

QUARTERLY ALTERNATE DISPUTE RESOLUTION ROUND-UP (SEPTEMBER 2025 – DECEMBER 2025)

SEPTEMBER

1. **Section 37(1)(a) of the Arbitration Act doesn't bar the arbitral tribunal from granting the pendente lite interest.**

The Supreme Court, in *Oil and Natural Gas Corporation Ltd. v M/s G & T Beckfield Drilling Services Pvt. Ltd.*,¹ observed that an arbitral tribunal can grant pendente lite interest unless the contract expressly or impliedly bars it. Furthermore, the Court held that the contractual clause barring interest on delayed payments did not take away the arbitral tribunal's power under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 [**"Arbitration Act"**] to award pendente lite interest.

2. **Execution of an award cannot be stalled merely due to the pendency under Section 37 of the Arbitration Act.**

The Supreme Court in *Chakardhari Sureka v Prem Lata Sureka through Spa & Ors.*,² held that the execution of an arbitral award cannot be stalled merely on the ground that an appeal under Section 37 of the Arbitration Act is pending.

3. **Arbitral award must be within the parameters of the Agreement between the parties.**

The Supreme Court in *Sepco Electric Power Construction Corporation v GMR Kamalanga Energy Ltd.*,³ held that the arbitral tribunal had erred by reinterpreting the contractual terms and departing

¹ *ONGC Ltd. v G & T Beckfield Drilling Services Pvt. Ltd.* [2025] SCC OnLine SC 1888.

² *Chakardhari Sureka v Prem Lata Sureka through Spa & Ors.* [2025] SC 919.

³ *Sepco Electric Power Construction Corp. v Kamalanga Energy Ltd.* [2025] SCC OnLine SC 2088.

from the agreed stipulations, which constituted a violation of Section 28(3) of the Arbitration Act.

4. Counterclaim in arbitration cannot be allowed after the commencement of the claimant's evidence.

In *Gayatri Granites & Ors. v Srei Equipment Finance Ltd.*,⁴ the Calcutta High Court held that a counterclaim in arbitration proceedings cannot be allowed after the commencement of the claimant's evidence, as it will cause grave injustice to the other party.

5. Independent panel of arbitrators not curated by either party cannot be challenged on the ground of impartiality.

In *M/s KNR Tirumala Infra Pvt. Ltd. v National Highways Authority of India*,⁵ the Delhi High Court held that when the panel of arbitrators comprising retired judges of the Supreme Court and other eminent officials, from which appointments are to be made, is broad-based, independent and not controlled by any party, the other party cannot refuse to abide by the institutional rules on the ground of impartiality.

6. Absence of the word “seat” does not oust the Court's jurisdiction by the arbitration agreement.

In *SNS Engineering Pvt. Ltd. v M/s Hariom Projects Pvt. Ltd & Anr*,⁶ the Delhi High Court held that the absence of the word “seat” does not take away the Court's exclusive jurisdiction to decide disputes arising out of an arbitration agreement.

7. The purpose of the Arbitration Act will be defeated if there are delays in executing the arbitral award.

The Jharkhand High Court in *R.K. Construction Pvt. Ltd. v State of Jharkhand*,⁷ observed that the purpose and the object of the Arbitration Act, would stand defeated if there are delays in the execution of the arbitral award.

⁴ *Gayatri Granites & Ors. v Srei Equipment Finance Ltd.* [2025] Cal 2449.

⁵ *KNR Tirumala Infra Pvt. Ltd. v National Highways Authority of India* [2025] SCC OnLine Del 5701.

⁶ *SNS Engineering Pvt. Ltd. v Hariom Projects Pvt. Ltd.* [2025] SCC OnLine Del 5836.

⁷ *R.K. Construction Pvt. Ltd. v State of Jharkhand* [2025] SCC OnLine Jhar 3116.

1. Delay in pronouncing arbitral award can render it void if it makes the award unworkable.

In *Lancor Holdings Ltd. v Prem Kumar Menon & Ors.*,⁸ the Supreme Court ruled that mere delay in pronouncing an arbitral award does not invalidate it. However, an unreasonable and unexplained delay, which makes the award impracticable or renders it useless, can result in the annulment of the award in accordance with Sections 34(2)(b)(ii) and 34(2A) of the Arbitration Act.

