be bound by the Arbitration Agreement. The requirement of the written Arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties. It is presumed that the formal signatories to an Arbitration agreement are parties who will be bound by it. However, in exceptional cases persons or entities who have not signed or formally assented to a written Arbitration agreement or the underlying contract containing the Arbitration agreement may be held to be bound by such agreement. To determine whether a non-signatory is bound by an Arbitration agreement, the courts and tribunals apply typical principles of Contract Law and Corporate Law. It is held that in the case of group companies, there may arise a situation where a holding company completely dominates the affairs of the subsidiary company, to the extent of misusing its control, to avoid or conceal liability. In such situations, the courts apply the doctrine of “alter ego” or

piercing the corporate veil to disregard corporate separateness between the two companies and treat them as a single entity.

Supreme Court in the case of ***Lombardi Engineering Ltd vs. State of Uttarakhand (2023) SCC Online SC 1422*** on neutrality of Arbitrator while dealing with validity of Arbitration Clause empowering the Principal Secretary (Irrigation), Government of Uttarakhand to appoint an Arbitrator of his choice, observed that if circumstances exist giving rise to justifiable doubts as to the independence and impartiality of the person nominated or if other circumstances warrant appointment of an independent Arbitrator by ignoring the procedure prescribed, the Chief Justice or his designate may, for reasons to be recorded ignore the designated Arbitrator and appoint someone else.

Supreme Court in the case of ***Caravel Shipping Services Private Limited vs. Premier Sea Foods Exim Private Limited, (2019) 11 SCC 461*** considered an arbitration clause recorded in bill of lading. Under Section 7(4) of the Arbitration Act, an arbitration agreement would be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4). This would not mean that in all cases an arbitration agreement needs to be signed. The only pre-requisite is that it shall be in writing, as has been pointed out in Section 7(3).

Supreme Court in the case of ***South Delhi Municipal Corporation vs. SMS AAMW Tollways Private Limited, (2019) 11 SCC 776*** has held that agreement/clause providing for a decision of a competent officer of a party and providing for an appeal against decision of competent officer is clearly an appeal in the nature of a departmental appeal commonly provided in several department rules including service rules and cannot be construed as an arbitration agreement. No arbitrator can be appointed under such clause.

Supreme Court in case of ***Vidya Drolia and Others vs. Durga Trading Corporation, 2019 SCC Online SC 358*** has held that there is nothing in

the Transfer of Property Act to show that a dispute as to determination of a lease arising under Section 111 of Transfer of Property Act cannot be decided by arbitration. It is held that public policy requires that parties can be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special Courts constituted by the Act. The disputes arising under the Indian Trusts Act cannot be referred to arbitration.

Supreme Court in the case of ***Kerala State Electricity Board and Anr. vs. Kurien E. Kalathil & Anr., (2018) 4 SCC 793*** has held that reference of a dispute to arbitration under Section 89 of the Code of Civil Procedure, 1908 can be done only with written consent of the parties either by way of a joint memo or joint application and not by oral consent given by the counsel without written memo of instructions.

Supreme Court in the case of ***M/s. Inox Wind Ltd. vs. M/s. Thermocables Ltd. – 2018 SCC Online SC 3*** has adverted to the judgment of the Supreme Court in the case of ***M.R. Engineers and Contractors (P) Ltd. – (2009) 7 SCC 696*** and has held that a general reference to a consensual standard form is sufficient for incorporation of an arbitration clause. It is held that if the document sought to be incorporated is a bespoke contract between the same parties, the courts have accepted this as a "single contract" case where general words of incorporation will suffice, even though the other contract is not on standard terms and constitutes an entirely separate agreement.

Supreme Court in the case of ***Hema Khattar vs. Shiv Khera (2017) 7 SCC 716*** held that the arbitration clause contained in agreement would remain operative even if agreement stands terminated by mutual consent of the parties.

Supreme Court in the case of ***Union of India & Anr. vs. Premco-DKSPL (JV) & Ors. (2016) 14 SCC 651*** has held that the period prescribed in the arbitration agreement for making an application for appointment of an

arbitrator would be binding between the parties and has to be followed for making an application for appointment of an arbitrator.

Supreme Court in the case of ***Vimal Kishor Shah & Ors. vs. Jayesh Dinesh Shah & Ors. (2016) 8 SCC 788*** has held that disputes relating to trust, trustees and beneficiaries arising out of trust deed and Trust Act, 1882 are not capable of being decided by the arbitrator despite existence of arbitration agreement to that effect between the parties. Such disputes have to be decided by the Civil Court as specified under Trust Act, 1882.

Supreme Court in the case of ***Booz Allen Hamilton vs. SBI Home Finance (2011) 5 SCC 532*****,** it is held that if the subject matter of dispute is not capable of settlement by arbitration under the law for the time being in force, such award is liable to be set aside. Supreme Court has enumerated some of such non arbitrable disputes and has held that such action would be an action in rem and not in personam and are thus not arbitrable even if parties agreed to refer such dispute by consent.

(1) Disputes relating to criminal offence

(2) Matrimonial disputes

(3) Guardianship matters

(4) Insolvency and winding up matters

(5) Testamentary matters

(6) Eviction or tenancy matters

(7) Suit for enforcement of mortgage by sale of property.

(8) Intellectual Property Dispute.

Supreme Court in the case of ***Chiranjilal Shrilal Goenka (deceased) through LRs. vs. Jasjit Singh & Ors. (1993) 2 SCC 507*** has held that consent of the parties cannot confer jurisdiction nor an estoppel against statute. Jurisdiction could be conferred by statute and the Court cannot confer

jurisdiction or authority on the tribunal. It is held that a decree passed by a court without jurisdiction on the subject matter or on the grounds on which the decree is made which goes to the root to its jurisdiction or lacks inherent jurisdiction is a *quorum non-judice*. Such decree passed by such a court is a nullity and is *non-est*.

Bombay High Court in the case of ***Raymond Ltd. Vs. Miltex Apparels 2025 SCC OnLine Bom 333: 2025 BHC(OS) 2896*** has held that not only is the arbitration clause an independent agreement, but even the void nature of the agreement in which it resides would not render the arbitration agreement void. If parties to an agreement are held to have extended a contract, all terms in that agreement would stand extended sub-silentio and by necessary implication.

Bombay High Court in the case of ***Lords Inn Hotel & Resorts Vs. Pushpam Resorts LLP and others 2025 SCC OnLine Bom 447: 2025 BHC(OS)2178*** has held that the court can never rewrite a contract. It is held that only because there is a demonstrated ambiguity and how the arbitration-related provisions in the subject agreement had been drafted and executed, it would be sensible to examine whether the business efficacy test could lead to a reasonable and logical inference of whether the parties had agreed to resort to arbitration, by applying commercial common sense.

Bombay High Court in the case of ***M3Nergy SDN BHD Vs. Hindustan Petroleum Corporation Ltd. 2025 Supreme(Bom) 1657: 2025 BHC(OS)19910*** held that it can be quite the norm for commercial parties, depending primarily on the commercial and corporate culture of each party, on how to negotiate for the best bargain, and on how much to pursue a desired objective. Commercial parties push for and extract the best package of give and take to arrive at a concluded bargain. The parties had initialed the arbitration agreement. The High Court held that there was no doubt about the parties having agreed to resolve their disputes by arbitration.

Bombay High Court in the case of ***Rajasthan Co-operative Oilseed Growers Federation Ltd. Vs. B. G. Shirke Construction Technologies Pvt. Ltd. & another 2025 Supreme (Bom) 1653: 2025 BHC (AS) 46528*** followed the principles laid down in case of Cox & Kings Judgment in which it was held that in exceptional cases persons or entities who have not signed or formally assented to a written arbitration agreement or the underlying contract containing the arbitration agreement may be held to be bound by such agreement. The decisive question before the courts or tribunals is whether a non-signatory consented to be bound by the arbitration agreement. The courts and tribunals apply typical principles of contract law and corporate law.

Bombay High Court in the case of ***Shriram EPC Ltd. Vs. Parkar – Hannifin India Pvt. Ltd. (2025) Supreme 596: 2025 BHC (OS) 12656*** held that the Arbitration has jurisdiction to decide where a non-signatory is bound by the Arbitration Agreement and can implement an arbitration clause effectively. It is held that the arbitration clause must be interpreted according to the specific obligation defined within the contract, and parties cannot alter contractual terms in the absence of mutual agreement.

Bombay High Court in the case of ***Luxempire Realty Pvt. Ltd. Vs. Eminence Landmark LLP (2025) Supreme (Bom) 1692 : 2025 BHC (AS) 46143*** while dealing with an order passed by the Arbitral Tribunal impleading a non-signatory to the arbitration agreement as party to the arbitration proceedings, has held that it is not an absolute proposition in law that Writ Petitions under Article 226 and 227 cannot be entertained and interfered with the order passed by the Arbitral Tribunal when the Arbitral Tribunal is patently lacking inherent jurisdiction or passes order with patent lack of jurisdiction. It is difficult to conceive that the remedy under section 16(6) needs to be foisted as a rigid and inflexible formula quay parties who are only alien/foreign to the arbitration proceedings, so as to leave them to suffer the

whole trial of arbitration and in such circumstances the recourse to a remedy of challenging such order in proceedings of a Writ Petition under Article 226 / 227 of the constitution, be not recognised. Such a third party would deserve interference under Article 226 / 227, which is a constitutional remedy unaffected by the provisions of Section 5, Section 16(6) and Section 34 of the Arbitration Act. It is held that if the position that the rights of third parties who are non-signatories to arbitral proceedings and who are non-contesting parties, in regard to the land and property, are subjected to adjudication in any arbitral proceedings with which such third party is unconnected, it would lead to not only chaotic situation but the whole sanctity of the arbitral proceedings being completely abused and destroyed. The Bombay High Court has set aside the order passed by the Arbitral Tribunal on the ground that the non-signatory had not given any consent to be a party to the arbitral proceedings in any manner whatsoever.

Bombay High Court in the case of ***Shree Dev Shasan Jain Shwetambar Murtipujak Trust Vs. Veer Tower Co-operative Housing Ltd. and another 2026 SCC OnLine Bom 969: 2026 BHC (OS) 3835*** considered the fact that each of the flat purchasers who had entered into an individual agreement with the developer had formed a society. The Developer had entered into an agreement with the Trust. Both these documents had an arbitration agreement. It is held that the fact that the society is a collection of multiple parties having the very same arbitration agreement with the developer, would place the society in the place of a veritable party. The subject matter of the relationship between society and the developer was the development of the property. The Temple Trust was claiming through the developer against the Society, and falls into the category of a person claiming through the Developer who is a party to an arbitration agreement. Bombay High Court applied the principles laid down by the Supreme Court in the case of Cox and Kings and relied upon Section 35 of the Arbitration Act and held that the Temple Trust, as a person claiming through the Developer, would be bound by the outcome of the proceedings and accordingly appointed an Arbitral Tribunal in the application filed by the Trust and also the developer.

Bombay High Court in the case of ***BKS Galaxy Realtors LLP v. Sharp Properties 2024 SCC OnLine Bom 3514*** while dealing with Section 7 has held that by execution of the Deed of Conveyance, the Agreement for Sale comes to an end and consequently an Arbitration Agreement and the Agreement for Sale comes to an end.

The Bombay High Court in ***Kalpataru Projects International Ltd. vs. Municipal Corporation of Greater Mumbai and Another 2024 SCC OnLine Bom 66*** while dealing with an application under Section 11 and arbitration clause stating that the decision given by the committee shall be final and binding upon the parties held that the said clause did not show that the parties intended to have their disputes resolved through arbitration and thus does not constitute an arbitration agreement between the parties and accordingly dismissed the petition.

Bombay High Court in ***Ingram Micro India Pvt. Ltd. vs. Mohit Raghuram Hegde 2022 SCC OnLine Bom 1777*** has held that arbitration agreements can exist in the form of terms and conditions (T&C) mentioned on the website.

Bombay High Court in the case of ***MEP RGSL Toll Bridge Pvt. Ltd. vs. Maharashtra State Road Development Corporation Ltd. & Ors., 2020 SCC OnLine Bom 2315*** held that the parties cannot be forced to arbitrate by issuance of a writ of Court as would not only be contrary to the entire concept of the arbitration agreement under Section 7 of the Arbitration Act but would also be in the teeth of the Indian Contract Act. Section 89 of the Code of Civil Procedure does not empower the Court to force a party to the proceedings to compulsory take recourse to alternative dispute redressal mechanism in the proceedings before it in absence of there being any arbitration agreement agreed between the parties.

Bombay High Court in the case of ***Associated Construction vs. Mormugao Port Trust (2010) SCC OnLine BOM 1071*** held that a fresh Arbitration is permissible at least in the event of an Award being set aside for reasons other than on merits. Where an Award is set aside, the commencement of the Arbitration again is pursuant to and under the existing Arbitration clause in such circumstances and not based on or dependent upon a fresh Arbitration Agreement between the parties. In that matter, the entire Award had been set aside only because a part of it was found to be contrary to law.

> **Under section 8(1), a judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists. Rights and remedy of the parties in that event would be then governed by the provisions of the Arbitration and Conciliation Act, 1996. An order passed by the Judicial Authority under Section 8 refusing to refer the parties to the arbitration is now made appealable under Section 37(1)(a) w.e.f. 23rd October 2015.**

> **The judicial authority or the Court, however, may appoint an arbitrator by consent of the parties while referring the parties to arbitration under Section 8 of the Arbitration and Conciliation Act,1996. After disposal of the suit under Section 8 by referring the parties to the arbitration, all rights and remedies of the parties would be thereafter governed by the provisions of the**

Arbitration and Conciliation Act, 1996 and in accordance with the arbitration agreement arrived at between the parties. A party aggrieved by the arbitral award can challenge such an arbitral award not before the judicial authority who had passed an order under Section 8 but can file proceedings under Section 34 before the Court as defined under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996.

A proviso is added to Section 8 which provides that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

Section 8 (1) is substituted by the amendment of 2015. Under the amended Section 8 (1), a judicial authority is bound to refer the parties to arbitration if the subject matter of the dispute is subject to arbitration agreement notwithstanding any judgment, decree or order of the Supreme Court or any Court. Because of the substitution of Section 8(1) by another provision, a judicial authority has to confine its scope to the existence of a valid arbitration agreement. If the judicial authority refuses to refer the parties to the arbitration under Section 8, such an order is an appealable order under Section 37(1)(a) inserted by an amendment to Section 37 with effect from 23rd October 2015. If the parties are referred to arbitration under Section 8 of the Act by the judicial authority, such an order is not appealable under Section 37 of the Act.

The judicial authority or the Court, however, may appoint an arbitrator by consent of the parties while referring the parties to arbitration under Section 8

of the Arbitration and Conciliation Act, 1996. After disposal of the suit under Section 8 by referring the parties to the arbitration, all rights and remedies of the parties would be thereafter governed by the provisions of the Arbitration and Conciliation Act, 1996 and in accordance with the arbitration agreement arrived at between the parties. A party aggrieved by the arbitral award can challenge such an arbitral award not before the judicial authority who had passed an order under Section 8 but can file proceedings under Section 34 before the Court as defined under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996.

If the defendant does not make an application under Section 8 before the judicial authority before the date of submitting his first statement on the substance of the dispute, such a suit has to be proceeded with.

Supreme Court in the case of ***Gujarat Composite Ltd vs. A Infrastructure 2023 SCC OnLine SC 540*** held that the relevant language used in Section 8 is: "in a matter which is the subject of an Arbitration agreement". The court is required to refer the parties to Arbitration. Therefore, the suit should be in respect of "a matter" which the parties have agreed to refer to and which comes within the ambit of the Arbitration agreement. Where, however, a suit is commenced "as to a matter" which lies outside the Arbitration agreement and is also between some of the parties who are not parties to the Arbitration agreement, there is no question of application of Section 8. The words "a matter" indicate that the entire subject-matter of the suit should be subject to Arbitration agreement.

Supreme Court in the case of ***Vinod Kumar Sachdeva vs. Ashok Kumar Sachdeva 2023 SCC OnLine SC 878*** held that there were several parties to the suit who were not parties to the Agreement. There were certain non-family shareholdings. Certain reliefs were sought against a third party. In consequence, the applications filed under Section 8 of the 1996 Act were dismissed.

Supreme Court in the case of ***Tata Consultancy Services Limited vs. SK Wheels Private Limited Resolution Professional, Vishal Ghisulal Jain (2022) 2 SCC 583*** has held that the existence of a clause for referring the disputes between the parties to arbitration does not oust the jurisdiction of NCLT to exercise its residuary powers under Section 60(5)(c) to adjudicate disputes relating to the insolvency of the corporate debtor. IBC is a complete code and overrides all other laws.

Supreme Court in the case of ***Vodafone Idea Cellular Ltd. vs. Ajay Kumar Agarwal (2022) 6 SCC 496*** has held that the existence of statutory arbitration under the Indian Telegraph Act will not oust the jurisdiction of a consumer forum. The Court held that there is no compulsion for the consumer to necessarily file a complaint with the consumer forum. However, it would be open for him to file a complaint with the consumer forum notwithstanding the availability of the arbitration under the Indian Telegraph Act.

Supreme Court in the case of ***Emaar MFG Land Limited & Anr. vs. Aftab Singh 2018 SCC OnLine SC 2771*** after considering the provisions of the Consumer Protection Act, 1986 and after considering the amended Section 8 of the Arbitration Act has held that in the event a person entitled to seek an additional special remedy provided under the statute does not opt for the additional/special remedy and he is a party to an arbitration agreement, there is no inhibition in disputes being proceeded in arbitration. It is only in the case where specific/special remedies are provided for and which are opted by an aggrieved person that judicial authority can refuse to relegate the parties to the arbitration. It is held that the dispute which can be resolved under the provisions of the Consumer Protection Act, 1986 cannot be referred to arbitration under Section 8 of the Act in terms of the arbitration agreement.

Supreme Court in case of ***Ananthesh Bhakta & Ors. vs. Nayana S. Bhakta (2017) 5 SCC 185*** has construed section 8(2) providing that the

Judicial authorities shall not entertain the application or referring the disputes to arbitration unless the said application is accompanied by the original arbitration agreement or duly certified copy thereof and held that filing of the application without such original or certified copy, but bringing original arbitration agreement on record at the time when the court is considering the application shall not entail rejection of the application under section 8(2).

Supreme Court in the case of ***Greaves Cotton Limited vs. United Machinery and Appliances (2017) 2 SCC 268*** has held that merely moving an application seeking further time to file the written statement would not amount to making the first statement on the substance of the dispute. It is held that filing of an application without reply to the allegations of the plaint does not constitute the first statement on the substance of the dispute and will not amount to a waiver of the right to object to the jurisdiction of judicial authority under Section 4 of the Arbitration and Conciliation Act, 1996.

Supreme Court in the case of ***Rastriya Ispat Nigam Ltd. vs. Verma Transport Company 2006 (7) SCC 275*** has held that filing of reply to an interim injunction application would not amount to filing of first statement on the substance of dispute and thus an application under Section 8(1) of the Arbitration and Conciliation Act, 1996 in a pending suit in respect of the dispute covered by arbitration agreement can be made even after filing of reply in the interlocutory proceedings.

Supreme Court in the case of ***Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandya & Anr. - 2003 (5) SCC 531*** has held that a matter is not required to be referred to the arbitration if no application is made before the judicial authority seeking such reference. Application under Section 8 is mandatory. The judicial authority or the Court has no suo moto jurisdiction to refer the disputes between the parties to the arbitration. Application under Section 8 has to be filed before the first statement on the substance of the dispute is filed. It is held that if the subject matter of the dispute includes the subject matter of the

arbitration agreement as well as the other disputes, the Court has no power under Section 8 to bifurcate either the causes of action and/or parties and in such event, Court cannot entertain an application under Section 8.

Bombay High Court in the case of ***Capri Global Capital Vs. Divya Enterprise and others 2025 SCC OnLine Bom 3783: 2025 BHC (OS) 18363*** has held that the enforcement of a mortgage being a right in rem, the same is not arbitrable. The Plaintiff was seeking enforcement of the mortgage; the dispute involved in the suit cannot be referred to arbitration.

Bombay High Court, in the case of ***Om Swayambhu Siddhivinayak Versus Harishchandra Dinkar Gaikwad 2025 Supreme (Bom) 1670: 2025 BHC (AS) 47203*** held that the Section 8 Court must only restrict its examination to examining the subject matter of the proceedings before it and compare it with the subject matter of the arbitration agreement. If the court comes to a prima facie view that a valid arbitration agreement does not exist, the section 8 court may then proceed to deal with the proceedings before it. It is held that where there is a fraud against society at large (in rem) as opposed to fraud within the scope of implementing the contract or inducing a contract, which contract contains an arbitration clause, the issue of fraud would indeed be arbitrable.

Bombay High Court in the case of ***Villa Realcon LLP Vs. Chandrish Parbat Gothi (2025) Supreme (Bom) 1405: 2025 BHC (AS) 52791*** has held that the scope of jurisdiction of Section 8 court involves examining an existence of an arbitration agreement; comparing the subject matter of the arbitration agreement and the subject matter of the suit, taking a view as to whether the arbitration agreement covers the subject matter of the suit, and refusing to refer the dispute to arbitration only if there is a prima-facie view that the arbitration agreement does not exist. The joining of the causes of action is a material inconvenience and has the effect of exercising the right to join

separable causes of action to defeat the legislative objectives of section 8 of the Arbitration Act.

Bombay High Court in the case of ***M/s. Anacon Process Control Pvt. Ltd. vs. Gammon India Limited 2016 SCC Online Bom 10076*** has held that "referring the parties to arbitration" cannot amount to the constitution of an arbitral tribunal. Once a judicial authority under Section 8(1) of the Act refers the parties to arbitration, the suit or the other proceedings come to an end before the said judicial authority and it becomes functus officio after referring the parties to arbitration.

Whether the allegations of fraud, fabrication, malpractice etc. can be referred to arbitration: -

Bombay High Court in case of ***Nilesh Shejwal vs. Agrown Agrotech Industries Pvt. Ltd. 2024 SCC OnLine Bom 3953*** held that Disputes relating to *rights in rem* are required to be adjudicated by Courts and/or Statutory Tribunals as they are the right exercisable against the world at large and it creates a legal status. *Action in Personam* determines the rights and interest of the parties, to the subject matter of the disputes which are arbitrable.

A three Judges Bench of Supreme Court in case of ***Rashid Raza vs. Sadaf Akhtar, 2019 SCC OnLine SC 1170*** has held that no allegation of fraud would vitiate the partnership deed as a whole or in particular the arbitration clause concerned in the said partnership deed since the allegations pertain to the affairs of the partnership and siphoning of funds therefrom and not to any matter in the public domain, disputes raised between the parties were arbitrable and application under Section 11 of the Arbitration Act would be maintainable.

Supreme Court in the case of ***A. Ayyasamy Vs. A. Paramasivam & Ors. (2016) 10 SCC 386*** has held that when a case of fraud is set up and, on that

basis, a party wants to wriggle out of an arbitration agreement, strict and meticulous inquiry into allegations of fraud is needed. Hence, the Court has to pronounce upon arbitrability or non-arbitrability of disputes. Only when the Court is satisfied that allegations are of a serious and complicated nature that it would be appropriate for the Court to deal with subject matter rather than relegating parties to arbitration, then alone such an application under Section 8 should be rejected. It is held that if the allegations of fraud are so serious which make a virtual case of criminal offence or allegations of fraud are so complicated, it cannot be decided by an arbitrator, only such allegations of fraud can be decided by the Civil Court and not by the arbitral tribunal.

> **Section 9 provides for interim measures which can be granted by a Court before or during the arbitral proceedings or any time after the making of the arbitral award but before it is enforced in accordance with Section 36. Because of amendment w.e.f. 23rd October 2015, if an order of interim measures for protection is granted by a Court before the commencement of the arbitral proceedings, the arbitral proceedings shall be commenced within ninety days from the date of such order or within such further time as the Court may determine. However, once the arbitral tribunal has already been constituted, the Court shall not entertain an application under Section 9, unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.**

Supreme Court in the case of ***Regenta Hotels Pvt. Ltd. Vs. Hotel Grand Centre Point & others (2026) Supreme SC 18: 2026 INSC 32*** has held that commencement of arbitral proceedings is a statutory event defined exclusively under section 21 of the Arbitration Act, wherein the Respondent's receipt of a request to refer the dispute to arbitration sets the arbitral proceedings in motion and no judicial application i.e. whether u/section 9 or

section 11 Petition, constitutes commencement. It is held that if the rationale underlying section 9(2) of the Arbitration Act is that the arbitral proceedings shall be commenced within 90 days from the grant of interim protection, which prevents the party from abusing section 9 to obtain interim protection, without submitting to the arbitral forum and ensures that interim measures remain tied to the arbitration they are meant to support. If the commencement is to be construed from the date of filing the Petition u/section 11 of the Act, the statutory scheme insisting on expedition in commencing arbitration after the grant of interim protection u/section 9 would be rendered incoherent.

Supreme Court in the case of ***Essar House Pvt. Ltd. vs. Arcellor Nippon 2022 SCC OnLine SC 1219*** has held that the powers of the Court under Section 9 of the Arbitration and Conciliation Act, 1996 are wider than the powers exercised under the Code of Civil Procedure, 1908. Technicalities of the Code of Civil Procedure, 1908 cannot prevent the Court from securing the ends of justice.

Supreme Court in the case of ***Sanghi Industries Limited vs. Ravin Cables Ltd. & Anr. 2022 SCC OnLine SC 1329*** has held that unless and until the pre-conditions under Order XXXVIII Rule 5 of the CPC are satisfied and unless there are specific allegations with cogent material and unless prima-facie the Court is satisfied that the appellant is likely to defeat the decree/award that may be passed by the arbitrator by disposing of the properties and/or in any other manner, the Commercial Court could not have passed an order to secure the amount in dispute in the exercise of powers under Section 9 of the Arbitration Act, 1996. It is held that there were very serious disputes on the amount claimed by the rival parties, which were to be adjudicated upon in the proceedings before the arbitral tribunal.

Supreme Court in the case of ***Sepco Electric Power Construction Corporation vs. Power Mech Projects Limited 2022 SCC OnLine SC 1243*** has held that Section 9 of the Arbitration Act confers wide power on the

Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the Arbitral proceedings, during the Arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.

Supreme Court in the case of ***Arcelor Mittal Nippon Steel India Limited vs. Essar Bulk Terminal Limited 2021 SCC OnLine SC 718*** held that Section 9(3) of the Arbitration Act has two limbs. The first limb prohibits an application under Section 9(1) from being entertained once an Arbitral Tribunal has been constituted while the second limb carves out an exception to that prohibition, if the Court finds that circumstances exist, which may not render the remedy provided under Section 17 efficacious. The Court further held that there is no reason why the Court should continue to take up application for interim relief, once the Arbitral Tribunal is constituted and is in seisin of the dispute between the parties, unless there is some impediment in approaching the Arbitral Tribunal, or the interim relief sought cannot expeditiously be obtained from the Arbitral Tribunal.

Bombay High Court in case of ***Ebix Cash World Money Ltd. Vs. Ashok Kumar Goel – 2025 SCC OnLine Bom 698 : 2025 BHC (OS) 4893*** has held that if it is found that the conduct of a party is such that it lacks in bonafides or that its actions are of such nature that would result in frustration of the arbitration proceedings itself or if false contentions are raised, it may amount to such party being guilty of obstructive conduct. It is held that while deciding an application U/sec 9, the Court ought to bear in mind the fundamental principles underlying the provisions of the Code of Civil Procedure 1908 and also have the discretion to mould the relief in appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process.

Bombay High Court in case of ***Kapani Resorts Pvt. Ltd. Vs. Manmohan Kapani – 2025 SCC OnLine Bom 599: 2025 BHC (OS) 70*** while granting relief u/sec. 9 of the Arbitration Act, the Court is guided by the principles which Civil Courts ordinarily imply for considering interim relief, particularly Order 39 Rules 1 and 2 and Order 38 Rule 5 of the Code of Civil Procedure. The Court, however, is not unduly bound by their texts.

Bombay High Court in the case of ***Ambit Urbanspace Vs. Poddar Apartment Co-op. Housing Society – 2025 SCC OnLine Bom 780: 2025 BHC(OS)9775,*** has held that covenants of the Development Agreement would bind even non-cooperative members who are not signatories to the Development Agreement, and the Court can exercise powers u/sec. 9 of the Arbitration Act to direct handing over of possession of the flats to the Developer by such non-cooperative members for the purpose of demolition and construction of a new building. It is held that the occupier of a garage who has put the garage to commercial use cannot insist on allotment of any space in the redeveloped building and cannot obstruct the redevelopment process of the building. Such obstruction can be removed by the Court by appointing a Court Receiver with the power of taking over possession of the garage and handing it over to the developer for demolition and construction of a new building. It is held that the existence of any dispute inter-se between members of the society or between the member and his inductee would deter the Court from exercising powers u/sec. 9 of the Arbitration Act from ensuring that the redevelopment process continues unhindered despite the existence of such a dispute. It is held that garages cannot be independently sold to a person not occupying any flat/shop/unit in the building.

Bombay High Court in the case of ***Borivali Vs. Gorai Road MHB Co-operative Housing Society Association and another – 2025 supreme (Bom)1109: 2025 BHC(OS) 12694*** relation to disputes over the governance of the society and not in relation to disputes about contracts

executed by the Society. It is held that it is trite law in the context of redevelopment contracts that a potential for a likely dispute is adequate to invoke the jurisdiction of the Section 9 Court. Even in the absence of imminent dispute, reliefs u/sec. 9 are sought and are granted in a manner that resolves the disputes altogether without having to proceed to arbitration. This is a proposition that is hardly alien to parties involved in redevelopment litigation.

Bombay High Court in the case of ***Pranav Constructions Ltd. Vs. Priyadarshan Co-operative Housing Society Ltd. 2025 Supreme (Bom) 1092: 2025 BHC (OS) 10901*** held that covenants of development agreement would bind even non-cooperative members who are not signatories thereto and court can exercise power u/section 9 of the Arbitration Act to direct handing over of possession of the flats to the developer by such non-cooperative members for the purpose of demolition of construction of new building. The High Court exercised the powers u/section 9 against the person occupying premises in the society's building but not a member thereof. It is held that merely because an individual member has some grievances against the society in respect of either appointment of developer or implementation of redevelopment process or grant of additional area, the same needs to be resolved outside the framework of section 9 of the Arbitration Act and can be agitated either in the disputes filed u/section 91 of the Maharashtra Cooperative Societies Act if they touch upon the business of the society or in the alternative, members can file civil suit in respect of their grievances quay the decisions adopted by the society, if they do not touch upon the business of the society.

Bombay High Court in the case of ***Wonderchef Home Appliances Pvt. Ltd. v. Shree Swaminarayan Pty Ltd.*****, 2025 Supreme (Bom) 228: 2025 BHC (OS) 1340,** held that it is not easy for a Court to prohibit a party from expressing itself about its grievances about the product acquired in the course of commerce, since the factors to be borne in mind when considering the request for a gag order, is to see if such expression is truthful and warranted. However, considering the clause in the agreement, providing that the Respondent shall conduct the business in a manner that reflects favourably at

all times on the products of the Petitioner and the reputation of the Petitioner, the Bombay High Court held that reliefs under Section 9 are capable of being granted within the contours of the jurisdiction of Section 9 of the Arbitration Act.

Bombay High Court in case of ***Gulshan Townplanners LLP v. Gulshan Coop. Housing Society Ltd., 2024 SCC OnLine Bom 3111*** while dealing with a petition under Section 9 of the Arbitration and Conciliation Act, 1996 held that there had been no arbitration agreement between the developer and the non-member occupant, the petition filed by the developer against such non-member occupant was not a party to the Agreement, the petition under Section 9 of the Arbitration and Conciliation Act, 1996 was not maintainable.

Bombay High Court in ***Chetan Iron LLP vs. NRC Ltd. (2022) SCC OnLine Bom 159*** has held that the court exercising powers under Section 9 of the Act cannot direct the specific performance of a determinable contract. Further, the principles contained in Section 14(d) r/w Section 41(e) of the Specific Relief Act are applicable even when a court is considering an application u/s 9 of the Arbitration Act, 1996.

