# ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration

FEB' 2026


## COVER STORY



## PIVOTAL ISSUES



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# Editor's Note

***Navigating Autonomy, Enforcing Finality,*** our cover story of this month captures a critical boundary in enforcement jurisprudence, examining how the **Bombay High Court has barred executing courts from resurrecting personal liabilities against a Karta that were expressly declined during adjudication.** This ruling marks a definitive stance where the law prioritises the sanctity of the arbitral decree over strategic attempts to bypass its limits, ensuring that the **"finality" of an award is an absolute shield rather than a flexible suggestion.**

This edition further explores the "procedural reset" occurring across Indian courtrooms, where the Supreme Court is actively **curbing judicial overreach in contract interpretation to preserve the essence of arbitral autonomy.** We also take a **rigorous look at the necessity of standalone Section 8 applications,** a reminder that in the realm of arbitration, procedural discipline is not a mere technicality but a prerequisite for jurisdiction.

On the global front, we navigate the structural evolution of Investor-State Dispute Settlement (ISDS) as **UNCITRAL** moves toward a permanent appellate framework, signaling a transition from ad-hoc instability to institutionalized predictability. From **decoding the "commencement" of proceedings under Section 21 to analysing why intellectual property ownership remains a non-arbitrable "right in rem,"** this month's digest is designed to help you master the evolving boundaries of dispute resolution. As the legal framework moves toward precision over paperwork and substance over procedural roadblocks, we invite you to explore the insights keeping the industry ahead of the curve.

**Let's dive in.**

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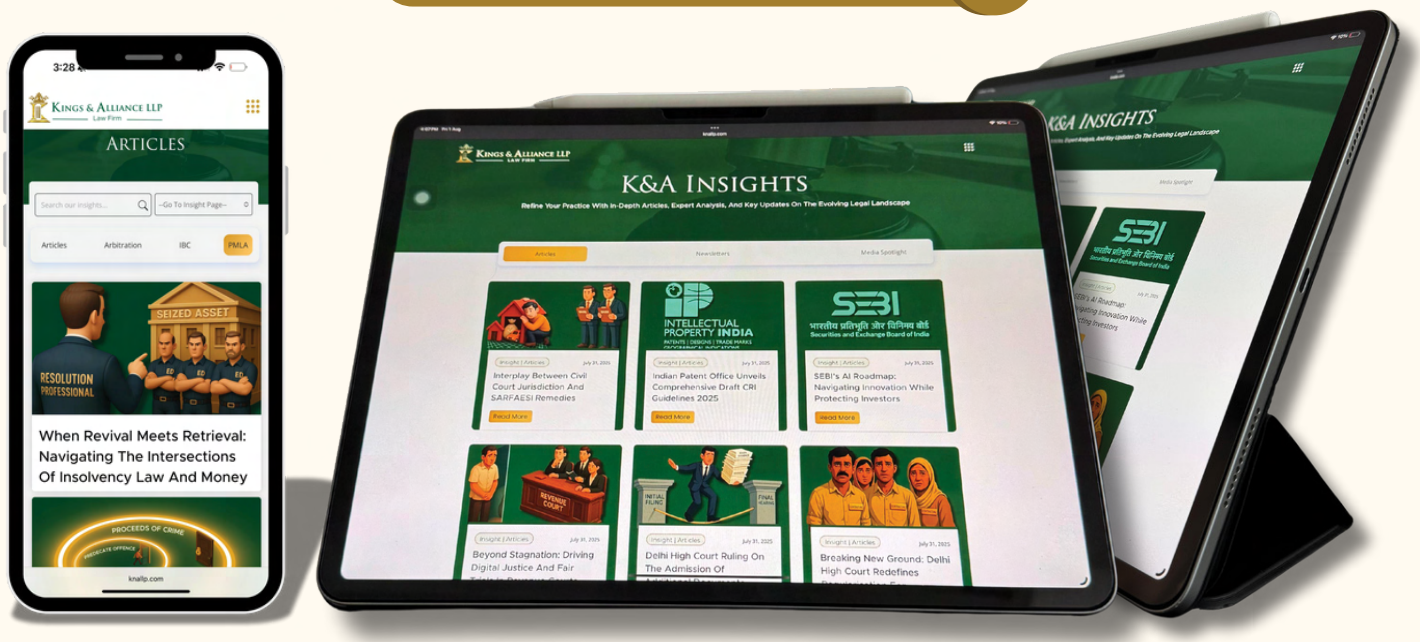

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# COVER STORY

## Can an Executing Court Fix Personal Liability Beyond an Arbitral Award? Bombay High Court on HUF and Karta Liability


> *The wording of an Arbitral Award is definitive; if a specific liability is not carved out during adjudication, it cannot be resurrected through the backdoor of execution.*

The pursuit of a "paper decree" often leads judgment creditors into a labyrinth of enforcement challenges, where the lines between corporate entities and personal liability become a battleground for commercial recovery. In the modern era, the legal focus has shifted toward ensuring that arbitral awards are not rendered hollow by strategic asset shielding, yet the sanctity of the "Executing Court" remains bound by the rigid perimeters of the decree itself.

