2025 INSC 605

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2025
(Arising out of S.L.P.(C) Nos.15336-15337 of 2021)

GAYATRI BALASAMY ..... APPELLANT

VERSUS

M/S. ISG NOVASOFT TECHNOLOGIES LIMITED ..... RESPONDENT

W I T H

CIVIL APPEAL NO. OF 2025
(Arising out of S.L.P.(C) No.21301 of 2024)

CIVIL APPEAL NO. OF 2025
(Arising out of S.L.P.(C) No.17941 of 2019)

CIVIL APPEAL NO. OF 2025
(Arising out of S.L.P.(C) No.7973 of 2022)

CIVIL APPEAL NOS. OF 2025
(Arising out of S.L.P.(C) Nos.4961-4962 of 2024)

CIVIL APPEAL NO. OF 2025
(Arising out of S.L.P.(C) No. of 2025 @ S.L.P.(C) Diary No.7789 of 2024)

CIVIL APPEAL NOS. OF 2025
(Arising out of S.L.P.(C) Nos.18656-18663 of 2024)

CIVIL APPEAL NO.8183 OF 2016

CIVIL APPEAL NO.8184 OF 2016

J U D G M E N T

SANJIV KHANNA, CJI.

A three-Judge Bench of this Court, *vide* order dated 20th February 2024, directed that the Special Leave Petitions in ***Gayatri Balasamy*** v. ***ISG Novasoft Technologies Limited***,[1] be placed before the Chief Justice of India for an appropriate order. The matter was to be examined to determine the need to refer the following questions of law to a larger Bench:

> "1. Whether the powers of the Court under Sections 34 and 37 of the Arbitration and Conciliation Act 1996 will include the power to modify an arbitral award?
>
> 2. If the power to modify the award is available, whether such power can be exercised only where the award is severable, and a part thereof can be modified?
>
> 3. Whether the power to set aside an award under Section 34 of the Act, being a larger power, will include the power to modify an arbitral award and if so, to what extent?
>
> 4. Whether the power to modify an award can be read into the power to set aside an award under Section 34 of the Act?
>
> 5. Whether the judgment of this Court in Project Director NHAI vs. M. Hakeem,[2] followed in Larsen Air Conditioning and Refrigeration Company vs. Union of India,[3] and SV Samudram vs. State of Karnataka,[4] lay down the correct law, as other benches of two Judges (in Vedanta Limited vs. Shenzden Shandong Nuclear Power Construction Company Limited,[5] Oriental Structural Engineers Pvt. Ltd. vs. State of Kerala,[6] and M.P. Power Generation Co. Ltd. vs. Ansaldo Energia Spa)[7] and three Judges (in J.C.

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[1] 2024 SCC OnLine SC 1681.
[2] (2021) 9 SCC 1.
[3] (2023) 15 SCC 472.
[4] (2024) 3 SCC 623.
[5] (2019) 11 SSC 465.
[6] (2021) 6 SCC 150.
[7] (2018) 16 SCC 661.

> Budhraja vs. Chairman, Orissa Mining Corporation Ltd.,[8] Tata Hydroelectric Power Supply Co. Ltd. vs. Union of India,[9] and Shakti Nath vs. Alpha Tiger Cyprus Investment No.3 Ltd.[10]) of this Court have either modified or accepted modification of the arbitral awards under consideration?"

2. Accordingly, this Bench of five-Judges has been constituted to decide the questions referred.

3. The fulcrum of the legal controversy rests on the following question(s): *Are Indian courts jurisdictionally empowered to modify an arbitral award? If so, to what extent?* The controversy arises because the Arbitration and Conciliation Act, 1996,[11] does not expressly empower courts to modify or vary an arbitral award. Section 34 of the 1996 Act only confers upon courts the power to set aside an award. Nevertheless, this Court, on several instances, has been compelled to modify arbitral awards, seeking to minimize protracted litigation and foster the ends of justice. In contrast, some judgments have posited that Indian courts cannot modify awards, due to the narrowly defined scope of Section 34. Therefore, divergent and contrasting judicial opinions exist on this question.

4. **Annexure A** to this judgment reproduces Section 34, and other pertinent provisions of the 1996 Act – namely Sections 5, 31, 33, 37, 43 and 48. **Annexure B** provides a compilation of prevailing stances adopted by foreign jurisdictions *vis-à-vis* the question of modification.

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[8] (2008) 2 SCC 444.
[9] (2003) 4 SCC 172.
[10] (2020) 11 SCC 685.
[11] Hereinafter referred to as, "1996 Act".

5. Before addressing the arguments raised, it would be useful to capture the divergence of judicial opinions on the question of modification. These conflicting judgments provide context to the legal controversy and the arguments presented.

A. JUDICIAL DIVERGENCE ON MODIFICATION POWERS

6. In ***McDermott International Inc.*** v. ***Burn Standard Co. Ltd. and Others***,[12] this Court explained the difference between judicial interference permitted by the 1996 Act *vis-à-vis* the Arbitration and Conciliation Act, 1940[13]. The 1996 Act limits the supervisory role of the court to specific grounds under Section 34, while the 1940 Act gave courts broader powers under Sections 30 and 33. The Court clarified that under Section 34, the court does not act as an appellate authority for factual findings, evidence, or questions of law dealt with by the arbitral tribunal. At the same time, the 1996 Act mandates that arbitrators issue a reasoned award, which was not a requirement under the 1940 Act.

7. Further, the judgment clarifies the role of arbitrators in determining claims and counterclaims. The court cannot correct the arbitrator's mistakes, whether factual or legal. Rather, its role is confined to setting aside the award, leaving the parties the option to initiate fresh arbitration proceedings if they wish. However, when it came to the rate of interest, the Court invoked its power under Article 142 of the Constitution[14] to vary the award, reducing the interest

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[12] (2006) 11 SCC 181.

[13] Hereinafter referred to as, "1940 Act".

[14] "**142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.—** (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may

from 10% per annum (as awarded by the tribunal) to 7.5% per annum. It felt compelled to do so as there was a significant lapse of time. Two earlier decisions were relied upon: ***Pure Helium India (P) Limited*** v. ***Oil & Natural Gas Commission***,[15] where the rate of interest was reduced from 18% per annum to 6% per annum, and ***Mukand Ltd.*** v. ***Hindustan Petroleum Corpn. Ltd.***,[16] where the interest rate was lowered from 11% per annum to 7.5% per annum.

8. In ***Vedanta Limited*** v. ***Shenzhen Shandong Nuclear Power Construction Company Limited***,[17] this Court, in the context of an international award, highlighted the need to consider the differing impact of interest rates when the parties operate in different currencies. The rate of interest had to be aligned with the applicable currency of each party. Accordingly, the Court held that applying a uniform interest rate for both the INR and Euro components was not justified. While maintaining the interest rate at 9% per annum for the INR component, the interest on the Euro component was modified to the London Interbank Offered Rate (LIBOR) rate plus 3 percentage points. Furthermore, the Court deleted the interest rate of 15% per annum, which was applicable if the awarded sum was not paid within 120 days. Significantly, this judgment did not reference the Court's power under Article 142 of the Constitution.

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be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

[15] (2003) 8 SCC 593.
[16] (2006) 9 SCC 383.
[17] (2019) 11 SCC 465.

9. In ***Oil and Natural Gas Corporation Limited*** v. ***Western GECO International Limited***,[18] a three Judge Bench of this Court observed that when an arbitral tribunal, upon considering the facts presented before it, fails to draw an inference that ought to have been drawn or, conversely, draws an inference that is manifestly untenable, resulting in a gross miscarriage of justice, such an award becomes amenable to challenge. In such circumstances, the award may be set aside or modified, depending on whether the offending part of the award is severable or not.

10. Earlier, a two-Judges Bench of this Court in ***Numaligarh Refinery Ltd.*** v. ***Daelim Industrial Co. Ltd.***,[19] held that courts should ordinarily refrain from substituting their interpretation for that of the arbitrator. However, where the parties, with full knowledge, have consented to refer the matter to arbitration, the court may intervene and modify the award when it is demonstrably and reasonably justified. For example, when an arbitrator acts without jurisdiction or adopts an interpretation that is contrary to established law, the court has the authority to interfere and set the matter right.

