



ARBITRATION AND CONCILIATION

Landmark Judgments in Arbitration (2025)

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Table of contents

- [Supreme Court](#)
 - [Glencore International AG v. Shree Ganesh Metals 2025 SCC OnLine SC 1815](#)
 - [Facts in Brief](#)
 - [Analysis of the Supreme Court](#)
 - [Hindustan Construction Company v. Bihar Rajya Pul Nirman Nigam 2025 INSC 1365](#)
 - [Facts in Brief](#)
 - [Analysis of the Supreme Court](#)
 - [Disortho S.A.S v. Meril Life Sciences Private Limited 2025 SCC OnLine SC 570](#)
 - [Facts in brief](#)
 - [Analysis of the Supreme Court](#)
 - [Hindustan Petroleum Corporation Ltd v. BCL Secure Premises Pvt. Ltd. 2025 INSC 1401](#)
 - [Facts in brief](#)
 - [Analysis of the Supreme Court](#)
 - [Tamil Nadu Cements Corporation Limited v. Micro and Small Enterprises Facilitation Council and Another \(2025\) 4 SCC 1](#)
 - [Facts in Brief](#)
 - [Analysis of the Supreme Court](#)
- [Bombay High Court](#)
 - [Om Swayambhu Siddhivinayak v. Harichandra Dinkar Gaikwad Arbitration Appeal No. 21 of 2025](#)
 - [Facts in brief](#)
 - [Analysis of the Bombay High Court](#)
 - [Divya Enterprise v. Capril Global Capital Ltd. 2025 SCC OnLine Bom 3783](#)
 - [Facts in brief](#)
 - [Analysis of the High Court](#)
 - [Proteus Ventures LLP v. Archilab Designs Comm. Arb. Pet. \(L\) 28606 of 2024](#)
 - [Facts in brief](#)
 - [Analysis of the Bombay High Court](#)
- [Delhi High Court](#)
 - [Precitech Enclosures Systems Pvt Ltd. v. Rudrapur Precision Industries 2025 SCC OnLine Del 1609](#)
 - [Facts in Brief](#)
 - [Analysis of the Delhi High Court](#)
 - [Jaiprakash Associates Limited v. NHPC Limited \(2025\) 1 HCC \(Del\) 39](#)
 - [Facts in Brief](#)
 - [Analysis of the Delhi High Court](#)
 - [Engineering Projects India Ltd v. MSA Global LLC Oman CS \(OS\) 243/2025](#)
 - [Facts in Brief](#)
 - [Analysis of the Delhi High Court](#)
- [Frequently Asked Questions](#)

Supreme Court

Glencore International AG v. Shree Ganesh Metals 2025 SCC OnLine SC 1815

The Supreme Court decided on the issue of whether an unsigned arbitration agreement could bind parties based on their conduct and correspondence.

Facts in Brief

Glencore International AG, the Appellant, and Shree Ganesh Metals, the Respondent No.1, had entered into four contracts for the purchase of zinc metal. All four contracts contained arbitration clauses that stated that any dispute in connection with that contract would be referred to arbitration to be resolved under the Rules of the London Court of International Arbitration, and the seat of the arbitration would be London, United Kingdom.

The parties proposed to enter into a fifth contract with the terms and modalities discussed over email. After several back and forth, the Appellant forwarded a signed contract incorporating the terms and modalities as discussed over email to the Respondent for signature. The contract contained a provision requiring the Respondent to open a Standby Letter of Credit in favour of the Appellant after conclusion of their respective business. However, the Respondent did not sign the contract but continued to accept 2,000 metric tonnes of zinc metal in accordance with the contract and at its behest, HDFC Bank, Respondent No. 2, issued two separate Standby Letters of Credit.

