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THE FUTURE OF JUDICIAL ENGAGEMENT WITH ARBITRATION

~ *Simran P Kanchagar*

1. ABSTRACT

The Supreme Court of India's decision in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* (2025) marks a critical evolution in India's arbitration jurisprudence by recognizing the judiciary's limited discretion to modify arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. In a 4:1 ratio, the Court introduced a calibrated approach that balances efficiency and justice while maintaining the non-interventionist ethos of arbitration. The judgment delineates four specific circumstances under which judicial modification is permissible—severability of invalid components, rectification of clerical or computational errors, adjustment of post-award interest, and the invocation of Article 142 of the Constitution to do complete justice.

Drawing upon the doctrines of severability and implied judicial powers, the decision harmonizes statutory interpretation with the objectives of the UNCITRAL Model Law, thereby bridging the legislative silence on "modification" within Section 34. At the same time, it addresses the long-standing tension between arbitral autonomy and judicial oversight by emphasizing that such modifications must not encroach upon the merits of disputes. The Court's reasoning situated India's arbitration framework within the global context, aligning it with the New York Convention's recognition of judicial authority to modify awards at the seat of arbitration.

This article argues that *Gayatri Balasamy* represents a progressive judicial shift from restraint to reasoned engagement—advancing a jurisprudence that values finality yet acknowledges the necessity of limited correction. The judgment underscores that judicious intervention, when narrowly confined, enhances rather than undermines the integrity of arbitration in India.

2. INTRODUCTION

In the case of *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (SLP (C) Nos.15336–15337/2021, decision dated April 30, 2025)¹. The Supreme Court of India has made a decision that may significantly alter judicial intervention in arbitral proceedings under the Arbitration and Conciliation Act, 1996². The Supreme Court, in a ratio of 4:1, has held that Courts may be described as a limited yet clear discretion available to modify arbitral awards under Sections 34 and 37 of the Act.

Departing from previous judgements, whereby in modifying arbitral awards Courts would only be limited to annulments and modifications. This decision shows that at an optimum path of conserving time, energy, and resources of all stakeholders. However, it is also balanced by the dissenting opinion of Justice K.V. Viswanathan whose opinion serves as a constitutional reminder of the principles of separation of powers and the structural discipline that must govern judicial conduct in arbitration matters.

3. JUDICIAL INTERVENTION IN ARBITRATION

The Supreme Court emphasized the need for minimal judicial intervention in arbitration while enumerating four specific situations when an award may be modified. These include:

1. When the invalid component of the award is severable from the valid portion;
2. Where there are clerical, computational, or typographical errors apparent on the face of the record;
3. When a modification of post-award interest is required in the interests of equity;
4. When Article 142 of the Constitution is applicable;

The Supreme Court has emphasized that while exercising its discretion under Article 142 of the Constitution, it may intervene with moderation and within the purview of Article 142. This constraint to modify awards under Article 142 is not an invitation for the Courts to intervene and modify the award based on its merits, instead the Court should adhere to the dictum set out by the Supreme Court in para 19 of *Shilpa Sailesh v. Varun Sreenivasan*³, whereby Article 142 should be used as a means to end the litigation and do complete justice.

¹ *Gayatri Balasamy v. ISG Novasoft Techs. Ltd.*, SLP (C) Nos. 15336–15337/2021 (India, Apr. 30, 2025).

² Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996)

³ *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 8 SCC 52 (India).

The 1996 Act's legislative scheme is largely inspired from the UNCITRAL Model Law⁴ which enshrines principles of party autonomy, finality and minimal judicial oversight. Section 34 of the Act embodies these principles while permitting judicial review as well and only on the very limited grounds of exceeding jurisdiction, grave procedural flaws, or breach of public policy. The absence of the term "modify" in Section 34 has resulted in some believing it implies that the Courts have no power to change the content of arbitral awards. However, this restrictive interpretation disregards the wider aim of the Act and such rigidity can culminate in ineffectiveness.