11. In an earlier decision of this Court in ***Tata Hydro-Electric Power Supply Co. Ltd. and Others*** v. ***Union of India***,[20] this Court exercised its power to modify the effective date from which the awarded interest would apply. However, similar to ***Numaligarh Refinery Ltd.*** (supra), this decision did not specifically address the restricted grounds of Section 34.

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[18] (2014) 9 SCC 263.
[19] (2007) 8 SCC 466.
[20] (2003) 4 SCC 172.

12. In a catena of judgments of this Court, it has been consistently held that the arbitral tribunal is the master of evidence. The scope of judicial intervention under Section 34 is confined to the limited grounds expressly provided therein.[21] The Court does not possess the power to correct errors of fact, reconsider costs, or engage in a review of the merits of the arbitral award.

13. In ***Ssangyong Engineering and Construction Company Limited*** v. ***National Highways Authority of India (NHAI)***,[22] a two-judge bench of this Court ruled that interference based on public policy violations under Section 34(2)(b)(ii) is limited to the fundamental policy of Indian law. The court cannot interfere merely because the arbitrator lacked a "judicial approach".[23] *Albeit* in the said case, an issue arose which went beyond the narrow scope of Section 34. The fundamental principle of justice was stated to be violated due to a unilateral change or addition to the contract by the arbitral tribunal. The Court emphasized that such changes, made without the affected party's consent, cannot be allowed. As a result, the majority award was set aside, along with the judgments of the Single Judge and the Division Bench of the High Court that had upheld the award. To ensure full justice, this Court, using its power under Article 142 of the Constitution, upheld the minority award and the interest it stipulated.

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[21] See *Maharashtra State Electricity Distribution Company Limited* v. *Datar Switchgear Limited and Others,* (2018) 3 SCC 133; *Parsa Kente Collieries Limited* v. *Rajasthan Rajya Vidyut Utpadan Nigam Limited,* (2019) 7 SCC 236; and *M.P. Power Generation Co. Ltd.* v. *ANSALDO Energia SpA,* (2018) 16 SCC 661.

[22] (2019) 15 SCC 131.

[23] For domestic awards made in India, an additional ground of interference is available – patent illegality appearing on the face of the award – in terms of Section 34(2A) of the 1996 Act.

14. In ***Oriental Structural Engineers Private Limited*** v. ***State of Kerala***,[24] this Court upheld the award for being in consonance with the contract but intervened to modify the interest rate. It was observed that the principles laid down in ***Secretary, Irrigation Department, Government of Orissa and Others*** v. ***G.C. Roy***,[25] for determining the interest rate would be equally applicable to the 1996 Act. In fact, Section 31(7)(a) of the 1996 Act, incorporates this principle. Simple interest at the rate of 8% per annum was directed to be paid on the sum left unpaid.

15. In ***Project Director, National Highways No. 45 E and 220 National Highways Authority of India*** v. ***M. Hakeem and Another***,[26] a two-judge bench of this Court held that Section 34 allows arbitral awards to be set aside only on the limited grounds specified in sub-sections (2) and (3). When a right is limited, its enforceability is coterminous with its limited nature, i.e., it can only be enforced in line with those limitations. As a result, the award can either be set aside or remanded to the arbitral tribunal. Section 34(4) facilitates such remand by allowing the court to adjourn the proceedings, and hence providing the arbitral tribunal a chance to eliminate the grounds for setting it aside. Here again, the tribunal's opinion is key in determining whether the grounds for setting aside have been resolved.

16. The Court also noted that Section 34 is modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985,[27] which does not allow courts to modify awards. Unlike the broader powers available under the 1940

[24] (2021) 6 SCC 150.
[25] (1992) 1 SCC 508.
[26] (2021) 9 SCC 1.
[27] Hereinafter referred to as, "Model Law".

Act, the court's powers under the 1996 Act are narrower. The Court cited previous judgments of this Court and various High Courts, emphasizing that allowing modification under Section 34 would go against the legal framework, as only the legislature has the power to change the law. Any expansion of Section 34's powers to include modification would require a legislative amendment.

B. ARGUMENTS RAISED

I. In Favour of Modification

17. First, it is contended that the judgment in ***M. Hakeem*** (supra) warrants reconsideration, as it conflicts with several decisions rendered by Benches of two and three Judges of this Court, in which awards were modified and varied. This Court has also upheld the modification of awards by the High Courts or District Courts on other occasions. Second, it is claimed that the Model Law, based on the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958[28], permits a broader scope of judicial intervention. Several signatory countries to the Model Law have enacted provisions for domestic awards that permit modification and/or variation (**Annexure B**), in addition to allowing for the setting aside of awards. This international perspective, it is argued, reflects a broader understanding of the court's powers in arbitrations. Lastly, the principle that a greater power includes a lesser power is invoked. Since Section 34 allows for the setting aside of an

[28] Hereinafter referred to as, "New York Convention".

award, it is argued that this power inherently includes the ability to modify the award, as modification is seen as a lesser form of intervention than annulment.

18. Reference is made to ***Ahmedabad St. Xavier College Society and Another*** v. ***State of Gujarat and Another,***[29] where a nine-Judge Bench of this Court applied the maxim "*omne majus continent in se minus"* – the greater contains the lesser. Applying this maxim, it is contended that the power to set aside will include power to modify or partially set aside an award. It is also submitted that the power to modify and set aside an award can be exercised when the award is in conflict with public policy in terms of Section 34(2)(b)(ii) or to the extent it is vitiated by patent illegality in terms of Section 34(2A) of the 1996 Act. This approach aligns with the jurisprudence of other jurisdictions such as the United Kingdom, Australia, Singapore, and other countries (**Annexure B**), where similar powers are vested in the courts.

19. Three additional and ancillary arguments were raised. The first argument was that the expression, 'recourse', used in Section 34, is broad in scope, and it can include any action to enforce a right. Thus, the recourse to set aside an award includes within its ambit the recourse to modify or vary it. The second argument relates to the public law aspect of land acquisition under the National Highways Act, 1956[30]. As this Act mandates arbitration on public law issues, it is contended that commercial considerations can neither be factored in nor applied. Further, the court, while examining a petition under Section 34, has the power to enhance compensation for acquired land. Lastly, it was contended

[29] (1974) 1 SCC 717.
[30] Hereinafter referred to as, "NHAI Act".

that the power to grant, reduce, or increase interest should be read into Section 34, without requiring the parties to go through a fresh arbitration process. The granting of interest does not necessitate an elaborate inquiry that would justify the need for re-arbitration.

II. *Against Modification*

20. The learned counsel opposing the court's power of modification argue that the Model Law was the result of a collective effort by several countries to establish a uniform and cohesive legal framework. During discussions, it was decided that courts should not have the power to modify awards. If courts had such power, it could result in a situation where a court order or decree replaces the arbitral award, which in arbitration jurisprudence is unacceptable. It may carry international repercussions when awards are sought to be enforced under foreign conventions.

21. For example, under the New York Convention, only arbitral awards are recognized and enforceable, not court decrees/orders that modify those awards. A court decree cannot substitute an arbitral award, especially when the award is examined under the limited jurisdiction of Section 34. Section 36 treats awards as enforceable in the same way as court decrees. However, unless Indian law legislatively empowers courts to modify awards, this power cannot be assumed from the power to set aside an award under Section 34. While some countries have granted courts the specific power to modify or vary an award under their domestic laws, Indian law does not permit the same.

22. It is further submitted that the maxim *omne majus continent in se minus* – the greater contains the lesser – should not be applied in the present case. The power to set aside an award is a *sui generis* power, which is intrinsically different from the modification power. Further, when an award is set aside, it results in the annulment of the award. Annulment means that the award no longer exists. Something that does not exist cannot be modified or altered. Similarly, it is submitted that the arbitral tribunal after rendering an award, becomes *functus officio.* Thus, the exercise of any modification, would lead to the courts adopting appellate powers. Without appellate powers, which the court does not possess, an award cannot be modified. Therefore, assuming modification powers would be contrary to both the express language and the intent behind Section 34 of the 1996 Act.

