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The Scope of Judicial Intervention in Arbitration: Lessons from Gayatri Balasamy vs. ISG Novasoft Technologies Ltd

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ABSTRACT

The Supreme Court case of Gayatri Balasamy v. ISG Novasoft Technologies Ltd. (2025 INSC 605) addresses the critical question of the scope of judicial intervention in arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996. Arising from a dispute involving allegations of sexual harassment, defamation, and termination of employment, the case saw an arbitral award of ₹2 crore modified by a single judge of the Madras High Court to ₹3.6 crore, which was later reduced by a division bench to ₹2.05 crore, citing computational errors.

The Court clarified that Section 34 does not confer power to modify an arbitral award on merits; the jurisdiction is limited to setting aside the award, either wholly or partially, where the award is severable and issues are distinct. Partial setting aside is permissible only when invalid portions can be separated without affecting the valid parts. However, limited corrective powers exist under Section 37 to rectify clerical, computational, or typographical errors, and courts may intervene in post-award interest to ensure fairness.

The judgment rejects broader modification powers, including arguments based on the maxim omne majus continet in se minus, emphasizing the preservation of arbitral finality and party autonomy. While Article 142 powers must be exercised with restraint, the ruling balances minimal judicial oversight with the efficiency of arbitration, preventing unnecessary remittal for fresh proceedings in cases of minor defects.

I. FACTS OF THE CASE

In 2006, Ms Gayatri Balasamy, then Vice President of ISG Novasoft Technologies Ltd., tendered her resignation. This action was followed by her allegations of sexual harassment against Mr Krishna Srinivasan, the company's Chief Executive Officer. Subsequently, her resignation was not accepted. Approximately one year later, a series of three termination letters was issued to Ms Balasamy.

Ms Gayatri Balasamy lodged a criminal complaint against Mr Krishna Srinivasan and a Vice

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President of ISG Novasoft Technologies Ltd. for offences under the Indian Penal Code, 1860, and the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

Subsequent to Ms Balasamy's complaint, ISG filed a criminal defamation suit against her. The case was elevated to the Supreme Court, which referred it to arbitration. An award of ₹2 crore was issued in Ms Balasamy's favour, which she challenged before the Madras High Court on the grounds that the arbitrator did not consider all pertinent facts.

In 2014, the Madras High Court's single-judge bench modified the arbitration award in favour of Gayatri Balasamy. In addition to the original ₹2 crore, the court ordered an extra ₹1.6 crore, bringing the total to ₹3.6 crore. In 2019, a division bench of the same High Court revised this order, finding the additional ₹1.6 crore to be arithmetically illogical and excessive. In 2019, a division bench of the same High Court revised this order, finding the additional ₹1.6 crore to be "arithmetically illogical" and excessive. Consequently, the division bench reduced the additional amount to just ₹50,000. Aggrieved by this decision, Ms. Balasamy filed a Special Leave Petition (SLP) before the Supreme Court of India.

II. ISSUE(S)

1. Whether the power to set aside an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 is distinct from the power to modify the award?
2. Does Section 34 of the Arbitration and Conciliation Act, 1996, empower the Court to modify an arbitral award, or only to set it aside?
3. Can the Court under Section 34 modify an award partially, or only in its entirety?
4. Can the Court under Section 34 modify post-award interest?
5. Was Rs. 1.6 crore, the additional award, a computational error by the Madras High Court, and did this error legally justify the Division Bench's reduction of the award to Rs. 50,000?

III. ARGUMENTS IN FAVOUR OF MODIFICATION OF AN ARBITRAL AWARD UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996

In the context of applications to set aside an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, certain judicial precedents, including *Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Ltd.*, *Tata Hydroelectric Power Supply Co. Ltd. & Ors. v. Union of India*, and *Oriental Structural Engineers Pvt. Ltd. v. State of Kerala*, have been cited to argue for the permissibility of modifying an award. These cases specifically

address the court's power to alter the rate of interest or the date from which it is to be applied, thereby affirming that such modifications fall within the scope of the court's jurisdiction under Section 34.

