MODIFICATION AND SEVERABILITY OF ARBITRAL AWARDS

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ABSTRACT

This article examines the challenges surrounding judicial modification and severability of arbitral awards under the Arbitration and Conciliation Act, 1996. It outlines the limited recourse available to parties against an arbitral award, and charts judicial developments on the questions of modification and severability in context of the principle of minimal judicial intervention embedded in arbitration law. In conclusion, the article argues that while the legislative framework seeks to preserve the finality of arbitral awards, practical challenges and prolonged litigation compel courts to engage in selective and substantive intervention with arbitral awards. It suggests that a balanced approach – potentially via legislative amendment – could reconcile the need for judicial oversight with the principle of minimal interference, thereby ensuring speedy and equitable dispute resolution.

1. Introduction

Finality of arbitral awards and the principle of minimal judicial intervention are few of the core tenets of arbitration. In India, these principles are codified in the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**").[3] Under Part I of the Arbitration Act: **(a)** Section 5 provides that "*in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part*"; and **(b)** Section 35 provides that "*Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively*". Therefore, the Arbitration Act limits judicial authority over matters concerning arbitration, and prescribes that the only recourse available against an arbitral award would be that which is provided under Part I of the Arbitration Act.

Part I of the Arbitration Act provides limited recourse to a party aggrieved by an arbitral award. While Section 33 entitles parties to request the arbitral tribunal to, *inter alia*, "*correct any computation errors, any clerical or typographical errors or any other errors of a similar nature*", this power of 'correction' made available to arbitral tribunals does not contemplate any interference with the substantive

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findings and reliefs rendered in the arbitral award. Such corrections, though capable of being construed as 'modifications' to the award, are not scrutinized in this article.

Instead, we assess the questions of modification and severability of arbitral awards in context of judicial interference with the substance of an arbitral award; questions which frequently arise for consideration once a party adopts the only recourse available for challenging the substantive findings and reliefs in an award – under Section 34 of the Arbitration Act – by filing "*an application for setting aside such award*" on the limited grounds provided by the said provision.[4]

These questions, having been the subject of significant discourse over the years, are quite topical as, on the date of this article being written, a five-member Constitution Bench of the Supreme Court of India has begun hearing arguments on the issues of whether courts have the power to modify awards; if so, to what extent; and whether such power, if available, can be applied only to awards which are severable.[5] In this light, we chart the discourse on the issues of modification and severability, and attempt to provide our own answers to the questions.

2. Modification

The erstwhile Arbitration Act, 1940 ("**1940 Act**")[6] expressly permitted courts to modify arbitral awards. Section 15 provided that courts may "*modify or correct an award*" where: **(a)** a part of the award was upon a matter not referred to arbitration and such part could be separated from the other parts without affecting the decision on those parts; or **(b)** the award was imperfect in form, or contained any obvious error which could be amended without affecting such decision; or **(c)** the award contained a clerical mistake or an error arising from an accidental slip or omission.

Such an express power of modification or correction is not available to courts under the Arbitration Act, which – upon a literal reading of Section 34 – only permits courts to set aside the award. The power of modification/ correction provided under the first ground of Section 15 of the 1940 Act (concerning matters not referred to arbitration) is, however, aligned with the ground of setting aside available under the proviso to Section 34(2)(iv) of the Arbitration Act, which provides 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*

[4] While such a challenge does not entail a review on the merits of the award: see *Ssangyong Engineering v. National Highways Authority of India*, (2019) 15 SCC 131 ("***Ssangyong***"), it does remain the only recourse for a party to escape the award's finality.

[5] *Gayatri Balasamy v. ISG Novasoft Technologies*, SLP (Civil) Nos. 15336-15337/2021.

[6] Arbitration Act, 1940, No. 10, Acts of Parliament, 1940 (India).

aside".[7] On the other hand, the power of modification/ correction provided under the second and third grounds of Section 15 of the 1940 Act (concerning obvious errors, clerical mistakes and accidental slips or omissions) are not provided to courts at all under the Arbitration Act, with Section 33 instead empowering arbitral tribunals to, *inter alia*, "*correct any computation errors, any clerical or typographical errors or any other errors of a similar nature*".

