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UPDATE

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Modification of Arbitral Awards: Supreme Court answers

A. *Introduction*

What began as a criminal complaint in 2004, culminated in a landmark ruling by the Hon'ble Supreme Court on a key issue in the field of arbitration. On 30 April 2025, while delivering its judgment in *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd*[1] *["**Gayatri**"]*, the Apex Court addressed the pivotal question of whether Indian courts are empowered to modify an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"]. By a 4:1 majority, led by (Retd.) Chief Justice of India Sanjiv Khanna, the Court held that a court may modify an award under Section 34 of the Arbitration Act, in limited circumstances. Contrary to the majority judgment, Justice K.V. Vishwanathan, in his dissenting opinion, categorically held that a Court, while exercising jurisdiction under Section 34, does not possess the power to modify, alter or vary the arbitral award unless explicitly permitted by law.

B. *Position of law prior to Gayatri Judgment*

The judicial approach towards modification of arbitral awards can be traced back to the Hon'ble Supreme Court's decision in *Mc Dermott International Inc. v. Burn Standard Co. Ltd*[2], where the Court clarified the limited scope of judicial intervention under Section 34 of the Arbitration Act. The Court emphasized that in a Section 34 proceeding, courts did not possess the power to modify an award, except where the award was tainted with fraud or bias. However, the decision in *Mc Dermott* was silent on the broader question of whether arbitral awards could be modified by courts. It was only in *Project Director, National Highway Authority of India v. M. Hakeem & Anr.*[3], that the Hon'ble Supreme Court conclusively resolved this uncertainty by explicitly holding that Indian courts did not have the power to modify an arbitral award under Section 34 of the Arbitration Act. The Court made it clear that the only available recourse is either to set aside the award passed by an arbitrator or to remit the matter back to the arbitral tribunal for fresh consideration.

Following the judgment of the Apex Court in *M. Hakeem*, several High Courts have clarified, that, although courts do not possess the power to modify an arbitral award, they do possess the authority to partially set aside severable portions of an award, which would not amount to modification, but only annulment to the extent possible. Reliance in this regard may be placed on the decision of the

[1] SLP (C) No. 15336-15337 of 2021 and reported in 2025 SCC Online SC 986.
[2] Civil Appeal No. 4492 of 1998 and reported in (2006) 11 SCC 181.
[3] SLP (C) No. 13020 of 2020 and reported in (2021) 9 SCC 1.

Hon'ble Delhi High Court in *National Highway Authority Of India (NHAI) v. Trichy Thanjavur Expressway Ltd*.[4], where a single bench of Justice Yashwant Varma, while adjudicating two cross petitions under Section 34 of the Arbitration Act opined that the term "modify" connotes a variation or modulation of the ultimate relief granted by an arbitral tribunal. However, when deciding an application under Section 34, the Court may exercise its power to partially set aside an award, which does not constitute modification or variation. Instead, it involves annulling only the offending portion of the award. Applying the doctrine of severability, The Court emphasized the distinction between modification and partial setting aside of an award and held that where an award addresses distinct claims separately, the Court is empowered to strike down the offending parts while allowing the remainder of the award to stand and remain enforceable.

C. *Modification of an award viz-a-viz Article 142 of the Constitution*

Notwithstanding the absence of a statutory framework permitting modification of arbitral awards in India, and despite consistent judicial precedent opposing such alteration, courts have, in exceptional circumstances, deviated from this norm in the larger interest of justice. This position is exemplified by the decision of the Hon'ble Supreme Court in *Krishna Bhagya Jala Nigam Ltd. v. G. Harishchandra Reddy & Anr.*[5], where the Hon'ble Court, while adjudicating a civil appeal arising from a judgment of the Division Bench of the Karnataka High Court under Section 37(1)(b) of the Arbitration Act, invoked its powers under Article 142 of the Constitution to reduce the future rate interest from 18% to 9%, keeping in view the prevailing economic reforms in the country at that time. Likewise, the Hon'ble Apex Court in *S.V. Samudram v. State of Karnataka*[6], relying on its judgment passed in *M. Hakeem* reiterated that modification of an award under Section 34 is impermissible, as the court lacks the authority to alter an arbitral award and any such attempt would amount to "crossing the Lakshman Rekha". However, with respect to the dispute concerning the interest amount, the Hon'ble Court, once again invoked Article 142 to award *pendente lite* interest at 9% p.a. from the date of award till the date of payment.

