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# DISPUTE RESOLUTIONS

The Bi-Monthly Newsletter of the **NANI PALKHIVALA ARBITRATION CENTRE**

Nani  
Palkhivala  
Arbitration  
Centre

Some Reprieve for NBFCs

Theory and Practice of  
Dispute Resolution  
A 5-Day Training Program for  
Civil Servants by NPAC, Chennai

NPAC Hosts Intensive 3-Day Arbitration  
Training Program

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# MESSAGE

to the

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## Some Reprieve for NBFCs

The Non Banking Financial Companies (“NBFCs”) are an important segment of the country’s financial sector. They are by and large involved in the business of leasing, hire purchase, lending against mortgage/ hypothecation of assets, loans securitization, investment and asset management services.

One of their most important contributions to the country’s economy is providing last minute credit delivery to the Micro, Small and Medium Enterprises (“MSME’s”) and the self employed for their business purposes.

In this sector, traditionally, any disputes with borrowers has been referred to arbitration usually named by the NBFC in their contract. Invariably it is the Managing Director of the NBFC itself or any of its other executive officers. Such an approach followed by these NBFCs (and most other Government Corporation/ PSUs too) came to be frowned on by Courts and have been held to be as unilateral appointment of contracts which the Courts held to be prohibited by the provisions of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”).

In the case of *Perkins Eastman Architects BPC vs. HSCC India Ltd.*, reported in 2019 V17 SCR (275), the Hon’ble Supreme Court examined an arbitration clause where the Chief Managing Director of HSCC was empowered to appoint a sole arbitrator. It was held that a person interested in the dispute cannot be involved in appointing an arbitrator as it compromises the impartiality of the process.

Essentially to the same effect were most other judgments of the Supreme Court and as these judgments struck at the roots of the long established practices of several corporates, the issues were agitated before a Constitution Bench of the Supreme Court.

A five judge bench of the Supreme Court delivered its judgment in *Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV)* in Civil Appeal Nos. 9486-9487 of 2019 on 08.11.2024. The majority judgment was authored by the then Chief Justice of India, Dr. D.Y. Chandrachud, for himself, Justice J.B. Pardiwala and Justice Manoj Mishra. Justice Hrishikesh Roy and Justice PS Narsimha authored their partially dissenting and concurring opinions.



## The Constitution Bench (*Majority Judgment*) held:

- **Equal treatment principle:** The principle of ensuring equal treatment for all parties must be upheld at every stage of the arbitration process, including appointment of arbitrators.
- **PSUs and arbitrator panels:** The Arbitration Act does not prevent Public Sector Undertakings (“PSUs”) from forming a panel of potential arbitrators. However, it is not permissible for an arbitration clause to compel the opposing party to choose an arbitrator solely from the panel of arbitrators appointed by the PSU.
- **Unilateral appointment of arbitrator:** A clause that permits one party to unilaterally select a sole arbitrator raises legitimate concerns about the independence and impartiality of the arbitrator. Additionally, such a provision is inherently exclusive, as it limits the other party’s ability to participate equally in the arbitrator selection process.
- **Appointment of three-member panel:** Requiring the other party to choose an arbitrator from a pre-curated list of potential arbitrators is a violation of the equal treatment principle. In this scenario, there is no adequate counterbalance, as the parties are not equally involved in the process of selecting arbitrators. This creates an imbalance, with the process being skewed in favor of one party, in this case, the Railways Department, thereby breaching the principle of fairness. Hence, it suggested that the appointment of a three-member panel of arbitrators will eliminate any such undue advantage to one party.
- **Violation of Article 14:** Unilateral appointment clauses, especially in public-private contracts, violate the principles of fairness and equality under Article 14 of the Indian Constitution, which guarantees the right to equality before the law.
- **Waiver of bias allegation to be mutual:** The principle of express waiver, as outlined in the proviso to Section 12(5) of the Arbitration Act, applies in cases where a party seeks to waive the claim of bias against an arbitrator chosen unilaterally by one of the parties. After a dispute has arisen, the parties may mutually decide whether it is necessary to waive the rule that no one should be a judge in their own cause (*nemo iudex in causa sua*).
- **Prospective Application:** The legal principles established in this judgment will apply prospectively, meaning they will govern arbitrator appointments made after the date of the judgment. This rule specifically applies to appointments made for three-member arbitration panels as the position of law with respect to sole arbitrator has been adequately clarified by the Hon’ble Supreme Court in cases such as *Perkins Eastman Architects DPC vs. HSCC (India) Ltd.* and *TRF Ltd. vs. Energo Engineering Projects Ltd.*