More than two decades ago in 2006, the Supreme Court of India in the case of *McDermott International v. Burn Standard* ("***McDermott***")[8] analysed the legislative changes to the scope of raising a challenge against an arbitral award, and held that:

> *"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration against if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as the parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."*
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> [emphasis added]

Therefore, the Supreme Court in *McDermott* made it clear that courts under Section 34 of the Arbitration Act could not correct errors of arbitrators, but could only quash the award, leaving the parties to commence arbitration afresh. Despite this unequivocal finding, in *McDermott* itself, the Supreme Court proceeded to modify the arbitral award by reducing the rate of interest.

A year later in 2007, the Supreme Court in *Krishna Bhagya Jala Nigam v. G. Harischandra Reddy* ("***Krishna Bhagya***")[9] once again modified the arbitral award, with the first modification being reduction of the rate of interest awarded by the arbitrator, and the second modification being reduction of the amount awarded by the arbitrator towards idling charges from INR 1.47 crores to INR 1 crore.[10]

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[7] This power, in reality, is not a 'modification' but a 'partial setting aside' of the award. However, as we will observe in this article, courts in various decisions have conflated and used these terms interchangeably, leading to justifiable confusion.

[8] (2006) 11 SCC 181.

[9] (2007) 2 SCC 720.

[10] It is pertinent to highlight that the second modification was carried out with consent of the parties.

The case of *Numaligarh Refinery v. Daelim Industrial Co.* ("***Numaligarh Refinery***"), also decided in 2007,[11] adopted an even more hands-on approach. Here, the arbitral tribunal had rendered two awards –the majority award held that the claimant was entitled to receive INR 29.76 crores along with costs and interest at the rate of 12% per annum, and the minority award held that the claimant was entitled to receive INR 13.74 crores along with interest at the rate of 10% per annum. In challenge under Section 34, the district court set aside the majority award on some issues, and in appeal under Section 37, the High Court of Guwahati accepted some items of the majority award while also accepting some items of the minority award. In these peculiar facts, though the Supreme Court noted that "*there are no two opinions that the court should not sit in appeal and normally should not interfere with the views of the arbitrator*", it proceeded to "*enter into the merit to put an end to the controversy*", since four different sets of views had already been rendered (first by the majority award, second by the minority award, third by the Section 34 court, and fourth by the Section 37 court). In this background, the *Numaligarh Refinery* decision assessed each claim raised before the arbitral tribunal on merits and moulded the relief to be given to the claimant. After modifying certain claims, accepting certain claims and rejecting others, the Supreme Court concluded that the claimant was entitled to receive INR 11.1 crores along with interest – a figure that none of the fora below had arrived at.

These cases, amongst others,[12] formed the basis for various High Courts across India to hold that it was permissible for courts to modify arbitral awards. In *Union of India v. Arctic India*,[13] the Bombay High Court placed reliance on, *inter alia*, *McDermott* and *Krishna Bhagya* to hold that "*there is no bar under the act to modify the award*". In *Union of India v. Modern Laminators* ("***Modern Laminators***"),[14] the Delhi High Court relied on *McDermott*, *Krishna Bhagya* and *Numaligarh Refinery* to hold that "*the power given to the court to set aside the award, necessarily includes a power to modify the award, notwithstanding absence of express power to modify the award*". Taking all of these decisions into account,[15] including

[11] (2007) 8 SCC 466.

[12] See *Tata Hydro-electric Power Supply Co. v. Union of India*, (2003) 4 SCC 172 ("*Tata Hydro-electric*").

[13] 2007 (5) Mh LJ 174. It may be noted that while the Bombay High Court held that it had the power to modify the award, in reality, only a 'partial setting aside' of the award was carried out, i.e., by upholding a part of the arbitral award while setting aside another part of the award. Similarly, in *Axios Navigation v. Indian Oil*, 2012 (3) Mh LJ 701, the Bombay High Court while holding that it had the power to modify the arbitral award actually only set aside the award in part.

[14] 2008 SCC OnLine Del 956.

[15] Supra notes 6, 7, 9 and 10.

those by the High Courts at Bombay[16] and Delhi,[17] the Madras High Court in *Gayatri Balaswamy v. ISG Novasoft Technologies*[18] held that:

> *"… from the various decisions of the Supreme Court and of the Bombay and Delhi High Courts, it is seen that the judicial trend appears to favour an interpretation that would read into Section 34, a power to modify or revise or vary the award. Except one observation found in the decision of the Supreme Court in Mc Dermott, all the decisions of the Supreme Court have either modified the Awards or approved the modification of the Awards done by the Courts under Section 34."*
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> [emphasis added]

In parallel, other decisions passed by the High Courts of Allahabad,[19] Delhi[20] and Madras[21] continued to follow the finding laid down in *McDermott*, holding that modification or variation of an arbitral award would amount to correcting errors made by the arbitral tribunal, which – according to the decision in *McDermott* – was not permissible under Section 34 of the Arbitration Act.