D. *The Gayatri Judgment: The much-awaited answer*

I. Facts:

Gayatri Balaswamy, then Vice President (M&A Integration Strategy) of ISG Novasoft Technologies Limited (Novasoft), tendered her resignation alleging sexual harassment by Novasoft's Chief Executive Officer, Krishankumar Srinivasan. A criminal complaint was subsequently filed against Krishnakumar Srinivasan under the Indian Penal Code, 1860 and the Tamil Nadu Prohibition of Harassment of Women Act, 1998. As counter measures, Novasoft instituted proceedings alleging defamation and extortion. The parties engaged in prolonged legal battles before ultimately approaching the Hon'ble Supreme Court. The Hon'ble Supreme Court, in SLP (Cri) No. 8272 of 2009[7], taking into account the arbitration clause in Gayatri Balaswamy's employment agreement, appointed the Hon'ble Justice (Retd.) T.N.C. Rangarajan as the sole arbitrator to resolve the dispute between

[4] O.M.P.(COMM) 95 of 2023 and reported in 2023 SCC OnLine Del 5183.
[5] Civil Appeal No. 149 of 2007 and reported in 2007 SCC OnLine SC 62.
[6] Civil Appeal No. 8067 of 2019 and reported in 2022 SCC OnLine SC 19.
[7] SLP (Cri) No. 8272 of 2009 [Gayatri Balaswamy v. Krishankumar Srinivasan] with SLP (Cri) No. 6135 of 2009 [Krishna Srinivasan v. Gayatri Balaswamy].

the parties. Pursuant thereto, Gayatri filed her Statement of Claim seeking recovery of Rs. 28,88,55,500/-, under twelve (12) different heads of claims. The Ld. Sole Arbitrator, however, accepted just one head of claim (claim for severance benefit) and awarded a sum of Rs. 1.68 Crores, rounded off to Rs. 2 Crores, in Gayatri's favour, while rejecting the remaining eleven claims. Aggrieved by the award, Gayatri preferred an application under Section 34 of the Arbitration Act, before the Hon'ble Madras High Court.

II. Decisions of the Hon'ble Madras High Court:

The Single Bench of the Hon'ble Madras High Court, by its order dated 2 September, 2014[8], observed that the decision of the Ld. Sole Arbitrator in so far as the 12th claim was concerned, was contradictory to the principle laid down by the Hon'ble Supreme Court in *ONGC v. Saw Pipes*[9]. Consequently, the Hon'ble Court modified the award passed by the Ld. Sole Arbitrator and granted an additional sum of Rs. 1.68 Crores, towards the 12th claim, directing Novasoft to make such payment within a period of two months from the date of receipt of the order. Dissatisfied and aggrieved by the order of the Single Bench, both parties preferred two separate appeals being, (i) O.S.A. No. 59 of 2015 by Novasoft, questioning the correctness of the order passed by the Hon'ble Single Bench and (ii) O.S.A. No. 181 of 2015 by Gayatri, seeking further enhancement of the compensation amount with respect to disallowed portion of the claim. By a common judgment passed on 8 August, 2019[10], the Division Bench of the Hon'ble Madras High Court dismissed the appeal preferred by Gayatri and partly allowed the appeal filed by Novasoft, by reducing the amount of Rs. 1.68 Crores awarded under Claim No. 12 to Rs. 50,000/- (Rupees Fifty Thousand Only). Dissatisfied with the decision of the Division Bench, Gayatri challenged the judgment before the Hon'ble Supreme Court by way of a Special Leave Petition under Article 136 of the Constitution.

III. Litigation before the Supreme Court:

The Special Leave Petitions [SLP(C) Nos. 15336-15337 of 2021] preferred by Gayatri, were first heard by a three-Judge Bench led by (Retd.) Chief Justice N.V. Ramana, J, on 1 October 2021. The proceedings were subsequently listed before multiple benches before it was finally taken up by a three-Judge Bench led by Justice Dipankar Datta. By its order dated 20 February 2024[11], the Hon'ble Bench noted that the proceeding raised a pivotal question of whether the Courts had the power to modify an arbitral award under Sections 34 and 37 of the Arbitration Act. Acknowledging the complexity of the issue and the potential implication for arbitration jurisprudence in India, the Hon'ble Bench referred the proceeding to a Five-Judge Constitutional Bench, led by (Retd.) Chief Justice of India, Sanjiv Khanna.

