Volume Issue
March 2026

Chamber of Commerce and Industry

IMC ARBITRATION COMMITTEE

News Bulletin- Published and circulated

Table of Contents:

WRIT NOT A SHORTCUT – BOMBAY HIGH COURT REFUSES TO INTERFERE IN ONGOING ARBITRATION

...Page No. 2

SECOND ARBITRATION ALLOWED ONLY WHEN EARLIER AWARD IS SET ASIDE WITHOUT DECIDING MERITS

...Page No. 4

ARBITRABILITY OF FORCIBLE EVICTION DISPUTES

...Page No. 6

SHIELD BEFORE DECREE – SECTION 9 RELIEF AVAILABLE EVEN DURING ENFORCEMENT OF FOREIGN AWARD

...Page No. 8

CAN SECTION 9 RELIEF BE SOUGHT OUTSIDE THE SEAT OF ARBITRATION?

...Page No. 10

MANDATORY PRE-LITIGATION MEDIATION: ACCESS TO JUSTICE OR PROCEDURAL HURDLE

...Page No. 13

EXTENSION OF ARBITRAL MANDATE UNDER SECTION 29A OF THE ARBITRATION AND CONCILIATION ACT, 1996

...Page No. 17

THE DOCTRINE OF COMPETENCE - COMPETENCE IN INDIAN ARBITRATION

...Page No. 19

JUDICIAL LIMITS IN ARBITRAL SUBSTITUTION: REAFFIRMING BOUNDARIES UNDER SECTION 15(2)

...Page No. 21

INDIA'S EVOLVING INVESTMENT TREATY FRAMEWORK: BALANCING INVESTOR PROTECTION AND SOVEREIGN REGULATION

... Page No. 23

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News Bulletin- Published and circulated

IMC'S PREMIER 7-DAY ARBITRATION COURTSE (09/03/2026- 17/03/2026): A TRANSFORMATIVE EXPERIENCE

... Page No. 25

WRIT NOT A SHORTCUT- BOMBAY HIGH COURT REFUSES TO INTERFERE IN ONGOING ARBITRATION

I. Background of the Dispute

In SAP India (P) Ltd. v. Cox and Kings Ltd.[1], the Bombay High Court reaffirmed a settled but critical principle of arbitration law:

"*Writ courts will not lightly interfere with orders passed by an Arbitral Tribunal.*"

The dispute arose from multiple agreements between the parties, including:

a) A License Agreement, and
b) A Services General Terms and Conditions Agreement (GTC).

Arbitration was initially invoked under the GTC. An arbitral tribunal was constituted, and claims and counterclaims were filed. Subsequently, insolvency proceedings before the NCLT led to adjournment of those arbitral proceedings.

Later, arbitration was invoked again under the GTC. A sole arbitrator was appointed by the Supreme Court. Fresh claims amounting to approximately ₹45.99 crore were filed. These claims appeared similar to earlier counterclaims.

II. Jurisdictional Objections

The petitioners challenged the arbitrator's jurisdiction by filing two applications under Section 16 of the Arbitration and Conciliation Act, 1996. The principal argument was that the claims arose under the license agreement, arbitration had not been properly invoked under

[1] 2025 SCC OnLine Bom 5662

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the agreement and the arbitrator therefore usurped jurisdiction.

The Arbitrator rejected these objections and held that all agreements formed part of a composite transaction, and therefore jurisdiction was properly assumed. Aggrieved, the petitioners approached the Bombay High Court under Articles 226 and 227 of the Constitution of India.

III. **Contentions before the High Court**

The petitioners argued that the arbitral tribunal had acted without jurisdiction and that the error was ex-facie. In view of the same, immediate writ intervention was therefore justified.

On the other hand, the respondent's submitted that the writ petition was premature and the objections relating to the jurisdiction has already been considered and rejected by the arbitral tribunal. The respondent further submitted that the proper remedy was to wait the final award and challenge it under Section 34 of the Arbitration and Conciliation Act, 1996.

IV. Court's Analysis

Justice Farhan P. Dubash emphasized the narrow scope of writ interference in arbitration matters. The Court laid down a clear principle:

"*Only in rare and exceptional cases, where it is ex-facie evident that the Arbitral Tribunal has passed an order which is patently illegal or perverse, or exercised power wholly without jurisdiction, interference from the Writ Court is warranted*."

The Court noted that the arbitral tribunal had relied upon the Supreme Court's decision in Ameet Lalchand Shah v. Rishabh Enterprises (2018) 15 SCC 678, which recognizes that multiple agreements forming part of a composite transaction may be referred to arbitration together.

At this stage, and without the benefit of the final award, the High Court held that it could not be said that the Tribunal had exceeded jurisdiction. Furthermore, no patent illegality was evident and that the matter required full adjudication in arbitration.

Hence, the writ petition was dismissed. The Court granted liberty to the petitioners to challenge the impugned orders under Section 34 of the

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Arbitration Act after the arbitral proceedings conclude. No order as to costs was passed.

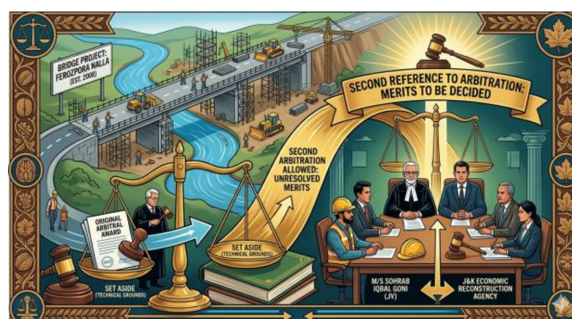
V. Conclusion

This decision reinforces several important arbitration principles:

a. Section 16 jurisdictional rulings are ordinarily not to be interfered with in writ jurisdiction.
b. Courts encourage parties to complete arbitration first.
c. The statutory remedy under Section 34 remains the primary challenge route.
d. Writ jurisdiction is reserved for truly exceptional cases of patent lack of jurisdiction.

