

FROM SPEED TO ENFORCEABILITY: ASSESSING THE ICC 2026 HIGHLY EXPEDITED ARBITRATION RULES WITHIN INDIA'S ARBITRATION FRAMEWORK

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Introduction

International commercial arbitration operates at the intersection of party autonomy, institutional efficiency, and domestic public policy.¹ But it has been found that cost and delay are amongst the most persistently cited drawbacks of the traditional arbitral process.² Moreover, minimising cost and securing quicker outcomes remain the principal reasons parties choose an expedited procedural mechanism over traditional arbitration.³ This gap between the promise and the practice of efficient dispute resolution is precisely what has driven arbitral institutions to redesign their procedural rules. The International Chamber of Commerce Arbitration Rules, 2026 [**ICC Rules**] are the latest instance of this institutional pursuit.⁴ ICC Rules have crucially introduced a third tier of arbitration, the Highly Expedited Arbitration Provisions [**HEAP**].⁵ It is structured in such a manner that it will yield the final award within three months, which will significantly alter the traditional method. It will also prevent any procedural flexibility, multi-party joinder, and document production, and will permit the use of unreasoned awards.⁶

¹ Fali S Nariman, 'Introduction' in SB Malik, *Commentary on the Arbitration and Conciliation Act* (8th edn, LexisNexis 2017).

² School of International Arbitration, Queen Mary University of London and White & Case LLP, '2025 International Arbitration Survey: The Path Forward: Realities and Opportunities in Arbitration' (2025) 15–19, <<https://www.scobserver.in/wp-content/uploads/2025/02/report-of-the-expert-committee-members-on-arbitration-law-2-526205.pdf>> accessed 6 September 2026.

³ *ibid.*

⁴ International Chamber of Commerce, 'Arbitration Rules 2026' (ICC Arbitration Rules 2026), <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2026-arbitration-rules/#block-accordion-94>> accessed 5 June 2026.

⁵ *ibid* Appendix VI.

⁶ *ibid* Appendix VI, arts 3, 6(2), 7(2).

At the same time, India is in the midst of a legal transformation with a view to making it a premier global arbitral seat.⁷ Motivated by suggestions made by the T.K. Viswanathan Expert Committee,⁸ the Draft Arbitration and Conciliation (Amendment) Bill, 2024, introduces statutory Appellate Arbitral Tribunals [“**AAT**”] under Section 34A and codifies emergency arbitration.⁹ The Supreme Court in *Cox & Kings Ltd. v SAP India Pvt. Ltd.* [“**Cox & Kings**”] has affirmed the ‘group of companies’ doctrine, letting non-signatories be bound by an arbitration agreement and permitting related disputes to be consolidated.¹⁰ HEAP’s prohibition on joinder and consolidation gives cause for concern. Parties opting for HEAP in an India-related contract could find that they are unable to rely on a remedy that Indian courts now recognise as settled law. Moreover, Indian courts have remained quite strict when it comes to awards without reasons, routinely striking these down as suffering from ‘patent illegality.’¹¹

Hence, it is argued in this article that, whilst HEAP holds commercial attraction for parties having simple bilateral disputes, its procedural restrictions create significant friction with India’s evolving arbitration framework. These restrictions seem to conflict with Indian mandatory law. To support this, the article first outlines the HEAP framework and its conflict with the expanding ‘group of companies’ doctrine. Secondly, it examines the annulment vulnerability of unreasoned awards under Article 7(2) and the time compression problem during institutional scrutiny. Thirdly, enforcement asymmetry for foreign-seated HEAP awards is discussed. Ultimately, India needs a calibrated statutory response to absorb HEAP’s efficiency gains without exposing India-seated awards to annulment.

Framework of ICC HEAP

HEAP is located in Article 33 read with Appendix VI of the ICC Rules.¹² It is set out to be distinct from the ICC’s existing Expedited Procedure Provisions [“**EPP**”].¹³ EPP may apply automatically upon satisfaction of the applicable threshold, subject to the parties’ right to opt out,¹⁴ whereas

⁷ Fali S Nariman, *Harmony Amidst Disharmony: The Indian Framework* (LexisNexis 2022) 181–192.