This critical tension was the centerpiece of Manjeet Singh T. Anand v. Nishant Enterprises HUF & Anr., heard by the High Court of Judicature at Bombay, presided over by Justice R.I. Chagla. The court primarily held that an executing court cannot go "behind or beyond" an award to fix personal liability on a Karta for the principal debts of an HUF if the award specifically declined such a personal relief, while also addressing the complex interplay of territorial jurisdiction in the execution of deemed decrees.

The Applicant sought to enforce an Arbitral Award of certain sum against an HUF (Respondent No.1) and its Karta (Respondent No.2). While the Award was passed, the Respondents challenged it under Section 34 of Arbitration Act, obtaining a stay only on the "costs" component, leaving the principal sum outstanding. The Applicant alleged that the Respondents were siphoning assets to defeat the Award and sought recourse against the Karta's personal assets, despite the Karta claiming that his personal property was immune...



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## Preserving Arbitral Finality: The Supreme Court Curbs Judicial Overreach in Contract Interpretation


> *If the Tribunal's interpretation of a contract is a 'plausible view,' it must be accepted, even if the appellate court believes a 'better view' exists.*

The Arbitration and Conciliation Act, despite being enacted with the legislative intent of promoting arbitral autonomy, has long been burdened by a systemic tendency toward excessive judicial intervention. This tendency is most evident under Sections 34 and 37, where courts, under the pretext of correcting procedural infirmities, often re-enter the merits of contractual interpretation. Such approaches dilute the principle of arbitral finality and risks reducing arbitration to a preliminary step in prolonged litigation rather than being a mechanism for definitive dispute resolution.

In a significant reaffirmation of India's pro-arbitration stance, the Supreme Court of India, in the case of Jan De Nul Dredging India Pvt. Ltd. v. Tuticorin Port Trust, has reinforced the principle of minimal judicial intervention. The judgment, delivered by a Bench comprising Justice P.S. Narasimha and Justice Pankaj Mithal, clarifies that Courts cannot interfere with an arbitral award simply because an alternative interpretation of a contract is possible. This decision serves as a deterrent against the tendency of appellate courts to reopen commercial arbitral disputes on their merits, thereby protecting the finality and efficiency of the arbitration process. The dispute in this case arose from a large-scale maritime infrastructure project involving dredging (underwater sediment removal) and basin deepening. Following a formal tender process, the parties entered into a contract that mandated the deployment of specific dredging equipment. While the work was completed significantly ahead of the original schedule, a dispute emerged during the final billing...

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# PIVOTAL ISSUES

Is a Standalone Application Mandatory under Section 8 of Arbitration Act?

## The Necessity of Procedural Rigor


Arbitration is granted only when it is invoked through the correct and independent procedure—shortcuts are not accepted by the court

> *When the law prescribes a specific path, shortcuts lead to a dead end; in arbitration, procedural rigor is not a technicality, but a prerequisite for jurisdiction.*

The efficacy of Arbitration as a specialized dispute resolution mechanism hinges upon the timely and precise invocation of a court's power to refer parties to their chosen forum. However, this power is not self-executing. The central legal issue in this scenario is whether the mandatory requirement under Section 8 of the Arbitration Act for a party to apply for a reference to arbitration necessitates a formal, independent, and standalone application, or the Court possesses the authority to mould alternative reliefs, such as a prayer for the rejection of a plaint, to satisfy this statutory mandate.

This fundamental question of procedural compliance was discussed in Jagannath Heights Pvt Ltd v. M/s Sammaan Capital Limited, adjudicated by the High Court at Calcutta, Commercial Division, and presided over by Hon'ble Justice Aniruddha Roy. It was held that a defendant is barred from seeking an arbitral reference if their formal prayers only seek the dismissal or rejection of the suit under the CPC. It was further emphasized that the essential of filing a standalone application is a mandatory precondition that cannot be bypassed by seeking collateral civil remedies. The factual matrix originated from a suit filed by the plaintiff despite the existence of an arbitration clause in the underlying contract. The defendant, rather than filing a dedicated application under Section 8 of the Arbitration Act, took out a Master's Summons praying for the dismissal of the suit, the rejection or return of the Plaint under the CPC, or a stay of the proceedings. While the defendant's supporting affidavit referenced Section 8 and the arbitration agreement, the formal prayers in the summons...