The Court noted that the question of delay affecting the arbitral process and findings in the award has to be decided based on the facts of each case. The Supreme Court also held that an award that does not result in effective and final relief, thus compelling the parties to file fresh proceedings, is against the public policy of India and amounts to patent illegality. The Court, therefore, exercised its authority under Article 142 of the Constitution to make a just and final settlement and thus put an end to the dispute. It considered that lengthy delays and incompetent adjudication weaken the very object of arbitration.

2. Non-operation of arbitration clause due to statutory amendment does not vitiate arbitration agreement.

In the case of *Offshore Infrastructures Ltd. v Bharat Petroleum Corporation Ltd.*,⁹ the Supreme Court decided that a situation where a statutory amendment results in the non-operation of an arbitration clause for the appointment of an arbitrator does not affect the arbitration agreement itself. The Court noted that the removal of a particular arbitrator under Section 12(5) of the Arbitration Act, as amended in 2015, is not the removal of the parties' intention to refer the matter to arbitration. It explained that courts have the power to appoint an independent and impartial arbitrator under Section 11(6) of the Arbitration Act so as to give effect to that intention. The Court, therefore, ruled that an arbitration clause was to be read with reference to its purpose to ensure that the parties' contract did not result in the abolition of the clause due to changes in law.

⁸ *Lancor Holdings Ltd. v Prem Kumar Menon & Ors.* [2025] SCC OnLine SC 2319.

⁹ *Offshore Infrastructures Ltd. v Bharat Petroleum Corporation Ltd.* [2025] SCC OnLine SC 2147.

3. C.A.-certified audited statements held reliable evidence of expenditure and arbitral award partially sustained.

In *National Highways Authority of India v Hindustan Construction Co. Ltd.*,¹⁰ Delhi High Court decided that C.A.-certified audited statements are genuine records of actual expenditure and thus, partly, the Court upheld the arbitral award, which was challenged under Section 34 of the Arbitration Act. The Court noticed that it was proper for the arbitral tribunal to depend on the audited financial statements certified by the statutory auditors since these documents were the most accurate ones to reflect the contractor's overhead and operational costs for the extended period of the project. The Court found that the arbitral tribunal's findings were its reasons and not its perverse, and that the Court cannot look at the evidence afresh under Section 34 of the Arbitration Act unless the award is obviously illegal or against public policy.

4. Orissa High Court dismisses Section 37 appeal and reiterates limited judicial review under Section 34.

In *Union of India v Pyari Mohan Mohanty*,¹¹ the Orissa High Court has refused an appeal under Section 37 of the Arbitration Act, thus maintaining the decision of the District Judge, who had confirmed the arbitral award. The Court, referring to its earlier decision, held that the interference under Section 34 is limited to very few grounds like conflict with public policy, fraud, corruption, or manifest illegality, and that courts cannot review the evidence or act as appellate authorities in the case of arbitration. It pointed out that the arbitral tribunal is the main fact-finding authority and that the court's role is to give judicial respect to its findings if they are supported by evidence and not perverse in the obvious. Analysing the matter, the Court found the tribunal's conclusions regarding the delay and the awarding of the claims for specific construction components as its reasoning and backed by the record. Noticing no obvious illegality or procedural irregularity, the Court rejected the appeal and confirmed the arbitral award, without making any order as to costs.

¹⁰ *National Highways Authority of India v Hindustan Construction Co. Ltd.* [2025] LiveLaw (Del) 1330.

¹¹ *Union of India v Pyari Mohan Mohanty* [2025] Latest Caselaw 8908 Ori.

5. Supreme Court rejects Section 11 petition as barred by limitation and reiterates non-arbitrability of stale claims.

In *Alan Mervyn Arthur Stephenson v J. Xavier Jayarajan*,¹² on a point of limitation, the Supreme Court rejected a request under Section 11(5) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator. The plaintiff, a United Kingdom [“UK”] resident, as per the allegations, in a partnership agreement for a real estate project, had to perform and therefore sought the refund of the money advanced. The Court pointed out that the property was bought in May 2016, while the arbitration notice was only given on 9 December 2020, i.e., after the expiration of the three-year limitation period set for contractual disputes. Acknowledging the last payment in August 2017 at the very latest, the claim would still be out of time. The Court, held that the delay in filing the arbitral proceedings intentionally is against the very idea of speedy dispute resolution laid down in the Act since arbitration cannot be invoked for stale claims.

