

# ARBITRA

Your Monthly Guide to Navigate the Evolving Landscape of Arbitration



## COVER STORY

**Jurisdictional Defect at the Stage of Appointment Renders Arbitral Award Void Ab Initio in International Commercial Arbitration** 04

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- Union of India v. Anand and Company
- Skylord Solutions Pvt. Ltd vs Jetsetgo Aviation Services Pvt. Ltd
- Phoenix Arc Private Limited vs. Future Brands Limited
- V.K. John vs S. Mukanchand Bothra And HUF
- Nalin Vallabhbbhai Patel and Anr. v. Atharva Realtors and Ors.

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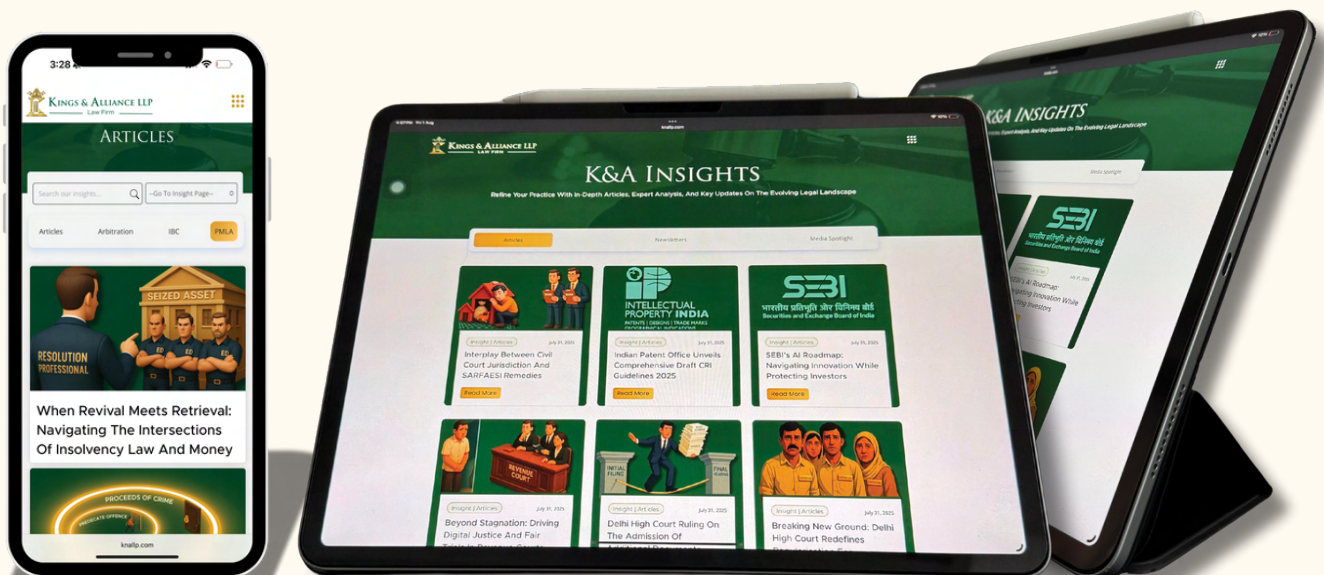
**Miswired**, our cover story this month examines how a jurisdictional defect at the very stage of appointment can render an arbitral award void ab initio in international commercial arbitration. This edition's pivotal issues explore critical developments shaping modern arbitration practice. We analyse whether a party can abandon arbitral proceedings midway and later seek to revive the same dispute under Section 11, the increasingly limited scope of judicial review at the referral stage, and the judiciary's continued insistence on the existence of a clear and enforceable arbitration agreement.