23. Lastly, it is submitted that the doctrine of merger does not apply to court modifications of an arbitral award. The nature and scope of the power of a court, being distinct from an arbitral tribunal, the modifications will not merge with the arbitral award. In simpler words, any modification or variation made by the court to the arbitral award would not be subsumed into the arbitral award. For instance, if the court modifies the rate of interest decided by a tribunal, the original award will not be deemed to have been amended to reflect this new interest rate. This could cause issues at the enforcement stage, as the New York Convention allows only the enforcement of an arbitral award, not a court's judgment/order.

C. ***ANALYSIS***

24. Given this background, we have to determine whether, and under what circumstances, the courts have the power to modify or vary arbitral awards.

25. We recognize that the legal controversy carries significant implications. The arguments canvassed symbolize the longstanding conflict between equity and justice, on the one hand, and the fetters imposed by the court's jurisdictional limits, on the other. Therefore, in addressing the questions referred, it is crucial to adopt a balanced approach. While we may favour an equitable and pragmatic view, our interpretation must not be at odds with the express or implied legislative intent underlying the 1996 Act. The question therefore is – *to what extent can we weave the principles of equity and justice while not offending the jurisdictional fabric of Section 34?*

26. We begin by examining the scope and ambit of the power of 'recourse' under Section 34 of the 1996 Act.

I. Contours of Section 34, 1996 Act

27. Section 5 of the 1996 Act limits judicial intervention in an arbitral award to what is authorized by Part I of the Act. Section 34(1) stipulates that 'recourse' to a court against an arbitral award may be made only by an application for setting aside the award in accordance with Section 34(2) and 34(3).

28. Section 34(2)(a) enumerates specific grounds on which an award can be set aside. These include – the incapacity of a party, invalidity of an arbitration agreement in law, improper notice for appointment of an arbitrator or arbitral proceedings, denying the opportunity to a party to present their case, the award

being beyond the scope of submission to arbitration, and the composition of the arbitral tribunal or the arbitral procedure not being by the agreement of the parties in certain circumstances. The *proviso* to Section 34(2)(a)(iv) outlines the concept of "severability of awards". This has been addressed separately in **Part II** of our **Analysis**.

29. Section 34(2)(b) stipulates that an arbitral award may be set aside when the subject matter of the dispute cannot be settled by arbitration per the applicable law or if the arbitral award conflicts with the public policy of India. Explanation I clarifies that an award can conflict with public policy of India only if (i) the award is induced or affected by fraud, corruption or is in violation of Section 75[31] or Section 81[32] of the 1996 Act; (ii) when it is in contravention with the fundamental policy of Indian law;[33] or (iii) when it conflicts with the most basic notions of morality or justice. Explanation 2 mandates that no review on the merits shall be undertaken when determining a contravention of the fundamental policy of Indian law.

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[31] "**75. Confidentiality.**— Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement."

[32] "**81. Admissibility of evidence in other proceedings.—** The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—
(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
(b) admissions made by the other party in the course of the conciliation proceedings;
(c) proposals made by the conciliator;
(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator."

[33] In *Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)*, (2019) 15 SCC 131 the scope of the public policy ground for setting aside awards was narrowed and confined to violations of the fundamental policy of Indian law.

30. Section 34(2-A) stipulates that an award may be set aside when it is vitiated by patent illegality appearing on the face of the award. The *proviso* clarifies that such determination shall not be made solely because there is an erroneous application of law or through reappreciation of evidence. Section 34(3) provides timelines which needs to be adhered to while filing an application under Section 34. Section 34(4) stipulates the court's power of remanding an award to the arbitral tribunal. We have addressed this remand power in **Part VI** of our **Analysis**. Section 34(5) outlines notice requirements, while Section 34(6) mandates the expeditious disposal of Section 34 applications, setting a hard outer limit of one year from the date of service of notice on the other party under Section 34(5).

31. The next question that arises is whether the power to set aside an award includes the power to partially set it aside.

II. *Severability of Awards*

32. In the present controversy, the *proviso* to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The *proviso*, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a two-fold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of *kompetenz-kompetenz* — that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the court to sever and preserve the "valid"

part(s) of the award while setting aside the "invalid" ones.[34] Indeed, before us, none of the parties have argued that the court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the *proviso* to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part.

[34] The "validity" and "invalidity", as used here, does not refer to legal validity or merits examination, but validity in terms of the *proviso* to Section 34(2)(a)(iv) of the 1996 Act.

36. The Privy Council, in ***Pratap Chamaria*** v. ***Durga Prasad Chamaria***,[35] addressed this issue with the following pertinent observations:

> "…If, however, the pronouncement of the arbitrators is such that matters beyond the scope of the suit are inextricably bound up with matters falling within the purview of the litigation, in that case, the court would be unable to give effect to the award because of the difficulty that it cannot determine to what extent the decision of the subject-matter of the litigation has been affected and coloured by the decision of the arbitrators in regard to matters beyond the ambit of the suit…."

Thus, the power of partial setting aside should be exercised only when the valid and invalid parts of the award can be clearly segregated—particularly in relation to liability and quantum and without any corelation between valid and invalid parts.

37. We would now proceed to examine, the permissibility and scope of the court's modification powers, within the parameters of Section 34 of the 1996 Act. In doing so, we will distinguish the court's power of modification from: (i) the court's power of setting aside an award; (ii) the arbitrator's power under Section 33 to correct, reinterpret, and/or issue an additional award; and (iii) the power of the court to remand the award to the arbitrator under Section 34(4).

III. Difference between setting aside and modification

38. This distinction lies at the heart of many arguments canvassed before us. The parties opposing the recognition a power of modification of the courts have strenuously contended that modification and setting aside are distinct and *sui*

[35] AIR 1925 PC 293.

generis powers. While modification involves altering specific parts of an award, setting aside does not alter the award but results in its annulment. Their primary concern is that recognizing a power of modification may invite judicial interference with the merits of the dispute—something arguably inconsistent with the framework of the 1996 Act.

39. We agree with this argument, but only to a limited extent. It is true that modification and setting aside have different consequences: the former alters the award, while the latter annuls it.[36] However, we do not concur with the view that recognizing any modification power will inevitably lead to an examination of the merits of the dispute. It will completely depend on the extent of the modification powers recognised by us. In the following part of our **Analysis**, we outline the contours of this limited power and explain why, in our view, recognizing it will ultimately yield more just outcomes.

IV. A Limited Power of Modification Can Be Located in Section 34

40. A core *principium* of arbitration, an Alternative Dispute Resolution[37] mechanism, is to provide a quicker and cost-effective alternative to courtroom litigation. While this suggests minimal judicial interference, the role of domestic courts remains crucial, as they function in a supportive capacity to facilitate

[36] The words used in the statute must be interpreted contextually, taking into account the purpose, scope, and background of the provision. Many words and expressions have both narrow and broad meanings and thereby open to multiple interpretations. Legal interpretation should align with the object and purpose of the legislation. Therefore, we may not strictly apply a semantic differentiation while interpreting the words "modification" or "setting aside". Instead, a holistic and purposive interpretation of these words will be consistent with the intent behind the provision and the 1996 Act. Linguistically and even jurisprudentially, a distinction can be drawn between the expressions – modification, partial setting aside, and setting aside of an arbitral award in its entirety. However, we must note that the practical effect of partially setting aside an award is the modification of the award.

[37] Hereinafter referred to as, “ADR”.

and expedite the resolution of disputes. Therefore, it follows that judicial intervention is legitimate and necessary when it furthers the ends of justice, including the resolution of disputes.

41. To deny courts the authority to modify an award—particularly when such a denial would impose significant hardships, escalate costs, and lead to unnecessary delays—would defeat the *raison d'être* of arbitration. This concern is particularly pronounced in India, where applications under Section 34 and appeals under Section 37 often take years to resolve.

42. Given this background, if we were to decide that courts can only set aside and not modify awards, then the parties would be compelled to undergo an extra round of arbitration, adding to the previous four stages: the initial arbitration, Section 34 (setting aside proceedings), Section 37 (appeal proceedings), and Article 136 (SLP proceedings). In effect, this interpretation would force the parties into a new arbitration process merely to affirm a decision that could easily be arrived at by the court. This would render the arbitration process more cumbersome than even traditional litigation.