The judicial pronouncement in *Project Director, National Highways Authority of India (NHAI) v. M. Hakeem* is cited for reconsideration. In this precedent, the court definitively held that it lacks the power to modify an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996. The ruling affirmed that the court's jurisdiction is limited to either upholding the award or setting it aside in instances where the award is vitiated by fraud, corruption, or is contrary to public policy.

The maxim "**greater includes the lesser**" (in Latin, *omne majus continet in se minus*) is a legal and logical principle. It asserts that if you have the power to do something of a more significant nature, you inherently possess the power to do something of a lesser or less significant nature. This maxim is a well-established principle in common law jurisdictions, including the United Kingdom, Australia, and Singapore.

Based on the above maxim, *omne majus continet in se minus*, the argument posits that since setting aside an award is a complete annulment, a more extensive form of judicial intervention, the power to perform a less drastic action, such as modification, is inherently vested in the court. This will promote efficiency and will avoid the need for fresh arbitration proceedings for the parties.

Emphasis on the term 'Recourse'

It has been argued that a special emphasis on the term 'recourse' in Section 34 supports the contention for modification, contending that the scope of recourse is broader, and that recourse to set aside an award may be construed to include recourse to modify the award.

Modification of the award is permitted in the National Highways Authority of India Act (NHAI Act)

Under the National Highways Act, being a public law, the compensation payable on acquisition of land may be subject to enhancement through arbitration in accordance with the Arbitration and Conciliation Act, 1996, if either party is dissatisfied with the amount determined. Consequently, in such cases, the Court possesses the jurisdiction to modify the compensation amount upon a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

Power of Court to alter Rate of Interest

An argument in favour of a court's power to modify an arbitral award is that, under an

application made pursuant to Section 34 of the Arbitration and Conciliation Act, 1996, the court possesses the jurisdiction to alter the awarded rate of interest. This power to either grant, reduce, or increase the interest rate is justified on the basis that it constitutes a limited and specific modification rather than a complete re-adjudication of the dispute. Granting courts the authority prevents the need for a new arbitral proceeding, which would be a time-consuming and costly process undertaken solely to address the issue of interest.

IV. ARGUMENTS AGAINST MODIFICATION OF AN ARBITRAL AWARD UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996

The arguments against modifying an arbitral award, as grounded in the cases of *McDermott International Inc. vs. Burn Standard Co. Ltd.*, *Ssangyong Engineering and Construction Co. Ltd. vs. National Highways Authority of India (NHAI)*, and *Project Director, National Highways Authority of India vs. M. Hakeem*, assert that the court's power under Section 34 of the Arbitration and Conciliation Act, 1996, is strictly limited to setting aside the award on specified grounds. These judicial pronouncements consistently hold that the court lacks the jurisdiction to modify or substitute the arbitral award, thereby upholding the principle of party autonomy and the finality of the arbitration process. This limited scope of judicial intervention prevents the statutory remedy from becoming a de facto appeal, thus preserving the core legislative intent behind the Act.

The argument against modifying an arbitral award is a cornerstone of arbitration jurisprudence, finding strong support in the principles of the UNCITRAL Model Law and significant judicial precedents in India, such as *McDermott International*, *Ssangyong Engineering*, and *M. Hakeem*. These cases firmly establish that a court's power under Section 34 of the Arbitration and Conciliation Act, 1996, is limited exclusively to setting aside an award, not to altering or substituting it. To permit courts to modify an award would fundamentally undermine the legislative intent of the Act, which is to provide a swift, party-driven dispute resolution mechanism.

If a court were to replace an arbitral award with its own decree, the very purpose of the arbitral proceedings would become redundant. This would transform arbitration from a final and binding process into a mere preliminary step to litigation, thereby violating the core principles of party autonomy and the finality of arbitral awards. Such an approach is jurisprudentially unacceptable as it would erode the efficacy and credibility of arbitration as a viable alternative to traditional court proceedings. The rationale is clear: the court's role is supervisory, not appellate. It ensures the integrity of the process, but does not interfere with the merits of the

decision itself, thus preserving the sanctity of the arbitral award in its original form.