¹² *Alan Mervyn Arthur Stephenson v J. Xavier Jayarajan* [2025] SCC OnLine SC 2227.

1. Arbitral award would be liable to be set aside if contractual terms are re-written by the arbitral tribunal.

The Supreme Court in *Indian Railways Catering and Tourism Corporation Ltd. v M/s Brandavan Food Products*,¹³ set aside a substantial arbitral award on the ground that the arbitral tribunal had gone beyond its mandate by granting claims contrary to the Master License Agreements and policies governing catering operations. The Court noted that the Agreements expressly subordinated themselves to Railway Board circulars, and once the contract clearly gave primacy to the latest catering policy, the tribunal could not disregard these binding directions. By granting claims relating to additional meals and welcome drinks in contradiction to the applicable policy, the arbitrator effectively rewrote the core contractual obligations. The Court held that such deviation amounted to a breach of fundamental principles of justice, warranting interference under the narrow contours of patent illegality. The tribunal's reasoning ignored the plain text of the agreements, was found inconsistent with the established principles in *Ssangyong Engineering and Construction Company Ltd. v National Highway Authority of India*.¹⁴

2. Indian courts lack jurisdiction to appoint arbitrators in foreign-seated arbitrations despite Indian nationality of parties.

The Supreme Court in *Balaji Steel Trade v Fludor Benin S.A.*¹⁵ has held that Indian courts cannot assume jurisdiction under Section 11 of the Arbitration Act where the principal contract designates a foreign juridical seat. The Buyer–Seller Agreement expressly provided for arbitration seated in Benin and governed by Beninese law. The Court stated that the existence of subsequent ancillary contracts, including those containing India-seated arbitration clauses, could not override the dispute resolution mechanism of the mother agreement. Since the alleged breaches arose from the principal contract, only the foreign-seated clause governed the dispute.

The Court further rejected reliance on the Group of Companies doctrine to invoke domestic jurisdiction, noting that ancillary sales contracts and high-seas agreements merely facilitated performance and did not alter the juridical seat. The judgment relied on the territoriality

¹³ *Indian Railways Catering and Tourism Corporation Ltd. v M/s Brandavan Food Products* [2025] INSC 1294.

¹⁴ *Ssangyong Engineering and Construction Company Ltd. v National Highway Authority of India* (2019) 15 SCC 131.

¹⁵ *Balaji Steel Trade v Fludor Benin S.A.* [2025] INSC 1342.

principle and reiterated that Part I of the Arbitration Act does not extend to foreign-seated arbitrations.

3. Pendente lite interest would not form part of principal amount awarded unless expressly capitalised by arbitral tribunal for purposes of post-award interest.

The Delhi High Court in *BWL Ltd. v BSNL*,¹⁶ addressed the question whether pendente lite interest can form part of the principal sum for the purpose of post-award interest under Section 31(7)(b) of the Arbitration Act. The decree-holder argued that the Supreme Court's reference to statutory interest implied that interest awarded for the period during which the award subsisted must automatically be capitalized. However, the Court held that only the amount expressly incorporated into the sum by the tribunal or appellate court forms the base for post-award interest.

After examining the appellate modification, the Court held that *pendente lite* interest had been awarded as a lump sum and not merged with the principal. Since the Division Bench did not capitalize interest, post-award interest could only accrue on the principal amount. The Court thus rejected the decree-holder's attempt to enlarge the scope of the award through execution proceedings, concluding that the decretal obligation stood fully satisfied.

4. Bombay High Court sets aside award for relying on uncommunicated internal materials and contradicting the contract:

In *Konkan Railway Corporation Ltd. v SRC Company Infra Pvt. Ltd.*,¹⁷ the Bombay High Court set aside an award that had shifted liability for royalty payments from the contractor to the employer. The Court found that the arbitral tribunal had disregarded the explicit terms of the contract, which placed the burden of royalty on the contractor. Despite this clarity, the tribunal relied on tender committee minutes and pre-contractual deliberations to infer a different intention. The Court held that such materials, never communicated to the contractor, could not override the operative contract.