⁸ Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act 1996, ‘Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act 1996’ (Ministry of Law and Justice, Government of India, February 2024) <<https://www.scobserver.in/wp-content/uploads/2025/02/report-of-the-expert-committee-members-on-arbitration-law-2-526205.pdf>> accessed 6 June 2026.

⁹ Draft Arbitration and Conciliation (Amendment) Bill 2024, ss 9A, 34A.

¹⁰ *Cox and Kings Ltd v SAP India Pvt Ltd* 2023 SCC OnLine SC 1634.

¹¹ *Dyna Technologies Pvt Ltd v Crompton Greaves Ltd* 2019 SCC OnLine SC 1656.

¹² ICC Arbitration Rules 2026, art 33 and Appendix VI.

¹³ *ibid* art 32 and Appendix V.

¹⁴ *ibid*.

HEAP operates only upon the express agreement of all parties.¹⁵ HEAP is suitable for parties who prefer speed, and its suitability depends on the complexity of the issues in dispute, not the value of the claim.¹⁶

HEAP is designed to shorten and compress the arbitral proceedings into a sequenced and time-bound procedure. The process commences with the Request for Arbitration, and it must contain the entire Statement of Claim, with all legal grounds and evidence.¹⁷ The Respondent is then given 30 days to file its complete Answer and Statement of Defence from the date of receipt of the Request.¹⁸ If a party wishes to challenge a sole arbitrator's appointment or confirmation, this must be done no later than seven days from the receipt of notice of the appointment or confirmation of the sole arbitrator, or no later than seven days from the receipt of notice of the facts and circumstances relied upon for such challenge, whichever is later.¹⁹

As per the Rules, the tribunal is required to convene a Case Management Conference [**CMC**] within a week of receiving the file of the case.²⁰ An award must be made by the tribunal within a period of three months of the CMC.²¹ Unless the parties agree, time limits cannot be extended.²²

Most importantly, the need for speed necessitates a reduction in processes. Only a sole arbitrator shall decide all HEAP disputes, irrespective of any prior agreement to the contrary.²³ Evidentiary hearings may be waived altogether, empowering the tribunal to determine the dispute solely based upon documents.²⁴ However, the most legally sensitive features of HEAP and those most likely to trigger enforcement challenges in jurisdictions like India are the absolute prohibition on the joinder of additional parties and the consolidation of arbitrations (Article 3), and the authorisation for the tribunal to render an unreasoned award if the parties so agree (Article 7(2)).²⁵

The multi-party exclusion vs. the Indian corporate reality

¹⁵ *ibid* Appendix VI, art 1.

¹⁶ ICC, 'Unveiling the 2026 ICC Arbitration Rules, part 4: Highly Expedited Arbitration Provisions' (21 May 2026), <<https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-4-highly-expedited-arbitration-provisions/>> accessed 3 August 2026.

¹⁷ ICC Arbitration Rules 2026, Appendix VI, art 2(1).

¹⁸ *ibid* Appendix VI, art 2(5).

¹⁹ *ibid* Appendix VI, art 5.

²⁰ *ibid* Appendix VI, art 6(1).

²¹ *ibid* Appendix VI, art 7(1).

²² *ibid* Appendix VI, art 2(9).

²³ *ibid* Appendix VI, art 4.

²⁴ *ibid* Appendix VI, art 6(3).

²⁵ *ibid* Appendix VI, arts 3, 7(2).

In contrast to value-capped EPP, HEAP is aimed at parties who prioritise absolute speed and finality over procedural completeness (particularly those in recurring contractual relationships), irrespective of the value of the dispute.²⁶ The ICC's prohibition on joinder and consolidation has thus been intentionally designed. A mechanism that is designed to deliver its final award within a period of three months cannot absorb additional pleadings, evidence and jurisdictional issues arising in multiparty arbitrations. This bar is a necessity rather than a design omission. The question is not whether the ICC erred, but whether this strictly bilateral mechanism remains as viable for India's increasingly complex corporate disputes.

