GNLU SRDC ADR MAGAZINE

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FOREWORD

Prof. (Dr.) S. Shanthakumar

Director, Gujarat National Law University

As Director of GNLU, it gives me profound satisfaction to present the GNLU SRDC ADR Magazine. Since its inception in 2020, the Magazine has established itself as a pioneering platform in India's Alternative Dispute Resolution (ADR) discourse, publishing four volumes and twelve issues that have consistently advanced the understanding and practice of ADR in our nation.

The significance of ADR in today's legal landscape cannot be overstated. India's journey toward building an effective and internationally aligned ADR framework has been marked by transformative changes. While this path has presented its challenges, these very challenges underscore the vital importance of academic debate and research in refining and strengthening our ADR systems.

The Magazine distinguishes itself through its innovative structure: scholarly articles examining contemporary issues, a Round Up section covering significant developments, and interviews with leading legal luminaries. This comprehensive approach ensures readers benefit from both academic insights and practical expertise from the field.

We are profoundly honoured to have the steadfast guidance of our esteemed advisory board, led by Justice Dipak Misra, Former Chief Justice of India. His profound insight and visionary perspective have been instrumental in shaping this publication's scholarly path, ensuring it remains a rigorous and dynamic forum for advancing ADR. The invaluable counsel of our advisory board members has maintained the highest standards of academic integrity, relevance, and depth.

At the core of this publication lies our remarkable student editorial board, whose dedication to advancing ADR knowledge is truly inspiring. Working closely with experienced external peer reviewers, they have consistently produced a publication that sets a benchmark for student-led academic initiatives and exemplifies the scholarly excellence that defines GNLU. Their commitment to each edition has been instrumental in the Magazine's growth and relevance in the ADR community.

As we release this issue, we remain confident that the Magazine will continue to enrich its readership and play a vital role in shaping the future of ADR in India. We hope these pages serve not only as an academic resource but as a catalyst for progressive thought, inspiring readers to engage deeply with contemporary ADR issues. We look forward to the Magazine's continued growth, sustained by the support of our readers, advisors, and contributors.

ABOUT THE MAGAZINE

The ADR Magazine was launched in 2020 under the aegis of GNLU's Student Research Development Council. The Magazine, now in its fourth year of operations, is a tri-annual student-run publication that publishes articles pertaining to the field of Alternative Dispute Resolution. The Magazine aims to keep pace with the recent developments, judicial decisions, and practices being adopted in Indian and foreign jurisdictions and promote a comparative and interdisciplinary understanding of various dynamics shaping this domain of law. Throughout its stint, the Magazine has successfully published 5 Volumes and 13 Issues featuring articles from notable practitioners and interviews with industry leaders.

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(January 2026 - April 2026)

NOTE FROM THE EDITORS

We extend our heartfelt gratitude to our readers, advisors, peer reviewers, contributors, and everyone involved with this magazine for their unwavering support and commitment. Your faith in our vision has been vital to the success and growth of this magazine, now proudly in its fifth edition. As the Magazine continues to make strides and build a respected presence in the field, we look forward to reaching an even broader audience. We hope this platform will catalyse the free exchange of ideas further and provide a valuable learning resource for students and professionals dedicated to Alternative Dispute Resolution.

We are elated to announce the publication of Volume VI Issue II of the Magazine. This Issue features an exclusive interview with Prof. Dr. h.c. Ingeborg Schwenzer, Professor Emerita of Private Law at the University of Basel and a globally renowned scholar in international commercial law and arbitration. We take this opportunity to extend our gratitude to Prof. Schwenzer for engaging with us and sharing her valuable insights on international commercial law, arbitration, and legal education.

This Issue presents five meticulously curated articles, each exemplifying the highest standards of academic integrity and research quality that define the GNLU Academia. We are proud to uphold these standards within the pages of this Issue, which brings together insightful perspectives on pressing contemporary issues in the realm of Alternative Dispute Resolution. We trust that our readers and contributors will continue to recognize and support our commitment, helping us maintain the quality and standards of the Magazine.

We hope our readers will enjoy reading this Issue as much as we have in assembling it.

GNLU SRDC ADR MAGAZINE

VOLUME VI | ISSUE II

THE EQUILIBRIUM OF TRUST AND CERTAINTY: FORTY YEARS OF REFINING ENGLISH ARBITRATION

AUTHOR

Dr. Sarosh Zaiwalla

Senior Partner & Founder, Zaiwalla & Co.

The Foundational Balance

English arbitration was initially built on a simple promise: a sanctuary where the rigid formalities of the High Court were traded for the swift, practical judgment of industry peers. The English arbitration process was to belong to the commercial man, and disputes were resolved through industry-specific knowledge and integrity rather than the cold mechanics of binding legal precedent and courtroom convention. Russel on Arbitration, one of the early legal practitioners' books of International Arbitration began with the words "*honest men dread arbitration more than lawsuits*".[1]

However, as global trade scaled, international commerce craved for more than mere fair play and required a London arbitration award to be as legally resilient as a judicial ruling. This transition from commercial discretion to judicial alignment has been the defining arc of the modern era of arbitration.

Overview

The development of the English arbitral mandate is not a story of replacing commercial wisdom, but of recalibrating its relationship with the law. Over the last four decades, the power to resolve complex disputes has shifted from a reliance on purely industry-based intuition towards a sophisticated alignment with qualified legal principles.

This evolution has ensured that London remains a robust pillar of the international rule of law. From its foundational days in the early 1980s, *Zaiwalla & Co.* has been at the forefront of this

[1] David St. John Sutton, Judith Gill and Matthew Gearing, *Russell on Arbitration* (24th edn, Sweet & Maxwell 2015).

globalised practice, not merely witnessing the expansion of London's legal reach, but actively shaping it through landmark successes that have defined English law for a generation.

1985: Originality of Thought and the Legacy of La Pintada

The first major shift toward legal precision occurred in *La Pintada Compania Navegacion S.A. v President of India* ["**La Pintada**"].[2] The dispute arose out of a contract for the carriage of wheat from the United States of America to India in the aftermath of the 'Great Indian Famine' from 1976-1978, a period marked by chronic payment delays. The central question was whether arbitrators possessed an inherent power to award amounts of compound interest as damages for late payment, in the absence of an express contractual term.

The case reached the House of Lords through a novel legal path. Both the High Court and the Court of Appeal had fallen into line with an arbitrator who had awarded compound interest against the President of India. Having obtained permission to take the case to the highest court, *Zaiwalla & Co.* instructed a young Tony Blair, as a junior to leading counsel Derry Irvine QC, to argue the matter. Keen followers of politics will note that when Mr. Blair became the United Kingdom ["**UK**"] Prime Minister, he appointed Mr. Irvine as his Lord Chancellor, in real terms Minister of Law and Justice.

Despite the initial protestations of counsel that *Zaiwalla & Co*'s proposed arguments having no prospects of success, the firm maintained its stance that the rule of law required strict adherence to established damages principles, rather than broad 'commercial' pragmatism. The House of Lords ultimately upheld this view, reinforcing the boundaries of arbitral discretion.

The impact of the ruling was so significant that it prompted a surprise personal visit to the firm's offices by the then Lord Chancellor, Lord Mackay of Clashfern. His visit was a rare acknowledgement that the English justice system remains open to original thought and that even a boutique practice, through professional integrity and persistence, can fundamentally enhance national jurisprudence.

Refining the Boundaries: Lips Maritime

[2] *La Pintada Compania Navegacion S.A. v President of India* [1983] 1 Lloyd's Rep. 37.

By 1988, the alignment of arbitral powers with that of the courts continued with the House of Lords case of *President of India v Lips Maritime Corp.* ["**Lips Maritime**"].[3] This case focused on currency exchange losses. While the courts were beginning to show a matured willingness to accommodate commercial realities, the *Lips Maritime* case reinforced that such accommodation must be anchored in conventional legal doctrine. The House of Lords upheld the award nonetheless, translating commercial logic into the formal legal frameworks of remoteness and foreseeability.

This period demonstrated a progression of the arbitral mandate. The commercial man was now supported by the precision of qualified legal thought. Efficiency was no longer measured merely by the speed of settlement, but by the legal durability and integrity of the final award.

Protecting the Heart of the Process: Jivraj v Hashwani

As the 21st century dawned, a new challenge emerged: ensuring that legal formalisation did not extinguish the essence of arbitration, being the independence and autonomy of the parties involved. This tension culminated in 2011 in *Jivraj v Hashwani,*[4] where the Hon'ble UK Supreme Court had replaced the House of Lords as the highest tribunal in the country. The dispute involved an arbitration agreement requiring arbitrators to be members of a specific community. The challenge was based on the premise that such a requirement violated employment equality legislation.

Representing the party seeking to uphold the clause, *Zaiwalla & Co.* argued a point of fundamental principle, that an arbitrator cannot be considered a subordinate employee whose appointment is subject to formal legal qualifications of employment equality. Rather, an arbitrator stands in independent capacity to render justice to both the parties. To treat arbitrators as employees would be to strip parties of their right to choose adjudicators they trust as individuals, who understand the cultural or religious context of the underlying bargain.

The Supreme Court's agreement was a landmark moment protecting the soul of arbitration, affirming that while the process must be legally sound, the selection remains a private matter of trust.

[3] *President of India v Lips Maritime Corp.* [1987] 2 WLR 906.
[4] *Hashwani v Jivraj* [2011] 1 WLR 1872.

Inference: A Symmetry of Rules and Justice

The journey from the House of Lords in 1980s to the modern Supreme Court illustrates that English arbitration is a living system. It has successfully found a balance between commercial wisdom and legal expertise. This evolution reflects *Zaiwalla & Co.*'s 45 years commitment to the idea that law exists for justice, and that justice is best served through an efficiency of approach that never sacrifices professional integrity.

The modern challenge is to preserve the flexibility that makes arbitration unique while providing the absolute stability required by global commerce. The most effective legal solutions continue to be found where originality of thought meets the courage to uphold the rule of law. As we refine the legal architecture of dispute resolution, we must ensure that the technical precision of the lawyer never fully eclipses the shared integrity of the individuals who first placed their trust in the process. Ultimately, true legal excellence lies in the realization that while legal rules provide certainty, it is the pursuit of justice that gives those rules their purpose as the ultimate goal of law is to do justice.

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ARBITRAL SECRETARIES AND THE SHADOW ADJUDICATION PROBLEM: DELEGATION, LEGITIMACY AND THE LIMITS OF TRIBUNAL ASSISTANCE

AUTHOR

Ms. Shilpi Sharma

Advocate, Desai & Diwanji

Introduction

Arbitration has evolved significantly from its traditional perception as a streamlined and party-driven mechanism into a procedurally intensive system characterised by complex documentation, expert evidence, jurisdictional disputes, and strict procedural timelines. In response to these increasing managerial demands, arbitral tribunals have developed a growing reliance on arbitral secretaries to assist with organisational, research, and drafting functions. Although such assistance is frequently justified on grounds of efficiency and cost-effectiveness, it raises an important structural concern regarding the legitimacy of arbitral adjudication and the extent to which secretarial participation may dilute the tribunal's personal decisional mandate.

Judicial authorities have increasingly acknowledged the risks associated with excessive delegation in arbitral proceedings. In *P v Q*,[1] the English High Court observed that although arbitral secretaries may assist tribunals in administrative matters, adjudicatory authority must remain with the arbitrators themselves. Similarly, in *Sonatrach v Statoil Natural Gas LLC* ["**Sonatrach**"],[2] the Court emphasised that tribunals must retain effective control over the reasoning process underlying the award. These decisions illustrate the growing judicial concern that excessive intellectual involvement by arbitral secretaries may compromise the non-delegable nature of arbitral decision-making and weaken party confidence in the legitimacy of the process.

[1] *P v Q* [2017] EWHC 148 (Comm).
[2] *Sonatrach v Statoil Natural Gas LLC* [2014] EWHC 875 (Comm).

The legitimacy of arbitration is grounded in party autonomy. Arbitrators are chosen by parties because of their expertise, independence, and adjudicatory judgment. The authority of an arbitral award depends upon the assumption that the reasoning and conclusions contained in it are those of the appointed tribunal. Judicial authority has consistently recognised that arbitral power derives legitimacy from party consent and must operate within the limits of that mandate.[3] When individuals lacking such authority make substantive intellectual contributions to the award, the arbitral process risks creating what may be described as shadow adjudication, namely, the informal diffusion of decision-making authority outside the structure of party consent.

The issue is not the existence of arbitral secretaries, which is widely accepted in institutional practice, but the absence of a principled distinction between permissible administrative assistance and impermissible delegation of adjudicatory functions. Institutional guidance acknowledges this concern but addresses it in broad and largely self-regulatory terms.[4] In jurisdictions where arbitration continues to operate predominantly through ad hoc procedures, the absence of formal safeguards further intensifies the risk. This article argues that shadow adjudication constitutes a due process concern that undermines the personal nature of the arbitral mandate and weakens the legitimacy of arbitral awards at both the enforcement and annulment stages. It proposes a functional framework based on non-delegation, transparency, and party control as a means of reconciling procedural efficiency with adjudicatory legitimacy.

The Managerial Turn and Epistemic Influence

The growing reliance on arbitral secretaries must be understood in the context of arbitration's overall proceduralisation. Tribunals must handle large volumes of pleadings, complex evidentiary exercises, and numerous interlocutory applications. Secretarial aid allows for the preservation of the procedural record, the creation of chronologies, the organization of documentary materials, and the scheduling of hearings. These functions are often classified as administrative and so these are uncontroversial.[5]

Nevertheless, the modern practice often goes beyond the field of logistical coordination. These functions influence the manner in which tribunals engage with the evidentiary record. "The

[3] *Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc.* (2012) 9 SCC 552.
[4] ICC, *Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration* (ICC 2019) ¶¶ 180-183, 185.
[5] LCIA, *LCIA Notes for Arbitrators* (LCIA 2020) ¶ 202.

individual who synthesises evidence and frames legal questions may significantly influence the tribunal's deliberative process.

This epistemic dimension distinguishes contemporary secretarial assistance from traditional clerical support. The secretary is not merely sorting out material, but also arranging the way that it will be presented to the tribunal. Consequently, the risk goes further than formal delegation and includes the risk of informal intellectual influence in which the parties are unaware.

The Personal Mandate and Non-Delegation

The power of arbitrators to carry out adjudicatory roles is non-transferable and personal. Arbitrators are appointed by parties since they trust that they can make judgments and do so in a competent manner. The Indian jurisprudence has continuously stressed the necessity of consent of parties in arbitration. The Supreme Court defined arbitration in the case of *Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc.* as an adjudicatory procedure where the parties' agreement is the basis for its legitimacy.[6]

The principle of non-delegation is rooted in this consensual foundation. Although the assistance of administration is allowed, the design of legal reasoning, the evaluation of evidence, and the introduction of findings are all intellectual endeavours that are inseparably connected with adjudication. This distinction is enhanced by comparative judicial power. In *P v Q*, the English High Court ruled that while the use of a tribunal secretary is permitted, any delegation of decision-making authority would be incongruous with the arbitrators' mandate.[7] Similarly, in *Sonatrach*, the Court stressed that arbitrators must maintain control over the reasoning process.[8]

The evidentiary challenge is the confidentiality of deliberations. Because parties do not have access to the internal decision-making process, the non-delegation concept is difficult to implement in practice. This structural opacity creates the conditions for shadow adjudication.