Most corporates have realigned their commercial interests to align with the ratio of the above judgment and have moved to Institutional Arbitration to prevent awards given in their favour from being set aside by Courts. The problem still looms large in respect of earlier disputes, adjudicated in arbitration proceedings by unilaterally appointed arbitrators. In a substantial number of these proceedings the respondents to the claim had not even participated in the proceedings. The awards were challenged at the stage of either execution proceedings or by filing an application to set aside the award. In a good number of arbitrations the objections to appointment of arbitrators was not even taken during the course of the arbitration proceedings.

Given this gloom scenario, the decision of the Hon’ble Madras High Court in *VR Dakshin Pvt. Ltd., V. SCM Silks Pvt. Ltd.*, 2025 (1) CTC Page 1, gives NBFCs a breather. In this judgment the court held that when the respondent actively participated in proceedings till passing of award, such participation amounts to ‘deemed waiver’ of respondent’s right to object. The Court held that the respondent’s conduct in raising objection regarding appointment of arbitrators after the award encourages parties to protract litigation and use the court as a tool to achieve dishonest objectives.

An appeal against this judgment has been dismissed *in limine* by the Supreme Court of India.

This judgment at least gives life to those awards, where during the course of the arbitration proceedings no objections had been taken to the unilateral appointment of arbitrator.

**N.L. RAJAH**  
Senior Advocate  
Madras High Court



# LEGAL UPDATES



## Supreme Court Upholds Sole Arbitrator's Jurisdiction in Contractual Dispute

In the case of *M/s Vidyawati Construction Company vs. Union of India (2025 INSC 101)*, wherein the dispute arose from a construction contract awarded by the Respondent to M/S Vidyawati Construction Company for building an office for the Railway Electrification Project in Allahabad. The contract contained an arbitration clause for a three-member tribunal. Initially, two arbitrators were appointed, but after their failure to nominate an umpire, the Chief Justice appointed a retired High Court Chief Justice as the sole arbitrator. The arbitration proceedings commenced, and the Respondent had filed a statement of defense but later objected to the sole arbitrator's jurisdiction, arguing that the arbitration clause required three arbitrators.

The sole arbitrator rejected the jurisdictional objection and proceeded to pass an award. The Union of India challenged the award under Section 34 of the Arbitration

and Conciliation Act, 1996, and the District Judge set it aside, solely on the ground of improper tribunal composition. The High Court upheld this decision in an appeal under Section 37. However, the Supreme Court noted that the Respondent had explicitly agreed to the appointment of a sole arbitrator in December 2003 and had submitted a statement of defense, thereby waiving any jurisdictional objections as per Section 16(2) of the Arbitration Act.

The Supreme Court ruled that the Respondent was barred from raising a belated jurisdictional challenge after submitting to arbitration. It set aside the judgments of the High Court and District Judge and reinstated the Section 34 petition for fresh consideration of other grounds not previously addressed. The matter was remanded to the District Judge, Allahabad, for further proceedings.



## Supreme Court Restores Arbitral Award, Limits Judicial Interference in Contractual Disputes

In the case of *Somdatt Builders-NCC-NEC (JV) vs. NHAI & Ors. (2025 INSC 113)*, Somdatt Builders-NCC-NEC (JV) entered into a contract with the National Highways Authority of India (“NHAI”) for the construction of a highway under a World Bank-funded project. A dispute arose regarding the increased quantity of geogrid required for reinforced earth walls, which exceeded the original Bill of Quantities (“BOQ”). The Dispute Review Board and later the Arbitral Tribunal ruled that the increase in geogrid quantity was not due to any changes instructed by NHAI but rather because of NHAI’s incorrect quantity estimation, and no contractual variation was involved, meaning that the contractor was entitled to be paid as per the original BOQ rates. NHAI challenged this decision under Section 34 of the Arbitration and Conciliation Act, 1996, but the Single Judge of the Delhi High Court upheld the award.



NHAI then appealed under Section 37, and the Division Bench of the High Court reversed the decision, holding that any increase beyond the BOQ tolerance limit allowed rate renegotiation. The Division Bench ruled that the arbitration award was contrary to public policy and constituted patent illegality, as the tribunal ignored the right of the Engineer to revise rates for substantial variations. This prompted Somdatt Builders to challenge the decision before the Supreme Court.