43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words, the power cannot contradict the

essence or language of Section 34. The court would not exercise appellate power, as envisaged by Order XLI of the Code of Civil Procedure, 1908[38].

44. We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided *in toto*. Read in this manner, the limited and restricted power of severing an award implies a power of the court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.

45. We are thus of the opinion that the Section 34 court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in **Part II** of our **Analysis**.

46. Mustill and Boyd have observed that an order varying an award is not equivalent to an appellate process.[39] The authors suggest that a modification order would only be appropriate where the modification, including any adjustment of costs, follows inevitably from the tribunal's determination of a question of law.[40] This approach would be beneficial, as it would reduce costs and delays. The courts need not engage in any fact-finding exercise. By acknowledging the Court's power to modify awards, the judiciary is not rewriting the statute. We hold that the power of judicial review under Section

[38] Hereinafter referred to as, "Code".
[39] Sir Michael J. Mustill & Stewart C Boyd QC, Commercial Arbitration, p. 617 (2nd ed. 2001).
[40] *Ibid.*

34, and the setting aside of an award, should be read as inherently including a limited power to modify the award within the confines of Section 34.

V. *Court can modify the award despite Sections 33 and 34(4)*

47. Section 33 of the 1996 Act (**Annexure A**) empowers an arbitrator, upon request, to correct and/or re-interpret the arbitral award, on limited grounds. This includes the correction of computational, clerical or typographical errors, as well as giving interpretation on a specific point or a part of the award, when mutually agreed upon by the parties. Section 33(3) enables the tribunal to *suo moto* correct any errors within thirty days of delivering the award. Section 33(4) grants wider powers. It permits the arbitral tribunal, upon compliance with specified manner of request, to make an additional award on claims presented before the arbitral proceedings but omitted from the arbitral award.

48. Section 33(7) states that Section 31 (**Annexure A**) shall apply where correction, interpretation or any addition is made to the arbitral award. Section 31 deals with form and content requirements for arbitral awards. Consequently, an order passed by the arbitral tribunal under Section 33 amounts to an arbitral award. Under Section 34(3), where a request is made under Section 33, the limitation period for filing an application to set aside the award commences from the date on which the arbitral tribunal disposes of the Section 33 request.

49. Notwithstanding Section 33, we affirm that a court reviewing an award under Section 34 possesses the authority to rectify computational, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain

powers inherent to the court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or limited jurisdiction as in the case of Section 34. The powers are intrinsically connected as they are part and parcel of the jurisdiction exercised by the court.

50. In ***Grindlays Bank Ltd.*** v. ***Central Government Industrial Tribunal and Others***,[41] this Court has held that every tribunal or court is endowed with certain ancillary or incidental powers which are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In that case, the simple question was whether an *ex parte* award passed on merits, when sought to be set aside by an application showing sufficient cause, amounts to seeking a review on merits of the dispute. The Court held that a procedural review differs from a review on merits of the dispute. The former is a power inherent in every court or tribunal and inadvertent errors committed by another tribunal can be corrected by the court/tribunal. This would not amount to a review on merits. The reasoning distinguishing between procedural and merits review is reproduced below:

> "The expression "review" is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito

[41] 1980 Supp SCC 420.

justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."

51. Reference may also be made to the power of recall, which every court possesses, as recognized by this Court in ***Budhia Swain and Others*** v. ***Gopinath Deb and Others***[42]. The availability of this power enables the court to address various situations efficiently, rather than remanding the matter to the arbitral tribunal under Section 34(4). Lastly, one may also refer to the power of granting interim relief if the circumstances so warrant.

52. The doctrine of implied power is to only effectuate and advance the object of the legislation, i.e., the 1996 Act and to avoid the hardship. It would, therefore, be wrong to say that the view expressed by us falls foul of express provisions of the 1996 Act.

53. Under Section 152 of the Code,[43] a court executing a decree has the power to correct clerical or arithmetic mistakes in judgments, orders, or decrees arising from any accidental slips or omissions. This Court, in ***Century Textiles Industries Limited*** v. ***Deepak Jain and Another,***[44] held that clerical or arithmetical errors may be corrected by the executing court, however, the court must take the decree according to its tenor and cannot go behind the decree.

54. In the same vein as these judgments, we hold that inadvertent errors, including typographical and clerical errors can be modified by the court in an application under Section 34. However, such a power must not be conflated with the

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[42] (1999) 4 SCC 396.

[43] "**152. Amendment of judgments, decrees or orders.**— Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

[44] (2009) 5 SCC 634.

appellate jurisdiction of a higher court or the power to review a judgment of a lower court. The key distinction between Section 33 and Section 34 lies in the fact that, under Section 34, the court must have no uncertainty or doubt when modifying an award. If the modification is debatable or a doubt arises regarding its appropriateness, i.e., if the error is not apparent on the face of the record, the court will be left unable to proceed, its hands bound by the uncertainty. In such instances, it would be more appropriate for the party to seek recourse under Section 33 before the tribunal or under Section 34(4).

VI. To Modify or to Remit? Addressing the court's quandary.

55. As elucidated above, if a fog of uncertainty obscures the exercise of modification powers, the courts must not modify the award. Instead, they should avail their remedial power and remand the award to the tribunal under Section 34(4). Under the sub-section, either party—whether the one challenging the award under Section 34 or the one defending against such a challenge—may request the court to adjourn the proceedings for a specified period. If the court deems it appropriate, it may grant such an adjournment, allowing the arbitral tribunal to resume proceedings or take necessary corrective measures to eliminate the grounds for setting aside the award. Thus, Section 34(4) provides a second opportunity for a party to seek recourse through arbitral channel.

56. However, the power of remand permits the court only to send the award to the tribunal for reconsideration of specific aspects. It is not an open-ended process; rather, it is a limited power, confined to limited circumstances and issues identified by the court. Upon remand, the arbitral tribunal may proceed

in a manner warranted by the situation – including recording additional evidence, affording a party an opportunity to present its case if previously denied, or taking any other corrective measures necessary to cure the defect. In contrast, the exercise of modification powers does not allow for such flexibility. Courts must act with certainty when modifying an award – like a sculptor working with a chisel, needing precision and exactitude. Therefore, the argument that remand powers make modification unnecessary is misconceived. They are distinct powers and are to be exercised differently.

57. Section 34(4), derived from the Model Law, is discretionary in nature. This is evident from the use of the word "may" in the provision. The Court may invoke this power when it identifies a defect in the award that could lead to its setting aside. In such cases, the court may seek to prevent this outcome by granting the arbitral tribunal an opportunity to rectify the defect.

58. While it is not appropriate to establish rigid parameters or a straitjacket formula for the exercise of this power, it is clear that Section 34(4) does not authorize the arbitral tribunal to rewrite the award on merits or to set it aside. Rather, it serves as a curative mechanism available to the tribunal when permitted by the court. The primary objective is to preserve the award if the identified defect can be cured, thereby avoiding the need to set aside the award. Accordingly, a court may not grant a remand when the defect in the award is inherently irreparable. A key consideration is the proportionality between the harm caused by the defect and the means available to remedy it.

59. While exercising this power, the court must also remain mindful that the arbitral tribunal has already rendered its decision. If the award suffers from serious

acts of omission, commission, substantial injustice, or patent illegality, the same may not be remedied through an order of remand. Clearly, there cannot be a lack of confidence in the tribunals' ability to come to a fair and balanced decision when an order of remit is passed.

60. Thus, an order of remand should not be passed when such order would place the arbitral tribunal in an invidious or embarrassing position. Additionally, remand may be inappropriate when it does not serve the interests of the parties, particularly in time-sensitive matters or where it would lead to undue costs and inefficiencies. Once an order of remand is granted, the arbitral tribunal has the authority to vary, correct, review, add to, or modify the award. Notably, under Section 34(4), the tribunal's powers, though confined, remain nonetheless substantial. This stands in contrast to the court's narrow role under the rest of Section 34.