As held by the Supreme Court, the absence of the term modification in Section 34 should not be read as an intent to omit modification of awards, it would be better understood as a legislative void that could, in certain cases, be filled by the discretion of the Courts.

4. DOCTRINE OF SEVERABILITY

One of the core principles used by the Supreme Court in *Gayatri Balasamy* (supra) is the concept of 'severability'. The provision to Section 34(2)(a)(iv) of the Act, includes the doctrine of severability and permits the Courts to set aside only those parts of an Award which are not arbitrable. This saves the award from annulment because only portions which can be validly exercised are preserved. The maxim "omne majus continet in se minus" strengthens the notion that awards are modifiable, by asserting that a greater power to set aside an arbitral award as described in Section 34(2)(a)(iv) also entails a lesser power which could merely set aside the arbitral award. However, the Supreme Court decided that this power is limited and it stops functioning when parts of the award are intertwined with the essential part of the award.

In such cases, as previously recognized by the Privy Council in *Champsey Bhara & Co. v. Jivraj Balloo Spinning and Weaving Co*⁵ and reaffirmed by the Supreme Court in *Gayatri Balasamy*, "the power of partial setting aside should be exercised only when the valid – particularly in relation to liability and quantum and without correlation between valid and invalid parts."

⁴ UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, Annex I (1985).

⁵ *Champsey Bhara & Co. v. Jivraj Balloo Spg. & Weaving Co.*, (1923-24) 51 I.A. 324 (P.C.).

A problem that has always shadowed many such themes involving judicial modification, is the encroachment upon the arbitrator's decision, which Section 34 of the Act does not make provisions for. The predominant viewpoint has been to alteration, many weaken arbitral autonomy and invite the Courts to exceed its jurisdiction, and this modification power will then lead to an examination of the merits of the dispute. Although this argument seems rational, it does not withstand doctrinal examination. Modification, as enumerated by the Supreme Court, is not an exercise where the case is reevaluated, but rather a restrictive approach within the boundaries of Section 34 to rectify errors that can be remedied without re-adjudication. The Court's right to intervene extends only to an erroneous computation of principal amounts claimed, due to clerical error, or applying mandated statutory interest incorrectly. The Court has held that these do not affect the tribunal's core reasoning and, in so doing, does not breach the non-intervention ethos of the Act.

Another concern resolved by the Supreme Court is the substantive rights of the parties vested in Section 33 and 34(4) of the Act. The Supreme Court held that Courts have the discretion to change arbitral awards under Section 34 Act for reasons ancillary to Sections 33 and 34(4). While Section 33 empowers the arbitral tribunal to correct and pass other supplementary awards, Section 34 allows Courts to remove clerical, computational, or typographical mistakes, as long as these errors are straightforward and do not require a substantial consideration on the merits. The Supreme Court adopts the precedents set out in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*⁶ and *Dhubal Swain and Others v. Gopinath Deb and Others*⁷, i.e., to judicially exercise intrinsic powers and to rectify mistakes that inevitably undermine justice. Such inherent powers must, however, be exercised without infringing the divide on what constitutes an appellate and merits-based review. The principle of such underlying authority in implied power justifies this extent of judicial interference, without contradicting the rationale of what the object of the Act.⁸

5. JUDICIAL MODIFICATION AND ITS LIMITS

The modification of post-award interest requires a more judicial approach. According to Section 31(7)(b), unless the arbitral award says otherwise, any amount it directs to be paid will

⁶ *Grindlays Bank Ltd. v. Central Gov't Indus. Tribunal*, (1980) Supp SCC 420 (India).

⁷ *Dhubal Swain v. Gopinath Deb*, (1999) 4 SCC 602 (India).