Enforcement and Annulment Implications

There are direct implications qua setting aside and enforcement actions of an award emanating from the legitimacy issues due to the aforementioned shadow adjudication. A failure to correctly form the panel or procedural issues could lead to a challenge to an award that relies on the

[6] *Bharat Aluminium Co.* (n 3).
[7] *P v Q* (n 1).
[8] *Sonatrach* (n 2).

reasoning of an anonymous third party. Failure to comply with the parties' agreement about the arbitral process may result in the refusal of enforcement under the New York Convention.[9] This may apply in cases where the parties did not voluntarily consent to the transfer of adjudicatory powers.

Indian courts have adopted a similar approach. In *Associate Builders v DDA*, the Supreme Court ruled that violations of natural justice are grounds for setting aside a judgment.[10] When shadow adjudication denies a party the ability to challenge the logic behind the award, the procedural fairness of the process is jeopardized.

The challenge stems from evidentiary proof. Because the work of the secretary is rarely documented, parties may find it impossible to prove that improper delegation occurred. This underlines the need of procedural safeguards that establish an evidence record.

The Indian Context: Ad Hoc Practice, Time Pressure and Procedural Legitimacy

The Indian arbitral system presents a distinct institutional context for the problem of shadow adjudication. Even though institutional arbitration is growing, a significant percentage of proceedings continue to remain ad hoc, particularly in domestic commercial disputes. In such cases, the tribunal and the parties primarily shape the procedural framework with minimal external supervision. Although the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"] does not expressly regulate the scope of functions performed by arbitral secretaries, the power to appoint administrative assistance is often traced to section 6 of the Arbitration Act, which permits parties to authorise any person, including an institution, to determine certain procedural issues with the consent of the parties. This provision is frequently relied upon to justify the appointment of tribunal secretaries for administrative and organisational assistance. However, section 6 cannot be interpreted as permitting unrestricted delegation of adjudicatory responsibilities. The provision facilitates procedural autonomy and efficiency, but it does not dilute the tribunal's obligation to independently evaluate evidence, formulate legal reasoning, and render the award. This limited statutory recognition, when read alongside the time-bound requirement under section 29A, creates a procedural environment in which reliance on secretarial assistance becomes both attractive and insufficiently regulated.

[9] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention) art V(1)(d).
[10] *Associate Builders v Delhi Development Authority* (2015) 3 SCC 49.

Constrained timetables have an impact on deliberation. Courts with large records to handle within strictly set statutory time limits can delegate the preparatory or analytical work to be done so that awards can be made in time. Whereas administratively effective, this kind of delegation threatens to change the decisional nature of the tribunal. The objective of expedition must therefore be balanced with adjudicatory integrity.

The Indian courts always demand that arbitral decisions should be based on independent application of mind and observance of natural justice. In *ONGC Ltd. v Western Geco International Ltd.,*[11] the Supreme Court has determined that an award should reflect reasoned consideration of evidence, showing that intellectual consideration should be made by the tribunal itself. Outsourcing of the analysis work to a secretary undermines this judicial principle.

In *Ssangyong Engineering & Construction Co. Ltd. v NHAI* ["**Ssangyong**"],[12] the significance of a fair chance to respond to the tribunal's rationale and the fact that violations of natural justice might warrant a re-evaluation of an award under section 34 were both upheld by the Court. Unacknowledged intellectual work compromises such a chance through the introduction of the kind of analysis, which is not subject of adversarial scrutiny.

Similarly, *Associate Builders v DDA*[13] demands that the arbitral conclusions should have an independent and rational basis of reasoning. Where an undisclosed third party shapes the reasoning, the need to apply mind independently is affected. An Indian doctrine however is an expression of an implicit non-delegation rule even though it is not actually written down.

Enforcement, Annulment, and the Burden of Proof

The shadow adjudication issue directly applies to the enforcement and the set-aside action. The New York Convention grants powers to deny enforcement in cases where the arbitral procedure deviates off-course of the agreement between the parties.[14] In the absence of an agreement to the delegation of adjudicatory functions the involvement of such nature can constitute a procedural irregularity in Article V(1)(d).

[11] *ONGC Ltd. v Western Geco International Ltd.* (2014) 9 SCC 263.
[12] *Ssangyong Engineering & Construction Co. Ltd. v National Highways Authority of India* (2019) 15 SCC 131.
[13] *Associate Builders* (n 10).
[14] New York Convention (n 9) art V(1)(d).

The Indian jurisprudence adopts a similar approach under section 34 of the Arbitration Act.[15] The Supreme Court in *Ssangyong* decided that an award could be challenged where natural justice is violated or material evidence left out.[16] The independent use of mind of a tribunal may be compromised in case the logic behind a given award is provided by a hidden agent.

The difficulty lies in proof. The deliberations at the arbitral level are confidential and the work of the secretary is hardly documented, which forms an asymmetry in the structure, between the transparency of the principle of non-delegation and managing to ground the breach of this principle.

Comparative jurisprudence illustrates this evidentiary burden. In *P v Q*, the English High Court dismissed an appeal on the part of the secretary on the grounds that it is the arbitrators who decide the case, and the secretary did not have a say in the process.[17] Help with research or drafting was also insufficient to amount to delegation without evidence of independent judgment on the part of the secretary.

These restrictions imply that use of post-award judicial review is insufficient. The procedural safeguards at the arbitral level are necessary to achieve the appropriate regulation and create the documentary account of the functions of the secretary.

Institutional Practice and its Structural Limits

The institutional rules are aimed at controlling arbitral secretaries, through consent of the parties, and limiting their duties to administrative tasks, with the appreciation of the non-delegation principle. These measures are still, however, limited.

First, advice is based on labels, that is, to be administrative and not substantive, and lacks a functional test. Such activities as the drafting of chronologies, an overview of submissions or the preparation of procedural orders might include an element of analytical input, but they remain considered to be administrative.

[15] Arbitration and Conciliation Act 1996, s 34.
[16] *Ssangyong Engineering & Construction Co Ltd* (n 12).
[17] *P v Q* (n 1).

Second, it is more enforcement-based. The extent of the secretarial work is supposed to be presided over by tribunals without an outside supervision and the work done itself is not required to be documented or the level of intellectual input to be revealed.

Third, the after-effects of over dependence are ambiguous. Whether or not such behaviour would warrant annulment or non-enforcement in the absence of provable prejudice makes the existing guidance less of a deterrent.

Such structural gaps imply that the institutional regulation that is in place is not sufficient to mitigate the epistemic risks that are inherent in shadow adjudication.

Legitimacy, Reform, and the Epistemic Authority of the Tribunal

The legitimacy of arbitration depends not merely upon procedural efficiency but upon the epistemic authority of the tribunal. Parties accept arbitral awards because they trust that the outcome reflects the independent judgment of the arbitrators they selected. This trust is rooted in party consent and in the expectation that the tribunal itself will evaluate evidence and formulate legal reasoning. Shadow adjudication disrupts this foundation by introducing an undisclosed actor into the deliberative process. Even where the tribunal formally approves the reasoning, the diffusion of intellectual authorship weakens the relationship between consent and adjudication. The problem therefore extends beyond formal delegation and concerns the perceptible authorship of the award itself. Where analytical contributions remain opaque, parties are deprived of the opportunity to engage with the reasoning underlying the award, thereby weakening confidence in arbitration as a consensual dispute resolution mechanism.

To deal with this risk, it is not necessary to remove arbitral secretaries but create a set of principles of regulation. Functional differentiation is the beginning point. Organisational and logistical work e.g. document management, scheduling and formatting could be outsourced since it would not impact content. In comparison, non-delegable aspects of the arbitral mandate comprise legal analysis, evidence assessment, formulation of findings and substantive reasoning.

Procedural safeguards need to be provided to support functional limits. This proposed role by the secretary should be given during the appointment period so as to have informed consent. The tribunal ought to keep a documented list of duties done as a component of the procedural file to allow it to deal with the evidentiary gap that prevents challenges on excessive delegation. The parties should also not lose a literal right to have an objection to certain functions without losing

control over the adjudicatory structure. These provisions change the secretarial support to an open and responsible procedural process and not a non-traceable managerial habit.

Conclusion

The growing prominence of arbitral secretaries is a problem, as it underscores the inherent tension between administrative efficiency and adjudicatory legitimacy, but also demonstrates the complexity of the procedure and time constraints of modern arbitration. This article has asserted that, absence of a principled distinction between administrative assistance and intellectual choice is the primary problem, and not the presence of secretarial assistance. The personal mandate of the tribunal is threatened, and the epistemic basis of arbitral authority is undermined when the secretarial engages in determination of evidence, or the formulation of legal reasoning.

The constrainability of present-day institutional policy advice and the normative silence of the Indian statutory system is exposed through the conceptualization of this threat as shadow adjudication. The paradigm of functionality which is founded on meaningful party control, demanded transparency, job distinction, and responsibility which is recorded in documents offers a rational manner of ensuring efficiency without compromising legitimacy. Finally, arbitration has its strength in the belief of parties in a neutral decision of the tribunal. To preserve this trust, it is recommended that the adjudicatory power should be transparent, personal and confined to persons nominated by the parties to settle their dispute.

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EMERGENCY ARBITRATION FOR CRYPTO ASSETS IN INDIA UNDER THE SHADOW OF PMLA

AUTHORS

Ms. Kashish Singhvi
II Year, Rajiv Gandhi National University of Law

Ms. Raima Singh
II Year, Rajiv Gandhi National University of Law

Introduction

Cryptocurrency disputes reveal a huge difference in how disputes are resolved between digital markets and traditional dispute resolution settings. Cryptocurrency values fluctuate within hours and can be moved irreversibly amongst blockchain networks within a matter of minutes.[1] However, the conventional arbitration method is much slower and usually unfolds over months, which requires time to establish the tribunal; exchange pleadings, and file interim applications to grant relief. By then, the asset may have doubled in value, collapsed, or disappeared across wallets.

With the advent of emergency arbitration, it seems there may be a way to resolve cryptocurrency disputes more quickly, as the emergency arbitrator is appointed by the institution within days and can provide urgent interim relief within the same timeframe.[2]

However, in India, this promise runs against regulatory and practical limits. The Enforcement Directorate's ["**ED**"] expansive attachment powers under the Prevention of Money Laundering Act, 2002 ["**PMLA**"],[3] combined with the voluntary nature of exchange compliance, raise a critical question: can emergency arbitration meaningfully preserve crypto assets?

[1] Reserve Bank of India, *Financial Stability Report* (June 2024) 45-46; Joseph Bonneau and others, 'SoK: Research Perspectives and Challenges for Bitcoin and Cryptocurrencies' (2015) IEEE 104-121.
[2] Singapore International Arbitration Centre (SIAC) Arbitration Rules 2016, sch 1 paras 3, 7; International Chamber of Commerce (ICC) Arbitration Rules 2021, app V arts 2(1), 6(4).
[3] Ministry of Finance (Department of Revenue), 'Prevention of Money-laundering (Maintenance of Records) Amendment Rules 2023', SO 1072(E) (7 March 2023) (India).

This article argues that while emergency arbitration is structurally well-suited for resolving disputes arising from cryptocurrencies, the lack of targeted coordination leaves it operationally weak.

Why Crypto Needs Emergency Relief?

Crypto disputes often involve exchange freezes (post hack, as with WazirX), investment fraud, smart contract exploits, or custody battles over private keys. In every scenario, the underlying asset can be moved irrevocably across borders within minutes. These make time the critical variable. The inherent characteristics of virtual assets, which are volatility and irreversibility, create an urgent need for interim relief that conventional arbitration, with its months-long timelines, cannot provide. This is how crypto disputes differ from traditional commercial disputes because, here, time is not only important, but everything.

The value of cryptocurrencies or Virtual Digital Assets fluctuates considerably within a short period of time, frequently rendering delayed relief futile. For instance, Bitcoin was traded at approximately $75000 in February 2024, decreased to $63,000 by May 2024, and reached $100,000 by December 2024.[4] This volatility creates a distinct legal problem for arbitration. If a tribunal takes three months to grant interim relief, the value of the frozen crypto assets may have changed by 30–40% in either direction. Consequently, a final award calculated on the asset's value at the time of filing becomes inherently inequitable, the claimant may receive a windfall or a fraction of the actual loss, depending on market movements. Moreover, the legal standard for granting interim relief under Section 9 or Section 17 of the Arbitration and Conciliation Act 1996 ["**Arbitration Act**"] requires showing irreparable harm. Price swings of this magnitude, occurring while the tribunal deliberates, arguably constitute irreparable harm because no subsequent monetary award can restore the parties to their original position. The volatility thus transforms what appears as a commercial risk into a procedural injustice that conventional arbitral timelines cannot address. In contrast to traditional banking systems, where wire transfers can be stopped before completion, or court orders can freeze accounts mid-transaction, blockchain transactions achieve finality within minutes. Once a cryptocurrency transaction is completed and received by the intended wallet and confirmed on the blockchain, the transaction is irreversible. There is no "*undo*" function, no intermediary bank that can reverse the transfer, and no technical mechanism to retrieve funds unilaterally. If the crypto moves during the

[4] John Schmidt and Julius Mansa, 'Bitcoin's Price History' (*Investopedia*, 12 February 2025) <https://www.investopedia.com/articles/forex/121815/bitcoins-price-history.asp#toc-2024-price-history> accessed 28 February 2026.

pendency of arbitration, the tribunal's final award may be nothing more than words on paper, because there is nothing left in the wallet.

This concern is sometimes dismissed on the ground that tribunals value awards as on the date of institution and compute interest thereafter, which theoretically shields the claimant from subsequent price swings. But that only solves the numbers' problem, not the deeper one. The real danger is not that the figures will look different by the time the award is passed, it is that there will be nothing left to attach. A decree against an empty wallet is not made fair by the correct valuation date; it is simply unenforceable.

Order XXI of the Code of Civil Procedure does provide a decree-holder with recovery options beyond the specific asset,[5] including proceedings against the personal assets of directors, and in ordinary commercial disputes this is a reasonable fallback. Crypto disputes are different. The respondents here are typically offshore exchanges, pseudonymous wallet holders, or foreign custodians with no traceable presence in Indian jurisdiction. Personal liability is difficult to establish and even harder to enforce against such parties. Once the wallet is emptied, there is genuinely nothing left for the execution machinery to work with.