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## Arbitration Beyond Formalities: Supreme Court clarifies Section 21 and the Limits of Procedural Objection in Arbitration


> *Procedure cannot be elevated into a weapon to defeat arbitration; jurisdiction flows from consent, not from technical perfection.*

Indian arbitration law is increasingly focusing on limiting procedural objections that obstruct effective arbitral resolution. This concern came before the Supreme Court in Bhagheeratha Engineering Ltd. v. State of Kerala, where the Court examined the scope of Section 21 of the Arbitration Act, and whether procedural lapses in initiating arbitration could be used to curtail arbitral jurisdiction, despite the conduct of parties and the arbitration agreement.

This issue was taken into consideration by a Division Bench of the Supreme Court comprising Justice J.B. Pardiwala and Justice K.V. Viswanathan. The Court held that Section 21 of the Act is procedural, not jurisdictional. It further clarified that where an arbitration clause is broadly worded, and the parties have participated in the arbitral process, procedural provisions cannot be selectively enforced to defeat adjudication on the merits.

The dispute arose out of four Road Maintenance Contracts executed between the parties, and accordingly, the claims were first presented to the Engineer and thereafter escalated to the Adjudicator, who rendered a composite decision on all disputes. When the matter proceeded to arbitration, the respondent sought to restrict the arbitral reference by invoking Section 21, asserting that arbitration had been formally invoked in respect of only one dispute, even while assailing the adjudicator's decision in its entirety. This objection ultimately led the courts below to set aside the arbitral award, bringing the controversy before the Supreme Court for final determination. The Appellant contended...



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## Limits of Arbitral Autonomy: Patent Illegality in Contractual Interpretation and Bias in Arbitral Tribunals


> *Arbitral autonomy ends where contractual fidelity and adjudicatory impartiality are compromised; interpretation cannot become reconstruction, and unanimity cannot cure bias.*

Arbitral autonomy is a defining feature of modern arbitration law, but it is not absolute. Indian arbitration jurisprudence is structured around a calibrated balance between party autonomy, finality of awards, and procedural fairness. While arbitral tribunals enjoy substantial latitude in interpreting contracts and adjudicating disputes, judicial intervention becomes necessary when tribunals depart from express contractual stipulations or compromise the integrity of the arbitral process itself. Over time, the Arbitration Act has evolved into a layered framework to address concerns regarding arbitrator independence, impartiality, and the fairness of adjudication.

Notably, sections 12 and 13 of the Act regulates disclosures and challenges to arbitrators during the pendency of arbitral proceedings, while the Seventh Schedule prescribes mandatory disqualifications based on an arbitrator's relationship with the parties or the dispute. Closely modelled on the Non-Waivable Red List of the IBA, The Seventh Schedule renders persons falling within its categories ineligible to act as arbitrators. Judicial decisions, including Perkins Eastman Architects DPC v. HSCC (India) Ltd., have reinforced this framework by affirming that unilateral appointment mechanisms undermine arbitral neutrality. Where bias emerges from the adjudicatory process itself, it implicates the violation of principles of natural justice embodied in Section 18 and attracts judicial scrutiny at the post-award stage under Section 34(2)(b)(i). It is within this broader statutory and jurisprudential context that the decision of the Madras High Court in M/s. Muthu Construction...

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# SIGNIFICANT CASE LAWS

## Arbitrability Overrides Exclusivity: Supreme Court Upholds Arbitrator Appointment in Motilal Oswal Dispute

The Supreme Court of India, in the case of Motilal Oswal Financial Services Limited v. Santosh Cordeiro and Another (2026), dismissed an appeal against a Bombay High Court order that appointed an arbitrator for a dispute involving a "leave and licence" agreement for office premises in Mumbai. A bench comprising Justice JB Pardiwala and Justice KV Viswanathan clarified that under Section 11(6A) of the Arbitration and Conciliation Act, 1996, the court's role at the pre-referral stage is strictly limited to verifying the existence of an arbitration agreement. The Court held that Section 41 of the Presidency Small Cause Courts Act, 1882, which generally grants exclusive jurisdiction to Small Causes Courts for tenancy and licence disputes in Mumbai, does not by itself nullify a valid arbitration clause.