Division bench of Bombay High Court in ***Valentine Maritime Ltd. vs. Kreuz Subsea Pte Limited and Another*** **2021 SCC OnLine BOM 75** has held that third parties who want to seek any Interim Measures under Section 9 would not be entitled to invoke the said provision for seeking Interim Measures against a party to Arbitration. However, there is no bar against the Court from granting Interim Measures under Section 9 of the Arbitration Act against a party, who is not a party to the Arbitration Agreement, if those reliefs fall under any of the reliefs provided in Section 9 (1) (I)(ii) (a) 9 (e) of the Arbitration Act. It is held that where the Court is of the view that there is practically no defence to the payability of the amount and where it is in the interest of justice to secure the amount, which forms part of the subject matter of the proposed Arbitration reference, even if no case strictly within the letter of Order 38 Rule 1 or 2 is

made out, though there are serious allegations concerning such case, it is certainly within power of court to order a suitable Interim Measure of protection. It is held that the power of the court under Section 9(i)(II)(b) can be exercised not only in the hands of the parties to the Arbitration Agreement but also in the hands of a third party who has to admittedly pay any amount to the party by directing the said third party to deposit the amount on behalf of the party to Arbitration Agreement in Court or by way of an injunction against such third party not to part with that amount in favour of the party to the Arbitration Agreement.

Bombay High Court in ***Jagdish Ahuja vs. Cupino Ltd. 2020 SCC OnLine Bom 849*** has held that as far as Section 9 is concerned, it can be said that High Court, while considering a relief thereunder, is strictly not bound by the provisions of Order 38 Rule 5. The scope of Section 9 of the Act is very broad; the court has a discretion to grant thereunder a wide range of interim measures of protection "as may appear to the court to be just and convenient", though such discretion has to be exercised judiciously and not arbitrarily. The court is, no doubt, guided by the principles which civil courts ordinarily employ for considering interim relief, particularly, Order 39 Rules 1 and 2 and Order 38 Rule 5; the court, however, is not unduly bound by their texts.

Bombay High Court in the case of ***Welspun Infrateck Ltd. vs. Ashok Khurana 2014 SCC OnLine Bom 39*** held that the parties not parties to the arbitration agreement can still be impleaded in an application under section 9 if they are likely to be affected by the reliefs claimed in the application under section 9.

Bombay High Court held in the case of ***Rameshkumar N. Chordiya vs. Principal District Judge 2013 SCC OnLine Bom 1426*** that the application for stay of the arbitration proceedings not maintainable under section 9 of the Arbitration Act read with section 151 of the Code of Civil Procedure.

Bombay High Court in case of ***Tata Capital Financial Services Limited vs. Deccan Chronicles Holdings Ltd. 2013 SCC OnLine Bom 2334*** has held that the Court can grant interim measures under section 9 (2) (b), (d) and (e) even if the properties or things are not the subject matter of the dispute in arbitration. It is held under Order XXXIV Rule 14 of the Code of Civil Procedure, 1908 that there is no bar in filing a money claim even by the mortgagee notwithstanding contained under Order II Rule 2 of the Code of Civil Procedure. It is for the claimant to decide whether to file a money claim before the Arbitral Tribunal and file a separate suit for enforcement of the mortgage after complying with the provisions of Order II Rule 2 of the Code of Civil Procedure. Proceedings under section 9 for interim measures cannot be equated with the proceedings filed in a pending suit for referring the parties to arbitration under section 8 of the Arbitration & Conciliation Act, 1996.

The Bombay High Court held in the case of ***Spice Digital Ltd. vs. Vistaas Digital Media Pvt. Ltd., 2012 SCC OnLine Bom 1536*** held that no injunction can be granted under section 9 if the specific relief cannot be granted in terms of section 41(e) of the Specific Relief Act. The contract which is determinable cannot be specifically enforced.

Whether the Court can grant interim measures under Section 9 though the claim is rejected by the Arbitral Tribunal: -

Bombay High Court in Wind World (India) Ltd. vs. Enercon GmbH and Others 2017 SCC OnLine Bom 1147 relied on the judgment of ***Dirk India Private Limited vs. Maharashtra State Electricity Generation Company Limited 2013(7) Bom. C.R. 493*** and were of the same opinion that even if a petition under Section 34 filed by an unsuccessful party is allowed, at highest, the impugned Award can be set aside. The Court dealing with a petition under Section 34 is not capable of granting any further relief to the

party that challenges the Award. If an application is made at the instance of such an unsuccessful party under section 9, there will not be any occasion to grant any interim measure which will be in the aid of the execution of the arbitral Award as such a party will not be entitled to seek enforcement under Section 36.

Division Bench of the Bombay High Court in the case of ***Dirk India Private Limited vs. Maharashtra State Electricity Generation Company Limited 2013(7) Bom. C.R. 493*** has held that the interim measures or protection within the meaning of section 9 (ii) is intended to protect through measure, fruits of the successful conclusion of the arbitral proceedings and the party whose claim has been rejected in the courts of the arbitral proceedings cannot have an arbitral award enforced per Section 36.

Whether interim measures under section 9 can be granted if a document required to be stamped is not stamped

Seven Judges Bench of the Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1*** judgement held that while overruling decisions in ***N.N.Global Mercantile Pvt. Ltd vs. Indo Unique Flame Ltd (2023) SCC OnLine*** **SC 495** and ***SMS Tea Estates Pvt. Ltd. vs. Chandmari Tea Co. Pvt. Ltd. (2011) 14 SCC 66*** and ***Garware Wall Ropes vs. Coastal Marine Construction and Engineering ltd. (2019) SCC OnLine SC 515*** to the extent of Paragraph 22 and 29 held that the agreements which are not stamped or are inadequately stamped are inadmissible in evidence under **Section 35 of the Stamp Act,1899**. Such agreements are not rendered void or void ab initio or unenforceable. Non-stamping or inadequate stamping is a curable defect. An objection as to stamping does not fall for determination under Section 8 or 11 of the Arbitration Act. The concerned court must examine whether the Arbitration agreement prima facie exists. Any

objections in relation to the stamping of the agreement fall within the ambit of the Arbitral tribunal.

Full Bench of the Bombay High Court in the case of ***Gautam Landscapes Private Limited vs. Shailesh S. Shah & Anr., 2019 SCC Online Bom 563*** has held that the Court under the Arbitration and Conciliation Act can entertain and grant any interim or ad-interim relief on an application under Section 9 when an arbitration agreement is contained in a document, i.e. unstamped or insufficiently stamped.

SCHEDULE IV

Supreme Court in ***Oil and Natural Gas Corporation Limited vs. Afcons Gunanusa JV 2022 SCC OnLine SC 1122*** has held that arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their fees. The term 'sum in dispute' in the Fourth Schedule of the Arbitration Act refers to the sum in dispute in claim and counter-claim separately, and not cumulatively. The ceiling of Rs.30,00,000/- in the entry at Serial No.6 of the Fourth Schedule applies to the sum of the base amount (of Rs.19,87,500) and the variable amount over and above it. Consequently, the highest fees payable shall be Rs.30,00,000/-. The ceiling applies to each arbitrator and not the arbitral tribunal as a whole, where it consists of three or more arbitrators.

Supreme Court in the case of ***National Highways Authority of India vs. Gayatri Jhansi Roadways Limited, 2019 SCC Online SC 906*** has held that parties having agreed to pay fees of the Arbitral Tribunal under an agreement, Arbitral Tribunal would be entitled to charge their fees under the said agreement and not under the Fourth Schedule to the Arbitration Act. The Supreme Court upheld the order passed by the Delhi High Court holding that the change in language of Section 31(8) read with Section 31A, which deals only with the costs generally and not with arbitrator's fees. Arbitrator's fees may be

a component of costs to be paid but it is a far cry thereafter to state that Sections 31(8) and 31A would directly govern contracts in which a fee structure has already been laid down.

Section 10 provides that the parties are free to determine the number of arbitrators, provided that such number shall not be an even number, failing which the arbitral tribunal shall consist of a sole arbitrator.

Section 11 provides that if a party does not appoint an arbitrator within 30 days from the date of receipt of a request to do so, the other party may apply for appointment of an arbitrator by filing an application under section 11(6). Even if two arbitrators nominated by the parties do not appoint a presiding officer, an application can be made to the Court for the appointment of the presiding arbitrator.

By 2019 Amendment, Sub-Section (3-A) is inserted in Section 11 which provides that the Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under Section 43-I for the purposes of the Arbitration Act. It is however, subject to proviso, that in respect of those High Court jurisdiction, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to

such fee at the rate as specified in the Fourth Schedule. It further provides that High Court may, from time to time, review the panel of arbitrators.

By 2019 Amendment, Sub-Section (4) of Section 11, the words for the portion beginning with "the appointment shall be made" and ending with "designated by such Court" are substituted as "the appointment has to be made by the arbitral institution designated by the Supreme Court, in the case of international commercial arbitration, or by the High Court, in the case of arbitrations other than international commercial arbitration, as the case may be, on an application of the party.

In view of amendment to Section 11 by insertion of Sub-section (6-A), the powers of the Court while appointment of arbitrators is confined to the examination of the existence of an arbitration agreement notwithstanding any judgment, decree or order of any Court. Even if powers of any person or institution designated by the Supreme Court or High Court under Section 11 to appoint arbitrators shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court. The order passed by the Supreme Court or the High Court or person or institution designated by such Court is final. No appeal including Letters Patent Appeal shall lie against such decision. The proceedings however under Article 136 of the Constitution of India can be filed. Under Section 11(8), the Court or the person or institution designated by such Court has to seek a disclosure in writing from the prospective arbitrator before appointing arbitrators

having due regard to any qualifications required for the arbitrator by the agreement of the parties and the contents of the disclosure and other considerations which are likely to secure the appointment of an independent and impartial arbitrator.

By 2019 Amendment, it is provided that sub-Section (6-A) and Sub-Section (7) and Sub-Section (10) shall be omitted. In Sub-Section (8) of Section 11, the words "The Supreme Court or, as the case may be, the High Court or the person or institution designated by such court," the words, brackets and figures "The arbitral institution referred to in Sub-Sections (4), (5) and (6)" shall be substituted. Under Section 11(11) to 11(14), where more than one request has been made to different arbitral institutions, the arbitral institution to which the request has been first made shall be competent to appoint the arbitrator.

In view of the amendment to Section 11(6) and 11 (6-A) of the Arbitration and Conciliation Act, 1996, since a request for appointment of arbitrator/s has to be made before the Supreme Court or as the case may be, the High Court or any person or institution designated by such Court, those proceedings which are for appointment of arbitrator/s before the Supreme Court or the High Court, the orders passed by the Supreme Court or the High Court, as the case may be, would have precedential value.

If the arbitration clause entered into between the parties refers to a particular rules of arbitration providing for a

particular method or procedure for reference to the arbitration, the parties will have to follow such method or procedure for reference to the arbitration and if in spite of such procedure having been followed, the arbitral tribunal is not appointed, the application under Section 11(6) and 11(9) can be made before the High Court or the Supreme Court as the case may be, or any person or institution designated by such Court.

By 2019 Amendment to Section 11(12), it is provided that where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (3-A).

Under Section 11(13), an application for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavor shall be made to dispose of the matter within sixty days from the date of service of notice on the opposite party.

Under Section 11(14), the Bombay High Court has framed Rules in the year 2018 determining the fees of the Arbitrators after considering the rates specified in the Fourth Schedule. Section 11 is amended by The Arbitration and Conciliation (Amendment) Act, 2019. These rules are partly amended in 2023.

Sub-rule (2) of Rule 2 of the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 shall be substituted as: — (2) "Where the dispute includes both a claim and a counter-claim, to compute the fees of Arbitral Tribunal, the 'Sum in dispute' shall be the sum in dispute in the claim and each counter-claim filed separately."

After the sub-rule (2) of the Rule 2 of the Principal Rules as substituted, sub-rules (3) and (4) be added as follows:

"(3) The Arbitral Tribunal will be entitled to charge fees separately for the claim and separately for each counter-claim filed.

(4) Further, when the Schedule is made applicable to arbitration, the fees ceiling contained in the Schedule will apply separately to the claim and separately to each counter-claim filed."

In the Schedule appended to the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018, the existing entry "above Rs.20,00,000 and above Rs.1,00,00,000" be substituted with "above Rs.20,00,000 and up to Rs.1,00,00,000".

Under Section 43B the Central Government is empowered to establish a Council to be known as the Arbitration Council of India to perform the duties and functions under the Act. Such Council shall be a body corporate and shall have perpetual succession and a common seal with power, subject to the provisions of the Act. The Council shall consist of various members. A person who has been a Judge of Supreme Court or Chief Justice of High Court or a Judge of High

Court or an eminent person having special knowledge and experience in the conduct or administration of arbitration to be appointed by the Central Government in consultation with the Chief Justice of India, would be Chairperson of the said Council.

The Council is empowered to make grading of the arbitration institution defined under Section 2(ca), which means an arbitral institution designated by the Supreme Court or a High Court under the Arbitration Act. Under Section 11(3), the Supreme Court and the High Court have the power to designate, arbitration institutions from time to time, which have been graded by the Council under Section 43(i) of the Arbitration Act. It is provided that where no graded arbitration institutions are available then the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of the arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the said Section. The arbitrator appointed by the party shall be entitled to such fee at the rate specified in the Fourth Schedule.

Section 11(4) provides that the appointment shall be made on an application of the party by the arbitral institution designated by the Supreme Court in case of International Commercial Arbitration or by the High Court in case of an Arbitration other than International Commercial Arbitration as the case may be. Section 11(6A) and 11(7) are deleted. No notification however has been issued so far.

Such an arbitration institution has to dispose of an application for the appointment of an arbitrator within 30 days from the date of service of notice on the opposite party. The arbitration institution shall determine the fees of the Arbitral Tribunal and the manner of its payment to the Arbitral Tribunal, subject to the rates specified in the Fourth Schedule. Section 11(11) to (14) does not apply to International Commercial Arbitration and in Arbitration (other

than International Commercial Arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.

Supreme Court in case of ***Kamal Gupta & Another Vs. L. R. Builders Pvt. Ltd. 2025 SCC OnLine SC 1691: 2025 INSC 975*** has held that once it is clear that the arbitral award would not bind non-parties to the agreement, as such parties were not signatories to the said document, there would be no legal basis whatsoever to permit a non-signatory to the agreement to remain present in the proceedings before the sole arbitrator. When the arbitration proceedings can take place only between the parties, the arbitration agreement and section 35 of the Arbitration Act do not make the arbitral award binding on non-signatories to such agreement; no legal right is conferred by the Act that would enable a non-party to the agreement to remain present in arbitration proceedings between the signatories to the agreement. A non-signatory to the agreement would be a stranger to such arbitration proceedings. The remedy, if any, to a party who is not a signatory to the agreement is available u/sec. 36 of the Arbitration Act, if such an award is sought to be enforced against him.

Supreme Court in the case of the ***Managing Director, Bihar Food & Civil Supplies Corporation Ltd. Vs. Sanjay Kumar – (2025) supreme SC 1157: 2025 INSC 933*** has held that the court exercising jurisdiction u/sec. 11(6) and Section 8 must follow the mandate of sub-section 6(A), and their scrutiny must be confined to the examination of the existence of the arbitration agreement. The Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of the arbitration agreement. The Referral Court is not the appropriate forum to conduct a mini trial by allowing the parties to adduce in regard to the existence or validity of the arbitration agreement. It is held that mere invocation of criminal proceedings does not preclude arbitration unless allegations affect the fundamental integrity of the arbitration agreement.

Supreme Court in the case of ***Office for Alternative Architecture Vs. Ircon Infrastructure & Services Ltd. (2025) Supreme SC 807: 2025 INSC 665*** has held that in view of Sec. 11(6)(a) of the Arbitration Act, while considering an application u/sec. 11(4), (5) or (6), the Supreme Court or the High Court, as the case may be, shall, notwithstanding any judgment, decree or order of any court, confine its examination to the existence of an arbitration agreement. It is held that the High Court was not correct in bifurcating the claims into arbitrable and non-arbitrable parts despite having found that an arbitration agreement existed between the parties. The High Court ought to have left it open to the parties to raise the issue of non-arbitrability of certain claims before the Arbitral Tribunal, which, if raised, could be considered and decided by the Arbitral Tribunal.

Supreme Court in case of ***Disortho S.A.S. Vs. Meril Lifesciences Pvt. Ltd. 2025 SCC OnLine SC 570: 2025 INSC 352*** has held that the matters such as filling vacancies on arbitral tribunals and the removal of an arbitrator through the exercise of supervisory jurisdiction, in the absence of a clear mechanism within the arbitration agreement, should be normally governed by the law applicable to the arbitration agreement itself, rather than by the procedural rules that govern the arbitration process. The lex arbitri, the law governing the arbitration agreement and the performance of the agreement and its associated processes. Supreme Court referred to the Judgment in the case of Sulamérica Cia Nacional De Seguros S.A. and Others v. Enesa Engenharia S.A. and others (2012) EWCA CIV 636, laying down various principles governing the determination of law applicable to the arbitration agreement. It is held that mere choice of 'place' is not sufficient, in the absence of other relevant factors, to override the presumption in favour of lex contractus. The parties have not explicitly chosen the seat of arbitration. The Supreme Court held that the parties had impliedly agreed that Indian law governed the arbitration agreement, and the controversy could be resolved accordingly.

Supreme Court in the case of ***M/s. Citicorp Finance India Ltd. Vs. Snehasis Nanda 2025 SCC OnLine SC 594: 2025 INSC 371*** while

construing section 2(1)(d) of the Consumer Protection Act and also Judgment of the Supreme Court in the case of Emaar NGF Land Ltd. Vs. Aftab Singh (2019) 12 SCC 751 and in the case of M. Hemlatha Devi Vs. B. Udyasri (2024) 4 SCC 255 held that even in a consumer dispute under the Consumer Protection Act, or for that matter, the Consumer Protection Act, 2019, arbitration, if provided for, under the relevant agreement/document, can be opted for / resorted to, however, at the exclusive choice of the 'consumer' alone.

Supreme Court in the case of ***Hindustan Construction Co. Vs. Bihar Rajya Pul Nirman Nigam Ltd. & others 2025 SCC OnLine SC 2578: 2025 INSC 1365*** has held that once an arbitrator is appointed, the arbitral process must proceed unhindered. There is no statutory provision for review or appeal from an order u/sec. 11, which reflects a conscious legislative choice. While High Courts, as courts of record, do possess a limited power of review, such power is extremely subscribed in matters governed by the Arbitration Act. It may exercise only to correct an error apparent on the face of the record or to address a material fact that was overlooked. It cannot be used to revisit findings of law or reappreciate issues already decided. It is held that when both parties jointly seek an extension u/sec. 29A (5), they signify continued consent and confidence in the Tribunal. The court, in its discretion extend the mandate with or without substituting the arbitrator. Once the High Court has accepted the existence of a valid arbitration agreement and appointed an Arbitrator, its later interference on the same question of validity of the arbitration agreement amounted to an appeal disguised as supervisory review. If the Arbitrator had become unable to act owing to recusal or disqualification, the proper course was to invoke Section 15(2) and appoint a substitute arbitrator to continue from the existing stage of the proceedings. Restarting the arbitral process de novo would be both inequitable and inefficient. The progress already made shall be preserved.

Supreme Court in the case of ***Bank of India Vs. M/s. Sri Nangli Rice Mills Pvt. Ltd. And others 2025 SCC OnLine SC 1229: 2025 INSC 765*** have held that sec. 11 r/w sec. 2(f) of the Securitisation & Reconstruction of Financial

Assets & Enforcement of Security Interest Act, 2002 does not apply to disputes where one bank or financial institution is a borrower. Sec. 2(f) of the SARFAESI Act includes entities receiving financial assistance by creating a security interest. It is held that sec. 11 of the SARFAESI Act creates a legal fiction by using the word "as if," which presumes the existence of an arbitration agreement among the designated parties, viz., the bank or financial institution or asset reconstruction company or qualified buyer. This provision negates the requirement for a formal written arbitration agreement as it assumes consent for arbitration or conciliation concerning disputes related to securitisation, reconstruction or non-payment of an amount due, including interest. Section 11 of the SARFAESI Act exists independently of a formal arbitration agreement.

Supreme Court in the case of ***Arabian Exports Pvt. Ltd. Vs. National Insurance Co. Ltd.2025 SCC OnLine SC 1034: 2025 INSC 630*** adverted to various Judgments of the Supreme Court and held that at the stage of Sec. 11 application, a dispute challenging the validity of a full and final settlement on the ground of coercion, fraud or undue influence remains arbitrable. The execution of a discharge voucher does not preclude arbitration if coercion is alleged. U/sec. 16 of the Arbitration & Conciliation Act, the Arbitral Tribunal is competent to determine its jurisdiction over such disputes. The arbitrability cannot be conclusively determined at the section 8 or 11 stage unless the dispute is manifestly non-arbitrable. Economic duress is a valid ground for challenging the settlement. The courts should not deny arbitration based on preliminary assessments of coercion at the stage of Sec 11(6). It is held that these issues are clearly within the domain of the arbitral tribunal.

Supreme Court in the case of ***Rajia Begum Vs. Barnali Mukherjee (2026) supreme SC 116 : 2026 INSC 106*** has held that when an allegation of fraud is made with regard to arbitration agreement itself, such a dispute is generally recognized as a dispute, which is in the realm of non-arbitrability and the court will examine it, as a jurisdictional issue only to interfere whether the dispute has become non-arbitrable due to one or the other reason. While findings in section 9 proceedings are undoubtedly prima facie in nature, such

findings, when they attain finality, cannot be ignored in subsequent proceedings founded on the very same issue. It is held that the dispute relating to a document involved serious allegations going to the root of the arbitration agreement itself and is not amenable to arbitration at this stage. The Supreme Court has set aside the order passed by the High Court exercising jurisdiction under Article 227 of the Constitution of India, directing reference of the dispute to arbitration, particularly when the very existence of the arbitration agreement was under serious doubt.

Supreme Court in the case of ***Motilal Oswal Financial Services Ltd. Vs. Santosh Cordeiro and another (2026) Supreme SC 7: 2026 INSC 5*** held that in proceedings u/section 11 of the Arbitration Act, the Court is to confine the examination to the existence of an arbitration agreement in view of section 11(6-A), which provision, though omitted by Act 33 of 2019, the omission has not yet been notified. After construing section 28 of the Act, it is held that when two or more persons agree to refer the matter to arbitration, Section 28 will not render that agreement invalid.

Supreme Court in the case of ***M/s. Eminent Colonizers Pvt. Ltd. Versus Rajasthan Housing Board and others (2026) Supreme SC 126: 2026 INSC 116*** has held that there is a clear conceptual distinction between precedent and res-judicata. A decision between two parties that sets out a principle of law will operate as a precedent for disputes between other parties, too. The precedent operates in rem. A res judicata operates in personam between the same parties either in the later stage of the same litigation between them or in different litigation between them. The order of appointing the arbitrator, read with the law laid down in SBP & Co. Vs. Patel Engineering Ltd. (2005) 8 SCC 618, clearly operates as a res-judicata, insofar as the existence of validity of the arbitration agreement between the parties is concerned.

Supreme Court in the case of ***Alan Mervyn Arthur Stephenson Vs. J. Xavier Jayrajan (2025) Supreme SC 1811: 2025 INSC 1228*** has held

that if the claims are barred by limitation on the date of the arbitration notice itself, an arbitration petition seeking appointment of an arbitrator cannot be entertained.

Supreme Court in the case of ***Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd., (2025) 1 SCC 502*** while dealing with Section 11 (6) of the Arbitration and Conciliation Act, 1996 has held that the referral court must only conduct a limited enquiry to examine whether the 11(6) application has been filed within the limitation period of 3 years or not. It is not proper for the referral court to indulge intricate evidentiary enquiry into the question of whether the claim raised by the petitioner is time-barred or not. Such a decision should be left to the arbitrator.

Supreme Court in case of the ***Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd., (2025) 2 SCC 192*** while dealing with an application under Section 11 has held that the scope of enquiry under Section 11 of the Arbitration and Conciliation Act, 1996 is limited to ascertaining the prima facie existence of an arbitration agreement.

Supreme Court in the case of ***Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313*** while dealing with Section 11 has held that Article 137 of the Limitation Act applies to proceedings under Section 11(6).

Supreme Court in the case of ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754*** while dealing with Section 11 has held that when a dispute arises about the full and final settlement of the claim and whether the contract is discharged or not, such dispute is arbitrable. The referral Court must not conduct an intricate evidentiary enquiry into the question of whether the claims are time-barred and should leave that question for determination by the Arbitrator.

Supreme Court in the case of the ***Central Warehousing Corporation v. Sidhartha Tiles & Sanitary (P) Ltd., 2024 SCC OnLine SC 2983*** while dealing with Section 11(6) has held that an eviction order passed under the Public Premises Eviction Act could not come in the way while invoking an arbitration clause upon the filing of an application u/s 11(6) of the Act for appointment of an Arbitrator to decide the contractual dispute.

Supreme Court in the case of ***Lifeforce Cryobank Sciences v. Cryoviva Biotech (P) Ltd., 2024 SCC OnLine SC 3215*** while dealing with an application under section 11(6) of the Arbitration and Conciliation Act,1996 has held that at the stage of consideration of prayer under section 11(6), the court has to confine itself to the examination of the existence of an arbitration agreement vide sub-section 6-A of section 11 of Arbitration and Conciliation Act, 1996.

Supreme Court in the case of the ***HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190*** held that while dealing with an application under section 11(6) of the Arbitration and Conciliation Act, 1996 and the provisions of the Limitation Act, 1963 fresh application for appointment of an arbitrator filed after the withdrawal of previous application without liberty is not maintainable as per principles analogues to order XXIII Rule 1 of Code of Civil Procedure 1908. Since the fresh application was filed beyond 3 years from the date of refusal to appoint an arbitrator, the fresh application was barred by law of limitation and the Respondent was not entitled to benefit under Section 14 of the limitation act for exclusion of time spent in the insolvency proceedings under the provisions of Insolvency and Bankruptcy Code 2016 as it did not seek the same relief.

Supreme Court in the case of ***Dushyant Janbandhu v. Hyundai Autoever India Pvt. Ltd. 2024 SCC OnLine SC 3691*** while dealing with Section 11(6) has held that disputes falling exclusively within the jurisdiction of statutory authorities are not arbitrable. Disputes related to wages and the

termination of an employee are not arbitrable and can be exclusively dealt with by the statutory authorities established under the Payment of Wages Act, 1936 and the Industrial Disputes Act, 1947.

Supreme Court in the case of ***M. Hemalata vs. B. Udayasri* 2023 SCC OnLine SC 1686** held that the Consumer Protection Act is a piece of welfare legislation with the primary purpose of protecting the interest of consumer disputes or assigned by the legislature to public forum as a measure of public policy and thus, by necessary implication would fall in the category of non-arbitrable disputes. These disputes are to be kept away from a private forum such as Arbitration unless both parties willingly opt for Arbitration over the remedy before a public forum. The law gives choice to the consumer to either avail a remedy under the Consumer Protection Act or go for Arbitration. This option is not available to the builders as they are not 'consumers', under the Consumer Protection Act, 2019. It is held that merely because the builder has approached the Court first under Section 11 of Arbitration Act will itself not oust the jurisdiction of the Consumer Courts.

Supreme Court in the case of ***B and T AG vs. Ministry of Defence (2023) SCC Online SC 657*** has held that limitation under Article 137 of Schedule to the Limitation Act, 1963 would apply to the Petition under Section 11(6) of the Arbitration Act for seeking appointment of Arbitral Tribunal which begin to run when the right to apply first arises. It is held that 'bilateral discussions' for an indefinite period of time would not save the situation so far as the accrual of cause of action and the right to apply for appointment of Arbitrator is concerned. The court is to find out what was the "Breaking Point" at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for Arbitration. The Supreme Court recommended an Amendment to Section 11 of Arbitration Act prescribing a specific period of limitation for filing an application for appointment of Arbitrator.

Supreme Court in the case of ***Magic Eye Developers Pvt. Ltd vs. Green Edge Infrastructure Pvt. Ltd (2023) SCC OnLine SC 620*** observed that the issue with respect to the existence and the validity of an Arbitration Agreement goes to the root of the matter and thus the same has to be conclusively decided by the Referral Court at the referral stage itself. Further, if the dispute/issue with respect to the existence and validity of an Arbitration agreement is not conclusively and finally decided by the Referral Court while exercising the pre-referral jurisdiction under Section 11(6) and it is left to the Arbitral Tribunal, it will be contrary to Section 11(6-A) of the Arbitration Act.

Supreme Court in the case of ***Shree Vishnu Constructions vs. Engineer in Chief Military Engineering Service, 2023 SCC OnLine SC 600*** observed and held that in a case where the notice invoking Arbitration is issued before the 2015 Amendment Act and the application under Section 11 for appointment of an Arbitrator is made post-Amendment Act, 2015, the provisions of pre-Amendment Act, 2015 shall be applicable and not the 2015 Amendment Act.

Supreme Court in the case of ***VGP Marine Kingdom Pvt. Ltd. vs. Kay Ellen Arnold (2023) 1 SCC 597*****,** has held that merely because proceedings of oppression and mismanagement are pending before NCLT, the application under Section 11 of the Arbitration and Conciliation Act, 1996 could not be dismissed. The Supreme Court accordingly appointed an arbitrator leaving the issue of arbitrability to be decided by the Arbitrator.

Supreme Court in the case of ***NTPC vs. SPML Infra Ltd 2023 SCC OnLine SC 385*** held that the pre-referral jurisdiction of the Court under Section 11(6) of the Act is very narrow. The primary inquiry is about the existence and the validity of an Arbitration Agreement, which includes an inquiry as to the parties to the Agreement and the applicant's privity under said Agreement. The secondary inquiry that may arise at the referral stage itself is the non-arbitrability of the dispute. Supreme Court looked into the correspondence

exchanged between the parties in respect of allegations of coercion and economic duress in the execution of the settlement agreement and held that the High Court should have exercised the prima facie test to screen and struck down the ex-facie meritless and dishonest litigation and set aside the order of appointment of Arbitrator passed by High Court.

Supreme Court in the case of ***Meenakshi Solar Power Pvt. Ltd. vs. Abhyudaya Green Economic Zones Pvt. Ltd. (2022) SCC OnLine SC 1616*** has held that the High Court was not right in dismissing the petition under Section 11(6) of the Act of 1996 by giving a finding on novation of the Share Purchase Agreement between the parties as the said aspect would have a bearing on the merits of the controversy between the parties. Therefore, it must be left to the Arbitrator to decide on the said issue.

Supreme Court in the case of ***Emaar India Ltd. vs. Tarun Aggarwal Projects LLP & Anr. (2022) SCC OnLine SC 1328*** held that when a specific plea was taken that the dispute falls within 'excepted matters' and therefore not arbitrable, the High Court was at least required to hold a preliminary inquiry/review and prima facie come to a conclusion on whether the dispute is arbitrable or not.

Supreme Court in the case of ***Indian Oil Corporation Limited vs. NCC Limited 2022 SCC OnLine SC 896*** has held that even at the stage of deciding Section 11 application, the Court could prima facie consider the aspect regarding 'accord and satisfaction' of the claims. The Court could also decide whether the dispute is non-arbitrable or falls within the excepted clause if the facts were "very clear and glaring" and the clauses in the agreement were specific.

Supreme Court in the case of ***Babanrao Rajaram Pund vs. Samarth Builders and Developers & Anr. (2022) 9 SCC 691*** has held that when there is the discernible intention of parties in the agreement to refer disputes to

arbitration, the application under Section 11 of the Arbitration is maintainable. Section 7 of the Arbitration Act does not mandate any particular form of arbitration clause. The deficiency in words in the agreement which otherwise fortifies the intention of parties to arbitrate their disputes, cannot legitimize the annulment of the arbitration clause.