Therefore, crypto's rapid nature makes typical institutional arbitration timelines structurally incompatible. Notice of arbitration (typically 30 days for response), constitution of tribunal (typically 45-60 days), preliminary hearing (typically 30 days), and hearing of interim application (another 30 days) each take up substantial time and delay the issuance of relief.

It is here that emergency arbitration may come into the picture. Emergency arbitration was specifically designed for situations where "justice delayed" becomes "justice denied". Under the Singapore International Arbitration Centre ["**SIAC**"] Rules, once an application is filed, an emergency arbitrator must be appointed within one working day, and the decision must be made within 14 days.[6] The International Chamber of Commerce ["**ICC**"] Rules provide for similar timelines: appointment within two days, order within 15 days.[7] A shrinking timeline from months to days theoretically aligns with cryptocurrency's operational speed, offering a procedure that matches the speed at which the assets actually move.

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[5] Code of Civil Procedure 1908, O XXI.

[6] Singapore International Arbitration Centre, *SIAC Arbitration Rules 2016* (6th edn, 1 August 2016) Schedule 1 paras 3, 7 <https://siac.org.sg/wp-content/uploads/2022/06/SIAC-Rules-2016-English_28-Feb-2017.pdf\> accessed 28 February 2026.

[7] International Chamber of Commerce, *ICC Arbitration Rules* (1 January 2021) app V arts 2(1), 6(4) <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/> accessed 28 February 2026.

The obvious pushback here is that 14 days is still far too long when assets can vanish across wallets within minutes. That concern is fair, but the pause is not meant to stand alone. It works together with the escrow proposal in the conclusion: once an application is filed, the assets are already locked in a tribunal-controlled multi-signature wallet. The 14 days is not a window of exposure but a coordination period during which the ED holds off precisely because the assets are secured. Both recommendations depend on each other, and reading either in isolation understates what the combined mechanism is designed to do. The next question, therefore, is how this mechanism fits into the Indian legal framework, and whether it truly delivers on this promise in practice.

Emergency Arbitration in the Indian Framework

Emergency arbitration allows parties to seek urgent interim relief before a full arbitral tribunal is constituted. Under rules such as SIAC and ICC, an emergency arbitrator is appointed within 24 hours and is expected to issue an interim order within a few days, after which the regular tribunal can confirm, vary, or revoke that order.

Before moving further, a structural gap in this mechanism deserves acknowledgement. Emergency arbitration exists only under institutional rules and has no default standing under the Arbitration Act.[8] Parties with bare ad hoc arbitration clauses, which cover a large share of domestic crypto disputes involving retail participants and informally drafted contracts, cannot access it at all. The very disputes most likely to involve volatile assets and vulnerable parties are also the ones least likely to have opted into an institutional framework.

Up until recently, the validity and enforceability of emergency arbitration in India were unclear. Several divergent High Court decisions, notably *Raffles Design International India Pvt. Ltd. v Educomp Professional Education Ltd.*,[9] and *Ashwani Minda v U-Shin Ltd.*,[10] were due to disagreement among the judges whether an emergency arbitrator can be considered an 'arbitral tribunal' pursuant to Section 2(1)(d) of the Arbitration Act.[11] This controversy has now been conclusively settled by the Supreme Court in *Amazon.com NV Investment Holdings LLC v Future Retail Ltd.* ["**Amazon.com**"],[12] wherein it was recognised that the emergency arbitrator falls squarely within the statutory definition. Accordingly, emergency awards are now enforceable as interim measures

[8] Arbitration and Conciliation Act 1996, s 2(1)(d).
[9] *Raffles Design International India (P) Ltd. v Educomp Professional Education Ltd.* [2016] SCC OnLine Del 5521 [48].
[10] *Ashwani Minda v U-Shin Ltd.* [2020] SCC OnLine SC 1123 [33]-[39].
[11] Arbitration and Conciliation Act 1996, s 2(1)(d).
[12] *Amazon.com NV Investment Holdings LLC v Future Retail Ltd & Ors* (2021) 18 SCC 338, [52]-[55].

of protection under Section 17(2) of the Arbitration Act. In clarifying its position on this issue, the Supreme Court confirmed that emergency arbitration will be governed by principles of natural justice but did not dilute its enforceable status. It is now clear that emergency arbitration operates within, and not outside the scope of the Indian statutory framework.

Establishing that emergency arbitration is enforceable is only half the battle. For an emergency arbitrator to preserve, freeze, or protect crypto assets, those assets must first be recognised as capable of being held as property, otherwise there is nothing tangible for the interim order to attach to. The recognition of cryptocurrency as property further strengthens the legal basis of the concept. In *Rhutikumari v Zanmai Labs Pvt. Ltd.* ["**Rhutikumari**"],[13] the Court found that virtual digital assets constitute "property" that is protected by Article 300A of the Constitution and is capable of being held in trust. As a result, if crypto is being held as property, it can be preserved, frozen, or protected using interim measures. Moreover, the Court relied upon the ruling in *PASL Wind Solutions Pvt. Ltd. v GE Power Conversion India Pvt. Ltd.*,[14] whereby it reaffirmed that Indian courts can grant Section 9 relief to support foreign-seated arbitrations where the assets are situated in India.

Collectively, these rulings establish the existence of a coherent legal regime: emergency arbitration is enforceable, and crypto assets can be legally protected. The framework exists. The pressing question, therefore, is not one of validity but of practical efficacy.

PMLA's Override of Emergency Orders

Emergency arbitration's legal validity, combined with cryptocurrency's recognition as property under Indian law, creates a theoretical basis for granting interim relief. However, that foundation crumbles when confronted with the ED's power under the PMLA. This section demonstrates how PMLA's implementation process sets aside emergency arbitral awards, rendering them operationally illogical.

Section 5 of PMLA provides the ED with substantial powers to provisionally attach any property considered as the "*proceeds of crime*" for a period not exceeding 180 days without any prior approval from the court.[15] The attachment is triggered unilaterally: the ED needs to only form a subjective "*reason to believe*" that the property represents proceeds of crime, and no court sanction

[13] *Rhutikumari v Zanmai Labs Pvt Ltd* (2025) 1 MLJ 385 (Mad HC) [42]-[45].
[14] *PASL Wind Solutions Pvt Ltd v GE Power Conversion India Pvt Ltd* (2021) 7 SCC 1.
[15] Prevention of Money Laundering Act 2002, s 5.

is required at the point of attachment.[16] Once effected, the ED must file a complaint before the Adjudicating Authority within 30 days, under Section 5(5).[17] The Adjudicating Authority then has a further period to confirm or revoke the attachment under Section 8,[18] a process that can run concurrently with and entirely independently of any pending arbitration. The definition of "*property*" under Section 2(1)(v) of PMLA is broad, defining "*property*" to mean "*any property or assets of whatever description…tangible or intangible*",[19] wherever they may be. With the Ministry of Finance's notification in March 2023, notifying that activities involving virtual digital assets fall within the PMLA,[20] the ED now designates cryptocurrencies and other virtual digital assets as property subject to provisional attachment as well as "proceeds of crime" when associated with a scheduled offence(s). The intersection with emergency arbitration is most acute here. An emergency arbitrator may issue its interim order within 14 days under SIAC Rules well before the ED files its PMLA complaint. Even so, the two proceedings operate on distinct statutory tracks, and there is presently no clear procedural mechanism to coordinate the arbitral relief with the PMLA attachment process.

The ED's power under Section 5 of the PMLA has different implications than emergency arbitration. The emergency arbitrator's interim order conserving cryptocurrency assets, whether as an injunction or a status quo order, cannot constrain ED's actions because the attachment of property under Section 5 is not established by any judicial order; rather, it is a unilateral executive act that precedes judicial inspection. The Adjudicating Authority under PMLA only confirms attachment post facto, typically within 30 days. By that point, an emergency order to preserve assets is rendered irrelevant.

The important point is the sequencing. Emergency arbitral orders are issued after the dispute has arisen, and ED's attachment can precede, coincide with, or follow the arbitration. The timing of attachment does not create a duty for the ED to defer action.

Section 71 of PMLA contains a non-obstante clause; its provisions are to have an effect "*notwithstanding anything inconsistent therewith contained in any other law for the time being in force*".[21] This is not just an interpretation indicator but a statement of supremacy that PMLA has over all other

[16] Prevention of Money Laundering Act 2002, s 5(1).
[17] Prevention of Money Laundering Act 2002, s 5(5).
[18] Prevention of Money Laundering Act 2002, s 8.
[19] Prevention of Money Laundering Act 2002, s 2(1)(v).
[20] Ministry of Finance (Department of Revenue), 'Prevention of Money-laundering (Maintenance of Records) Amendment Rules 2023', SO 1072(E) (7 March 2023) (India).
[21] Prevention of Money Laundering Act 2002, s 71.

acts, including any arbitral award recognised by courts under Section 17 of the Arbitration Act,[22] which constitutes an "other law" for this purpose.

That said, simply invoking Section 71 does not fully close the argument. Indian courts have long applied the principle of *generalia specialibus non derogant*, under which a special law overrides a general one in its specific domain. PMLA is undeniably special law for money laundering offences, but the Supreme Court in *Bharat Aluminium Co. v Kaiser Aluminium Technical Service Inc.* treated the Arbitration Act as a self-contained code,[23] a characterisation courts have used to resist override by other legislation. If the Arbitration Act is treated as special law for arbitration, Section 71's non-obstante clause is not automatically decisive. The better view, given the criminal character of PMLA against the civil-commercial nature of arbitration, is that PMLA's supremacy holds in this conflict, but that conclusion needs to be argued, not assumed.

The Delhi High Court's decision in *Lata Yadav v Shivakriti Agro Pvt. Ltd.*[24] ["**Lata Yadav**"] tried to clarify the relationship between arbitration and PMLA proceedings. The court stated that pending criminal proceedings or provisional attachment under PMLA doesn't automatically render a dispute non-arbitrable, because PMLA relates to criminal proceeds, while arbitration is about resolving contractual disputes. Therefore, generally, these are two separate areas and can exist separately. Although this reasoning makes doctrinal sense, it does not take into account the practical impact, as the court only said that arbitration is "not barred", but it did not/was not able to say that any arbitration order will have precedence over the ED's attachments.

The *Lata Yadav* case provided means for arbitral proceedings to continue simultaneously along with PMLA proceedings, but without any real impact on the attached property/assets. An arbitral tribunal may hear evidence, assess the validity of the user's claim under the contract and issue a final award to the user that he is entitled to the cryptocurrency. However, the ED will not permit the release of the attached property until after the PMLA Adjudicating Authority's review process is completed to ensure that the attached property is not itself proceeds of crime.

The arbitral award thus becomes a "*paper victory*", legally enforceable in theory but practically useless. The PMLA-arbitration interface operates in a coordination vacuum. The ED is not obligated to give notice to arbitration panels before attachment of property, nor do arbitrators

[22] Arbitration and Conciliation Act 1996, s 17.
[23] *Bharat Aluminium Co v Kaiser Aluminium Technical Service Inc* (2012) 9 SCC 552.
[24] *Lata Yadav v Shivakriti Agro Pvt Ltd & Ors* [2025] SCC OnLine Del 4334.

have any procedural method available to them for appealing or contesting such attachment before the issuance of a final award.

The result is a dual reality: arbitration operates on a contractual timeline (interim relief in days, final award in months), while PMLA operates on a criminal investigation timeline (attachment for 180 days, adjudication over years). When these timelines clash over the same crypto assets, the emergency arbitrator's speed advantage, the very feature that makes it theoretically suitable for crypto disputes, becomes irrelevant. By the time the emergency order is issued, the ED attachment may already have occurred; even if not, the ED can attach subsequently and unilaterally override the arbitral directive. Even if one were to set PMLA aside, emergency arbitration still faces problems when it comes to actually enforcing orders, arising purely because of the limited powers of the arbitral tribunal and the way blockchain technology works.

Shortcomings in Enforcement Mechanisms

Although the PMLA override is currently temporarily bracketed out, there remains another debilitating problem with the practical enforcement of emergency arbitration orders between parties engaged in cryptocurrency: the lack of practical enforcement even though they are procedurally recognised. Such a gap between the theory of enforceability and the practicality of the same becomes abundantly visible once one asks a simple question: what happens after an emergency order is issued?

In *Amazon.com*,[25] the Supreme Court's decision resolved the formal debate over enforceability of emergency arbitrators as arbitral tribunals via Section 2(1)(d) of the Arbitration Act[26] and, therefore, as being subject to enforcement as an interim award under Section 17(2) of the Arbitration Act. Therefore, on paper, the Indian position provides a firm foundation for the enforcement of temporal arbitral awards as emergency orders are not alien concepts in a legal vacuum; they are embedded within the statutory framework.

Enforcement will not occur as a matter of choice under Section 17(2).[27] An emergency arbitrator is not empowered to possess contempt powers as exercised by courts under section 9,[28] read with the Contempt of Courts Act, 1971,[29] and hence, will not have the same tools available to

[25] *Amazon.com NV Investment Holdings LLC v Future Retail Ltd & Ors* (2021) 18 SCC 338 [52]-[55].
[26] Arbitration and Conciliation Act 1996, s 2(1)(d).
[27] Arbitration and Conciliation Act 1996, s 17(2).
[28] Arbitration and Conciliation Act 1996, s 9.
[29] Contempt of Courts Act 1971.

them as the courts exercise. Although the order is binding in principle, it is a direction rather than a decree. The aggrieved party must still seek assistance from the courts for enforcement if the other party refuses to comply. In the volatile and highly unstable world of cryptocurrency, this procedural step has the potential to neutralise the urgency of the mechanism that was designed to protect.

Hence, compliance operates as more of a commercial incentive and less from a position of authority. Domestic exchanges, like those of WazirX and CoinDCX, have the choice to comply with the emergency orders issued by institutional rules to maintain their relationship and preserve professional legitimacy, which helps them secure future business opportunities. Foreign exchanges, such as those of Kraken and Binance, are less exposed to Indian enforcement and therefore less inclined to prioritise such orders unless expressly directed by their courts. The events surrounding the hack of WazirX and its aftermath clearly illustrated the entire hierarchy of compliance; cooperation occurred following an order of a court rather than from an order of an arbitral tribunal. In effect, the emergency award is more of a persuasive mechanism than a coercive authority.

Blockchain makes it difficult to get around the arbitrator's obstacles and is the second barrier to architecture. An emergency arbitrator can freeze the wallet address, but the crypto assets can be rapidly dispersed and spread out in different intermediate wallets, sent through mixers or converted to privacy tokens before the freeze order can be enforced.[30] Because of this, the assets may not be traceable to their original form. Arbitrators cannot easily obtain forensic evidence and the lack of jurisdiction to enforce or issue orders globally. All of these restrictions are even worse in cross-border situations in which an investor from India has his crypto assets held in an offshore custodian such as Zettai Pte. Ltd., and the arbitration is seated outside of India. The New York Convention does not provide uniformity in interim enforcement, so assets may be left to pay under jurisdictional limbo.[31] Thus, without PMLA intervention, the use of emergency arbitration in crypto disputes will continue to face systematic challenges and enforceability issues.

