

May 2025

Supreme Court clarifies scope of modification of arbitral awards under the Arbitration and Conciliation Act, 1996

On April 30, 2025, a 5 (five) judge constitution bench of the Hon'ble Supreme Court of India ("**Supreme Court**") in *Gayatri Balasamy vs. M/s. ISG Novasoft Technologies Limited*¹ held that the courts possess a limited power to modify arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Supreme Court further clarified that this power is not absolute and may only be exercised in specific circumstances, such as when the arbitral award is severable, to correct clerical or computational errors, or to modify post-award interest. However, the Supreme Court stated that such power is always subject to the express statutory framework and legislative intent and cautioned that it may not be exercised to rewrite the award or to conduct a merits-based evaluation.

Brief facts

In the present case, the Supreme Court referred a pivotal legal question to a 5 (five) judge constitution bench viz. whether courts possess the authority to modify arbitral awards under Sections 34 and 37 of the Arbitration Act. The brief facts leading to the lead reference are as follows:

1. Gayatri Balasamy ("**Appellant**") joined ISG Novasoft Technologies Limited ("**Respondent**") as Vice President (M&A Integration Strategy) in April 2006. Just a few months into her tenure, she resigned in July 2006, alleging sexual harassment by the Respondent's CEO, Krishna Srinivasan. The Appellant's resignation was not accepted, and over the following year, the Respondent issued 3 (three) termination letters to the Appellant.
2. In response, the Appellant filed criminal complaints against the CEO of the Respondent and another company executive. The Respondent countered with criminal complaints of defamation and extortion against the Appellant. The dispute escalated and was eventually referred by the Supreme Court to arbitration.
3. The arbitral tribunal awarded the Appellant INR 2,00,00,000 (Indian Rupees two crore) as compensation, but the Respondent challenged the arbitral award before the Hon'ble Madras High Court ("**Madras HC**"). It was the case of the Appellant before the Madras HC that several of the Appellant's claims were not considered.
4. In 2014, a single-judge bench of the Madras HC modified the arbitral award under Section 34 of the Arbitration Act and granted an additional compensation of INR 1,60,00,000 (Indian Rupees one crore sixty lakh).

¹ Special Leave Petition (Civil) Nos. 15336 of 2021

5. However, in 2019, the Division Bench of the Madras HC acting under Section 37 of the Arbitration Act reduced this additional amount and modified it to INR 50,000 (Indian Rupees fifty thousand), finding the earlier increase excessive.
6. Dissatisfied by the judgment of the Division Bench of the Madras HC, the Appellant appealed the same before the Supreme Court *via* a special leave petition. The Supreme Court recognised that the Appellant's case raised a significant legal issue and was referred to a larger bench due to conflicting judicial opinions by the Supreme Court in the past. Accordingly, the appeal was referred to a 5 (five) judge bench to clarify the legal position on the court's power to modify arbitral awards under Sections 34 and 37 of the Arbitration Act.

Key issue

Are Indian courts jurisdictionally empowered to modify an arbitral award under Sections 34 and 37 of the Arbitration Act? If so, to what extent?

Legal provision

Section 34 of the Arbitration Act reads as follows:

"(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with 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 establishes on the basis of the record of the arbitral tribunal that—

(i) a party was under some incapacity, or

(ii) 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

(v) 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.

(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 reappreciation of evidence.

..."

[explanations omitted]

Analysis and findings

By a majority of 4:1, the Supreme Court held that courts have a limited power to modify awards under Sections 34 and 37 of the Arbitration Act. The decision was centred around the following issues:

1. severability of arbitral awards;
2. hardship of parties;
3. correction of clerical or typographical errors;
4. variation of interest; and
5. exercise of powers under Article 142 of the Constitution for modification of awards.