61. This Court, in ***Kinnari Mullick and Another*** v. ***Ghanshyam Das Damani,***[45] referred to and laid down the preconditions for exercising the power of remand under Section 34(4). It held that the court cannot exercise the power of remand *suo motu* in the absence of a written request by one of the parties. Secondly, once an application under Section 34(1) has been decided and the award set aside, the court becomes functus officio and cannot thereafter remand the matter to the arbitral tribunal. Consequently, the power under Section 34(4) cannot be invoked after the court has disposed of the Section 34(1) application.

[45] (2018) 11 SCC 328.

62. We are unable to accept the view taken in ***Kinnari Mullick*** (supra), which insists that an application or request under Section 34(4) must be made by a party in writing. The request may be oral. Nevertheless, there should be a request which is recorded by the court. We are also unable to agree that the request must be exercised before the application under Section 34(1) is decided. Section 37 (**Annexure A**) permits an appeal against any order setting aside or refusing to set aside an arbitral award under Section 34. To this extent, the appellate jurisdiction under Section 37 is coterminous with, and as broad as, the jurisdiction of the court deciding objections under Section 34. Hence, the contention that the tribunal becomes *functus officio* after the award is set aside is misplaced. The Section 37 court still possesses the power of remand stipulated in Section 34(4). Of course, the appellate court, while exercising power under Section 37, should be mindful when the award has been upheld by the Section 34 court. But the Section 37 court still possesses the jurisdiction to remand the matter to the arbitral tribunal.

63. Our reasoning does not breach the principle of party autonomy.[46] Neither does it confer appellate powers on the courts. Instead, it adheres strictly to the parameters stipulated in Sections 34 and 37 of the 1996 Act. The power of the appellate court in civil proceedings under Order XLI of the Code, is as broad as that of a trial court, both in terms of facts and law. Contrastingly, the court's

[46] Rather, it acknowledges that the parties opting for arbitration also consent to be governed by the applicable statute governing arbitration—in this case, the 1996 Act. Further, principle of party autonomy should not be extended to an extreme to urge that the party misunderstood the law and consequently the consent is invalid. While it is true that a mistake of law may vitiate consent in certain contexts, the interpretation here restricts the court's role to that of limited judicial scrutiny in terms of the 1996 Act.

authority under Sections 34 and 37 of the 1996 Act is limited by the silhouette of Section 34.

64. In ***Dyna Technologies Private Limited*** v. ***Crompton Greaves Limited***,[47] this Court emphasized that the issuance of a reasoned award is not a mere formality under the 1996 Act. For an award to be termed "reasoned", it must meet three essential yardsticks: it must be proper, intelligible, and adequate. The purpose behind Section 34(4) is clear: it allows for an award to become enforceable after granting the tribunal an opportunity to cure any defects. This power is exercisable when the arbitral tribunal has failed to give any reasoning or the award exhibits gaps in reasoning and these defects can be cured, thereby preventing unnecessary challenges. The underlying intent is to provide an effective, expeditious forum for addressing curable defects, which Section 34(4) facilitates.

65. In ***I-Pay Clearing Services Private Limited*** v. ***ICICI Bank Limited***,[48] this Court clarified that Section 34(4) does not grant the authority to review or reconsider previous findings or conclusions. As discussed earlier in this judgment, the scope of the power under Section 34(4) is not to be restricted to a rigid, straitjacket formula. Rather, it depends on the specific facts and circumstances of each case. Being a discretionary power, it is to be exercised by the Court judiciously, keeping in mind the grounds raised in the application under Section 34(1). The Court should be *prima facie* satisfied that the wrong and illegality in the award are curable. While doing so, the Court need not

[47] (2019) 20 SCC 1.
[48] (2022) 3 SCC 121.

record the final finding on the contentious issue at hand; however, not every request for such relief is warranted. The discretion must be exercised with caution, and only when it is evident that an adjournment will allow the arbitral tribunal to resolve the issues and remove the grounds for setting aside the award. However, Section 34(4) is an enabling provision—it does not compel the tribunal to take corrective action, leaving it free to either amend or refuse to amend the award.

VII. *Doctrine of Merger and the New York Convention*

66. The reliance placed on doctrine of merger, coupled with the argument that court orders partially setting aside or modifying an award would render the amended award unenforceable under the New York Convention, is unfounded and must be rejected as misconceived. We are of the view that, once Section 34 is reinterpreted to include a limited power to modify awards, this authority will not affect the international commercial arbitration regime or the enforcement of foreign awards.

67. Section 48 of the 1996 Act (**Annexure A**), which is similarly worded as Article V of the New York Convention, delineates situations when the enforcement of a foreign award may be refused. Section 48(1)(e) states the award may not be enforced when it has not become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. In simpler words, the award must become "binding on the parties" in terms of the law of the seat before enforcement. Sub-clause (e) therefore recognizes that, for enforcement, the domestic law of the country where the award is made shall prevail and have supremacy. Thus,

this Court's interpretation, reading modification powers into Section 34, would not be at loggerheads with the New York Convention. The Convention requires the enforcement court to consider whether an award has become binding in terms of the law of the seat.

68. In any case, the New York Convention, as explained by this Court in ***Brace Transport Corporation of Monrovia, Bermuda*** v. ***Orient Middle East Lines Limited, Saudi Arabia and Others***,[49] speaks of "recognition and enforcement" of an award. An award may be recognized without being enforced; but if it is enforced, then it is necessarily recognized. Recognition may act as a shield against re-agitation of issues which the award deals with. A party successful in arbitration, may seek and rely upon recognition, if proceedings are brought against him on issues already dealt with by an award. A defensive shield is then erected on the award.

69. Based on the above discussion, the argument that several countries like Singapore, Kenya, and the United Kingdom (**Annexure B**) – though originally following the Model Law – now allow courts to modify an award in limited cases, while the 1996 Act does not, is only linguistically correct. However, it is not convincing jurisprudentially or in principle. The limited power under Section 34 allows the court to vary or modify the award. The effect thereof is that the award would be read as modified by the judgment/order.

[49] 1995 Supp (2) SCC 280.

VIII. NHAI Act – Expansive Modification of Arbitral Awards is Impermissible

70. It has been argued that Section 34 should be expansively interpreted to permit modification of awards under the NHAI Act. In particular, it is suggested that courts should be allowed to modify the quantum of compensation awarded, as the Act involves statutory arbitration. This argument is, however, untenable. The jurisdiction conferred under Section 34 does not distinguish between statutory and non-statutory arbitration in terms of the scope of courts' power of review. Hence, this argument stands rejected.

71. We refrain from expressing any opinion on the validity of the provisions under the NHAI Act, which is presently under judicial consideration in a separate writ petition. Neither do we adjudicate upon whether or in what manner awards issued by statutory authorities may be challenged.

IX. Post-Award Interest

72. The next question that arises is: *do courts possess the power to declare or modify interest, especially post award interest?* In respect of *pendente lite* interest, Section 31(7)(a) (**Annexure A**), states that unless otherwise agreed by the parties, the arbitral tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (**Annexure A**) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of

the award till the date of payment. The explanation defines the expression 'current rate of interest'.

73. There can be instances of violation of Section 31(7)(a), and the *pendente lite* interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).

74. For the post award interest in terms of Section 31(7)(b), the courts will retain the power to modify the interest where the facts justify such modification. This is why the standard rate stipulated in clause (b) applies when the award itself does not specify the applicable post award interest. There can be a situation where the party to be paid money is at fault and is guilty of delay which may require a modification in the rate of interest. In the absence of grant of post award interest in the award, the court also possesses the power to grant post award interest. Clearly, as per the legislative mandate, it is not the sole prerogative of the arbitrator.

75. Compare Section 31 of the 1996 Act with Section 31 of the Model Law. While both sections are titled similarly – "Form and Contents of Award" – only the 1996 Act addresses interest in Section 31(7). The Model Law does not provide standards governing the determination of interest rates. Thus, Section 31(7) is a unique creation of the Indian legislature. It was not borrowed from the Model Law. Specifically, under Section 31(7)(b), the legislature has established a standard rate of interest to guide the arbitrator's discretion when it comes to determining the post-award interest rate. While the arbitrator retains his

flexibility based on facts and circumstances of the case, the standard set by the legislature must weigh in on their consideration. Further, as there is a standard prescribed by the legislature, the post-award interest awarded can be scrutinized by courts against the standards prescribed.