Conclusion

[30] Antonio Muñoz Triviño, 'How Digital Assets Are Located, Frozen and Protected' (*RRYP Global*, 28 November 2025) <https://rrypglobal.com/en/precautionary-measures--cryptocurrencies--NTFS--international-litigation/> accessed on 28 February 2026.

[31] Danrivanto Budhijanto, Prita Amalia and Naufal Ahmad Shiddiq, 'Blockchain Arbitration: Roadmap to Recognition and Enforcement of Arbitral Award' (2025) 11(1) Cogent Social Sciences.

In crypto disputes, time is everything. Volatility, irreversibility and rapid asset movement render ordinary arbitral timelines meaningless. Emergency arbitration promised a solution by compressing relief from months into days. The recognition of cryptocurrency as property in *Rhutikumari* seemed to complete the picture.

On closer look, this story does not hold. Once PMLA is triggered, the Enforcement Directorate's power to attach crypto as "*proceeds of crime*", backed by Section 71's non-obstante clause, can sideline emergency orders. Even where PMLA is not in play, emergency arbitrators depend on exchanges' voluntary compliance and cannot prevent assets from being scattered, mixed or moved offshore in minutes.

The role of emergency arbitration in Indian crypto disputes is far more fragile than *Amazon.com*, and *Rhutikumari* suggests. Each of these operational weaknesses can be addressed by rethinking the remedy, sequencing the legal regimes, and using regulatory licencing power. Three targeted interventions can make it matter.

First, instead of relying on unenforceable freeze orders, emergency arbitrators should order disputed crypto into a multi-signature escrow wallet (two keys: one held by the tribunal, the other by a Securities and Exchange Board of India ["**SEBI**"] registered exchange). If the respondent refuses to comply, the exchange, as a condition of its licence, automatically transfers the assets within hours.

Second, a surgical amendment to Section 5 of PMLA should introduce a 14-day pause on provisional attachment where an emergency arbitration application has been filed with SIAC or ICC. The ED retains full attachment powers after fourteen days, the exact window within which an emergency arbitrator must issue an order. This does not weaken PMLA; it merely sequences the two regimes so they do not collide blindly.

The harder question is why the ED would ever accept this. Speed is the whole point of provisional attachment under PMLA, and any pause runs against how the statute works in practice. The answer is that this does not ask for voluntary restraint but for a narrow statutory amendment making the pause mandatory. More importantly, the ED's core concern, that the assets will disappear during any delay, is answered by the escrow mechanism. If the assets are already locked in a tribunal-controlled wallet, the ED loses nothing by waiting fourteen days and retains full attachment powers once that window closes, with the assets still intact.

Third, the SEBI should mandate, as a condition of every Virtual Asset Service Provider licence, that registered exchanges must automatically freeze any wallet identified in a certified emergency arbitral order for at least 72 hours, turning compliance from a commercial favour into a binding obligation. For offshore exchanges not subject to SEBI's licence, bilateral cooperation agreements would be required as a complementary track.

These recommendations are not utopian. They use existing levers, arbitral institutional rules, a narrow legislative amendment, and SEBI's licencing power to close the gaps. Emergency arbitration can still be made to matter in Indian crypto disputes, but only if we stop celebrating the framework and start fixing its operational fault lines.

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BEYOND COURTS AND TRIBUNALS: EVALUATING THE BANKING OMBUDSMAN MECHANISM IN INDIA UNDER REGULATORY ADR

AUTHORS

Ms. Ananya Shrivastava

V Year, Symbiosis Law School Pune

Introduction

The Indian justice system is burdened with challenges such as excessive delays, procedural complexities and the increasing costs of litigation, especially in areas of civil and regulatory disputes. Various judicial and policy-based interventions introduced to remedy this remain fruitless as the Indian courts and tribunals still remain overburdened.[1] Various empirical studies, Law Commission reports, and judicial observations highlight that these problems dilute the remedial value and public confidence in the legal systems.[2] This has necessitated the development of alternative institutional frameworks that deliver timely dispute resolution.

In the face of such challenges, alternative modes of Dispute Resolution become a vital part of modern-day legal systems, which present the parties with the option of using flexible, informal, and non-confrontational methods for settling their disputes. The classical pillars of Alternative Dispute Resolution ["**ADR**"] are still essential, but during the last few years, the emergence of regulatory and sector-specific ADR mechanisms has been increasingly acknowledged. The Ombudsman mechanism has carved out a unique position within this expanded sphere of new-age ADR methods, where it assumes the role of a grievance-centric, institutional, and regulatory form of dispute resolution. This mechanism was initially meant to address the maladministration by public authorities, but it has not evolved into multiple sector-specific forms, including the

[1] Law Commission of India, *Arrears and Backlog: Creating Additional Judicial (Wo)manpower* (Report No 245, 2014).
[2] Jayanth K Krishnan and Marc Galanter, 'Bread for the Poor: Access to Justice and the Rights of the Needy in India' (2004) 55 Hastings L. J. 789.

Banking Ombudsman ["**BO**"], Insurance Ombudsman, and Pension Ombudsman, among other industry-specific frameworks.[3]

Out of these, the BO stands out for its role in the Indian banking industry with its size, intricacies, and systemic relevance. Customer disputes have quadrupled in size and case difficulty concurrently with the advent of digital banking, financial inclusion projects, and outreach to large numbers of consumers. The Reserve Bank of India-managed [**"RBI"**] BO scheme can be regarded as one of the most widely used and standardised in the Indian context Ombudsman mechanisms.[4] This paper analyses the Ombudsman system in India as a non-judicial and tribunal regulatory ADR. It mainly takes the BO as a representative case study concerning the effectiveness, limitations, and future potential of the Ombudsman institution in the changing ADR scenario of India.

Thesis statement

The thesis proposed by this essay is that while the Ombudsman mechanism in India signifies an exponential shift towards the institutional and regulatory form of ADR, which goes beyond courts and tribunals, the effectiveness of the same remains uneven across sectors. By taking the BO as a representative case study, this essay argues that despite its accessibility and consumer-centric nature, the structural limitation of the jurisdictional scope, enforcement power, institutional independence, and lack of awareness prohibit it from being a completely effective form of formal adjudication in the evolving framework of ADR in India.

Methodology

This study adopts a policy-oriented and doctrinal method of research to assess the BO mechanism as a regulatory ADR in India. The basis of analysis lies in the study of statutory provision, the RBI's regulatory framework, judicial decisions, academic literature and policy reports pertaining to consumer dispute resolution and financial regulation.

The essay evaluates the BO through four parameters, which are accessibility, procedural efficiency, institutional independence, and effectiveness of dispute resolution. It also draws limited comparative insights from international ombudsman models to identify potential reforms for the

[3] Graham Greenleaf and others, 'Challenges for Free Access to Law in a Multi-Jurisdictional Developing Country: Building the Legal Information Institute of India' (2011) University of Edinburgh, School of Law Working Paper Series No. 2011/43 < https://dx.doi.org/10.2139/ssrn.1975760> accessed 1 April 2026.
[4] Karan Gulati and Renuka Sane, 'Grievance Redress by Courts in Consumer Finance Disputes' (2021) NIPFP Working Paper No. 331 <https://dx.doi.org/10.2139/ssrn.3797435> accessed 1 April 2026.

Indian framework. The paper is primarily doctrinal in nature and does not rely on empirical research.

Analysis

Conceptual Foundations

The Ombudsman institution has its origins in an accountability system that was set up to deal with grievances regarding poor management through a forum that was independent and informal.[5] In India, the concept has been modified to deal with a great number of small disputes in the heavily regulated sector, thus showing the government policy choice of shifting consumer complaints from the already overstressed courts to specialised mechanisms that assure quick and easy remedies without formal trials.[6] The aforementioned characteristics classify it as ADR, specifically characterised by its non-adversarial nature, procedural informality, minimal judicial intervention, and an emphasis on equitable resolution rather than strict adherence to the law. Advocating for a regulatory ADR model, it is, however, distinct from private mechanisms, including arbitration, which operate within the statutory framework but remain aligned with the primary ADR objectives of efficiency, accessibility, and low cost, particularly for individual customers.

Legal and Institutional Framework of the Banking Ombudsman

The BO derives its authority from the regulatory powers of the RBI under the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949.[7] The Integrated Ombudsman Scheme, 2021, ["**2021 Scheme**"] has been a major step towards the normalisation of regulation by incorporating various sectoral ombudsman schemes into one cross-sectoral framework and enhancing the Ombudsman's position as the main and most approachable financial dispute resolution method in India's regulatory ADR infrastructure.[8] The extent of the RBI Ombudsman's approachability is evident in cases such as those of *Balla Rama Rao v Office of the Banking Ombudsman*,[9] and *Sarwar Raza v Ombudsman Reserve Bank of India*.[10] The BO procedure is characterised by informality, a non-adversarial nature, and low costs, which means that complainants do not have

[5] Kaviyarasu K, 'A Study on Origin and Development of Ombudsman in India' (2024) 4(3) Indian J. Legal Rev. 524.
[6] Carrie Menkel-Meadow, 'The Many Ways of Mediation: The Transformation of Traditions, Ideologies, Paradigms, and Practices' (1995) 11 Negotiation J. 217.
[7] Banking Regulation Act 1949, s 35A.
[8] Reserve Bank – Integrated Ombudsman Scheme 2021, RBI/2021-22/125 (12 November 2021) <https://rbidocs.rbi.org.in/rdocs/content/pdfs/RBIOS2021_amendments05082022.pdf> accessed 1 April 2025.
[9] *Balla Rama Rao v Office of the Banking Ombudsman* 2003 117 Comp Cas 201 AP.
[10] *Sarwar Raza v Ombudsman Reserve Bank of India* [2023] SCC OnLine Del 1111.

to spend money on lawyers and that issues can be resolved through conciliation, settlement, or recommendation.[11] The absence of strict procedural and evidentiary rules, combined with a principles-based approach that emphasises fairness and protects consumers, makes the BO a viable institutional alternative to litigating in court.[12]

Accessibility and Procedural Features of the Banking Ombudsman

The 2021 Scheme has made the BO much easier to access, thanks to the introduction of a centralised, technology-based grievance redressal system. According to the RBI's reports, the vast majority of complaints are now lodged through electronic modes, thus significantly reducing the barriers to access for courts, arbitration, and consumer forums due to procedures and location.[13] Nevertheless, differences in the levels of consumer awareness and digital literacy still prevent some user groups from having full access to the system. The BO provides a relatively quicker and free-of-charge resolution of banking disputes as compared to civil litigation and consumer courts, with RBI Annual Reports showing the disposal of several lakh complaints annually.

The lack of court fees and legal representation fees solidifies its role as an inexpensive ADR method for minor claims, but at times, the rise in the number of complaints has put pressure on the institutions' capacity and has influenced the time of disposal. Meanwhile, the imbalance of power between banks and individual consumers continues to affect the outcome.[14] Unlike courts and arbitral tribunals, the BO is not bound by the Code of Civil Procedure, 1908,[15] or the Indian Evidence Act, 1872.[16] Disputes are being resolved in a flexible and practical manner. On the one hand, this freedom of procedure makes it easier for people to access the system and for the process to be quick, but on the other hand, it is a source of inconsistency and unpredictability issues when there are more and more complicated complaints.

Assessing the Effectiveness of the Banking Ombudsman

The BO acted as a regulatory ADR mechanism, and its effectiveness was determined by the resolution of a large number of consumer complaints through a process that was both structured

[11] Reserve Bank of India, 'Integrated Ombudsman Scheme' (2021) ch IV.
[12] *Canara Bank v P. Selathal* (2020) 13 SCC 143.
[13] Press Trust of India, 'Ombudsman Disposed of 95 pc Complaints Received in FY24' The Economic Times (2025) <https://economictimes.indiatimes.com/industry/banking/finance/banking/ombudsman-disposed-of-95-pc-complaints-received-in-fy24/articleshow/117531532.cms?from=mdr>.
[14] Bibekananda Panda, 'Asymmetric Information and Market Failure in Bank-NBFC Co-Lending Model' (2023) Indian Institute of Banking & Finance.
[15] Code of Civil Procedure, 1908.
[16] The Indian Evidence Act, 1872.

and informal. The 2021 Scheme, which superseded the previous scheme, unified the various siloed sectoral mechanisms into a single integrated system with a common portal and a Centralised Receipt and Processing Centre, thereby making the entire process more efficient and less time-consuming. By this integration, the Ombudsman became a more powerful force in resolving banking disputes rather than being a secondary alternative to the courts. The role of a BO primarily includes handling of clerical errors in ordinary banking services, such as digital payment failures, credit reporting errors, and extremely long waits for grievance resolution. The Draft Reserve Bank - Ombudsman Scheme, 2025 ["**2025 Scheme**"][17] mandates expanding coverage to include Non-Banking Financial Companies, banks, credit information companies and payment system participants, which highlights the complex intricacies of the relationships between financial consumers. The reliance on summarising and mediation processes makes it very appropriate for conflicts that are frequent and of low value, which are not very suitable for resolution by courts or consumer forums.

The powers of the Ombudsman for remediation add to its effectiveness as well. The 2025 Scheme limits the amount of money that can be awarded as compensation for consequential loss and mental anguish to ₹30 lakh and ₹3 lakh, respectively, but still allows claims of any amount to be brought for examination. Its utility in high-stakes commercial disputes is nevertheless limited, and it still remains in line with its consumer-protection aim as well as the principles of ADR, which are based on fairness. The requirement of the complainant's acceptance guarantees the validity of the process; the consent component is kept. The BO not only settles single disputes but also carries out a systemic regulatory role that increases consumer trust and accountability in the banking industry as a whole.[18] The annual reports by the RBI and the integration of Ombudsman's findings into the supervisory process have made the mechanism a remedial one as well as a preventive. The Ombudsman, in this case, is the regulatory intelligence who is pinpointing the recurring service failures and compliance gaps in the process of evolving India's regulatory ADR framework.[19]

Structural Limitations of the Banking Ombudsman

The BO, although it is a regulatory ADR mechanism of great utility, is still mostly incapable of winding up complex or high-value disputes because of the capped compensation and summary

[17] Reserve Bank of India, *Draft Reserve Bank – Ombudsman Scheme, 2025* (7 October 2025) <https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=4749> accessed 1 April 2026.
[18] Iain Ramsay, 'The Alternative Consumer Credit Market and Financial Sector: Regulatory Issues and Approaches' (2001) 35 Canadian Bus. L. J. 325.
[19] Julia Black, 'Proceduralising Regulation: Part I' (2000) 20 Oxford J. Legal Stud. 597.

procedures, thus referring such disputes to courts or arbitration for complete remedy. The complainant's option to accept the enforceability of the award, although consistent with the principles of ADR, reduces the finality of the process and possibly lowers the deterrent effect, hence allowing it to be viewed as a mediator rather than a conclusive venue. Increasing numbers of complaints have also revealed the limitations of the capacity, sometimes compromising the promised quick resolution that is the main argument for ADR's legitimacy.

