Dispute Resolution & ADR

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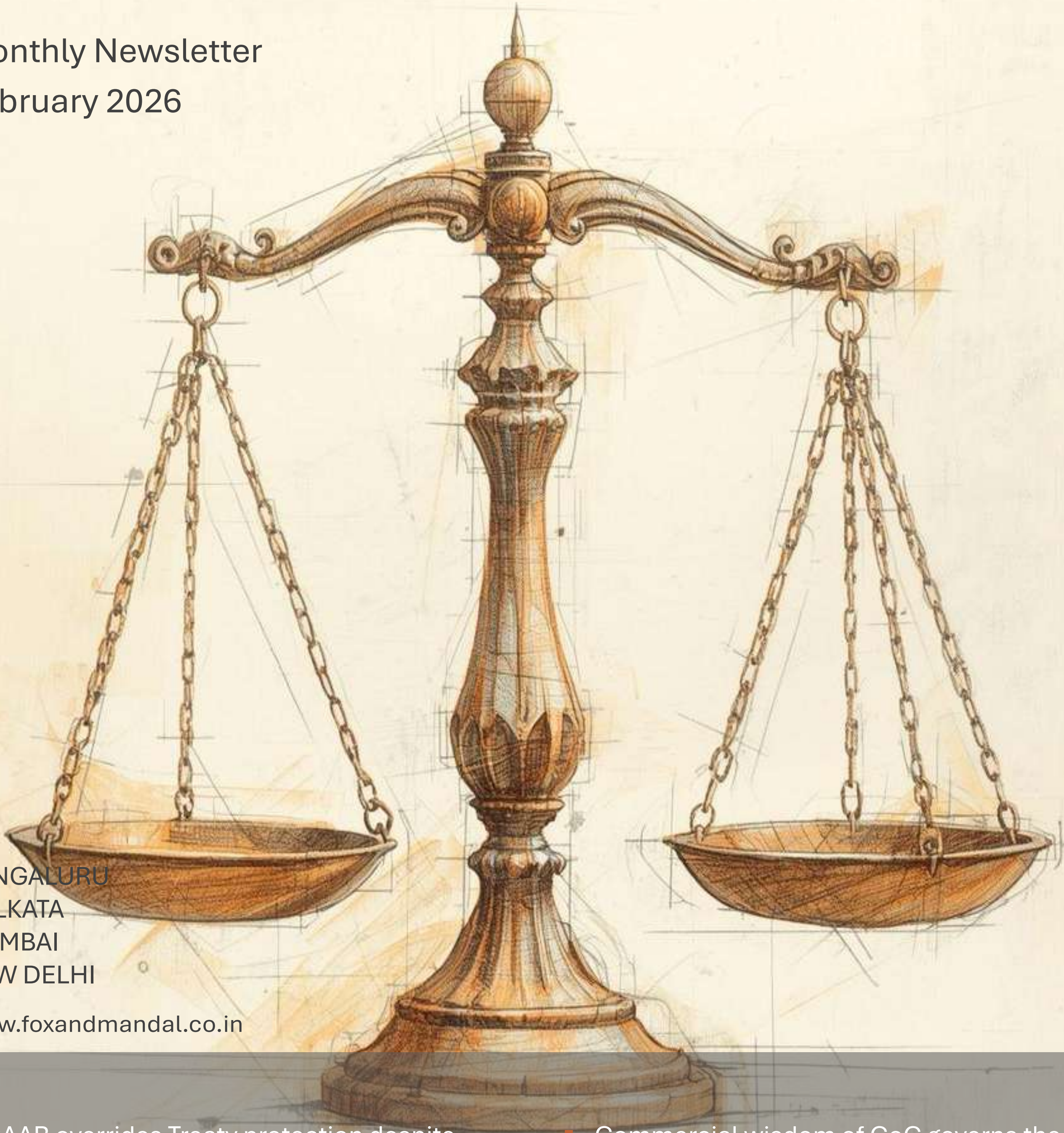

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GAAR overrides Treaty protection despite Tax Residency Certificates

AAR (Income Tax) v. Tiger Global International II Holdings

Supreme Court of India | 2026 SCC OnLine SC 86

In a significant decision reshaping the landscape of cross-border tax structuring into India, the Supreme Court has held that treaty entitlement to tax benefits/exemption cannot rest on documentation alone, and that commercial substance will prevail over formal compliance.