Disputes arose when the Respondent failed to furnish further letters of credit, which is when the Appellant invoked the Standby Letters. The Respondent filed a civil suit in the Delhi High Court against the Appellant, declaring the invocation of the Standby Letters null and void. Thereafter, the Appellant filed an interim application in the civil suit requesting that the matter be referred to arbitration in terms of the contract. However, the learned Single Bench of the Delhi Court rejected the interim application and recorded that there was no concluded contract between the parties. The Appellant filed an appeal before the Division Bench, which was also dismissed and upheld the Single Bench's decision. Hence, the Appellant filed the present Civil Appeal in the Supreme Court.

Analysis of the Supreme Court

The Supreme Court held that from the exchange of letters, electronic communications and the conduct of the parties, it can be concluded that the parties had accepted the contract terms, including the arbitration clause. The Court thus stated, “... *that such actions on its part clearly demonstrated due and complete acceptance of the said contract. Therefore, it cannot blithely bank upon its own failure to sign the said contract to wriggle out of the terms and conditions mentioned therein.*”

Hindustan Construction Company v. Bihar Rajya Pul Nirman Nigam 2025 INSC 1365

The Supreme Court has addressed the issue of whether a High Court can review and effectively nullify its own order appointing an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (“Act”) after the arbitral process has substantially progressed.

Facts in Brief

Hindustan Construction Company, the Appellant, and Bihar Rajya Pul Nirman Nigam Ltd, the Respondent, entered into a contract for the construction of a bridge in 2014. The contract contained a dispute resolution clause, which was invoked after a dispute arose between the parties. An arbitrator was appointed under Section 11 of the Act by the Patna High Court, a final award was rendered in December 2021, and the Respondent honoured the same.

However, another wave of disputes arose between the parties. The Appellant invoked arbitration, but due to the non-consensus of an arbitrator, the Appellant approached the High Court under Section 11 of the Act. The Patna High Court appointed a sole arbitrator. The parties participated in the arbitration with more than seventy sittings held. It was only at the point of conclusion that the Respondent filed a review petition before the High Court, challenging the existence of the arbitration clause and seeking recall of the order appointing the arbitrator. The Patna High Court allowed the review, holding that the arbitration clause was not valid after the 2015 amendments and dismissed the appointment of the arbitrator under Section 11 of the Act.

Analysis of the Supreme Court

The Supreme Court reiterated the limited role of courts at the stage of hearing a Section 11 Application under the Arbitration and Conciliation Act, 1996. The Court stated that the inquiry is confined to a prima facie examination of the “existence” of an arbitration agreement. The Court stressed that a review of an order under Section 11 of the Act would violate the mandate of minimal judicial interference of Section 5 of the Act and would undermine the autonomy and conclusiveness of orders.

Disortho S.A.S v. Meril Life Sciences Private Limited 2025 SCC OnLine SC 570

The Supreme Court addressed the issue of how to determine the governing law for an arbitration agreement when the agreement itself doesn't specify anything, while hearing a petition filed under Section 11 of the Arbitration and Conciliation Act 1996 (“Act”) for the appointment of an arbitrator.

Facts in brief

The petitioner, a corporation incorporated in Bogota, Colombia, and the respondent, a company incorporated in Gujarat, India, entered into an International Exclusive Distributor Agreement for the distribution of medical products in Colombia. The agreement stated that Indian law would govern the contract and that any disputes would be exclusively handled by the courts in Gujarat. However, the arbitration clause stated that the arbitration would be in accordance with the rules of the Arbitration and Conciliation Centre of the Chamber of Commerce in Bogota, Colombia. As disputes arose between the parties, the petitioner approached the Supreme Court to appoint an arbitrator to adjudicate the disputes between the parties. However, the respondent argued that the arbitration proceedings were to be conducted in Colombia and that Colombian law would govern the arbitration process.