Moreover, the placement of the Ombudsman within the RBI has raised questions about its perceived independence, especially in cases involving regulatory supervision. Little consumer awareness has been a persistent gap that has made it even more difficult for people to make effective use of services, thus highlighting the need for continuous institutional and regulatory reforms to consolidate the Ombudsman's position in India's regulatory framework for ADR.

The system needs a new statutory framework which should operate independently from regulations by following the United Kingdom Financial Ombudsman Service model.[20] The Ombudsman needs structural insulation from the Reserve Bank of India administrative system because this will protect institutional impartiality while reducing actual and perceived biases in regulatory enforcement matters. The framework needs to move beyond its current summary procedure because it requires a multi-tiered adjudicatory system, which will establish special benches to handle valuable and complex legal cases while implementing new financial limits that match current inflation and digital transaction patterns. The scheme needs two enhancements to solve its finality problem, which should include cost-shifting mechanisms and reasoned rejection penalties against banks that fail to win their appeal awards. AI-based Online Dispute Resolution tools will help the Ombudsman system in two ways because they enable automated triage to solve capacity issues and provide multilingual digital systems to educate people about their rights, which will establish the Ombudsman as a strong foundation of India's financial justice system.

Conclusion

The BO is a good example of ADR to handle consumer disputes that cannot be solved with formal adjudication, which has poor regulatory interference. The whole concept is designed in a way that it is very easy to use, has fewer formalities, and is very quick; thus, it can very well handle the cases of ordinary banking complaints while at the same time providing regulatory information on the issues that are causing the banks to fail in their service towards the customers. Therefore, the

[20] Niamh Moloney, *EU Securities and Financial Markets Regulation* (3rd edn, OUP 2014).

Ombudsman stands between the dispute resolution and the financial regulation. On the other hand, the limitations of the nature of remedy that can be provided, the matter of enforceability, the institution's capacity, and the perceived independence, all these factors together mature the Ombudsman's ability to act as a complete alternative to the courts. In spite of the same, these gradual institutional reforms to tackle these issues, enhanced transparency and constant consumer education would make the Ombudsman more reliable and a permanent component of India's changing regulatory dispute resolution system.

The BO system requires development beyond its current function of resolving disputes through proper adjudication. The Ombudsman office in India needs to establish its digital payment systems to handle the increasing digital payment volume, which comes with the adoption of fintech solutions. The institution will use big data analytics to analyse recurring complaint patterns, which will help create real-time behavioural advisories for banks to resolve potential disputes before they turn into official complaints. The Ombudsman system will gain the new role of building consumer trust, which will function as its main responsibility. The system will reach its full development when it can assist the RBI with its regulatory framework development, which needs to keep up with current technological developments. The Ombudsman office will become an active force in India's financial system by using its protective methods to safeguard consumer rights while working together with ongoing technological advancements.

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BETWEEN SETTLEMENT AND AWARD: JUDICIAL RESTRAINT, CORPORATE AUTHORITY AND FINALITY IN INTERNATIONAL ARBITRATION — A CRITICAL ANALYSIS OF LT V RV

AUTHORS

Mr. Mohak Chaudhary
V Year, Gujarat National Law University

Ms. Anusha Dixit
II Year, Gujarat National Law University

Introduction

International arbitration has become the most favourable way of resolving complicated disputes with cross-border implications due to its adaptability, objectivity, and enforceability within the international system developed through the United Nations Commission on International Trade Law ["**UNCITRAL**"] Model Law and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ["**New York Convention**"].[1] The concept of 'arbitral award' serves as a cornerstone in the efficiency of this system. Nonetheless, the modern process of arbitration has become more and more hybrid in terms of final results obtained, being both substantial and procedural in nature. Some examples include incidents such as reaching of settlement agreements during arbitration procedures, procedural termination decisions, and awards resulting from consent of parties involved, which undermine the common definition of an 'arbitral award' and may have legal implications different from those generally provided.

The judgment in *LT v RV* represents a case study for understanding the changing dynamics in the domain of international arbitration.[2] In the given case, the issue concerned a situation where there were elements of multiple jurisdictions, insolvency and corporate restructuring, as well as efforts towards settlement while the arbitration was still underway. Thus, the Hong Kong Special Administrative Region ["**SARS**"] High Court was called upon to determine what legal status should be attributed to the settlement agreement entered into during the course of arbitration and the procedural order terminating it before a substantive arbitral award could have been duly issued in respect of the settlement reached. This problem became especially pertinent, taking into

[1] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.
[2] *LT v RV* (2026) HKCFI 1280.

consideration that in the given case, it involved a certain degree of ambiguity with regard to one of the parties' authority and the orders of restructuring in a different court altogether.

From a regime perspective, the ruling becomes important since it delineates the demarcation line between the arbitral body's authority and its jurisdiction by the courts, while further emphasising the rule that post-arbitration proceedings pertain solely to the final arbitral award rather than procedural ones. Additionally, the ruling underscores an increasing trend of the interplay between the law of arbitration and corporate governance within the context of troubled enterprises and their restructuring plans. This can impact the legitimacy of the compromise agreement reached by the corporation through internal approval procedures.

The present article critically examines the judgment in *LT v RV,* situating it within the broader international arbitration regime and assessing its implications for contemporary arbitration practice, particularly in relation to finality of proceedings, authority of corporate actors, and the structured limits of court intervention. [3]

Factual Summary of the Case:

The issue came up when LT, a cryptocurrency trading platform registered in Seychelles, had a disagreement with RV, an individual and the company's major client trading on the platform. In 2022, the cryptocurrency market globally crashed, leading to acute financial distress for LT. The company put a stop to the withdrawal process after it went insolvent. In June 2022, RV sued LT through arbitration at the Hong Kong International Arbitration Centre ["**HKIAC**"] to recover the amount of about USD 249 million because of the breaches by LT of their agreement. In return, LT filed its own arbitration suit against RV with counterclaims for losses worth USD 84 million.

In the same period, LT commenced proceedings for restructuring before the Supreme Court of the Seychelles owing to its financial difficulties. In particular, the company put forward a scheme of arrangement for restructuring purposes and optimising recovery on behalf of the creditors. According to the plan, all claims of LT in the arbitration would be assigned to a separate special purpose vehicle, while recovery entitlements and equity stakes would be allocated to creditors. After obtaining the consent of a majority of creditors, the scheme was accepted by the court in March 2023. As a result of adopting the new scheme, the company made certain amendments to

[3] *ibid.*

its constitutional documents, introducing a new governance system where all decisions related to the settlement of claims were to be approved by creditor-appointed directors.

On 24 August 2023, at the time when the arbitration and restructuring process was still in progress, a settlement agreement was made between LT and RV. This agreement, which was made on behalf of LT by ML, the existing sole director of the firm, envisaged a final and complete settlement on a "drop hands" basis in respect of all matters involved in the arbitration process, with each party waiving its respective claim and being responsible for its own costs. However, disputes later emerged in LT with regard to ML's competence to make such an agreement, considering the changed structure of governance of the firm. ML's actions were taken in haste and before the Seychelles court-ordered restructuring could take place. This was ignored by RV. On 28 August 2023, Procedural Order No. 7 ["**PO7**"] was made by the arbitral tribunal, and the proceedings were terminated without recording any settlement terms and issuing any substantive orders.

Analysis of the Case

The result of an arbitration proceeding, in any case, heavily relies on the wisdom of the tribunal and the expertise of its members. While submissions made by the parties ultimately form part of the award, they have to undergo scrutiny, which ultimately results in a substantive deliberation on the issues. However, it is not impossible that the award may leave important aspects undecided while terminating the proceedings before final determination of such issues, albeit on the request of the parties and leave gaps which may result in the questioning of the award's status.

This situation arose particularly in the instant case, where the final order passed was merely in the nature of a procedural order and not a substantive order, particularly with respect to the validity of the settlement agreement signed by the parties. The applicable law to this arbitration, which is based on model law, treats 'settlement agreement' as an award only if the parties request the agreement to be treated so.[4] However, as noted, the recorded final order PO7 specifically mentioned that:[5]

> *"44. (d) the tribunal does not rule on the merits of any claims or counterclaims presented in the present arbitration as the Parties have agreed that the Arbitration is to be terminated."* [6]

[4] Hong Kong International Arbitration Centre, *HKIAC Administered Arbitration Rules 2018*, art 37.2(a).
[5] *LT v RV* (2026) HKCFI 1280.
[6] *ibid.*

In this case, the order of the tribunal declaring that the proceedings are terminated on account of the settlement agreement would definitely cause some confusion as to whether the settlement agreement is considered equivalent to the award. Furthermore, the issue of determining the validity of the settlement agreement makes one wonder whether the form and content criteria, as mentioned in Article 31 of the model law have any relevance in this situation. [7]

In terms of balancing the interests from an arbitration regime point of view, the decision made by the Hong Kong SARS High Court is appreciable. The decision emphasises the concept of competence that is neither against arbitration nor expansive. This can be explained based on the structure of the Model Law and the current thinking whereby the intervention of courts is allowed only if there is permission in the statute or by the parties.[8] Additionally, the decision supports the prevailing trend whereby procedural preconditions or settlement mechanics cannot be disputed through jurisdictional challenges.

Court's Restraint Towards Classifying Settlement Agreement as an Award for Certain Purposes

In the Model Law system, the difference between "award" and "settlement agreement" is not one of legal formalism but instead constitutes one of the determining factors for whether enforcement and set-aside mechanisms along the lines of those contained in the New York Convention will apply.[9] It is evident from the decision of the Hong Kong court that PO7 was simply an action where the arbitral proceedings were ended by the tribunal together with the imposition of costs, without deciding the merits or recording the settlement as an "award."[10] Therefore, the settlement in PO7 lacks the characteristic "final determination" of an award.

This is an important matter in international commercial arbitration since there are more instances where the dispute has been settled by using multiple means, such as settlement of the dispute during arbitration proceedings, agreement on terms, orders for termination of procedure, or settlement minutes, which are then put before the arbitrator. This case illustrates the importance of being particular in the matter. If the parties want the settlement to enjoy the position of an award, then they have to make sure that the arbitrator has recorded the award in proper form as per the rules.

Protection of Finality Without Expanding Set-Aside Jurisdiction

[7] UNCITRAL Model Law on International Commercial Arbitration 1985, art 31.
[8] UNCITRAL Model Law on International Commercial Arbitration 1985, art 5.
[9] UNCITRAL Model Law on International Commercial Arbitration 1985.
[10] *LT v RV* (n 2).

Another issue is the refusal of the court to permit section 81 from undertaking what the text will not allow.[11] The setting aside of power under the Hong Kong legislation constitutes the only remedy available to challenge an award. The section cannot be employed as a means of enforcing control over every document generated during or around the process of arbitration. In this way, the decision avoids a prevalent trend in arbitration cases where attempts are made to relabel disputes over contracts or settlements as disputes over an award.[12]

It becomes important from an international perspective as well since the New York Convention and UNCITRAL Model Law both constitute award-based systems of arbitration. Although the Model Law was meant to apply to the entire process of arbitration, the system of its enforcement and challenge was created in such a way that the award remained at its heart. This particular position by the courts of Hong Kong can be viewed as one of the examples of the use of textual discipline.

Tribunal Autonomy and Boundary of Judicial Supervision

One of the crucial decisions made during the hearing was related to the proper balance between arbitral independence and judicial control. In this particular case, the arbitral tribunal decided to terminate the procedure since there were no terms for settlement to be recorded, and it refused to consider whether the settlement agreement was valid and whether the individuals had sufficient corporate powers. It serves as an example that arbitral tribunals are not always the proper place for collateral disputes.[13]

It is up to them to resolve the disputes brought before them. If the dispute turns into a matter of corporate power and restructuring approval and the use of an independent settlement instrument, then the boundary between arbitration and regular judicial process becomes more distinct.

Authority of the Signatory: Corporate Governance Now Sits Inside Arbitration Strategy

The most practical question addressed by the decision is that of the 'authority' of the director. It was held in this case that, upon the implementation of the restructuring proposal and the amended articles, there had been changes made in the internal control structure of the company, and that the director executing the settlement was no longer authorised to represent the company. The court rejected apparent authority on the facts, emphasising the difference in this case, a highly

[11] Hong Kong International Arbitration Centre, *HKIAC Administered Arbitration Rules 2018*, s 81.
[12] *C v D* (2021) HKCFI 1474.
[13] *Paul Smith Ltd v H & S International Holding Co. Inc.* (1991) 2 Lloyd's Rep 127.

unusual settlement of a major claim during a court-sanctioned restructuring, and other commercial acts in a company's usual business. [14]

This presents an important arbitration-related problem in our times owing to the increasing prevalence of troubled firms, creditor schemes, and international restructurings in arbitration matters. What this means for any arbitration practitioner is that the issue of authority cannot be treated merely as a correlated matter. In international arbitrations, the power of signature has become one of the factors to be considered in the management of arbitration risks, and in this regard, board approval, creditor approval, amendment of the articles, and restructuring orders could all be relevant.

The judge found that a reasonable person in the same position as the customer (RV) should have taken action to establish whether the creditors knew about the settlement and agreed to it, especially since the terms did not favour them. However, it was unreasonable and irrational for the customer not to inquire about it further, especially since the situation was "extraordinary and exceptional", considering the fact that the signatory to the document appeared to him to be a perjurer and a fraudster.[15]

Public policy is not a Free-Standing Merits Appeal

The case also reflects a larger international warning that public policy must not be used as a 'Free-Standing' merits appeal. The court did not invoke public policy to reassess the merit of the matter, but rather examined whether the settlement was validly executed and if proper authority conducted the matter. This is a much more restricted and justified application of the idea of public policy. At an international level, this issue is significant in light of the abuse of public policy in arbitral proceedings.

The Indian perspective is particularly helpful in this regard. Under Section 34 of the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"], grounds for annulment are quite restricted, and the law now states that public policy considerations should not allow for any merits-based review.[16] In *Ssangyong Engineering & Construction Co. Ltd. v. NHAI,* the Supreme Court of India has made it clear that after 2015, the concept of public policy is rather restrictive in scope and only deals with

[14] *Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd.* (1964) 2 QB 480.
[15] *Hely-Hutchinson v Brayhead Ltd.* (1968) 1 QB 549.
[16] Arbitration and Conciliation Act 1996, s 34.

the fundamentals of the law, moral values, and justice, and illegalities are strictly defined under the law.[17]

Settlement During Arbitration: Why Form Matters?

The judgment's most practical lesson is simple: if that step is skipped, parties may be left with a 'settlement contract,' and not an 'arbitral award.' When parties decide to settle their dispute while arbitration is still ongoing, they have the onus to ensure that it is done correctly. In Hong Kong, this can be achieved according to the ordinance much in the same way as it is achieved by section 30 of the Arbitration Act, where the tribunal can dismiss the case and convert it into an award under agreed terms if the parties so request.[18]

The issue is critical for the global regime, given the nature of award enforcement through the New York Convention. Although the mere settlement agreement may remain enforceable as a contract, it will not become an award by default. The case in question provides a clear message to the parties designing a settlement that if finality, enforceability, and certainty in the form of the New York Convention are sought, the settlement must be transformed into an award by requesting the tribunal.