This edition of **ARBITRA** further explores how Indian courts are reinforcing procedural discipline and defining the strict boundaries of judicial intervention. We navigate the prevention of tactical abuse in **Rajiv Gaddh v. Subodh Parkash**, where the Supreme Court barred parties from restarting disputes after walking away midway, and examine the finality of Section 11 orders in **Krishnendu Mondal v. Swapan Dey**, which limits the "back-door" review of appointments. The narrative of procedural integrity continues in **Shinde and Sons v. GMIDC**, where the Bombay High Court struck down an award born of "undue haste" and jurisdictional defiance, and culminates in **IHBAS v. Mi 2 C Securities**, which reinforces the arbitrator as the sole master of contract interpretation even in the face of subsequent shifts in wage notifications.

**To cap it off**, this edition brings together a curated selection of global arbitration events and training shaping the future of dispute resolution.

Let's dive in.

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## COVER STORY

04

Jurisdictional Defect at the Stage of Appointment Renders Arbitral Award Void Ab Initio in International Commercial Arbitration



## PIVOTAL ISSUES

05

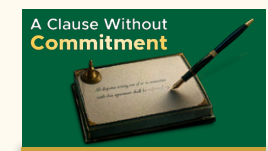
Can a Party Walk Away from Arbitration Midway and Later Restart the Same Dispute Under Section 11?



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Limited Scope of Judicial Review for Section 11 Orders and Requirement of a Clear Arbitration Agreement



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Arbitral Award Set Aside for Undue Haste and Lack of Jurisdiction as Bombay High Court Clarifies Seat vs Venue



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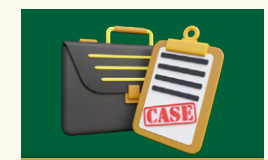
Arbitral Award Cannot Be Set Aside for Subsequent Change in Law as Delhi High Court Reaffirms Limited Scope of Patent Illegality under Section 34



## CASE LAWS

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## TRAINING & EVENTS

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# COVER STORY

Jurisdictional Defect at the Stage of Appointment Renders Arbitral Award Void Ab Initio in International Commercial Arbitration



## Plugged Into the Wrong Source

In International commercial arbitration (ICA), can an arbitral award be dismantled by a single jurisdictional error made at its inception, specifically when an arbitral tribunal is appointed by a forum lacking the inherent authority to do so? In the landscape of Indian arbitration, the answer is a sobering one: an award's "finality" is only as strong as the authority of the court that appointed the tribunal. As underscored by the Madhya Pradesh High Court in the recent case of *State of Madhya Pradesh v. SMEC International Pvt. Ltd.*, an arbitrator appointed by a forum lacking inherent jurisdiction, specifically a High Court appointing an arbitrator in an International Commercial Arbitration (ICA) is a legal nullity. This decision clarifies that the death of an award is often written in its very first chapter, regardless of how many years of litigation follow.

The dispute arose from a contract between the State of Madhya Pradesh and SMEC International Pvt. Ltd., a company incorporated outside India. When disputes surfaced, an application was moved under Section 11 of the Arbitration and Conciliation Act, 1996, for the appointment of an arbitrator. Crucially, this application was filed before and entertained by the High Court, which subsequently appointed a tribunal. The arbitration proceeded to its logical conclusion, resulting in an award. The initial legal skirmish saw the State challenge the arbitral award under Section 34, only for a Commercial Court to dismiss the plea on the dual grounds of limitation and merit. However, the subsequent appeal under Section 37 unmasked a fatal, foundational flaw: since one party was a foreign entity, the proceedings...

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# PIVOTAL ISSUES

Can a Party Walk Away from Arbitration Midway and Later Restart the Same Dispute Under Section 11?

## Finality vs. Flexibility



Can a party walk away from an arbitration midway and later come back to restart the same dispute by seeking an appointment of a fresh arbitrator under Section 11? On April 1, 2026, a division bench of the Supreme Court of India comprising Justice Pamidighantam Sri Narasimha and Justice Alok Aradhe in *Rajiv Gaddh v. Subodh Parkash* dealt with this contentious issue that sits at the intersection of procedural discipline and the prevention of abuse of process. The court observed that the prohibition against initiating fresh proceedings on an identical cause of action, as established under Order 23 Rule 1 of the CPC, extends to Section 11 of the Arbitration Act to safeguard public policy and prevent the tactical abuse of the judicial process.