The ruling strengthens India's pro-arbitration stance by discouraging premature court intervention.

SECOND ARBITRATION ALLOWED ONLY WHEN EARLIER AWARD IS SET ASIDE WITHOUT DECIDING MERITS



I. Introduction

The Jammu & Kashmir and Ladakh High Court have clarified an important point in arbitration law.[2] when an arbitral award is set aside by a court without deciding the actual merits of the dispute, the parties can start arbitration again. In other words, if the earlier award is cancelled on technical or procedural grounds and the core issues remain undecided, a second reference to arbitration is legally permissible.

II. Background of the Dispute

[2] M/S Sohrab Iqbal Goni (JV) Vs. Director, Transport J&K Economic Reconstruction Agency 2025 SCC OnLine J&K 1289

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This ruling was delivered by Justice Sanjay Dhar in a case arising from a 2008 contract for the construction of a 54-metre bridge over Ferozpora Nalla. The contractor, M/S Sohrab Iqbal Goni (JV), had entered into an agreement with a government agency for the project. During execution, disputes arose over delays, alleged design defects, and eventual foreclosure of the contract. The contractor raised multiple monetary claims, while the government agency filed counterclaims.

An arbitral tribunal was appointed earlier to resolve the dispute. In its award delivered in 2022, the tribunal rejected most of the contractor's claims and allowed only one claim in part. Both sides challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court in Srinagar. In 2025, the Commercial Court set aside the entire award. However, it did so without examining the claims in detail or giving its own findings on their merits. The court also observed that the parties were free to pursue fresh arbitration if they wished. No appeal was filed against this order.

After the award was set aside, the contractor issued a fresh notice invoking arbitration and approached the High Court under Section 11 seeking appointment of a new arbitrator. The government agency opposed this move, arguing that since the claims had already been rejected by the earlier arbitrator, they had become "dead claims" and could not be revived. According to them, allowing a second arbitration would amount to giving the contractor another opportunity to reargue the same issues.

III. Court's analysis and verdict

The Hon'ble High Court explained that there is a difference between claims that have been finally decided on merits and claims that remain unresolved because the award was set aside on procedural grounds. If a court, while setting aside an award, clearly decides that certain claims have no merit, then a second arbitration on those issues would not be allowed. However, if the award is quashed without such findings, the original disputes continue to exist.

The court relied on the principle laid down by the Supreme Court in McDermott International

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Inc. v. Burn Standard Co. Ltd.[3], which states that when a court sets aside an arbitral award, it cannot correct the errors but may leave the parties free to begin arbitration again. The High Court also distinguished the Delhi High Court's decision in Jaiprakash Associates Ltd. v. NHPC Ltd.[4], where a second reference was refused because the claims had already been conclusively examined on merits.

In the present case, since the Commercial Court had not independently assessed the merits and had merely set aside the award for legal and procedural reasons, the disputes between the parties were still unresolved. Therefore, the High Court allowed the application and appointed a new arbitrator.

This judgment reinforces that arbitration aims to resolve disputes fully and fairly. If an award fails due to procedural defects but the real issues remain undecided, the law permits a fresh opportunity to settle them through arbitration.

ARBITRABILITY OF FORCIBLE EVICTION DISPUTES

I. Background

The Kerala High Court has clarified that disputes relating to forcible eviction of a tenant cannot be referred to arbitration, even if the lease agreement contains an arbitration clause. The Court held that matters concerning protection against eviction fall within the jurisdiction of civil courts and cannot be decided by an arbitral tribunal

II. Events Leading to the Dispute

The decision was delivered by the High Court while allowing a petition filed by A.K. Sukumaran, a retired employee of Bharat Sanchar Nigam Limited (BSNL). He had approached the civil court seeking an injunction to restrain BSNL

[3] McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181.

[4] Jaiprakash Associates Ltd. v. NHPC Ltd 2025 SCC OnLine 2025.

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from evicting him from a residential premises that had been leased to him. In response, BSNL filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, requesting the court to refer the dispute to arbitration based on a clause in the lease agreement.

The I Additional Munsiff Court, Ernakulam, accepted BSNL's request and referred the matter to arbitration. Aggrieved by this order, Sukumaran approached the High Court, arguing that the primary relief he sought, i.e. protection against eviction was not arbitrable and could only be decided by a civil court.

III. Court's analysis and verdict

The Hon'ble High Court examined whether a dispute relating to eviction could be resolved by an arbitral tribunal. It relied on the principles laid down by the Supreme Court in Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. (2011),[5] where the Court identified certain categories of disputes that are not capable of being decided through arbitration. Among these are disputes involving rights in rem, such as eviction and tenancy matters governed by specific statutory protections.

The High Court observed that while certain incidental issues arising from a lease agreement such as rent calculation or contractual obligations may be arbitrable, the core issue in the present case was protection against forcible eviction. Such relief requires adjudication by a civil court. The Court emphasized that an arbitral tribunal does not have the authority to grant a decree protecting a tenant from unlawful eviction.

[5] Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. (2011) 5 SCC 532.

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SHIELD BEFORE DECREE – SECTION 9 RELIEF AVAILABLE EVEN DURING ENFORCEMENT OF FOREIGN AWARD

I. Background

In a significant development for arbitration jurisprudence, the Bombay High Court in Osterreichischer Lloyd Seereederei (Cyprus) Ltd. v. Victore Ships Pvt. Ltd.[6] clarified that interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 remains available even after initiation of enforcement proceedings for a foreign award.

The dispute arose from a foreign arbitral award dated 23/03/2020, passed in favour of a Cyprus-based shipping company for approximately USD 269,105.08 against an Indian entity.

