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ARBITRATION AND CONCILIATION

Courts Have Failed Arbitration: Arbitration Has Not Failed, Courts Have: Supreme Court Reaffirms Judicial Restraint and Finality in Arbitral Proceedings

Introduction An arbitral award passed in 2014. A dispute originating from a termination of contract in 2007. And yet, by 2026, the award-holder had still not received the fruits of its award. This is the factual backdrop against which the Supreme Court, in Madhya Pradesh Road Development Corporation Ltd. v. M/s Jabalpur Corridor Pvt. Ltd., […]

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Introduction

An arbitral award passed in 2014. A dispute originating from a termination of contract in 2007. And yet, by 2026, the award-holder had still not received the fruits of its award.

This is the factual backdrop against which the Supreme Court, in **Madhya Pradesh Road Development Corporation Ltd. v. M/s Jabalpur Corridor Pvt. Ltd.**, delivered what may well be one of its most candid indictments of judicial conduct in arbitration matters.

Dismissing the appeal filed by the Madhya Pradesh Road Development Corporation Ltd. ("MPRDC") against an arbitral award of Rs. 49 crores with 14.75% pre-award interest, the bench of Justice J.K. Maheshwari and Justice Atul S. Chandurkar did not merely uphold the award on merits. It issued a pointed institutional warning: that courts, and not the arbitration mechanism itself, have at times been the primary obstacle to finality in Indian arbitration.

> *"Arbitration in India has not failed, however Courts sometimes have failed arbitration in India."*

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Background of the Dispute

MPRDC, a wholly owned undertaking of the Government of Madhya Pradesh, invited tenders in 2002 for the construction, operation, and maintenance of the **Jabalpur–Sagar–Damoh Road Project** on a Build-Operate-Transfer ("BOT") basis. Tiara Dhaya Maju Constructions (M) SDN BHD, a Malaysian company, was the successful bidder.

To implement the project, M/s Jabalpur Corridor Pvt. Ltd. ("JCPL") was incorporated as a Special Purpose Vehicle ("SPV"). A Concession Agreement was executed on 11 April 2003 for a concession period of 5,440 days, including an 18-month construction phase.

Disputes arose during implementation, primarily owing to **delays in the handover of vacant land** by MPRDC. JCPL approached the High Court in March 2007 seeking possession of the land.

Before the matter could be resolved, MPRDC issued a termination notice on 12 July 2007 under Clause 32.2 of the Concession Agreement, purporting to terminate the agreement on account of the Concessionaire's default.

JCPL contested the termination as unlawful and, in 2011, initiated **arbitration proceedings** under Clause 39 of the Concession Agreement, read with the Arbitration and Conciliation Act, 1996 ("1996 Act"). The majority of the Arbitral Tribunal, by award dated 22 August 2014, found in favour of JCPL, holding the termination to be arbitrary and unlawful, and awarded termination payment under Clause 32.6 of the Concession Agreement.

Instead of attaining finality, the award then became the subject of nearly two decades of challenges:

1. An application under **Section 34** before the District Court.
2. An appeal under **Section 37** before the High Court.
3. A **Special Leave Petition** before the Supreme Court.

The Jurisdictional Challenge: An Impermissible Resurrection

A central issue throughout the proceedings was whether the dispute should have been adjudicated before the Tribunal constituted under the **Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983** ("Adhiniyam") — the State's local law governing works contracts — rather than through private arbitration under the 1996 Act.

This objection had been raised by MPRDC before the Arbitral Tribunal under Section 16 and rejected. Thereafter, MPRDC agitated it through multiple fora:

1. A **Section 14 application** before the District Court.
2. A **writ petition** before the High Court.
3. A **Special Leave Petition** before the Supreme Court.
4. A **Review Petition**, which was also dismissed.

All of these were decided against MPRDC.

Remarkably, MPRDC sought to raise the jurisdictional challenge once again before the Supreme Court — this time in a rejoinder affidavit — relying on the subsequent Full Bench judgment of the Madhya Pradesh High Court in *Viva Highways Ltd. v. MPRDC*, which had overruled the earlier High Court order, and on *LG Chaudhary II* [(2018) 10 SCC 826], which held that disputes under works contracts covered by the Adhiniyam were to be adjudicated exclusively by the statutory tribunal.

