

Gayatri Balasamy v ISG Novasoft Technologies Ltd. : Redrawing the Lines for Award Modification in India

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***Gayatri Balasamy v ISG
Novasoft Technologies Ltd.:***
*Redrawing the Lines for
Award Modification in India*



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1. Introduction

The decision of the 5-Judge bench of the Indian Supreme Court in the case of Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2025 SCC OnLine SC 986 on April 30, 2025, marks a significant development in the interpretation of Indian arbitration law. The judgement concluded a long-standing debate as to whether the Indian Courts are vested with the power to modify an arbitral award, under Section 34 and 37 of the Arbitration and Conciliation Act, 1996 ("**A&C Act**").

The Bench, in a 4:1 majority, held that the Court possesses a limited power to modify an arbitral award under the following circumstances: (i) severing the "invalid" portion from "valid" portion of a severable award; (ii) correcting clerical, computational, typographical errors, as well as other *manifest errors*, which appear erroneous on face of the record; (iii) modifying post-award interest; (iv) under Article 142 of the Constitution, with great care and caution, to 'do complete justice' in consonance with the objectives of A&C Act. Although the *Gayatri Balasamy* judgement seeks to uphold fairness while maintaining the autonomy of arbitral tribunals, it has resulted in an array of questions, especially in light of the dissent by Justice K.V. Viswanathan.

The background of the case is rooted in the conflicting decisions of the Apex Court over the years, which necessitated a decision by a larger Bench. In cases such as McDermott International Inc. v. Burn Standard Co. Ltd.; Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited, the Apex Court invoked its plenary powers under Article 142 to alter post-award interest rates, owing to the lapse of time in legal proceedings. Furthermore, in Oil and Natural Gas Corporation Limited v. Western GECO International Limited, the Court observed that the award may be modified or set aside where offending part of the award is severable in order to prevent gross injustice. In contrast, the Apex Court in Project Director National Highways No. 45E and 220 National Highways Authority of India v. M. Hakeem, adopted a strict construction of Section 34, A&C Act, and held that no power of modification could be inferred.

In this article, we explain and analyse the *Gayatri Balasamy* judgement, and what it means for parties opting for arbitration and how it will impact arbitration proceedings.

2. Decision of the Supreme Court

Issue	Majority Opinion	Dissenting Opinion (Justice K. V. Viswanathan)
Whether the Court has power to modify an arbitration award under Section 34 and 37, A&C Act?	Yes, a limited power of modification under Section 34, but only in specific scenarios—not to be conflated with a substantive appeal on the merits of the case. This modification is seen as a curative tool to prevent unnecessary costs and delays caused by remitting the matter back to arbitration.	No. Adopting strict statutory interpretation, Section 34, A&C Act, expressly allows only setting aside awards, not modification. He emphasized the omission of modification was a deliberate legislative choice, contrasting it with the 1940 A&C Act and recommendations of T.K. Viswanathan Committee, which included such powers. He rejected applying the maxim " <i>omne majus continet in se minus</i> " (the greater power includes the lesser power) as for a greater power to include lesser power both powers should have common main ingredients.

		<p>The power of judicial review under Section 34 is fundamentally different from appellate jurisdiction, and cannot said to include the power to modify which would include adjudicating the merits of the dispute. He also opposed relying on inherent powers of Court under Section 151, CPC, to expand jurisdiction of Section 34, citing Sections 33 (enabling correction by the arbitral tribunal) and 34(4) (enabling remission) as sufficient remedies. The possibility of hardship due to re-arbitration does not justify deviating from statutory scheme of Section 34, A&C Act.</p>
<p>Severability of Award</p>	<p>Yes, the Courts may sever invalid parts of an award only if they are distinct from valid parts, under the proviso to Section 32(a)(iv), A&C Act. The remainder of the award can be preserved to avoid injustice.</p>	<p>Agreed to Majority Opinion However, the power of severance was held to be distinct from the power to modify.</p>
<p>Power to rectify computational, clerical, typographical or inadvertent errors</p>	<p>Yes, the Courts have the inherent power under Section 34, A&C Act, to rectify inadvertent errors, including computational, clerical, or typographical errors, as well as other manifest errors, provided such modification does not necessitate a merits-based evaluation. This implied power is to ensure efficiency of arbitration proceedings and avoid hardships due to unnecessary remand. This implied power should not be conflated with appellate jurisdiction or power to review a judgment of a lower Court. If an error is not apparent on the face of record, correction must be sought through Section 33 before the tribunal or by remand under Section 34(4). Section 34(4) allows the Court, on a party's request, to remit the award to the tribunal to</p>	<p>Yes, the Court may invoke the doctrine of <i>actus curiae neminem gravabit</i> (an act of the Court shall prejudice no man) under Section 34, A&C Act, to rectify computational, clerical, or typographical errors, only if the correction does not involve a review on merits, and the tribunal has failed or refused to correct these errors under Section 33, A&C Act.</p>

	cure identified defects, but the tribunal cannot rewrite the award on merits. Remand is appropriate only when the defect is curable and circumstances (trust in tribunal, the matter is not time-sensitive and will not lead to undue cost) permit. Section 34(4) is enabling and it is not mandatory for the tribunal to take corrective action, and the tribunal's powers thereunder are broader than the Court's limited modification powers under Section 34.	
Post-award interest	Yes, Courts may alter post-award interest under Section 34, A&C Act, if found to be manifestly excessive, as arbitrators may not anticipate lengthy delays or changing market conditions, provided the Courts should not review on merits, and intervene only when there are compelling reasons.	No. Courts cannot directly change post-award interest; instead, matter must be remitted to the arbitral tribunal under Section 34(4) for correction.
Article 142 Powers under the Constitution of India	Yes, Supreme Court can invoke Article 142 cautiously to prevent injustice, particularly where modification avoids unnecessary delays or cost, and aligns with the limitations of the A&C Act.	No. Using Article 142 to modify awards undermines statutory limits of A&C Act, and disrupts finality and efficacy of arbitration proceedings. The Court modified award would be treated as a Court order rather than an arbitral award affecting international recognition and enforcement under the New York Convention.