To secure the awarded amount, the award-creditor adopted a dual approach:

a. Filed a petition under Part II of the Arbitration Act[7] (Sections 47–49) for recognition and enforcement of the foreign award; and
b. Simultaneously sought interim protection under Section 9, including deposit directions and asset disclosure.

The central question before the Hon'ble Court was whether filing a petition for recognition and enforcement of a foreign award under Part II bar the Court from granting interim relief under Section 9?

II. Contentions of the Parties

The Respondent submitted that enforcement under Part II is a composite process involving both recognition and execution. Furthermore, allowing Section 9 reliefs alongside would create overlapping jurisdictions. The Respondent relied upon precedents concerning domestic awards and composite enforcement mechanisms.

[6] 2026 SCC OnLine Bom 1868

[7] Arbitration & Conciliation Act, 1996

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On the other hand, it is the Petitioner's case that a foreign award becomes executable only after recognition under Section 49 of the Arbitration and Conciliation Act, 1996. Until such recognition, the award is not a decree. The Petitioner further submitted that interim protection is essential to prevent dissipation of assets during this stage. It was lastly submitted that Section 9 jurisdiction continues unless expressly barred, which is not the case in hand.

III. Court's analysis and verdict

Justice Somasekhar Sundaresan undertook a detailed analysis of the statutory framework.
The Court drew a crucial distinction between domestic awards and foreign awards.

Domestic Awards (Section 36): Automatically become enforceable as decrees upon expiry or dismissal of a Section 34 challenge.

Foreign Awards (Sections 46–49): Require a positive judicial determination under Section 49 before being treated as a decree. This distinction formed the backbone of the Court's reasoning.
The Hon'ble Court held that:

a. Filing a Part II petition is primarily a step for recognition, not immediate execution.
b. Only after recognition under Section 49 does the award attain the status of a decree.
c. Until that stage, Section 9 jurisdiction remains fully available.

The Hon'ble Court rejected the argument that Section 9 of the Act is temporally limited by reference to Section 36, noting that Section 36 does not apply to foreign awards. Further, parliament did not impose any such limitation when extending Section 9 to foreign awards via the 2015 amendment to Section 2(2).

The Court emphasized the protective purpose of Section 9, stating:

"*The Petition filed under Part II is first and foremost a petition for recognition… only upon the foreign award being conferred with the status of a decree under Section 49… would execution commence. At least until that stage, Section 9 jurisdiction cannot be said to be ousted*."

Further, the Court clarified that there is no statutory embargo on concurrent jurisdiction under Section 9 and Part II. Courts cannot read

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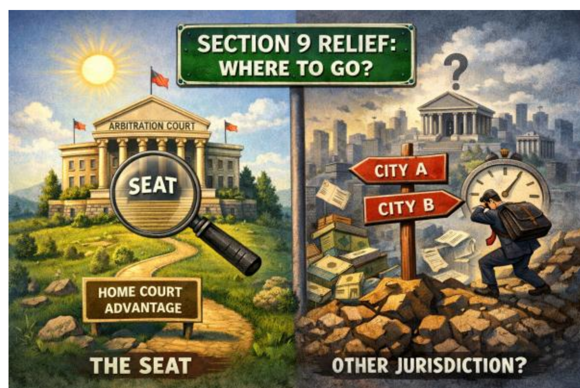
limitations into the statute where none exist. Interim measures remain necessary to safeguard the award-creditor. Hence, the Hon'ble Bombay High Court rejected the jurisdictional challenge to Section 9 petition and allowed the enforcement proceedings under Part II of the Act.

CAN SECTION 9 RELIEF BE SOUGHT OUTSIDE THE SEAT OF ARBITRATION?



I. Introduction

Arbitration, we are told, has a home. Not a metaphorical home, but a juridical one. The "seat" of arbitration is not merely a geographic label; it is the legal center of gravity. It anchors supervisory jurisdiction. It determines which court has the final say over interim measures, appointment of arbitrators, and challenges to awards. But here's the practical dilemma: what if the dispute's urgency lies elsewhere?

If the arbitration clause designates Delhi as the seat, but the assets requiring protection are in Mumbai, can a party rush to the Mumbai court under Section 9 of the Arbitration and Conciliation Act, 1996? Or must it seek protection only at the juridical "home" of the arbitration?

This question has triggered significant jurisprudential evolution. And the short answer, increasingly, is this: Section 9[8] relief cannot ordinarily be sought outside the seat**.**

II. Section 9 and the Illusion of Choice

Section 9 allows parties to approach "the Court" for interim measures before, during, or after arbitral proceedings. At first glance, the definition of "Court" under Section 2(1)(e)[9] seems to suggest flexibility i.e., the principal civil court having jurisdiction over the subject matter

[8] Arbitration and Conciliation Act, 1996 - Section 9 – Interim measures by Court

[9] Arbitration and Conciliation Act, 1996 - Definition of "Court"

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of the arbitration if it were a suit. Under traditional CPC principles, this could mean:

i. The court where cause of action arose, or
ii. Where the defendant resides or carries on business.

For years, this created the appearance of concurrent jurisdiction. If cause of action arose in multiple places, multiple courts might entertain Section 9 petitions. But arbitration jurisprudence did not remain static.

III. <u>Where Does Section 9 Fit?</u>

Section 9 is not merely procedural. It is often urgent. It is the emergency first aid of arbitration. and includes freezing assets, preserving property, securing claims. The argument for allowing Section 9 outside the seat usually proceeds like this:

If assets are located in City A, and urgency arises in City A, why should a party be compelled to approach City B (the seat) for interim protection? Would that not undermine practical efficiency?

This argument appears intuitive. But it misunderstands the structural design of arbitration law. The seat doctrine is not about convenience. It is about coherence.[10] Allowing Section 9 petitions outside the seat would fragment supervisory jurisdiction. It would revive concurrent court interventions, precisely what the Supreme Court sought to eliminate.