The controversy continued, with the Supreme Court modifying arbitral awards by reducing the rate of interest by the arbitral tribunals in *Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company* ("***Shenzhen Shandong***"),[22] *Shakti Nath v. Alpha Tiger Cyprus Investment*,[23] and *Oriental Structural Engineers v. State of Kerala* ("***Oriental Structural Engineers***"),[24] even while holding in other decisions that it was not open for courts to substitute their own views in place of those of the arbitral tribunal[25] or to correct errors of fact.[26]

The conflict was finally put to rest by the decision in the case of *Project Director v. M. Hakeem* ("***M. Hakeem***"),[27] with the Supreme Court unequivocally pronouncing that "*there can be no doubt that*

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16 Supra note 11.
17 Supra note 12.
18 2014 SCC OnLine Mad 6568. This decision was upheld by the Division Bench of the Madras High Court in *ISG Novasoft Technologies v. Gayatri Balaswamy*, 2019 SCC OnLine Mad 15819. This decision of the Division Bench forms the subject matter of the reference pending before the Constitution Bench of the Supreme Court: see supra note 3.
19 *U.P. State Handloom Corpn. Ltd.* v. *Asha Lata Talwar,* 2009 SCC OnLine All 624.
20 *Cybernetics Network (P) Ltd.* v. *Bisquare Technologies (P) Ltd.,* 2012 SCC OnLine Del 1155; *Bharti Cellular Ltd.* v. *Deptt. of Telecommunications,* 2012 SCC OnLine Del 4846; *DDA* v. *Bhardwaj Bros.,* 2014 SCC OnLine Del 1581; *Puri Construction v. Larsen & Toubro*, 2015 SCC OnLine Del 9126.
21 *Central Warehousing Corpn.* v. *A.S.A. Transport,* 2007 SCC OnLine Mad 972.
22 (2019) 11 SCC 465.
23 (2020) 11 SCC 685.
24 (2021) 6 SCC 150.
25 *Sumitomo Heavy Industries v. ONGC*, (2010) 11 SCC 296.
26 *Associate Builders v. DDA*, (2015) 3 SCC 49.
27 (2021) 9 SCC 1.

given the law laid down by this Court, Section 34 of the Arbitration Act, 1996 cannot be held to include within it a power to modify an award". The Supreme Court clarified that earlier decisions of the Supreme Court modifying awards, such as *McDermott*, *Krishna Bhagya* and *Numaligarh Refinery*, were referable to the Supreme Court's power to do complete justice under Article 142 of the Constitution of India, and could not be treated as precedent since orders under Article 142 do not constitute the *ratio decidendi* of a judgment. The Madras High Court decision in *Gayatri Balaswamy v. ISG Novasoft Technologies*[28] – which held that Section 34 provided the power "*to modify or revise or vary the award*" – was expressly overruled, while decisions of the Bombay High Court[29] and the Delhi High Court[30] that returned similar findings were overruled impliedly.

3. Severability and partial setting aside

Severability is a well-established doctrine of law. More than a century ago in 1894, the House of Lords in *Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Company*[31] upheld the Court of Appeal's decision that, while dealing with a covenant in restraint of trade, upheld part of the covenant while invalidating the remainder. Here, a patentee and manufacturer of guns and ammunition had covenanted with a company (to which his patents and business had been transferred) that he would not, for twenty-five years, engage either directly or indirectly, except on behalf of the company, in the business of a manufacturer of guns or ammunition or "*in any business competing or liable to compete in any way*" with the business of the company. The Court of Appeal had found that the covenant was "*valid so far as it relates to the trade or business of a manufacturer of guns*", i.e., that the patentee could be restricted from engaging in the business of arms manufacturing, but not from engaging "*in any business competing or liable to compete in any way*" with the business of the company. In appeal, the House of Lords upheld the Court of Appeal's decision, holding that "*it cannot be disputed that the covenant is severable, and that part may be good though part be void.*"