E. *Decision of the Constitution Bench.*

On 30 April 2025, the Hon'ble Supreme Court, by a 4:1 majority, led by (Retd.) Chief Justice of India, Sanjiv Khanna, J, held that Courts possess limited authority to modify an arbitral award, in specific

[8] Original Petition No. 463 of 2012 and reported in 2014 SCC OnLine Mad 6568.
[9] (2003) 5 SCC 545 [paragraph 31].
[10] 2019 SCC OnLine Mad 15819.
[11] Order dated February 20, 2024, in SLP(C) No. 15336 of 2021 and SLP(C) No. 15337 of 2021 and reported in 2024 SCC OnLine SC 1681.

circumstances, notwithstanding the absence of any express provision under the Arbitration Act. The majority reasoned that such authority is derived from the inherent powers of the Court wile exercising jurisdiction under Section 34 of the Arbitration Act, and in the case of the Hon'ble Supreme Court, from the extraordinary powers conferred under Article 142 of the Constitution.

IV. Ratio of the Majority:

The majority opinion, authored by the Chief Justice, observed that although Section 34 of the Arbitration Act does not expressly empower courts to modify or vary an arbitral award, yet such authority exists in a limited context as an inherent judicial power. While addressing the question of the extent to which the principles of equity and justice can be incorporated without transgressing the jurisdictional fabric of Section 34, the majority arrived at the following findings with regard to modification:

a. Partial Setting aside of an arbitral award:

Placing reliance on the judgment of the Hon'ble Delhi High Court in *Trichy Thanjavoor* and invoking the principle of *omne majus continent in se minus, (the greater contains the lesser),* the majority reasoned that where an arbitral award contains portions that are invalid or beyond the scope of arbitration, courts are empowered to sever the offending portion and uphold the remainder of the arbitral award. The rationale being that a court which is vested with the authority to set aside an award under Section 34 of the Arbitration Act, also possesses the power to set aside an award partially.

b. Addressing the principle of modification:

The majority, departing from the view taken in *M. Hakeem*, acknowledged that although minimal judicial interference is an essential ingredient of arbitration, courts nonetheless play a crucial role in ensuring speedy and effective dispute redressal. It reasoned that in the absence of a limited power to modify arbitral awards, courts would be compelled to set aside such awards in entirety, thereby necessitating fresh arbitration proceedings and incurring additional cost. Such an outcome would undermine the very purpose of opting for arbitration as a mechanism for dispute resolution. The majority in the judgment held as follows:

> *"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."*

c. Modification to what extent possible:

The majority, while delineating the scope of modification permissible under Section 34 of the Arbitration Act, circumscribed the power in a manner that prevents re-evaluation of the merits of the dispute. The majority held that such power may be exercised only to rectify clear and obvious errors including computational, typographical, clerical and other manifest errors apparent on the face of the award.

d. Modification of award by courts or remitting back to arbitral tribunal:

The majority, while addressing this issue, held that under Section 34(4) of the Arbitration Act, a court may remit an arbitral award to the tribunal for correction of curable defects upon request. The majority further clarified that where the modification sought is straightforward and the error is apparent on the face of the award, the Court may itself carry out the necessary corrections. However, if the issue is complex and not amenable to simple correction, then the award should be remitted back to the tribunal. The Court also opined that these powers extend equally to an appellate court exercising jurisdiction under Section 37 of the Arbitration Act.

e. Enforcement of foreign awards:

The majority rejected the submissions that the power to remit an award back to the arbitral tribunal renders modification unnecessary, terming such an argument as misconceived. The majority held that recognising a limited power of modification under Section 34 is not conflict with the New York Convention 1958. The Court reasoned that once Section 34 is reinterpreted to encompass a narrowly circumscribed power of modification, the exercise of such authority would neither undermine the international commercial framework nor impede the enforcement of foreign awards.

f. Interest portion in arbitral awards:

The majority, while deciding on whether courts possessed the power to declare or modify interest, including post award interest, held that the courts do have the authority to modify post award interest granted under Section 31(7)(b) of the Arbitration Act. The provision prescribes a default rate of 2% above the prevailing interest rate in cases where the award is silent towards the interest amount. The majority reasoned that post award interest is future-oriented and may not be always be adequately determined by an arbitral tribunal, thereby justifying judicial correction at a later stage. However, the majority categorically clarified that the interest awarded for the period *pendente lite* lies beyond the scope of judicial alteration by courts under Section 34 and Section 37 of the Arbitration Act.

g. Power vested under Article 142:

With regard to the scope and applicability of the Hon'ble Supreme Court' power under Article 142, the majority held that such power must be exercised with great care and caution, solely for the purpose of ensuring complete justice. It further emphasized that the exercise of Article 12 must remain consistent with the fundamental principle and objective underpinning the Arbitration Act.