The Supreme Court in Ashwani Minda v. U-Shin Ltd.[11] reinforced the centrality of the seat in determining jurisdiction. The Court emphasized that once parties designate a seat, courts at that seat exercise exclusive supervisory control over the arbitration. The decision underscored the territoriality principle embedded in the Act, aligning Indian arbitration law with international standards.

While *Ashwani Minda* arose in a slightly different factual matrix, its doctrinal signal was unmistakable: **jurisdiction follows the seat.** The ruling strengthens the view that Section 9, being part of the supervisory framework, must align with seat-based exclusivity.

[10] Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552

[11] Ashwani Minda v. U-Shin Ltd., (2020) 19 SCC 760

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IV. Can CPC Principles Survive the Seat?

A common counter-argument invokes Section 2(1)(e) and CPC-based jurisdiction. If a civil suit could have been filed in City A, why not a Section 9 petition? The answer lies in understanding that arbitration law reconfigures jurisdictional logic.[12] The seat is not merely one factor among many, it is determinative. To allow CPC territorial principles to override seat designation would dilute party autonomy. When parties choose a seat, they choose a supervisory court. That choice must be respected.

V. Analysis and Practical Implications

Suppose assets are physically located outside the seat's territorial jurisdiction. Would the seat court's orders be effective? The answer is yes.

Orders passed by a competent court can be enforced across India under procedural law. The enforceability mechanism does not require the Section 9 petition to originate where the assets lie. Efficiency concerns cannot override structural clarity. Indeed, permitting multiple courts to grant interim measures risks conflicting orders, an outcome far more destabilizing than requiring parties to approach a single supervisory court.[13]

Before the seat doctrine matured, arbitration litigation often resembled jurisdictional chess. Parties strategically approached different courts, sometimes seeking favorable forums. The Supreme Court's insistence on seat-based exclusivity is a conscious attempt to end this forum-shopping. If Section 9 were treated as an exception to the seat rule, the entire architecture would unravel. Parties could resurrect concurrent jurisdiction arguments under the guise of urgency. Arbitration would lose its predictability, i.e. one of its defining strengths.

Is there absolutely no scope for Section 9 outside the seat? In purely domestic arbitrations where the seat is not clearly designated, jurisdiction may still be determined on traditional principles. Ambiguous clauses could leave room for argument. But where the seat is clearly identified, the doctrinal trajectory points strongly toward exclusivity. The modern position is not ambiguous. It is consolidating.

[12] Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd., (2017) 7 SCC

[13] BGS SGS Soma JV v. NHPC Ltd., (2020) 4 SCC 234

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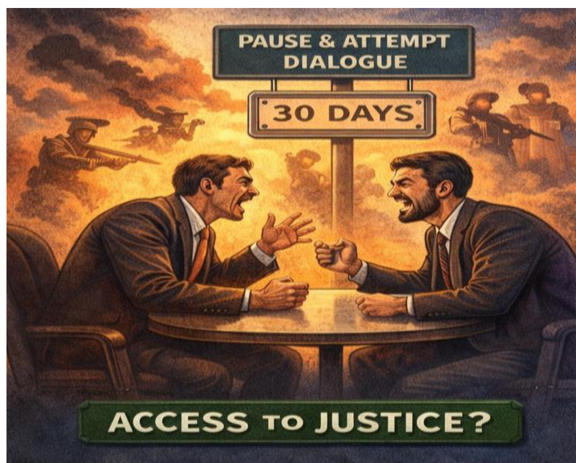
Section 9 relief should not be sought outside the seat of arbitration once the seat is clearly designated. This is not merely a technical conclusion, rather it is a structural necessity.

Arbitration's promise lies in clarity and certainty. The designation of a seat is not ornamental drafting; it is a jurisdictional anchor. Section 9, though urgent and powerful, operates within the supervisory framework of arbitration. It cannot float independently of the seat without disturbing the balance carefully constructed by judicial precedent.

MANDATORY PRE-LITIGATION MEDIATION: ACCESS TO JUSTICE OR PROCEDURAL HURDLE



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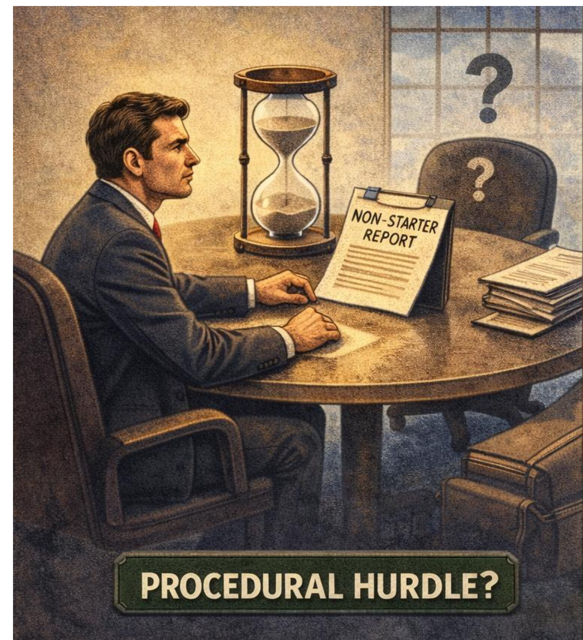

I. Introduction

The recent past tells us that wars are rarely declared without warning. Before armies mobilize and battle lines are drawn, there are backchannel conversations, diplomatic envoys, cooling-off periods, and last attempts at negotiation. Sometimes they fail. Occasionally, they avert catastrophe. But the pause however brief; is deliberate.