The dispute originated when Motilal Oswal vacated its Malad office during the COVID-19 pandemic, leading to a conflict over unpaid licence fees during a "lock-in" period and the refund of a security deposit. While the company argued that the matter was non-arbitrable due to the exclusive jurisdiction of the Small Causes Court, the Supreme Court emphasized that the Arbitral Tribunal itself should decide complex questions of arbitrability and the nature of the claims (whether they constitute a debt or licence fees) under Section 16. By referencing recent precedents like Vidya Drolia, the Court reiterated that the mere conferment of jurisdiction on a specific court does not automatically render a dispute non-arbitrable, directing the arbitrator to conclude proceedings within six months.

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# SIGNIFICANT CASE LAWS

## Consent Cannot Be Implied: Supreme Court Bars "Deemed Waiver" of Arbitrator Ineligibility

In the ruling of Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India (2026), the Supreme Court held that a party's participation in arbitral proceedings does not amount to a waiver of its right to challenge an ineligible arbitrator. A bench comprising Justices JB Pardiwala and KV Viswanathan clarified that under the proviso to Section 12(5) of the Arbitration and Conciliation Act, 1996, any waiver of ineligibility must be made through an "express agreement in writing" entered into after the dispute has arisen. The Court rejected the idea of "deemed waiver" by conduct, emphasizing that silence or active participation cannot override statutory disqualifications.

The case involved a license agreement where the Chairman of the Airports Authority of India (AAI) had unilaterally appointed a sole arbitrator. Even though Bhadra International participated in the proceedings for over two years and sought time extensions, the Supreme Court ruled that because the Chairman was himself ineligible to be an arbitrator (due to his relationship with the AAI), he was equally barred from appointing one. Following the "Perkins Eastman" doctrine, the Court held that a unilateral appointment by an ineligible authority renders the entire proceeding void ab initio, and the resulting award is a nullity.

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# SIGNIFICANT CASE LAWS

## Post-Repayment Tort: Himachal Pradesh High Court Rules Arbitration Clause Inapplicable to Damages for Withholding NOC

In the case of Kotak Mahindra Bank Ltd. & Anr. v. Jaimal Singh, the Himachal Pradesh High Court held that a civil suit for damages arising from the non-issuance of a No Objection Certificate (NOC) cannot be referred to arbitration once the underlying loan agreement has been fully satisfied. Justice Ajay Mohan Goel ruled that the loan contract "stood exhausted" upon the complete repayment of the debt, meaning the bank could no longer invoke the arbitration clause to block a lawsuit centered on harassment and mental agony that occurred after the contractual relationship had ended.

The dispute began after a borrower repaid two successive vehicle loans by 2011, yet the bank failed to provide the necessary NOC, preventing the sale of the vehicle. Despite a Permanent Lok Adalat order directing the release of the certificate, the bank's continued non-compliance led the borrower to file a suit for ₹2,00,000 in damages. The High Court upheld the Trial Court's rejection of the bank's Section 8 application, clarifying that a claim for damages for mental agony is a separate legal grievance that does not arise "out of the contract," as the contract's life cycle had already concluded with the final payment.

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# SIGNIFICANT CASE LAWS

## Collective Will Overrules Individual Actions: Bombay High Court Rejects Abandonment of Arbitration Clause

In Phalke Niketan Co-operative Housing Society Ltd. v. Adit Enterprises (2026), the Bombay High Court held that a civil suit filed by individual members of a housing society does not constitute an "abandonment" or waiver of the arbitration clause contained in a redevelopment agreement. Justice Somasekhar Sundaresan emphasized that once a co-operative housing society is formed, the individual will of its members is subsumed into the collective will of the society. Therefore, only the society: acting through its managing committee has the legal prerogative to pursue or waive an arbitration agreement.

The case involved a stalled 2009 redevelopment project where the developer had defaulted on transit rent and failed to commence construction for over a decade. While the society was under administration, four members filed a civil suit against the developer. The developer later argued that this suit signified a waiver of the arbitration clause. However, the High Court rejected this, noting that individual members lack "privity" to the arbitration agreement and cannot bind the society through their personal litigation. Given that the members had been displaced for 17 years, the court granted interim protection to the society, allowing a new developer to proceed.

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# SIGNIFICANT CASE LAWS

## Section 21 Is Key: Supreme Court Clarifies Arbitral Proceedings Commence Upon Receipt of Notice, Not Court Filings

In the case of Regenta Hotels Private Limited v. M/S Hotel Grand Centre Point and Others (2026), the Supreme Court set aside a Karnataka High Court order, reaffirming that arbitral proceedings commence the moment the respondent receives a notice invoking the arbitration clause under Section 21 of the Arbitration and Conciliation Act, 1996. A bench of Justices Dipankar Datta and Augustine George Masih clarified that judicial applications such as those filed under Section 9 (interim relief) or Section 11 (appointment of arbitrator) do not constitute the "commencement" of arbitration. The Court held that treating court filings as the starting point would unfairly jeopardize interim protections and invite procedural delays.