Conclusion

The case will have far-reaching yet persuasive effects on the Indian arbitration laws from an educational perspective. The Arbitration Act in India is based on the UNCITRAL Model Law, in which Section 5 prohibits judicial interference, Section 16 provides for *kompetenz-kompetenz*, Section 30 deals with settlements in the process of arbitration and award on agreed terms, Section 32 discusses termination, while Section 34 is restricted to arbitral awards only. Insolvency does not destroy the arbitration but may impact its conduct.

What it really implies is three things for the Indian administration. Firstly, a settlement cannot be considered an arbitral award automatically. It is the responsibility of the parties to seek a ruling from the arbitral tribunal to declare a settlement as an 'award'. Secondly, any disputes involving 'authority' within a struggling business entity are far more than mere procedural matters, especially in circumstances like those involved here. Thirdly, it behoves the courts in India to avoid any

[17] *Ssangyong Engineering & Construction Co. Ltd. v NHAI* [2019] SCC OnLine SC 677.
[18] Arbitration and Conciliation Act 1996, s 30.

efforts to make section 34 serve as a means to launch an attack on a settlement that is not an award or to convert a contract dispute into an arbitral award dispute.

The judgment should be seen in India as a pro-finality, pro-textual, and pro-party-autonomy decision that rewards careful drafting and respects the boundary between an unrecorded settlement agreement and an award.

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IN CONVERSATION WITH PROF. DR. H.C. INGEBORG SCHWENZER

PROF. DR. H.C. INGEBORG SCHWENZER

PROFESSOR (EM.), UNIVERSITY OF BASEL

Editor's Note: Ingeborg Schwenzer is Professor Emerita of Private Law at the University of Basel. Additionally, she is an adjunct professor at Bond University, Gold Coast, Australia, and has been an adjunct professor at City University, Hong Kong, and at Griffith University, Brisbane, Australia.

She is internationally recognised for her work in international commercial law, contract law, and arbitration. She is widely known for her scholarship on the United Nations Convention on Contracts for the International Sale of Goods and has authored and edited several leading publications in the field of international sales and contract law.

Prof. Schwenzer has also been associated with international law harmonisation initiatives connected with United Nations Commission on International Trade Law. In addition to her academic contributions, she has remained actively engaged with international arbitration and legal education. She has also been associated with the Vis East Moot Foundation and has contributed to the development of arbitration advocacy and mooting culture among law students and young practitioners across different jurisdictions.

Editorial Board ["EB"]: You have had an extraordinary academic and professional journey spanning multiple jurisdictions, institutions, and roles in both academia and practice.

Could you begin by telling us what initially drew you to private law, and what sustained your interest in international sales law and arbitration over the course of your career?

Prof. Ingeborg Schwenzer ["IS"]: Yes. During my studies, very early, I focused on private law. I always found that private law is more rational than the other areas of law. In private law, we weigh the different interests of the parties and then come to solutions. In contrast, public law is very much intertwined with politics. Just take today's world. We may discuss human rights in depth. But the reality is very different. The reality depends on politics, and not what we are discussing in public law. Also, from the very start of my studies, in my second year of law school, I began to study comparative law. I was not so much interested in purely domestic law with all its historical whimsicalities that differ from one country to the other. Rather, I wanted to know what the solutions are outside my own country and how we can compare different solutions, giving regard to their historical background. More and more, I was drawn to the question how we can harmonize and unify laws in order to ease international contracts and international disputes resolution. And hand in hand with unifying substantive law goes the question of international arbitration. Domestic courts in international conflicts are not a viable route for international parties, so international arbitration today is the only way forward in international dispute.

EB: Having taught and engaged with legal systems across all five continents, how have these cross-jurisdictional experiences shaped your approach to comparative law and your understanding of harmonization in international commercial law?

IS: Well, this experience reinforced my approach that we need uniform and harmonized law in international commercial law. What parties need and want in international relationships is predictability. This is amply proven by recent field studies. Only if the outcome is predictable can you provide in your contract accordingly. Fairness is much less important in international relationships than predictability. Domestic laws are often not predictable. If the parties choose the law of one party, this is at least the case for the other party who cannot predict the outcome under this law. But even if the parties choose a third law, – very often parties choose a neutral law, like Swiss law, an apparently neutral law – then both parties do not know the outcome of the case and it is unpredictable for both sides because they are not familiar with the law chosen.

EB: As a leading authority on the United Nations Convention on International Sale of Goods ["CISG"] and former Chair of its Advisory Council, you have played a central role in its interpretation and development. How do you assess the CISG's success in fostering uniformity in international sales law, and where do you continue to see divergence in its application across jurisdictions?

IS: Well, the CISG now has 97 member states throughout the world, almost equally featuring developed countries, developing countries and transitioning countries. With this, the CISG is by far the most successful international private law convention that exists regarding substantive law. The New York convention regarding arbitration is even more successful and has even more – almost double – number of members than the CISG. Furthermore, during the last 30 years, the CISG has exerted an enormous influence on the international and on the domestic level. This fact may be even more important than the sheer number of member states that belong to the CISG. On the international level, all later initiatives are based on the CISG. But also, on the domestic level during the last 30 years, all legislators in civil law jurisdictions that reformed their respective civil codes, took the CISG as a blueprint. From Germany, France, Scandinavia, the Baltic States, Romania in Europe, Argentina in Latin America, Japan and China especially in Asia, they all relied on the CISG. Furthermore, in Africa, where the Organization for the Harmonization of Business Laws in Africa ["**OHADA**"], initiated the harmonization of business laws, they also based their commercial code on the CISG.

Still, as you mentioned in your question, problems exist. Unfortunately, to the very day there are many parties who opt out of the CISG, which is possible. The CISG sets its requirements for application autonomously but it is heavily based on party autonomy. Thus, the parties can opt out of the CISG. And unfortunately, especially in countries like Germany and United States ["**US**"], there are many parties who opt out, the reason being, they just don't know the CISG. In German, there is a saying: "what the peasant doesn't know, he doesn't eat". It is the same with the CISG.

Unfortunately, the CISG is not a mandatory course at law schools. I think, nowhere in the world is it mandatory to study the CISG. At law schools, the domestic law of contracts is taught but not the CISG. Maybe the CISG is an elective course, but it is not a mandatory class. So, there are many lawyers who leave law school without having ever heard anything about this CISG. And if they are confronted with an international conflict, and they don't know the CISG so they just exclude it for not knowing it.

Another problem is the so-called homeward trend. Unfortunately, to the very day, many judges see the CISG through their own domestic lenses and do not apply the CISG autonomously and thus in a uniform manner. This is especially true in countries like the US, but also even in countries like Germany that have a very high number of CISG cases.

Fortunately, the importance of the CISG and its uniform application are increasing. This is also due to the Vis Moot Court on international commercial arbitration. There are now more and more bright young people who are becoming partners in leading international law firms that are trained on the CISG, and who know the advantages and benefits of applying CISG instead of applying domestic law. So, I really see a certain progress, but it takes a lot of time. Gradually there are less counsels who are excluding the CISG in their international contracts.

But, as you know we still have certain deplorable lacunae with regards to member states of the CISG, and one deplorable lacuna is India. India is not yet a member state of the CISG. In Africa, too, there are still many states that are lacking. I think especially in India and Africa, parties could really benefit from the CISG in their negotiations with, let's say American or European parties, because they could insist on applying CISG. Where an Indian party contracts with an American party, it is difficult if not impossible for the Indian party to insist on the application of Indian law. But in such a negotiation situation, the Indian party could at least say, "we do have the CISG in common, so let's apply the CISG and not New York Law"

All in all, the progress is slow, but we are progressing, we are going forward.

EB: Given your extensive work on the CISG and uniform sales law, how do you assess the relevance of the International Institute for the Unification of Private Law ["UNIDROIT"] Principles in international commercial contracts today? Do they primarily serve as interpretative tools, or are they evolving into an independent source of norms?

IS: Unlike the CISG which is an international convention and an opt-out instrument the UNIDROIT Principles of International Commercial Contracts ["**PICC**"] are so-called soft law. They only apply if the parties have chosen them. However, most jurisdictions do not allow the parties to validly choose soft law as the law governing their contract. Thus, we have only little case law on the PICC that is published and that can give guidance for the application of the PICC. We do not have much evidence whether the PICC are more often used in arbitration as only few arbitral awards are published. However, as I already mentioned, what parties need is predictability. If we do not have case law applying the PICC there is little predictability. Additionally, The PICC

make ample use of the notion of good faith which makes the outcomes even more unpredictable. At last, the PICC cannot and should not be used to interpret are supplement the CISG. They may be consulted as a tool of comparative law mostly in areas where the CISG does not apply.

EB: Arbitration is often valued for its neutrality, flexibility, and efficiency. However, concerns have increasingly been raised about rising costs, delays, and procedural complexity. In your view, is international arbitration at risk of becoming overly court-like, and how can it retain its distinct advantages?

IS: Well, that is a very difficult question. With arbitration replacing domestic courts' litigation, the requirements for arbitration are getting more and more court-like. Especially with regards to predictability and to due process. This certainly runs counter to flexibility and often to efficiency. For example, due process safeguards can be easily misused by dilatory tactics. Take for example the challenge of an arbitrator or of a whole tribunal for cause. This is a very important tool to guarantee due process. However, such challenge of the whole tribunal, for example the review of such a challenge, may easily take a whole year. So, you will have a delay in the proceedings of one year. If one of the arbitrators has to be replaced or has to resign for other reasons, you have to start the whole procedure anew, this is also different from court proceedings where you might just go on with a different judge. And with regard to the costs that you mentioned, the biggest share are not the fees of arbitrators or the costs of the institution. What is high are the costs of counsel. Arbitration, like the CISG, is firmly based on party autonomy. Thus, you cannot forbid the parties from agreeing on a certain fee with their respective counsel, and very often we see that costs for counsel in arbitration amount to almost 10% of the amount in controversy. With amounts in controversy of several millions these costs are quite high.

Usually in court litigation you do not have such high amounts in controversy. I once had a discussion with the chair of the sales law senate of the German supreme court and I asked him, "what are your international sales cases that go up to the domestic supreme court?" He said that it is usually the producer of shoes in Italy who is selling the shoes to a German retailer. Those are the cases that come to the courts. The courts today don't know much about the real international commercial world anymore. For example, the international sale of a power plant or a submarine. Whereas in state court litigation the amount in controversy is rarely above one million dollars, in arbitration cases below 5 million dollars are the exception.

EB: In recent years, particularly following developments such as the Mauritius Convention on Transparency, there has been a growing push for openness in investor State arbitration. Do you believe similar transparency obligations should extend to international commercial arbitration where public interest considerations are implicated, or would this undermine confidentiality?

IS: The Mauritius Convention and the United Nations Commission on International Trade Law ["**UNCITRAL**"] Rules on Transparency apply to treaty-based Investor-State arbitration under the UNCITRAL Arbitration Rules. Since 2014, when these rules have been adopted, they have been incorporated in many bilateral investment treaties. If we look at the reason, why we have this trend towards transparency in investment arbitration, we find certain specifics that pertain to investment arbitration. In investment arbitration, the interest of the general public is very often at stake. Take for example, the building of a dam or a nuclear power plant, there you have environmental interests, or interests of indigenous people, of the farmers, whole villages may depend on the water supply and things like that, all these interests have to be considered and taken into account. Here it is appropriate to make arbitration proceedings public and also allow third parties to intervene and to voice the interests of the general public. In general, no such problems exist in commercial arbitration. In pure commercial arbitration, there are two private companies, that are dealing with each other at arm's length. Thus, we have no similar need for transparency in international commercial arbitration. However, I have to mention that investment cases may also be decided in commercial arbitration. That is very often the case, because the investment contract usually contains an arbitration clause, so we have this dual pathway. Investment arbitration can be based on bilateral investment treaties and it can be based on a breach of the investment contract that underlies the whole investment. In this case, it might well be argued that we should have transparency if the underlying contract is an investment that entails also the interests of the general public. The parties themselves may agree in the investment contract on a clause on transparency. . Furthermore, domestic laws referenced in the contract may provide for transparency. However, for the time being, the UNCITRAL Rules on Transparency do not apply if we have commercial arbitration based on a breach of the investment contract. But we might discuss, whether this should also be possible in the future.

EB: You have been involved in international lawmaking and advisory processes, including representing Switzerland at UNCITRAL. From that vantage point, what do you see as the most pressing challenges currently facing international commercial lawmaking bodies?

IS: Well, whereas commercial trade on the one side is becoming more and more global and interdependent, on the other side, we see that the politics is becoming more and more parochial. It is very different from the 1970s and 1980s. Thus, we have been facing severe budget cuts for international institutions and for many United Nations ["**U.N**"] institutions also, especially UNCITRAL. The ever growing "my-country-first" mentality, is certainly not open for discourse for a unification of laws considering foreign approaches.

In my view, the CISG probably could not be elaborated and agreed upon in our days anymore. There was a special and beneficial timeframe in the 1970s and 1980s, when there was much more openness to internationality. However, it did not only start with the current government in the US. It goes back to the 2010s. In 2012, Switzerland proposed at UNCITRAL to work on a general international contract law. This contract law should have covered the areas not yet dealt with by the CISG and could have been based on the PICC. However, the US fiercely opposed this endeavour, and thus it never took off.

EB: The growing use of artificial intelligence ["AI"] in legal practice has raised concerns about reliability, particularly in light of instances of AI hallucinations affecting legal submissions. Given that arbitration relies heavily on pleadings and documentary evidence, what safeguards or best practices would you consider essential to ensure the integrity of AI-assisted work?

IS: Well, you are perfectly right. AI has entered arbitration and will become more and more important. As per a recent survey, over 90% of arbitrators and counsel expect to use AI in the future. Thus, it is very important to have ethical guidelines on how to use AI. There are already different sets of such guidelines. The first one was published in 2024 – the guidelines on the use of AI in Arbitration by the Silicon Valley Arbitration and Mediation Center ["**SVAMC**"]. Last year, the Guidelines on the Use of AI in Arbitration by the Chartered Institute of Arbitrators ["**CIArb**"] followed. One of the most important safeguards for the use of AI is transparency. Parties may already provide for the use of AI in their arbitration clause. If they have not yet done so the tribunal may discuss with the parties how to use AI, which tools they want to use and how to make it transparent which tools have been used. When a tribunal intends to use AI, they also have to consult with the parties on how the tribunal should use AI. Under no circumstances, AI should influence the procedural and substantive decisions. With regard to your concern that counsel will use AI to formulate their submissions, I think tribunals must always verify the accuracy and correctness of any information that has been produced by AI.