Commercial disputes follow a similar trajectory. A contract sours. Emails sharpen. Lawyers are

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briefed. Draft pleadings circulate. Positions harden. The courtroom looms like a battlefield. And just before the first procedural strike is launched, the law intervenes, not with an injunction, but with an invitation: *pause and attempt dialogue.*

Though Section 12A of the Commercial Courts Act, 2015[14], reinforced by the Mediation Act, 2023[15], Indian commercial litigants are now required, in most cases, to attempt mediation before commencing suit. The message is clear: before you litigate, negotiate.

But this legislative "cooling-off period" raises a fundamental question. Is mandatory pre-litigation mediation a diplomatic safeguard designed to prevent unnecessary legal warfare or does it merely delay access to adjudication when conflict is inevitable? In compelling parties to talk before they fight, the law attempts to reshape the culture of dispute resolution. Whether that pause enhances justice or postpones it is a debate that continues to unfold.

II. The case for mandatory mediation as access of justice

Proponents argue that mandatory pre-litigation mediation enhances, rather than restricts, access to justice.

1. Speed and Efficiency

Commercial litigation in India is often protracted. Mandatory mediation creates an early opportunity to resolve disputes within a structured yet flexible framework. Even if mediation does not culminate in a full settlement, it may narrow the issues in dispute, thereby streamlining subsequent litigation. In this sense, mediation serves as a filter that eliminates or refines claims before judicial time is expended.

2. Cost-Effectiveness

Litigation entails substantial financial burdens: court fees, prolonged legal representation, procedural adjournments, and opportunity costs. Mediation, by contrast, is comparatively inexpensive and time-bound. For small and medium

[14] Commercial Courts Act, 2015 - Mandatory pre-institution mediation

[15] Chapter II – Pre-litigation mediation

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enterprises, early settlement through mediation may preserve financial viability and business continuity.

3. **Preservation of Commercial Relationships**

Unlike adversarial litigation, mediation is collaborative in design. It encourages dialogue and interest-based negotiation. In partnership disputes, shareholder conflicts, or long-term supply arrangements, preserving business relationships may be more valuable than securing a formal decree. Mandatory mediation creates an institutional space for such dialogue before adversarial positions harden.

4. **Systemic Judicial Efficiency**

From a macro perspective, diverting even a fraction of commercial disputes from courts reduces docket pressure. This benefits not only the parties to mediated disputes but also litigants awaiting adjudication in other matters. In this sense, mandatory mediation can be viewed as a structural reform aimed at improving systemic access to justice.

III. The Counter-Argument: Procedural Obstacle or Delaying Tactic?

Despite these advantages, critics contend that compulsion risks undermining both procedural fairness and the voluntary essence of mediation.

1. **Additional Procedural Layer**

Mandatory pre-litigation mediation inserts an additional stage before access to court. In disputes where settlement is unlikely, particularly where parties are entrenched or acting in bad faith, mediation may function as a mere formality. Rather than facilitating resolution, it delays adjudication.

2. **Ambiguity Surrounding "Urgent Interim Relief"**

Section 12A carves out an exception for suits seeking urgent interim relief. However, what qualifies as "urgent" has itself become a matter of judicial interpretation. Litigants may face uncertainty regarding whether their claim falls within the exception. This threshold question can generate preliminary litigation, paradoxically increasing procedural complexity.

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3. **Power Imbalances**

Mediation's effectiveness presupposes relatively balanced bargaining positions. In disputes involving unequal economic or informational power, mandatory mediation may exert subtle pressure on weaker parties to settle prematurely. Without adequate safeguards, compulsion could risk coercive outcomes disguised as consensual settlements.

4. **Litigation over Compliance**

Following the decision in *Patil Automation*, non-compliance with pre-institution mediation may result in rejection of the plaint. Consequently, parties may strategically challenge suits on technical grounds relating to mediation compliance. Thus, a mechanism designed to reduce litigation may itself generate satellite litigation.

IV. Analysis and Practical Implications

Whether mandatory pre-litigation mediation enhances or obstructs access to justice ultimately depends on its operational design.

In practice, the pre-litigation mediation stage is not always the seamless gateway it is envisioned to be. Initiating mediation itself requires careful drafting of the application, articulation of claims, compilation of supporting documents, and compliance with institutional formats. Once filed, parties must await issuance and service of notice, followed by scheduling coordination. If the opposite party chooses not to participate, the process does not simply conclude instantly; it culminates in the issuance of a "non-starter" report. In reality, obtaining this report, which is procedurally necessary before approaching the court can take considerable time. For a litigant already prepared with a plaint, pleadings, and strategy, this additional procedural layer may feel less like a cooling-off period and more like an extended waiting room before adjudication can formally begin.

Mandatory pre-litigation mediation represents a significant recalibration of India's dispute resolution framework. It reflects a policy preference for consensual settlement and systemic efficiency. Yet its legitimacy rests on

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delicate balance. Overly rigid enforcement risks converting mediation into a procedural hurdle; thoughtful implementation can transform it into an effective access-enhancing mechanism.

EXTENSION OF ARBITRAL MANDATE UNDER SECTION 29A OF THE ARBITRATION AND CONCILIATION ACT, 1996

I. Introduction

The introduction of Section 29A by the 2015 Amendment Act represented a paradigm shift in Indian arbitration, moving toward a strictly time-bound regime. Under the current framework (post-2019 Amendment), an arbitral tribunal is mandated to pass an award within twelve months from the completion of pleadings. While Section 29A (3) allows parties to mutually extend this period by an additional six months, any subsequent extension requires an application to the Court under Section 29A (4) and (5). The critical legal controversy recently resolved by the judiciary concerned whether such an application is maintainable after the mandate has already expired.

II. The Conflict of Interpretation: Termination vs. Continuity

The crux of the debate rested on the interpretation of the word "terminate" in Section 29A (4). A restrictive school of thought, adopted by the Calcutta and Patna High Courts, argued that the expiry of the twelve or eighteen-month period resulted in an automatic and irreversible cessation of the arbitrator's authority. Under this view, if no application for extension was filed prior to the deadline, the arbitrator became *functus officio*, rendering the mandate incapable of being "extended" because it no longer existed.