The Court concluded that the tribunal had not only rewritten essential contractual terms but had also travelled beyond the reference by applying principles of rectification without any pleading, prayer or issue framed under the Specific Relief Act. Accordingly, the Court allowed

¹⁶ *BWL Ltd. v BSNL* [2025] SCC OnLine Del 8506.

¹⁷ *Konkan Railway Corporation Ltd. v SRC Company Infra Pvt. Ltd.* [2025] BHC-OS 20965.

the petition and set aside the award holding that the tribunal travelled beyond the contractual terms and wrongly place liability to bear royalty charges on Konkan Railway.

5. Prior interpretation of a similar clause does not disqualify an arbitrator for “issue conflict”.

The Delhi High Court in *Steel Authority of India Ltd. v British Marine L.L.C.*¹⁸ rejected a challenge to two arbitrators on grounds of “issue conflict” arising from their prior interpretation of a similar clause in an earlier arbitration involving Steel Authority of India. The Court held that prior professional engagement or experience with analogous contractual questions does not automatically give rise to justifiable doubts under Section 12 of the Arbitration Act. Bias must be demonstrated through a real likelihood of prejudgment, not inferred from the mere existence of prior opinions. The Court also remarked that in specialized fields such as maritime arbitration, the pool of qualified arbitrators is small and repeat appointments or similar issues are inevitable. Treating prior interpretative experience as a disqualification would undermine the efficiency and expertise that arbitration demands.

6. Courts cannot reassess evidence under Section 34.

The Delhi High Court in *National Building Construction Corporation v Sharma Enterprises*¹⁹ held that an arbitral tribunal is the master of the quantity and quality of evidence, and Section 34 does not confer appellate jurisdiction. The Court, reviewing a long-running dispute arising from flooring and cladding works at a railway station project, held that most of the factual determinations such as delays caused by third parties, approval timelines, and extra-item claims lay squarely within the tribunal’s domain and could not be revisited unless shown to be perverse or patently illegal.

The Court noted that the arbitrator had provided a reasoned assessment based on material on record and that mere disagreement with conclusions did not justify interference. Except for modifying the award on the limited aspect of interest due to a specific contractual bar, the Court declined to disturb the substantive findings. The Court reiterated that judicial review under Section 34 must remain narrow, focusing only on statutory grounds such as patent illegality, jurisdictional error, or violation of natural justice.

¹⁸ *Steel Authority of India Ltd. v British Marine L.L.C.* [2025] DHC 3394.

¹⁹ *National Building Construction Corporation v Sharma Enterprises* [2025] DHC 10215.

7. Repeated remands under Section 37 without reversing findings are unworkable and legally impermissible.

In *Electronics Corporation of Tamil Nadu Ltd. v ICMC Corporation Ltd.*,²⁰ the Madras High Court addressed an unprecedented situation in which a Division Bench had remanded several applications under Section 37 of the Arbitration Act without reversing the underlying findings on merits. The Court held that such wholesale remands were unworkable because the findings of the Single Judges continued to stand, leaving the remand courts without jurisdiction to re-examine merits afresh. Since the Division Bench had not vacated the findings, the doctrine of merger was inapplicable.

The Court held that remand powers under Order 41 Rules 23, 23-A, and 25 of the Code of Civil Procedure, 1908 are strictly limited and cannot be exercised unless the appellate court first reverses or sets aside the findings on merits. The Court also noted that unnecessary remands impose undue strain on judicial resources and lead to avoidable duplication. It accordingly granted liberty to the parties to seek review before the appropriate Division Benches.

8. Supreme Court upholds 24% contractual interest in arbitral award; not contrary to fundamental policy of Indian law:

In *Sri Lakshmi Hotel Pvt. Ltd. v Sriram City Union Finance Ltd.*,²¹ the Supreme Court upheld the award of 24% interest in a commercial loan dispute, thus rejecting the argument that such a rate violated public policy or the fundamental policy of Indian law. The Court held that Section 31(7)(a) of the Arbitration Act gave primacy to party autonomy, and once the parties agree to a particular rate in a commercial setting, it cannot later be characterized as unconscionable unless it shocks the conscience of the Court. The award reflected the risk-based pricing practices of non-banking financial companies and was consistent with prevailing commercial standards. The Court observed that public policy under Section 34 of the Arbitration Act does not extend to disagreements about rate of interest unless the award is manifestly arbitrary. It held that high interest rates may legitimately reflect market risks, discourage defaults, and compensate lenders for volatility in credit conditions.

