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The Article 142 Blackhole: Is Gayatri Balasamy the Much Needed Push to Finally Trigger Legislative Intervention?

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On 30 April 2025, a five judge constitutional bench (by a majority of 4:1) of the Supreme Court of India ("**SC**") passed the much-awaited judgment in *Gayatri Balasamy v. ISG Novasoft Technologies Limited* ("**Judgment**") on the issue of whether a court, hearing a challenge to the arbitral award, can modify the arbitral award.

As discussed in our previous post, the Judgment could have potentially put an end to the controversy of whether and to what extent courts can interfere and modify an arbitral award. In this article, we discuss how the constitutional bench of the SC tackled this issue and whether it has succeeded in its mandate of putting an end to the on-going debate, as many had hoped.

Statutory Framework Under the Indian Arbitration and Conciliation Act, 1996 ("Act")

Section 34 of the Act empowers courts to hear challenges to an arbitral award and is modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985. Section 34(2)(a) provides limited grounds for setting aside an arbitral award, namely, 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 its case, the arbitral award being beyond the scope of submission to arbitration and composition of the arbitral tribunal or the arbitral procedure not being by the agreement of the parties. Further, Section 32(b) provides that an arbitral award may be set aside when the subject matter of the dispute cannot be settled by arbitration or if the arbitral award conflicts with the public policy of India. Section 34(2-A) stipulates that an arbitral award may be set aside when it is vitiated by patent illegality appearing on the face of the award. This ground is limited to only domestic arbitrations and does not apply in case of international commercial arbitrations. Lastly, Section 37(1)(c) of the Act permits an appeal against any order setting aside or refusing to set aside an arbitral award under Section 34.

A bare perusal of Sections 34(2) and (2-A) indicates that while courts are empowered to set aside an arbitral award, they cannot modify an award. In this regard, it is pertinent to note that courts under the erstwhile Arbitration Act, 1940 had the power to modify an arbitral award. However, no such express power is provided in the Act.

That said, while courts cannot modify the award, under Section 34(4) of the Act, they have the

power to remand the proceedings back to the arbitral tribunal to eliminate the grounds for setting aside the arbitral award.

Reference to the Five Judge Bench

As indicated in our previous post, modification of arbitral awards by courts was a hotly debated issue in India. Since there were conflicting judgments of co-equal benches of the SC on whether courts are empowered to modify arbitral awards, in February 2024, a three-judge bench of the SC finally referred this question to the five-judge bench for consideration.

The Majority's Decision

After considering the arguments advanced, four out of the five judges found merit in the argument that courts do have the power to modify arbitral awards. However, Justice K.V. Viswanathan, in his dissent, disagreed and opined that no such power is envisaged under Section 34 of the Act.

The majority, after considering the existing Indian legal framework and comparing it with the framework of other countries (such as England, United States of America, Canada, Australia, and Singapore), concluded that courts have *limited* power to interfere in an arbitral award and identified the following four grounds when they could:

1. when the arbitral award is severable, by severing the invalid portion from the valid portion of the arbitral award;
2. correcting any clerical, computational, or typographical errors which appear erroneous on the face of the record;
3. modification of post-award interest; and
4. under Article 142 of the Constitution of India ("**Constitution**"), which empowers the SC to pass any order, as it deems fit, "necessary for doing complete justice", albeit the power must be exercised with great care and caution and within the limits of the constitutional power. Article 142.

In all other cases the court must either set aside the arbitral award or remand the matter back to the arbitral tribunal.

Justice K.V. Viswanathan's Compelling Dissent

Justice K.V. Viswanathan in his detailed dissenting opinion, spanning over 129 pages, took a more restrictive view of Section 34, emphasising that the said provision does not permit courts to modify arbitral awards. He opined that the power to set aside and power to modify do not emanate from the same genus. Consequently, the power to modify is not a lesser power subsumed in the power to set aside the arbitral award granted to courts under Section 34. Further, while drawing a distinction between arbitral award modification and severance, he highlighted that while Section 34 does not permit modification, severance of a portion of the arbitral award which falls foul of Section 34 is permissible in exercise of powers under Section 34.