Supreme Court in the case of ***Swadesh Kumar Agarwal vs. Dinesh Kumar Agarwal & Ors. (2022) 10 SCC 235*** held that an application seeking termination of the mandate of the sole arbitrator on the ground that he has become de jure and/or de facto unable to perform his functions on the ground of delay in concluding the arbitration proceedings or on the grounds mentioned in Section 14(1)(a) of the Arbitration Act, such a dispute has to be raised before the "Court" defined under Section 2(1)(e) of the Arbitration Act and such a dispute cannot be decided on an application filed under Section 11(6) of the Arbitration Act.

Supreme Court in the case of ***New Delhi Municipal Council vs. Minosha India Limited, (2022) 8 SCC 384*** held that under the Insolvency and Bankruptcy Code, under the order admitting the application, be it under Sections 7, 9 or 10 and by imposing a moratorium, proceedings, as are contemplated in Section 14 of the IBC, would be tabooed, but this does not include an application under Section 11(6) of the Arbitration Act by the corporate debtor or for that matter, any other proceedings by the corporate debtor against another party. By the order of moratorium under Section 14 of the IBC, the entire period of the moratorium is liable to be excluded in computing the period of limitation even in a suit or an application by a corporate debtor, including one under Section 11(6) of the Arbitration Act.

Supreme Court in the case of ***Mohammed Masroor Shaikh vs. Bharat Bhushan Gupta & Ors. (2022) 4 SCC 156*** has held that while dealing with a petition under Section 11 of the Arbitration Act, the Court by default would refer the matter when contentions relating to non-arbitrability are arguable and

in such case, the issue of non-arbitrability is left open to be decided by the Arbitral Tribunal.

Supreme Court in the case of ***Intercontinental Hotels Group (India) Pvt. Ltd. vs. Waterline Hotels Pvt. Ltd. (2022) SCC OnLine SC 83*** has held that once a party has paid the stamp duty, any objection regarding its sufficiency cannot be decided by a court exercising powers under Section 11 of the Act.

Supreme Court in the case of ***Durga Welding Works vs. Chief Engineer, Railway Electrification (2022) 3 SCC 98*** has held that the settled position of law is that a party forfeits it's right to appoint an arbitrator as per the clause if it does not make an appointment before the filing of an application under Section 11(6).

Supreme Court in the case of ***Sanjiv Prakash vs. Seema Kukreja & Ors. (2021) 9 SCC 732*** has held that there is a limited interference by Court at referral stage particularly after the 2015 amendment. The interference by Court at the referral stage is restricted to cases where it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. The Court exercising powers under Section 11 would refer the matter to arbitration when contentions relating to non- arbitrability are plainly arguable or when facts are contested. Further, the Court cannot at referral stage, enter into a mini trial or elaborate review of facts and law which would usurp the jurisdiction of the arbitrator.

Supreme Court in the case of ***Chief General Manager (IPC) MP Power Trading Co. Ltd. & Anr. vs. Narmada Equipments Pvt. Ltd. 2021 SCC OnLine SC 255*** the Appellant was aggrieved by the order appointing an arbitrator passed by the High Court in the Respondent's application under Section 11 of the A&C Act. The Appellant objected to the appointment because, under Section 86 (1) (f) of the Electricity Act 2003, the State Electricity Commission was vested with exclusive jurisdiction to adjudicate the disputes

between licensees and power-generating companies. The Supreme Court held that inherent lack of jurisdiction cannot be overcome even with the consent of parties. Thus, the fact that the appellant had agreed to the appointment of arbitrators in an earlier round of litigation does not preclude it from raising the plea of bar under Section 86 (1) (f) of the Electricity Act, 2003. The Court set aside the judgment of the High Court appointing arbitrators.

Supreme Court in the case of ***Secunderabad Cantonment Board vs. B. Ramachandraiah & Sons (2021) 5 SCC 705*** has held that limitation period for filing an application under Section 11 of the Arbitration Act commences on the expiry of the period specified in the notice invoking arbitration i.e. period of limitation will begin to run from the date when there is failure to appoint the arbitrator within period specified in the notice invoking arbitration. Mere exchange of letters or mere settlement discussions may not extend the limitation period. The rejection of arbitration proceedings by the other side at a subsequent time i.e. post expiry of such limitation period or writing of reminder letters to the other side shall not extend the limitation period.

Supreme Court in the case of ***Bharat Sanchar Nigam Ltd. vs. Nortel Networks India Pvt. Ltd. (2021) 5 SCC 738*** held that an application under Section 11 can be filed only after a notice of Arbitration in respect of particular claim(s)/dispute(s) to be referred to Arbitration as contemplated by Section 21 is issued and there is failure to make an appointment. The court further held that the limitation period for applying for the appointment of an arbitrator under Section 11 is governed by Article 137 of the Limitation Act i.e. application for appointment of an arbitrator under Section 11(6) is to be filed within 3 years from date on which "right to apply" under Section 11(6) accrues. The Court further clarified that the period of limitation for filing a petition seeking the appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying contract.

Supreme Court in the case of ***Pravin Electricals Private Limited vs. Galaxy Infra and Engineering Private Limited (2021) 5 SCC 671*** has held that when there is a dispute regarding the existence of the arbitration agreement, the Court can exercise prima facie review at the referral stage i.e. prima facie examination to weed out manifestly and ex facie non-existent and invalid arbitration agreements and non-arbitrability disputes. Where such prima facie review would be inconclusive/inadequate as the matter requires a detailed examination of documentary evidence and cross-examination of witnesses, in such cases, the issue of the existence of arbitration agreement is to be referred to the arbitrator for determination as a preliminary issue.

Supreme Court in the case of ***Mankastu Impex Private Limited vs. Airvisual Limited, (2020) 5 SCC 399*** has considered the fact that parties had agreed that the place of arbitration is in Hong Kong. The petitioner was incorporated in India and the respondent-company was incorporated under the laws of Hong Kong. Hong Kong was the place of arbitration. It would not lead to the conclusion that the parties have chosen Hong Kong as the seat of arbitration. The reference to Hong Kong as "place of arbitration" is not a simple reference as the "venue" for the arbitral proceedings; but a reference to Hong Kong is for final resolution by arbitration administered in Hong Kong. Section 11 has no application to international commercial arbitration seated outside India. Petition filed under Section 11(6) is held not maintainable.

Supreme Court in the case of ***The Oriental Insurance Co. Ltd. & Ors. vs. Dicitex Furnishing Ltd., (2020) 4 SCC 621*** has held that application under Section 11(6) is in the form of a pleading which merely seeks an order of the court, for appointment of an arbitrator. It cannot be conclusive of the pleas or contentions that the claimant or the concerned party can take, in the arbitral proceedings. The court which is required to ensure that an arbitrable dispute exists, has to be prima facie convinced about the genuineness or credibility of the plea of coercion. It cannot be too particular about the nature of the plea,

which necessarily has to be made and established in the substantive proceeding. The Supreme Court considered a plea of economic duress while signing the "no claim certificate" by the original applicant and did not interfere with the order passed by the High Court appointing an arbitral tribunal.

Supreme Court in the case of ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd., 2019 SCC OnLine SC 1517*** has held that in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. The person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015. Supreme Court has set aside the appointment of an arbitrator appointed by one of the parties having exclusive right to appoint and appointed an independent arbitrator in the application filed under Section 11(6) of the Arbitration Act.

Supreme Court in case of ***Union of India vs. Parmar Construction Company, 2019 SCC Online SC 442*** has held that the Court has to put emphasis to act on the agreed terms and to first resort to the procedure as prescribed and open for the parties to the agreement to settle differences/disputes arising under the terms of the contract through appointment of a designated arbitrator but emphasis should always be on the terms of the arbitration agreement to be adhered to or given effect as closely as possible. Where the impartiality of the arbitrator in terms of the arbitration agreement is in doubt or where the Arbitral Tribunal appointed in terms of the arbitration agreement has not functioned or has failed to conclude the proceedings or to pass an award without assigning any reason and it became necessary to make a fresh appointment, Chief Justice or his designate in the given circumstances after assigning cogent reasons in appropriate cases may resort to an alternative arrangement to give effect to the appointment of independent arbitrator under Section 11(6) of the Act.

Bombay High Court in the case of ***Smruddhi Industries Ltd. Vs. Kotak Mahindra Bank Ltd. – 2025 supreme (Bom) 1260: 2025 BHC (OS) 8912*** held that only recovery proceedings that attract substantive jurisdiction of the Debt Recovery Tribunal that have relevance for consideration of the pecuniary jurisdiction threshold of the Debt Recovery Tribunal referred to in the arbitration agreement. The dispute for which arbitration was sought to be invoked was one of the allegedly abusive application of penal interest rates in conflict with the agreement. Such a dispute is not amenable to the jurisdiction of the Debt Recovery Tribunal, and therefore fallback of the arbitration contained in the arbitration agreement is not applicable to such a dispute. The High Court dismissed the application for the appointment of arbitrator U/sec. 11

Bombay High Court in the case of ***Mudhit Madanlal Gupta Vs. EMGEE Enclave LLP & Others – 2025 supreme (SC) 629: 2025 BHC (OS) 1530,*** has held that emphasis on Item No.24 of the Fifth Schedule is to eliminate any conflict of interest arising out of appointing an arbitrator who would already have a point of view of "related issue" If a view is already formed by the Arbitrator, that view is seeming to be examined as to whether it could raise a doubt of independence or impartiality. It is a guideline for making a disclosure to the parties. Item 16 must be read along with items 22 and 24 of the Fifth Schedule. A disqualification contained in items No.22 and 24 is not absolute, as an arbitrator who has, within the past 3 years, been appointed as arbitrator on two or more occasions by one of the parties or an affiliate, may yet not be disqualified on his showing that he was independent and impartial on the earlier two occasions.

Bombay High Court in the case of ***Bali Edifices LLP Vs. New Lourdes Chambers Co-op. Housing Society – 2025 supreme (Bom) 1217: 2025 BHC (OS) 10201*** held that the law does not protect the indolent and refused to condone delay of 15 days to the Applicant who had issued notice

invoking arbitration agreement during the COVID period but did not take steps of filing the application U/sec.11 after order of the Supreme Court removing the jurisdiction of limitation on 10th January 2022.

Bombay High Court in the case of ***Abhay Damodar Kanhere Vs. Morya Infraconstruct Pvt. Ltd. 2025 Supreme (Bom) 1288: 2025 BHC (AS) 24209*** has held that the existence of an arbitration clause does not negate RERA's jurisdiction and that jurisdictional issue should be resolved by the arbitrator and not the court under section 11.

Bombay High Court in case of ***Keller Ground Engineering India Pvt. Ltd. Vs. Archon Powerinfra India Pvt. Ltd. & Others – 2025 supreme (Bom) 361: 2025 BHC (OS) 1256*** has held that in case of domestic arbitration when the venue of arbitration is decided to be Mumbai without reference to the seat of arbitration, the Court in Mumbai would be the competent court to exercise jurisdiction over the proceedings and Section 2(1)(e) of the Arbitration Act which provide for jurisdiction of the subject matter of suit, will not be determinative factor in ascertaining the court which would exercise the jurisdiction as regards the appointment of the Arbitrator u/sec. 11.

Bombay High Court in the case of ***Salasar Cotex Vs. Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. 2026 SCC OnLine (Bom) 1134: 2025 BHC (Nag) 3554*** has held that there cannot be any application of the Code of Civil Procedure in respect of Section 11(6) of the Arbitration Act, and therefore, no question of clubbing of the applications together. There were individual agreements by respective parties with the Respondents, and therefore, there have to be separate arbitration proceedings.

Bombay High Court in case of ***Tata Capital Ltd. Vs. Vijay Devij Ayar & Another – 2025 supreme (Bom) 866: 2025 BHC (OS) 6716*** held that the mere fact that the Applicant initiated proceedings under the SARFAESI Act would not bring an end to the arbitration agreement. The court ought not to

venture beyond examining the existence of a valid arbitration agreement that has been formally executed. Even a question of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of section 16 of the Arbitration Act.

Bombay High Court in the case of ***Tata Capital Housing Finance Ltd. Vs. Indrajeet Sahani and others 2026 Supreme (Online)(Bom) 239: (2026) BHC (OS) 2988*** has held that notice u/sec. 21 of the Arbitration Act is necessary mainly for the purpose of deciding whether the claims are within the period of limitation. Failure to call upon the Respondents to participate in the appointment of an arbitrator would not mean that there is no invocation of arbitration. Parties had agreed that the arbitration shall be held in Mumbai / Delhi / Kolkata / Chennai, and it was left to the Applicant to choose one out of the 4 places for holding the arbitration. The Applicant has chosen Mumbai as the place where the arbitration would be held and filed a Petition U/sec. 11 before the Bombay High Court. Bombay High Court held that the seat of the arbitration in that event is Mumbai. The 4 places agreed by the parties in the agreement are not convenient venues. They are seats of arbitration. The Applicant, having exercised its discretion to choose Mumbai out of 4 seats, the seat of arbitration was Mumbai. The Bombay High Court has thus jurisdiction to entertain the said application u/sec. 11. It is held that the remedy under the SARFAESI Act is merely in the nature of enforcement, where no adjudication takes place. Mere initiation of proceedings under the SARFAESI Act cannot be a ground for not permitting adjudication proceedings under the Arbitration Act and vice versa. However, if any bank or financial institution is covered under the RDDB Act, Arbitration cannot be conducted for adjudication of such claims of such banks or financial institutions merely on the strength of the arbitration clause in the loan agreement. There cannot be two adjudications in respect of the same claim.

Bombay High Court in the case of ***Shreegopal Barasia Vs. Creative Homes and others (2025) Supreme (Bom) 141: 2025 BHC (AS) 726*** has held that unless a dispute comes into existence, there would be no question

of submitting it to arbitration. A dispute that has arisen can be submitted to arbitration only when there is a right to submit it to arbitration. Such a right can come into existence only when there is an agreement containing an arbitration clause. Under section 19(2)(a) of the Indian Partnership Act, the implied authority of partners does not extend to submitting disputes to arbitration without express authorisation.

Bombay High Court in the case of ***Ravindra Eknath Kumavat Vs. Future Development Construction Co. & others 2025 Supreme (Bom) 1019: 2025 BHC (AS) 27392*** has held that mere termination of an agreement cannot bring an end to the arbitration agreement contained therein. The arbitration clause in any agreement would always survive the termination. Whether the conduct of a party is in accordance with, and apparently in pursuance of, the agreement in question is an existential fact that would need to be considered by the Arbitral Tribunal.

Bombay High Court in the case of ***Airport Authority of India Vs. Lite Bite Foods Pvt. Ltd. – 2025 Supreme (Bom) 1688: 2025 BHC (AS) 54930*** has held that since the disputes had already been subjected to arbitration and culminated in the arbitral award, the disputes and differences, including differences over interest payment prior to commencement of arbitration, are issues that are covered by constructive res-judicata. The disputes between the parties have already been adjudicated, and all incidental issues that were raised, or with reasonable diligence ought to have been raised, are covered by adjudication already effected. The High Court accordingly rejected the application u/section 11 of the Arbitration Act, invoking the principles of constructive res judicata. It is held that the invocation of the business efficacy test to resolve ambiguous positions emerging from a contract would need to meet 5 factors. The resolution of the ambiguity must be (i) reasonable and equitable, (ii) necessity to give business efficacy to the contract, (iii) it should 'go without saying', (iv) capable of clear expression and (v) must not contradict any express terms of the contract. The Bombay High Court, having found that the reasoning and the outcome of the impugned award were not in the realm of

mere errors but in the realm of manifest perversity, changed the very nature of the contract represented by the agreement with an impossible view on the impact of the MOM on the agreement and accordingly interfered with the Award.

Bombay High Court in the case of ***Batliboi Environmental Engineering Ltd. Vs. Hindustan Petroleum Corporation Ltd. 2025 Supreme (Bom) 437: 2025 BHC (OS) 4031*** while dealing with an application under section 11 of the Arbitration and Conciliation Act, 1996 has considered a situation where the learned Arbitrator allowed some of the claims made by the Claimant. The said award was set aside by the Appellate Court under section 37 which judgement came to be upheld by a judgement by Supreme Court in Civil Appeal. Bombay High Court held that the Supreme Court did not purport to, conduct its own assessment to return findings on merits. Supreme Court stated that it was not commenting or examining the merits of the computation in the Arbitral Award. It is held that the section 37 judgement merges with the judgement of the Supreme Court, passed in Civil Appeal. The Appellate Court hearing an appeal under section 37 and the Supreme Court hearing an appeal by delivering a judgement arising out of the judgement of the Appellate Court held that no reasons were recorded by the Arbitral Tribunal and thus had set aside the Arbitral Award. The parties are restored to the original pre-arbitral award position and accordingly appointed an arbitrator for adjudication of the disputes and differences between the parties. High Court considered the judgement of the SC in the case of ***McDermott International Inc. Vs. Burn Standard Co. Ltd. Ors. (2006) 11 SCC 181.***

Bombay High Court in the case of ***Pankaj Maadan Vs. Health Assure Pvt. Ltd. 2025 SCC OnLine Bom 327: 2025 BHC(OS) 2780*** while dealing with an application under Section 11 held that the applicant citing section 11(6) instead of 11(5) of the Arbitration and Conciliation Act, 1996 in the arbitration application would not invalidate the core substance in the application namely prayer for the appointment of a sole arbitrator, no prejudice can at all be caused to the respondent by a wrong sub-section quoted in the application. It is trite

law that mentioning a wrong section of law in an application would not be fatal to a case if the substance of the application is clear and no prejudice is caused by the citation of a wrong provision.

Bombay High Court in the case of ***Kartik Radia v. BDO India LLP, 2025 SCC OnLine Bom 445*** while dealing with an application under Section 11 of the Arbitration and Conciliation Act, 1996 and the provisions of the Limited Liability Partnership Act held that a notice issued to the managing partner of an LLP could well be regarded as a notice issued to the LLP. The court held that the subject matter of the LLP agreement includes duties owed by partners to the LLP and also the duties owed to the partners by the LLP and thus would necessarily render an LLP a necessary party to the arbitration proceeding relating to the LLP's operations and governance, despite the LLP not being a signatory to the LLP agreement. Even if there had been no arbitration clause at all in the LLP Agreement, the First Schedule would lead to an arbitration agreement being in existence in the eyes of the law, for dispute amongst the partners. The LLP would be thus a necessary party to the arbitration proceedings.

Bombay High Court in the case of ***Darshan Mahendra Nibjya v. Jayantilal Tarachand Oswal, 2025 SCC OnLine Bom 379*** while dealing with an application under Section 11 of the Arbitration and Conciliation Act, 1996 has held that it is not for Section 11 Court to sit in judgement about the privity of the parties in a complex situation where partners enter and exits a continuing partnership firm. Under Section 11, the Court cannot venture beyond examining the existence of an evident arbitration agreement that has been formally executed. Even questions of existential substance are a matter that falls squarely in the domain of arbitral tribunal, in view of Section 16 of the Arbitration and Conciliation Act, 1996.

The Bombay High Court in ***Ketan Champaklal Divecha vs. DGS Township Pvt. Ltd. 2024 SCC OnLine Bom 1*** in the petition filed by the Society under Sections 9 and 11 of the Arbitration Act, held that when a cooperative housing society enters into a development agreement with a developer, the will of the majority members prevails. The individual desire or identity of the member is subsumed within the will of the cooperative housing society, which collectively represents the aspirations and the cause of its members. An Individual member simply cannot invoke Arbitration under the development agreement.

Bombay High Court in the case of ***Hyundai Construction Equipment India Pvt. Ltd. vs. M/s. Saumya Mining Ltd. 2024 SCC OnLine Bom 65*** while dealing with an Application under Section 11 and Section 42 of the Arbitration Act held that since an Application in pursuant of the Agreements was already made before the Calcutta High Court, it is only that High Court, which has jurisdiction to entertain any application under the Act can entertain an application under Section 11 and no other Court.

Bombay High Court in the case of ***Devike Constructions & Developers (P) Ltd. v. Dilip Vengsarkar Foundation, 2024 SCC OnLine Bom 2531***, while dealing with an application under Section 11 of the Arbitration and Conciliation Act, 1996 has held that the Petitioner being not a party to the Arbitration Agreement and had no privity of contract with the Respondent arising out of the MOU could not file Section 11 Petition for appointment of Arbitrator and dismissed the said Petition on the ground of locus.

Bombay High Court in the case of ***Shailesh Ranka v. Windsor Machines Ltd., 2023 SCC OnLine Bom 2704*** while dealing with an application under Section 11(6) of the Arbitration and Conciliation Act and an application for review held that review of an order dismissing an application for appointment of arbitrator having any error apparent from the face of the record is

maintainable. The Court recognized its inherent power under Article 215 of the Constitution of India to correct errors in its record.

Bombay High Court in ***Omkar Realtors & Developers Private Limited vs. Tenants Co- Operative Housing Society Limited 2023 SCC OnLine Bom 593*** referred the parties to arbitration when the arbitration clause was contained in the tender, though no formal agreement was executed, since the parties had taken effective steps pursuant to tender.

Bombay High Court in ***K.R. Traders vs. Union of India 2022 SCC OnLine Bom 11762*** has held that when a mandate of an arbitrator terminates, a substitute arbitrator is to be appointed only under rules that apply to the appointment of the arbitrator. Even when an arbitration award is set aside by the Court, the only course of action available to the parties for resolving existing disputes is to initiate arbitration proceedings afresh, the only condition being that such arbitration proceedings would necessarily proceed strictly in terms of the arbitration agreement between parties.

The Bombay High Court in ***DP Constructions vs. M/s Vishvaraj Environment Pvt. Ltd. 2022 SCC OnLine Bom 1410*** has held that when the agreed procedure does not lead to the appointment of an Arbitrator, due to failure on the part of either party, then an application can be filed for the appointment of Arbitrator, either before the institution specified under Section 11(6) of the Arbitration Act or High Court depending upon the facts of the case. Jurisdiction under Section 11(6) can be exercised only when the procedure agreed between the parties under Section 11(2) of the Arbitration Act has met with failure. It is further held that unless there is a request by a party that the dispute is to be referred to Arbitration, merely stating the claims and disputes in the notice would not suffice. In the absence of the agreed procedure being triggered by either party for reference of the dispute to arbitration, the question of failure thereof would not arise.

Bombay High Court in ***Jasani Realty Pvt. Ltd. vs. Vijay Corporation (2022) SCC OnLine Bom 879*** has held that mere pendency of an insolvency petition is not a bar to the application under Section 11 of the Act. The Court held that it is only when the insolvency petition is admitted by the National Company Law Tribunal (NCLT) that the embargo would apply.

Bombay High Court in case of ***Earnest Business Services Private Limited vs. Government of the State of Israel, 2019 SCC Online Bom 1793*** has held that parties can agree for appointment of an arbitrator in any proceedings in Court without applying Section 11(6) or 11(9) as the case may be including in petition under Section 9 or even without the intervention of Court. Court also held that the claim for set-off for the period before 3 years of the date of filing the statement of claim by the claimant, which would be the date for filing a plea of set-off, because of Section 3(ii)(b)(i) of the Limitation Act, 1963 would be time barred.

Bombay High Court in the case of ***Deepdharshan Builders Pvt. Ltd. vs. Saroj w/o Satish Sunderrao Trasikar 2018 SCC OnLine Bom 4885*** held that the arbitral proceedings filed under Section 11(6) of the Arbitration Act are the proceedings before the Court because of the amendment to various subsections of Section 11 of the Arbitration Act and thus Article 137 of the Schedule to the Limitation Act, 1963 would apply to the application under Section 11(6). It is held that whether the application under Section 11(6) is within the time prescribed under Article 137 of the Schedule to the Limitation Act, 1963 or not has to be decided by the Court while considering such application under Section (6) of the Act. Such an issue cannot be left open to be decided by the arbitral tribunal. It is held that Section 5 of the Limitation Act, 1963 applies to the application under Section 11(6) of the Arbitration Act. The limitation period applicable to the application under Sections 11(6) or 11(9) of the Arbitration Act cannot be mixed up with the period of limitation applicable to the claim prescribed in various other Articles of the Schedule to the Limitation Act, 1963. Both the periods of limitation are different and cannot be made applicable to each other.

Under Section 12, when a person is approached in connection with his possible appointment as an arbitrator, is bound to disclose in writing any circumstances, such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months. Various grounds are set out in the Fifth Schedule as a guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator. The disclosure shall be made by such a person in the form specified in the Sixth Schedule. An arbitrator may be challenged by the parties only if any circumstances referred to Section 12 (3) subject to Sub-section (4) of Section 13 which provides for an agreement between the parties for such a procedure for challenge. If such a challenge is unsuccessful, the party may make an application for setting aside an arbitral award under Section 34.

Supreme Court in the case of ***Offshore Infrastructures Ltd. Vs. Bharat Petroleum Corporation Ltd. 2025 SCC OnLine (SC) 2147: 2025 INSC 1196*** has held that merely because the procedure to appoint an arbitrator provided in the clause has become inoperative due to subsequent changes in statutory provisions, would not mean that the core of the contract referred in the dispute for adjudication to arbitrator would render negatory. The

Arbitration Agreement must be interpreted in a purposive manner, but not literally so as to enable the parties to issue the intended dispute redressal mechanism of the court. The right to apply u/sec. 11(6) accrues from the date when the final bill became due.

Supreme Court in the case of ***Bhayana Builders Pvt. Ltd. v. Oriental Structural Engineers Pvt. Ltd. 2025 Supreme (SC) 1303: 2025 INSC 1073*** has held that since the Managing Director of a Company would be ineligible for being appointed as an Arbitrator in view of Section 12(5) read with paragraph 5 of the Fifth Schedule to the 1996 Act, he would be ineligible to nominate a Sole Arbitrator. The Supreme Court terminated the mandate of the Sole Arbitrator nominated by the Managing Director of the Respondent.

Supreme Court in the case of ***Chennai Metro Rail Ltd vs. Transtonnelstroy Afcons JV 2023 SCC OnLine SC 1370*** observed that it is undoubtedly clear that fee increase can be resorted to only with the agreement of parties; in the event of disagreement by one party, the tribunal has to continue with the previous arrangement or decline to act as Arbitrator. Yet, whether the breach of that rule, as in that case, by insisting that the increase of fee should prevail does not amount to a per se ineligibility, reaching to the level of voiding the tribunal's appointment, and terminating its mandate. It is held that for any legal disability that attaches on the grounds enumerated in Schedule V or any other circumstance, given the terminology of Section 12(3) which is not restricted to Schedule V ineligibility, the aggrieved party has to first apply before the tribunal as a matter of law. When the grounds enumerated in Schedule VII occur or are brought to the notice of one party unless such party expressly waives its objections, it is ipso facto sufficient for that party to say that the Tribunal's mandate is automatically terminated. The party aggrieved then can go ahead and challenge the continuation of the tribunal with the proceeding under Section 14.

Supreme Court in the case of ***Glock Asia-Pacific Ltd vs. Union of India (2023) SCC Online SC 664*** held that where the Ministry of Home Affairs is a party to the Contract and where the Arbitration clause authorizes the Secretary, Ministry of Home Affairs, whose relationship with the Union of India is that of an employee, to nominate an officer of the Ministry of Law and Justice to act as a sole Arbitrator, falls within the expressly ineligible category provided in Sch. VII Para 1 r/w S. 12(5). The Court further held that the contract entered into in the name of the President of India, cannot and will not create an immunity against the application of any statutory prescription imposing conditions on parties to an agreement, and rejected the submission of the Union of India that the contracts entered into by Union of India in the name of president of India are immune from the provisions that protect against conflict of interest of a party to a contract, under Section 12 (5) of the Act.

Supreme Court in the case of the ***Government of Haryana PWD Haryana (B and R) Branch vs. M/s. G.F. Toll Road Pvt. Ltd. & Ors. (2019) 3 SCC 505*** after considering the 2015 amendment has held that since the appointment of the arbitrator was made before the 2015 Amendment Act when the Fifth Schedule was not inserted, the objection raised by a party that an arbitrator was an ex-employee of a party could not be entertained. It is held by the Supreme Court that the Arbitration Act does not disqualify a former employee from acting as an arbitrator, provided that there are no justifiable doubts as to his independence and impartiality. The Supreme Court after considering entry 1 of the Fifth and Seventh Schedule has held that an arbitrator who has "any other" past or present "business relationship" with the party is also disqualified. The word "other" used in entry 1 would indicate a relationship other than an employee, consultant or an advisor. The word "other" cannot be used to widen the scope of entry to include past/former employees. It is held that entry 1 indicates that a person, who is related to a party as an employee, consultant or adviser is disqualified to act as an arbitrator. The words "as an" indicate that the person so nominated is only disqualified if he/she is the present/current employee, consultant or adviser of one of the parties.

Supreme Court in the case of ***Bharat Broadband Network Limited vs. United Telecoms Limited, 2019 SCC OnLine SC 547*** after construing Section 12(5) of the Arbitration Act read with Fifth, Sixth and Seventh Schedule held that the Managing Director of the party, who was a named arbitrator, could not act as arbitrator nor could be allowed to appoint another arbitrator. The disclosure of a prospective arbitrator has to be made in the form specified in the Sixth Schedule and the grounds stated in the Fifth Schedule are to serve as a guide in determining whether circumstances exist that give rise to justifiable doubts as to the independence or impartiality of an arbitrator. Any prior agreement to the contrary is wiped out by the non-obstante clause in Section 12(5) the moment any person whose relationship with the parties or the counsel or the subject matter of the dispute falls under the Seventh Schedule.

Bombay High Court in the case of ***Larsen & Toubro Ltd. Vs. Sangeeta Bhansali 2026 SCC OnLine (Bom) 218: 2026 BHC (OS) 1344*** has held that unilateral appointment of a sole arbitrator appointed by a party violates equal treatment principles and such an appointment was void ab initio. The consent of the parties must be valid within the framework of the Arbitration Act. The executing court was pleased to set aside the Arbitral award and dismissed the Execution Application.

Bombay High Court in the case of ***Jankar Steel Pvt. Ltd. Vs. TJSB Sahakari Bank Ltd. 2025 SCC OnLine (Bom) 446: 2025 BHC(OS) 2320*** has held that when an Arbitrator gets appointed to some role that renders it legally impossible for him to continue even if he is physically able to be an arbitrator, for instance, elevation as a Judge of a Court. Another means of becoming de jure unable would be if the contents of the Seventh Schedule are attracted in any manner. It is held that if the outcome of the Arbitration could hurt the arbitrator's financial interest, it would lead to Item 13 of the Seventh Schedule getting attracted. The appointment of the Arbitrator by the Registrar in 7 cases would not, by itself, lead to an inference of the arbitrator having a significant financial interest in the Respondent-Bank. Jurisdiction of the Court to intervene in the arbitration proceedings is limited to the circumstances

where the Arbitrator is unable to perform his functions as per Section 14 of the Arbitration Act.

Bombay High Court in the case of ***Jalaram Fabrics Vs. Niserg Textiles Pvt. Ltd. 2026 Supreme (Bom) 4: 2026 BHC (OS) 398*** held that an application to the court for appointment of an arbitrator can be made under section 11(6)(c) of the Arbitration Act only when an institute fails to perform any function entrusted to it in the case of institutional arbitration. Once an arbitration institution proceeds by appointing the arbitrator and conducting arbitral proceedings, it is not necessary to approach the court under section 11(6) merely because one of the parties refuses to concur in the appointment of the arbitrator by the institute. So far as the objection to the appointment of a unilateral arbitrator is concerned, the principle of waiver does not apply. Since the institute had appointed an arbitrator after due grant of an opportunity to the Petitioner to nominate his arbitrator and the Respondent not having exercised the right to choose or appoint the arbitrator, the impugned award does not suffer from the vice of unilateral appointment.

Bombay High Court in the case of ***R. B. Krishnani Vs. Stem Water Distribution & Infrastructure Co. Pvt. Ltd. 2025 Supreme (Bom) 800: 2025 BHC (AS) 17845*** has held that if an arbitrator continues, being de jure unable to perform his functions, as he falls within any of the categories mentioned in section 12(5) read with Seventh Schedule, the party may apply to the court which will then decide on whether his mandate has terminated. The proviso to section 12(5) must be contrasted with section 4 of the Arbitration Act. Section 4 deals with cases of deemed waiver by conduct, whereas the proviso to section 12(5) deals with waiver by express agreement in writing between parties, only if made subsequent to disputes having arisen between the parties.