This legal necessity arose from a dispute over a 2005 joint bid for land in Hoshiarpur, Punjab, where the parties Rajiv Gaddh and Subodh Parkash had structured their interests through a Tripartite Agreement and three subsequent contracts containing an arbitration clause. The Respondent first invoked arbitration in 2015, but after a series of appointments and recusals, he ceased participation in 2017 while alleging bias. By 2019, he explicitly communicated his refusal to participate, yet the Arbitrator proceeded to issue an award in 2020 that dismissed the Respondent's claims while granting the Appellant's. Following a separate 2021 Supreme Court judgment that upheld the original land auction, the Respondent attempted to file a fresh arbitration notice, asserting a new cause of action. Although the High Court allowed this second Section 11 application, The Supreme Court set...

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# PIVOTAL ISSUES

Limited Scope of Judicial Review for Section 11 Orders and Requirement of a Clear Arbitration Agreement

## A Clause Without Commitment



Can a party seek a review of an order passed under Section 11(6) of the Arbitration and Conciliation Act, 1996, particularly when the original order was based on their own concession and a patently vague arbitration clause? This critical question was addressed by the High Court of Calcutta in *Krishnendu Mondal v. Swapan Dey*, where the court examined the limits of judicial intervention and the essential requirements of a binding arbitration agreement. The factual matrix of this case centers on an application seeking a review of an order dated 19 April 2024, which had dismissed a Section 11 application for the appointment of an arbitrator. During the initial hearing, the petitioner had conceded that the application was misconceived as there was no valid or subsisting arbitration clause. However, the petitioner subsequently sought a review, arguing that despite the cryptic nature of the clause, the use of the word "Arbitrator" signaled a clear intention to refer disputes to arbitration.

The court's rationale for dismissing the review application was multi-faceted, addressing both procedural maintainability and the substantive law of contracts. Firstly, the court emphasized that the Arbitration and Conciliation Act is a self-contained code with limited scope for judicial intervention. Relying on *BSNL v. Nortel Networks (India) (P) Ltd.* and *Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.* The court held that any attempt to review a Section 11 order undermines the principle of minimal judicial interference and "goes against the grain of the Act". The court noted that the proper...

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# PIVOTAL ISSUES

Arbitral Award Set Aside for Undue Haste and Lack of Jurisdiction as Bombay High Court Clarifies Seat vs Venue

## Procedural Integrity and the Perils of "UNDUE HASTE"



Can an arbitral award survive when it is passed with "undue haste" by an arbitrator whose very appointment was under a cloud of legal challenge, and does a Commercial Court at the site of the work lose jurisdiction simply because the arbitrator held sittings elsewhere? In *Shinde and Sons v. Godawari Marathwada Irrigation Development Corporation and Anr.*, The Bombay High Court negated these propositions. The Court held that when an arbitrator willfully brushes aside the impact of related civil court decrees and proceeds ex-parte while a challenge to his jurisdiction is pending before higher courts, the resulting award is patently illegal. Furthermore, the Court clarified that in the absence of a designated "seat" in the contract, the court where the cause of action arose such as where the work was executed retains jurisdiction regardless of where the physical sittings of the tribunal took place.

The factual matrix of this dispute traces back to a 1990-91 tender for canal construction work on the Majalgaon Right Bank Canal, with an estimated cost of approximately ₹1.15 Crores. Although the work was slated for completion by August 1993, it was significantly delayed and only concluded in June 2006. This delay led to a series of legal battles, including civil suits (RCS No. 258 of 1994 and RCS No. 221 of 1995) that were initially compromised, with the contractor waiving claims for rate revisions in exchange for the revocation of a termination order. However, fresh disputes emerged following the final bill in 2006, leading to the appointment of multiple successive arbitrators. Ultimately, the contractor selected Mr. B.B. Jadhav from a list provided by the Chief Engineer. Despite vigorous objections from the...