The expansion of the group of companies doctrine

Commercial disputes in India are usually multilateral. The nation's arbitral docket, dominated by infrastructure, energy and joint-venture contracts, is seldom executed in a bilateral setting.²⁷ In *Cox & Kings*, the Supreme Court recognised this economic reality and affirmed that the 'group of companies' doctrine is part of Indian law.²⁸ It was held that the non-signatory affiliates may be bound by the arbitration agreement depending on the facts, which must show their involvement in negotiating, performing or terminating the contract as parties with the intent to be real parties to the dispute.²⁹ The Court established the doctrine on the ground of the implied consent of the parties.³⁰ Consequent decisions of courts in India also affirm that non-signatories may be bound on this basis, and may even be impleaded into a pending arbitration after the tribunal is already constituted.³¹ Consequently, Indian courts and India-seated tribunals are increasingly empowered and expected to join non-signatories to prevent fragmented litigation, so that all relevant actors are present before a single tribunal.

Fragmentation of Disputes under HEAP

The ICC's own EPP (Appendix V) permits joinder and consolidation, subject to the ICC Secretariat's approval.³² Other international rules, like the London Court of International

²⁶ Maria Hauser-Morel and Jan-Heiner Nedden, 'The 2026 ICC Arbitration Rules: A Practical Guide for Counsel to the Most Significant Overhaul in a Decade' (Kluwer Arbitration Blog, 8 June 2026) <<https://legalblogs.wolterskluwer.com/arbitration-blog/the-2026-icc-arbitration-rules-a-practical-guide-for-counsel-to-the-most-significant-overhaul-in-a-decade/>> accessed 7 September 2026.

²⁷ Bernard Hanotiau, *Complex Arbitrations: Multi-party, Multi-contract, Multi-issue* (2nd edn, Kluwer Law International 2020).

²⁸ *Cox and Kings* (n 10).

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *Mahanagar Telephone Nigam Ltd v Canara Bank* 2019 SCC OnLine SC 995; *Cheran Properties Ltd v Kasturi and Sons Ltd* (2018) 16 SCC 413.

³² ICC Arbitration Rules 2026, art 8.

Arbitration 2020 Rules³³ and the Singapore International Arbitration Centre 2025 Rules,³⁴ allow joinder with party consent. However, HEAP has an absolute bar. This gap creates two risks specific to the Indian context. The party facing a strong ‘group of companies’ claim is incentivised to steer a dispute to HEAP, whether by an insertion of an HEAP clause in the subcontract or by consenting to HEAP on a dispute arising, strategically to close off the joinder of parties that *Cox and Kings* would allow. A system designed to assist parties requiring speed becomes a device to defeat a substantive right which Indian courts have chosen to uphold.

Even parties that act in good faith may end up opposing outcomes of HEAP. The claimant who is locked into separate bilateral proceedings on the same facts against different counterparties must suffer duplicate arbitration, duplicate costs and risk inconsistent findings on common issues, which is the very fragmentation that consolidation is designed to avoid. Delivering fast awards that contradict each other on the same set of facts is worse, for commercial parties, than one award on a normal ICC timeline. Rules intended to save time and money can thus produce the opposite effect, and this is a potential problem with importing an absolute joinder bar in the Indian legal order, which has moved firmly in the opposite direction.

Annulment risk of unreasoned awards and time compression problem

HEAP’s second point of friction with Indian law concerns Article 7(2), where an arbitrator can make an award without stating the reasons on which it is based, when the parties have expressly agreed to such omission.³⁵ It allows consenting parties to prioritise speed over time-consuming detailed records. Conversely, Indian jurisprudence grounds the requirement of reasoned orders as a fundamental principle of natural justice.³⁶ The difficulty lies not in the commercial rationale of this choice, but in whether such a contractual waiver remains legally effective when the seat of arbitration is India.

Unreasoned awards as ‘patent illegality’

According to Indian domestic law, unless otherwise agreed by the parties, an arbitral award must state reasons as mandated by Section 31(3) of the Arbitration and Conciliation Act, 1996 [**Arbitration Act**].³⁷ The availability of the waiver of reasoning is expressly provided for, and Section 34 does not disturb that autonomy on its own terms: an award cannot be ‘patently illegal’

³³ London Court of International Arbitration Rules 2020, art 22.1(x).

³⁴ Singapore International Arbitration Centre Rules 2025, art 18.