76. Our reasoning is bolstered when considering the practical aspects. Arbitral tribunals, when determining post-award interest, cannot foresee future issues that may arise. Post award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued. Since the future is unpredictable and unknown to the arbitrator at the time of the award, it would be unreasonable to suggest that the arbitrator, as a soothsayer, could have anticipated or predicted future events with certainty. Therefore, it is appropriate for the Section 34 court to have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change.

77. Inherent in the discussion above, is the court's power to both increase or decrease the post-award interest rate. It would be incorrect to state that the court's power to interfere with this interest rate is limited solely to decreasing the interest rate. Situations may arise where the rate should be increased due to delays or obstructions in the execution of the award. Interest rates may also fluctuate over time.

78. However, the court, while exercising this power, must be cautious and mindful not to overstep its role by altering the interest rate unless there are compelling and well-founded reasons to do so. In exercising this power, the court is not acting in an appellate capacity, but rather under limited authority. For instance,

the 1996 Act stipulates a standard post-award interest rate. When the statute itself benchmarks a standard, unless there are special and specific reasons, the rate of interest stipulated by the statute should be applied.

79. Nevertheless, this limited power is significant, as it can help avoid further rounds of litigation. Without it, the court may be forced to set aside the entire award or order a fresh round of arbitration because of an erroneous interest rate rather than simply adjusting this rate.

X. Post-Award Settlements

80. We are also of the opinion that the parties are entitled to enter into an agreement or settlement even after an award is pronounced. Such a settlement should be in accordance with the provisions of Order XXIII of the Code. The law of the land does not bar the parties from entering into a post award or post decree settlement. The only legal requirement is that such settlement must be verifiable and in accordance with law i.e., the settlement is not a result of undue influence, force, fraud, coercion, etc.

XI. Limitation Period – Section 34

81. This brings us to Section 43(4) (**Annexure A)** of the 1996 Act. It clarifies the legal position *re* limitation and setting aside. For context, once an award is set aside, it becomes null and void, but the original dispute may still require resolution. The 1996 Act, *vide* Section 43(4), enables the parties to initiate fresh arbitration or court proceedings in relation to the dispute. However, the question that arises is: *how do we calculate the limitation period within which the fresh arbitration or court proceedings are to be commenced?* Section 43(4)

stipulates that the period between the commencement of arbitration and the Court's order setting aside the award is excluded for the purposes of calculating the limitation period under the Limitation Act, 1963. In essence, the time during which the award is in force is not counted. We are also cognizant that there could be a situation that, on setting aside of the award, the entire dispute gets resolved and decided. However, we need not go into this question. What is relevant is that Section 43(4) provides liberty for the parties to invoke either arbitration or court proceedings, as applicable, following the annulment of the award.

XII. Supreme Court's Power to Do Complete Justice

82. As far as the applicability of Article 142 of the Constitution is concerned, this power is to be exercised by this Court with great care and caution. Article 142 enables the Court to do complete justice in any cause or matter pending before it. The exercise of this power has to be in consonance with the fundamental principles and objectives behind the 1996 Act and not in derogation or in suppression thereof.

83. In ***Shilpa Sailesh*** v. ***Varun Sreenivasan,***[50] a Constitution Bench of this Court summarized the scope of its power under Article 142 of the Constitution as follows:

> "19. Given the aforesaid background and judgments of this Court, the plenary and conscientious power conferred on this Court under Article 142(1) of the Constitution of India, seemingly unhindered, is tempered or bounded by restraint, which must be exercised based on fundamental considerations of general and specific public policy. Fundamental general conditions of public policy refer to

[50] (2023) 14 SCC 231.

> the fundamental rights, secularism, federalism, and other basic features of the Constitution of India. Specific public policy should be understood as some express pre-eminent prohibition in any substantive law, and not stipulations and requirements to a particular statutory scheme. It should not contravene a fundamental and non-derogable principle at the core of the statute. Even in the strictest sense, it was never doubted or debated that this Court is empowered under Article 142(1) of the Constitution of India to do "complete justice" without being bound by the relevant provisions of procedure, if it is satisfied that the departure from the said procedure is necessary to do "complete justice" between the parties."

84. While exercising power under Article 142, this Court must be conscious of the aforesaid dictum. In our opinion, the power should not be exercised where the effect of the order passed by the court would be to rewrite the award or modify the award on merits. However, the power can be exercised where it is required and necessary to bring the litigation or dispute to an end. Not only would this end protracted litigation, but it would also save parties' money and time.

CONCLUSIONS

85. Accordingly, the questions of law referred to by ***Gayatri Balasamy*** (supra) are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

I. when the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in **Part II** of our **Analysis**.

II. by correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in **Part IV** and **V** of our **Analysis**;

III. post award interest may be modified in some circumstances as held in **Part IX** of our **Analysis**; and/or

IV. Article 142 of the Constitution applies, *albeit*, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in **Part XII** of our **Analysis**.

…….....CJI.
(SANJIV KHANNA)

…….....J.
(B.R. GAVAI)

…….....J.
(SANJAY KUMAR)

…….....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
APRIL 30, 2025.

ANNEXURE - A

"**5. Extent of judicial intervention**.— Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
(3) The arbitral award shall state the reasons upon which it is based, unless—
(*a*) the parties have agreed that no reasons are to be given; or
(*b*) the award is an arbitral award on agreed terms under Section 30.
(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place.
(5) After the arbitral award is made, a signed copy shall be delivered to each party.
(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.
(7)(*a*) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
(*b*) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.
Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (*b*) of Section 2 of the Interest Act, 1978 (14 of 1978).
(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with Section 31-A.

33. Correction and interpretation of award; additional award.— (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(*a*) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(*b*) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (*a*) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

34. Application for setting aside arbitral award.— (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(*a*) the party making the application establishes on the basis of the record of the arbitral tribunal that—

(*i*) a party was under some incapacity; or

(*ii*) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(*iii*) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(*iv*) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(*v*) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(*b*) the Court finds that—

(*i*) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(*ii*) the arbitral award is in conflict with the public policy of India.

[*Explanation 1*.— For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(*ii*) it is in contravention with the fundamental policy of Indian law; or

(*iii*) it is in conflict with the most basic notions of morality or justice.

Explanation 2.— For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

[(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

37. Appealable orders.— (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under Section 9;

(c) setting aside or refusing to set aside an arbitral award under Section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

43. Limitations.— (1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in Section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

48. Conditions for enforcement of foreign awards.— (1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that—

(a) the parties to the agreement referred to in Section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security."

ANNEXURE - B

S. NO.	COUNTRY	RELEVANT PROVISION
1.	Singapore	**Sections 47 and 49 of the Singapore Arbitration Act, 2001** **47. No judicial review of award** The Court does not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Act. **49. Appeal against award** (1) A party to arbitral proceedings may (upon notice to the other parties and to the arbitral tribunal) appeal to the Court on a question of law arising out of an award made in the proceedings. (2) Despite subsection (1), the parties may agree to exclude the jurisdiction of the Court under this section and an agreement to dispense with reasons for the arbitral tribunal's award is to be treated as an agreement to exclude the jurisdiction of the Court under this section. (3) An appeal must not be brought under this section except — (a) with the agreement of all the other parties to the proceedings; or (b) with the permission of the Court. (4) The right to appeal under this section is subject to the restrictions in section 50. (5) Permission to appeal is to be given only if the Court is satisfied that — (a) the determination of the question will substantially affect the rights of one or more of the parties; (b) the question is one which the arbitral tribunal was asked to determine; (c) on the basis of the findings of fact in the award— (i) the decision of the arbitral tribunal on the question is obviously wrong; or (ii) the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and