Put simply, the doctrine of severability means that where it is possible to sever the good part from the bad part, the good part can always be enforced while the bad part may be struck out. This doctrine has been applied to various branches of jurisprudence, with the Supreme Court employing

[28] Supra note 16.
[29] Supra note 11.
[30] Supra note 12.
[31] 1894 AC 535.

it to invalidate select provisions of a statute while upholding the statute itself,[32] and also to enforce valid parts of a contract while striking out the offending ones.[33]

The Arbitration Act also embraces the doctrine of severability, with: **(a)** Section 16(1)(a) providing that "*an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract*"; and **(b)** the proviso to Section 34(2)(iv) ("**Subject Proviso**") providing 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*".

In the context of applying the doctrine of severability to arbitral awards, one of the earliest decisions in India which did so is the Supreme Court's 2008 decision in *J.C. Budhraja v. Chairman, Orissa Mining Corporation*.[34] Without much discussion on the specific point of whether this power was available under Section 34 of the Arbitration Act, the Supreme Court held that:

> *"34. Does it mean that the entire award should be set aside? The answer is, no. That part of the award which is valid and separable can be upheld."*

About two years later, the Bombay High Court analysed the issue in greater detail in the case of *R.S. Jiwani v. Ircon International* ("***R.S. Jiwani***").[35] The Bombay High Court noted that: **(a)** the Arbitration Act does not contain any bar or prohibition on applying the principle of severability to arbitral awards; **(b)** rather, the Subject Proviso permits courts to set aside awards partially in cases falling under Section 34(2)(iv); **(c)** the Subject Proviso has to be read *ejusdem generis* to the entirety of Section 34; **(d)** if the principles of severability can be applied to a contract as well as a statute, there is no reason as to why it cannot be applied to a judgment or an arbitral award; and **(e)** since partial challenge to an award is permissible, partial setting aside of an award should be permissible as well. Accordingly, the Bombay High Court concluded that "*section 34 of the Arbitration and Conciliation Act, 1996 takes within its ambit the power to set aside an award partly or wholly depending on the facts and circumstances of the given case*". The Bombay High Court also cautioned that "*where the bad part of the award was intermingled and interdependent upon the good parts of the award there it is practically not possible to sever the award as the illegality may affect the award as a whole*".

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[32] See, for instance, *State of Bombay v. F.N. Balsara*, 1951 SCC 860; *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh*, (1952) 1 SCC 528.

[33] See, for instance, *Canbank Financial Services v. Custodian*, (2004) 8 SCC 355; *Shin Satellite Public Co. v. Jain Studios*, (2006) 2 SCC 628.

[34] (2008) 2 SCC 444.

[35] 2010 (1) Mh LJ 547.

The Supreme Court in *J.G. Engineers v. Union of India*[36] reaffirmed this position, holding that "*if an award deals with and decides several claims separately and distinctly, even if the court finds that the award in regard to some items is bad, the court will segregate the award on items which did not suffer from any infirmity and uphold the award to that extent*".

Since then, courts have applied the principle of severability and set aside awards in part in several decisions, such as in the Supreme Court decision of *Madhya Pradesh Power Generation Company v. Ansaldo Energia SPA*,[37] the Delhi High Court decisions of *MMTC Limited v. Alcari, SA*[38] and *B.R. Arora & Associates v. Airports Authority of India*,[39] the Bombay High Court decisions of *NHAI v. Additional Commissioner*[40] and *John Peter Fernandes v. Saraswati Ramchandra Ghanate*,[41] and the Kerala High Court decision of *Navayuga Engineering Company v. Union of India*.[42]

However, in the absence of a detailed judgment of the Supreme Court on the issue, parties continue to rely on *M. Hakeem* (which barred courts from modifying awards under Section 34 of the Arbitration Act) to argue that 'partial setting aside' is merely a specie of 'modification' and is, therefore, impermissible under Section 34 of the Arbitration Act.[43]

The issue of whether severing and partially setting aside an award was prohibited by *M. Hakeem* was thoroughly analysed by the Delhi High Court in *NHAI v. Trichy Thanjavur Expressway* ("***Trichy Thanjavur***").[44] Here, the court was dealing with two cross-petitions under Section 34 of the Arbitration Act, each raising limited challenge to certain specific parts of the arbitral award. The Delhi High Court noted at the outset that the question which fell for consideration was whether *M. Hakeem* should be read as authority for the proposition that there can be no partial setting aside, and that the answer to the question turned on the interpretation of the phrase 'setting aside' used in Section 34.