The Supreme Court found that the Dispute Review Board, Arbitral Tribunal, and Single Judge had correctly interpreted the contract, and the Division Bench erred in overturning their findings under the limited scope of Section 37. The Court reiterated that courts should not interfere with arbitration awards unless they are perverse or violate fundamental policy. The Supreme Court set aside the High Court’s judgment, restored the arbitral award, and reaffirmed that an increase in quantity alone does not warrant rate renegotiation unless an instructed variation occurs.

## Supreme Court Upholds Arbitral Award, Affirms Joint Liability in Stock Trading Dispute

In the case of *AC Chokshi Share Broker Pvt. Ltd. vs. Jatin Pratap Desai & Anr. (2025 INSC 174)*, the appellant, a registered stock broker, initiated arbitration against the respondents, a husband and wife, for the recovery of a debit balance in the wife’s trading account. The appellant claimed that the husband had orally agreed to be jointly and severally liable for the transactions conducted in his wife’s account. The arbitral tribunal upheld this claim, holding both respondents liable, and the Section 34 petition filed by the respondents to set aside the award was dismissed by the Single Judge of the High Court. However, in a Section 37 appeal, the Division Bench set aside the award against the husband, ruling that the arbitration agreement did not cover him and that the finding of joint and several liability was perverse and patently illegal.



The Supreme Court overturned the High Court’s decision, holding that the husband was a party to the arbitration agreement

by virtue of his oral contract and conduct. The Court emphasized that arbitration under Bye-law 248(a) of the Bombay Stock Exchange (BSE) Bye-laws covered matters incidental to transactions executed on the stock exchange, including joint liabilities arising from oral agreements. It further held that objections to the arbitral tribunal’s jurisdiction must be raised under Section 16(2) of the Arbitration and Conciliation Act, 1996, at the time of submitting the defense, and since the husband had participated in the proceedings without objecting, he had waived his right to challenge jurisdiction at a later stage.

Reinstating the arbitral award, the Supreme Court ruled that the High Court had exceeded its scope under Section 37 by re-evaluating evidence and interfering with a reasonable conclusion reached by the tribunal. The Court reaffirmed that judicial intervention in arbitral awards should be minimal and that findings based on evidence, even if disputed, cannot be termed perverse or illegal unless they violate fundamental policy. Consequently, the husband was held jointly and severally liable along with his wife for the outstanding amount.

## Supreme Court Nullifies Fraudulent Arbitration Awards in U.P. Government Employment Dispute



In the case of *State of Uttar Pradesh & Anr. vs. R.K. Pandey & Anr.* (2025 INSC 48), the Supreme

Court dealt with a fraudulent arbitration claim initiated by R.K. Pandey, a former lab technician at a government hospital in Kanpur. Following his retirement, Pandey contested his superannuation age, first through a writ petition and later by invoking an alleged arbitration agreement from 1957. Without any court intervention, he unilaterally appointed arbitrators who passed two ex parte awards granting him substantial monetary claims. The State of Uttar Pradesh challenged these awards under Section 34 of the Arbitration and Conciliation Act, 1996, arguing that the arbitration agreement was fabricated and lacked legitimacy. However, the High Court dismissed the challenge on the grounds of limitation.

The Supreme Court found multiple irregularities in the arbitration process, including the absence of a genuine arbitration agreement, the unilateral appointment of arbitrators, and an attempt to enforce null and void

awards. The Court observed that neither the Municipal Corporation nor the State Government had acknowledged the alleged arbitration agreement, and its sudden emergence decades later raised serious concerns about its authenticity. The Court emphasized that arbitration must adhere to principles of party autonomy and procedural fairness, and any deviation leading to fraudulent awards is legally unsustainable. The Court also invoked the principle that fraud vitiates all proceedings, affirming that an executing court can examine jurisdictional and fraudulent defects even at the enforcement stage.

Accordingly, the Supreme Court set aside the two ex parte arbitration awards, declaring them null and void. It ruled that the arbitration proceedings initiated by Pandey were a sham and an abuse of process. The execution proceedings based on these awards were dismissed, and costs were awarded to the State of Uttar Pradesh. The judgment reinforces the judiciary's role in preventing the misuse of arbitration as a tool for fraudulent claims and underscores the importance of procedural integrity in arbitral appointments and proceedings.