Analysis of the Supreme Court

The Supreme Court turned to the famous case of *Sulamérica Cia Nacional De Seguros S.A. v. Enesa Engenharia S.A* [2012] EWCA Civ 638, to decide the issue of how to determine the governing law when it has not been specified. The Court reiterated the three-step process to determine the governing law for their arbitration agreement. They are, if an express choice has been made, it would be followed strictly. If there was no clear choice, the court would then look for an implied choice. If neither an explicit nor an implicit choice has been made, then the court will use the “closest and most real connection” test. The Supreme Court held that when an arbitration clause does not expressly state the law governing it, the law governing the underlying contract i.e. *lex contractus*, will ordinarily govern the arbitration agreement i.e. *lex arbitri*. Therefore, in the present case, the Court held that Indian courts would have supervisory jurisdiction under the Act.

Hindustan Petroleum Corporation Ltd v. BCL Secure Premises Pvt. Ltd. 2025 INSC 1401

The Supreme Court heard an appeal against a judgment and order passed by the Bombay High Court, whereby an application was filed and allowed by the respondent under Section 11 of the Arbitration and Conciliation Act 1996 (“Act”), and an arbitrator was appointed to adjudicate upon the parties.

Facts in brief

In 2013, the appellant had floated a tender and issued a purchase order in favour of one AGC Networks Ltd for design, supply, installation, integration, testing, commissioning and post-commissioning warranty support services of Tank Truck Locking System. In 2016, the appellant had issued a show cause notice to AGC Network for unsatisfactory performance. Subsequently, the respondent informed the appellant that they were working as a subcontractor of AGC Networks and were entitled to receive 94% of the payment due. However, the appellant informed the respondent that since there was no contract between the parties, no payment was due to it. The Respondent filed an application before the Bombay High Court for the appointment of an arbitrator, which came to be allowed. An Appeal was filed before the Hon'ble Supreme Court.

Analysis of the Supreme Court

The court questioned whether the High Court, on the facts, was justified in referring the parties to arbitration by allowing the Section 11(4) petition filed by the respondent. The Court, whilst dealing with this issue, relied on case laws such as *Cox and Kings Ltd. v. Sap India (P) Ltd* (2024) 4 SCC 1, *ASF Buildtech (P) Ltd. v. Shapoorji Pallonji and Co. (P) Ltd* (2025) 9 SCC 76, and held that the respondent was not a veritable party. The Court established *prima facie* that the respondent was not a veritable party to the contract between the appellant and AGC Networks. The Court further observed that there was no privity of contract between the appellant and the respondent, as no contractual or documentary relationship existed between the respondent and AGC Networks.

Tamil Nadu Cements Corporation Limited v. Micro and Small Enterprises Facilitation Council and Another (2025) 4 SCC 1

The Supreme Court debated whether writ petition against an order/award under the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act”) are maintainable. The Court also analysed the interplay between the Arbitration and Conciliation Act, 1996 (“Act”) and the MSME Act.

Facts in Brief

The appellant invited tenders for the design, supply, erection and commissioning of Electrostatic Precipitators for its Ariyalur Cement Works. The contract was awarded to M/s Unicon Engineers in April 2010. However, Unicon failed to complete the project within the time. Subsequently, due to non-payment, Unicon filed a petition under Section 18 of the MSMED Act before the Micro and Small Enterprise Facilitation Council ("**MSEFC**"). After several hearings before the conciliator, the MSEFC directed the appellant to pay Rs. 39.66 lakhs as balance retention money and Rs. 1.57 crores towards additional expenditures with interest.

Aggrieved by this order, the appellant approached the Madras High Court to set aside the order under Section 34 of the Act. However, the petition was dismissed for failure to make the mandatory 75% pre-deposit under the MSMED Act. Having exhausted all its remedies by filing appeals and writ petitions, the appellant approached the Supreme Court to challenge the maintainability of writ petitions against the MSEFC order.

Analysis of the Supreme Court

The Supreme Court clarified that while the MSMED Act mandates conciliation and, failing that, arbitration "as if" an arbitration agreement exists, the MSEFC cannot issue binding directions without duly conducting arbitration proceedings. It further held that writ jurisdiction under Article 226 remains available in cases where the MSEFC acts without jurisdiction, in breach of principles of natural justice, or where its order is a nullity.