After a close scrutiny, the Delhi High Court reasoned that: **(a)** there is a distinction between 'modification' and 'partial setting aside' – 'modification' of an award entails variation or modulation of the findings of the award, or substituting the court's view for the tribunal's view, as opposed to 'partial setting aside', which merely severs and annuls the bad parts of the award; **(b)** *M. Hakeem*

[36] (2011) 5 SCC 758.
[37] (2018) 16 SCC 661.
[38] 2013 SCC OnLine Del 2932.
[39] 2019 SCC OnLine Del 7765.
[40] 2022 SCC OnLine Bom 1688.
[41] 2023 SCC OnLine Bom 676.
[42] 2021 SCC OnLine Ker 5197.
[43] See, for instance, supra notes 38 and 40; and also *Union of India v. Alcon Builders*, 2023 SCC OnLine Del 160.
[44] 2023:DHC:5834.

only prohibits courts from modifying/ varying arbitral awards and partial setting aside does not amount to variation or modification; **(c)** the Subject Proviso is legislative acknowledgment for both, an award being composed of distinct elements and parts, as well as it being capable of being set aside in part; **(d)** an arbitral award comprises of decisions rendered on multiple claims, with each claim flowing from distinct facts and contractual obligations, and a decision on a particular claim may stand independently without drawing sustenance from a decision on another claim; **(e)** as such, if the claims themselves are separate, complete and self-contained, and not subordinate to other claims, decisions on certain claims may be able to stand and survive independently of invalidities which may taint decisions on other claims; and **(f)** the decision in respect of each claim constitutes and is entitled to be viewed as an independent award in itself; and **(g)** accordingly, there is no hurdle in the way of courts applying severability and setting aside awards partly, as this power would continue to be confined to the 'setting aside' permitted by Section 34 of the Arbitration Act.

The Delhi High Court also provided guidance on when awards could be severed and partially set aside, and the factors to be borne in mind while doing so. It cautioned that: **(a)** the question of partial setting aside would ultimately depend on whether there is an inextricable link between the offending part of the award with any other part of the disposition; **(b)** courts could consider partial setting aside only when the award in respect of a particular claim stands on its own and its setting aside does not have a cascading impact on other parts of the award; **(c)** partial setting aside of an award should not precipitate a chain reaction which adversely impacts other parts of the award; and **(d)** recourse to partial setting aside would be valid and justified only when the part of the award proposed to be annulled is independent and unattached to any other part of the award such that it could be validly incised without affecting other components of the award.

4. Analysis and conclusion

From the above, we see that while the issue of modification has been the subject of conflicting views over the years, discourse on the issue of severability and partial setting aside has been fairly consistent, with courts allowing partial setting aside even in cases that misconstrued it as a 'modification' of the award.[45] A common takeaway from developments on both issues is that even though the legislative framework under the Arbitration Act limits judicial intervention with arbitral awards, the practical realities of certain disputes and the economic and legal landscape compel the judiciary to intervene in a more substantive manner.

[45] Supra note 11.

For instance, the Supreme Court's decision to modify the arbitral award in *Numaligarh Refinery* was premised on the peculiar background where four different sets of reliefs had been granted by subordinate fora (one each by the majority award, the minority award, the Section 34 court and the Section 37 court), compelling the Supreme Court to put an end to the controversy. Similarly, the Supreme Court's decision to modify the arbitral award by reducing the rate of interest in *Shenzhen Shandong* and *Oriental Structural Engineers* was premised on the necessity of keeping the awarded interest (which was found to be excessive) aligned with the prevailing interest rates in the economy.

Even in the landmark decision of *M. Hakeem*, which is the leading authority for the proposition that courts under Section 34 of the Arbitration Act are barred from modifying arbitral awards, the Supreme Court actually upheld the Section 34 court's decision to enhance the compensation payable to the claimant, on the basis that the original compensation in the arbitral award was awarded by the arbitrator "*on a completely perverse basis*" and "*grave injustice would be done*" if the award was set aside and remanded for a fresh arbitration. The Supreme Court held that "*given the fact that most of the awards in these cases were made 7-10 years ago , it would not, at this distance in time, be fair to send back these cases for a de novo start*".