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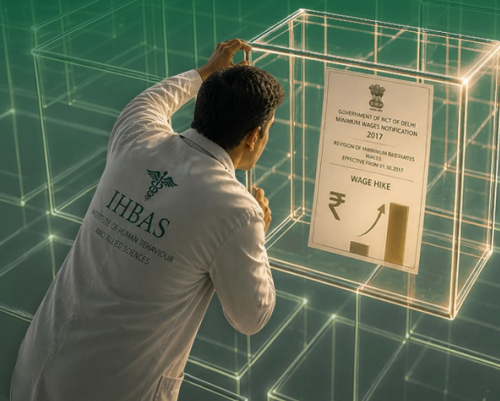
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# PIVOTAL ISSUES

Arbitral Award Cannot Be Set Aside for Subsequent Change in Law as Delhi High Court Reaffirms Limited Scope of Patent Illegality under Section 34

## LIMITED SCOPE OF PATENT ILLEGALITY



Does a post-award change in the legal interpretation of minimum wage notifications by a High Court justify the setting aside of an arbitral award under the narrow gateway of "patent illegality" or "public policy"? In *Institute of Human Behaviour and Allied Sciences (IHBAS) v. Mi 2 C Securities and Facilities*, the Delhi High Court rejected the point of dispute, reinforcing the principle that an arbitrator is the sole master of both facts and the interpretation of a contract. The Court held that unless an award is so perverse that it shocks the judicial conscience or is based on no evidence at all, the judiciary cannot intervene simply because an alternative legal view even one subsequently affirmed by a higher court exists. This decision underscores that the "patent illegality" ground under Section 34 of the Arbitration and Conciliation Act is not an avenue for a merit-based review or a "second look" at the arbitrator's findings.

The dispute emerged from a 2018 Service Agreement wherein Mi 2 C Securities was engaged to provide security and facility management services to IHBAS, a premier mental health institute. Central to the conflict was a clause providing for the reimbursement of minimum wage increases mandated by the Government of NCT of Delhi. Following a 2017 notification that significantly hiked minimum wages, the contractor sought arrears. While IHBAS initially released partial payments, it later withheld substantial sums, leading to the invocation of arbitration. The sole arbitrator eventually awarded the contractor over ₹2.77 Crores, plus interest, after finding that the contractor had indeed complied with the...

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# SIGNIFICANT CASE LAWS

## Delhi High Court Curbs Excessive Damage Claims and Reaffirms Severability Doctrine

In the recent ruling of *Union of India v. Anand and Company (2026)*, the Delhi High Court delivered a precise application of the severability doctrine, affirming that courts may excise unsustainable portions of an arbitral award while preserving valid findings. Presided over by Justice Avneesh Jhingan, the judgment serves as a stern reminder of the necessity of evidence, as the court set aside claims for prolongation damages under Section 73 of the Contract Act for lack of proof regarding actual loss, and rejected claims for GST-VAT tax differentials due to unproven payment documentation. Furthermore, the court reinforced contractual sanctity by disallowing interest on withheld milestone payments, noting that such payments were expressly barred by the underlying agreement. While the court upheld the release of withheld milestone payments citing that Clause 5.4 allowed for rescheduling regardless of a formal application and maintained the refund of penalties for sample flat delays due to the petitioner's failure to substantiate actual injury, it exercised its corrective powers to adjust the final bill amount to Rs. 54,44,112, offering a balanced precedent that demands rigorous evidence over assumptions in arbitration proceedings.