Bombay High Court

Om Swayambhu Siddhivinayak v. Harichandra Dinkar Gaikwad Arbitration Appeal No. 21 of 2025

The Bombay High Court heard an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("**Act**"), challenging an order rejecting an application filed by the appellant under Section 8 of the Act.

Facts in brief

Disputes and differences between the parties relate to transactions between them arising out of a Development Agreement, which contained an arbitration clause and a further Supplemental Agreement, which did not contain an arbitration clause. The respondents instituted a civil suit before the 4th Joint Civil Judge, Senior Division, Kalyan, alleging that the Supplemental Agreement was vitiated by fraud, including allegations that their signatures were obtained on blank papers and sought its cancellation along with other reliefs. In turn, the appellant filed an application under Section 8 of the Act seeking reference for the disputes to arbitration. The Learned District Judge rejected the application solely on the ground that the Supplemental Agreement did not contain an arbitration clause, leading the appellant to challenge the order under Section 37 of the Act before the Bombay High Court.

Analysis of the Bombay High Court

The Bombay High Court held that the Learned District Judge failed to undertake the limited and mandatory enquiry contemplated under Section 8 of the Act, which requires only a prima facie examination of the existence of a valid arbitration agreement. The Court observed that the Development Agreement admittedly contained an arbitration clause, and therefore all disputes arising out of or in connection with it were arbitrable. It further held that the Supplemental Agreement was ancillary and incidental to the Development Agreement and could not be viewed in isolation so as to exclude arbitration. Addressing the allegations of fraud, the Court reiterated the settled position that bilateral allegations of fraud relating to inducement or performance of a contract are arbitrable, unless they involve rights in rem or fraud against society at large. In view thereof, the Court set aside the impugned order of the District Judge and referred the disputes between the parties to arbitration.

Divya Enterprise v. Capril Global Capital Ltd. 2025 SCC OnLine Bom 3783

The Bombay High Court, under an application under Section 8 of the Arbitration and Conciliation Act 1996, decided whether the subject matter of the present suit was arbitrable and whether the matter could be referred to arbitration in the absence of an arbitration agreement.

Facts in brief

The plaintiffs and one of the defendants entered into a development agreement for the redevelopment of a property. The Society issued a No Objection Certificate to mortgage the project property to the defendants. Subsequently, a loan agreement was executed between the plaintiffs in the defendants' favour. Upon dishonour of repayment cheques and classification of the loan accounts as Non-Performing Assets, the defendants filed a commercial suit seeking recovery of the outstanding amount from the

plaintiffs as well as the enforcement of mortgage rights over unsold flats of the project. In the commercial suit, the defendants contended that the resolution of disputes should be through arbitration. Accordingly, the defendants filed the present application under Section 8 of the Act for reference of the dispute to arbitration as the suit was not maintainable in light of the agreement between the parties for the resolution of the dispute through arbitration.

Analysis of the High Court

The Court referred to several Supreme Court case laws while deciding the present issue. It is laid down by the Supreme Court that while conducting an enquiry under Section 8 of the Act, the Court could decide the issue of arbitrability. In the present case, as far as the issue of arbitrability of a suit for enforcement of a mortgage was concerned, it would be decided by the Courts and not by the Arbitral Tribunal. The Court observed that when a cause of action in the subject matter of the dispute affected third-party rights and required centralised adjudication, such a dispute would be non-arbitrable. Thus, the Court rejected the defendants' application and held that the disputes involved in the suit could not be referred to arbitration as disputes relating to redemption of mortgage were a right in rem.

Proteus Ventures LLP v. Archilab Designs Comm. Arb. Pet. (L) 28606 of 2024

The Bombay High Court, whilst hearing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Act**"), upheld the award with a slight modification.