Interestingly, this line of reasoning – concerning the considerable time consumed in arbitration and deciding challenges to an award, and the perilous prospect of starting arbitration afresh if the challenge is allowed – finds common ground in arguments for allowing both, modification as well as severability.

While holding that the power to set aside an award under Section 34 included also the power to modify the award, the Delhi High Court in *Modern Laminators* observed that "*If the powers of the court under Section 34 are restricted to not include power to modify, even where the court without any elaborate enquiry and on the material already before the arbitrator finds that the lis should be finally settled with such modification and if the courts are compelled to only set aside the award and to relegate the parties to second round of arbitration or to pursue other civil remedies, we would not be serving the purpose of expeditious/ speedy disposal of lis and would be making arbitration as a form of alternative dispute resolution more cumbersome than the traditional judicial process*". This is echoed by the Supreme Court's decision in *Ssangyong*, where the Supreme Court intervened by setting aside the majority award and upholding the minority award, and held:

> *"77. The judgments of the Single Judge and of the Division Bench of the Delhi High Court are set aside. Consequently, the majority award is also set aside. Under the scheme of Section 34 of the 1996 Act, the disputes that were decided by the majority award would have to be referred afresh to another arbitration.*

> *This would cause considerable delay and be contrary to one of the important objectives of the 1996 Act, namely, speedy resolution of disputes by the arbitral process under the Act. Therefore, in order to do complete justice between the parties, invoking our power under Article 142 of the Constitution of India, and given the fact that there is a minority award which awards the appellant its claim based upon the formula mentioned in the agreement between the parties, we uphold the minority award, and state that it is this award, together with interest, that will now be executed between the parties."*

Similarly, while holding that the power to set aside an award under Section 34 included also the power to set aside the award in part, the Bombay High Court in *R.S. Jiwani* observed that "*To say that it is mandatory for the Court without exception to set aside an award as whole and to restart the arbitral proceeding all over again would be unjust, unfair, inequitable and would not in any way meet the ends of justice … To compel the parties, particularly a party who had succeeded to undergo the arbitral process all over again does not appear to be in conformity with the scheme of the Act*". The Delhi High Court in *Trichy Thanjavur* also highlighted the need to save parties from the spectre of commencing arbitral proceedings from scratch in respect of all issues including those which could have been validly severed and upheld.

What these decisions and developments underscore is the need for a balance between the principle of minimal judicial intervention in arbitration, and the objective of speedy dispute resolution through arbitration. There are one too many examples of cases where after years spent in arbitration and consequent litigation, the Supreme Court is compelled to put a quietus to the dispute through modification of the arbitral award by exercising extraordinary powers under Article 142 of the Constitution. Providing courts under Section 34 to exercise powers of modification would not only save costs and time expended by the parties (which would be aligned with the objective of speedy dispute resolution), but it may also be useful in de-clogging the dockets of the Supreme Court of India. While the required balance may be arrived at through judicial refinement by the Constitution Bench of the Supreme Court (which is currently hearing arguments on the questions of modification and severability),[46] we feel a clear legislative amendment may be necessary to provide powers of modification to Section 34 courts, and to circumscribe such powers by delineating circumstances in which they can be exercised. This is so because an uncharted power of modification may itself lead to lengthening the arbitral process, in view of the ever-increasing workload of, and pendency of cases before courts in India. Guidance in this regard may also be

[46] Supra note 3.

drawn from the statutory frameworks in Australia,[47] England,[48] and Singapore[49], all of which provide express provisions for varying/ modifying an arbitral award.

[47] Section 34-A of the (Australian) Commercial Arbitration Act, 2010 entitles parties to file an appeal "*on a question of law arising out of an award*" and empowers the court, *inter alia*, to "*vary the award*" or to "*set aside the award in whole or in part*".

[48] Section 69 of the (English) Arbitration Act, 1996, which is *pari materia* with the corresponding Australian provision: see id., also entitles parties to "*appeal to the court on a question of law arising out of an award*" and empowers the court, *inter alia*, to "*vary the award*" or to "*set aside the award in whole or in part*".

[49] Similar to Australian and English law on the point: see supra notes 45 and 46, Section 49 of the (Singapore) Arbitration Act, 2001, which is *pari materia* with the Australian provision: see id., also entitles parties to "*appeal to the Court on a question of law arising out of an award*" and empowers the court, *inter alia*, to "*vary the award*" or to "*set aside the award in whole or in part*".