EB: As a member of the Board of Directors of the Vis East Moot Foundation, you have closely observed the role of mooting in arbitration training. From your experience, what distinguishes an exceptional moot participant or young arbitration professional, both in terms of technical ability and professional approach?

IS: Well, if I bring it down to three simple words, it's openness, flexibility and responsiveness. Openness, to different legal approaches and different cultures and different personalities of arbitrators. In this regard I can recommend a book on different cultures by Erin Meyer, "The Culture Map". There, she places the different cultures on diagrams regarding, for example, directness or flexibility or punctuality or openness with regard to criticism and the like. Itis very important to know that arbitrators coming from different cultures have different expectations. One must be open to these different cultural and legal approaches. You must be flexible and have to adjust to these different cultural challenges, not only as a mooter, but also in the real world if you have arbitrators coming from a different legal culture other than your own. You should be responsive, be attentive to what is verbally said, but also non-verbally communicated. For example, be always aware if an arbitrator is not following your submissions, and anticipate any doubts and questions and try to respond to them and thus advance your own case.

EB: You recently served as a judge at the final rounds of the Vis East Moot. How would you compare the role of oral advocacy in international commercial arbitration with that in traditional court litigation?

IS: Well, I give you the answer of any good lawyer, and the answer is "it depends". It depends with which traditional system you are comparing arbitration. Because, you have an enormous gap between civil law jurisdictions and common law jurisdictions.

Civil law jurisdictions, are usually called inquisitorial systems. This implies that the judge is active and in control and command of the whole proceedings, whereas counsel do not take a real active part in the proceedings. Thus, take for example, the interrogation of witnesses. It is the judge, who asks the witness, counsel won't be allowed to address the witness, if counsel wants an additional question to be asked to the witness, they have to go through the judge, they have to request the judge to ask the witness the additional question. This is a very different situation from the one in common law countries. The same goes for the role of experts, they are not nominated by the parties, but by the court and again interrogated by the judge.

On the other hand, we have the common law systems, called adversarial systems, based on the firm belief that the truth should come forward by vigorous competition between the parties. The judge remains passive, he or she does not intervene directly, the judge ensures that the rules are respected by the parties. Very rarely the judge asks additional questions to witnesses after the witness is interrogated by the legal counsel.

The procedure in arbitration is very close to common law systems. One of the reasons is that in arbitration usually you have one oral hearing only. Everything must be ready by that date. It must be ensured that all documents, all witnesses have been properly presented in order to avoid any delays or postponements. Common law civil procedure is better suited to guarantee this as the old English law was based on the idea of having "one day in court", whereas in civil law jurisdictions postponements of oral hearings are the rule rather than the exception.

And by the way, moot courts go back to old English Law, where the education and training of barristers took place in the Inns of Court. The crucial elements of the education were the dining terms, where the future barristers mooted real cases and thus learnt how to appear in court and plead a case.

EB: Finally, as international commercial law and dispute resolution continue to evolve in response to globalisation and technology, what excites you most about the future of the field?

IS: Well, it is exactly these constant ongoing developments in the technology field and in the global society at the same time. If you look at arbitration and legal practice during the last 30 years, it has enormously developed. In the 1990s, arbitration was "pale, male and stale", as we used to call it. It was dominated by old white males and this has changed a lot. Many younger lawyers, men and women both, are entering the scene. Asia, Latin America, and Africa have become new hotspots of arbitration. And above all, international arbitration is far more flexible to respond to new challenges of globalisation and technology compared to static domestic court systems. This has been proven especially during the pandemic, when we all started to develop different tools of remote procedures in arbitration. We are now all used to upload documents to secure platforms in arbitration, whereas many domestic jurisdictions are still firmly paper-based, counsel have to sign their submissions sometimes even in handwriting. Many court systems are really rusted and are still based in and stuck in not only the 20th century, but sometimes in the 19th century. Arbitration is much more flexible and ready to adjust to the challenges of the future.

GNLU SRDC ADR MAGAZINE

VOLUME VI | ISSUE II

QUARTERLY ALTERNATE DISPUTE RESOLUTION ROUND-UP (JANUARY 2026 – APRIL 2026)

JANUARY

1. **High-value disputes relating to MoRTH contracts excluded from being settled through arbitration.**

The Ministry of Road Transport and Highways ["**MoRTH**"] has revised the dispute resolution clauses in standard Build-Operate-Transfer, Hybrid Annuity Model and Engineering, Procurement and Construction highway contracts.[1] Arbitration is now barred for claims amounting to ₹10 crore, as well as for all declaratory or other non-monetary disputes. Such disputes are to be resolved through conciliation, failing which civil remedies may be pursued. Only disputes below ₹10 crore remain arbitrable through Society for Affordable Redressal of Disputes or Indian Institute of Arbitration and Mediation, while ongoing arbitration proceedings are protected under the earlier regime.

2. **Refund of full court-fee applicable to all settlements under Delhi Court Fees (Amendment) Act, 2026.**

The Delhi Court Fees (Amendment) Act (2026)[2] introduces a new regime for the refund of court fees upon the settlement of any dispute. Through this amendment, the facility of refunding court fees would be made available regardless of the manner by which the dispute has been settled. The new refund regime marks a significant improvement compared to the earlier regime under which refunds were available only when disputes were settled through court-referred Alternative Dispute Resolution ["**ADR**"] processes.

3. **ICSI International ADR Centre expanded to further strengthen ADR framework.**

[1] Ministry of Road Transport & Highways, Modification in the Chapter Related to Dispute Resolution of MCA/Contract Document of BoT(Toll)/HAM/EPC Projects (Circular dated Jan. 12, 2026).
[2] Court Fees (Delhi Amendment) Act 2026.

The Institute of Company Secretaries of India ["**ICSI**"] has announced plans to expand its ADR platform into a global centre, beginning with Noida and later extending to major Indian and overseas hubs.[3] The Centre is envisaged to handle commercial and civil disputes through arbitration and mediation, easing court backlog and offering a structured alternative dispute-resolution forum. The move signals ICSI's push to build a wider institutional ADR ecosystem beyond its existing Noida centre.

4. Judicial interference with arbitral awards confined to limited grounds under Section 34.

The Delhi High Court dismissed the National Highways Authority of India's ["**NHAI**"] challenge to the arbitral award in favour of Kochi Aroor Tollways in *NHAI v Kochi Aroor Tollways Pvt. Ltd.,*[4] thereby affirming that judicial interference with an arbitral award must remain minimal. The High Court upheld compensation of approximately ₹12.18 crore for revenue losses arising out of toll-rate errors and delays in the project's commercial operation date. The ruling aligns with the pro-arbitration approach under the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"][5], where Courts avoid re-appreciating the merits of the arbitral award unless there is a patent legal error.

5. Arbitral award may be partially set aside under Section 34 when it suffers from patent illegality.

The Delhi High Court in *Pali Hills Breweries Pvt. Ltd. v Carlsberg India Pvt. Ltd.,*[6] examined an appeal against an arbitral award under Section 34[7] of the Arbitration Act. While upholding the arbitral award of ₹25 lakh as compensation for liquidated damages, the Delhi High Court ruled that the amount was a bona fide estimate of loss, and did not require precise quantification. However, the Court partially allowed the application in regard to the claimant's claim for storage-rent, as the arbitrator failed to take into account pertinent facts, thereby vitiating that portion of the award.

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[3] Institute of Company Secretaries of India, 'List of Important Decisions Taken in the Meeting of the Council Dated 11 January 2026' (Press Release, 18 January 2026) <https://taxguru.in/chartered-accountant/icsi-approves-decentralisation-esg-policy-framework-adr-expansion.html> accessed 20 January 2026.
[4] *National Highways Authority of India v Kochi Aroor Tollways Pvt. Ltd.* OMP (COMM) 170/2019 (Delhi High Court, 23 January 2026).
[5] Arbitration and Conciliation Act 1996, No. 26, Acts of Parliament, 1996.
[6] *Pali Hills Breweries Pvt Ltd v Carlsberg India Pvt. Ltd.* OMP (COMM) 595/2020 (Delhi High Court, 22 January 2026).
[7] Arbitration and Conciliation Act 1996, s 34.

6. Approval of a resolution plan under IBC extinguishes pending arbitral claims and bars continuation of proceedings.

The Delhi High Court, in *Tata Steel Ltd. v Ministry of Corporate Affairs,*[8] terminated arbitration proceedings filed by ISGEC Heavy Engineering Limited ["**ISGEC**"] against Bhushan Energy Ltd. The Court held that any claim prior to the commencement of insolvency proceedings stands extinguished upon the approval of the resolution plan under the Insolvency and Bankruptcy Code, 2016 ["**IBC**"].[9] The claim by ISGEC was classified as a contingent liability during the course of the insolvency proceeding and hence, not admitted within the resolution plan. Based on Section 31(1)[10] of IBC, the Court stated that once the resolution plan is approved, it becomes binding on all parties, irrespective of whether their claims were admitted or not. According to the Court, allowing arbitration in relation to such claims would be against the "clean slate" principle, whereby no liabilities remain with the successful resolution applicant. Consequently, the Court held that the arbitral tribunal lacked jurisdiction to consider the claim.

7. Arbitral proceedings would commence upon the receipt of notice invoking arbitration under Section 21.

The Supreme Court, in *Regenta Hotels v Hotel Grand Centre Point,*[11] held that arbitral proceedings commence upon receipt of the notice invoking arbitration by the respondent under Section 21 of the Arbitration Act.[12] The Court clarified that such commencement is not dependent on the filing of an application before the Court for appointment of an arbitrator under Section 11[13] of the Act. The Court further observed that the determination of the date of commencement under Section 21 is relevant for proceedings under Section 9[14] and other matters arising under the Arbitration Act.

8. Arbitral tribunals may adopt reasonable estimation for quantification of damages where precise proof is unavailable.

[8] *Tata Steel Ltd v Ministry of Corporate Affairs* W.P.(C) 10431/2020 (Delhi High Court, 9 January 2026).
[9] Insolvency and Bankruptcy Code 2016.
[10] Insolvency and Bankruptcy Code 2016, s 31(1).
[11] *Regenta Hotels (P) Ltd v Hotel Grand Centre Point* (2026) 4 SCC 142.
[12] Arbitration and Conciliation Act 1996, s 21.
[13] Arbitration and Conciliation Act 1996, s 11.
[14] Arbitration and Conciliation Act 1996, s 9.

The Delhi High Court, in *Bharat Heavy Electricals Ltd. v Delkon India Pvt. Ltd.,*[15] upheld an arbitral award assessing damages on the basis of reasonable estimation, by holding that precise quantification is not necessary where the fact of loss is established. The Court observed that arbitral tribunals are entitled to adopt a broad and reasonable approach in determining damages, and such assessment would not warrant interference under Section 34[16] of the Arbitration Act unless vitiated by patent illegality or perversity.

[15] *Bharat Heavy Electricals Ltd. v Delkon India Pvt. Ltd.* 2026 SCC OnLine Del 482.
[16] Arbitration and Conciliation Act 1996, s 34.

FEBRUARY

1. Acceptance of Section 11 appointment bars subsequent challenge to arbitration agreement under pre-2015 regime.

In *Eminent Colonizers Pvt. Ltd. v Rajasthan Housing Board*,[17] the Supreme Court emphasised that under the pre-2015 amendment regime, a party upon accepting a judicial order appointing an arbitrator pursuant to Section 11 of the Arbitration Act,[18] would not be permitted to raise a plea regarding the non-existence or invalidity of the arbitration agreement before the arbitral tribunal or in proceedings under Section 34[19] of the Arbitration Act.

The dispute arose out of agreements for construction works, wherein the appellant-contractor alleged non-payment of certain escalation charges. Clause 23 of the agreement provided for dispute resolution by a Standing Committee comprising government officers. However, on the failure of the Rajasthan Housing to set up the Standing Committee, the High Court appointed a sole arbitrator under Section 11 and the same had been accepted by the Respondent without raising any challenge. Following an arbitral award in favour of the contractor, the Respondent sought to set aside the award on the ground that Clause 23 of the agreement did not constitute a valid arbitration agreement, a contention that was accepted by the High Court. The Supreme Court held that once the Board had accepted the order under Section 11, there could not be raised any issue regarding the validity of the arbitration agreement which had acquired finality between the parties.

2. Award passed after the expiry of the arbitrator's mandate is not void if the Court subsequently extends the mandate under Section 29A.

The Supreme Court, in *C. Velusamy v K. Indhera,*[20] held that an award passed by the arbitral tribunal after the mandate had expired cannot be treated as void. It was further observed that the Court can consider an application for an extension of the mandate period even after an award has been made in terms of Section 29A(5)[21] of the Arbitration Act. It was held that there is no statutory restriction on Courts from extending mandate after award had been passed. An

[17] *M/s Eminent Colonizers Private Ltd. v Rajasthan Housing Board and Ors.* [2026] INSC 116.
[18] Arbitration and Conciliation Act 1996, s 11.
[19] Arbitration and Conciliation Act 1996, s 34.
[20] *C. Velusamy v K. Indhera* [2026] INSC 112.
[21] Arbitration and Conciliation Act 1996, s 29A(5).

award, though ineffective and unenforceable, cannot be considered a nullity in the sense that it will prevent the Court from reviving the arbitration proceedings nor will it necessitate setting aside of the award under Section 34[22] of the Arbitration Act when the mandate gets extended. After extension of the mandate, the arbitration would proceed from the point from which the mandate expired.

3. **Dispute regarding forgery of the arbitration agreement itself renders the dispute non-arbitrable.**

The Supreme Court, in *Rajia Begum v Barnali Mukherjee,*[23] held that where the existence of an agreement containing an arbitration clause has been disputed on grounds of forgery, such a dispute becomes non-arbitrable since it shakes the foundation of the jurisdiction of the arbitral body.

In the instant case, the dispute arose from a jewellery business run by a joint family, wherein the appellant was relying on a Deed of Admission and Retirement dated 2007 containing an arbitration clause, whereas the respondent alleged that the said deed was forged. In this regard, the appellant failed to file a copy of the document within the meaning of Section 8(2)[24] of the Arbitration Act, thereby placing the existence of the arbitration agreement in serious doubt. The Court found that raising a plea of forgery or falsification in relation to the arbitration agreement would constitute a serious allegation of fraud. Thus, such a plea constitutes a jurisdictional issue and needs to be determined by the Court and not the arbitral tribunal. Considering the nature of arbitration being an exercise in consent, the Court held that no reference could be made to arbitration under Section 8, nor could an arbitrator be appointed under Section 11[25] of the Arbitration Act.