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# SIGNIFICANT CASE LAWS

## Upholding Arbitral Autonomy: Delhi High Court Clarifies Limited Scope of Section 11 Intervention

In the judgment of Skylord Solutions Pvt. Ltd vs Jetsetgo Aviation Services Pvt. Ltd, the Delhi High Court, presided over by Hon'ble Mr. Justice Harish Vaidyanathan Shankar, exercised its jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint Hon'ble Mr. Justice (Retd.) Hemant Gupta as the Sole Arbitrator to resolve disputes between the parties, valued at approximately Rs. 8.5 crores. Relying on the Supreme Court's authoritative pronouncement in SBI General Insurance Co. Ltd. v. Krish Spinning, the Court emphatically reiterated that the role of a Referral Court is strictly confined to a prima facie examination of the existence of a valid arbitration agreement. Underscoring the necessity of minimal judicial interference to preserve arbitral autonomy, the High Court clarified that contentious issues such as the doctrine of "accord and satisfaction" are matters for the Arbitral Tribunal to decide upon a detailed appreciation of evidence, rather than for the Referral Court to adjudicate at the initial stage. Consequently, the Court declined to express any opinion on the merits of the dispute, leaving all rights and contentions open for the Arbitrator, while directing that the proceedings be conducted under the aegis of the Delhi International Arbitration Centre (DIAC).



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# SIGNIFICANT CASE LAWS

## Procedural Hurdles Cannot Trump Urgency: Bombay High Court Clarifies Section 12-A Compliance

In the recent decision of Phoenix Arc Private Limited vs. Future Brands Limited (2026), the Bombay High Court firmly rejected a preliminary challenge questioning the maintainability of a commercial suit under Section 12-A of the Commercial Courts Act, 2015. The defendants had sought to reject the plaint under Order VII Rule 11 of the CPC, arguing that the plaintiff failed to exhaust the mandatory pre-institution mediation process and suppressed material facts regarding its failure. Justice Gauri Godse, however, ruled that the requirement for pre-institution mediation does not override a plaintiff's right to seek urgent judicial intervention when a real need is established. Assessing the case from the plaintiff's standpoint, the court held that because the suit was filed to protect substantial security interests namely, royalty receivables under trademark agreements that were on the verge of expiring the urgency was not a mere camouflage for evading mediation. Highlighting that the objective of the Commercial Courts Act is to facilitate the speedy disposal of disputes, the court cautioned that judicial forums must look beyond procedural technicalities to avoid rendering a party remediless, ultimately affirming that the lack of a "non-starter" report did not preclude the filing of the suit where legitimate exigency existed. Justice Godse further clarified that the statutory timeline for pre-institution mediation cannot be weaponized by defendants to delay urgent relief. By emphasizing that the court must scrutinize pleadings holistically rather than relying on defendants' selective assertions, the judgment sets a critical precedent against using procedural defenses to mask substantive defaults. The court dismissed the allegation of "suppression of facts," finding that the plaintiff had acted in good faith and that the non-starter report was issued only after the suit was initiated. Furthermore, the ruling reaffirms that rejecting a plaint under Order VII Rule 11 is a "drastic measure" that should not be invoked to defeat substantial civil rights when a genuine cause of action exists. Ultimately, this decision serves as a powerful reminder that the Act does not intend to leave creditors remediless in the face of imminent asset erosion.