³⁵ ICC Arbitration Rules 2026, Appendix VI, art 7(2).

³⁶ *M/S Kranti Asso Pvt Ltd & Anr v Masood Ahmed Khan & Ors* (2010) 9 SCC 496.

³⁷ Arbitration and Conciliation Act 1996, s 31(3).

simply because the parties validly agreed not to have reasons.³⁸ The tension is narrower than an outright conflict between the two provisions. According to section 34(2A),³⁹ a domestic award can still be set aside by a court on the grounds that the tribunal ignored vital evidence, decided beyond the contract, or exceeded its jurisdiction.⁴⁰ These grounds are not easy to rule out, and require some reasoning trail that helps to test the award against. A validly unreasoned award does not in itself raise a Section 34 breach, but it limits the material upon which a reviewing court has to work with if another party alleges one of these grounds.

Thus, if parties opt into an India-seated HEAP arbitration and agree to an unreasoned award as per Article 7(2), the award runs a high risk of challenge. Even if waiving reasons in a contract is allowed, such an award would be highly susceptible to scrutiny under section 34(2A) since the successful party will not be able to point to anything from the tribunal's findings to rebut allegations of an arbitrary award, ignoring evidence or jurisdictional overreach.

Time compression and institutional scrutiny

According to Article 37(3), the ICC Court must take the requirements of the mandatory law at the seat into account during its scrutiny process.⁴¹ In ordinary ICC cases, this examination cycle takes around three to four weeks.⁴² In HEAP, however, the whole arbitration must finish in 12 weeks, from CMC to the final award, thereby providing the ICC Court seemingly no time for institutional scrutiny.

Indian law will apply a very strict 'public policy' standard as laid down in *Ssangyong Engineering & Construction Co. Ltd. v National Highways Authority of India*,⁴³ ["**Ssangyong**"] and this extreme time compression will obviously face that scrutiny, given the enforceability risk at stake. It is settled that an award could be set aside for violating the fundamental policy of Indian law, requiring a detailed examination of the contract and relevant statutes, which cannot be done in a cursory manner.⁴⁴ If the ICC Court is unable (or finds it difficult) to carry out a proper mandatory law analysis of this matter in the given time frame (especially one on an unreasoned award), it risks ultimately

³⁸ *ibid* s 34.

³⁹ *ibid* s 34(2A).

⁴⁰ Shilpa Shah, 'The Test of Patent Illegality' (Singhania & Partners, 29 April 2020) <<https://singhania.in/blog/the-test-of-patent-illegality>> accessed 8 September 2026.

⁴¹ ICC Arbitration Rules 2026, art 37(3).

⁴² 'Ten Tips on How to Make an Arbitration Award Work: Lessons from the ICC Scrutiny Process' *ICC Dispute Resolution Bulletin* (2022, No 2, International Chamber of Commerce) <<https://www.icc-austria.org/fxddata/iccws/prod/media/downloads/Bulletin-Ten-tips-on-how-to-make-an-arbitration-award-work.pdf>> accessed 15 June 2026.

⁴³ *Ssangyong Engineering & Construction Co Ltd v National Highways Authority of India* (2019) 15 SCC 131.

⁴⁴ *ibid*.

approving an award that will be set aside by Indian courts. This will render the HEAP process a waste of time and resources.

The foreign paradigm: pro-enforcement bias and public policy

If the HEAP arbitration is seated outside of India, then the position changes significantly. If a party gets a favourable award, it may seek to get the unreasoned award enforced in India as a foreign award under Section 48 of the Arbitration Act, which incorporates the Convention-based grounds for refusing enforcement under the New York Convention.⁴⁵

The Supreme Court's interpretation in *Ssangyong* of the 2015 amendment to the Arbitration Act introduced a bifurcated regime for judicial review of foreign awards.⁴⁶ It explained that the 'patent illegality' test can only apply to domestic awards under Section 34 and has been specifically excluded for the enforcement of foreign awards under Section 48.⁴⁷ In order to block a foreign award, the award debtor must bring its challenge within one of the limited grounds specified in Section 48, including the public-policy exception.⁴⁸