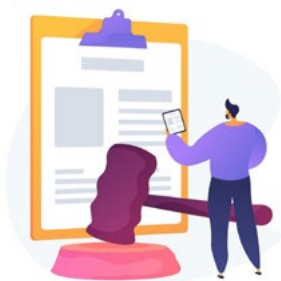
## Supreme Court Refers Key Questions on Writ Jurisdiction Against MSME Arbitration to Larger Bench

In the case of *M/s Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council & Anr.* (2025 INSC 91), the Supreme Court addressed whether a writ petition under Article 226 of the Constitution was maintainable against an order passed by the Micro and Small Enterprises Facilitation Council ("MSEFC") under Section 18 of the Micro, Small and Medium Enterprises Development ("MSMED") Act, 2006. Tamil Nadu Cements Corporation Limited ("TANCEM") had engaged M/s Unicon Engineers for a turnkey contract but later disputed payments due to alleged deficiencies in the work. M/s Unicon Engineers approached the MSEFC, which directed TANCEM to pay the claimed amount with interest. TANCEM

challenged this before the High Court, which dismissed its petition, holding that statutory remedies under Section 34 of the Arbitration and Conciliation Act, 1996, must be exhausted first.

TANCEM contended that MSEFC's order was illegal as it clubbed conciliation and arbitration, contrary to the principles of natural justice and Section 80 of the Arbitration Act. The Supreme Court noted conflicting judgments regarding whether a writ petition could be entertained against MSEFC orders. While some judgments held that an arbitral award could only be challenged under Section 34, others permitted writ petitions in exceptional cases. The Court also highlighted concerns over the high interest rate under the MSMED Act, the mandatory pre-deposit requirement under Section 19, and whether MSEFC members could act as both conciliators and arbitrators.

Given these complexities, the Supreme Court referred key questions to a larger five-judge bench, including whether a writ petition can ever be maintained against MSEFC orders, under what circumstances the alternative remedy rule does not apply, and whether MSEFC members can act as both conciliators and arbitrators. The case underscores critical issues in statutory arbitration and access to constitutional remedies in disputes under the MSMED Act.



# THEORY AND PRACTICE OF DISPUTE RESOLUTION

## A 5-Day Training Program for Civil Servants by NPAC, Chennai

Nani Palkhivala Arbitration Centre (NPAC) successfully conducted a five-day training programme on “**Theory and Practice of Dispute Resolution**” from January 6<sup>th</sup> to January 10<sup>th</sup>, 2025, in Chennai. The programme, organized in collaboration with the Department of Personnel and Training (“DoPT”), is aimed to introduce civil servants to various dispute resolution mechanisms, including arbitration, conciliation, and mediation. The sessions were attended by several civil servants from different states and departments such as the Indian Administrative Service, Indian Police Service, and Indian Forest Service.s

The training schedule was designed to balance theoretical knowledge with practical insights. It featured expert-led lectures, interactive sessions, and case study discussions to provide participants with a holistic understanding of dispute resolution mechanisms and their application in governance and business. The sessions were conducted by an esteemed panel of retired judges, senior advocates, and experienced arbitrators, including Retd. Justices Mr. Akbar Ali, Mr. K. Chandru, and Mr. K. Kannan, along

with legal luminaries such as Senior Advocates Mr. N.L. Rajah, Mr. Arvind Pandian, and Mrs. Chitra Sampath.

The faculty focused on providing a comprehensive framework of the fundamentals, procedures, and advantages of arbitration and conciliation. Participants explored their application in commercial and contractual disputes, gaining insight into their effectiveness as alternative dispute resolution mechanisms.

Additionally, in-depth sessions covered key legal provisions, including the Indian Contract Act, 1872, Civil Procedure Code, 1908, Evidence Act, 1872, Limitation Act, 1961, and regulatory frameworks such as Bharatiya Nyaya Sanhita, 2023, Bharatiya Nyaya Surakshik Sanhita, 2023, and Bharatiya Sakshya Adhinyam, 2023. These discussions provided clarity on their role in dispute resolution and compliance.

Experts shared best practices in drafting arbitration agreements, conducting arbitration proceedings, and enforcing arbitral awards. The emphasis was on ensuring legal soundness and efficiency in resolving disputes.