		(d) Despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the Court to determine the question. (6) An application for permission to appeal under this section must identify the question of law to be determined and state the grounds on which it is alleged that permission to appeal should be granted. (7) The permission of the appellate court is required for any appeal from a decision of the Court under this section to grant or refuse permission to appeal. (8) ***On an appeal under this section, the Court may by order —*** ***(a) confirm the award;*** ***(b) vary the award;*** ***(c) remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the Court's determination; or (d) set aside the award in whole or in part.*** (9) The Court is not to exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration. (10) The decision of the Court on an appeal under this section is to be treated as a judgment of the Court for the purposes of an appeal to the appellate court. (11) The appellate court may give permission to appeal against the decision of the Court in subsection (10) only if the question of law before it is one of general importance, or one which for some other special reason should be considered by the appellate court.
2.	United Kingdom	**<u>Section 30, 67(3), 68 and 69(7) of the Arbitration Act, 1996</u>** **30. Competence of tribunal to rule on its own jurisdiction.** (1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to— (a)whether there is a valid arbitration agreement, (b) whether the tribunal is properly constituted, and (c) what matters have been submitted to arbitration in accordance with the arbitration agreement. (2) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

		67. Challenging the award: substantive jurisdiction. (1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court— (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction. A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3). (2) The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction. ***(3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order—*** ***(a) confirm the award*** ***(b) vary the award, or*** ***(c) set aside the award in whole or in part.*** (4) The leave of the court is required for any appeal from a decision of the court under this section. **68. Court may set aside award** (1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3). (2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant— (a) failure by the tribunal to comply with section 33 (general duty of tribunal); (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);

		(c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties; (d) failure by the tribunal to deal with all the issues that were put to it; (e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers; (f) uncertainty or ambiguity as to the effect of the award; (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy; (h) failure to comply with the requirements as to the form of the award; or (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award. (3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may— (a) remit the award to the tribunal, in whole or in part, for reconsideration, (b) set the award aside in whole or in part, or (c) declare the award to be of no effect, in whole or in part. The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration. (4) The leave of the court is required for any appeal from a decision of the court under this section. **69 Appeal on point of law** (1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings. An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section. (2) An appeal shall not be brought under this section except—

		(a) with the agreement of all the other parties to the proceedings, or (b) with the leave of the court. The right to appeal is also subject to the restrictions in section 70(2) and (3). (3) Leave to appeal shall be given only if the court is satisfied— (a) that the determination of the question will substantially affect the rights of one or more of the parties, (b) that the question is one which the tribunal was asked to determine, (c) that, on the basis of the findings of fact in the award— (i) the decision of the tribunal on the question is obviously wrong, or (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and (d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question. (4) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted. (5) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required. (6) The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal. (7) ***On an appeal under this section the court may by order—*** ***(a) confirm the award,*** ***(b) vary the award,*** ***(c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination, or*** ***(d) set aside the award in whole or in part***. ***The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.*** (8) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal.

		But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.
3.	United States of America	**<u>Section 10 and 11 of the Federal Arbitration Act, 1925</u>** **Section 10. Same; vacation; grounds; rehearing** (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration (1) Where the award was procured by corruption, fraud, or undue means. (2) Where there was evident partiality or corruption in the arbitrators, or either of them. (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced. (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. (5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators. (b) The United States district court for the district wherein an award was made that was 6(10) issued pursuant to section 590 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 582 of Title 5. **Section 11. Same; modification or correction; grounds; order** ***In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration*** ***(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.***

		(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted. ***(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.*** ***The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.***
4.	France	**<u>Article 1502 of Code of Civil Procedure</u>** **Article 1502** Application for revision of an arbitral award may be made in the circumstances provided in Article 595 for court judgments, and under the conditions set forth in Articles 594, 596, 597 and 601 through 603. Application shall be made to the arbitral tribunal. However, if the arbitral tribunal cannot be reconvened, application shall be made to the Court of Appeal which would have had jurisdiction to hear other forms of recourse against the award. **Article 595** An application for revision of a judgment may be made only where: 1. it comes to light, after the judgment is handed down, that it was obtained fraudulently by the party in whose favour it was rendered; 2. decisive evidence that had been withheld by another party is recovered after the judgment was handed down; 3. the judgment is based on documents that have since been proven or have been held by a court to be false; 4. the judgment is based on affidavits, testimonies or oaths that have been held by a court to be false. In all four cases, an application for revision shall be admissible only where the applicant was not able, through no fault of his or her own, to raise such objection before the judgment became *res judicata.*
5.	Australia	**<u>Section 34A of the Commercial Arbitration Act, 2017 (Australian Capital Territory)</u>** **34A Appeals against awards** (1) An appeal lies to the court on a question of law arising out of an award if—

		(a) the parties agree, before the end of the appeal period referred to in subsection (6), that an appeal may be made under this section; and (b) the court grants leave. (2) An appeal under this section may be brought by any of the parties to an arbitration agreement. (3) The court must not grant leave unless it is satisfied— (a)the determination of the question will substantially affect the rights of 1 or more of the parties; and (b)the question is one which the arbitral tribunal was asked to determine; and (c)on the basis of the findings of fact in the award— (i) the decision of the tribunal on the question is obviously wrong; or (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt; and (d) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question. (4) An application for leave to appeal must identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted. (5) The court is to determine an application for leave to appeal without a hearing unless it appears to the court that a hearing is required. (6) An appeal may not be made under this section after 3 months have elapsed from the date on which the party making the appeal received the award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal (in this section referred to as the appeal period). ***(7) On the determination of an appeal under this section the court may by order—*** ***(a) confirm the award; or*** ***(b) vary the award; or*** ***(c) remit the award, together with the court's opinion on the question of law which was the subject of the appeal, to the arbitrator for reconsideration or, where a new arbitrator has been appointed, to that arbitrator for consideration; or***

		(d) set aside the award in whole or in part. (8) The court must not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration. (9) Where the award is remitted under subsection (7) (c) the arbitrator must, unless the order otherwise directs, make the award within 3 months after the date of the order. (10) The court may make any leave which it grants under subsection (3) (c) subject to the applicant complying with any conditions it considers appropriate. (11) Where the award of an arbitrator is varied on an appeal under this section, the award as varied has effect (except for this section) as if it were the award of the arbitrator.
6.	New Zealand	**Section 5 and 6 of Schedule 2 (Additional optional rules applying to arbitration), Arbitration Act, 1996** **5. Appeals on questions of law** (1) Notwithstanding anything in articles 5 or 34 of Schedule 1, any party may appeal to the High Court on any question of law arising out of an award— (a) if the parties have so agreed before the making of that award; or (b) with the consent of every other party given after the making of that award; or (c) with the leave of the High Court. (2) The High Court shall not grant leave under subclause (1)(c) unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of 1 or more of the parties. (3) The High Court may grant leave under subclause (1)(c) on such conditions as it sees fit. ***(4) On the determination of an appeal under this clause, the High Court may, by order,—*** ***(a) confirm, vary, or set aside the award; or*** ***(b) remit the award, together with the High Court's opinion on the question of law which was the subject of the appeal, to the***

		arbitral tribunal for reconsideration or, where a new arbitral tribunal has been appointed, to that arbitral tribunal for consideration,— and, where the award is remitted under paragraph (b), the arbitral tribunal shall, unless the order otherwise directs, make the award not later than 3 months after the date of the order. (5) With the leave of the High Court, any party may appeal to the Court of Appeal from any refusal of the High Court to grant leave or from any determination of the High Court under this clause. (6) If the High Court refuses to grant leave to appeal under subclause (5), the Court of Appeal may grant special leave to appeal. (7) Where the award of an arbitral tribunal is varied on an appeal under this clause, the award as varied shall have effect (except for the purposes of this clause) as if it were the award of the arbitral tribunal; and the party relying on the award or applying for its enforcement under article 35(2) of Schedule 1 shall supply the duly authenticated original order of the High Court varying the award or a duly certified copy. (8) Article 34(3) and (4) of Schedule 1 apply to an appeal under this clause as they do to an application for the setting aside of an award under that article. (9) For the purposes of article 36 of Schedule 1,— (a) an appeal under this clause shall be treated as an application for the setting aside of an award; and (b) an award which has been remitted by the High Court under subclause (4)(b) to the original or a new arbitral tribunal shall be treated as an award which has been suspended. (10) For the purposes of this clause, question of law— (a) includes an error of law that involves an incorrect interpretation of the applicable law (whether or not the error appears on the record of the decision); but (b) does not include any question as to whether (i) the award or any part of the award was supported by any evidence or any sufficient or substantial evidence; and (ii) the arbitral tribunal drew the correct factual inferences from the relevant primary facts.
7.	Canada	**<u>Section 45 of the Arbitration Act, 1991 Ontario</u>**