The ruling marks a clear shift from the earlier era, where Tax Residency Certificates (**TRCs**) and grandfathered treaty provisions were often treated as strong shields against Indian taxation. By affirming that General Anti-Avoidance Rules (**GAAR**) can override treaty benefits under Section 90(2A) of the Income Tax Act, 1961 (**Act**), and that even investments made prior to April 1, 2017, are not immune where the exit occurs post-GAAR, the Court has recalibrated the balance between certainty and anti-avoidance.

For investors, the decision underscores that treaty protection is no longer a structural default but a fact-intensive determination. Governance, decision-making authority, banking control, board independence, and demonstrable economic purpose will now be central to defending treaty claims. The Court's endorsement of examining the 'entire lifecycle' of an arrangement, from acquisition through exit, materially widens the scope of scrutiny, particularly for private equity and venture capital funds operating through intermediary jurisdictions.

The judgment also narrows the comfort historically derived from Circular 789 of 2000[6] and earlier precedents such as *Azadi Bachao*[7] and *Vodafone*[8]. signalling that post-GAAR jurisprudence operates in a different statutory environment. Grandfathering preserves tax treatment for genuine legacy investments, but does not immunise arrangements that lack substance at the time of exit.

On a practical note, this ruling may trigger reassessment of legacy Mauritius and Singapore holding structures, increased audit intensity, and greater emphasis on contemporaneous documentation of commercial rationale. Investors contemplating exits must now factor GAAR exposure into deal modelling, indemnity negotiations, and tax provisioning. Ultimately, the message is clear: alignment between structure and substance is no longer advisable – it is indispensable.

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[1] The Circular clarified that a TRC issued by Mauritius would suffice for determining both fiscal residence and beneficial ownership, including for capital gains

[2] Union of India v. Azadi Bachao Andolan, (2004) 10 SCC 1

[3] Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613

SUMMARY OF FACTS

Tiger Global group entities, incorporated in Mauritius, made indirect investments between 2011 and 2015 in Flipkart India Pvt Ltd (Flipkart India) through a Singapore-incorporated holding company, Flipkart Pvt Ltd (Flipkart Singapore), which, in turn, owned the Indian operating subsidiaries that carried on the core business.

In 2018, as part of Walmart's global acquisition of a majority stake in Flipkart, Tiger Global exited a portion of its investment by selling shares of Flipkart Singapore, realising capital gains of approximately USD 1.6 billion, which became the subject matter of Tiger Global's tax liability in India.

Although the shares transferred were legally those of the Singapore entity, the economic value of those shares was substantially derived from Indian assets and operations, given that the Singapore holding company had no material business or asset base outside India and the operations, customers, workforce, and revenue-generating activities of Flipkart were located almost entirely in India.

This triggered the indirect transfer provisions under Explanation 5 to Section 9(1)(i) of the Act, which deem offshore share transfers taxable in India where the foreign company derives substantial value from Indian assets (asset value exceeds INR 10 crore and represents at least 50% of all assets owned by the foreign entity).

The Mauritius entities claimed exemption from Indian capital gains tax on the basis that:

- They were tax residents of Mauritius under the India-Mauritius Double Taxation Avoidance Agreement (DTAA), which had historically allocated taxing rights over capital gains to the state of the transferor's residence and prevented India from taxing such gains under Article 13(4) of the DTAA.
- The 2016 amendment to the DTAA, which reversed the aforementioned position and shifted the capital gains taxation from a residence-based regime to a source-based regime under Article 13(3A), was applicable for shares acquired after March 31, 2017. As the investments had been made prior thereto, they were therefore covered by the DTAA's 'grandfathering provisions'.
- They held valid TRCs issued by the Mauritian tax authorities, which entitled them to invoke treaty benefits by establishing fiscal residence in Mauritius.

The Indian tax authorities rejected this position, asserting that the GAAR may be invoked to deny DTAA benefits where the foreign entity lacked genuine commercial substance and independent decision-making authority

The dispute progressed through an adverse ruling for Tiger Global by the Authority for Advance Rulings (AAR) in 2020, followed by a favourable judgment by the Delhi High Court in 2024, and a final appeal by the Revenue before the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court overturned the Delhi High Court's judgment and upheld the position taken by the Indian tax authorities. Capital gains arising from Tiger Global's exit from Flipkart were taxable in India, notwithstanding the offshore nature of the share transfer.