²⁰ *Electronics Corporation of Tamil Nadu Ltd. v ICMC Corporation Ltd.* [2025] MHC 2614.

²¹ *Sri Lakshmi Hotel Pvt. Ltd. v Sriram City Union Finance Ltd.* [2025] INSC 1327.

1. Claimant can pursue alternate remedy for severed part of award without limitation bar.

In *Laguna Resort Pvt. Ltd. v Concept Hospitality Pvt. Ltd.*,²² the Bombay High Court clarified that a claimant can invoke an alternate remedy for the severed portion of an arbitral award without being barred by limitation, even if a fresh dispute arises from a different contract. The Court held that Section 43(4) of the Arbitration Act allows exclusion of the time spent in earlier arbitral proceedings when computing limitations for fresh proceedings.

2. The appointment of arbitrator under ODR clauses is valid.

In *Amit Chaurasia v ICICI Bank Ltd.*,²³ the Bombay High Court upheld the validity of a pre-agreed Online Dispute Resolution [“**ODR**”] clause and confirmed that an arbitrator appointed via an ODR platform pursuant to that clause was properly appointed. The Division Bench reviewed the underlying contract and found no infirmity in the ODR mechanism or the appointment process, holding that parties’ autonomy to choose a digital dispute resolution route must be respected where it is clearly stipulated in the agreement.

3. Review Petition not maintainable against order refusing to appoint arbitrator.

In *Koshy Phillip v Thomas P Mathew*,²⁴ the Kerala High Court reaffirmed that review petitions are not maintainable against orders passed under Section 11 of the Arbitration Act. The Court dismissed a review petition filed against an order refusing to appoint an arbitrator, holding that the Arbitration Act operates as a self-contained code, allowing only such judicial interventions as are expressly provided in the statute. The Court emphasized that absent clear statutory authority for review in such matters, a review petition cannot be entertained simply because one party is aggrieved by the High Court’s Section 11 order.

²² *Laguna Resort Pvt. Ltd. v Concept Hospitality Pvt. Ltd.* [2025] BHC-OS 25034.

²³ *Amit Chaurasia v ICICI Bank Ltd.* [2025] BHC-OS 24269.

²⁴ *Koshy Phillip v Thomas P. Mathew & Ors.* [2025] KER 88222.

4. Bombay High Court Upholds Arbitral Award Granting Specific Performance of Development Agreement Between BTRA and Nilkanth Enterprise.

In *Bombay Trans-Harbour Roadway Authority v Nilkanth Enterprise*,²⁵ the Bombay High Court dismissed a challenge under Section 34 of the Arbitration Act, upholding a 2017 arbitral award directing specific performance of a negotiated development agreement relating to approximately 57,000 sq. m. of land in Ghatkopar (West), Mumbai. The petitioners had contended errors in the award, but the Court found no valid ground to interfere, holding that there was nothing on record to justify setting aside the award on merits or on public policy grounds.

5. Unexplained delay as grounds to set aside arbitral award.

In *The Tamil Nadu Housing Board v M/s N.C.C. Ltd.*,²⁶ the Madras High Court set aside an arbitral award of ₹51.48 lakh that had been granted in favour of the contractor. The Court observed that while delay alone is not an automatic ground for interference, an inordinate and unexplained delay that adversely affects the integrity and purpose of arbitration which is primarily used to provide a time-bound dispute resolution mechanism can vitiate an award's legality and public policy compliance. The Court also noted it would be unreasonable to enforce interest for the entire delayed period, holding this was contrary to legal principles. The award was quashed, and parties were left free to agree on the appointment of a new arbitrator strictly to take submissions and pass a fresh award within a stipulated timeframe.

²⁵ *Bombay Textile Research Association v Nilkanth Enterprise* [2025] BHC-OS 24545.

²⁶ *The Tamil Nadu Housing Board v M/s N.C.C. Ltd.* [2025] MHC 2775.