*Attendees and tutors of the training session conducted by NPAC in collaboration with DoPT*

Participants actively engaged in discussions addressing contractual disputes, arbitration clauses, and legal compliance challenges in government contracts. These interactive sessions facilitated practical learning and helped attendees apply legal principles to real-world scenarios.

The training significantly enhanced the participants' understanding of alternative dispute resolution mechanisms, equipping them with practical tools to handle disputes efficiently within their respective domains. The programme also provided an opportunity for civil servants to network with legal experts, fostering long-term professional collaborations.

Participants praised the interactive nature of the sessions and the expertise of the tutors. They suggested

incorporating moot arbitration exercises for hands-on experience and extending the programme's duration to cover advanced topics in greater depth. Additionally, strong interest was expressed for having follow-on workshops to assess the practical implementation of the knowledge gained.

The NPAC training program underscored the importance of integrating ADR mechanisms into governance to enhance efficiency, transparency, and compliance. With growing complexities in legal and contractual frameworks, initiatives like these empower civil servants to proactively address disputes and improve institutional decision-making. The overwhelmingly positive response from participants highlights the need for continued efforts in training government executives in modern dispute resolution practices.

## NPAC Hosts Intensive 3-Day Arbitration Training Program

NPAC recently organized an intensive 3-day programme on “*The Theory and Practice of Dispute Resolution*” from 31<sup>st</sup> January, 2025 to 2<sup>nd</sup> February, 2025. It was a highly focused training module developed with the intent to educate and build essential capacity amongst officers on legal frameworks and best practices relating to arbitration and to handle any arbitration proceedings with ease.

The event commenced with an inaugural address by Mr. R. Anand, emphasizing the growing significance of arbitration in India. Eminent speakers, including Justice K. Chandru, Justice G.M. Akbar Ali, Justice K. Kannan, Sr. Adv. Arvind Pandian, and legal experts, delved into key aspects of arbitration law. Sessions covered the Arbitration and Conciliation Act, 1996 (“Act”) arbitrability of disputes, interim relief, judicial intervention, foreign awards, and the latest amendments.

Mr. Ram Kishore Karnam opened with an overview of arbitration law, its evolution, arbitrability of disputes, and drafting arbitration agreements. Mr. Sharat Chandran discussed emerging trends, emergency arbitration,

and judicial intervention under Section 5. Mr. Adith Narayanan addressed pre-arbitral proceedings, arbitrator appointments, and conflict-of-interest declarations.

Mr. Adarsh examined interim relief under Sections 9 and 17, along with waiver under Section 4 of the Act. Mr. N.L. Rajah traced arbitration’s evolution and emphasized the need to interpret arbitration law alongside the Commercial Courts Act, 2015 and Mediation Act, 2023. Mr. Sriram Venkatavardhan mapped arbitration timelines, dispute settlements under Section 30 of the Act, and procedural efficiency.

Justice G.M. Akbar Ali analyzed statements of claims and defenses as provided under Section 23 of the Act, the procedure for arbitral hearings as enshrined under Section 24 of the Act, and the role of courts in evidence collection. Justice K. Chandru covered non-signatories in arbitration, unilateral appointments, and Section 29A’s retrospective application.

Mr. Thriyambak Kannan explained the scope of Section 34 of the Act, award enforcement under Section 36,



*Delegates of the Three day Training Session with Retd. Justice G.M. Akbar Ali (seated at the centre)*



*Delegates of the Three day Training Session with Retd. Justice K. Kannan (seated at the centre)*

and modifications of awards. Sr. Adv. Arvind Pandian explored judicial intervention, foreign award challenges, and enforcement complexities. Justice K. Kannan detailed foreign arbitral awards, their enforcement, and distinctions between the New York and Geneva Conventions.

Mr. P.J. Rishikesh discussed case law on award modification and severance, focusing on the case of *Gayatri Balasamy* and *NHAI vs. Hakeem*. Sr. Adv. M.K. Kabir distinguished between arbitration seat and venue, highlighting its impact on legal frameworks. Mr. P.V.

Balasubramaniam examined amendments to the Act and potential reforms that could be made to it.

Overall, the three-day intensive course provided participants with valuable insights into arbitration practice, covering both theoretical principles and practical insights. The feedback from participants indicated that these lectures were highly engaging and offered a comprehensive understanding of arbitration law, equipping them with the knowledge required to navigate their practice effectively.



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