The Court noted that tax treaties are intended to prevent double taxation and not to facilitate double non-taxation. As capital gains are not taxable in Mauritius, treaty benefits could not be invoked to legitimise arrangements that eliminate taxation in both jurisdictions.

The Court accepted the Revenue's view that the Mauritius entities lacked real commercial substance and functioned as conduit entities established primarily to obtain treaty benefits based on the following factors:

- Control outside Mauritius: Key financial and strategic decisions, including authority over large bank transactions, rested with non-Mauritius individuals, indicating that the 'head and brain' of the entities was not in Mauritius.
- Centralised group ownership: The same individual exercised control across multiple holding layers, suggesting group-level command rather than independent Mauritian management.
- Single-asset profile: The Mauritius entities had no meaningful investments apart from Flipkart, reinforcing their role as holding vehicles.
- Limited commercial footprint: Minimal operational presence in Mauritius, disproportionate to the scale of gains realised.
- Lifecycle analysis: The structure was examined as a whole (acquisition through exit) and viewed as a pre-arranged mechanism facilitating a tax-efficient exit.

A TRC, while a mandatory procedural requirement under Indian law, is not conclusive proof of entitlement to treaty benefits and does not bar an inquiry into the substance and purpose of the arrangement.

While Section 90(2) of the Act allows a taxpayer to claim the benefit of an inter-State treaty if it is more beneficial than domestic law, GAAR overrides such treaty benefits by virtue of Section 90(2A), which provides that the provisions of Chapter X-A (containing the GAAR framework) shall apply notwithstanding Section 90(2), thereby permitting denial of DTAA benefits where an arrangement qualifies as an 'impermissible avoidance arrangement'.

To determine the existence of an impermissible avoidance arrangement, Indian tax authorities are entitled to examine whether an entity claiming treaty protection has real economic substance, commercial purpose, and autonomous decision-making, or merely operates as a conduit.

While the grandfathering provisions under Article 13(3A) of the DTAA were applicable, they did not confer immunity from GAAR, as the grandfathering provisions were limited to preserving pre-2017 residence-based capital gains tax treatment and did not restrict the operation of domestic anti-avoidance rules.

A defaulting party cannot rely on 'no-claim' clauses to avoid damages

Command Area Development Authority v. Hule Constructions Pvt Ltd

Bombay High Court | 2026 SCC OnLine Bom 439

Recently, the Bombay High Court held that a party in breach of contract cannot rely on contractual clauses barring award of damages towards costs such as escalation, idle charges, or delay compensation to defeat legitimate claims arising from its own default. This ruling reinforces the principle that exclusionary clauses do not operate as a shield for a defaulting employer. Importantly, the decision subtly integrates equitable considerations into arbitral jurisdiction in a measured and limited manner, permitting compensation where strict enforcement of contractual bars would produce unjust results due to the employer's breach. For contractors, the ruling underscores the importance of meticulously documenting delays, correspondence, and site conditions, as well-substantiated evidence remains critical to successfully overcoming contractual 'no-claim' clauses.

SUMMARY OF FACTS

Disputes arose under a public works contract for the repair, renovation, and restoration of 19 minor irrigation tanks.

The contractor, Hule Constructions Pvt Ltd (HCPL), contended that various contractual breaches by the employer, Command Area Development Authority, Maharashtra (CADA) – failure to complete preliminary obligations, belated site handover, intermittent release of water during execution without prior notice, delayed payments of running bills, and unauthorised deductions from bills – had led to a delay of nearly 3 years beyond the stipulated completion period of 12 months. Notably, the contractual clauses barred escalation, idle charges, and compensation for delays.

HCPL invoked the contractual dispute resolution mechanism before the departmental authorities, and thereafter, filed a civil suit for recovery of dues. The matter was subsequently referred to arbitration with the consent of the parties.

After analysing the contractual provisions and the evidence on record, the arbitrator held CADA responsible for the delay and awarded approximately INR 10.54 crore to the contractor. The award included amounts towards escalation, idle charges, and compensation for delays, despite the contractual clauses restricting such claims.

Contending that the arbitrator could not have awarded the aforementioned costs, the award was unsuccessfully challenged by the State authorities under Section 34 of the Arbitration and Conciliation Act, 1996 (Act) before the Commercial Court, leading to the present appeal before the Bombay High Court under Section 37 of the Act.