Facts in brief

A dispute arose between the petitioner and the respondent out of multiple purchase orders for architectural works, resulting in an unpaid balance for the services rendered. The Sole Arbitrator, appointed by the Council of Architecture, passed an award directing the petitioner to pay Rs. 88 lakhs towards unpaid dues and Rs. 24 lakhs towards mental agony and hardship. The award also held that the designated partners of the LLP are jointly and severally liable along with the LLP. Aggrieved, the petitioner approached the Bombay High Court seeking to set aside the award.

Analysis of the Bombay High Court

The Bombay High Court upheld the arbitral award with a limited modification, holding that the liability of the LLP could not automatically extend to its designated partners in their personal capacity. Relying on the famous case of *Gayatri Balasamy vs. ISG Novasoft Technologies Limited (2025 INSC 605)*, the Court held that partial setting aside of an arbitral award is permissible where the severed portion is not interlinked with the rest of the award, and accordingly removed the personal liability imposed on the designated partners while sustaining the award against the LLP. The Court also reiterated that interference under Section 34 of the Act is impermissible in the absence of perversity or patent illegality.

Delhi High Court

Precitech Enclosures Systems Pvt Ltd. v. Rudrapur Precision Industries 2025 SCC OnLine Del 1609

The Delhi High Court, under Section 9 of the Arbitration and Conciliation Act, 1996 ("**Act**"), decided whether this Court has or does not have the territorial jurisdiction to hear and decide the present petition by the petitioner against the respondent.

Facts in Brief

The petitioner and respondent entered into a rent agreement for manufacturing and storage purposes. The rent agreement contained an arbitration clause conferring exclusive jurisdiction on the courts at Rudrapur, Uttarakhand. However, subsequently, the parties exchanged emails consenting to conduct arbitration in Delhi. Owing to the non-payment of rent, the respondent forcibly took possession of the disputed premises. As a result of this, the petitioner was unable to obtain access to its machinery and goods lying there. The petitioner, therefore, approached the Delhi High Court under Section 9 of the Act seeking interim relief.

At the outset, the respondent objected to the maintainability of the petition before the Court, stating that the Court does not possess the territorial jurisdiction to entertain or deal with it.

Analysis of the Delhi High Court

The Court held that it lacked territorial jurisdiction to entertain the petition under Section 9 of the Act. The Court held that the rent agreement expressly conferred exclusive jurisdiction on the courts of Rudrapur, Uttarakhand. Its subsequent email exchanges consenting to conducting the arbitration in Delhi merely fixed the venue of the arbitration, and that did not override or amend the

exclusive jurisdiction clause. The Court reiterated that the moment 'seat' is designated, it would be akin to an exclusive jurisdiction clause whereby only the jurisdictional courts of that seat will have the jurisdiction to regulate the arbitral proceedings.

Jaiprakash Associates Limited v. NHPC Limited (2025) 1 HCC (Del) 39

The Delhi High Court heard a petition filed under Section 11 of the Arbitration and Conciliation Act 1996 ("**Act**") by the petitioner seeking recommencement of the arbitration and appointment of a nominee arbitrator on behalf of the respondent to adjudicate upon the disputes which have arisen between the parties.

Facts in Brief

The parties entered into a contract for the execution of the Dulhasti Hydro Electric Project. The contract stipulated that the work be completed within 33 months, but an extension for the same was granted. After the completion of work, the petitioner raised bills which included certain additional costs. The respondent rejected the total additional costs. Thus, the arbitration clause was invoked, and an Arbitration Tribunal was constituted. The majority award held that, even though there was no evidence provided, the petitioner incurred a cost due to the delay on the principle of good conscience and reasonable and proper estimate. Under an application under Section 34 of the Act, the Single Judge Bench of the Delhi High Court set aside the arbitral award for the reason that the petitioner failed to produce any material to substantiate its claim.

Pursuant to the above facts, the petitioner approached this Hon'ble Court under Section 11 of the Act to refer disputes to the arbitral tribunal. The issue the Hon'ble Court decided on was whether, after such findings having arrived at by the Tribunal that there was no evidence at all based on which the claim could have been granted, should this Court once again send the parties back for fresh adjudication.