Bombay High Court in the case of ***Priyanka Communications India Pvt. Ltd. Vs. Tata Chemical Ltd. 2025 Supreme (Bom) 844: 2025 BHC (OS) 1910*** has held that there being no current representation of the

Respondent or any affiliate or the Respondent, by the learned sole Arbitrator, and the Petitioner not having brought to bear any material to indicate current representation nor do the disclosure made by the learned Sole Arbitrator point to such current representation, at the best it will be within the ambit of Fifth Schedule and not Seventh Schedule. The recourse for implications of the Fifth Schedule does not lie under section 14 of the Arbitration Act. The High Court refused to entertain the Petition filed by a party for setting aside an order passed by the Arbitral Tribunal recusing itself at the request of such party.

Bombay High Court in the case of ***Manmohan Bhimsen Goel v. Madhuban Motors Pvt. Ltd., 2025 Supreme (Bom) 1933: 2025 BHC (OS) 26724*** held that every arbitration agreement providing for a unilateral appointment, the Sole or the Presiding Arbitrator is invalid and thus, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are nullity and cannot result into an enforceable amount, being against the public policy of India. The objection of unilateral appointment of Arbitrators can be raised at any stage of the proceedings and even while challenging the Award under Section 34 or opposing enforcement under Section 36 of the Arbitration Act.

Bombay High Court in the case of ***Sawarmal Gadodia vs. Tata Capital Financial Services Limited, 2019 SCC OnLine Bom 849*** has held that under Section 12, an arbitrator is bound to make the necessary disclosure in the event of him having been appointed as an Arbitrator on two or more occasions by one of the parties, or an affiliate of one of parties, within the past three years, against Item 4 of his Disclosure in the form set out in the Sixth Schedule. Learned arbitrator is bound to specify the exact number of the ongoing arbitrations before him and not an 'approximate number'. Learned arbitrator not having disclosed that he was appointed by the respondent company in 252 arbitration petitions where the respondent company was the claimant in view of Item No.22 of the Fifth Schedule, the said fact constitutes a ground giving rise to justifiable doubts as to the independence or impartially of the arbitrator. The arbitral awards are accordingly set aside on that ground.

Bombay High Court in the case of ***Roadways Solution India Pvt. Ltd. & Anr. vs. L & T Finance Ltd. in Commercial Arbitration Petition No.133 of 2018, delivered on 5th March 2018*** has construed the arbitration agreement recording that the provisions of not only the Arbitration and Conciliation Act, 1996 would apply but also the amendment thereto from time to time and has held that since the parties have agreed to such clause, the parties would be governed by the provisions of Arbitration and Conciliation (Amendment) Act, 2015 though such arbitration agreement was entered into before 23rd October 2015.

> **Section 14 provides that the mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator if he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay and he withdraws from his office or the parties agree to the termination of his mandate.**

Supreme Court in the case of ***Lancor Holdings Vs. Prem Kumar Menon 2025 SCC OnLine (SC) 2319: 2025 INSC 1277*** has held that inordinate delay in the pronouncement of an Arbitral Award has several deleterious effects. The essence of time invariably debilitates frail human memory, and it would be well-nigh impossible for an arbitrator to have total recall of oral evidence, if any, adduced by the witnesses and the submissions and arguments advanced by the parties or their learned Counsel. Even if detailed notes are made by the Arbitrator during the process, they would be a poor substitute for what is fresh in the mind immediately after the conclusion of the hearing in the case. Such a delay, if unexplained, would give rise to unnecessary and wholly avoidable speculation and suspension in the minds of the parties. Each case would have to be examined on its own individual facts to ascertain whether the delay was of such import and impact on the final decision of the Arbitral Tribunal, whereby that award would stand vitiated due to the lapses committed by the Arbitral

Tribunal owing to such delay. The Supreme Court considered the fact of the delay of 4 years in the pronouncement of the award by the Arbitral Tribunal, with no benefit to show for it. It is held that such an unexplained and pointless delay of the arbitrator in concluding the matter clearly pitted his ineffective and futile award against the public policy of India. It is held that delay in delivery of the arbitral award by itself is not sufficient to set aside that award. If an arbitral award is unworkable, in terms of not settling the disputes between parties finally but altering their positions irrevocably and leaving them no choice but to initiate further litigation, it is liable to be set aside on the ground of perversity, patent illegality and being opposed to the public policy of India.

Supreme Court in case of ***HRD Corporation (Marcus Oil and Chemical Division) vs. Gail (India) Limited (Formerly Gas Authority of India Ltd.), 2017 SCC Online SC 1024*** has held that if the learned arbitrator fails to file disclosure in terms of section 12(1) read with Fifth Schedule of the Arbitration and Conciliation Act, 1996, the remedy of the party in that event would be to apply under section 14(2) of the Arbitration and Conciliation Act, 1996 to the court to decide about the termination of the mandate of the arbitral tribunal on that ground.

Bombay High Court in the case of ***Kalyani Aditya Mineral Ltd. Vs. Aditya Birla Group Trading (India) Pvt. Ltd. – 2025 Supreme (Bom) 263: 2025 BHC (OS) 2546*** has held that u/sec. 14(2) of the Arbitration Act, only where a controversy remains in respect of any element of Section 14(1)(a), the Court would have jurisdiction to intervene i.e. (i) de jure inability to perform duties, (ii) de facto inability to perform duty and (iii) inability of the Arbitral Tribunal to act without a due delay. Item No.1 of the Seventh schedule shows that for the ineligibility contained in the said provision to be attracted, the Arbitrator ought to be an employee, a consultant or advisor or, for that matter, to have any past or present business relationship with the parties to the dispute.

Bombay High Court in the case of ***Uvik Technologies Pvt. Ltd. Versus Nearby Technologies Pvt. Ltd. and another (2025) BHC (OS) 12032*** while dealing with the Sections 31, 33, 34, 35, 37 and 39 of the Maharashtra Stamp Act, held that when parties execute an arbitration agreement they agreed that Arbitral Tribunal is authorized to receive to adjudicate their disputes and has power to impound the instrument u/section 33 of the Stamp Act. The Arbitral Tribunal could, as a matter of law, compute the duty and penalty payable, certify it, admit the instrument into evidence, and send an authenticated copy to the Collector. When an instrument so admitted cannot be called into question on the ground of under-stamping in the proceedings, and it is only under section 58 that, in a challenge to the arbitral award, the exercise of testing the adequacy can be undertaken again. If impounding is a statutory duty cast on the learned arbitrator, having it stamped is also the duty cast upon the learned arbitrator. Even in the course of having, it stamped, if the Stamp Authorities were to raise an untenable objection, it would only be fair for the learned arbitrator to explain the process to the Stamp Authorities. Bombay High Court rejected the allegations of bias and refused to entertain the application u/sec. 14(2) of the Arbitration Act against the Arbitral Tribunal.

Bombay High Court in the case of ***Shanklesha Construction v. Ashok Mohanraj Chhajed, 2024 SCC OnLine Bom 33*** while dealing with an application under Section 14 (1) (a) held that once it is found that the fees specified by the arbitrator in the minutes of the meeting or order are well within the ambit of schedule IV to the Arbitration Act, such fees was certainly legally payable to the learned arbitrator.

Bombay High Court in the case of ***Parekh Industries Limited vs. Diamond India Limited, 2019 SCC OnLine Bom 851*** has held that the approach of the learned arbitrator to adjust the already paid fees to be utilized for future hearings, while demanding fresh fees from the petitioner, for the cancelled hearings only qua the petitioner's claim was contrary to the proviso to Sub-Section (2) of Section 38. It is held that the petitioner had lost confidence in the arbitral tribunal. These are the sufficient grounds for exercising

jurisdiction under Section 14 read with Section 15 of the Arbitration Act and to declare that the mandate of the arbitral tribunal stands terminated.

> **Section 15 provides that the mandate of arbitrator is also terminated if he withdraws from office for any reason or by or pursuant to agreement of the parties. In such an event, the substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. If such an arbitrator is replaced, any hearing previously held may be repeated at the discretion of the arbitral tribunal unless otherwise agreed by the parties. The earlier order or ruling of the arbitral tribunal made before the replacement of an arbitrator shall not be invalid unless otherwise agreed by the parties.**

Supreme Court in the case of ***Shailesh Dhairyawan vs. Mohan Balkrishna Lulla- (2016) 3 SCC 619*** has held that where the mandate of an arbitrator is terminated, an appointment of a substitute arbitrator may be under the arbitration agreement unless such arbitration agreement, either expressly or by necessary implication excludes the substitution of an arbitrator, whether named or otherwise. The learned arbitrator named, in that matter, in the consent order passed by the Bombay High Court had resigned. The Supreme Court upheld the judgment of the Bombay High Court appointing substituted arbitrator.

> **Under Section 16, the arbitral tribunal is empowered to rule on its own jurisdiction including ruling on any objection with respect to the existence or validity of arbitration agreement. Such plea shall be raised not later than the submission of the statement of defence. If such plea is rejected by the arbitral tribunal, it has to**

proceed with the arbitral proceedings and declare an award. If the plea of jurisdiction is accepted by the arbitral tribunal, the respondent may file an appeal under section 37. If the plea of jurisdiction is not accepted, the respondent may challenge such ruling along with the award under section 34.

Supreme Court in the case of ***K. Mangayarkarasi & another Vs. N. J. Sundaresan & another 2025 SCC OnLine SC 1104***: ***(2025) INSC 687*** has held that not all trademark-related disputes are non-arbitrable, especially those concerning rights in personam. It is held that as long as an arbitration agreement exists, the court must adopt an enabling approach and refer parties to arbitration. When the arbitrability of a dispute is opposed on the ground of fraud, courts must examine whether a mere allegation of fraud is sufficient to execute the dispute from arbitration or whether such a challenge can be adjudicated by the Arbitral Tribunal u/sec. 16 of the Arbitration Act.

Supreme Court in the case of ***Bharat Petroleum Corporation Limited vs. Go Airlines (India) Limited, (2019) 10 SCC 250*** has held that plea of jurisdiction in respect of counterclaim being not arbitrable and falling beyond the scope of reference to the arbitration and such other related questions are to be determined only during the enquiry by the arbitral Tribunal and counterclaim cannot be rejected at the threshold on the ground that the arbitral Tribunal has no jurisdiction.

Supreme Court in the case of ***National Aluminium Company Limited vs. Subhash Infra Engineers Pvt. Ltd. and another, 2019 SCC Online SC 1091*** has held that any objection to the existence or validity of the arbitration agreement can be raised only by way of an application under Section 16 of the Arbitration Act. Such a party who seeks to raise such an objection cannot maintain a suit for declaration and injunction with such a plea before the Civil Court.

Supreme Court in the case of ***Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products, (2018) 2 SCC 534*** has held that ruling on issue of limitation is not a ruling on issue of jurisdiction of arbitrator. It is held that plea of the limitation rejected by the Arbitral Tribunal at the threshold is an interim award and can be challenged under Section 34 and not under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996. The jurisdiction to make an interim arbitral award extends to "any matter" with respect to which it may make a final arbitral award. Any point of dispute between the parties which has to be answered by the Arbitral Tribunal can be the subject matter of an interim arbitral award.

Bombay High Court in the case of ***MPD Associates Pvt. Ltd. Vs. Angen Broking Ltd. 2025 Supreme (Bom) 1427: 2025 BHC (OS) 23107*** has held that the Petitioner never raised objection to the invocation of arbitration under the Act during the arbitral proceedings, never raised any objection to the Arbitral Tribunal's lack of jurisdiction during the proceedings, either in its written statement nor by way of an application under section 16 of the Act, no objection as to the jurisdiction can be raised after award is made.

Bombay High Court in ***Ambey Mining Pvt. Ltd. vs. Western Coalfileds Limited 2021 SCC OnLine Bom 1539*** held that Section 16(1) of the 1996 Act empowers Arbitral Tribunal to rule upon its own jurisdiction, including ruling on any objection with respect to all aspects of non- arbitrability, including validity of arbitration agreement.

> **Section 17 duly amended w.e.f. 23rd October 2015 now empowers the arbitral tribunal with the identical powers that of Court to order interim measures. The arbitral tribunal is also empowered to grant interim measures during the arbitral proceedings or at any time after making of the arbitral award but before it is**

enforced in according to Section 36. Under Section 17(2), subject to any order in appeal under Section 37, any order issued by the arbitral tribunal under Section 17(1) shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 in the same manner as if it were an order of the Court.

By 2019 Amendment, Section 17 of the Arbitration Act, the words in Sub-Section (1) of Section 17, "or at any time after the making of the arbitral award but before it is enforced in accordance with section 36" is omitted.

Bombay High Court in the case of ***Mahendra Kumar N. Patel Vs. Ashwin Mahendra Kumar Patel – 2025 Supreme (Bom) 987: 2025 BHC (OS) 10161*** has held that an LLP is a body incorporated with limited liability and an independent legal existence, unlike a government partnership firm, which has a legal personality identical to that of its partners. LLP is an artificial juridical person and the conduct of affairs of LLP is a matter of the independent body corporate's own right, distinct from the rights of its partners. The assets of the LLP are not the assets of the partners.

Bombay High Court in the case of ***Sarvana Prasad Vs. Endemol India Pvt. Ltd. & Another – 2025 supreme Bom 959: 2025 BHC (OS) 9926*** has held that the sole shareholder of a one-person company cannot be held liable for the company's debts under the Companies Act. The Arbitral tribunal could not issue any directions against the shareholder to make a deposit or make any disclosure. Such a direction is in direct conflict with the fundamental policy of Indian law governing the OPC (One Person Company) concept introduced in the Companies Act, 2013.

Bombay High Court in the case of ***Skylark Feeds Pvt. Ltd. Vs. National Commodities Management Services Ltd. 2026 BHC (OS) 3347*** has held that need for and the scope of interim relief is a fact-specific perception that ought to be formed by the master of the proceedings - in every case, that is the Arbitral Tribunal, which is entitled to take an appropriate measure on its perception of the risk to the subject matter of the arbitration agreement. Principles of CPC are handmaidens for substantive justice and not meant to create substantive rights that cause hindrances to an assessment of just measures u/sec. 17 of the Act. It is held that the Appellate Court may interfere only if something perverse or impossible is found in the exercise of discretion by the forum appealed against and must not lightly interfere in the absence of capricious, perverse or arbitrary decision-making in the grant or denial of interlocutory relief.

Bombay High Court in the case of ***M/s. Shakti International Pvt. Ltd. vs. M/s. Excel Metal Processors Pvt. Ltd. 2017 SCC OnLine Bom 321*** has held that the arbitral tribunal cannot appoint a Court Receiver, Bombay High Court under Section 17 of the Act.

Bombay High Court in ***Baker Hughes Singapore Pte vs. Shiv-vani Oil and Gas Exploration Services Ltd. 2014 SCC OnLine Bom 1663***, the Court first analyzed whether a "money claim" made by a party before the tribunal can be considered as the 'subject matter of dispute' as required under Section 17 of the Act and further held that Interim reliefs are in aid of final reliefs. To consider interim measures, the arbitral tribunal has to consider whether the claimant has made out a prima facie case that he would succeed finally in the arbitration proceedings and whether had made out a case for the grant of interim measures. Since the arbitral tribunal is also empowered to make an interim award and to grant a money claim based on an admitted claim and/or acknowledged liability, then according to the Court the arbitral tribunal has also the power to grant interim measures to secure the claim which is the subject matter of the dispute before the arbitral tribunal if such case is made out by the applicant. The provisions under Sections 9 and 17 of the Arbitration

and Conciliation Act are meant to protect the subject matter of the dispute till the arbitration proceedings culminate into an award.

Under section 18, the arbitral tribunal has to treat both parties equally.

Section 18 - of the Arbitration Act and Article 227 of the Constitution of India –

Section 19 provides that the arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The arbitral tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence subject to section 19(3).

Bombay High Court in the case of ***Master Drilling India Pvt. Ltd. Vs. Sarel Drill & Engineering Equipment India Pvt. Ltd. 2025 Supreme (Bom) 1569: 2025 BHC (OS) 21641*** has held that by reason of Section 5 read with Section 19 of the Arbitration Act, the High Court ought not to interfere with the interim and prima-facie views expressed by the Arbitral Tribunal. Section 19 gives the Arbitral Tribunal full power to decide how to go about adjudicating such issues. The High Court cannot direct, monitor or oversee such exercise of power by the Arbitral Tribunal in conducting arbitration.

Bombay High Court in the case of ***Neelkanth Mansion & Infrastructures Pvt. Ltd. Vs. Urban Infrastructures Trustees Ltd. & Anr. – 2025 SC (Bom) 1307: 2025 BHC (OS) 9195*** has held that the arbitrator, while deciding the issue of limitation, is required to adopt a judicial approach. Even though section 19(1) of the Arbitration Act provides that Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or by the Indian Evidence Act, 1872, however, section 19(1) does not prohibit the Arbitral Tribunal from

following the fundamental principles underlying the Code of Civil Procedure, 1908 or by the Indian Evidence Act, 1872. The issue of limitation, which normally is a mixed question of law and facts, would be tried as a preliminary issue only if the same does not require any evidence.

Section 20 provides for determining the place of arbitration.

Supreme Court in the case of ***BBR (India) Pvt. Ltd. vs. S.P. Singla Constructions, 2022 SCC OnLine SC 642***, held that the seat of the arbitration would not be changed merely because a new arbitrator holds arbitration proceedings at a different place than the respective predecessor. The Supreme Court observed that it is highly desirable in commercial matters that there should be certainty as to how the Court should exercise jurisdiction. Thus, the seat once fixed by the arbitral tribunal under Section 20(2), should remain fixed, whereas the venue of the arbitration can change.

Bombay High Court in the case of ***Dhule Municipal Commr. v. Borse Brothers Engineers & Contractors (P) Ltd., 2024 SCC OnLine Bom 3330*** while dealing with Section 20(3) has held that Section 20(3) does not completely bar the change of venue without the consent of the parties, even when the venue is agreed upon in the contract. The arbitrator may change the venue if conducting arbitration proceedings at the agreed venue would be detrimental to the arbitration process.

Section 21 provides that unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

How to initiate arbitration - Notice Invoking Arbitration, precautions to be taken, Section 21

Before initiating arbitration, a party must examine an arbitration agreement and see whether such arbitration agreement provides for any procedure to be followed before invoking an arbitration agreement. If any procedure is required to be followed as a condition precedent before invoking an arbitration agreement, such procedure has to be followed before invoking an arbitration agreement. If such a mandatory procedure is not followed before invoking an arbitration agreement, the opponent may object to non-compliance with the mandatory procedure provided in the agreement before invoking arbitration agreement. If no such mandatory procedure is followed by the party who seeks to invoke an arbitration agreement but no objection is raised by the opponent before the arbitral tribunal, it would amount to waiver under Section 4 of the Arbitration and Conciliation Act, 1996. A party who seeks to invoke the arbitration agreement has to be careful in drafting a notice invoking the arbitration agreement.

When disputes and differences arise between the parties, a party to the arbitration agreement as defined under Section 2(1)(h) has to issue notice invoking the arbitration agreement and has to call upon the opponent to appoint an arbitrator in accordance with the arbitration agreement. If the arbitration agreement provides for the appointment of sole arbitrator or if the arbitration agreement is silent about the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.

A party who invokes the arbitration agreement can suggest the name of a few arbitrators and may call upon the opponent to agree to one of the names suggested by that party or to suggest any other names if the names suggested by that party is not agreeable by the other party within thirty days from the date of receipt of the said notice. Section 43(2) provides that for the purposes of Section 43 of the Arbitration and Conciliation Act, 1996 and the Limitation Act,

1963, arbitration proceedings shall be deemed to have commenced on the date referred in Section 21.

Section 21 of the Arbitration and Conciliation Act, 1996 provides that unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. Limitation in respect of which a request is made by one party to other party to refer such dispute to the arbitration stops when such notice is received by other party.

Supreme Court in the case of ***Bhageeratha Engineering Ltd. Vs. State of Kerala (2026) supreme SC 6: (2026) INSC 4*** has held that section 21 of the Arbitration Act is only for the purpose of commencement of arbitral proceedings and for determining the commencement of dispute for the purposes of reckoning limitation. Failure to issue a notice would not be fatal to a party in arbitration if the claim is otherwise valid and the disputes are arbitrable.

Supreme Court in the case of ***Voltas Limited vs. Rolta India Limited (2014) 4 SCC 516*** has held that limitation for filing a counterclaim is saved if a respondent against whom a claim has been made satisfies the twin test, namely, he had made a claim against the claimant and sought arbitration by serving a notice to the claimant.

Supreme Court in the case of ***State of Goa vs. Praveen Enterprises (2012) 12 SCC 581*** has held that the limitation for counterclaim should be computed, as on the date of service of notice under Section 21 of the Arbitration and Conciliation Act, 1996 of such claim on the claimant and not on the date of filing of the counterclaim.

Bombay High Court in case of ***Integro Finserv (P) Ltd. v. Vineet Singh Construction (P) Ltd., 2024 SCC OnLine Bom 511*** while dealing with sections 11, 14, 15 and 18 of the Arbitration and Conciliation Act, 1996 and Section 26 of the Amendment Act, 2015 held that Schedule iv, v, vi, vii inserted by section 26 of the Amendment Act, 2015 shall not apply to the arbitration proceedings that have commence as in accordance the provisions of Section 21 of the Arbitration and Conciliation Act, 1996, before the commencement of the amending act.

Bombay High Court in the case of ***Malvika Rajnikant Mehta vs. JESS Constructions, 2022 SCC OnLine Bom 920*** has held that the exclusionary clause, "unless otherwise agreed by the parties", under Section 21 of the Act, implies that the parties can by agreement provide that the arbitral proceedings shall commence on the date other than when a request was made by one of the parties to refer the dispute to arbitration. The Court also held that, the requirement of notice under Section 21 of the Act can be waived.

Division Bench of the Bombay High Court in the ***Jethmal Mulji Thakkar vs. Maharashtra State Co-operative Marketing Federation Ltd. (2017) SCC Online Bom 144*** has held that if there is no dispute and the denial to the amount so claimed and demand is made from time to time, but the opponent has delayed the payment, the request of the claimant made for the first time should have been treated as first communication to refer the dispute to arbitration as contemplated under Section 21 of the Arbitration and Conciliation Act, 1996. Merely because the claimant invoked the Arbitration Agreement a second time, that in no way be treated and/or interpreted to mean that the earlier invocation of the arbitration clause was superseded and/or required to be overlooked.

Bombay High Court in the case of ***Board of Trustees of Jawaharlal Nehru Port Trust vs. Three Circles Contractors (2015) SCC Online Bom 951*** has held that the arbitration proceeding commences in respect of

the disputes which are referred in the notice invoking arbitration agreement on the date on which such notice is received by the respondent in respect of such disputes. In that case, the claimant had made a claim of a specific amount for a specific quantity at a particular rate in the notice invoking an arbitration agreement. It is held that the arbitration proceedings thus commenced in respect of those specific disputes which were raised in the said notice invoking arbitration agreement. The limitation stopped only in respect of such disputes which were referred to in the said notice invoking arbitration agreement. It is held that the limitation in respect of the additional claims/disputes would stop only on the date of application for such amendment and will not relate back. It is held that merely because the respondent had reserved their right to amend the statement of claim in future, such plea would not extend the period of limitation till the date of filing the amendment application whenever they apply in future.

Under Section 23, the claimant has to state the facts supporting his claim, the points at issue and the relief or remedy sought whereas the respondent has to state his defence in respect of those particulars unless the parties have otherwise agreed as to the required elements of those statements. The parties are also allowed to submit their statements and all documents which they consider to be relevant. Because of the amendment to Section 23, the respondent is also permitted to submit a counterclaim or plead a set-off which also shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement. The parties are also permitted to amend or supplement their claim or defence during arbitral proceedings unless otherwise agreed by the parties and unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

By the 2015 Amendment, Section 23 of the Act is amended. After subsection (2) of Section 23, sub-section (2-A) is inserted. It provides that the respondent is entitled to submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal if such counterclaim or set-off falls within the scope of the arbitration agreement.

By 2019 Amendment sub-Section (4) is inserted in Section 23. It is provided that the Statement of claim and defence shall be completed within six months from the date the arbitrator or all the arbitrators, as the case may receive notice in writing of their appointment.

The Bombay High Court in the case of ***Wanbury Ltd. vs. Candid Drug Distributors 2015 SCC Online Bom 3810*** has held that the power of the arbitral tribunal to issue directions to file pleadings and documents includes the power to grant an extension of time. Such orders passed by the arbitral tribunal are procedural and can be recalled if sufficient case is made out.

> **Section 24 provides that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on a day-to-day basis, shall not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause. It is for the arbitral tribunal to decide oral hearings for the presentation of evidence or for oral argument unless otherwise agreed by the parties. The parties shall be given sufficient advance notice of any hearing and any meeting of the arbitral tribunal for inspection of documents, goods or other property. All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one**

party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

By 2015 Amendment, Section 24 of the Act is amended. Proviso to sub-section (1) of Section 24 is inserted. It is provided that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on a day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.

Section 25 of the Act is also amended. Because of the amendment in clause (b) of Section 25, the arbitral tribunal has the discretion to treat the right of the respondent to file such statement of defence as having been forfeited in case of failure of the respondent to communicate his statement of defence under subsection (1) of Section 23.

Section 27 provides for Court assistance in taking evidence. Under Section 27(5), if any person fails to attend under such process issued by the Court under Section 27(1) or commits any other default refuses to give their evidence or is guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, such person shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

Bombay High Court in the case of ***Dilip vs. Errol Moraes 2022 SCC OnLine Bom 129***, held that Section 27 needs to be read on the touchstone of

Section 5 read with Section 19 of the Act, which clearly brings out a legal consequence under Section 27 of the Arbitration Act. The Court has not been conferred with any adjudicatory powers being a provision merely intended to enable the parties to seek assistance of the Court in taking evidence, which is particularly clear from the provisions of Section 27(1) of the Act.

The Delhi High Court in case of ***Steel Authority of India Ltd. vs. Uniper Global Commodities 2023 SCC OnLine Del 7586*** while dealing with application under Section 27 of the Arbitration Act held that the Arbitral Tribunal although not bound by the rules of procedure prescribed under **Code of Civil Procedure and Evidence Act** and entitled to conduct the proceedings in the manner it considers appropriate, was still required to form an opinion/exercise discretion in permitting the witness to be examined by the other party. The Arbitral Tribunal cannot allow an Application under Section 27 for seeking the assistance of the Court for recording evidence mechanically but must scrutinize at least on a prima facie basis, that there is the relevancy of the witness sought to be produced. The Court exercising powers under Section 27 does not have adjudicatory powers when read with Section 5 and Section 19 of the Arbitration Act.

Section 28 (1) of the Act provides that where the place of arbitration is situated in India, in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration under the substantive law for the time being in force in India. Section 28(3) provides that in all cases the arbitral tribunal shall decide under the terms of the contract and shall take into account the trade usages applicable to the transaction. Section 31 provides for the form and contents of an arbitral award. Section 32 provides for the termination of arbitral proceedings.

Section 28 of the Act was amended in 2015. Sub-section (3) of Section 28 is substituted which provides that the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.

Sub-section (1) of Section 29-A of the Arbitration and Conciliation Act, 1996 provides that the award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference. The explanation to the said provision provides that an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment. Sub-section (2) of Section 29-A of the Arbitration and Conciliation Act,1996 provides that if the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree. Sub-section (3) of Section 29- A of the Arbitration and Conciliation Act, 1996 provides that the parties may, by consent, extend the period specified in sub-section (1) for making an award for a further period not exceeding six months. Sub-section (4) of Section 29-A of the Arbitration and Conciliation Act, 1996 provides that if the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period. If the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, the Court may pass an order for

reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such a delay. Sub-section (5) of Section 29-A of the Arbitration and Conciliation Act, 1996 provides that the extension may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court. Pleadings have to be filed within six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment as per Section 23(4) of the Arbitration Act.

By the 2019 Amendment, Sub-Section 1(a) of Section 29-A is substituted by the words "the award in matters other than international commercial arbitration shall be made by the arbitral tribunal within twelve months from the date of completion of pleadings under sub-section (4) of Section 23. The award in the matter of international commercial arbitration may be made as expeditiously as possible and an endeavor may be made to dispose of the matter within twelve months from the date of completion of pleadings under sub-section (4) of Section 23.

In Section 29-A, the proviso is inserted in Sub-Section (4) that where an application under sub-section (5) of Section 11 is pending, the mandate of the arbitrator shall be continued till the disposal of the said application for extension of time.

Supreme Court in the case of ***C. Velusamy Vs. Indhera 2026 SCC OnLine (SC) 142: (2026) INSC 112*** has held that the Court has powers to extend the time before or after the expiry of a statutorily stipulated period. The provisions of Section 29A must not be interpreted to infer a threshold bar for an

application/sec.29A (5) for extension of the mandate of the Arbitrator even when an award is passed, through after expiry of the mandate. Application u/sec. 29A for extension of the mandate of the arbitrator is maintainable even after expiry of time u/section 29A (1) and (3) and even after rendering of an award during that time. Such an award is ineffective and unenforceable but the powers of the Court to consider extension is not impaired by such an indiscretion of the arbitrator.

Supreme Court in the case of ***Jagdeep Chowgule Vs. Sheela Chowgule 2026 SCC OnLine (SC) 124: 2026 INSC 92*** has held that the application for time extension u/section 29A shall lie before the High Court when the Arbitrator is appointed by the High Court or in case of appointments made by the parties u/sec. 11(2) the principal civil court would have the jurisdiction. Once the Arbitral Tribunal is appointed u/sec. 11, the authority of appointing the court becomes functus officio concerning the arbitral proceedings. Subsequent applications regarding the Tribunal's operation must be submitted to the specified court as defined in Section 2(1)(e) of the Arbitration Act.

Supreme Court in case of ***Viva Highways Ltd. Vs. Madhya Pradesh Road Development Corporation Ltd. 2026 SCC OnLine SC 195,*** held that while dealing with section 29A (6) of the Arbitration Act, when the Supreme Court had used the expression 'obligates', it only meant that a substitute Arbitrator would be appointed if the situation so warranted. It is not an inference which would necessarily follow the mandate of the Arbitrator standing terminated u/sec. 29A (4) of the Arbitration Act.

Supreme Court in the case of ***Mohan Lal Fatehpuria Vs. Bharat Textiles & others 2025 SCC OnLine (SC) 2754: 2025 INSC 1409*** has held that when the mandate of an arbitrator has expired, his continuation is impermissible. Section 29A (6) empowers and obligates the court to substitute the arbitrator. The Supreme Court accordingly held that the mandate of the sole arbitrator stood terminated by operation of law and substituted the arbitrator

by appointing another arbitrator with a direction to resume from the stage already attained.

Supreme Court in the case of **Chief Engineer (NH) PWD (Roads) v. BSC & C & C JV, 2024 SCC OnLine SC 1801** while dealing with Section 29(A)(4) has held that under Section 29(A)(4), the power to extend the time limit for passing of the Arbitral Award rests within the Principal Civil Court of Original Jurisdiction but there is no impediment for the High Court which is exercising the Ordinary Original Civil Jurisdiction.

Supreme Court in case of ***Ajay Protech (P) Ltd. v. General Manager, 2024 SCC OnLine SC 3381*** while dealing with application under section 29(4) of the Arbitration and Conciliation Act, 1996 has held that if arbitral award is not made within 12 months from when pleadings are completed extendable for further 6 months by mutual consent of the parties, the mandate of the arbitral tribunal will terminate unless court either prior or after the expiry of period, extends it Court can extend tribunal's mandate after expiry of statutory and extendable period of 18 months.

Supreme Court in the case of ***Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd., 2024 SCC OnLine SC 2494*** while dealing with an application under section 29A (5) of the Arbitration and Conciliation Act, 1996 has held that court while adjudicating an application for an extension will be guided by the principle of sufficient cause. However, under section 29A (5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension cannot be granted mechanically on the filing of the application. Judicial discretion of the court in terms of enactment acts as a deterrent against any party abusing the process of law or espousing a frivolous or vexatious application. The court can impose terms and conditions while granting an extension. Delay even on the part of the arbitral tribunal is not countenanced.