> *"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.***********
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> *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."*

IV. Dissenting Judgment:

Hon'ble Justice K.V. Vishwanathan, in his dissenting opinion, took a contrary view to that of the majority. He held that Section 34 of the Arbitration Act does not confer upon courts the power to modify, alter and/or change an arbitral award. He observed that the term "modify" signifies a change or an alteration, which cannot be read into the limited framework of Section 34 of the Arbitration Act, particularly when the legislature has not been expressly vested such power.

On the issue of partially setting aside of arbitral awards, Justice Vishwanathan drew a clear distinction between setting aside severable portions of an award and modifying an award, noting that the two operate in entirely different spheres and cannot be treated as of the same genus. Drawing reference to the Arbitration Act, 1940, which expressly permitted modification, he emphasized that the Arbitration Act, despite multiple amendments contains no such provision, reflecting deliberate legislative intent.

Rejecting the majority's reliance on implied powers, Justice Vishwanathan took a divergent view by holding that such power may only be invoked where it is necessary to enforce the final powers of the statute. Since Section 34 of the Arbitration Act embodies the principle of minimal judicial intervention, recognising an implied power to modify an award would, in his view, undermine the very foundation of the statute's objective. In support of his decision, he laid emphasis on the legislations of other countries such as United Kingdom and Singapore, where the legislation itself has granted express power.

On the applicability of Article 142, Justice Vishwanathan firmly rejected its use for modifying arbitral awards as he maintained that allowing the Apex Court to invoke its inherent powers to alter awards, would bypass the lucid statutory limits maintained by the Arbitration Act.

Concluding his dissent, he underscored that arbitration is a distinct and self-contained mechanism of dispute resolution mechanism and permitting courts to modify an award at the final stage of the litigation would introduce significant uncertainty, contrary to the foundational objectives of the Arbitration Act.

F. *Conclusion*

By conclusively addressing the long-awaited question, the Hon'ble Supreme Court has attempted to settle one of the most complex questions in Indian arbitration jurisprudence viz. the permissible scope of judicial intervention in arbitral awards.

For decades, courts and practitioners have grappled with the tension between the two competing objectives, the need to uphold the finality and sanctity of arbitration as a party driven dispute resolution mechanism, and the equally compelling necessity of ensuring that arbitral awards do not perpetuate patent errors or injustices.

Through this judgment, the Hon'ble Supreme Court has delineated the narrow circumstances in which modification of an award may be undertaken, thereby creating a carefully balanced framework. On one hand, the Hon'ble Supreme Court reaffirmed that arbitration must remain largely insulated from judicial interference, preserving the principle of party autonomy and the efficiency that underpins the arbitral process, and on the other hand, the Hon'ble Supreme Court has recognized that a rigid bar against modification could compel courts to set aside entire awards even for limited

defects, thereby triggering costly and time consuming arbitrations, an outcome that would defeat the very rationale of arbitration.

The majority's decision represents an attempt to reconcile efficiency with fairness, finality with flexibility. While it opens the door for limited judicial correction of manifest errors, it simultaneously reaffirms that courts cannot re-evaluate the merits of the dispute or sit in appeal over arbitral reasoning. The dissenting view, however, reminds us that the evolution of the law must remain grounded in legislative intent and constitutional principle, highlighting the delicate balance between judicial creativity and judicial restraint.

In its broader significance, the judgment of *Gayatri Balaswamy v. ING Novasoft* not only settles a contentious legal debate but also reflects the dynamic and evolving nature of arbitration laws in India. It signals India's gradual move towards a more mature arbitral regime, one that seeks to harmonise global best practices with the unique requirements of domestic jurisprudence, while reinforcing the judiciary's role as a safeguard against manifest injustice.

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