Can a foreign award that has no reasoning behind it be considered contrary to the fundamental policy of Indian law? The answer is that it cannot. In *Aircon Beibars FZE v Heligo Charters Pvt. Ltd.*, the High Court of Bombay considered a challenge to the enforcement of a foreign award under Section 48.⁴⁹ The award-debtor contended that part of the award was unreasoned and thus violated the basic notions of justice and public policy in India.⁵⁰ The High Court categorically rejected this contention, explaining that assessing the presence or absence of reasons would entail an impermissible review into the merits of a foreign award.⁵¹ It was concluded that a procedural error, even existing, does not breach the fundamental policy of Indian law if the award is unreasoned.⁵²

The result is an asymmetry. An unreasoned HEAP award rendered at a foreign seat benefits from a narrower enforcement review in India, because of exclusion from the 'patent illegality' test under Section 48. On the other hand, if the same award were made in an arbitration seated in India, it

⁴⁵ Arbitration and Conciliation Act 1996, s 48.

⁴⁶ *Ssangyong* (n 43).

⁴⁷ *ibid.*

⁴⁸ Arbitration and Conciliation Act 1996, Explanation 1 to s 48(2)(b).

⁴⁹ *Aircon Beibars FZE v Heligo Charters Pvt Ltd* 2022 SCC OnLine Bom 329.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *ibid.*

would likely be set aside under Section 34 for ‘patent illegality,’ making the domestic seat commercially unviable for this ICC mechanism.

Towards a calibrated framework

HEAP is made for parties who want fast, simple, and bilateral dispute resolution. Whereas, the Indian arbitration regime increasingly expects multi-party joinder and reasoned awards. To bridge this gap, the following steps may help:

1. Parties negotiating multi-tiered agreements should treat any HEAP clause in any one contract as a live risk to every related contract in the same project. Model clauses applicable to India-related transactions should exclude HEAP where a project has two or more contracting parties or mirror the clause, so that no sub-agreement can exclude joinder which would otherwise be permitted by the ‘group of companies’ doctrine.
2. Indian lawmakers should incorporate a narrow amendment in Section 34(2A) of the Arbitration Act.⁵³ A safe harbour provision could provide that a consensual waiver of reasons under a recognised institutional expedited procedure is not, in itself, ‘patent illegality,’ provided that the tribunal produces a short-form record reflecting the jurisdiction, the claims determined and the relief granted. It gives the reviewing court something to work with under Section 34 without getting the tribunal to produce a full reasoned award within HEAP’s strict timeline. In addition, the ICC Court could implement a seat-specific protocol that adds a brief fixed extension, perhaps two additional weeks, to the scrutiny period in HEAP awards seated in India so that its Article 37(3) Review of mandatory law has room to function properly.⁵⁴
3. The proposed Section 34A of the Draft Bill should provide for a dedicated fast-track appellate route for awards issued under expedited institutional procedures.⁵⁵ A course of action like this would have the result that the award is presumed to stand, and can only be rebutted by showing a manifest denial of due process and not by reopening the merits. It ensures that HEAP’s key selling point, speed, is preserved whilst giving Indian parties a genuine safety valve against the annulment risk this note traces.

Conclusion

⁵³ Arbitration and Conciliation Act 1996, s 34(2A).

⁵⁴ ICC Arbitration Rules 2026, art 37(3).

⁵⁵ Draft Arbitration and Conciliation (Amendment) Bill 2024, proposed s 34A.

Simple bilateral disputes are well served by the HEAP commitments, *i.e.*, a three-month deadline, no joinder, and option of an unreasoned award, but its compatibility with Indian arbitration law remains highly conditional. The joinder bar runs against the expanding ‘group of companies’ doctrine. It hands parties a way to defeat the doctrine by pushing disputes to HEAP. And the option of an unreasoned award is vulnerable because of ‘patent illegality,’ where the seat of arbitration is in India. Further, the unreasoned award is capable of sailing through narrower enforcement review, where the seat of arbitration is based outside India. India need not reject the HEAP outright. It, rather, demands a calibrated response as discussed hereinabove, so India can capture HEAP’s efficiency benefits, without supplying the parties with a mechanism that results in fragmented proceedings at home, and which is unenforceable at the seat it is supposedly meant to serve.