Supreme Court in ***Tata Sons Pvt. Ltd. (Formerly Tata Sons Ltd.) vs. Siva Industries and Holdings Ltd. & Ors. 2023 SCC OnLine SC 23*** has held that Section 29A of Arbitration and Conciliation Act does not apply to International Commercial Arbitration. The award in International Commercial Arbitration may be made as expeditiously as possible and an endeavour may be made to dispose of the matter within twelve months from the date of completion of pleadings.

Bombay High Court in the case of ***Indiaulls Infraestate Ltd. Vs. Imagine Realty Pvt. Ltd. 2025 SCC OnLine (Bom) 1760: 2025 BHC (OS) 6783*** has held that under section 29A (6) of the Arbitration Act, the jurisdictional court would have the power to substitute the arbitrator. However, such power can never be construed to be an absolute power that can be exercised for the asking and that too by a party aggrieved by having lost on a parallel arbitration. The said provision does not give unbridled power to substitute an arbitrator lightly without meeting the ingredients of section 14 and 16 of the Arbitration Act. The allegation that the learned Arbitral Tribunal has made its mind and that it is likely to not change its mind, are in the realm of speculation and maybe a ground in the challenge under section 34 but cannot be the basis to substitute the arbitrator.

Bombay High Court in the case of ***Surender Singh Vs. Arrow Engineering Ltd. 2025 SCC OnLine (Bom) 1761: 2025 BHC (OS) 6784*** having found that the arbitration proceedings had gone stale and no cause was made out for extending the mandate of the Arbitral Tribunal held that extending the mandate would be of no real benefit to anyone and the only implication could be the prolonging of agony for all the litigating parties involved. The High Court refused to grant an extension of time in these circumstances.

Bombay High Court, in the case of ***Rural Infrastructure Development Pvt. Ltd. Vs. Land Acquisition Officer and Sub-Divisional Officer***

2026 BHC (AS) 427 (DB), has held that Section 11 of the Arbitration Act cannot be invoked in case of arbitration relating to National Highways. It is held that power under section 29-A of the Arbitration Act, for arbitration proceedings where the seat is outside Mumbai, would be exercisable by Bombay High Court only in cases where Bombay High Court has appointed the arbitrator under Section 11 of the Arbitration Act. Since the Arbitrator was not appointed by the High Court under section 11, principal civil court having jurisdiction over the juridical seat of the arbitration i.e. over Navi Mumbai would have the jurisdiction to consider a Petition under section 29A (4) and to substitute the arbitrator under section 29A (6) of the Arbitration Act read with Section 2(1)(e) of the Arbitration Act.

Bombay High Court in the case of ***Ramesh Ramchandra Kalyankar v. Suresh K. Haware & Ors., 2025 Supreme (Bom) 1159: 2025 BHC (OS) 12529*****,** after considering that the parties had agreed to the seat of arbitration at Karjat / Thane, the parties are, however, capable of amending their consent and changing the seat. Parties have also accepted two extensions under Section 29A of the Arbitration Act granted by the District Court. Further application for extension was made before the Bombay High Court under Section 29A. Bombay High Court held that it does not have territorial jurisdiction and accordingly granted liberty to the parties to go back to the District Court for seeking an extension.

Bombay High Court in the case of ***Maharashtra Public Service Commission Versus Vast India Pvt. Ltd.2025 SCC OnLine Bom 450: 2025 BHC (OS) 2179*** has held that Section 18(5) of the Micro Small & Medium Enterprises Development Act, which prescribes 10 days period for making an award, is directory. Section 18(3) empowers the Felicitation Council to be the Arbitral Tribunal and provides that the Arbitration Act shall then apply to the arbitration. Once the Felicitation Council commences its role as the Arbitral Tribunal, the provisions of the Arbitration Act would take over. There is no penal consequence for the Felicitation Council for imposing the deadline of 90 days making an award for the issuance of the first arbitration notice. It is

held that provisions of the Arbitration Act would take over, and therefore, Section 29-A would run its course. A counterclaim is a pleading. By filing a counterclaim, the Respondent reset the 12 months deadline for the purpose of Section 29-A of the Arbitration Act. The counterclaim has to be considered in the light of other pleadings, and the statute grants 12 months from the completion of pleadings to undertake that exercise.

The Bombay High Court in ***K.I.P.L. Vistacore Infra Projects J.V. vs. Municipal Corporation of the city of Ichalkarnji 2024 SCC OnLine Bom 327*** has held that the words used by the Statute in sub Section (1) or (2) of Section 29A are not otiose when it permits the definitions to be read in the manner provided, unless the context otherwise requires and if the meaning assigned to term 'court' in Section 2(1) (e) is introduced in Section 29A, it would run contrary to the intention of legislation and would defeat the purpose of the provision by permitting a 'court' as defined under Section 2(1)(e) to partake the power vested in the High Court to extend the mandate of the Arbitrator and substitute the Arbitrator or Arbitral Tribunal itself.

The Bombay High Court in the ***Fedbank Financial Services vs. Narendra H. Shelar & Ors. 2020 SCC OnLine Bom 5252*** held that an arbitration clause cannot be constantly revived and brought back to life again and again. The mandate of the Arbitrator expired by efflux of time. The Petitioner belatedly filed an application under Section 29-A (for extension), and the same was dismissed. Thereafter, the Petitioner filed a fresh application under Section 11 for the appointment of arbitrator, for the same dispute.

Bombay High Court in the case of ***Sanjay R. Dhote & Anr. vs. Karla Farms & Ors. delivered on 4th April 2018 in Commercial Arbitration (L) No.323 of 2018*** has held that even if the arbitral proceedings are terminated under Section 29-A (4) of the Arbitration and Conciliation Act, 1996, the arbitration agreement which is entered into between the parties does not come to an end.

Under Section 31, the arbitral award has to be made in writing and has to be signed by the members of the arbitral tribunal. In the case of the arbitral tribunal, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient if the reason for any omitted signature is stated. The arbitral award shall state the reasons upon which it is based, unless otherwise agreed by the parties or unless the award is an arbitral award on agreed terms under section 30. Under Section 31(5), a signed copy of the arbitral award has to be delivered to each party by the arbitral tribunal. The arbitral tribunal is empowered to make an interim arbitral award on any matter to which it may make a final arbitral award. The arbitral tribunal is empowered to award interest at such rate as he deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made unless otherwise agreed by the parties. In view of amendment to Section 31(7)(b) w.e.f. 23rd October 2015, if the arbitral award is silent, in so far as the interest is concerned, from the date of the award to the date of payment, a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award.

'Current rate of interest' shall have the same meaning as assigned to it under clause 2(b) of the Interest Act, 1978. The arbitral tribunal has to fix the costs of an arbitration under Section 21(8) according to Section 31- A.

Supreme Court in case of ***Oil & Natural Gas Corporation Vs. GNT Backfield Drilling Services Pvt. Ltd. –2025 SCC OnLine (SC) 2088: 2025 INSC 1066*** has held that the arbitral tribunal can be denuded of its power to award pendente lite interest only if the agreement/contract between the parties is so worded that the award of the pendente lite interest is either explicitly or by necessary implication, barred. A clause merely barring award of interest on delayed payment by itself will not be readily inferred as a bar to award pendente lite interest by the arbitral tribunal.

Supreme Court in the case of ***HLV Ltd. Vs. PBSANP Projects Pvt. Ltd. 2025 SCC OnLine (SC) 2062: 2025 INSC 1148*** has held that parties possess the autonomy to determine pre-award interest on the payment of money that may be awarded by the Arbitral Tribunal. However, no such discretion is available to the parties u/sec. 31(7)(b) of the Arbitration Act though such discretion is available to the Arbitral Tribunal. It is held that the agreement did not stipulate compounding of interest, the Arbitral Tribunal did not award compound interest. The Respondent cannot at the stage of execution seek to introduce claim of compound interest by drawing on general principles. Allowing such a claim amount to re-writing the award at the stage of execution which is impermissible.

Supreme Court in the case of ***Sri Lakshmi Hotel Pvt. Ltd. Vs. Sriram City Union Finance Ltd. 2025 SCC OnLine (SC) 2473: 2025 INSC 1327*** has held that grant of post award interest u/sec. 31(7)(b) is mandatory. The only discretion the Arbitral Tribunal has to decide is the rate of interest to be awarded. Where the arbitrator does not fix any rate of interest, then the statutory rate, as provided u/sec. 31(7)(b) shall apply.

Supreme Court in the case of ***BPL Ltd. V/s. Morgan Securities & Credits Pvt. Ltd. - 2025 SCC OnLine (SC) 2640: 2025 INSC 1380*** has held that position under Section 31(7) of the Arbitration Act, is wholly different inasmuch as Section 31(7) of the Act sanctifies agreements between the parties and states

that moment the agreement says otherwise, no interest becomes payable right from the date of the cause of action until the award is delivered. It is held that the contra proferentem principle does not merit applicability in the case of commercial contracts, for the reason that a clause in the commercial contract is bilateral and has been mutually agreed upon. Whether the terms of the contract are clear, there will be no occasion to apply the contra proferentem rule. Subsequent conduct of the parties in the performance of the contract does not affect the true effect of the clear and unambiguous words used in the contract.

Supreme Court in the case of ***M/s. Ferro Concrete Construction (India) Pvt. Ltd. Vs. State of Rajasthan 2025 SCC OnLine SC 708: 2025 INSC 429*** has held that an arbitrator's award to grant interest would depend on the contractual clause in each case and whether it expressly takes away the arbitrator's power to grant pendente lite interest. A bar on award of interest for delayed payment would not be readily inferred as an express bar to the award of pendente-lite interest by the arbitrator.

Supreme Court in the case of ***Interstate Construction Vs. National Projects Construction Corporation Ltd. 2025 5 Supreme 577: 2025 INSC 699*** has held that u/sec. 31(7)(a) of the Arbitration Act, there is a statutory recognition of the power of the Arbitral Tribunal to grant pre-reference interest from the date on which the cause of action arose till the date on which the award is made. The Arbitral Tribunal has the discretion to include in the sum awarded interest at such rate as it deems reasonable on the whole or any part of the money awarded on the whole or any part of the period from the date on which the cause of action arose till the date on which the Award is made. It is held that the sum awarded would mean a principal amount plus interest awarded from the date of the cause of action up to the date of award. Thereafter, as per Sec. 31(7)(b) of the Arbitration Act, the sum (principal amount plus interest) would carry further interest @ 2% higher than the current rate of interest prevalent on the date of the award to the date of payment, unless the future interest is separately awarded in the award.

Supreme Court in the case of ***Union of India Vs. Larsen & Toubro Ltd. 2026 Supreme (SC) 218: 2026 INSC 203*** has held that if the contract prohibits pre-reference and pendente lite interest, the Arbitrator cannot award interest for the said period. The expression 'unless the award otherwise directs', in Section 31(7)(b), relates to the rate of interest and not the entitlement of interest. The only distinction made by Section 31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate.

Supreme Court in the case of ***Pam Developments (P) Ltd. v. State of W.B., (2024) 10 SCC 715*** while dealing with Section 31(7) has held that the arbitrator has authority u/s 31(7) to award pre-reference period interest unless the contract prohibits it. Courts and Tribunals have to examine contract clauses in proceedings concerning arbitration.

Supreme Court in the case of ***R.P. Garg v. Telecom Department, 2024 SCC OnLine SC 2928*** while dealing with Section 31(7) has held that– the post-award period shall carry a rate of interest decided as per Section 31(7)(b). Even an Agreement between the parties not to grant post-award interest cannot eliminate the statutory right to award post-award interest.

Supreme Court in case of ***NDMC v. S.A. Builders Ltd., 2024 SCC OnLine SC 3768*** while dealing with as Section 31 (7) of the Arbitration and Conciliation Act, 1996 held that the post-award interest includes both principal and pre-award interest. The Supreme Court overruled the previous decision in the case of S. L. Arora. The Supreme Court held that the learned arbitrator had not become functus officio and was within his right to issue clarification post-award as permitted by the Court.

Supreme Court in ***Morgan Securities & Credits Private Limited vs. Videocon Industries Limited (2023) 1 SCC 602*** has held that the phrase "unless the award otherwise directs" in Section 31(7)(b) only qualifies the rate

of interest. According to Section 31(7)(b), if the arbitrator does not grant post-award interest, the award holder is entitled to post-award interest at eighteen per cent. Section 31(7)(b) does not fetter or restrict the discretion the arbitrator holds in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the sum. The arbitrator must exercise the discretionary power to grant post-award interest reasonably and in good faith, taking into account all relevant circumstances.

Supreme Court in ***Executive Engineer (R and B) & Ors. vs. Gokul Chandra Kanungo (Dead) through his legal representatives 2022 SCC OnLine SC 1336*** has held that in terms of Section 31(7)(a) of the A&C Act an arbitrator is required to assign reasons for awarding a particular rate of interest. Further, it held that the arbitrator cannot award interest to a party that itself was to be blamed for the delay. Therefore, the Supreme Court, by exercising power under Article 142, reduced the rate of interest on the grounds of long lapse of time and latches on the part of the award holder.

Supreme Court in ***UHL Power Company Limited vs. State of Himachal Pradesh, (2022) 4 SCC 116*** has held that the Arbitral Tribunal is empowered to grant compound interest. Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and interest.

Supreme Court in ***Union of India vs. Manraj Enterprises 2021 SCC OnLine SC 1081*** has held that an arbitrator cannot award interest contrary to the terms of the agreement/contract between the parties because of the bar under specific clause of the contract/agreement that no interest would be payable upon earnest money or security deposit or amounts payable under the contract. Arbitral Tribunal independently of the contract and on equitable grounds and/or to do justice, cannot award interest pendente lite or future interest.

Supreme Court in ***Oriental Structural Engineers Pvt. Ltd. vs. State of Kerala (2021) 6 SCC 150*** held that interest on delayed payments is grantable when the contract permits it, even though the space earmarked for filing rate of interest might be left blank in the bid documents. Leaving the space earmarked for filing the rate of interest as blank is not to be inferred as a "zero" or "nil" interest rate. In such a case the Arbitral Tribunal to decide for awarding reasonable interest be guided by the principles as enunciated in Section 31 of the Arbitration Act.

Supreme Court in case of ***Jaiprakash Associates Ltd. vs. Tehri Hydro Development Corporation India Ltd., 2019 SCC Online SC 143*** has held that Arbitral Tribunal cannot award interest if such claim is prohibited under the terms of the contract entered into between the parties.

Supreme Court in the case of ***Hyder Consulting (UK) Ltd. vs. Governor, State of Orissa (2015) 2 SCC 189*** has held that under section 31(7)(a) of the Arbitration Act, the arbitral tribunal has the power to award interest for pre-award period, interest pendente lite and interest post award on whole or part of the money and for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made however, subject to the contract to the contrary.

Bombay High Court in ***Shriram Transport Finance Company Limited, Aurangabad vs. State of Maharashtra 2022 SCC OnLine Bom 11758*** quashed the impugned order of the executing Court insisting that decree holders should produce evidence/documents showing compliance with Section 31(5) of the Act. The Court held that under Section 31(5) the arbitrator/Arbitral Tribunal has to deliver a signed copy of the award to each party. The decree-holder is not under obligation to produce evidence/documents showing compliance with Section 31(5) of the Act.

Bombay High Court in the case of ***Sphere International vs. Ecopack India Paper Cup Pvt. Ltd., 2019 SCC Online Bom 1490*** has held that the interim award under Section 31(6) of the Arbitration Act can be made by the arbitral tribunal only if the alleged admission or acknowledgment of the liability on the part of the respondent before the arbitral tribunal is clear, unambiguous and definite and does not require any evidence to prove such admission at the stage of trial. If there are serious disputed questions raised by the respondent in the arbitral proceedings about the claim made by the claimant which requires detailed evidence at the stage of trial, the arbitral tribunal cannot exercise its discretion under Order XII Rule 6 of the Code of Civil Procedure, 1908 and to make any interim award.

Bombay High Court in the case of ***Ashesh Busa vs. Atul Gandhi 2019 SCC Online Bom 1102*** has considered Section 31(2) of the Arbitration Act and has held that though one of the three arbitrators had not signed the arbitral award, because such arbitrator confirming the award by sending a separate email confirming his participation jointly with the other two arbitrators and concurring with the views taken by the other two arbitrators, it would amount to substantial compliance under section 31(2) of the Arbitration and Conciliation Act, 1996 and thus the impugned award cannot be set aside on that ground.

Bombay High Court in the case of ***A.S. Patel Trust & Ors. vs. Wall Street Finance Limited, 2019 SCC OnLine Bom 1328*** has held that since there was no prayer for recovery of possession of the premises under Leave and License Agreement made by the claimant and the prayer was only for refund of security deposit made by the licensee in the arbitral proceedings, such prayer was within the jurisdiction of the arbitral tribunal and was not within the jurisdiction of Small Cause Courts under section 41 of the Presidency Small Cause Courts Act. Bombay High Court has held that since there was no bar under the contract entered into between the parties from claiming payment of interest, because of Section 31(7)(a) of the Arbitration and Conciliation Act, the arbitrator has power to award interest on payment of money, at such rate as it

deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. It is also held in the said judgement that since the findings rendered by the arbitral tribunal are rendered ignoring vital evidence produced by the petitioner, it would fall under the ground of patent illegality.

The Bombay High Court in the case of ***Haresh Advani vs. Suraj Jagtiani (2015) 7 Bom CR 887*** has held that the power of the arbitrator under section 31(7) is not restricted to award interest on principal only and has also power to award interest on damages before the date of the award even if no notice under section 3(b) of the Interest Act, 1978 is issued by the claimant.

> **After Section 31, Section 31-A is inserted. The arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure,1908, shall have the discretion to determine the amount of costs.**

Bombay High Court in the case of ***Signpost India Pvt. Ltd. Vs. Brihanmumbai Electric Supply & Transport Undertaking (2025) Supreme (Bom) 1382: 2025 BHC (OS) 23431***, has held that awarding 18% interest on hefty delayed payment charges of 18%, 24% and 30% is contrary to the clause to the contract and even otherwise in conflict with public policy of India and in contravention with fundamental policy of Indian law. It is held that since the sum named in the contract was not agreed as a genuine pre-estimate of damages by the parties, it was incumbent on the Respondent to prove the cause of loss. Under the contract, where an amount is fixed in the nature of a penalty, only reasonable compensation can be awarded, not exceeding the penalty so stipulated.

Section 32 provides for Termination of proceedings. If the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute or the parties if agrees on the termination of the proceedings or the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

Supreme Court in case of ***Harshbir Singh Pannu & another Vs. Jaswinder Singh 2025 Supreme (SC) 2016: (2025) INSC 1400*** has held that the power of Arbitral Tribunal to pass an order to terminate the proceedings under the scheme of the Act, 1996 lies on in Section 32(2). The common thread that runs across sections 25, 30, 32 and 38 of the Act respectively is that although the Arbitral proceedings may get terminated for varied reasons, yet consequence of such termination remains the same i.e., the Arbitral reference stands concluded and the authority of the Tribunal stands extinguished. If recall application is dismissed by the Arbitral Tribunal, the party aggrieved therefrom would be empowered to approach the court u/sec. 14(2) of the Act. If and order of recall is passed and if Arbitration proceedings recommences, the only option available to the party aggrieved would be to participate in the proceedings and thereafter, challenge the final award u/sec. 34 of the Arbitration Act.

Supreme Court in the case of ***Sai Babu vs. M/s. Clariya Steels Pvt. Ltd., 2019 (5) SCJ 503*** has held that there is a distinction between the mandate terminated under Section 32 and proceedings coming to an end under Section 25. The Arbitral Tribunal has no power to entertain an application for a recall order under Section 32(3) of the Arbitration Act, which was passed under Section 32(2)(c) of the Arbitration Act.

Under Section 33, the arbitral tribunal is empowered to correct and interpret the award and has to make an additional award within the time prescribed therein, to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award, to give an interpretation of a specific point or part of the award.

Supreme Court in ***Gyan Prakash Arya vs. Titan Industries Limited 2021 SCC OnLine SC 1100*** has held that power of modification of award under Section 33 of the Arbitration and Conciliation Act can be exercised only to the extent of correcting arithmetical and/or clerical error without any material changes.

Supreme Court in the case of ***State of Arunachal Pradesh vs. Damani Construction Co., (2007) 10 SCC 742*** has held that since an application under Section 33 for seeking review of the interim award itself was misconceived and was not within the parameters of Section 33, there is no fresh cause of action to move an application under section 34(3) for challenging an award and taking it as the starting point of limitation from the date of reply given by the arbitrator to such misconceived application filed under Section 33.

Bombay High Court in the case of ***Dr Writers Food Products Pvt. Ltd. & Ors. vs. The Cosmos Co-operative Bank Ltd. 2019 SCC OnLine Bom 2140*** has held that the limitation of 30 days in applying Section 33(1) of the Arbitration and Conciliation Act, 1996 cannot be extended unless both the parties agree for another period for making such application for correction and interpretation of the award or additional award. Application filed by a party under Section 33(1) for correction of the award beyond the period of limitation and the order passed by the arbitrator on such application would not extend the period of limitation prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996. Time prescribed under Section 34(3) to challenge the

original award already having expired, belated application made under Section 33(1)(a) and the order passed by the learned arbitrator on such application therefore, would be of no significance. The challenge to the original arbitral award thus held as barred by limitation prescribed under Section 34(3) of the Act.

An arbitral award can be set aside on the grounds set-out in section 34 (2) (a) and (b) and if an application for setting aside such award is made by a party not later than three months from the date from which the party making such application had received the arbitral award or if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal. If the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of 30 days but not thereafter.

Section 34 of the Act reads as under: -

<u>34. Application for setting aside arbitral award: -</u>

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award under sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if —

(a) the party making the application furnishes proof that—

a party was under some incapacity, or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon,

under the law for the time being in force; or(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that —

(i) the subject - matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1. — For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, —

(i) the making of the award was induced or affected by fraud or

corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2. — For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review of the merits of the dispute.]

The words "furnishes proof that" prescribed under Section 34(2) is substituted by the words "establish based on the record of the arbitral tribunal that".

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the

arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within one year from the date on which the notice referred to in subsection (5) is served upon the other party.

By the 2019 Amendment, in Section 34(2) in clause (a), the words "furnishes proof that", and the words "establish based on the record of the arbitral tribunal that" are substituted.

Supreme Court in the case of ***Larsen & Toubro Ltd. Vs. Puri Construction Pvt. Ltd. 2025 SCC OnLine SC 830: 2025 INSC 523*** has observed a tendency of the members of the bar to rely upon a large number of decisions, whether relevant or irrelevant, while arguing Sec. 34 Petitions and Sec. 37 Appeals as well as appeals arising therefrom. Multiple decisions are cited on the same proposition of law, which makes the hearing time-consuming. As there are long oral arguments, the courts permit written submissions to be filed. Very long written submissions come on record. The courts have to devote page after page for dealing with many submissions which ought not to be made, considering the limited jurisdiction u/sec. 34 of the Arbitration Act. This results in a very lengthy judgment. All these results in the criticism about the arbitration in India, and therefore, there is a need to impose a time limit on oral submissions in such cases.

Supreme Court in the case of ***R. K. Transport Company Vs. Bharat Aluminium Co. Ltd. 2025 SCC OnLine SC 717: 2025) INSC 438*** has held that the statutory language of Sec. 34(3) of the Arbitration Act clearly stipulates the limitation period as 'three months' as distinct from the condonable period of 'thirty days. The limitation period is 3 calendar months and not 90 days. U/sec.12(1) of the Limitation Act, the date of receipt of the signed copy of the arbitral award is required to be excluded. The three-month period fell on the 2nd Saturday when the Court was not working, and thus benefit of section 4 of the Limitation Act accrued to the Respondent, and the application filed on the next working day of the court was within the limitation period.

Supreme Court in the case of ***Consolidated Construction Consortium Ltd. Vs. Software Technology Parks of India 2025 SCC OnLine SC 956: (2025) INSC 574*** has held that an award cannot be set aside merely on the ground that it is illegal or erroneous in law where such interference would require the appreciation of the evidence led before the Arbitral Tribunal. Proceeding u/sec. 34 are summary in nature, unlike a full-fledged civil suit or appeal. An arbitral award can be interfered only if it is contrary to the substantive provisions of law, provision of sec. 34 or the terms of the agreement. Even if an alternative or different interpretation of a contractual clause is possible, the award cannot be set aside on that ground.

Supreme Court in the case of ***Jan De Nul Dredging India Pvt. Ltd. Vs. Tuticorin Port Trust 2026 SCC OnLine SC 33: 2026 INSC 34*** held that in view of section 5 of the Arbitration Act, in order to speed up the remedial measures under the Arbitration Act in relation to domestic arbitration, there has to be minimum intervention of the Court and if necessary, it has to be only in strict compliance with the provisions of the Act. The appellate powers under section 37 are limited to the scope of and cannot exceed it. Scope of jurisdiction u/sec. 34 and section 37 of the Arbitration Act is not akin to normal appellate jurisdiction. The scope of interference of the court with the arbitral award is virtually prohibited, if not absolutely barred. The Appellate Court cannot sit as an ordinary Court of Law and re-appraise the evidence to record a contrary finding.

Supreme Court in the case of ***Geojit Financial Services Ltd. Vs. Sandeep Gurav - 2025 SCC OnLine SC 1811: 2025 INSC 1021*** has held that limitation for filing an application u/sec. 34 commences from the date of receipt of the arbitral award, in case there is no application u/sec. 33 of the Arbitration Act filed by a party. If any application u/sec. 33 is filed, a starting point of limitation u/sec. 34(3) would be the date of disposal of such application, irrespective of whether the Arbitral Tribunal ultimately allows or rejects the request, makes or declines to make any correction or modification, or renders or declines to render additional award.

Supreme Court in the case of ***Sepco Electric Power Construction Corporation Vs. GMR Kamalanga Energy Ltd. 2025 SCC OnLine SC 2088: 2025 INSC 1171*** has held that an arbitrator lacks the power to deviate from or to reinterpret the terms of the contract while making an award. The awards must be within the parameters of the agreement entered into between the parties. The arbitral decisions must adhere to natural justice and cannot rest solely on personal beliefs or perceived moral duties. The principles of natural justice and the public policy of India are paramount and cannot be ignored or sidelined in an attempt not to frustrate the patent or latent commercial wisdom of the parties to seek an alternate means of dispute resolution.

Supreme Court in the case of ***My Preferred Transformation & Hospitality Pvt. Ltd. Vs/ Faridabad Implements Pvt. Ltd. (2025) INSC 56,*** has held that an express reference to an exclusion is not essential and the court can examine the language of the special law and its scheme to arrive at a conclusion that certain provisions of the Limitation Act are impliedly excluded. The scheme of the Arbitration Act would result in an exclusion of Section 5 of the Limitation Act, and therefore, the delay beyond 30 days cannot be condoned by recourse to Section 5. Section 5 of the Limitation Act allows the court to exercise discretion to condone delay, and there were extents to the period of limitation. However, under Section 14, the exclusion of time is mandatory if certain conditions are satisfied. As per Section 4 of the Limitation Act, the period of limitation computed in accordance with its provisions expires on a day when the court is closed; the application may be made on the day when the court reopens.

Supreme Court in the case of ***Ramesh Kumar Jain Vs. Bharat Aluminium Co. Ltd. 2025 SCC OnLine SC 2857: (2025) INSC 1457*** has held that courts are not to treat every factual error or every divergent interpretation as an illegality while dealing with an award under Section 34. The illegality must be of a kind that strikes at the heart of the award's validity. If an

award ignores a binding precedent or a clear prohibition in the contract, that may be patent illegality.

Supreme Court in the case of ***M/s. Sai Sudhir Energy Ltd. Vs. NTPC Vidyut Vyapar Nigam Ltd. – 2026 Supreme (SC) 113: 2026 INSC 103*** after adverting to the Judgment in case of Gayatri Balasamy held that modification of the Award so as to enhance the amount of reasonable compensation by section 34 Court was a permissible exercise when viewed in the context of the law laid down in Gayatri Balasamy. The modification is in exercise of jurisdiction under section 34 of the Act of 1996 without undertaking any examination of the merits of the disputes. It is held that the modification in the amount of reasonable compensation by the Division Bench is merely a substitution of its view in place of the plausible view taken by the learned Single Judge. Such a course of taking a different view of the same matter from one taken u/section 34 of the Arbitration Act would be beyond the scope of Section 37 of the Arbitration Act. Supreme Court construed section 74 of the Indian Contract Act and adverted to the Judgment in the case of M/s. Construction & Design Services Vs. Delhi Development Authority (2015) INSC 92, wherein it was held in the context of delay in providing public utility service that, in such a case, the delay in commissioning of utility service itself can be taken to have resulted in loss in the form of environmental degradation. If the parties had pre-estimated loss likely to be caused, it would be unjustified to arrive at the conclusion that the party that had committed the breach was not liable to pay compensation.

Supreme Court in the case of ***Gayatri Balasamy Vs. M/s. ISG Novasoft Technologies Ltd. (2025) Supreme (SC) 751: 2025 INSC 605*** has held that it is appropriate for the section 34 court to have the authority to intervene and modify the post award interest if the facts and circumstances justify such a change. The court's power is both to increase or decree the post-award interest rate. The exercise of the power of the Supreme Court in Article 142 has to be in consonance with the fundamental principles and objectives behind the 1996 Act and not in derogation or in suppression thereof. Section 34 court and courts

hearing appeals have no power to modify the award. An inherent power under section 151 of CPC cannot be used to modify awards, as it will be contrary to the express power mentioned in section 34. There is no scope for applying the doctrine of implied power to modify awards. Power under section 34(4) can be exercised by the court suo-moto in certain circumstances, and an oral request under section 34(4) can be entertained by the Court.

Supreme Court in the case of **OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417** while dealing with Section 34 has held that mere violation of law is not enough to interfere with an Award. It must conflict with the most fundamental aspect of public policy, justice. Powers of Courts u/s 34 are very limited, particularly after the 2015 Amendment Court which led to guidelines as to when an implied term in a contract can be read.

Supreme Court in the case of ***Somdatt Builders -NCC - NEC(JV) v. National Highways Authority of India, 2025 SCC OnLine SC 170*** while dealing with section 34 and 37 of the Arbitration and Conciliation Act, 1996 as reiterated that grounds of interference with an award under section 34 are limited and reaffirmed the interpretation of contractual clauses by technical experts.

Supreme Court in the case of ***C & C Constructions Ltd. v. IRCON International Ltd., 2025 SCC OnLine SC 218*** while dealing with an award under Section 34 of the Arbitration and Conciliation Act, 1996 dealt with a clause of the contract which prohibited the contractor from claiming damages or compensation and held that as the claims were hit by the said clause on its plain reading, there was no question of allowing the contractor to lead evidence.

Supreme Court in case of ***Manbhupinder Singh Atwal Vs. Neeraj Kumarpal Shah 2024 Supreme (SC) 894*** while considering Section 34 of the Arbitration and Conciliation Act, 1996 considered a situation where Section

34 petition was heard over 23 sittings and the Judgement was reserved for 10 months. Execution proceedings were initiated by the Petitioner in favour of the arbitral award. Supreme Court held that undue delay in judicial proceedings undermines the efficiency of the legal process and imposes unnecessary burdens on the parties involved. The Supreme Court disposed of the proceedings with a direction that the same learned single Judge should take up the proceedings expeditiously.

Supreme Court in the case of ***DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357*** while considering a curative jurisdiction under article 142 of the Constitution of India and an award under Section 34 of the Arbitration and Conciliation Act, 1996 has held that patent illegality arises where the arbitrator adopts a view which is not a possible view that is when no reasonable body of a person could possibly have taken it. Decision or Award could not be perverse or irrational. An award is rendered perverse or irrational where finding are no evidence based on irrelevant material or ignores vital evidence. Patent illegality may also arise where the award is in breach of provisions of the arbitration statute. A fundamental breach of natural justice will result in patent illegality. Arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating fundamental principles of natural justice.

