



ARBITRATION AND CONCILIATION

Arbitral Award Must Be Within the Parameters of the Agreement Between the Parties

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Introduction

Arbitration, as an alternative dispute resolution mechanism, is founded on the doctrine of party autonomy. It derives its validity not from legislative command but from the consent of the parties who choose to submit their disputes to a private tribunal. This consent embodied in the arbitration agreement defines the jurisdiction, scope, and authority of the arbitral tribunal. Consequently, every arbitral award must remain within the parameters of the contract that the parties themselves have agreed upon. When an arbitral tribunal departs from the contractual framework, either by disregarding express terms or granting reliefs inconsistent with the agreement, it violates the sanctity of contract and exceeds its jurisdiction. Such deviation vitiates the arbitral process and renders the award vulnerable to judicial intervention under the Arbitration and Conciliation Act, 1996.

Contractual Autonomy and Section 28(3)

The Indian arbitration framework recognizes contractual sanctity as the cornerstone of arbitral authority. Section 28(3) of the Arbitration and Conciliation Act, 1996 explicitly mandates that the arbitral tribunal “shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.” This provision operates as a statutory restraint ensuring that arbitral discretion is exercised strictly within the contours of the agreement. The arbitrator's role is interpretative, not creative. He or she cannot rewrite, modify, or disregard the terms of the contract on considerations of equity, fairness, or perceived commercial reasonableness. The bargain struck between the parties, however onerous or inconvenient, is the ultimate boundary of arbitral jurisdiction. Arbitration, therefore, cannot become a forum for contractual reformation.

Judicial View and Precedents

The Supreme Court of India has consistently emphasized that arbitral tribunals are creatures of contract and cannot travel beyond their mandate. In *Associated Engineering Co. v. Government of Andhra Pradesh*^[1], the Court held that an arbitrator cannot act arbitrarily or ignore the terms of the contract, and any award inconsistent with contractual stipulations is void. This principle was further crystallized in *ONGC v. Saw Pipes Ltd.*^[2], where the Court held that an award violating the express terms of the contract is patently illegal and contrary to the public policy of India. The same approach was reaffirmed in *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.*^[3], where the Court observed that an arbitrator's interpretation, however plausible, cannot survive if it rewrites the contractual obligations of the parties.

Through these decisions, Indian jurisprudence has evolved a clear boundary: arbitral tribunals may interpret contracts, but they cannot innovate upon them. Any award that deviates from the contract's express terms or grants reliefs inconsistent with it will not withstand judicial scrutiny under Sections 34 or 37 of the Arbitration Act.

Evidentiary Discipline and Contractual Compliance

A critical aspect of ensuring that an arbitral award remains within contractual limits lies in evidentiary discipline and procedural adherence. Where a contract prescribes specific preconditions such as issuance of notices, fulfillment of milestones, or written approvals these requirements form the procedural foundation of the parties' obligations. An arbitral tribunal cannot waive or relax these stipulations unless the contract itself permits such a waiver. For instance, where a contract includes a “No Oral Modification” or “No Waiver” clause, the tribunal cannot infer a waiver through correspondence or conduct. Similarly, if the contract prescribes that certain claims must be supported by contemporaneous documentation, reliance on unverified or hearsay evidence would amount to a jurisdictional error.

Equity and fairness have a limited role in such cases. While tribunals may interpret ambiguities to achieve commercial reasonableness, they cannot override clear contractual commands in the name of equitable adjustment. As the Supreme Court has reiterated, commercial fairness cannot substitute contractual discipline.

This principle was recently reinforced by the Supreme Court of India in **SEPCO Electric Power Construction Corporation vs. GMR Kamalanga Energy Ltd.**^[4] In this case, the Arbitral Tribunal's decision to uphold a claim was set aside because it wrongly invoked the doctrine of **equitable estoppel** to overlook the mandatory requirement for contractual notices, which directly violated the contract's explicit **“No Waiver or Variation”**. The Supreme Court held that the tribunal's attempt to use waiver to bypass the NOM clause was “an untenable one” and amounted to rewriting the contract.

Scope of Judicial Review under Sections 34 and 37

Although the Arbitration Act promotes minimal judicial interference, the limited review powers conferred upon courts under Sections 34 and 37 serve as a necessary safeguard against arbitral excess. Courts are not appellate forums and cannot reassess factual determinations or evidence. However, when an arbitral award:

- disregards express contractual provisions,
- travels beyond the scope of submission to arbitration, or
- grants remedies not contemplated by the contract,

it is deemed to suffer from patent illegality or violation of public policy, warranting judicial correction. The judiciary thus is a guardian of contractual sanctity without intruding upon arbitral independence. This ensures that arbitration remains faithful to the principle of party consent the very essence of its legitimacy.

Practical Implications

For contracting parties, this principle highlights the necessity of precision in drafting and adherence in performance. Arbitration clauses must be drafted to clearly delineate procedural requirements, timelines, and limitations on the arbitrator's powers. During the arbitral process, parties must ensure strict compliance with notice requirements, documentation, and contractual preconditions. Arbitrators, on their part, must remain vigilant against substituting equitable considerations for contractual stipulations.

For courts, the guiding test remains whether the arbitral award has respected the four corners of the agreement. When the award reflects a faithful interpretation of the contract, judicial restraint must prevail. When it departs from the agreement, judicial correction becomes imperative.

Conclusion

Arbitration thrives on contractual fidelity. Its strength lies in its predictability and respect for the parties' autonomy. An arbitral tribunal that confines itself to the agreement preserves this integrity, reinforces commercial certainty, and enhances confidence in India's arbitration ecosystem. Conversely, when a tribunal exceeds its mandate and rewrites the contractual bargain, it undermines both the process and the principle upon which arbitration rests. An arbitral award must not be an exercise in fairness detached from law, but an adjudication rooted in the contract. Staying within the parameters of the agreement ensures that arbitration remains a true extension of party autonomy, a private system of justice governed by the rule of contract.

For more details, write to us at: contact@indialaw.in

[1] (1991) 4 SCC 93

[2] (2003) 5 SCC 705

[3] (2024) 6 SCC 357

[4] Civil Appeal No. of 2025

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