Conversely, a more purposive interpretation was championed by the High Courts of Delhi, Bombay, and Madras. These courts focused on the legislative language in Section 29A (4), which explicitly empowers the Court to extend the

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period "either prior to or after the expiry of the period so specified." This school of thought argued that the "termination" mentioned in the statute is not absolute but is instead "subject to" the Court's power of extension.

III. Supreme court clarification and current legal position

The Supreme Court has now decisively resolved this split in *Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd*[16]. The Court held that an application for extension of the arbitral mandate is indeed maintainable even if filed after the expiry of the statutory period. The Court reasoned that a literalist approach would lead to absurd results, such as the collapse of complex arbitrations that are nearing completion, thereby defeating the very object of the Act, efficient dispute resolution.

The Court emphasized that the word "extension" implies the continuation of an existing mandate rather than the creation of a new one. Therefore, the mandate is suspended upon the expiry of the time limit but remains eligible for judicial revival. This ensures that the progress made in the proceedings is not wasted due to technical delays. However, the Court cautioned that extensions are not a matter of right. As established in the broader context of procedural delays in *Dinesh Kumar v. Land Acquisition Officer*[17], the moving party must demonstrate "sufficient cause" to warrant the Court's exercise of discretion.

IV. Principles for judicial discretion

In exercising its power under Section 29A (5), the Court may impose terms and conditions, such as a reduction in the arbitrator's fees if the delay is attributable to the tribunal. The judiciary seeks to balance the need for speed with the necessity of substantive justice, a principle further reinforced in *South Bihar Power Distribution Co. Ltd. v. Bhagalpur Electricity Distribution Co. (P) Ltd*[18]., where the emphasis remained on ensuring that procedural timelines do not become instruments of injustice. This balanced approach was also supported by the reasoning in *Ashok Kumar Gupta v. M.D. Creations*[19], which favored the preservation of arbitral proceedings over their premature termination.

[16] 2024 SCC OnLine SC 2494
[17] (2023) SCC OnLine HP 767.
[18] 2023 SCC OnLine Pat 1658.
[19] 2024 SCC OnLine Cal 6808.

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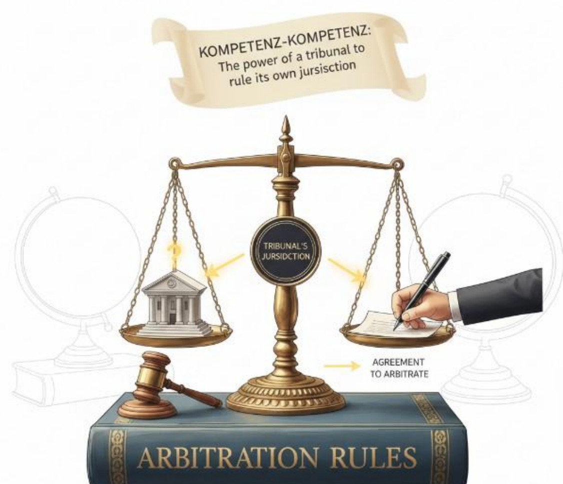
THE DOCTRINE OF COMPETENCE - COMPETENCE IN INDIAN ARBITRATION



I. Introduction

The doctrine of *Competence-Competence* (or *Kompetenz-Kompetenz*) is a foundational pillar of modern arbitration, asserting that an arbitral tribunal possesses the legal authority to determine its own jurisdiction. This includes the power to rule on the existence, validity, and scope of the arbitration agreement. In India, this principle is statutorily enshrined in Section 16 of the Arbitration and Conciliation Act, 1996, which is modeled after the UNCITRAL Model Law.

II. Statutory Framework and Autonomy

Under Section 16, an arbitration clause is treated as an independent contract, separate from the underlying commercial agreement. Consequently, even if the main contract is declared null and void, the arbitration clause survives, ensuring that the tribunal can continue to adjudicate the dispute. This legislative framework aims to minimize judicial interference and promote party autonomy.

III. Limitation and judicial scrutiny

The interplay between judicial intervention and the tribunal's authority often arises at the pre-reference stage (Sections 8 and 11). Following the 2015 Amendment, courts are generally required to confine their examination solely to the prima facie "existence" of an arbitration agreement.

The Supreme Court has clarified that issues regarding limitation are typically mixed questions of law and fact that should be left to the arbitrator. However, a narrow exception exists: if a claim is "ex facie" time-barred or the dispute is patently non-arbitrable, the court may decline the reference to prevent wasteful litigation. If there is to prevent wasteful litigation. If there is even a

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"vestige of doubt," the matter must be referred to the tribunal[20].

IV. Arbitrability of fraud

Historically, Indian courts were hesitant to refer cases involving serious fraud to arbitration. However, the jurisprudence has shifted toward a pro-arbitration stance. The current legal position is that allegations of fraud are arbitrable unless the fraud is so pervasive that it vitiates the arbitration agreement itself or involves complex criminal issues that have implications in the public domain. The Supreme Court has emphasized that arbitrators are equally capable of maintaining impartiality and procedural fairness as judges[21].

V. Subject matter arbitrability

Despite the strength of the competence-competence doctrine, certain disputes remain non-arbitrable due to public policy or the nature of the rights involved. Disputes involving *rights in rem* (actions against the world), such as criminal offenses, matrimonial causes, insolvency, and probate matters, are reserved for specialized state forums. In contrast, disputes involving *rights in personam* (private rights between parties) are generally amenable to arbitration[22].

VI. Conclusion

The Indian judiciary has increasingly embraced the competence-competence doctrine to balance party autonomy with necessary judicial safeguards. By limiting court intervention to a "preliminary' or 'prima facie" assessment, the law ensures that arbitral tribunals remain the primary masters of their own jurisdictional boundaries, thereby strengthening India's position as a pro-arbitration jurisdiction.