Supreme Court in the case of ***State of W.B. v. Rajpath Contractors & Engineers Ltd., (2024) 7 SCC 257*** while dealing with an application under Section 34 and considering Section 4 of the Limitation Act held that the period of limitation under Section 34 of the Arbitration Act is of 3 months and not 90 days. The prescribed period within the meaning of Section 4 of the Limitation Act, ended while filing a petition and thus the appellant was not entitled to take benefit of Section 4 of the Limitation Act. The arbitration petition was held barred by limitation prescribed under section 34 (3) of the Arbitration and Conciliation Act, 1996.

Supreme Court in the case of ***Punjab State Civil Supplies Corporation Ltd. v. Sanman Rice Mills, 2024 SCC OnLine SC 2632*** while dealing with powers of the Court under Sections 34 and 37 of the Arbitration and Conciliation Act, 1966 has held that Appellate Court has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits. Proceedings under section 34 of the Act are of summary nature and are not like a full-fledged regular civil suit. Appellate Court cannot set aside an award without recording any finding that the award suffers from any illegality contained in Section 34 of the Arbitration and Conciliation Act, 1966.

Supreme Court in the case of ***Kalanithi Maran v. Ajay Singh, 2024 SCC OnLine SC 1876*** while dealing with Section 34 has held that interference with the Arbitral Award u/s 34 must be confined to the grounds which are permissible under the Statute. Court hearing an application u/s 34 must apply their mind to the grounds of challenge and then deduce as to whether a case for interference with the parameters of Section 34 has been made out.

Supreme Court in the case of ***Kirpal Singh v. Union of India, 2024 SCC OnLine SC 3814***, New Delhi while dealing with Section 34(3) and 37 of the Arbitration and Conciliation Act, 1996 has held that when the substantial remedies under Section 34 or 37 of the Arbitration Act are by very nature limited in their scope due to statutory prescription under Arbitration and Conciliation Act, 1996, it is necessary to interpret the limitations provisions liberally, or as, even that limited window to challenge an arbitration award will be lost. Remedies under Sections 34 and 37 are precious. Courts of law will keep in mind the need to secure and protect such remedies while calculating the period of limitation for invoking arbitration invoking these jurisdictions. Section 14 of the Limitation Act applies to such proceedings under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996.

Supreme Court in the case of ***Batliboi Environmental Engineers Ltd. vs. Hindustan Petroleum Corporation Ltd. (2024) 2 SCC 375*** has while

dealing with a matter arising out of Section 34 of the Arbitration Act held that the Arbitrator has the right to construe and interpret the term of contract reasonably. Such interpretation should not be a ground to set aside the Award, as the construction of the terms of the contract is finally for the arbitrator to decide. The Award can only be set aside if the Arbitrator construes the Award in a way that no fair-minded and reasonable person would do. The Supreme Court after analyzing the Award held that its patent flaws and illegalities that emanate from it, like the manifest lack of reasoning in arriving at the conclusions and the calculation of amounts awarded, which, in fact, amount to double or part-double payments, besides being contradictory etc. and thus interfered with the judgment of division bench by which judgment of learned single judge setting aside the Award was set aside.

Supreme Court in the case of ***Unibros vs. All India Radio (2023) SCC OnLine SC 1366*** held that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions: first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. A claim for damages, whether general or special, cannot as a matter of course result in an award without proof of the claimant having suffered injury. The Court opined that the Arbitral Award in question, was patently illegal as it was based on no evidence and was, thus, out rightly perverse; therefore, again, in conflict with the "public policy of India" as contemplated by Section 34(2)(b) of the Act. It is held that any Award of an Arbitrator or Tribunal that seeks to overreach a binding judicial decision does conflict with the fundamental public policy and cannot therefore sustained. It is held that Hudson's formula as well as other methods used to calculate claims for loss of off-site overheads and profit, do not directly measure contractor's exact cost. Though their formulae are helpful when needed, they alone cannot prove the contractor's loss of profit.

Supreme Court in the case of ***Hindustan Construction Company Ltd vs. National Highways Authority of India (2023) SCC OnLine SC 1063*** held that a dissenting opinion cannot be treated as an Award if the majority Award is set aside. When a majority Award is challenged by the aggrieved party, the focus of the Court and the aggrieved party is to point out the errors or illegalities in the *majority Award*. It is held that by training, inclination and experience, judges tend to adopt a corrective lens; usually, commended for appellate review. However, that lens is unavailable when exercising jurisdiction under Section 34 of the Act.

Supreme Court in the case of ***Indian Oil Corporation Ltd. & Others vs. Sathyanarayana Service Station & Another 2023 SCC OnLine SC 597*** held that it is beyond the pale of any doubt that the Court cannot, after setting aside the award, proceed to grant further relief by modifying the award. It must leave the parties to work out their remedies in a given case even where it justifiably interferes with the award.

Supreme Court in the case of ***Bhimashankar Sahakari Sakkare Karkhane Niyamati vs. Walchandnagar Industries Ltd (2023) SCC Online SC 382*** while relying on the case of ***Assam Urban Water Supply & Sewerage Board vs. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624*** held that in light of the application of the **Limitation Act, 1963** to the proceedings under the Arbitration Act and when **Section 10 of the General Clauses Act, 1897** specifically excludes the applicability of Section 10 to any Act or proceeding to which Limitation Act, 1963 applies and in light of the definition of "period of limitation" as defined under Section 2(*j*) read with Section 4 of the Limitation Act, benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside Award is filed within "prescribed period of limitation" and shall not be available in respect of period extendable by Court in exercise of its discretion.

Supreme Court in the case of ***USS Alliance vs. State of Uttar Pradesh (2023) SCC Online SC 778*** has held that the starting point for the limitation in case of *suo moto* correction of the Award, would be the date on which the correction was made and the corrected Award is received by the party. Once the Arbitral Award has been amended or corrected, it is the corrected Award that has to be challenged and not the original Award. The original award stands modified, and the corrected Award must be challenged by filing objections. Application for condonation of delay can be filed at any time till the proceedings are pending.

Supreme Court in the case of ***Tirupati Steels vs. Shubh Industrial Component & Anr. (2022) 7 SCC 429*** has held that in an application under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act 2006, the requirement of a deposit of 75% of the amount in terms of the award as a pre-deposit as per Section 19 of MSMED Act is mandatory. The order passed by the High Court in the entertaining application without insisting on 75% was set aside. The Court further observed that unless and until 75% pre-deposit is made, an application under Section 34 shall not be entertained and decided on merits and in that case execution proceedings may continue.

Supreme Court in the case of ***Indian Oil Corporation vs. Shree Ganesh Petroleum Rajgurunagar 2022 (4) SCC 463*** has held that an Arbitral Tribunal is a creature of contract and is bound to act as per its terms. An award is patently illegal when the tribunal has failed to act in terms of the contract or has ignored the specific terms of the contract.

Supreme Court in the case of ***I-pay Clearing Services Pvt. Ltd. vs. ICICI Bank Limited, (2022) 3 SCC 121*** has held that Section 34(4) of the Act itself makes it clear that it is the discretion vested with the Court for remitting the matter to an arbitral tribunal to give an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral tribunal will eliminate the grounds for setting aside the arbitral award. The words

"where it is appropriate" itself indicates that it is a discretion to be exercised by the Court, to remit the matter when requested by a party.

Supreme Court in the case of ***Mahindra and Mahindra Financial Services Limited vs. Maheshbhai Tinabhai Rathod & Ors. (2022) 4 SCC 162*** set-aside the order which condoned the delay beyond the period of 3 months plus 30 days i.e. beyond the period of 30 days after expiry of prescribed period of 3 months in filing an application for setting aside arbitral award. If a petition is filed under Section 34 of the Arbitration Act beyond the prescribed period of 3 months, the Court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Section 5 of the Limitation Act is not applicable to condone the delay beyond the period prescribed under Section 34(3).

Supreme Court in the case of ***Narinder Singh & Sons vs. Union of India through Divisional Superintendent Engineer 2021 SCC OnLine SC 1082*** set aside an arbitral award on the ground that there was a violation of the principles of natural justice and lack of full opportunity as envisaged by Section 18 of the Arbitration Act thereby impeding a fair and just decision. The Court held that the award suffers and is liable to be set aside in terms of clause (iii) to Section 34(2)(a) as well as clause (ii) to Section 34(2)(b) of the Arbitration Act.

Supreme Court in the case of ***Ratnam Sudesh Iyer vs. Jackie Kakubhai Shroff (2022) 4 SCC 206*** has held that provisions of amended Section 34 of the Arbitration Act are inapplicable to proceedings under Section 34 commenced prior to 23.10.2015. Patent illegality as a ground for setting aside domestic award arising from an international commercial arbitration applies only to Section 34 applications that have been made to the Court on or after 23.10.2015, irrespective of the fact that the arbitration proceedings may have commenced prior to that date.

Supreme Court in the case of ***State of Chattisgarh & Anr. vs. Sal Udyog Private Limited 2021 SCC OnLine SC 1027*** has held that failure on the part of the arbitrator to decide under terms of the contract governing parties would certainly attract "patent illegality ground", as such oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins Arbitral Tribunal to take into account terms of contract while making an award. The said 'patent illegality' is not only apparent on the face of the award but also it goes to the root of the matter and deserves interference.

Supreme Court in the case of ***Dakshin Haryana Bijli Vitran Nigam Limited vs. Navigant Technologies Private Limited (2021) 7 SCC 657*** has held that period of limitation for challenging the award under Section 34 of the Arbitration Act commences from the date on which the party making the application has "received" a signed copy of the arbitral award, as required by Section 31(5) i.e. only after a valid delivery of the award (including dissenting opinion, if any) takes place under Section 31(5).

Supreme Court in the case of ***Noy Vallesina Engineering Spa (now known as Noy Ambiente Spa) vs. Jindal Drugs Limited & Ors. (2021) 1 SCC 382*** has held that an arbitration petition under Section 34 of the Arbitration Act is not maintainable against foreign arbitration award.

Supreme Court in the case of ***Patel Engineering Ltd. vs. North Eastern Electric Power Corporation Ltd AIR 2020 SC 2488*** has held that the ground of patent illegality is the ground available under the statute for setting aside a domestic award. Supreme Court held that if the decision of an arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at the same, or the construction of the contract is such that no fair or reasonable person would take or that the view of the arbitrator is not even a possible view, it would fall under the ground of patent illegality. Supreme Court reiterated the test set out for interference with an arbitral award in the case of ***Associate Builders vs. Delhi Development Authority (2015) 3 SCC***

49 and in the case of ***Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India, 2019 SCC Online SC 677.***

Supreme Court in the case of ***South East Asia Marine Engineering & Constructions Ltd. vs. Oil India Limited, (2020) 5 SCC 164*** has held that the thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. If the basic rule of interpretation is ignored by the Arbitral Tribunal while interpreting the clause, such award can be interfered with under Section 34.

Supreme Court in the case of ***Mitra Guha Builders (India) Company vs. Oil and Natural Gas Corporation Limited, 2020 3 SCC 222*** has held that parties having agreed that the decision of the Superintending Engineer in levying compensation is final and the same is an "excepted matter" and the determination shall be only by the Superintending Engineer and the correctness of his decision cannot be called in question in the arbitration proceedings, dispute raised arising out of such excepted matters would not be arbitrable and can be set aside under Section 34.

Supreme Court in the case of ***Oriental Insurance Company Limited vs. Tejparas Associates and Exports Private Limited, (2019) 9 SCC 435*** has held that Section 5 to the Limitation Act, 1963 is not applicable beyond the statutory period under Section 34(3) of the Arbitration Act. When the arbitration petition is returned to be re-presented before the Court of competent jurisdiction under Order VII Rule 10 and 10-A of the Code of Civil Procedure, representation of the petition in Court which is indicated for return cannot be considered as a fresh filing in all circumstances when it is returned to the plaintiff for such re-presentation.

Supreme Court in the case of ***M/s. Canara Nidhi Limited vs. M. Shashikala & Ors. 2019 SCC Online SC 1244*** has held that proceedings

under Section 34 of the Act are summary in nature. The scope of enquiry in the proceedings under Section 34 of the Act is restricted to a consideration of whether any of the grounds mentioned in Section 34(2), Section 13(5) or Section 16(6) are made out to set aside the award. The grounds for setting aside the award are specific. It is imperative that the arbitration cases under Section 34 of the Act should be decided only with reference to the pleadings and the evidence placed before the Arbitral Tribunal and the grounds specified under Section 34(2) of the Act. The legal position is clarified that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. cross-examination of persons swearing into the affidavits should not be allowed unless necessary. It is held that the High Court did not keep in view that respondents had not made out grounds that it is an exceptional case to permit them to adduce evidence in the application under Section 34 of the Act. The said directions of the High Court amount to a retrial on the merits of the issues decided by the arbitrator.

Supreme Court in the case of ***Parsa Kente Collieries Limited vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited, (2019) 7 SCC 236*** has held that an arbitral Tribunal must decide under the terms of the contract. If an arbitrator construes a term of the contract reasonably and if such interpretation is a possible or plausible interpretation, the award cannot be set aside. The construction of the terms of a contract is primarily for an arbitrator. The Court does not act as a court of appeal when a court is applying the "public policy" test to an arbitration award. It is held that if the arbitral award is contrary to the evidence on record, it can be set aside by the Court under Section 34.

Supreme Court in the case of ***Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India, 2019 SCC Online SC 677*** has held that under Section 34 (2A) of the Arbitration Act, a decision which is perverse while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. A finding based on the documents taken behind the back of

the parties by the arbitrator would also qualify as a decision based on no evidence since such a decision is not based on evidence led by the parties and therefore would also have to be characterized as perverse. It is held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

Supreme Court in the case of ***MMTC Limited vs. Vedanta Limited, (2019) 4 SCC 163*** has held that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. It is only if one of these conditions set out in Section 34(2)(b)(ii) is met that the Court may interfere with an arbitral award under the said provision but such interference does not entail a review of the merits of the dispute and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the Court is shocked or when the illegality is not trivial but goes to the root of the matter.

Supreme Court in the case of ***Simplex Infrastructure Limited vs. Union of India, (2019) 2 SCC 455*** has held that Section 5 of the Limitation Act, 1963 has no application challenging an arbitral award under Section 34 of the Arbitration Act. Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of certain periods.

Supreme Court in the case of ***P. Radha Bai & Ors. vs. P. Ashok Kumar & Anr., (2019) 13 SCC 445*** has held that once the respondents received the award, the time under Section 34(3) commenced and any subsequent disability was immaterial. Even if the appellant had committed some fraud, it would not affect the right of the respondents to challenge the award if the facts entitling the filing of a Section 34 application were within their knowledge.

Supreme Court in the case of ***Northern Railway vs. Pioneer Publicity Corp. (P) Ltd. (2017) 11 SCC 234*** held that re-filing of application after curing defects in application does not amount to fresh filing of application for counting limitation under Section 34(3).

Supreme Court in the case of ***Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49***, has held that interference with an arbitral award is permissible only when the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the Court is shocked or when illegality is not trivial but goes to the root of the matter. It is held that once it is found that the arbitrator's approach is neither arbitrary nor capricious, no interference is called for on facts. The arbitrator is ultimately a master of the quantity and quality of evidence while drawing the arbitral award. Patent illegality must go to the root of the matter and cannot be of a trivial nature.

Supreme Court in the case of ***P.R. Shah, Shares and Stock Brokers Pvt. Ltd. vs. B.H.H. Securities Pvt. Ltd. & Ors. (2012) 1 SCC 594***, held that the Court does not sit in appeal over the award of an arbitral tribunal by reassessing or re-appreciating the evidence and the award can be challenged only under the grounds mentioned in section 34(2) of the Arbitration & Conciliation Act, 1996. It is held that the arbitral tribunal cannot make use of their knowledge of the facts of the dispute which is not part of the record, to decide the issue but can use their expert or technical knowledge or general knowledge about the particular trade

in deciding the matter.

Supreme Court in the case of ***Satyanarayan Construction Co. vs. Union of India (2011) 15 SCC 101***, it is held that an arbitrator cannot rewrite the contract and if a rate higher than agreed in the contract is awarded, it would be beyond his competency & authority and such award is liable to be set aside.

Supreme Court in the case of ***State of Maharashtra vs. Hindustan Construction Co. Ltd. AIR 2010 SC 1299*****,** held that incorporation of additional grounds by way of amendment in the application under section 34 does not tantamount to filing of fresh application in all situations and circumstances. If an application under section 34 has been made within the prescribed time, to grant leave to amend such application if the very peculiar circumstances of the case warrant and it is so required in the interests of justice, an amendment to the petition can be allowed.

Supreme Court in the case of ***Fiza Developers and Inter-Trade Private Limited vs. AMCI (India) Private Limited and another (2009) 17 SCC 796*****,** has held that applications under section 34 are summary proceedings. The scope of enquiry in a proceeding under section 34 is restricted to consideration of whether any one of the grounds mentioned in section 34 (2) exists for setting aside the award which grounds are specific. It is held that issues under Order 14 and Order 18 need not be framed in applications under section 34 of the Act. An application under section 34 of the Act is a single-issue proceeding. Provisions of the Civil Procedure Code will apply only to the extent considered necessary or appropriate by the court. There is no wholesale or automatic import of all the provisions of the Code of Civil Procedure into proceedings under section 34 of the Act as that would defeat the very purpose and object of the Act.

Supreme Court in the case of ***M. Anasuya Devi and another vs. M. Manik Reddy and others (2003) 8 SCC 565***, it is held by the Supreme Court that an award cannot be set aside under section 34 for want of stamping and registration. Questions as to whether there was any deficiency in stamping or registration are not within the purview of section 34 and such question falls within the ambit of section 47 of CPC and such questions can be agitated only at the stage of enforcement of award under section 36.

Supreme Court in the case of ***Oil and Natural Gas Corporation Ltd. vs. Saw Pipes Ltd. (2003) 5 SCC 705***, it is held that the award has to be in accordance with the terms of the contract. Phrase 'public policy of India' referred in section 34(2) (b) (ii) should be given a wider and not a narrower meaning. Court can set aside the award if it is (1) contrary to (a) fundamental policy of Indian law or (b) the interest of India or (c) justice or morality or (ii) is patently illegal or (iii) is so unfair and unreasonable that it shocks the conscience of the court. The Supreme Court has interpreted section 34 and has enumerated various grounds of challenge to an arbitral award.

Bombay High Court in the case of ***Paperbox Co. India Ltd. Vs. Golden Source International Pvt. Ltd. – 2025 SCC OnLine Bom 2821: 2024 BHC (OS) 6057*** has held that claims relating to security deposit refund, not possession issues, are arbitrable despite Small Causes Court jurisdiction.

Bombay High Court in case of ***Suryadeep Engineering Pvt. Ltd. Vs. N.M. Construction – 2025 SCC OnLine Bom 55: 2025 BHC (OS) 394*** has held that section 16(1) of the Arbitration Act confers expansive and wide power on the arbitral tribunal to rule on its own jurisdiction, including ruling on objections with respect to the existence or validity of the arbitral agreement. The award can be set aside if it is vitiated by patent illegality appearing on the face of the award. The appointment was not in accordance with the agreement under which arbitration was invoked. The Arbitrator was appointed unilaterally by one of the parties. Bombay High Court has set aside the Award given by the Arbitrator appointed unilaterally by one of the parties and not by consent of the parties.

Bombay High Court in the case of ***Dhwaja Shares & Securities Pvt. Ltd. Vs. Sunita A. Khatod – 2025 supreme Bom 1201: 2025 BHC (OS) 12996*** has held that the inherent contradictions in the impugned award render it perverse. The outcome of the impugned award was in conflict with most basic notions of justice. The High Court has set aside such an award.

Bombay High Court in the case of ***Sumanbai Shantaram Bachchav Vs. Arbitrator & Additional Commissioner, National Highway Authority – 2025 supreme Bom 1311: 2025 BHC (AS) 22588*** held that though the Petitioners were entitled to solatium u/sec. 23(2) of the Land Acquisition Act, 1894, the Arbitral Tribunal is not the forum in which payment can be directed. The Arbitral Tribunal does not enable modification of the Arbitral Award. The powers u/sec. 34 read with Sec. 37, if sought to be exercised to modify an arbitral award, could only be used to sever and excise any invalid portion of the arbitral award or to correct clerical, computational or typographical errors or in relation to post award interest, It is held that Court u/sec. 37, too, cannot go outside the frame of reference in its jurisdiction, which is an Appellate Jurisdiction over Section 34 of the Court's decision. Any step to do so would constitute writing a new component into the arbitral award, i.e. modification by way of new insertions in the arbitral award.

Bombay High Court in the case of ***Union of India Vs. Bridge Track & Tower Pvt. Ltd. 2026 BHC (OS) 3303*** has held that a lien can either be maintained under the terms and conditions of the contract or by operation of law. The Bombay High Court did not interfere with an arbitral award which had allowed the claim made by the Contractor challenging the sanction on the part of the Petitioner, withholding the amount due and payable under one of the contract against the alleged liability which may arise in future on the basis of a pending criminal prosecution against the Contractor. Bombay High Court held that withholding of the amount by raising a lien on the amount payable under the first purchase order was neither valid under the contract nor valid by operation of law. The Petitioner had not filed any claim to recover the amount alleged to have been fraudulently recovered by the Contractor under the second purchase order. The payability of the amount to the contractor under the first contract was not disputed by the Petitioner and could not be withheld.

Bombay High Court in the case of ***Commissioner, Solapur Municipal Corporation & others Vs. S.M.C. -G.E.C.P. Ltd. (J.V.) - 2025 SCC OnLine Bom 855: 2026 BHC (OS) 357*** has held that admissions in cross-examination, by themselves, constitute the best evidence. An admission is the best evidence that the opposite party can rely upon, and though not conclusive, is decisive of matters, unless successfully withdrawn or proved erroneous. Bombay High Court held that once termination is found to be unjustified, it is permissible for the court to award a reasonable percentage of unexecuted work as damages. However, in a case involving a claim for loss of profitability, it becomes necessary for the contractor to prove how the delay in execution of work and his overstayal at the site has led to actual sufferance of damages. In such a case, it is necessary to prove as to how detention of manpower or machinery at the contract site prevented the contractor from utilising the same at some other contract site and how he suffered loss on account of the same. The High Court did not interfere with the arbitral award granting 10% of the balance value of the contract as damages awarded by the Arbitral Tribunal.

Bombay High Court in the case of ***Nirmal Bang Securities Pvt. Ltd. Vs. Shashi Mehra HUF 2026 SCC OnLine Bom 618: 2026 BHC (OS) 3229*** has held that once the trades are found to be authorized by the investor, the resultant loss cannot be claimed by citing some regulatory failure on the part of the stockbroker. It is held that the Arbitral Tribunals, which are supposed to adjudicate the disputes strictly in accordance with the contractual agreement between the parties, are not supposed to adopt a justice-oriented approach and invoke principles of equity while deciding the claims. The Arbitral Tribunals are not courts of law that can invoke notions of equity or fairness unless the parties confer such jurisdiction u/sec. 28(2). Justice-oriented or equitable approach adopted by the Arbitral Tribunals is contrary to the provisions of Section 28 of the Arbitration Act. In a case where the breach itself is not established, the mere cause of loss becomes an irrelevant factor. Awarding of compensation even if the breach on the part of the Petitioner is not established, is against the fundamental policy of Indian law and contrary to the provisions of Section 73 of the Indian Contract Act.

Bombay High Court in the case of ***Jinam Arihant Realtors and Others Vs. Neha Yogesh Sachde - 2026 SCC OnLine Bom 616: (2026) BHC (OS) 3138*** has held that the Section 34 Court must refrain from being judgmental about the manner of Judgment by the learned Arbitral Tribunal and must look to whether the findings returned by the Arbitral Tribunal are impossible or perverse findings. It is held that enforcing a bargain rooted in such patent illegality of dealings between the parties renders the impugned award contrary to the public policy within the parameters of section 34 of the Arbitration Act. The High Court came to the conclusion that enforcement of transacting the conduct of business, in cash outside the books of account and entirely in the parallel cash economy in black money, is unpardonable perversity under section 34 of the Arbitration Act and accordingly set aside the Arbitral Award.

Bombay High Court in the case of ***A. Navinchandra Steel Pvt. Ltd. Vs. Board of Directors of Abhyudaya Co-operative Bank Ltd. - 2026 SCC OnLine Bom 1101: 2026 BHC (OS) 4094*** has held that the statutory provisions of the RDB Act do not place an absolute embargo on the mechanism provided under the Multi-State Co-operative Societies Act, 2002 and, on the contrary, admit of the right of a Multi-State Co-operative Bank to initiate proceedings under the Multi-State Co-operative Act to recover debts. The Multi-State Co-operative Societies Act gives an option to theMulti-State Co-operative Bank to initiate proceedings under the said Multi-State Co-operative Act instead of approaching the Debt Recovery Tribunal for recovery of its debts. The exclusive jurisdiction thus does not vest in the Debt Recovery Tribunal constituted under the RBD Act in view of the option made available by the Multi-State Co-operative Act. In view of the non-obstante clause under section 84 of the Multi-State Co-operative Act, the dispute arising among the classes set out in section 84(a) to (d) of sub-section (1) of the Multi-State Co-operative Societies Act and held that section 37 of the SARFAESI Act does not bar the application of other laws. Enforcement of security interest by invoking provisions of SARFAESI Act cannot be pressed into service to oust the

jurisdiction of arbitration u/section 84 of the Multi-State Co-operative Act, which is an adjudicatory process.

Bombay High Court in the case of ***Ulhas Dandekar Vs. Sushil Financial Services Pvt. Ltd. 2025 SCC OnLine Bom 715: 2025 BHC(OS) 4950*** considered an award upholding the broker's claims for dues and recognizing the client's knowledge of the trades despite the absence of a lawyer's written instructions, and held that the absence of evidence of pre-authorization is not evidence of the absence of instructing the trades. It is held that it is vital to examine the commercial conduct of the parties or assess who is speaking the truth, rather than rely on a binary proposition to hold that the absence of recorded prior authorization would automatically lead to an absolute immunity to the client of the stockbroker from paying up for the very trades that it consciously participated in with full knowledge. Absence of a prior or written authorization would not be fatal to the broker's right to be paid for the client's trade.

Bombay High Court in the case of ***Urban Infrastructure Real Estate Fund Vs. Neelkanth Realty Pvt. Ltd. and others 2025 SCC OnLine Bom 843: 2025 BHC (OS) 5596 (DB)*** has held that the arbitrator, while deciding the issue of limitation, is required to adopt a judicial approach. Even though section 19(1) of the Arbitration Act provides that Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or by the Indian Evidence Act, 1872, however, section 19(1) does not prohibit the Arbitral Tribunal from following the fundamental principles underlying the Code of Civil Procedure, 1908 or by the Indian Evidence Act, 1872. The issue of limitation, which normally is a mixed question of law and facts, would be tried as a preliminary issue only if the same does not require any evidence.

Bombay High Court in the case of ***Central Railway – Mumbai Division Vs. A.1 Laundry Services - 2025 SCC OnLine Bom 4609: 2025 BHC (OS) 21910*** held that once the contractual clause is clear and unambiguous,

requiring no interpretation, it was erroneous on the part of the Arbitral Tribunal to refer to the Railway Board's circulars for awarding the claim contrary to the specific contractual clause. There was nothing in the contract to indicate that any subsequent changes effected by the Railway Board's circulars were to be given effect as covenants of the contract. There was no provision in the contract for alteration of the terms of the contract based on subsequently issued Railway Board Circulars.

Bombay High Court in the case of ***Regus South Mumbai Business Centre Pvt. Ltd. Vs. Marie Gold Realtors Pvt. Ltd. (2025) Supreme Bom 1450: 2025 BHC (OS) 22246*** has held that 'burden of proof' and 'onus of proof' are distinct concepts in law, where the burden of proof is the overall responsibility to prove a case and generally never shifts, while onus of proof is the responsibility to prove a specific fact and can shift continuously during the trial as evidence is presented. The party with the initial burden of proof is the one who would lose if no evidence were presented at all. When that party presents evidence to meet its burden, the onus of proof shifts to the opposite party to provide rebutting evidence. It is held that no person with a common business sense would ever agree that upon breach of the agreement, there would be no consequence for the party committing the breach.

Bombay High Court in the case of ***Lloyds Realty Developers Vs. Oakwood Asian Pacific Ltd. - 2025 SCC OnLine Bom 4781: 2025 BHC (OS) 22638*** has held that failure to allege breaches in contemporaneous correspondence is merely an additional facet/reason for rejecting the claims of a party. Bombay High Court referred to a Judgment of the Supreme Court in the case of Bhagwati Oxygen Ltd. Vs. Hindustan Copper Ltd. (2005) 6 SCC 462, in which it was held that the conduct of the Respondent in not complaining about the fall in purity of oxygen during the relevant period constituted waiver.

Bombay High Court in the case of ***Central Depository Services (India) Ltd. Vs. Daksha Narendra Bhavsar - 2025 SCC OnLine Bom 4816:***

2025 BHC (OS) 22899 held that the manner of enquiry conducted by the Arbitral Tribunal or the detailed findings recorded by it may not be to the liking of the Petitioner, however, so long as the court finds the final conclusion of the Arbitral Tribunal treating role of a party to be not perverse, there is no warrant for exercising the powers u/section 34 of the Arbitration Act for invalidating the award.

Bombay High Court in the case ***Thermax Ltd. Vs. Rashitrya Chemical & Fertilizers Ltd. - 2025 SCC OnLine Bom 5010: 2025 BHC (OS) 24006*** has held that while deciding whether or not to set aside an award under Section 34 of the Arbitration Act, the Court is only concerned with the question with respect to whether the Arbitral Tribunal has considered all relevant evidence, dealt with the same by providing reasons in the award and/or whether the Arbitral Tribunal has disregarded/ignored certain vital evidence resulting in perversity in the award which amounts to patent illegality and has held that damages can only be the difference between the price which a party paid and the price which he would have received, if he had resold the goods in the market forthwith after the purchase, provided of course that there was a fair market then.

Bombay High Court in the case of ***Konkan Railway Corporation Ltd. Vs. SRC Company Infra Pvt. Ltd. - 2025 SCC OnLine Bom 4438***: ***2025 BHC (OS) 20965.*** has held that Arbitral Tribunal having rewritten the contract, despite the absence of any pleading, prayer or issues framed invoked section 26 of the Specific Relief Act, 1963 which requires specific prayer for rectification of a written instrument supported by clear averments or pleadings. Rectification of a contract cannot be granted in the absence of a foundational plea and/or prayer. The Arbitral Tribunal offended the fundamental policy of Indian Law, which requires adjudicatory bodies to remain within the scope of the dispute as framed

Bombay High Court in the case of ***NTPC BHEL Power Projects Pvt. Ltd. Vs. Shree Electricals & Engineers (India) Pvt. Ltd. (2025) Supreme Bom 466: 2025 BHC(AS) 12377*** has held that section 14 of the Limitation Act applies to the limitation prescribed u/sec. 34(3) of the Arbitration Act. The High Court held that the time taken by the Petitioner in prosecuting a Writ Petition on the basis of the Judgment holding the field that Writ Petition was maintainable, and after withdrawing the Writ Petition subsequently, had filed an Arbitration Petition u/sec. 34. The proceedings u/sec. 34 were filed within the limitation as prescribed u/sec. 34(3) of the Act and was not barred by the law of limitation.

Bombay High Court in case of ***National Agricultural Co-operative Marketing Federation of India Ltd. Vs. Roj Enterprises (P) Ltd. – 2025 SCC OnLine Bom 541: 2025 BHC (AS) 1085 4DB*** has held that a finding arrived at ignoring vital evidence can also be termed to be perverse and liable to be set aside under the head of "Patent illegality". If a matter is not within the jurisdiction of the Arbitrator, it could result in patent illegality. When a specific challenge arises in an application u/sec. 34 is raised to the Award, it would be necessary for the Court exercising jurisdiction u/sec. 34(2) of the Arbitration Act to deal with such a challenge. The Court is required to refer to and deal with the objections raised to the Award. It is necessary for the Court to have considered the rival contentions and expressed its opinion so as to reflect its judicial consideration, albeit within the scope permissible u/sec. 34 of the Arbitration Act and to record findings by either accepting them or rejecting some grounds.