DECISION OF THE COURT

The Bombay High Court dismissed the appeal and upheld the arbitral award.

On the principal challenge to the grant of compensation, despite contractual clauses barring escalation, idle charges and compensation for delays, at the very outset, it was reiterated that Courts under Sections 34 and 37 of the Act do not act as appellate forums over arbitral awards and cannot reappreciate evidence. The contractual interpretation by the arbitrator cannot be substituted by the Court's own view. Noting that the arbitrator had examined the contractual clauses, correspondence and evidence in detail, the award did not suffer from perversity or patent illegality.

More particularly, the Court observed that while the parties would typically be bound by the contractual terms agreed, in the event one of the parties to the contract is unable to fulfil its obligations under the contract which has a direct bearing on the work to be executed by the other party, the arbitrator is vested with the authority to compensate the second party for the extra costs incurred by him as a result of the failure of the first party to live up to its obligations.

When the party has failed to stand by it's part of the contract, it is not available for the defaulting party to insist upon implementation of the clauses of the contract providing for no claim for idling of machinery or escalation of price.

This judgment decisively clarifies that post-appointment supervision of arbitral timelines as well as the power to substitute an arbitrator under Section 29A of the Arbitration and Conciliation Act, 1996 (Act), lies with the statutory 'Court' under Section 2(1)(e) of the Act, not the Referral Court under Section 11. By firmly separating the limited appointment jurisdiction under Section 11 from the curial powers under Section 29A, the Court restores doctrinal coherence to Part I of the Act. The rejection of 'hierarchical difficulties' and 'jurisdictional anomaly' as interpretative tools reinforces a rule-of-law approach grounded strictly in statutory text. Practically, the ruling curtails jurisdictional objections based solely on the identity of the appointing authority, thereby preventing avoidable delays in ongoing arbitrations. This clarity enhances procedural certainty, reduces tactical litigation, and strengthens the efficiency-oriented framework introduced by the 2015 amendments, ensuring that time-bound arbitration is not derailed by disputes on the appropriate forum.

An application for extension of the arbitration timeline must be filed before the Principal Civil Court, not the Referral Court

Jagdeep Chowgule v. Sheela Chowgule

Supreme Court of India | 2026 SCC OnLine SC 124

SUMMARY OF FACTS

The central issue in this matter was whether an application under Section 29A(4) of the Act for extension of time to make an arbitral award must be filed before the High Court (if the arbitrator was appointed under Section 11 by the High Court) or before the Civil Court defined under Section 2(1)(e) of the Act.

Disputes arose under a Memorandum of Family Settlement, and arbitration was invoked.

During the arbitral proceedings, an application for extension of time under Section 29A of the Act was filed before the Commercial Court. Further, owing to the resignation of the presiding arbitrator, an application for the appointment of a new arbitrator under Section 11 was filed before the High Court. Both applications were allowed.

In an appeal against the order extending the tribunal's mandate, the High Court observed that the Section 29A application was not maintainable before the Commercial Court as the High Court had appointed the presiding arbitrator.

This order was challenged before the Supreme Court of India.

DECISION OF THE COURT

The Supreme Court upheld the jurisdiction of the Commercial Court to extend the arbitral tribunal's mandate under Section 29A of the Act for the following reasons:

- The power under Section 11 is limited to the appointment of the arbitrator, and once the appointment is made, the Referral Court becomes *functus officio*.
- The expression 'Court' in Section 29A must bear the meaning assigned in Section 2(1)(e), unless the context otherwise requires, and no contextual indication justifies deviation – perceptions of hierarchical difficulties, conflict of power, or jurisdictional anomaly do not support deviation from the statutory definition.
- Section 42, which locks jurisdiction in the 'Court' where the first application under any provision of Part I is made, does not apply to Section 11 applications.

Therefore, an application concerning extension of mandate or substitution of arbitrators falls squarely within the jurisdiction of the 'Court' defined under Section 2(1)(e), namely the Principal Civil Court of ordinary original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction.