[20] *BSNL v. Nortel Networks India (P) Ltd.*, (2021) 5 SCC 738.
[21] *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1
[22] *Uttrakahand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.*, (2020) 2 SCC 455.

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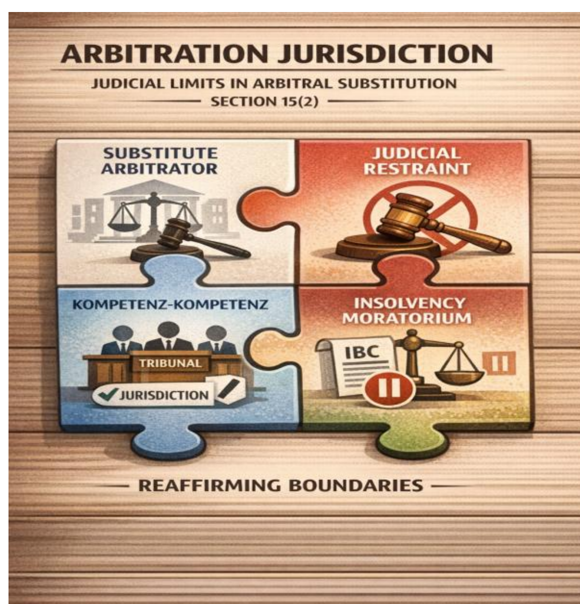
JUDICIAL LIMITS IN ARBITRAL SUBSTITUTION: REAFFIRMING BOUNDARIES UNDER SECTION 15(2)



I. Introduction

The Supreme Court of India in Ankhem Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd., (2026) [23]clarified the limited scope of judicial intervention under Section 15(2) of the Arbitration and Conciliation Act, 1996. The Court held that while appointing a substitute arbitrator, courts cannot invalidate prior arbitral proceedings. This ruling reinforces the principle that arbitration must remain insulated from excessive judicial interference and highlights the delicate balance between arbitration and insolvency frameworks.

II. Scope of Section 15(2): Procedural, No Adjudicatory

Section 15(2) provides that when an arbitrator's mandate terminates, a substitute must be appointed using the same procedure as the original appointment. The Supreme Court emphasized that this provision is purely procedural and does not confer adjudicatory powers. By declaring prior proceedings void, the High Court exceeded its jurisdiction. The Court reiterated that the legislative intent behind Section 15 is continuity of proceedings, not reopening or re-evaluating past actions. This interpretation aligns with earlier jurisprudence that substitution does not reset arbitration.[24]

III. Judicial restraint and minimal intervention

[23] Ankhem Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd 2026 INSC 137

[24] Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd., (2006) 6 SCC 204.

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The judgment reinforces the doctrine of minimal judicial intervention embodied in Section 5 of the Arbitration Act. Courts are only permitted to intervene where explicitly provided. Expanding the scope of Section 15(2) would allow indirect challenges to arbitral decisions, undermining efficiency and finality. The Supreme Court's reasoning is consistent with precedents that caution against excessive judicial involvement in arbitration. [25]This approach ensures that arbitration remains a speedy and autonomous dispute resolution mechanism.

IV. Kompetenz-Kompetenz and Tribunal Authority

The Court reaffirmed the principle of kompetenz-kompetenz under Section 16, which empowers arbitral tribunals to rule on their own jurisdiction. Issues such as the validity of proceedings during a moratorium must be raised before the tribunal and not adjudicated by courts at the substitution stage. By bypassing this mechanism, the High Court undermined tribunal autonomy. The Supreme Court clarified that challenges must follow statutory remedies, including appeals under Section 37.[26]

V. Interplay with insolvency moratorium

The case also examined the effect of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016. The Court held that arbitral proceedings conducted during a moratorium are not automatically void. Instead, their validity must be determined within the arbitration framework. This nuanced interpretation prevents blanket invalidation while respecting insolvency objectives. It also aligns with judicial precedent recognizing that the moratorium's application depends on the nature of proceedings.[27]

VI. Conclusion

The Supreme Court's ruling in Ankhem Holdings marks a significant step in preserving arbitral autonomy. By restricting courts to a procedural role under Section 15(2), the decision prevents judicial overreach and reinforces the self-contained nature of

[25] SBP & Co. v. Patel Eng'g Ltd., (2005) 8 SCC 618.
[26] Deep Indus. Ltd. v. ONGC Ltd., (2020) 15 SCC 706.
[27] Power Grid Corp. of India Ltd. v. Jyoti Structures Ltd., 2017 SCC OnLine Del 12189.

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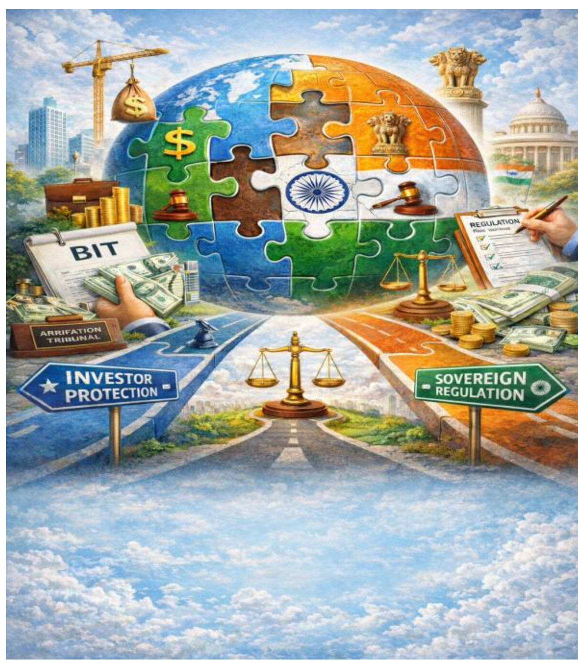
arbitration law. It also clarifies the interaction between arbitration and insolvency regimes, ensuring a balanced and coherent legal framework.