⁸ *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 1958).

earn interest at 2% above the 'current interest rate' (meaning as assigned in section 2(b) of the Interest Act, 1978)⁹, from the date of the award until realization. Because post-award interest is payable only after the tribunal has passed the award, the Court inherently has the authority to alter such interest. Judicial modification under these circumstances does not encroach upon arbitral authority but it is a necessary adjustment to the tribunal's award because of changing circumstances, such as unexpected delays in enforcement judicially in the economy. This modification increases the efficacy of justice without undermining tribunal's outcome.

The Supreme Court has dealt with concerns regarding the enforceability of modified awards in relation to the New York Convention with inherent clarity. The Convention allows a Court in the place of arbitration, to annul or modify the award. Hence, a modification effected under the law of the seat of arbitration is valid when enforcing the award. The balance of powers created by the modification of an award under the law and its enforcement serves the interest of efficiency at the seat of arbitration.

The judgment of the Apex Court in Gayatri Balasamy therefore marks an evolution of Indian arbitration jurisprudence. The Court, while aware of the level of arbitral autonomy, concludes that a complete non-intrusive judicial approach amounts to injustice by promoting fairness and efficiency. The Supreme Court in Gayatri Balasamy has ensured that the power to modify is exercised within the narrow limits. What emerges is that absence of judicial oversight does not mean absence of judicial action and that adherence to legislative intent may sometimes require intervention.

The judgement thus offers a balanced framework that preserves the efficiency and finality of arbitration while equipping courts with necessary tools to safeguard justice . Hence the Supreme Court has carved a path that is both constitutionally sound and commercially sensible, reinforcing India's commitment to being a credible arbitration hub .

6.RECOMMENDATIONS

1. Legislative Clarification of Judicial Powers:

Parliament should consider amending Section 34 of the Arbitration and Conciliation Act, 1996 to explicitly include the scope of judicial modification of arbitral awards. Codifying this

⁹ The Interest Act, No. 32 of 1978, § 2(b) (India).

discretion would ensure consistency in judicial practice and prevent interpretive uncertainty regarding the limits of such intervention.

2. Guidelines for Judicial Discretion:

The Supreme Court or the Law Commission may formulate detailed procedural guidelines on when and how courts can exercise modification powers under Sections 34 and 37. These guidelines should distinguish between permissible corrections (clerical, computational, or typographical) and impermissible merit-based revisions to safeguard arbitral autonomy.

3. Strengthening Training and Institutional Capacity:

Specialized arbitration benches or designated judges trained in arbitration law and international best practices can ensure uniform and efficient application of modification powers, particularly in high-value commercial disputes.

4. Promotion of Consistency with International Norms:

Judicial modifications should be harmonized with global conventions such as the New York Convention and the UNCITRAL Model Law. Such alignment will promote enforceability of Indian arbitral awards abroad and enhance India's credibility as a pro-arbitration jurisdiction.

5. Encouraging Pre-award Corrective Mechanisms:

Arbitral tribunals should be encouraged to utilize Section 33 of the Act more proactively for correction of errors, thereby reducing the necessity for judicial modification post-award and reinforcing the principle of party autonomy.

7. CONCLUSION

The Supreme Court's judgment in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* signifies a transformative moment in India's arbitration jurisprudence. By recognizing a limited judicial discretion to modify arbitral awards, the Court has struck a careful balance between arbitral autonomy and judicial oversight. The decision promotes procedural fairness and efficiency while reaffirming the non-interventionist ethos that underpins the Arbitration and Conciliation Act, 1996.

However, the absence of express statutory recognition of modification powers leaves room for interpretive ambiguity. Future reforms should aim to codify the judicial discretion delineated

by the Supreme Court, ensuring that modifications remain narrowly confined to clerical or technical errors and do not evolve into appellate review.

Ultimately, *Gayatri Balasamy* represents the Indian judiciary's evolving maturity in engaging with arbitration transitioning from an interventionist stance to a facilitative one. The judgment reinforces that minimal, well-reasoned judicial engagement can serve as a mechanism for justice rather than a disruption to arbitral independence.