The dispute involved a franchise agreement for a hotel in Srinagar, where the appellant secured an interim injunction on February 17, 2024. Although the appellant issued an arbitration notice on April 11, 2024 (within the 90-day window required by Section 9(2)), the lower courts vacated the injunction, erroneously believing that arbitration only "commenced" when the Section 11 petition was later filed in June. The Supreme Court corrected this, restoring the injunction and emphasizing that Section 21 is the exclusive statutory definition for commencement, which is vital for determining limitation periods and the validity of pre-arbitral measures.

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# SIGNIFICANT CASE LAWS

## IP Ownership is a "Right in Rem": Bombay High Court Rules Software Ownership Non-Arbitrable

In the case of Anand Khosla v. Punam Kumari Singh (2026), the Bombay High Court affirmed that disputes involving the ownership of intellectual property (IP), such as software trademarks and copyrights, cannot be resolved through private arbitration. Justice Sandeep V. Marne held that deciding who owns a product like the “Test Magic” software involves determining "rights in rem": rights that operate against the world at large, rather than just "rights in personam," which only affect the parties to a contract. Consequently, the Court upheld an arbitral tribunal's refusal to adjudicate ownership claims, directing that such matters must be settled in a civil court.

The conflict arose after a fallout between partners in Universal Test Solutions LLP. While the arbitral tribunal had previously upheld the expulsion of Punam Kumari Singh for siphoning funds, it declined to grant counterclaims regarding the ownership of the software developed by her and her husband. Khosla argued that the software had become LLP property through investment; however, the High Court noted that any ruling on the trademark or copyright would inevitably impact public records and third-party rights. The Court further clarified that projected revenue losses do not automatically equate to proven loss of profits, dismissing the petition for lack of evidence.

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# SIGNIFICANT CASE LAWS

## Estoppel Against NHAI: Himachal Pradesh High Court Bars Plea of Delay After Nine Years of Participation

In the case of Sandesh Kumar (Deceased) through LRs v. National Highway Authority of India and Another, the Himachal Pradesh High Court ruled that the NHAI cannot invoke the plea of "delay and laches" to terminate arbitral proceedings that have been ongoing for years. Justice Ranjan Sharma held that since the NHAI had actively participated in the proceedings for nearly nine years and the court had granted extensions to other "similarly placed" landowners in the same land acquisition project, it would be inequitable to deny the same relief to the current petitioners.

The dispute stemmed from land acquisition for the four-laning of the Solan-Shimla National Highway. Although the arbitration began following the 2015 award, the Arbitrator-cum-Divisional Commissioner abruptly closed multiple cases in 2023, citing the expiry of statutory timelines under Section 29A of the Arbitration and Conciliation Act. The High Court reversed this, noting that the delays were due to administrative lapses and the COVID-19 pandemic rather than any fault of the landowners. The Court emphasized that the object of the Act is effective resolution, not the use of procedural technicalities to defeat the rights of citizens whose land was acquired.

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# REGULATORY UPDATE:

## UNCITRAL issues draft statutes for Permanent and Appellate Tribunal to reform Investor-State Dispute Settlement

UNCITRAL
United Nations Commission on International Trade Law

The United Nations Commission on International Trade Law (UNCITRAL), acting through its Working Group III on Investor-State Dispute Settlement (ISDS) Reform, has released two important draft working papers proposing a major institutional restructuring of how investor-state disputes are resolved. These drafts, **A/CN.9/WG.III/WP.259** and **A/CN.9/WG.III/WP.260,** set out proposed statutes establishing a permanent first-instance tribunal and a permanent appellate tribunal for investor-State disputes, respectively, marking a departure from traditional reliance on ad hoc arbitration.

Investor-State dispute settlement allows foreign investors to bring claims directly against host States under international investment agreements. While this mechanism has played a central role in investment protection, States have increasingly expressed concerns regarding inconsistent awards, limited transparency, high costs, and the absence of any meaningful appellate review. In response, UNCITRAL mandated Working Group III in 2017 to examine whether systemic reform was required and, if so, to develop concrete and workable reform solutions. The two draft statutes form part of this solution-oriented phase and reflect a collective effort by States to move towards a more structured, predictable, and institutionalised ISDS framework. The draft statute proposes a standing first-instance tribunal to hear investor-State disputes, moving away from the current...

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