INDIA'S EVOLVING INVESTMENT TREATY FRAMEWORK: BALANCING INVESTOR PROTECTION AND SOVEREIGN REGULATION



I. Introduction

India's investment treaty regime has undergone a significant transformation over the past decade, reflecting a conscious shift from expansive investor protections to a more calibrated and sovereign-centric approach. Historically, India entered into numerous Bilateral Investment Treaties (BITs) to attract foreign investment, beginning with its agreement with the United Kingdom in 1994. However, the rise in investor-state disputes, particularly following adverse awards such as White Industries Australia Ltd. v. Republic of India [UNCITRAL No. 30,2011] prompted a reassessment of this framework. The adoption of the 2015 Model BIT marked a turning point, aiming to balance investor rights with the state's regulatory autonomy.

II. Shift from Broad Protection to Regulated Commitments

Pre-2016 BITs adopted an expansive asset-based definition of "investment" and provided broad protections such as Fair and Equitable Treatment (FET) and Most-Favored-Nation (MFN) clauses. However, these provisions exposed India to extensive arbitral claims. In response, the Model BIT introduced a narrower "enterprise-based" definition of investment and removed traditional FET protections, replacing

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them with a limited standard tied to customary international law. [28]This shift reflects India's intent to reduce interpretive ambiguity and prevent expansive arbitral interpretations that could constrain domestic policymaking.

III. Redefining Investor Rights and Obligations

The Model BIT also redefines the concept of "investor" by requiring substantial business activity in the home state, thereby addressing concerns of treaty shopping. Additionally, it introduces stricter procedural requirements, including the exhaustion of local remedies for a minimum period before initiating arbitration. [29]These changes signal a move toward ensuring that only genuine investors with real economic presence can invoke treaty protections, while also strengthening domestic legal systems as the primary forum for dispute resolution.

IV. Limiting Arbitral Discretion and Expanding State Defenses

India's revised treaty framework significantly curtails arbitral discretion by incorporating detailed provisions on expropriation and general exceptions. For instance, the Model BIT clarifies that non-discriminatory regulatory measures aimed at public welfare objectives such as health, environment, or economic stability do not constitute indirect expropriation.[30] Furthermore, taxation measures are largely excluded from treaty protection, a direct response to disputes arising from retrospective tax amendments in cases like Vodafone International Holdings BV v. Republic of India.[31] These provisions strengthen the state's ability to regulate without the constant threat of arbitration.

[28] Model Text for the Indian Bilateral Investment Treaty art. 3 (2015).
[29] Id. art. 15.2.
[30] Id. art. 5.5.
[31] Vodafone Int'l Holdings BV v. Republic of India, PCA Case No. 2016-35, Final Award (Sept. 25, 2020).

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IMC'S PREMIER 7-DAY ARBITRATION COURTSE (09/03/2026- 17/03/2026): A TRANSFORMATIVE EXPERIENCE

The 7-Day Arbitration Course conducted by the Indian Merchants' Chamber (IMC) was held from March 9/3/2026 to 17/3/2026, bringing together a diverse group of legal professionals and aspiring arbitration practitioners for an intensive and highly enriching program. As one of IMC's flagship initiatives, this course has, over the years, earned a reputation as one of the most sought-after and prestigious training programs in the field of arbitration law. The 2026 edition continued this legacy by delivering a meticulously structured curriculum across fourteen sessions, spread over seven days.

A defining feature of the course was the exceptional calibre of its speakers. Each session was led by eminent personalities, including Hon'ble sitting judges of the Bombay High Court, renowned jurists, senior counsel, and experienced practitioners. Their sessions provided not only in-depth legal knowledge but also practical insights drawn from real-world arbitration practice. The speakers' ability to combine doctrinal clarity with practical application made the sessions both engaging and intellectually stimulating. Additionally, the interactive question-and-answer segments at the end of each session allowed participants to actively engage, clarify doubts, and deepen their understanding of complex issues.

The course offered a comprehensive exploration of arbitration law and practice. It covered the entire gamut of arbitration, including foundational principles, statutory provisions under the Arbitration and Conciliation Act, 1996, and its amendments, as well as practical aspects such as drafting arbitration agreements, initiating proceedings, conducting hearings, and addressing post-award issues, including enforcement of domestic and foreign awards. This holistic approach ensured that participants gained both theoretical grounding and practical competence, enabling them to confidently engage with arbitration matters in their professional careers.

Participant feedback reflects the significant impact of the course. One review highlighted that the structured format of the sessions kept participants highly attentive and helped them develop the confidence to represent parties in arbitration proceedings. It also emphasized that the course provided a fresh perspective on pursuing a career in arbitration. Another

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participant described the program as a crucial stepping stone for refining and revitalizing their legal career, particularly after a long stint in the corporate sector. The course was also appreciated as a valuable networking platform, fostering meaningful professional connections.

Overall, the IMC 7-Day Arbitration Course stands as a benchmark in arbitration training. Its continued success over nearly two decades reflects IMC's unwavering commitment to promoting excellence in alternative dispute resolution. By combining academic rigor, practical training, and professional engagement, the course not only enhances participants' knowledge but also instills the confidence and perspective necessary to excel in the evolving field of arbitration.

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Mr. Satyan Israni
Mr. Vyom D. Shah
Ms. Sneha Phene
Ms. Amita Dubey
Mr. Venkat Ramana

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

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Note from the editorial: Credits to all the members for encouraging and offering suggestions for this bulletin. Thank you for making this possible. Though the issue is being circulated in April 2026, we have covered recent developments from previous months.

Committee Members for Bulletin:

Mr. Prashant Popat

Mr. Satyan Israni

Mr. Venkata Ramana

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