Commercial wisdom of CoC governs the mode of sale of non-core assets

Pankaj Mahajan v. Edelweiss Asset Reconstruction Asset Co

National Company Law Appellate Tribunal | 2025 SCC OnLine NCLAT 1793

The National Company Law Appellate Tribunal (NCLAT) has reaffirmed that the mode and manner of sale of non-core assets during CIRP lies within the exclusive domain of the Committee of Creditors (CoC) and is ordinarily immune from judicial interference. This decision strengthens the doctrine of commercial wisdom by clarifying that value maximisation does not invariably require a public auction, particularly where assets are functionally integrated and capable of generating optimal value only for specific stakeholders. Importantly, the ruling curbs adjudicatory overreach that could derail parallel CIRPs by artificially interlinking them. The judgment provides welcome clarity on Regulation 29 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), (which governs the sale of assets outside the ordinary course of business during the corporate insolvency resolution process) and reinforces structural flexibility within the insolvency framework while preserving creditor primacy. Stakeholders would be well advised to ensure that such transactions are supported by robust valuation, clear deliberative records, and documented creditor consent to withstand judicial scrutiny.

SUMMARY OF FACTS

Arshiya Ltd, an integrated logistics and FTWZ operator, owned 42.08 acres of land, while its wholly owned subsidiaries, NCR Rail Infrastructure Ltd (NCR Rail) and Arshiya Northern FTWZ Ltd (Arshiya Northern), carried on railway and FTWZ operations on adjoining parcels within the same zone.

A parcel of the subject land was interspersed within and around NCR Rail's railway siding operations, and another formed part of a spine road constituting the sole access to the assets of both subsidiaries, thereby making the parcels operationally integrated and commercially interdependent.

Separate Corporate Insolvency Resolution Processes (CIRPs) were initiated against all 3 entities. During the CIRP of Arshiya Ltd, its CoC considered the subject parcels to be non-core assets and approved a 2-part sale of the parcels to the subsidiaries.

Since the land parcels were encumbered in favour of secured creditors forming part of the CoC, the Resolution Professional (RP) sought approval from the NCLT under Regulation 29 of the Regulations for the proposed sale. The NCLT permitted the sale in principle but directed that independent bids be invited from prospective resolution applicants of NCR Rail and Arshiya Northern to ensure transparent price discovery.

Aggrieved by this interference, which had effectively rendered Arshiya Ltd's CIRP contingent on parallel proceedings, the RPs approached the NCLAT.

DECISION OF THE COURT

The NCLAT held that the manner of sale of non-core assets during CIRP falls squarely within the commercial wisdom of the CoC, and that the NCLT cannot re-appraise or substitute its own view on the mode of sale so long as the decision complies with the statutory framework.

The CoC had undertaken detailed deliberations, considered alternatives such as the grant of right-of-way, commissioned valuation from two independent valuers, and resolved to sell the parcels at not less than the average fair value, thereby ensuring adequate price discovery and value maximisation. A public auction is not the sole permissible method of price discovery under the Code, and neither Regulation 29 nor any other provision mandates an auction in every case, particularly where the assets have limited standalone utility and only specific entities can derive optimal value from them.

On the issue of encumbrance, the NCLAT clarified that Regulation 29 does not prohibit the sale of encumbered assets where the secured creditors have consented, and such consent by the charge-holders, who were members of the CoC, constituted sufficient compliance.

The NCLT exceeded its jurisdiction by directing the invitation of independent bids in the CIRPs of the subsidiaries, thereby impermissibly rendering the CIRP of Arshiya Ltd contingent upon parallel proceedings pending before separate benches.

Taking into account the commercial context of the 3 entities, the interdependent nature of the land parcels, and the advanced stage of the other 2 CIRPs, the NCLAT concluded that the CoC's decision was commercially rational and did not require judicial review, and accordingly set aside the directions of the NCLT interfering with the approved sale mechanism.

Plausible, contractual damages awarded by a Court under Section 34 cannot be re-quantified in appeal under Section 37

Saisudhir Energy Ltd v. NTPC Vidyut Vyapar Nigam Ltd

Supreme Court of India | 2026 SCC OnLine SC 125

In a recent decision, the Supreme Court clarified the limits of the jurisdiction available to Courts under Section 37 of the Arbitration and Conciliation Act, 1996 (Act), reinforcing a supervision-not-substitution model of review. Parties can now approach Section 34 Courts with greater clarity that well-reasoned, contract-anchored modifications will not be lightly disturbed at the appellate stage. Furthermore, this judgment also emphasises that taking a different view of the same matter from the one taken under Section 34 would be considered beyond the scope of Section 37.