Lastly, given the restrictive nature of Section 34, Justice Vishwanathan cautioned that Article 142 of the Constitution should not be used as a door to allow the SC to enter in the realm of arbitral award modification, as it cannot be used to override substantive statutory provisions.

The Article 142 Problem

As discussed in our previous post, Article 142 permits the SC to exercise extraordinary jurisdiction when "necessary for doing complete justice" and has regularly been invoked to revise arbitral awards as a residuary provision.

As indicated above, while the constitutional bench of the SC in the Judgment has indicated that courts can only modify awards in limited circumstances, it has recognised Article 142 as one of the grounds empowering the courts to interfere. While it is understandable why the constitutional bench may not have been desirous of completely shutting the door to Article 142, this ground has the potential of opening the pandora's box, with miscreant parties misusing this option to delay enforcement.

No doubt that the constitutional bench in the Judgment has warned that the power under Article 142 should not be exercised where the effect of the order would rewrite the arbitral award or modify the arbitral award on merits. However, the absence of any clear restrictive guidelines or limits leaves the door open for parties to approach the SC and convince it to invoke its residuary powers to modify awards. This would be antithetical to arbitration as an alternative and efficacious mode of dispute resolution.

Moreover, as correctly observed by the Justice K.V. Viswanathan, in his dissenting opinion, contracting parties will suffer grave uncertainty if such power is exercised by the SC towards the fag end of the ongoing litigation between the parties. This would always be a sword hanging over the parties and a cause for concern given the wide amplitude of the powers given to the SC under Article 142.

Impact of the Judgment

The Judgment has been polarizing. Some argue that the constitutional bench should have followed the hands-off approach (wherein courts are not permitted to modify awards) which the SC has been strongly advocating for the past few years. However, others believe that modification— to the limited extent of the four identified grounds in the Majority judgment—is a better alternative than setting aside the award, thereby compelling the parties to undergo an extra round of proceedings.

While the argument on both sides cannot be faulted, the question which arises is whether there was a way which could have achieved both goals. At first blush the argument that if modification is not allowed, it would increase the hardship of parties, compelling them to undergo another round of proceedings sounds reasonable. However, on a closer look, it becomes evident that empowering courts to make such modification goes against the very ethos of arbitration, where parties consciously opt to move away from court adjudication. Even if the modification is minor, it still leads to a situation where a court has interfered with the arbitral award.

Even otherwise, with the exception of Article 142, an analysis of the other three grounds identified by the constitutional bench shows that such modifications could also be carried out by remanding the matter back to the arbitral tribunal under Section 34(4) of the Act. In fact, the constitutional bench in the Judgment has itself observed that "[o]nce 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." Therefore, courts can always remand the arbitral award back to the arbitral tribunal for reconsideration on the abovementioned specific aspects. Remanding the arbitral award back to the arbitral tribunal would resolve both issues, where the party will not have to undergo another round of proceedings and court interference would be kept to the minimum.

Conclusion

In the lead up to the Judgment, many had hoped that the SC would formulate a definitive, and more importantly, restrictive response on whether and to what extent courts have the power to modify arbitral awards. Unfortunately, the path taken by the SC has once again created a sense of uncertainty, particularly, because of the leeway given to parties to apply for modification under Article 142 of the Constitution for "doing complete justice" in the matter.

This could potentially open the floodgates for modification requests before courts, perpetuating uncertainty and delays—the very issues which many hoped the constitutional bench would put an end to.

This uncertainty once again raises the need for a legislative intervention to conclusively address this issue. As discussed in our previous post, the government of India is presently in the process of considering further amendments to the Act. Last year, the Arbitration and Conciliation (Amendment) Bill, 2024 proposed various important and much needed amendments. These include formal recognition of emergency arbitration and a clarification of the longstanding ambiguity around the venue of an arbitration. However, surprisingly the Bill was silent on the aspect of modification of awards by courts. It is hoped that this Judgment is the final push required for the legislature to take up this issue and formulate a roadmap to deter judicial deviation.

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