		45. Appeals **Appeal on question of law** (1) If the arbitration agreement does not deal with appeals on questions of law, a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that, (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and (b) determination of the question of law at issue will significantly affect the rights of the parties. 1991, c. 17, s. 45 (1). **Idem** (2) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law. 1991, c. 17, s. 45 (2). **Appeal on question of fact or mixed fact and law** (3) If the arbitration agreement so provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law. 1991, c. 17, s. 45 (3). **Powers of court** (4) The court may require the arbitral tribunal to explain any matter. 1991, c. 17, s. 45 (4). **Idem** (5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration. 1991, c. 17, s. 45 (5). **Family arbitration award** (6) Any appeal of a family arbitration award lies to, (a) the Family Court, in the areas where it has jurisdiction under subsection 21.1 (4) of the Courts of Justice Act; (b) the Superior Court of Justice, in the rest of Ontario. 2006, c. 1, s. 1 (6).
8.	South Africa	**<u>Section 31 of Arbitration Act 42 of 1965</u>** **31. Award may be made an order of court** (1) An award may, on the application to a court of competent jurisdiction by any party to the reference after due notice to the other party or parties, be made an order of court.

		(2) The court to which application is so made, may, before making the award an order of court, correct in the award any clerical mistake or any patent error arising from any accidental slip or omission. (3) (3) An award which has been made an order of court may be enforced in the same manner as any judgment or order to the same effect.
9.	Hong Kong	**<u>Section 5 of Schedule 2 (Provisions that may be Expressly Opted for or Automatically Apply) of Cap. 609 Arbitration Ordinance</u>** **5.Appeal against arbitral award on question of law** (1) Subject to section 6 of this Schedule, a party to arbitral proceedings may appeal to the Court on a question of law arising out of an award made in the arbitral proceedings. (2) An agreement to dispense with the reasons for an arbitral tribunal's award is to be treated as an agreement to exclude the Court's jurisdiction under this section. (3) The Court must decide the question of law which is the subject of the appeal on the basis of the findings of fact in the award. (4) The Court must not consider any of the criteria set out in section 6(4)(c)(i) or (ii) of this Schedule when it decides the question of law under subsection (3). ***(5) On hearing an appeal under this section, the Court may by order—*** ***(a)confirm the award;*** ***(b)vary the award;*** ***(c)remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the Court's decision; or*** ***(d)set aside the award, in whole or in part.*** (6) If the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal must make a fresh award in respect of the matters remitted— (a)within 3 months of the date of the order for remission; or (b)within a longer or shorter period that the Court may direct.

		(7) The Court must not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration. (8) The leave of the Court or the Court of Appeal is required for any further appeal from an order of the Court under subsection (5). (9) Leave to further appeal must not be granted unless— (a)the question is one of general importance; or (b)the question is one which, for some other special reason, should be considered by the Court of Appeal. (10) Sections 6 and 7 of this Schedule also apply to an appeal or further appeal under this section.
10.	Kenya	**Section 39 of Arbitration Act, 1995** **39. Questions of law arising in domestic arbitration** (1) Where in the case of a domestic arbitration, the parties have agreed that— (a) an application by any party may be made to a court to determine any question of law arising in the course of the arbitration; or (b) an appeal by any party may be made to a court on any question of law arising out of the award, such application or appeal, as the case may be, may be made to the High Court. ***(2) On an application or appeal being made to it under subsection (1) the High Court shall—*** ***(a) determine the question of law arising;*** ***(b) confirm, vary or set aside the arbitral award or remit the matter to the arbitral tribunal for re-consideration or, where another arbitral tribunal has been appointed, to that arbitral tribunal for consideration.*** (3) Notwithstanding sections 10 and 35 an appeal shall lie to the Court of Appeal against a decision of the High Court under subsection (2)— (a) if the parties have so agreed that an appeal shall lie prior to the delivery of the arbitral award; or (b) the Court of Appeal, being of the opinion that a point of law of general importance is involved the determination of which will substantially affect the rights of one or more of the parties, grants

		leave to appeal, and on such appeal the Court of Appeal may exercise any of the powers which the High Court could have exercised under subsection (2). (4) An application or appeal under this section shall be made within the time limit and in the manner prescribed by the Rules of Court applicable, as the case may be, in the High Court or the Court of Appeal. (5) When an arbitral award has been varied on appeal under this section, the award so varied shall have effect as if it were the award of the arbitral tribunal concerned.
11.	Brunei Darussalam	**<u>Sections 47 and 49 of the Arbitration Order, 2009</u>** **47. No judicial review of award** The Court does not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Order. Appeal against award **49. Appeal against award** (1) A party to arbitral proceedings may, upon notice to the other parties and to the arbitral tribunal, appeal to the Court on a question of law arising out of an award made in the proceedings. (2) Notwithstanding subsection (1), the parties may agree to exclude the jurisdiction of the Court under this section and an agreement to dispense with reasons for the arbitral tribunal's award shall be treated as an agreement to exclude the jurisdiction of the Court under this section. (3) An appeal must not be brought under this section except — (a) with the agreement of all the other parties to the proceedings; or (b) with the leave of the Court. (4) The right to appeal under this section is subject to the restrictions in section 50. (5) Leave to appeal is to be given only if the Court is satisfied that — (a) the determination of the question will substantially affect the rights of one or more of the parties; (b) the question is one which the arbitral tribunal was asked to determine;

		(c) on the basis of the findings of fact in the award— (i) the decision of the arbitral tribunal on the question is obviously wrong; or (ii) the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and (d) Despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the Court to determine the question. (6) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted. (7) The leave of the Court shall be required for any appeal from a decision of the Court under this section to grant or refuse leave to appeal. ***(8) On an appeal under this section, the Court may by order —*** ***(a) confirm the award;*** ***(b) vary the award;*** ***(c) remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the Court's determination; or*** ***(d) set aside the award in whole or in part.*** (9) The Court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration. (10) The decision of the Court on an appeal under this section shall be treated as a judgment of the Court for the purposes of an appeal to the Court of Appeal. (11) The Court may give leave to appeal against the decision of the Court in subsection (10) only if it considers that the question of law before it is one of general importance, or is one which for some other special reason should be considered by the Court of Appeal.
12.	Philippines	**Section 41 of the Republic Act No. 9285 (2004) or the Alternative Dispute Resolution Act of 2004 read with Section 25 of the Republic Act No. 876** **41. Vacation Award**

A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.

25. Grounds for modifying or correcting award

In any one of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the controversy which was arbitrated:

(a) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award; or
(b) Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or
(c) Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.

The order may modify and correct the award so as to effect the intent thereof and promote justice between the parties.

Section 46 of the Republic Act No. 9285 (2004), or the Alternative Dispute Resolution Act of 2004

46. Appeal from Court Decisions on Arbitral Awards

A decision of the regional trial court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

The losing party who appeals from the judgment of the court confirming an arbitral award shall required by the appellant court to post counterbond executed in favour of the prevailing party equal to the amount of the award in accordance with the rules to be promulgated by the Supreme Court.

31. Award may be made an order of court

		(1) An award may, on the application to a court of competent jurisdiction by any party to the reference after due notice to the other party or parties, be made an order of court. (2) The court to which application is so made, may, before making the award an order of court, correct in the award any clerical mistake or any patent error arising from any accidental slip or omission. (3) An award which has been made an order of court may be enforced in the same manner as any judgment or order to the same effect.
13.	Sri Lanka	**<u>Section 687 and 688 of the Civil Procedure Code</u>** **687. Application to set aside or correct the award** Within fifteen days from the date of receipt of notice of the filing of the award any party to the arbitration may by petition apply to the court to set aside the award, or to modify or to correct the award, or to remit the award to the arbitrators for reconsideration, on grounds mentioned in the following sections. **688. When court may correct award.** ***The court may, by order, modify or correct an award-*** ***(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred ; or (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.***