SUMMARY OF FACTS

In 2012, under the Jawaharlal Nehru National Solar Mission (JNNSM), NTPC Vidyut Vyapar Nigam Ltd (NVVNL) executed a Power Purchase Agreement (PPA) with Saisudhir Energy Ltd (SEL) for supply of 20 MW solar power at a discounted tariff. Clause 4.6 incorporated a framework for liquidated damages, providing for proportionate encashment of the performance bank guarantee during the first 3 months of delay, followed by daily liquidated damages calculated per MW.

SEL commenced supply of 10 MW after a 2-month delay and the remaining 10 MW after about 5 months. As NVVNL sought to encash the bank guarantees, SEL invoked arbitration and obtained interim relief under Sections 9 and 17 of the Act.

In the arbitral award, the majority limited SEL's liability to INR 1.2 crore (20% of the performance bank guarantee at INR 30 lakh per MW) and rejected its reimbursement claims. The minority, however, opined that the actual loss to NVVNL could not be precisely determined, treated Clause 4.6 as a genuine pre-estimate of loss, and upheld encashment of bank guarantees amounting to approximately INR 49.92 crore.

Both parties challenged the award under Section 34 of the Act before the Delhi High Court. A Single Judge found delay by SEL, but noted that NVVNL had not proved any specific actual loss and had not invested capital in the project. Applying Clause 4.6 and exercising discretion, the Court computed NVVNL's contractual entitlement at approximately INR 54.12 crore, and awarded INR 27.06 crore (50%) as reasonable compensation.

On cross-appeals under Section 37, the Division Bench accepted that the project served a social purpose and that exact loss was difficult to quantify, yet recast the computation, reduced the rate of damages and NVVNL's recovery to INR 20.70 crore plus bank guarantee renewal charges. Aggrieved, both parties approached the Supreme Court.

DECISION OF THE COURT

The Supreme Court held that the Division Bench had exceeded its limited jurisdiction under Section 37 of the Act by reworking the quantum of damages determined by the Section 34 Court.

Section 34 includes a narrow, inherent power to modify an award, provided the Court stays within the statutory confines and does not sit in appeal on facts.[4] The Single Judge's approach – applying Clause 4.6, recognising NVVNL's contractual entitlement, and then awarding 50% as reasonable compensation – was characterised as a legitimate, severable modification flowing inevitably from the tribunal's findings, not as a *de novo* merits review.

The JNNSM solar project served a public utility purpose, attracting the principle in *Construction and Design Services v. DDA*[5] that delay itself may constitute loss. The burden thus shifted to SEL to show absence of loss, which it failed to do, entitling NVVNL to reasonable compensation without strict proof of actual loss.

A Section 37 Court must only examine whether the Section 34 Court has acted within its jurisdiction, and cannot replace a plausible, contract-based quantification with its own preferred figure. Section 37 Courts are not vested with absolute appellate powers to re-assess evidence or re-compute amounts when the Section 34 decision is neither arbitrary nor contrary to the contract.[6] Since the grant of 50% of the Clause 4.6 entitlement was not perverse, excessive, or unconscionable, the Division Bench's reduction to INR 20.70 crore amounted to an impermissible substitution of views.

[4] Gayatri Balasamy v. ISG Novasoft Technologies Ltd 2025 INSC 605
[5] 2015 INSC 92
[6] AC Chokshi Share Broker Pvt Ltd v. Jatin Pratap Desai, 2025 INSC 174

Forgery allegations against a contract containing an arbitration clause render the dispute inarbitrable

Rajia Begum v. Barnali Mukherjee

Supreme Court of India | 2026 SCC OnLine SC 135

The Supreme Court has reaffirmed that where the existence of a document, supposedly containing an arbitration clause, itself is seriously disputed as forged, the dispute is non-arbitrable. This ruling draws a clear line, i.e. parties cannot be forced into arbitration when they plausibly assert they never agreed to arbitrate at all, and the Courts must first resolve such foundational challenges. Practically, it raises the bar for parties invoking arbitration to maintain clean, contemporaneous documentation, originals or certified copies of key agreements, and consistent banking/transactional records, to demonstrate the existence of an arbitration agreement. For the Courts, the decision reinforces that supervisory jurisdiction under Article 227 is not an appellate route to overturn concurrent factual findings on forgery and non-arbitrability, and that consent to arbitrate cannot be presumed where the very instrument embodying that consent is under a serious cloud.