4. **Court under Section 37 cannot recalculate damages awarded by a Section 34 Court in the absence of arbitrariness or perversity.**

The Supreme Court, in *NTPC Vidyut Vyapar Nigam Ltd. v Saisudhir Energy Ltd.,*[26] held that where a Court, in proceedings under Section 34[27] of the Arbitration Act, determines

[22] Arbitration and Conciliation Act 1996, s 34.
[23] *Rajia Begum v Barnali Mukherjee* [2026] INSC 106.
[24] Arbitration and Conciliation Act 1996, s 8(2).
[25] Arbitration and Conciliation Act 1996, s 11.
[26] *NTPC Vidyut Vyapar Nigam Ltd. v Saisudhir Energy Ltd.* [2026] INSC 103.
[27] Arbitration and Conciliation Act 1996, s 34.

compensation in accordance with the contractual terms, an appellate Court under Section 37[28] of the Arbitration Act cannot interfere with such determination unless the award is shown to be arbitrary or perverse.

The case involved a power purchase agreement under the Jawaharlal Nehru National Solar Mission where the respondent failed to commission the 20MW solar power plant within the designated period of time. The award of compensation by the arbitrators in the case was substantially lower than what was provided under Clause 4.6 of the agreement. In the Section 34 proceedings, the Single Judge awarded a compensation of ₹27.06 crores, which was reduced to ₹20.70 crores though independent calculations done by the Division Bench under Section 37. The Supreme Court held that the Division Bench has acted beyond its powers under Section 37[29] of the Arbitration Act by disregarding the rational decision of the Section 34 Court, and the Division Bench had not made any finding of arbitrariness or perversity in the impugned award.

5. Substitution of arbitrator is not mandatory upon termination of the arbitral tribunal's mandate under Section 29A.

The Supreme Court, in *Ankhim Holdings Pvt. Ltd. & Anr. v Zaveri Construction Pvt. Ltd.*,[30] made it clear that termination of an arbitration tribunal's mandate under Section 29A(4)[31] would not necessarily lead to the substitution of the arbitrator, and that Section 29A(6)[32] merely gave discretion to the courts and did not lay down any mandatory requirement.

The dispute arose from a decision of the Madhya Pradesh High Court wherein it was held in *Mohan Lal Fatehpuria v Bharat Textiles,*[33] ["**Mohan Lal Fatehpuria**"] that the use of the word "obligates" in Section 29A(6) indicates that it is the duty of the Court to substitute an arbitrator. Proceeding on this interpretation, the High Court directed substitution of the arbitrator upon termination of the mandate. The Supreme Court reversed this decision while observing that the use of the word "obligates" in *Mohan Lal Fatehpuria* was confined to the peculiar facts of that case where there had been undue delay on the part of the arbitrator for which substitution was necessary. It was pointed out that after the termination of the mandate, the Court could

[28] Arbitration and Conciliation Act 1996, s 37.
[29] Arbitration and Conciliation Act 1996, s 37.
[30] *Ankhim Holdings Pvt. Ltd. & Anr. v Zaveri Construction Pvt. Ltd.* [2026] INSC 137.
[31] Arbitration and Conciliation Act 1996, s 29A(4).
[32] Arbitration and Conciliation Act 1996, s 29A(6).
[33] *Mohan Lal Fatehpuria v Bharat Textiles* [2025] INSC 1409.

either extend the mandate of the tribunal or extend the same after appointing a substitute arbitrator.

6. Post-award purchaser of property cannot resist execution of an arbitral award.

The Supreme Court in *R. Savithri Naidu v Cotton Corporation of India Ltd.*,[34] held that a transferee of the property of the judgment-debtor after an arbitral award has no *locus standi* to resist the execution of the arbitral award, and that the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 has been applied by Courts in the context of arbitration-related proceedings, including the enforcement of arbitral awards.[35] The Court held that the principle of safeguarding the good faith purchaser of the land cannot be applied in any event to a transferee of lands executed in the light of the arbitral award, particularly when such transferee has the purpose of frustrating the judgment-creditor. Such cases bind the arbitral awards, thus rendering them conclusive without any opportunity for the judgment-debtors to avoid such arbitral awards through transferring lands.

[34] *R. Savithri Naidu v Cotton Corporation of India Ltd. & Ors.* [2026] INSC 150.
[35] Transfer of Property Act 1882, s 52.

MARCH

1. Belated jurisdictional challenges after active arbitration participation would be barred.

The Supreme Court in *Municipal Corporation of Greater Mumbai v R.V. Anderson Associates Ltd.*,[36] held that a party which had actively participated in arbitration proceedings without raising a jurisdictional objection at the appropriate stage under Section 16 of the Arbitration Act,[37] cannot later challenge the arbitral tribunal's jurisdiction upon receipt of an adverse award. The Court emphasised that allowing belated jurisdictional challenges after full participation in the arbitral process undermines the efficiency, finality, and party autonomy-based framework of arbitration, and that such conduct operates as a waiver of the right to object.

The Court reiterated that objections to the tribunal's jurisdiction must be raised at the earliest opportunity, and that once a party proceeds with filing pleadings, adducing evidence, and participating in hearings without contesting jurisdiction, it is estopped from raising a post-award plea of jurisdictional lack. The decision underscored that a party cannot reserve its "jurisdictional ace" for use after an unfavourable award is rendered, and that such tactical litigation is inconsistent with the spirit of the Arbitration Act.

2. Mere participation in arbitral proceedings does not create estoppel without agreement.

In *Bharat Udyog Ltd. v Ambernath Municipal Council through Commissioner & Anr.*,[38] the Supreme Court has held that a party's mere participation in a unilaterally invoked arbitration proceedings, in the absence of a valid arbitration agreement as under Section 7 of the Arbitration Act,[39] does not create an estoppel against it from challenging the inherent jurisdiction of the arbitral tribunal. The Court clarified that the foundational requirement of consent cannot be displaced by imputing implied consent from passive participation, and that an award rendered in the absence of a valid arbitration agreement is non-est in law.

It distinguished situations where a party has expressly or clearly accepted arbitration from those where participation is merely under compulsion or to avoid prejudice. This ruling qualifies the principle of waiver by participation by reaffirming that such waiver cannot override the requirement of a valid arbitration agreement. The Court stressed that estoppel cannot be used

[36] *Municipal Corporation of Greater Mumbai v M/s R.V. Anderson Associates Ltd.* [2026] INSC 228.
[37] Arbitration and Conciliation Act 1996, s 16.
[38] *Bharat Udyog Ltd. v Ambernath Municipal Council through Commissioner & Anr* [2026] INSC 288.
[39] Arbitration and Conciliation Act 1996, s 7.

to validate jurisdiction where the statute itself predicates the tribunal's authority on a written agreement, and that mere conduct short of unequivocal acceptance cannot cure the absence of an underlying agreement at the stage of challenge under Section 34[40] of the Arbitration Act.

3. Grant of pre-award interest prohibited where the contract expressly bars it.

The Supreme Court, in *Union of India v Larsen & Toubro Ltd.*,[41] held that an arbitral tribunal cannot grant pre-award or pendente lite interest even in the form of "compensation" where the contract expressly prohibits the payment of any such interest. The Court set aside that part of the Allahabad High Court's order which had upheld the grant of pre-award interest as compensation, reiterating that arbitral tribunals are bound by the explicit terms of the contract and cannot override clear contractual exclusions through Section 31(7) of the Arbitration Act.[42]

The Bench emphasised that the parties' autonomy in fixing interest-related terms must be respected, and that cloaking pre-award interest within "compensation" or other reliefs cannot circumvent an unambiguous contractual bar. The decision curtailed judicial and arbitral tendencies to creatively re-characterise interest, and laid down that only post-award interest, governed by the Arbitration Act or statutory provisions, can be awarded where the contract bars pre-award interest, thereby enhancing predictability in commercial arbitrations.

4. Resistance to foreign awards would be limited to public policy grounds only.

The Supreme Court, in *Nagaraj V. Mylandla v PI Opportunities Fund-I*,[43] reaffirmed that foreign arbitral awards can be resisted in India only on the limited public-policy grounds as enumerated in Section 48 of the Arbitration Act,[44] and that Indian Courts cannot re-examine such awards on the merits at the enforcement stage. The Court underlined that the pro-enforcement bias of the New York Convention[45] requires deference to the arbitral tribunal's findings of fact and law, and that judicial review is confined to issues such as fraud, corruption, or a patent violation of principles of natural justice which substantially affect the award.

[40] Arbitration and Conciliation Act 1996, s 34.
[41] *Union of India & Ors v Larsen & Toubro Ltd.* [2026] INSC 203.
[42] Arbitration and Conciliation Act 1996, s 31(7).
[43] *Nagaraj V Mylandla v PI Opportunities Fund-I and others* [2026] INSC 298.
[44] Arbitration and Conciliation Act 1996, s 48.
[45] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

The decision reiterated that mere allegations of incorrect interpretation of the contract or disagreement with the conclusion do not fall within the narrow public-policy exception, and that enlargement of resistance grounds would undermine India's position as an attractive forum for arbitration. By tightening the scope of enforceability objections, the Court reinforced a regime where foreign awards are enforced unless they clearly offend fundamental policy or due-process norms.

5. Non-disclosure of prior ties with party adversely affects the impartiality and transparency of arbitral process.

The Supreme Court, in *MSA Global LLC Oman v Engineering Projects India Ltd.,*[46] had expressed serious reservations over the failure of co-arbitrator Andre Yeap to disclose his prior involvement with one of the parties, as a result of which he has resigned from the arbitral tribunal. The Court observed that such non-disclosure contravenes the duties of impartiality and transparency under Schedule VII of the Arbitration Act[47] read with the International Bar Association Guidelines[48] on Conflicts of Interest in International Arbitration as it creates justifiable doubts about the arbitrator's independence. The Court stressed that proactive and full disclosure of any prior relationship with a party is a mandatory requirement, and that even inadvertent concealment may undermine the integrity of the arbitration process and expose the award to challenge on grounds of bias or breach of natural justice.

6. Temporary injunctive relief restraining the sale of shares during the pendency of enforcement of arbitral award permissible.

The Telangana High Court, in *OWH SE i.L. v United Company RUSAL International PJSC*,[49] passed an interim order restraining Russian entities from transferring shares held in Pioneer Aluminium Industries Ltd. pending the enforcement of foreign arbitral awards aggregating approximately ₹2,840 crore under Part II of the Arbitration Act.[50] The Court noted that given the cross-border nature of the dispute and the complex geopolitical sanctions environment,

[46] *MSA Global LLC (Oman) v Engineering Projects (India) Ltd.* Arising out of SLP(C) No.7545/2026.
[47] Arbitration and Conciliation Act 1996, Sch 7.
[48] International Bar Association, IBA Guidelines on Conflicts of Interest in International Arbitration (2014, updated 2024) ('IBA Guidelines').
[49] *OWH SE i.L. v United Company RUSAL International PJSC & Ors.,* Execution Petition No. 1 of 2026 (Telangana High Court, March 2026).
[50] Arbitration and Conciliation Act 1996, pt II.

preservation of the underlying assets was essential to ensure the efficacy of the enforcement process and to prevent dissipation of value.

The order balanced the claimant's right to enforce the award with the broader regulatory and sanctions-related context, holding that temporary injunctive relief restraining share transfers is permissible to maintain the status quo and protect the award-creditor's position during the pendency of enforcement proceedings. The decision underscored that Courts may grant interim measures ancillary to enforcement to safeguard the integrity of foreign awards, even where enforcement involves international parties and multi-jurisdictional constraints.

APRIL

1. **The word "can" in an arbitration clause indicates only a future possibility rather than imposing a mandatory arbitration agreement.**

   The Supreme Court in *Nagreeka Indcon Products Pvt. Ltd. v Cargocare Logistics India Pvt. Ltd.,*[51] held that to be legally binding under the Arbitration Act, an arbitration agreement must reveal a clear determination and commitment by the parties to arbitrate their disputes. The Court held that the use of permissive language, namely, the modal verb "can", suggests only a factual possibility or a wish to consider arbitration as a possible mode of settlement in the future and not as a binding requirement. The Court ruled that such clauses cannot be considered as valid arbitration agreements unless a new consensus is given by both parties when the dispute occurs. The Court observed that in cases where commercial entities want to make sure that the dispute resolution clauses are binding, the term "shall" is the most appropriate term to use to indicate a binding obligation.

2. **Designation of the seat of arbitration determines exclusive supervisory jurisdiction of courts.**

   The Supreme Court in *J&K Economic Reconstruction Agency v Rash Builders India Pvt. Ltd.,*[52] reaffirmed that the seat of arbitration determines the Court having supervisory jurisdiction over arbitral proceedings under the Arbitration Act. The Court held that once the seat is designated by the parties, it operates as an exclusive jurisdiction clause for the purposes of challenges under Section 34[53] and appeals under Section 37[54] of the Arbitration Act. Such jurisdiction cannot be altered merely because hearings are conducted or the award is rendered at a different place. In the present case, although proceedings were held and the award was delivered in New Delhi, the agreed seat was Srinagar, and jurisdiction accordingly vested with the Courts at the seat.

[51] *Nagreeka Indcon Products Pvt. Ltd. v Cargocare Logistics India Pvt. Ltd.* [2026] INSC 384.
[52] *J&K Economic Reconstruction Agency v Rash Builders India Pvt. Ltd* [2026] INSC 368.
[53] Arbitration and Conciliation Act 1996, s 34.
[54] Arbitration and Conciliation Act 1996, s 37.

3. **Review of an order passed under Section 11(6) of the Arbitration Act is not maintainable.**

The Calcutta High Court in *Krishnendu Mondal v Swapan Dey,*[55] held that the Arbitration Act is a self-contained code that restricts judicial intervention. The Court rejected a review application to an order under Section 11(6)[56] of the Arbitration Act and said that a review is not sustainable in the statutory scheme. It also stressed that the arbitration clause under consideration was not mutual and certain and thus was not a valid arbitration agreement. The Court noted that the original order had been passed on the petitioner's concession, which could not be reopened in review.

4. **Determination of the quantum of security under Section 17 is within the exclusive domain of the arbitral tribunal.**

The Calcutta High Court in *Saltee Infrastructure Ltd. v Shivam Industrial Parks and Estates Ltd.,*[57] held that the issue of quantum of security to be given, in the case of an application under Section 17[58] of the Arbitration Act, is squarely a matter of domain and discretion of the arbitral tribunal. The Court refused to override the order of the tribunal requiring the appellant to pledge a large amount of money as security and it was described to be a reasonable use of discretion that was not arbitrary and did not conflict with established legal principles.

[55] *Krishnendu Mondal v Swapan Dey* [2026] CHC-OS 109.
[56] Arbitration and Conciliation Act 1996, s 11(6).
[57] *Saltee Infrastructure Ltd. v Shivam Industrial Parks and Estates Ltd.* [2026] CHC-OS 107.
[58] Arbitration and Conciliation Act 1996, s 17.

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Student Research and Development Council (SRDC)

Gujarat National Law University

Attalika Avenue Knowledge Corridor, PDPU Road, Koba Sector, Gandhinagar, Gujarat- 382421

Email: srdcadr@gnlu.ac.in

Website: https://gnlusrdcadrmagazine.com/