The Supreme Court **rejected this attempt unequivocally**. Placing reliance on *Natural Resources Allocation, In re, Special Reference No. 1 of 2012* [(2012) 10 SCC 1] and *Gayatri Project Ltd. v. M.P. Road Development Corpn. Ltd.* [(2025) 10 SCC 750], the Court held that once a jurisdictional issue has been raised, adjudicated through the hierarchy of courts, and permitted to attain conclusiveness — including after dismissal of a review petition — it cannot be reopened in subsequent proceedings.

A subsequent change in the legal position does not reopen disputes that have already attained finality between the parties. The Court characterised MPRDC's conduct as a **"clear abuse of process and an impermissible attempt to indefinitely defer the finality of the arbitral award."**

The Merits: Termination Payment and Contractual Interest

Termination Payment Under Clause 32.6

On the merits, MPRDC challenged the award on the ground that the Arbitral Tribunal had **exceeded the scope of reference** by awarding termination payment under Clause 32.4.2 and Clause 32.6 of the Concession Agreement, when the Respondent had only claimed reimbursement of the value of work done.

The Court rejected this contention, finding that the Respondent had in fact claimed termination payment under Clause 32.6 of the Agreement as part of its reliefs. The Arbitral Tribunal, the District Court under Section 34, and the High Court under Section 37 had each concurrently found that such a claim had been specifically raised and contested before the Tribunal.

The interpretation placed upon Clause 32.6 by the Arbitral Tribunal was, in the Court's view, not only a plausible one but **"the only possible view."**

Pre-Award Interest Rate of 14.75%

MPRDC also challenged the **pre-award interest rate of 14.75%**, contending it was exorbitant. The Court dismissed this objection as well, noting that the rate was expressly contractually agreed under Clause 32.6 of the Concession Agreement as SBI PLR plus two percent.

MPRDC had itself claimed the identical rate in its counter-claim before the Tribunal. Relying on *Sri Lakshmi Hotel (P) Ltd. v. Sriram City Union Finance Ltd.* [(2026) 3 SCC 600], the Court held that **contractually agreed interest** cannot form the basis for setting aside an award on grounds of public policy unless it is so perverse as to shock the conscience of the court.

Judicial Restraint and the Foreign Investment Dimension

The judgment is notable for its broader observations on the **systemic costs of excessive judicial intervention** in arbitration. The Court observed that the respondent SPV was backed by Malaysian investors, and drew attention to the India-Malaysia Bilateral Investment Treaty, 1995 and the diplomatic exchanges between the Malaysian High Commission and the Ministry of External Affairs concerning the delayed enforcement of the award.

The Court referenced *SAIPEM S.P.A v. People's Republic of Bangladesh* (ICSID Case No. ARB/05/7) to underscore the risk that judicial interference which sets aside arbitral awards on impermissible grounds can itself constitute a **breach of bilateral investment treaty obligations**.

Reiterating its earlier observations in *State of U.P. v. Reliance Industries Ltd.* [2026 SCC OnLine SC 864], the Court held that transactions involving foreign investments carry an inherent expectation of **stability in the rule of law**, and that uniformity in the application of domestic dispute resolution laws is a key metric for ease of doing business.

Significance of the Decision

The decision is significant on several counts:

- **Issue estoppel and finality:** It reaffirms that the doctrine of issue estoppel and the principle of finality apply with full force to jurisdictional questions in arbitration — a settled legal position that losing parties continue to test.
- **The "narrowing pyramid" principle:** It reinforces that with each successive layer of challenge under Sections 34 and 37 of the 1996 Act, the threshold for judicial interference rises, not falls.
- **Party autonomy:** It treats party autonomy — including the freedom to contractually agree on interest rates — as a value to be upheld rather than second-guessed.

Most broadly, the judgment is a reminder that the problem in Indian arbitration is not the arbitral framework itself, but the manner in which it is engaged with by courts and losing parties alike.

Certainty, uniformity, and finality, the Court observed, are **"cherished values"** that must be progressively realised by the judiciary as a whole.

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