SUMMARY OF FACTS

RDDHI Gold was formed in 2005 with 3 partners, including Barnali Mukherjee.

Rajia Begum claimed that by a power of attorney and an Admission-cum-Retirement Deed (Admission Deed), the other 2 partners (including her husband) had retired and she had become a partner with a 50.33% share.

However, Barnali filed a civil suit seeking a declaration of forgery of the Admission Deed and denied Rajia's claims of becoming a partner.

Rajia sought reference of the matter to arbitration as per the arbitration clause of the purported Admission Deed, which was rejected by the Trial and Appellate Courts due to allegations of serious fraud and non-production of the original/certified Admission Deed.

However, the High Court, exercising its supervisory jurisdiction under Article 227 of the Constitution of India, set aside the Section 8 orders and referred the suit to arbitration, leading to cross appeals before the Supreme Court.

DECISION OF THE COURT

The Supreme Court clarified that while mere allegations of fraud do not, by themselves, invalidate an arbitration agreement, serious fraud that goes to the root of the contract or the arbitration clause, particularly where a party says it never agreed to arbitrate at all, can render a dispute inarbitrable.

Relying on precedents including *A Ayyasamy v. A Paramasivam*[7] and *Avitel Post Studioz*,[8] the Court reiterated 2 key tests:

- Whether the plea of fraud permeates the entire contract and the arbitration agreement, effectively negating consent to arbitrate?
- Whether the allegations push the matter into the public law domain?

On the facts, the Court found strong material casting serious doubt on the Admission Deed, such as Rajia's own admission that her husband continued as partner till 2010 despite being shown as 'retired' in 2007, the unexplained absence of the Admission Deed from any contemporaneous records for nearly 9 years, and financial documents that continued to show the original partners while Rajia appeared only as guarantor.

Arbitration is founded on consent, and a party can be bound by arbitration only if there is at least *prima facie* proof that it agreed to arbitrate. Where the arbitration clause is embedded in a document whose very existence and authenticity are seriously disputed as forged, the controversy 'strikes at the very root of arbitral jurisdiction' and falls into the category of disputes that are typically not arbitrable.

Therefore, the Court held that the suit concerning the Admission Deed could not be referred to arbitration at this stage. Further, the High Court had exceeded its narrow supervisory role under Article 227 of the Constitution by reappreciating evidence and compelling arbitration.

[7] (2016) 10 SCC 386
[8] Avitel Post Studioz Ltd v. HSBC PI Holdings (Mauritius) Ltd (2021) 4 SCC 713

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CONTRIBUTORS

Ashutosh Gupta | Partner
ashutosh.gupta@foxandmandal.co.in

Kunal Mimani | Partner
kunal.mimani@foxandmandal.co.in

Kartikey Bhatt | Partner
kartikey.bhatt@foxandmandal.co.in

Parag Chaturvedi | Associate Partner
parag.chaturvedi@foxandmandal.co.in

Mahima Cholera | Senior Associate
mahima.cholera@foxandmandal.co.in

Akshay Luthra | Associate
akshay.luthra@foxandmandal.co.in

Dev Karn | Associate
dev.karn@foxandmandal.co.in

Niket Ojha | Associate
niket.ojha@foxandmandal.co.in

Abhinav Jain | Assistant Manager
abhinav.jain@foxandmandal.co.in

Deeksha Dabas | Assistant Manager
deeksha.dabas@foxandmandal.co.in

Ishan Puri | Associate
ishan.puri@foxandmandal.co.in

OUR OFFICES

BENGALURU
G 102, Embassy One Pinnacle,
8 Bellary Road, Bengaluru 560 032
Email: bengaluru@foxandmandal.co.in

KOLKATA HO
12, Old Post Office Street
Kolkata 700 001
Email: calcutta@foxandmandal.co.in

KOLKATA
7th Floor, 206 AJC Bose Road
Kolkata 700 017
Email: calcutta@foxandmandal.co.in

MUMBAI
105, Arcadia Building, 195 NCPA Marg
Nariman Point, Mumbai 400 021
Email: mumbai@foxandmandal.co.in

NEW DELHI
Fox & Mandal House
D 394, Defence Colony, New Delhi 110 024
Email: newdelhi@foxandmandal.co.in