Bombay High Court in the case of State of ***Uttar Pradesh Versus Tata Consultancy Services Ltd. (2025) supreme (Bom) 1457: 2025 BHC (OS) 22245*** while dealing with Section 70 of the Indian Contract Act, held that a person who lawfully does something for another person and the other person enjoys the benefit thereof, the latter is bound to make compensation to the former. Section 70 contemplates a situation where an act is performed for the benefit of the other person in the absence of an express contract and under a

hope of receipt of returns, and the other person enjoys the fruits of that act. In such a case, the person enjoying the fruit of that act is made liable to pay compensation in respect of the enjoyment of that Act. The Court found the award of contract price a plausible view and did not interfere with the said Award.

Bombay High Court in the case of ***Rakesh S. Kathotia Vs. Milton Global Ltd. & Others 2025 Supreme Bom 1660: 2025 BHC (OS) 19901*** set aside the arbitral award on the ground that the impugned award, regrettably, falls under the realm of being in conflict with most basic notions of justice and morality, apart from being perverse by reason of being riddled with inherent contradictions, leading to an implausible outcome. By treating a right as an obligation, the Impugned Award is contrary to the contract.

Bombay High Court in the case of ***Iqbal Trading Co. Vs. Union of India 2025 BHC(AS)47439*** held that under Section 21 of the Arbitration Act, Arbitration proceedings commenced on the date on which the request for that dispute to be referred to arbitration is received by the counterparty. The Arbitral Tribunal was constituted after the 1996 Act came into force. The parties were governed by the Arbitration & Conciliation Act, 1996. An arbitral award holding that the 1940 Act would apply is set aside. It is held that the Arbitral Award should have been reasoned, explained and articulated in the arbitral award. In the absence of these requirements, the Arbitral Award is found in conflict with public policy, being in violation of principles of natural justice.

Bombay High Court in the case of ***Hi Style India Pvt. Ltd. Vs. Rakesh Corporation (2025) Supreme (Bom) 1462 : 2025 BHC (OS) 21462,*** rejected the contention belatedly raised that the arbitration agreement printed on the invoice could never apply before the Arbitral Tribunal. Section 34 Court has no power to condone the delay beyond the 30 days period after the 3-month period.

Bombay High Court in the case of ***ECGC Ltd. Vs. Baco Metallic Industries – 2025 Supreme (Bom) 1770: 2025 BHC (OS) 18995*** has held that the principles of the requirement of the insured to demonstrate utmost good faith or for strict interpretation of insurance contracts can never be quarrelled with. Section 34 Court must not likely interfere with the arbitral award. Section 34 limits the challenge to an award only on the grounds provided therein, or is interpreted by various courts.

Bombay High Court in the case of ***Bombay Textile Research Association Vs. Nilkanth Enterprise – 2025 Supreme (Bom) 1587: 2025 BHC (OS) 24545*** has held that mere delay by itself, without more, cannot be the sole factor to defend specific performance. If property prices have risen dramatically before filing the suit for specific performance, and it is coupled with a violation of the agreement by the Plaintiff who seeks specific performance, specific performance will not be decreed. After considering the nature of transaction discernible from the correspondence, execution of draft Development Agreement and the Memorandum of Understanding, the Bombay High Court held that distinction sought to be drawn by a party that these documents are not of a nature that renders either the understanding of the parties to have been disrupted or that a specific performance as granted by the Arbitral Tribunal being rendered incapable of execution. It is held that the instruments in question were one continuum and the findings of the Arbitral Tribunal did not lend themselves to being regarded as incoherent and perverse, and accordingly refused to interfere with such an award.

Bombay High Court in the case of ***Patel Engineering Ltd. Vs. Acron Developers Pvt. Ltd. 2025 Supreme (Bom) 1005: 2025 BHC (OS) 10704*** has held that where a party fails to produce the evidence which it could have produced to prove a particular fact that it asserts, then that fact of non-production of the same ought to be presumed as the evidence being unfavourable to it and an adverse inference with respect to the same ought to be drawn as per section 114(g) of the Evidence Act. Section 34 court can only

disturb the award when there is a patent illegality on the face of the award or perversity in the findings.

Bombay High Court in the case of ***Harkisandas Tulsidas Pabari Vs. Nikita S. Acharya 2025 Supreme (Bom) 1148: 2025 BHC (OS) 11534*** has held that exclusion of vital material by the learned Arbitrator constitutes a valid ground for setting aside the arbitral award under section 34 of the Arbitration Act.

Bombay High Court in the case of ***Securitrans India Pvt. Ltd. v. FIS Payment Solutions and Services Pvt. Ltd., 2025 Supreme (Bom) 1814: 2025 BHC (OS) 26174***, has held that the Plaintiff suing for damages must take necessary steps to mitigate the losses. Mitigation concerns the avoidance of the consequences of wrong. It involves taking steps to prevent or control the loss 'after' the harm is caused. Failure to take steps to avoid future wrongs is not mitigation, but it would be contributory negligence. However, in the facts of the said judgment, the case involved theft to which the principles of mitigation would not apply. Hon'ble Bombay High Court held that in a case involving liability to return the stolen money, there is no question of damages, and for that reason also, the principle of mitigation would not apply.

Bombay High Court in the case of ***Seok-Am Tech Co. Ltd. v. Tema India Pvt. Ltd., 2025 Supreme (Bom) 1323: 2025 BHC (OS) 8409***, while dealing with an issue whether claims were barred by law of limitation or not, held that Rules of limitation being Rules of procedure do not create any right in favour of any person, nor do they define or create causes of action. The law of limitation simply prescribes that the remedy can be exercised only up to a certain period and not subsequently. Under Section 34 of the Arbitration Act, it is not permissible for the Court to reappreciate evidence and come to a different conclusion from what has been recorded by the Arbitral Tribunal analyzing the documentary and oral evidence on the issue of limitation, merely on the applicability of Section 18 of the Limitation Act. Even if there was an erroneous

application of law, it was not the province of the Court in exercising jurisdiction under Section 34 of the Arbitration Act, reaching to a different conclusion on limitation, purporting to form the Award on the ground of patent illegality.

Bombay High Court in the case of ***Health Care, Medical & General Stores Vs. Amulya Investment (2025) Supreme (Bom) 98: 2025 BHC (OS) 616 DB*** has held that after an arbitral award is made, a signed copy is to be delivered to each party. Limitation prescribed under section 34(3) of the Arbitration Act would commence only from the date a signed copy of the arbitral award is delivered to the party that makes the application for setting it aside. Acknowledgement signed by an employee of the partnership firm would not amount to service of the arbitral award on the parties to the arbitration proceedings as required under the provisions of the Arbitration Act.

Bombay High Court in the case of ***Lotus Logistics & Developers Pvt. Ltd. Vs. Evertop Apartments Co-operative Housing Society 2026 SCC OnLine Bom 84: 2026 BHC (OS) 833*** has held that the directions issued by the Arbitral Tribunal for procurement of occupation certificate in respect of the building cannot be treated as in conflict with fundamental policy of Indian law or with most basic notions of justice. Itis held that the approach of the Arbitral Tribunal is judicious and not something which no fair-minded person would ever adopt.

Bombay High Court in the case of ***Union of India v. Emami Agrotech Ltd., 2025 SCC OnLine Bom 343*** while dealing with an award under Section 34 of the Arbitration and Conciliation Act, 1996 held that a price contracted by parties to a contract is a reflection of the consideration for changing hands of the promises and reciprocal promises made between the parties. To effect an automatic change to such a firm contracted price, on the basis of another contracted price, it would go without saying that the price point in the other contract ought to be a derivative of the same terms. If it is not, one would need to effect adjustment to examine if the two incomparable price

points can be made comparable. It is further held that the Fall Clause is meant to alter a pre-negotiated and agreed firm contracted price.

Bombay High Court in the case of ***Shanklesha Construction and Others vs. Ashok Mohanraj Chhajed 2024 SCC OnLine Bom 33*** has held that a perusal of Schedule IV of the Arbitration Act shows that fee has been prescribed in proportion to the sum in dispute between the parties. The learned arbitrator under Section 19 of the Arbitration Act is not bound by the Code of Civil Procedure or the Evidence Act and is free to adopt a procedure that is reasonable and aligns with principles of natural justice while conducting the arbitral proceedings. The High Court refused to substitute the arbitrator on the allegations made by the petitioner on the procedure followed by the arbitrator while recording evidence and held that such grievances have to be raised at the stage of proceedings under Section 34 of the Arbitration Act if at all the arbitral award goes against petitioners.

Bombay High Court in case of ***Ivory Properties & Hotels (P) Ltd. v. Vasantben Ramniklal Bhuta, 2024 SCC OnLine Bom 1900*** has held that if arbitrator adopts a non-judicial approach and relies on a non-executed agreement for arriving at a decision, the Court can annul an Arbitration Award w/s 34 of the Arbitration and Conciliation Act 1996.

Bombay High Court in the case ***CFM Asset Reconstruction (P) Ltd. v. SAR Parivahan (P) Ltd., 2024 SCC OnLine Bom 1659*** while dealing with an application under section 34 of the Arbitration and Conciliation Act,1996 has held that an arbitrator must ensure that any valuation report is substantiated by oral evidence to be admissible. A failure to do so along with the lack of opportunity for the petitioner to respond to the counterclaim ended the award invalid. It is held that the reliance placed by the arbitrator on the unproven valuation report was perverse and constituted a patent illegally. The petitioners were not given a fair opportunity to respond to the counterclaim and

the arbitrator failed to ensure the valuation report which was not substantiated by oral evidence.

Bombay High Court in the case of ***Tema India Ltd. v. Seok-am-Tech Co. Ltd., 2024 SCC OnLine Bom 1072*** while dealing with Section 34 of the Arbitration and Conciliation Act, 1966 and Section 18 of the Limitation Act, 1963 has held that mere admission of past liability does not suffice to extend limitation, the acknowledgement must be made in writing before the expiry of limitation.

Bombay High Court in the case of ***Kisan Mouldings Ltd. V. Micro & Small Enterprises Facilitation Council, 2024 SCC OnLine Bom 3094*** while dealing with Section 34 has held that Section 14 of the Limitation Act which excludes the time consumed in a proceeding initiated before a Court not having the jurisdiction and prosecuted in good faith and with due diligence, applies to proceedings u/s 34 of the Arbitration and Conciliation Act, 1996.

Bombay High Court in case of ***Gammon Engineers & Contractors (P) Ltd. v. Rohit Sood, 2024 SCC OnLine Bom 3304*** while dealing with Section 34 has held that– Jurisdiction of Court to hear the application u/s 34 to challenge an Award passed u/s 18(a) of MSMED Act would be governed by the agreement between the parties which has conferred exclusive jurisdiction to a particular Court.

Bombay High Court in the case of ***Hanuman Motors Pvt. Ltd. vs. Tata Motors Finance Ltd. 2023 SCC OnLine Bom 523*** set aside an arbitral award on the ground that a party had unilaterally appointed an arbitrator. The court further held that a party can raise such grounds in proceedings under Section 34. Court further held that mere participation on the part of the party would not dis-entitle a party from raising such an objection and such participation would not amount to waiver unless a party has agreed to waive such objection in writing.

Bombay High Court in the case of ***BST Textile Mills Pvt. Ltd. vs. Cotton Corporation of India Ltd. 2023 SCC OnLine Bom 318*** was dealing with an issue of whether the award is liable to be set- aside on the ground that disputes arising out of contracts were consolidated and single statement of claim filed on behalf of the Claimant was entertained and allowed in favour of the Claimant although the Respondent had not consented to it and raised a specific objection. The Court while rejecting the application for setting aside the award observed that when specific claims pertaining to each of the contracts were placed distinctly in the statement of claim filed on behalf of the Claimant, to which the Respondent had ample opportunity to respond and the fact that the Respondent also chose to file a consolidated counterclaim on all the contracts, it cannot be said that the learned arbitrator committed a jurisdictional error in proceeding with the arbitration.

Bombay High Court in the case of ***Naresh Kanayalal Rajwani vs. Kotak Mahindra Bank (2022) SCC OnLine Bom 6204*** has held that the ground of proceedings being vitiated from the inception due to Section 12(5) goes to the very root of the matter. The said ground, even though not specifically raised in the petition, gets covered under the ground of being "perverse, against settled provisions of law and public policy".

Bombay High Court in the case of ***Sushma Arya Ors. vs. Palmview Oceans Ltd. & Ors.* 2022 SCC OnLine Bom 4335** held that the test for deciding whether a particular order is an Interim Award is, whether it relates to 'any matter' to which the Tribunal may make a final Arbitral Award. It is further held that an Arbitral Tribunal unlike a Court of plenary jurisdiction is a creature of conduct governed by the agreement between the parties and cannot act in equity, in the absence of an express authorization by the parties. A Domestic Award passed in an International Commercial Arbitration, can be set aside, if the same is shown, to be (i) contrary to the principles of legislative policy, on which the Indian statutes and laws are formed, (ii) if it disregards binding

judgment of Superior Courts or (iii) arrives at a decision which shocks the conscience of the Court.

Bombay High Court in the case of ***Bharat Sanchar Nigam Limited vs. Unity Telecom Infrastructure Ltd 2019 SCC Online Bom 1675*** has considered a situation where the signed copy of the award was personally collected by the authorized representative of the party from the arbitral tribunal and thus the time taken in obtaining instructions from the higher authority or on opinion from a lawyer would not extend the period of limitation. The Court has no power to condone delay beyond 30 days after the expiry of the period of limitation i.e. from the date of service of signed copy of the award by the arbitral tribunal upon the party.

Bombay High Court in the case of ***Schokhi Industries Pvt. Ltd. vs. Maharashtra State Power Generation Co. Ltd., 2019 SCC OnLine Bom 1513*** has held that time prescribed under Section 34(3) has to be read with time prescribed in Section 33(1) of the Arbitration and Conciliation Act, 1996. Since, the application filed under Section 33(1) itself was not within the time prescribed under the said provision, limitation for filing an arbitration petition under Section 34(3) would not commence from the date of disposal of the request made by such party under Section 33(1) but would commence from the date of service of signed copy of the original award.

Bombay High Court in the case of ***Star Track Fasteners Private Limited vs. Union of India, 2019 SCC Online Bom 1453*** has held that the Court has no power to allow any claim which is rejected by the arbitral tribunal as the Court cannot correct errors made by the learned arbitrator. The court can either set aside the award uphold the award or in appropriate cases, modify the award if such part is severable.

Bombay High Court in the case of ***Dinesh Jaya Poojary vs. Malvika Chits India Pvt. Ltd., 2019 SCC Online Bom 1121*** has held that the Chit Funds

Act, 1982 is a self-contained Code which provides for remedy of adjudication of dispute under the said Act which remedy cannot be varied by an agreement of parties by referring the dispute to private arbitral forum contrary to Section 3 of the said Chit Funds Act.

Bombay High Court in the case of ***M/s. Tirumala Roadways vs. Indian Oil Corporation Ltd. and Anr. 2016 SCC OnLine Bom 3974*** has adverted the judgment of the Supreme Court in the case of Assam Urban Water Supply and Sewerage Board Vs. Subhash Projects and Marketing Limited, reported in (2012) 2 SCC 624 and has held that the period of 30 days after expiry of 3 months prescribed in Section 34(3) of the Arbitration and Conciliation Act, 1996 would not be the period of limitation and thus Section 4 read with Section 2(j) of the Limitation Act, 1963 would not apply to such application filed under Section 34 of the Arbitration and Conciliation Act, 1996 beyond a period of 3 months.

Bombay Court in the case of ***Pradyuman Kumar Sharma vs. Jaysagar M.Sancheti 2013 SCC OnLine Bom 453*** *has held that* principles of natural justice apply to arbitration. Disputed documents not proved cannot be considered by the Arbitrator as a piece of evidence.

Delhi High Court in the case of ***Union of India, Ministry of Railways Vs. Jindal Rail Infrastructure Ltd. – 2025 SCC online Del 1540*** held that while commercial interpretation is permissible where terms are ambiguous, it is impermissible to re-work a bargain on grounds of commercial difficulty. Altering agreed terms amounts to rewriting the contract, rendering the award in conflict with the fundamental policy of Indian law.

Delhi High Court in the case of ***Satluj Jal Vidyut Nigam Ltd. Vs. Jaiprakash Hyundai Consortium & Others – 2023 SCC online Del 4039*** held that in the context of construction contracts, where amounts involved are show astronomical any laxity in evidentiary standards in absence

of adequate diligence on a part of arbitral tribunal in closely scrutinizing financial claims advanced on the basis of mathematical deviations or adoption of novel formula would cast serious aspersions on the arbitral process. Delhi High Court in the case of Bharat Heavy Electricals Ltd. Vs. Xiamel Longking Bulk Material Science & Engineering Ltd. followed this Judgment.

Whether a person not a party to the arbitration agreement can file an arbitration petition under section 34: -

Bombay High Court in the case of ***Mukesh Nanji Gala and Ors. vs. M/s. Heritage Enterprises & Anr. 2014 SCC OnLine Bom 1817*** has held that a third party who is not a party to the arbitration agreement cannot be allowed to be implemented as a party to the arbitral proceedings. However, if a person is wrongly implemented as party to the arbitral proceedings and is aggrieved by arbitral award, such person can invoke section 34 of the Arbitration and Conciliation Act, 1996 and can challenge such arbitral award. A similar view has been taken by the Bombay High Court in the case of ***Smt.Prema A. Gera Vs. The Memon Co-operative Bank Ltd. and Anr. 2017 SCC OnLine Bom 72*** has allowed a third party to file a petition under Section 34 for challenging the arbitral award in which he was erroneously impleaded as a party and an adverse order was passed against him by the learned arbitrator.

Applicability of section 14 of the Limitation Act, 1963: -

Section 14 of the Limitation Act, 1963 applies to Section 34(3) of the Arbitration and Conciliation Act, 1996. The Supreme Court has held in the case of ***M.P. Housing Board vs. Mohanlal and Co. (2016) 14 SCC 199*** that the exclusion of time spent proceeding bona fide in Court without jurisdiction is excluded while computing the limitation under Section 34(3).

Supreme Court in the case of ***Venture Global Engineering vs. Satyam Computer Services Ltd. & Anr. (2010) 8 SCC 660*** has held that when an award is induced or affected by fraud or corruption, the same would fall within the grounds of excess of jurisdiction and a lack of due process and can be set aside. It is held that concealment of relevant and material facts which should have been disclosed before the arbitrator is an act of fraud and if the concealed facts disclosed after the passing of the award have a causative link with the facts constituting or inducing the award, such facts are relevant in a setting aside proceeding and award may be set aside as affected or induced by fraud.

Supreme Court in case of ***Union of India vs. Popular Constructions (2000) 8 SCC 1*** and in case of ***Consolidated Engineering Pvt. Ltd. vs. Irrigation Department (2008) 7 SCC 169*** has held that section 5 of the Limitation Act is not applicable to section 34 (3) of the Arbitration and Conciliation Act, 1996 in view of express inclusion within the meaning of section 29(2) of the Limitation Act, 1963. It is held that court cannot condone delay beyond a period of 30 days and that also only if sufficient cause is shown as to how the applicant was prevented from making application within the period of three months and not thereafter.

Whether the Court under section 34 can allow the claim rejected by the arbitrator

Supreme Court in the case of ***Mcdermott International Inc. vs. Burn Standard Co. Ltd. and others (2006) 11 SCC 181***, has held that the intervention of the Court under the provisions of the Arbitration Act, 1996 is envisaged in few circumstances, like in case of fraud or bias by the arbitrator, violation of natural justice etc. The Court cannot correct the errors of the arbitrators. It can only quash the award leaving the parties free to begin arbitration again if it is desired. It is held that "patent illegality" must go to the root of the matter. Public policy violation indisputably should be so unfair and unreasonable as to shock the conscience of the Court. If the arbitrator has gone

contrary to or beyond express law of contract or granted relief in the matter not in dispute would come within the purview of section 34 of the Act.

The Bombay High Court in ***BMA Commodities Pvt. Ltd. vs. Kaberi Mondal & Anr. 2015 SCC OnLine Bom 3353*** has held that the Court cannot correct the errors of the arbitral tribunal under section 34 of the Act. It can set aside the award wholly or partly and cannot make an award under section 34.

Whether the Court has the power to remand the proceedings back to the Arbitral Tribunal once the award is set aside under section 34

The Full Bench of the Bombay High Court in ***R.S. Jiwani vs. Ircon International Ltd. 2009 SCC OnLine Bom 2021,*** has held that the Court has discretion under section 34 of the Arbitration Act which takes within its ambit power to set-aside the award partially or wholly depending upon the facts and circumstances of each case. Section 34(2) does not admit of interpretation which will divest the Court of the competent jurisdiction to apply the principle of severability to the award by the arbitral tribunal, legality of which is questioned before the Court. It is held that the Court vests powers under section 34 to set-aside the award and even to adjourn the matter and to do such acts and deeds by the arbitral tribunal at the instance of the party which would help in removing the grounds of attack for setting aside the arbitral award.

> **Under Section 34 (5), an application shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.**

Supreme Court in the case of ***State of Bihar & Ors. vs. Bihar Rajya Bhumi Vikas Bank Samiti (2018) 9 SCC 472*** has held that the requirement of issuance of prior notice to other parties and filing of an affidavit endorsing compliance with the requirement under Section 34(5) is directory and not mandatory.

Provision of sub-section (5) of Section 34 has been held as directory by the Bombay High Court in the case of ***Global Aviation Services Private Limited vs. Airport Authority of India 2018 SCC Online Bom 233***. Bombay High Court after construing the provisions of Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 and Sections 34(5) and 34(6) of the Arbitration and Conciliation Act, 1996 has held that if the notice invoking arbitration agreement is received by other party prior to 23rd October 2015, the arbitration proceedings would commence prior to 23rd October 2015. The provisions of the Arbitration and Conciliation Act, 1996 in force prior to 23rd October 2015 would be applicable in such matters for all the purposes. It is held that if the notice invoking arbitration clause is received by another party after 23rd October 2015, the parties will be governed by the provisions of the Arbitration and Conciliation (Amendment) Act, 2015 for all the purposes. The date of filing of the arbitration petition under Section 34(1) is not relevant for the purpose of deciding the applicability of the provisions of the Arbitration and Conciliation Act, 1996 i.e. pre-amendment or post amendment. In view of sub-section (5) of Section 34, an application has to be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

Under section 36, when the time for making an application undersection 34 for setting aside an arbitral award has expired then subject to the provisions of Sub-section (2) of Section 36, such award shall be enforced under the provisions of the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court. In view of amendment to Section 36 w.e.f. 23rd

October 2015, there is no automatic stay merely on filing of an application under Section 34 for challenging the arbitral award. The applicant has to make a separate application for seeking an order of stay of operation of the arbitral award in accordance with the provisions of Section36(3). It is provided that while considering the application for grant of stay of arbitral award for payment of money, the Court shall have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.

On 4th November 2020, Ministry of Law and Justice issued an Ordinance i.e. The Arbitration and Conciliation (Amendment) Ordinance 2020 which is brought into force on the date of such notification. By the said Ordinance, a proviso is inserted in Section 36(3) with effect from 23rd October 2015 which provides that Court has to grant unconditional stay of award during the pendency of arbitral proceedings if the Court is satisfied that a prima facie case is made out–

(a) that the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award was induced or effected by fraud or corruption.

Amendment will apply irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

Supreme Court in the case of ***Electrosteel Steel Ltd. Vs. Ispat Carrier Pvt. Ltd 2025 SCC OnLine SC 829: 2025 INSC 525*** held that u/sec. 36(2),

where an application to set aside an Arbitral Award has been filed u/sec. 34, filing of such an application shall not by itself render an award unenforceable unless an order of stay is granted by the Court. It is held that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. It is held that objection to execution of an award u/sec. 47 of the Code of Civil Procedure 1908 is not dependent or contingent upon filing a Petition u/sec. 34 of the Arbitration Act. It is held that once a resolution plan is duly approved by the Adjudicating authority u/sec. 31(1) of the Insolvency & Bankruptcy Code, all claims which are not part of the resolution plan shall stand extinguished, and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan. It is held that lifting of the moratorium does not mean that the claim of the Respondent would stand revived notwithstanding approval of the resolution plan by the Adjudicating authority.

Supreme Court in the case of ***R. Savithri Naidu Vs. Cotton Corporation of India and another (2026) Supreme SC 162: 2026 INSC 150*** held that under section 36 of the Arbitration Act, an Arbitral award is enforceable in the same manner as if it were a decree of a court, essentially a deemed decree. Since the transfer occurred after the inception of the proceedings and the passing of the award, the Appellant is a transferee pendente lite / post arbitral award purchaser and is barred by Order XXI Rule 102 from resisting the execution. A Judgment Debtor cannot defeat a decree by alienating the property after the decree is passed but before the decree is realized.

Supreme Court in the case of ***Popular Caterers Vs. Ameet Mehta & others (2025) Supreme SC 1354 : 2025 INSC 1354*** has held that for the purpose of granting of benefit of unconditional stay of the execution of the money decree, it is to be established that (i) the decree is egregiously perverse, (ii) is riddled with patent illegalities, (iii) is facially untenable, (iv) such other exceptional causes similar in nature.

Supreme Court in the case of ***Lifestyle Equities C.V. & Anr. v. Amazon Technologies Inc., 2025 Supreme (SC) 1774: 2025 INSC 1190,*** held that the power of the Appellate Court to order a stay of execution of a decree is circumscribed and made subject to the existence of a 'sufficient cause' in favour of the Appellant being shown. The Appellate Court has to examine under Order XLI Rule 5(3) in order to ascertain whether a sufficient cause list for the grant of a stay of execution of a decree. The Appellate Court is required to assign reasons for its satisfaction regarding the existence of a 'sufficient cause', which reason should be cogent and adequate. A deposit is not a condition precedent for an order of stay or execution of the decree by the Appellate Court. For the grant of the benefit of an unconditional stay of execution of a decree, an exceptional case has to be made out. This discretion of the Appellate Court must not be exercised arbitrarily but must be exercised sparingly and only if an exceptional case is made out for such stay in view of the peculiar facts and attending circumstances of the case before it. There is no provision under Order 41 Rule 5 of CPC imposing a mandate to deposit cash liquidity as the only mode of security for execution of the decree. Security can be in the shape of property or a bond and/or in the form of an appropriate undertaking by the Appellant to abide by the decree, seeking a stay of execution.

Supreme Court in the case of ***Bharat Kantilal Dalal v. Chetan Surendra Dalal, 2025 Supreme (SC) 1151: 2025 INSC 1334***, held that the requirement of notice under Order 21 Rule 22(1) to the persons enumerated therein is not a mere procedural courtesy but is the very foundation of the jurisdiction when the execution is sought against the estate of the deceased debtor. It is held that the Arbitration Act is a self-contained Court and is founded upon principles of party autonomy, expedition and filing.

Supreme Court in the case of ***State of U.P. and another V/s. R. K. Pandey 2025 SCC OnLine SC 52: 2025 INSC 48*** and has held that even at the stage of execution, Sec. 47 of the Code of Civil Procedure, 1908 permits a party to

object to the decree both on the ground of fraud as well as lack of subject matter jurisdiction. One of the parties had self-appointed himself as the arbitrator who passed an ex-parte and invalid awards. He was not a signatory to the purported arbitration agreement. Supreme Court held that was a clear case of lack of subject matter jurisdiction and declared the award as null and void and non-enforceable in law and dismissed the execution proceedings.

Supreme Court in the case of ***International Seaport Dredging (P) Ltd. v. Kamarajar Port Ltd., 2024 SCC OnLine SC 3112*** while dealing with Section 36 of the Arbitration and Conciliation Act, 1996 held that the Arbitration Act is a self-contained code and does not distinguish between governmental and private entities. The decision of the Court cannot be influenced by the position of the party before it and whether it is a fly-by-night operator. Governmental entities must be treated similarly to private parties in so far as the proceedings under the Arbitration Act are concerned except where otherwise indicated by law. This is because parties have entered into commercial transactions with full awareness of the implications of compliance and non-compliance of the concerned contracts and the consequences that will visit them in law.

Supreme Court in the case of ***Hindustan Construction Company Limited and Anr. vs. Union of India & Ors., 2019 SCC OnLine SC 1520*** has struck down Section 87 of the Arbitration Act as violative of Article 14 of the Constitution of India and has restored Section 26 of the 2015 Amendment Act. It is held that deletion of Section 26 of 2015 Amendment Act together with insertion of Section 87 under the Arbitration Act, 1996 by the 2015 Amendment Act is manifestly arbitrary under Article 14 of the Constitution of India. Judgment of the Supreme Court in the case of ***Board of Control for Cricket in India vs. Kochi Cricket Pvt. Ltd. and Ors. (2018) 6 SCC 287*** would continue to apply to make the salutary amendments made by the 2015 Amendment Act to all the Court Proceedings after 23rd October 2014.

Supreme Court in the case of ***Pam Developments Private Ltd. vs. State of West Bengal, 2019 SCC Online SC 852*** has construed Section 36 of the Arbitration Act and Order XXVII Rule 8A of Civil Procedure Code, 1908 and has held that the Arbitration Act is self-contained. The provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act. Mere reference to CPC in Section 36 cannot be construed in such a manner that it takes away the power conferred in the Arbitration Act itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be allowed as guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. Provisions of the CPC are to be taken into consideration while considering an application for stay under Section 36 in case of a stay of money decree however they are not mandatory but in essence directory.

Bombay High Court in a judgment delivered on 16th December 2016 in the case of ***M/s. PFS Shipping (India) Limited vs. Capt. V.K. Gupta & Anr. 2016 SCC Online 10048*** has construed Section 36 of the Arbitration and Conciliation Act, 1996 amended by the Arbitration and Conciliation (Amendment) Act, 2015 and has held that while considering an application for a grant of stay in the case of an arbitral award for payment of money, the Court has been granted discretion to consider security required to be furnished by the petitioner seeking stay or whether stay has to be granted unconditionally or on furnishing such security so as to secure part of the claim depending upon the facts and circumstances of each case. It is held that while considering an application for grant of stay under Section 36(3) inserted by the Arbitration and Conciliation (Amendment) Act, 2015, due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 has to be given. However, in appropriate cases, the Court can grant stay even on the petitioner furnishing security to secure part of the awarded amount or may grant unconditional stay depending upon the facts and circumstances of each case. If the award is prima facie perverse and is contrary to the provisions of

law, the Court is not bound to direct the petitioner to deposit the entire amount of the arbitral award for payment of money.

Delhi High Court in the case of ***MMTC Ltd. Vs. Anglo American Metallurgical Coal Pvt. Ltd. 2025 (DHC) 6187*** considered the facts where the award had attained finality in view of the dismissal of the appeal by the Supreme Court in the proceedings arising u/sec. 34 of the Act. Objections to arbitral award execution are maintainable only if the decree is void or without jurisdiction. The Executing Court cannot go behind the decree. Plea of nullity against an arbitral award can be raised in a proceeding u/sec. 47 of the Code of Civil Procedure, 1908, during execution, as the Award is enforced u/sec. 36 of the Arbitration Act as if it were a decree of a civil court. An objection petition u/sec. 47 of the Code of Civil Procedure, 1908 should not invariably be treated as a commencement of a new trial.

Execution proceedings for executing an arbitral award to be filed in which Court: -

Supreme Court in the case of ***Sundaram Finance Limited vs. Abdul Samad & Anr., (2018) 3 SCC 622*** that an execution application can be filed in any Court in India where such decree can be executed. There is no requirement for obtaining transfer of decree from the Court which would have jurisdiction on the arbitral proceedings.

Powers of Executing Court

Supreme Court held in the case of ***Centro trade Minerals and Metal Inc. vs. Hindustan Copper Limited (2017) 2 SCC 228*** that even if the award is not enforced, it is not a waste paper. Once the award is made on a subject matter, no action can be started again on the original claim.

Supreme Court held in the case of ***Punjab State Civil Supplies Corpn. Ltd. vs. Atwal Rice and General Mills – (2017) 8 SCC 116*** that the Executing Court cannot hold any kind of factual enquiry which may have the effect of nullifying the decree itself but it can undertake limited inquiry regarding jurisdictional issues which goes to the root of the decree and has the effect of rendering the decree nullity.