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# SIGNIFICANT CASE LAWS

## Arbitral Awards and Legal Heirs: Supreme Court Clarifies the Path to Redressal

In the landmark judgment of V.K. John vs S. Mukanchand Bothra And HUF, the Supreme Court of India has definitively settled a crucial procedural question regarding the remedies available to legal representatives aggrieved by an arbitral award. The Division Bench, comprising Justice Sanjay Karol and Justice Vipul M. Pancholi, ruled that such challenges must be initiated under Section 34 of the Arbitration & Conciliation Act, 1996, explicitly rejecting the use of Article 227 of the Constitution or Section 115 of the Code of Civil Procedure as alternative forums. Emphasizing that the Arbitration Act functions as a self-contained complete code, the Court held that upon the death of a party, legal representatives step into their shoes inheriting both the authority to enforce and the obligation to be bound by the arbitral process. By referencing the definition of "legal representative" under Section 2(1)(g), the Court affirmed that the scheme of the Act ensures the seamless continuity of proceedings, explicitly precluding legal heirs from claiming they are remedial. Furthermore, citing the "exceptional rarity" standard for judicial interference established in Bhaven Construction, the ruling underscores that courts must strictly adhere to the legislative framework rather than entertaining external constitutional challenges. Consequently, while the Court dismissed the appellant's attempt to bypass the statute, it granted significant relief by permitting the appellant to pursue his appropriate statutory remedy under the Arbitration Act, with the limitation period running from the date of the judgment, thereby reinforcing the legislative intent behind efficient, structured, and fair dispute resolution.



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# SIGNIFICANT CASE LAWS

## Finality Over Flexibility: Bombay HC Bars Fresh Arbitration Post-Abandonment

In a significant verdict, the Bombay High Court in *Nalin Vallabhnbhai Patel and Anr. v. Atharva Realtors and Ors.* (dated April 1, 2026) has fortified the doctrine of finality in arbitral proceedings, ruling that parties cannot circumvent a refusal to extend an arbitrator's mandate by filing a fresh application. The Court categorically held that when a request for the extension of an arbitrator's mandate under Section 29A of the Arbitration and Conciliation Act, 1996, is rejected due to a party's abandonment of proceedings, a subsequent application for the appointment of a new arbitrator under Section 11(6) is not maintainable. Reasoning that such a move would effectively constitute an impermissible review or appeal of the previous order, the Court underscored that the "doors of arbitration" are closed once proceedings are terminated for lack of diligence. The Bench explicitly rejected the applicants' plea of a 'continuous cause of action,' observing that this argument was merely a thinly veiled attempt to escape the legal consequences of previous adverse orders. By clarifying that Section 11 jurisdiction cannot be invoked to breathe life into effectively dead proceedings, the Court has reinforced the absolute sanctity of judicial mandates passed under Section 29A. Ultimately, this judgment serves as a stern reminder that the legislative framework is designed to prevent procedural abuse and re-litigation, ensuring that litigants cannot treat the arbitral process as an indefinite venue for stalling tactics or "reset" the clock after failing to participate in the initial dispute resolution.



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# SIGNIFICANT CASE LAWS

## Employment Contracts and Accountability: High Court Denies Relief Against Agreed Service Terms

In a significant ruling, the Bombay High Court (Aurangabad Bench) in *Dr. Venkata Ramana Murthy Yellajosyula v. Union of India and Ors.* (dated April 1, 2026) has dismissed a Writ Petition challenging the established service conditions of an academic professional. The petitioner, an Associate Professor, had sought to contest a two-year probation period after previously accepting the terms of his appointment; however, the Court underscored that an employee cannot disavow contract conditions he fully understood and consented to at the time of entry simply because they later become unsuitable. The Division Bench highlighted that the petitioner failed to raise any timely, written grievances with the University regarding the terms, effectively undermining his argument of procedural unfairness. The Bench further observed that the petitioner's attempt to rely on external resolutions without having first initiated a formal internal dispute resolution process demonstrated a strategic omission, weakening his claim for equitable relief. Ultimately, this decision serves as a pertinent reminder that courts will not intervene to alleviate 'buyer's remorse' regarding employment terms where an employee, possessing full knowledge of the consequences, voluntarily accepted the appointment and remained silent throughout the tenure. Finding the impugned order to be entirely non-stigmatic and legally sound, the Court refused judicial interference, reinforcing the critical legal principle that parties are bound by the terms of their employment contracts and cannot treat the judicial process as an appellate forum to renegotiate settled service engagements.



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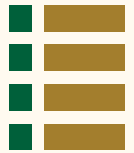
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