Analysis of the Delhi High Court

The Court reiterated that if there is an arbitration agreement, and disputes arise between the parties, the referral court, whilst exercising jurisdiction under Section 11, would refer the matter to arbitration. The Court stated that since the Tribunal had carefully scrutinised the contentions and concluded that there was no evidence for the grant of such a claim, referring the same issue back to the same Tribunal or a new Tribunal would be re-agitating it. The Court also held that if the matter were referred to arbitration, it would be a waste of resources and an improper use of the arbitration process. Applying the "eye of the needle" test, the Court stated that the prima facie scrutiny of the facts led to a clear conclusion that the claim was undoubtedly non-arbitral.

Engineering Projects India Ltd v. MSA Global LLC Oman CS (OS) 243/2025

The Delhi High Court granted an anti-arbitration injunction restraining the Appellant from proceeding with a Singapore-seated arbitration under the Rules of the International Chamber of Commerce ("**ICC**"). The injunction was granted due to a party nominated arbitrator's failure to disclose a potential conflict of interest.

Facts in Brief

The Respondent was awarded a contract for design, supply, installation, integration and commissioning of the border security system at the Oman-Yemen border. The Respondent and the Appellant entered into a sub-contact agreement for certain works to be carried out at specific sections of the Oman-Yemen border. The agreement contained an arbitration clause referring to any and all disputes arising out of the sub-contract agreement to arbitration under the Rules of ICC, while conferring exclusive jurisdiction to the courts of New Delhi.

After disputes arose between the parties, the Appellant invoked arbitration and appointed Mr. Andre Yeap SC as their nominee arbitrator. Mr. Andre Yeap submitted his disclosure of impartiality and independence, stating that he had "nothing to disclose". Accordingly, a three-bench tribunal was constituted, and the parties agreed on Singapore as the seat of arbitration. During the course of the proceedings, an undisclosed fact of Mr. Yeap's appointment as an arbitrator in a previous arbitration by the Appellant came to light. Owing to this non-disclosure, the Respondent filed an application under the Rules of the ICC challenging his impartiality and neutrality. The Respondent also filed an application before the High Court of Singapore challenging Mr. Yeap's appointment in the arbitration.

The Respondent, in parallel, filed a civil suit before the Delhi High Court, seeking a declaration and injunction against the continuation of the arbitration on the grounds that the proceedings are vexatious and oppressive. The Respondent also filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, seeking a temporary injunction on the arbitration proceedings during the pendency of the Suit. The issue before the Delhi High Court was whether it has the power in a civil suit to intervene in respect of a foreign-seated arbitration

Analysis of the Delhi High Court

The Delhi High Court reiterated the non-interventionist approach pertaining to arbitration to be taken by Courts but held that the same would not preclude courts from acting as safeguards when the arbitration proceedings are *“blatantly vexatious, unconscionable, oppressive, and violative of the public policy of India”*. The High Court also clarified that courts may intervene when the denial of relief would lead to grave injustice or oppression.

Frequently Asked Questions

Can an unsigned arbitration agreement bind the parties?

Yes. In *Glencore International AG v. Shree Ganesh Metals*, the Supreme Court held that parties can be bound by an arbitration clause through their conduct and correspondence, even in the absence of a formally signed contract.

Can a court review a Section 11 arbitrator appointment after the arbitration has progressed?

No. The 2025 rulings reaffirm that courts cannot reopen or review Section 11 appointments after the arbitration has made substantial progress, consistent with the principle of minimal judicial interference.

Which law governs an arbitration agreement when the parties have not specified one?

Where the governing law of the arbitration agreement is unstated, the law governing the underlying contract ordinarily governs the arbitration agreement as well.

Related Practice Areas

Alternative Dispute Resolution (ADR)

Arbitration