The findings rendered by the majority judgment and the minority judgment regarding each of these issues are summarised below:

Issue	Majority view	Minority view
	<i>"The limited power under Section 34 allows the court to vary or modify the award"</i>	<i>"...what is sought to be done is virtual mutilation of the fabric and not just the ironing out of the creases"</i>
Severability [concurrence]	Authority to sever the invalid portion of the award from the valid portion is inherent in the jurisdiction to set aside an award. Modification and setting aside have different consequences – one is alteration, the other is annulment.	The consistent view has been that if claims falling foul of Section 34 of the Arbitration Act are not inseparably intertwined with the good portion of the award, the award can be severed. The power to set aside will include the power to partially set aside.
Hardship of parties [dissent]	Denying courts the power to modify awards would impose significant hardship, escalate costs and lead to unnecessary delays. This would defeat the objective of arbitration as parties would be compelled to undergo extra rounds of arbitration, in addition to the stages of challenge under Sections 34 and 37 of the Arbitration Act and special leave petition.	Recommencement of proceedings being expressly contemplated in the statute, the same cannot be brushed aside on the grounds of hardship of parties. When parties agree to arbitrate, they consciously agree with open eyes to step out of the normal judicial process and submit to being governed by the Arbitration Act.
Errors [concurrence]	Courts under Section 34 of the Arbitration Act possess the authority to rectify computational, clerical or typographical errors <i>"as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation"</i> . Court must have no uncertainty or doubt in this regard – if the error is not apparent	Courts under Section 34 of the Arbitration Act can invoke the power to correct computational errors, clerical or typographical errors or any other errors of similar nature <i>"without modifying, altering or adding to the original award"</i> – hence, a limited exception to M Hakeem's judgement ² is made.

² *Project Director, National Highways No. 45 E and 220 National Highways Authority of India Vs. M. Hakeem and Anr.*, (2021) 9 SCC 1

	on the face of the record, the court cannot modify.	
Interest [dissent]	For pendente lite interest, court may set aside the award of interest or remand the matter to the arbitrators. For post-award interest, courts will retain the power to modify the interest rate. Courts may increase or decrease the post-award interest, but only where there are compelling and well-founded reasons to do so.	Court under Section 34 of the Arbitration Act cannot modify the interest. The correct course would be to remit the matter to the arbitrator to make course correction. If the matter comes to court again and the grounds for setting aside are still present, there would be no choice but to set aside the award.
Article 142 of the Constitution [dissent]	This power should not be exercised where the effect would be to rewrite or modify the award on merits. However, the power can be exercised where required and necessary to bring the dispute to an end.	This power cannot be used to supplant substantive law, as express statutory provisions cannot be ignored and what cannot be achieved directly cannot be achieved indirectly. The power cannot be exercised as it will derogate from the core aspects of the Arbitration Act and breach a pre-eminent prohibition in the Arbitration Act.

Conclusion

1. The majority view of the Supreme Court affirms that Indian courts possess a limited power to modify arbitral awards under Sections 34 and 37 of the Arbitration Act. This power is not absolute but is confined to specific circumstances, such as when the arbitral award is severable, to correct clerical or computational errors, or to adjust post-award interest rates that are unreasonable or conflict with statutory or contractual benchmarks. The Supreme Court made it clear that such modifications do not entail a review on merits, thereby preserving the sanctity and finality of arbitral awards, except in cases where statutory grounds for intervention exist.
2. The majority emphasised that the statutory framework under Section 34 of the Arbitration Act restricts judicial intervention to procedural irregularities, jurisdictional errors, and public policy violations, and does not permit a wholesale merits review of the arbitral tribunal's findings. The Supreme Court distinguished between setting aside and modification, stating that while setting aside annuls the award, modification is a narrower power exercised only to correct apparent and severable errors. This approach seeks to strike a balance between upholding arbitral autonomy and ensuring that manifest errors do not go unaddressed.
3. Importantly, the Supreme Court clarified that remand to the arbitral tribunal under Section 34(4) of the Arbitration Act is discretionary and should be reserved for curable defects, such as gaps in reasoning. Direct modification by the court is permissible only for non-substantive corrections, such as computational slips, to avoid unnecessary delays and procedural complications. The Supreme Court also recognised the uniform application of Section 34 of the Arbitration Act across all arbitrations, refusing to carve out exceptions for statutory arbitrations unless expressly provided by legislation.
4. Further, the majority view of the Supreme Court held that under Article 142 of the Constitution, the Supreme Court is empowered to 'do complete justice' in any case. However, the minority view noted that this extraordinary power must be exercised sparingly and in harmony with the statutory scheme of the Arbitration Act. Article 142 of the Constitution cannot be invoked to override explicit legislative intent or to rewrite arbitral awards on merits, thus

ensuring that the principle of party autonomy and the limited role of courts in arbitration are respected. The Supreme Court's nuanced approach preserves the integrity of the arbitral process while allowing to correct clear and severable errors, reinforcing both judicial restraint and 'complete justice'.

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