Supreme Court in the case of ***Leela Hotels Pvt. Ltd. vs. Urban Development Corporation Ltd. – (2012) 1 SCC 302*** it is held that an arbitral award has to be enforced under CPC in the same manner as if it were a decree of the court.

Section 37 provides for orders which are appealable under the Arbitration and Conciliation Act, 1996 i.e. -

(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award u/s 34.

An appeal is also maintainable against the order of the arbitral tribunal-

(a) accepting the plea referred to in sub - section (2) or sub - section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17. No second appeal is maintainable from an order passed in appeal u/s 37.

The right to appeal to the Supreme Court is however not taken away under the said provisions.

By 2019 Amendment, in Section 37(1), the words "An appeal" is substituted by words "Notwithstanding anything contained in any another law for the time being in force, an appeal."

Supreme Court in the case of ***Ramesh Kumar Jain Vs. Bharat Aluminium Co. Ltd. , 2025 SCC OnLine SC 2857: (2025) INSC 1457*** has held that when there is some evidence or testimony of even a single witness or a set of documents which are relied upon by the Arbitrator, the court cannot come to a conclusion and consider the said award as patently illegal on the ground that evidence has limited probative value. If the crucial finding is unsupported by any evidence or results from ignoring vital evidence placed before the Arbitral Tribunal, the court may interfere with such an award. No evidence means a complete absence of relevant evidence and not merely weak or scant evidence.

Supreme Court in case of ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills, 2024 SCC OnLine SC 2632*** while dealing with Section 37 has held that unless an Arbitral Award suffers from the illegality mentioned u/s 34, no award can be set aside u/s. 37 by the Appellate Court. Award cannot be touched unless it is contrary to the substantive provision of law, any provision of the Act or the terms of the Agreement.

Supreme Court in the case of ***Soham Dutt Builder Vs. National Highway Authority of India and Ors.*** While dealing with powers of the Court under Section 37 of the Arbitration and Conciliation Act, 1996 held that a great deal of restraint is required to be shown while examining the validity of an arbitral award when such an award has been upheld, wholly or substantially under Section 34 of the Arbitration and Conciliation Act, 1996. Frequent interference with the arbitral award would defeat the very purpose of the Arbitration and Conciliation Act, 1996. It is held that the Division Bench of the High Court was

not at all justified in setting aside the arbitral award by exercising extremely limited jurisdiction under Section 37 by merely using expressions like opposition to the public policy of India, patent illegality and shocking cosines of the court.

Supreme Court in the case of ***Bombay Slum Redevelopment Corporation Pvt. Ltd. v. Samir Narain Bhojwani (2024) 7 SCC 218*** while dealing with Section 37 has held that– bulky pleadings make the arbitration proceedings time-consuming and ineffective. Only legally permissible grounds u/s 34 shall be raised.

Supreme Court in the case of ***Konkan Railway Corporation Ltd. vs. Chenab Bridge Undertaking 2023 SCC OnLine SC 1020*** held that the jurisdiction of the Court under Section 37 of the Act, is akin to the jurisdiction of the Court under Section 34 of the Act. The Court cannot undertake an independent assessment of the merits of the Award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Scope of interference by a Court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an Award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

Supreme Court in the case of ***Reliance Infrastructure Ltd. vs. State of Goa 2023 SCC OnLine SC 604*** held that the High Court has again traveled beyond its jurisdiction under Section 37 and rather than remaining within the confines of consideration under Section 34 of the Act, has entered into the arena which is exclusively within the Arbitrator's domain. It is held that even if two views are possible, the Court cannot substitute its own view with that of the Arbitral Tribunal. It is held that the narrow scope of “patent illegality” cannot be breached by mere use of different expressions which nevertheless refer only to “error” and not to “patent illegality”.

Supreme Court in the case of ***Dr A. Parthasarathy & Ors. vs. E Springs Avenues Pvt. Ltd. & Ors. (2022) SCC OnLine SC 719*** has held that under Section 37 of the Arbitration Act, the Court cannot remand the matter to the Arbitrator for fresh decision. Only two options are available to the Court considering the appeal under Section 37 of the Arbitration Act. The High Court either may relegate the parties for fresh arbitration or to consider the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37 of the Arbitration Act. However, the High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both parties that the matter be remanded to the same Arbitrator.

Supreme Court in the case of ***Government of Maharashtra (Water Resource Department) represented by Executive Engineers vs. Borse Brothers Engineers and Contractors Private Limited (2021) 6 SCC 460*** has held that (I) Limitation period for filing appeal under Section 37 in respect of cases falling under Commercial Courts Act i.e. where specified value is not less than three lakh rupees, a period of 60 days (under Section 13(1-A) of the Commercial Courts Act) is provided for filing appeals. (II) Limitation period for filing appeal under Section 37 in respect of cases not falling under Commercial Courts Act i.e. where the specified value is less than three lakh rupees, it is limitation period prescribed under Article 116 and Article 117 of the Limitation Act which is applicable. Thus, the limitation period would be 90 days or 30 days, depending upon whether the appeal is from any other Court to a High Court or an intra-High Court appeal. Section 5 of the Limitation Act is applicable to condone the delay in filing appeal however subject to "sufficient cause" being shown to the satisfaction of the Court and keeping in mind the object of the Arbitration Act. Long delays may not be condoned as a rule.

Supreme Court in the case of ***Chintels India Limited vs. Bhayana Builders Private Limited (2021) 4 SCC 602*** has held that an appeal against an order refusing to condone delay in filing of an application under

Section 34 held is maintainable under Section 37(1) I as such order amounts to order refusing to set aside the award.

Bombay High Court in the case of ***Om Developers Vs. Bernardine Movad Henrique 2026 BHC (OS) 313*** has held that the stage for challenge is explicitly postponed to section 34 of the Act, while section 5 renders intervention under Part-I of the Act impermissible except where specifically provided for. The rejection of the section 16 application is not amenable to challenge during the pendency of the arbitral proceedings. The grievances about such rejection could form the subject matter of the ground of challenge under section 34, should the arbitral award eventually result in an outcome adverse to the party that file section 16 application.

Bombay High Court in the case of ***Executive Engineer, National Highway Division Vs. Sanjay Shankar Surve, 2025 SCC OnLine Bom 339: 2025 BHC (AS) 6550*** held that State agencies cannot hide behind the conventional excuse of bureaucratic delays and insufficiency in State capacity as an excuse to condone delays. The High Court noticed that a case of the Appellant was made on a demonstrably false pleading, solemnly filed in court, and thus there was no reason to entertain the interim application any further. The High Court refused to condone the delay.

Bombay High Court in the case of ***Zanmai Labs Pvt. Ltd. v. Bitcipher Labs LLP, 2025 Supreme (Bom) 1786: 2025 BHC (OS) 18334,*** has held that the scope of jurisdiction under Section 37 of the Arbitration Act is to consider whether the learned Arbitral Tribunal has come up with any arbitrary and implausible proposition in the course of what it considers to be an appropriate interim measure. It is held that the Appeal is to be regarded as a continuation of the original proceedings. The powers of an Appellate Court under Section 37 of the Act to review the exercise of discretion by the Arbitral Tribunal are well guided by the principles set out by the Supreme Court in *Wander Ltd. v. Antox India Pvt. Ltd.,* 1990 Supp SCC 727.

Bombay High Court in the case of ***Gammon India Ltd. v. Konkan Railway Corporation Ltd., 2025 Supreme (Bom) 1144: 2025 BHC (OS) 11543*****,** held that the jurisdiction of the Appellate Court dealing with an Appeal under Section 37 against the judgment in a Petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a Petition under Section 34. It is the duty of the Appellate Court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in the Petition under Section 34.

Bombay High Court in the case of ***Raymond Ltd. v. Miltex Apparels, 2025 SCC OnLine Bom 333*** while dealing with an Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has held that if parties to an agreement are held to have extended a contract, all points in that agreement would stand extended sub silentio and by necessary implication. It is far-fetched to expect reiteration of just the arbitration clause for that clause to be extended in the eyes of the law. It is held that the arbitral tribunal, being a master of proceeding, would be best placed to decide how such evidence would be used and at what stage the jurisdiction would be ruled upon alongside the final ruling or as a preliminary issue after the evidence necessary to answer the mixed question of fact and law becomes available.

Bombay High Court in the case of ***Heritage Lifestyles & Developers (P) Ltd. v. Madhugiri Coop. Housing Society Ltd., 2025 SCC OnLine Bom 449*** while dealing with Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 held that when the actual signature is elusive, one would need to examine if the essential features of the contract had been agreed upon by the conduct of the parties and by examination of contemporaneous facts and circumstances. It is held that in any collective body such as a co-operative society, there would be requirements for the governing bodies such as the Managing Committee to get member approval for certain actions. Such as approval is an authorization, without which the Managing Committee cannot validly contract. The parties must necessarily agree on the 'essential terms' and

consider whether indeed the matter of detail is to be left over for the future. That is the question to be examined in the context of the facts of the case.

Bombay Court in the case of ***Ambrish Soni v. Chetak Narendra Dhakan & Ors. 2024 SCC OnLine Bom 2280*** while dealing with Section 37(2)(b) has held that the court cannot constantly interfere with and micromanage proceedings pending before Arbitral Tribunal.

Division bench of Bombay High Court ***V Hotels Ltd. vs. Siddhivinayak Realties Pvt. Ltd. 2023 SCC OnLine Bom 267*** while dealing with appeal under Section 37 of Arbitration Act, held that the learned arbitrator is the last word on the facts, only if the approach of Arbitrator is not arbitrary or capricious. It is held that the award completely dehors the admitted facts and terms of the contract, the conclusions arrived at by the arbitrator are unreasonable, defy logic and suffer from the vice of irrationality which makes the award patently illegal. The scope of interference by the court in the jurisdiction under Section 34 of the Arbitration Act is narrow and also under Section 37 is restricted.

Bombay High Court in the case of ***Kumar Urban Development Pvt. Ltd. vs. Atul Ashok Chordia 2023 SCC OnLine Bom 580*** in an Appeal under Section 37 arising out of order passed by the Arbitral Tribunal under Section 17 of the Arbitration Act held that since the Appellant failed to make out a prima facie case in their favor, as per the settled position of law, it is not necessary to go into the aspects of grave and irreparable loss that the Appellants may suffer in the absence of the interim measures and the balance of convenience between the parties. The Bombay High Court applied the ratio of the judgment of Supreme Court in the case of ***Wander Limited vs. Antox India (P) Ltd. 1990 Supp SCC 727***

Bombay High Court in ***Essar Oil and Gas Exploration and Production Limited vs. Toshiba Water Solutions Private Limited (2021) SCC***

OnLine Bom 294 has held that no appeal is permitted under Section 37 of the 1996 Act against the order passed in an application for stay of the arbitral award and more particularly under Section 36 of the 1996 Act. Merely because the Notice of Motion for stay under Section 36 of the Arbitration and Conciliation Act, 1996 was filed in the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the order passed in such Notice of Motion/Interim Application cannot be construed as an order under Section 34 of the Arbitration and Conciliation Act, 1996.

Bombay High Court in ***Oil and Natural Gas Corporation Limited vs. A Consortium of Sime Darby Engineering Sdn. Bhd. 2021 SCC OnLine Bom 985*** refused to entertain an appeal under Section 37 of the Arbitration and Conciliation Act as it did not fall within any of the categories specified in Section 37 of the said Act.

Division Bench of Bombay High Court in the case of ***Kakade Construction Company Ltd. vs. Vistra ITCL (India) Ltd., 2019 SCC Online Bom 1521*** has held that an appeal under Section 37 of the Arbitration Act is not maintainable against the order passed by the Executing Court appointing receiver while exercising power under Section 36 of the Arbitration Act since the said order is not being under the Code of Civil Procedure. Only those orders are appealable, which are described under Section 37 and not other orders.

Bombay High Court in the case of ***Prabhat Steel Traders Pvt. Ltd. vs. Excel Metal Processors Pvt. Ltd., 2018 SCC Online Bom 2347*** held that a party who is not a party to the arbitration agreement and if aggrieved by an order of interim measures passed by the arbitral tribunal has locus standi to file an appeal under Section 37 of the Arbitration Act after obtaining leave from such Appellate Court. The validity of the order passed by the arbitral tribunal under Section 17 cannot be challenged in a Civil Court.

Bombay High Court in the case of ***MTNL vs. Applied Electronics Ltd. (2017) 2 SCC 37*** has held that cross objection under Order XLI Rule 21 of the Code of Civil Procedure cannot be filed in Appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

Delhi High Court in the case of ***Chakradhari Sureka Vs. Premlata Sureka 2025 (DHC) 1496,*** has held that 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. It is not proper for the Executing Court to defer consideration of the Execution Application and the objections thereto only because an appeal is pending u/sec. 37 of the Arbitration & Conciliation Act, 1996, when there is no interim order operating against the Award against which objection u/sec. 37 of the Act stands rejected.

Section 38 provides for fixing the amount of deposit or supplementary deposit, as an advance for the costs which it expects will be incurred in respect of the claim fix separate amount of deposit for the claim and counter- claim. Both the parties are required to make such a deposit an equal share. If one party failed to pay his share of deposit, the other party may pay that share. If other party does not pay share in respect of opponent or in respect of his claim, the Arbitral Tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counterclaim as the case may be.

Under Section 39, the Arbitral Tribunal has lien on the arbitral award for any unpaid costs on the arbitration. The Court may make an order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

The Madras High Court in case of ***M/s EDAC Engineering Ltd. vs. M/s Industrial Fans (India) Pvt. Ltd. 2023 SCC OnLine Mad 6010*** has held that the Fourth Schedule to the Arbitration and Conciliation Act, 1996 applies only to cases where the Court while appointing the Arbitrator had directed the parties to pay the fees as per the Fourth Schedule to the Act. The Arbitral Award was rendered before the order of Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016. The learned Arbitrator claimed a lien under Section 39(1) of the Arbitration Act for non-payment of his fees which was not disputed by the petitioner company at any point of time earlier. The Madras High Court held that in the interest of the Petitioner and its body of Creditors, the balance fees of the learned Arbitrator have to be paid to the learned Arbitrator to obtain the release of the statutory lien exercised by the learned Arbitrator. It is held that the fees payable to an Arbitrator appointed by the Court have to be necessarily treated as costs incurred for the Corporate Insolvency Resolution Process (CIRP). An Arbitrator appointed by the Court cannot be left high and dry. His fees/costs are paramount and they have to be treated as preferential payments even in cases where CIRP proceedings are pending before the National Company Law Tribunal (NCLT). The Arbitrator's fees payable to the Arbitrator appointed by the Court stand on a higher pedestal and have to be treated as a priority payment.

Under Section 40, the arbitration agreement is not discharged by death of any party thereto but shall be enforceable by or against the legal representative of the deceased. The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

Supreme Court in the case of ***Rahul Verma & others Vs. P Lal Verma & others - 2025 SCC OnLine SC 578: 2025 INSC 296*** has held that the term 'partners' extends to and would include their legal heirs, representatives, assigns or legatees, etc. Persons claiming under the rights of a deceased person

are the representatives of the deceased party, and therefore, both the parties to the agreement and their legal heirs are entitled to enforce an arbitral award and are bound by it. In view of Section 40 of the Arbitration Act, the existence of an arbitration agreement is not affected by the death of a party to the arbitration agreement. The right to sue for rendition of accounts also survives, ensuring that legal representatives can assert or defend claims arising from the partnership agreement.

Supreme Court in the case of ***Rahul Verma & Ors. Vs. Rampat Lal Verma in Special Leave to Appeal No. 4330 of 2025,*** **2025 INSC 296** delivered on 21st February 2025 after considering Section 40 of the Arbitration and Conciliation Act, 1996 has held that the existence of an arbitration agreement is not affected by the death of a party to the arbitration agreement. The right to sue for rendition of account also survives, ensuring that the legal representative can assert or defend claims arising from the partnership agreement. The term "partners" extends to and would include the legal heirs, representatives, assigns or legatees etc. Persons claiming under the rights of a deceased person are the representatives of the deceased party, and therefore both the parties to the agreement and their legal heirs are entitled to enforce an arbitral award and are bound by it.

Section 41 makes the provision for insolvency and for continuation of the arbitral proceedings by the receiver as well as the official assignee.

Section 42 provides that where with respect to an arbitration agreement any application under Part-I has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement

and the arbitral proceedings shall be made in that Court and no other Court.

Section 42A and 42B are inserted by The Arbitration and Conciliation (Amendment) Act 2019 to maintain the confidentiality of all arbitral proceedings except where its disclosure is necessary for implementation and enforcement of the award notwithstanding anything contained in any other law for the time being in force. No suit or other legal proceedings can be filed against the arbitrator for anything that is done in good faith or intended to be done in good faith under the Arbitration Act or the rules or regulations made thereunder.

Sections 2 and 3 of the Arbitration and Conciliation (Amendment) Act, 2019 are not brought into effect till date However, Section 10 of the Arbitration and Conciliation (Amendment) Act was brought into effect from 12th October, 2023. Central Government has also issued a notification dated 30th August, 2019 appointing 30th August, 2019 as the date on which the other provisions of the Amendment Act 2019 such as Sections 1, 4 to 9, 11 to 13 and 15 are brought into force.

By 2019 Amendment, after Section 42, Section 42-A is inserted which provides that "Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award."

By 2019 Amendment, Section 42-B is inserted which provides that "No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under the Arbitration Act or the rules or regulations made thereunder."

Supreme Court in ***General Manager East Coast Railway Rail Sadan & Anr. vs. Hindustan Construction Co. Ltd. 2022 SCC OnLine SC 907*** set aside the order of the High Court appointing sole arbitrator. In the said case, the respondent before filing an application under Section 11(6) of the Arbitration Act in High Court of Orissa at Cuttack, filed an application before the Court at Visakhapatnam under Section 9 of the Arbitration Act. The Hon'ble Supreme Court therefore held that "in that view of the matter considering Section 42 of the Arbitration Act, the High Court of Andhra Pradesh at Hyderabad alone would have jurisdiction to decide the subsequent applications arising out of the Contract Agreement and the further arbitral proceedings shall have to be made in the High court of Andhra Pradesh at Hyderabad (wrongly mentioned Amaravati) alone and in no other court. In that view of the matter the High Court of Orissa at Cuttack has committed a serious error in entertaining the application under Section 11(6) of the Act before it and appointing the sole arbitrator."

Bombay High court in the case of ***Gurumahina Heights Co-operative Housing Society Ltd. vs. Admirecon Infrastructure Pvt. Ltd.*****2023 SCC OnLine Bom 2703** held that the first application under Arbitration Agreement between parties under Section 9 having been filed before Principal District Judge, Thane which order was not challenged and the fact that part of cause of action had arisen within the jurisdiction of Principal District Court, Thane, it would be only the court of Principal District Court, Thane which would have jurisdiction to entertain subsequent application under the said Arbitration Agreement in view of Section 42 of Arbitration Act.

Section 43 provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in Court. An arbitration shall be deemed to have commenced on the date referred to in section 21. If an arbitral award is set aside, the period between the commencement of the arbitration and the date of order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 for commencement of proceedings including arbitration concerning the dispute so submitted.

By the 2019 Amendment, Part I-A is inserted i.e. Sections 43A to 43M which provides for the Establishment and incorporation of the Arbitration Council of India, Composition of Council, Duties and functions of Council etc.

On 4th November 2020, the Ministry of Law and Justice issued an Ordinance i.e. The Arbitration and Conciliation (Amendment) Ordinance 2020 by which Section 43J of the Arbitration Act is substituted by the words "The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations."

On 9th July 2022, the Central Government has made the Arbitration Council of India (Terms and Conditions and salary and allowances payable to the Chairperson and Members) Rules, 2022.

On 12th October, 2023 the Central Government appointed the date as 12th October 2023 on which provisions of Section 10

of Arbitration and Conciliation (Amendment) Act, 2019 (33 of 2019) shall come into force.

Before the Arbitration and Conciliation (Amendment) Act 2021, the qualifications, experience and norms for accreditation of arbitrators were to be specified in the Eighth Schedule. The Eighth Schedule was deleted by this amendment.

ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA

Supreme Court in the case of ***Tamil Nadu Cement Corporation Ltd. Vs. Micro & Small Enterprises Felicitation Council and another (2025) INSC 91*** has referred the issue where a Writ Petition could never be entertained against any order/award of Micro & Small Enterprises Felicitation Council, completely bars or prohibits maintainability of the Writ Petition before the High Court and if the bar is not absolute, when and under what circumstances will the principle/restriction of adequate alternative remedy, not apply. The question as to whether the members of such Council who undertake conciliation proceedings, upon failure, can themselves act as arbitrators of the arbitral tribunal in terms of Sec. 18 of the MSMED Act, r/w Section 80 of the Arbitration & Conciliation Act, 1996 is also referred to the larger bench.

Supreme Court in case of ***Serosoft Solutions Pvt. Ltd. Vs Dexter Capital Advisors Pvt. Ltd. – 2025 SCC OnLine SC 22: 2025 INSC 26*** has held that High Court must exercise caution in interfering with the arbitral process, only intervene in cases of clear perversity and avoiding excessive judicial interference. Interference under articles 226/227 is permissible only if the order is completely perverse, i.e., the perversity stares in the face.

Supreme Court in ***Bhaven Constructions vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Anr. 2021 SCC OnLine SC 8*** has held that ruling of arbitral tribunal under Section 16 of the Arbitration Act upon the challenge to the jurisdiction of the Arbitral Tribunal

is not to be interfered by proceedings under Article 226 and 227 except in exceptionally rare circumstances. This power needs to be exercised in exceptional rarity, wherein one party is left remedial under the statute or a clear "bad faith" shown by one of the parties. In usual course, 1996 Act provides a mechanism to challenge the said order under Section 16 under Section 34 of the Arbitration Act.

Supreme Court in case of ***Sterling Industries vs. Jayprakash Associates Ltd. and Others, 2019 SCC Online SC 1154*** after adverting the judgement in case of SBP and Co. v/s. Patel Engineering Ltd., (2005) 8 SCC 618 has set aside the judgement of High Court entertaining a writ petition under Article 227 of Constitution of India against an order of the learned District Judge passed under Section 20 of the Arbitration Act, 1940 read with Section 19 of Micro, Small and Medium Enterprises Development Act, 2006 on the ground that the application made to the District Judge by the respondent against a partial award made under Section 16 itself was not tenable vide Section 16(6) of the Arbitration Act.

Bombay High Court in the case of ***Central Depository Services India Ltd. Vs. Ketan Lalit Shah (2025) Supreme (Bom) 515*** has held that interference under Article 226/227 is permissible only if the order passed by the Arbitral Tribunal is completely perverse, i.e. that the perversity must stare in the face. The Arbitral Tribunal is not bound by the CPC or the Indian Evidence Act; however, failing any agreement on the procedure to be followed in the conduct of the proceedings, the Arbitral Tribunal has the power to determine the conduct of the proceedings in the manner it considers appropriate. The High Court noted that the Arbitral Tribunal itself had declared that the Respondents-Claimants shall have to give fresh notice of invocation of arbitration if the Claimant decides to initiate fresh proceedings after withdrawal. In that case, the Arbitral Tribunal had granted liberty to withdraw the existing arbitration application with the liberty to file fresh proceedings. The High Court did not find any perversity in the said order passed by the Arbitral Tribunal.

Bombay High Court in the case of ***Municipal Corporation Bhandara Vs. J. S. Construction Pvt. Ltd. (2025) Supreme Bom 163: 2025 BHC (Nag) 993*** has held that the object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or 226 of the Constitution of India against every order made by the Arbitral Tribunal. Once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, the right of appeal is available to them u/section 37 of the Arbitration Act, even at an earlier stage.

Bombay High Court in the case of ***Hindustan Petroleum Corporation Ltd. vs. Om Construction 2023 SCC OnLine Bom 2219*** held that the remedy by way of writ is a discretionary remedy. High Court should not exercise that discretion, as the remedy is available to petitioner to challenge the impugned order by filing Special Leave Petition before the Supreme Court. It is further held that if the High Court exercises its jurisdiction under Article 226 and Article 227 of Constitution of India, and starts entertaining writ petitions against order passed under Section 11 of Arbitration Act, it will lead to opening the floodgates for such kind of litigation, which definitely needs to be avoided.

Bombay High Court in ***M/s. MES RGSL Toll Bridge Private Limited vs. MSRTC 2020 SCC OnLine Bom 2315*** held that remedy under Article 226 and 227 cannot be invoked to force contracting parties to consent/agree to arbitration.

Bombay High Court in case of ***Shri Guru Gobind Singhji Institute of Engineering & Technology v. Kay Vee Enterprises, 2024 SCC OnLine Bom 3808*** has held that jurisdiction of the High Court under Article 226 and 227 of the Constitution of India is not excluded from examining the validity of the interlocutory orders passed by the Arbitrator.

GENERAL

Supreme Court in the case of ***Tomorrowland Ltd. v. HUDCO Ltd., 2025 SCC OnLine SC 309*** held that it is imperative to maintain the sanctity of the terms of the agreement between the parties. A commercial document ought not to be interpreted in a manner that arrives at a complete variance with what may originally have been the intention of the parties.

Supreme Court of India in case of ***M.S. Ananthamurthy v. J. Manjula, 2025 SCC OnLine SC 448*** while dealing with a power of attorney, the provisions of the Contract Act and Transfer of Property Act held that a transfer of immovable properties by way of sale can only be by a deed of conveyance. An agreement to sale is not a conveyance. It is not a document of title or a deed of transfer of property and does not confer ownership right or title. The mere use of the word 'irrevocable' in a power of attorney would not make power of attorney irrevocable. If interest had been transferred by way of a written document, it had to be compulsorily registered.

Supreme Court in the case of ***Priyanka Kumari vs. Shailendra Kumar in Transfer Petition Civil (S) No. 2090 of 2019 2023 Supreme (Online)(SC) 14329, delivered on 13rd October, 2023*** while dealing with the provisions of Section 114 of Evidence Act and Section 27 of General Clauses Act held that the word 'refusal' can be interpreted as synonymous to the word "unclaimed". When a notice is served to the proper address of addressee, it shall be deemed to have been served unless contrary is proved. When the notice is returned as unclaimed, it shall be deemed to be served and it is proper service.

The Supreme Court in ***Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation (2022) 9 SCC 286*** held that the phrase "unless otherwise agreed by the parties" used in various sections viz.17, 21, 23(3), 24(1), 25, 26, 29, 31, 85(2)(a) etc. of the 1996 Act indicates that it is open

to the parties to agree otherwise than what the statutory provision in question provides for. So, if there is such an agreement between the parties on any aspect so permitted by 1996 Act, the arbitrator shall be bound by the same.

Supreme Court in the case of ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd., (2023) 6 SCC 401*** held that chapter V of MSMED Act 2006 would override the provisions of the Arbitration and Conciliation Act, 1996, no party to a dispute about any amount due under section 17 of the MSMED Act, 2006 would be precluded from referring to the micro and small enterprises facilitation counsel through an independent arbitration agreement exists between the parties. The facilitation council which had initiated the conciliation proceedings under section 18 (2) of the MSMED Act, 2006 would be entitled to act as arbitrator despite a bar contained in section 80 of the Arbitration and Conciliation Act,1996. It is held that the proceeding before the facilitation Council/Institute/Center acting as an Arbitrator/Arbitration Tribunal under section 18(3) of the MSMED Act, 2006 would be governed by the Arbitration Act, 1996. The Facilitation council would be competent to rule on its jurisdiction as also on other issues because of Section 16 of the Arbitration and Conciliation Act, 1996. It is also held that a party who is not the supplier as per the definition contained in Section 2(m)of the MSMED Act, 2006 on the date of entering into the contract cannot seek any benefit as the supplier under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would not apply to supply goods and rendering services after the date of registration.

Supreme Court in the case of ***Umesh Goel vs. Himachal Pradesh Cooperative Group Housing Society Ltd. AIR 2016 SC 3116*** has held that since the arbitral proceedings do not come under the expression “other proceeding” as specified in Section 69(3) of the Partnership Act, 1932, ban imposed under the said Section 69 can have no application to the arbitral proceedings as well as the arbitration award.

Bombay High Court in the case of ***Mahaonline Ltd. Vs. Aksentt Tech Services (2025) Supreme (Bom) 1373: 2025 BHC (OS) 23591*** has held that judicial admissions given in pleadings would stand on a higher footing than the evidentiary admission made by the Petitioner's witness. The Arbitral Tribunal granted an amount larger than the admitted amount, which is grossly perverse. The High Court held that this inadvertent error can be corrected by awarding the sum to the extent of admitted liability instead of setting aside the entire award, i.e. bad part of the award, which can easily be separated from the good part of the award.

Bombay High Court in the case of ***Dimple Enterprises Vs. Wework India Management Pvt. Ltd. – 2025 supreme Bom 1200: 2025 BHC (OS) 13153*** has held that disputes over in personam obligations flowing from lease deeds covered just by the Transfer of Property Act, without any special statutory protection being enjoyed by the Lessee, in relation to any property situate in Greater Mumbai would be amenable to arbitration. For such lease deeds, the phrase "any other law" u/sec. 42(2) of the Small Causes Court would include the Arbitration Act, thereby making Section 41(1) of that legislation inapplicable. The distinction and differentiation between a lease, which is a transfer of interest under the Transfer of Property Act and the mere right to occupy as a licensee or a tenant is distinct and real.

Bombay High Court in ***JMC Metals Pvt. Ltd. vs. Kunvarji Commodities Brokers Pvt. Ltd. 2021 SCC OnLine Bom 2588*** has held that Arbitration and Conciliation Act will continue to govern procedural parts of arbitration proceedings before an arbitral tribunal constituted under Multi-commodity Exchange bye-laws.

Bombay High Court in ***Choudhari Food Industries, Sangamner vs. Ahmednagar District Goat Rearing and Processing Co-operative Federation Ltd. 2021 SCC OnLine Bom 1542*** has held that bar under

Section 69 of the Indian Partnership Act would apply to the suit and not to initiation of the arbitration proceedings.

Bombay High Court in the case of ***Kalpataru Power Transmission Ltd. vs. Maharashtra State Electricity Transmission Co. Ltd., 2020 SCC Online Bom 120*** has held that the provisions of the Arbitration Act do not exclude the powers of the High Court to exercise its plenary powers and to exercise procedural review in case of errors apparent on the face of the record causing miscarriage of justice or shows grave and palpable errors committed by it. Procedural review can be exercised by the Court under plenary jurisdiction. The provisions of the Code of Civil Procedure, 1908 can be applied to the proceedings in Court to the extent of the provisions thereof not inconsistent with the provisions of the Arbitration Act. None of the provisions of the Arbitration Act bars the High Court from procedural review by exercising plenary jurisdiction.

A. The liability to pay stamp duty under Article 12 of Schedule I before its amendment and after its amendment.

(i) Before the amendment, duty payable on an Award in terms of Article 12 read as under: -

12. AWARD, that is to say, any decision in writing by an arbitrator or umpire, on a reference made otherwise than by an order of the Court in the course of a suit, being an award made as a result of a written agreement to submit present or future differences to Arbitration but not being an award directing partition	*Five hundred rupees*

(ii) Post amendment, it as under: -

"12. AWARD, that is to say, any decision in writing by an arbitrator or umpire, on a reference made otherwise than by an order of the Court in the course of a suit, being an award made as a result of a written agreement to submit present or future differences to Arbitration but not being an award directing partition, —	
(a) relating to immovable property;	*The same duty as is leviable on a conveyance under clause (b) of article 25.*

(b) relating to movable property, —	
(i) where the amount, granted in the award. does not exceed rupees fifty lakhs;	*0.75 per cent. of the amount granted in the award*
(ii) where the amount granted in the award, exceeds rupees fifty lakhs but does not exceed rupees five crores;	*Rupees thirty-seven thousand five hundred plus 0.5 per cent. of the amount granted in the award.*
(iii) where the amount granted in the award, exceeds rupees five crores;"	*Two lakhs sixty-two thousand five hundred rupees plus 0.25 per cent of the amount granted in the award.*

This Ordinance is the subject of debate amongst all the stakeholders concerning Arbitration Proceedings. The Ordinance also has raised various doubts about its implementation, about the party who will be liable to pay stamp duty on the award, when and whether the application for refund in case the award is set aside will be maintainable or not. The Ordinance requires clarity on various aspects.