3. Legal Analysis and Implications

The *Gayatri Balasamy* judgment adopts a pragmatic, justice-oriented approach that accommodates limited judicial modification of the arbitration award to prevent endless cycles of litigation. Arbitration originally intended to resolve commercial disputes with efficiency and finality, however, the existence of multiple layers of challenge and appeals (Sections 34 and 37, A&C Act, and Article 136, Constitution of India) have created substantial delays. The majority, recognizing this, granted Courts the limited power to modify awards in four specific scenarios: (i) typographical or clerical errors, where corrections prevent unnecessary annulment; (ii) severe 'invalid' portion of the award; (iii) post-award interest; and (iv) under Article 142, Constitution of India. The majority's objective was to preserve arbitration's efficiency by preventing parties to re-arbitrate (and thus

incur additional costs and time) for rectifying errors that can be decided by Court without evaluating the merits. However, the judgement underscores that this power of modification is strictly limited, and must be exercised with great judicial restraint. It is permissible only where the error is self-evident (i.e., a manifest error or error apparent on the face of the record), does not involve any reappreciation of evidence or law, and where remand would be either futile, cost-ineffective, or prejudicial to the parties. The Court explicitly cautioned against expanding this power into a form of appellate review, reaffirming that the autonomy of the arbitral process remains central to the A&C Act. Nevertheless, the majority's approach of practicality also raises concerns regarding misuse of the limited power of modification under Section 34, A&C Act.

1. *Ambiguities with regard to powers under Article 142, Constitution of India, and meaning of terms like "manifest error"*

The Court has also introduced certain ambiguities with regard to the extent of modification. The judgment remains unclear under what circumstances Article 142, Constitution of India, may be invoked. Given that only the Supreme Court may exercise Article 142, there is a risk that parties may be incentivized to pursue protracted litigation to the Apex Court in hopes of securing better relief. The invocation of such constitutional powers to address perceived legislative gaps risks undermining the self-contained nature of the Arbitration Act.

The judgment also introduces terms like "*manifest error*" and "*errors apparent on the face of the record*," while familiar in legal parlance, lack precise statutory definition and may invite parties to recast substantive disagreements as 'manifest errors', thus expanding the scope of judicial review beyond what Section 34, A&C Act, was intended to permit. If interpreted expansively, these concepts could erode the efficiency and finality of arbitration award. Such ambiguities open a Pandora's Box, by encouraging prolonged litigation, forum shopping, and uncertainty in an already overburdened system. The majority decision also dilutes the intent behind Section 33, A&C Act, which permits corrections and interpretations of awards only by the tribunal within a limited timeframe. Granting the Court the limited power to modify post-award interest, under Section 34, A&C Act, goes beyond statute, and may also increase the volume of litigation.

2. *Complications when enforcing the modified award in different jurisdictions*

Complications may also arise when an award modified by an Indian Court is simultaneously subject to enforcement proceedings in another jurisdiction under the New York Convention, potentially resulting in uncertainty and conflicting outcomes. Firstly, the foreign Court enforcing the arbitration award may not recognise the Indian Court modified award as it lacks backing of a clear Indian arbitration law. Secondly, the undergoing or concluded enforcement proceedings in a foreign jurisdiction may be disrupted if an arbitration award is modified by Indian Courts (being the seat) after 3-5 years. Such scenarios can affect the reputation of India as a seat for international commercial arbitration.

3. *Need for legislative reforms*

Without a clear statutory provision authorizing Courts to make limited modifications to arbitral awards, there is a risk of increased judicial discretion and potential misuse. In certain situations, it may be necessary for the Courts to modify the arbitration award, but this power must be granted by the legislature. Thus, explicitly codifying the scope of judicial modification and establishing procedural safeguards under the Indian arbitration law would provide much-needed certainty and predictability for all stakeholders in the arbitration process. India could rely upon arbitration laws of UK, US and Singapore, that have expressly granted the Courts the power to modify the arbitration award; thus, aligning with global standards.

4. CONCLUSION

The *Gayatri Balasamy* judgment reflects an irreconcilable tension between commercial pragmatism and statutory fidelity. While the majority's approach alleviates tangible burdens of India's delayed arbitration challenges, it does so at the cost of introducing judicial unpredictability and potential enforcement complications internationally.

The solution lies in legislative amendment rather than judicial innovation. India's arbitration law needs to grant the judiciary express, bounded modification authority, with clear parameters: (i) Exhaustive grounds for modification; (ii) Prohibition on substantive review; (iii) Time-bound procedures; and (iv) Explicit exclusion of Article 142 in commercial disputes.

Until such legislative intervention occurs, this judgment leaves parties navigating uncertainty between expediency and legitimacy. The path forward demands codification that balances finality with flexibility, ensuring India's arbitration regime meets both domestic justice imperatives and global enforcement standards.

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