New York Convention

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) is a landmark treaty designed to ensure the international enforceability of arbitral awards, not court judgments. Its fundamental premise is that an arbitral award is a distinct legal instrument, a product of a private, consensual process. The Convention upholds the finality of arbitration and prevents national courts from substituting their own decrees for the arbitral tribunal's decision.

The legal argument posits that a court's order cannot be merged or subsumed with an arbitral award because the New York Convention exclusively recognizes and enforces the award itself. Any judicial modification would transform the original award into a new, hybrid legal instrument, which would lose its international enforceability under the Convention. This non-merger principle is crucial to preserving the unique legal identity of an arbitral award and maintaining the integrity of the international arbitration framework. Modification of an arbitral award is not legislatively permissible. However, had the statute expressly vested such a power in the courts, it would then have been legally tenable to contend that courts could modify an arbitral award while exercising jurisdiction under Section 34.

Omne majus continet in se minus

The maxim *Omne majus continet in se minus* is therefore not applicable in this context. The power to set aside an award is not a "greater" power that encompasses the "lesser" power of modification. Instead, these are two entirely different legal actions with distinct consequences. The power of annulment extinguishes the award, while the power of modification would preserve it in a judicially altered form. The annulled award no longer exists and therefore cannot be modified. The court, having exercised its power to set it aside, cannot then proceed to modify a non-existent legal instrument.

V. JUDGEMENT

The court's power to partially set aside an Arbitral Award

The court held that a partial setting aside of an arbitral award is permissible, provided the award is **severable**. The principle of severability dictates that the portion of the award that is found to be non-arbitrable or otherwise invalid can be separated from the valid, arbitrable portion. This action is only tenable if the issues are distinct and not interdependent or intertwined.

The court reasoned that if the issues dealt with in the award are discrete and unconnected, a

court can annul the invalid part without affecting the integrity of the valid part. This approach avoids the need to set aside the entire award, which would be a disproportionate and unjust remedy. The court's power is thus conditional on the severability of the award's constituent parts.

Court's power under section 37 of the Arbitration and Conciliation Act, 1996

It was held that Section 37 of the Arbitration and Conciliation Act, 1996, gives power to the Court to correct any computational, typographical, or clerical error apparent on the face of the record. This power exists independently of the powers vested in the arbitral tribunal under Section 33. While Section 33 empowers the arbitral tribunal, upon a request by either party, to rectify computational, clerical, or typographical errors in the award, the legislative scheme also enables the Court under Section 37 to exercise a similar corrective jurisdiction.

Accordingly, even after the arbitral tribunal has exercised its authority under Section 33, the Court retains the power under Section 37 to correct or modify the award insofar as such corrections relate strictly to computational, clerical, or typographical errors.

Power of the Court to modify Post Award Interest

It is held that, on certain occasions, the court has the power to intervene in respect of post-award interest. The post-award interest may be subject to judicial modification so as to ensure fairness and equity. In addition, post-award settlements between the parties have been consistently upheld as valid in law.

Limits of the Court under Article 142 of the Constitution

It is held that its extraordinary powers under Article 142, though wide, must be exercised with caution and within the bounds of the Constitution. The jurisdiction to do "complete justice" is to be exercised with circumspection, care, and judicial restraint and must operate within the confines of the constitutional framework.

VI. ANALYSIS

According to the parties opposing the conferment of modification powers upon the courts, the jurisdiction to modify an arbitral award is wholly distinct from the jurisdiction to set aside an award. Hence, the maxim *omne majus continet in se minus*—that the greater power includes the lesser—cannot be invoked to justify such authority. It is argued that permitting modification would inevitably entail a re-examination of the merits of the case by the court, thereby frustrating the very object of arbitration and causing unnecessary delay and expense to the

parties.

Conversely, those supporting modification contend that the exercise of such power does not necessarily amount to a re-appreciation of evidence or a review on the merits. In their view, whether or not modification leads to a re-examination of the award depends upon the scope and extent of the modification powers conferred upon the court. Accordingly, it is argued that limited modification of an award—whether complete or partial, and confined to specific aspects—ought to be permissible in order to secure the ends of justice.

If the courts are wholly denied the power to modify an arbitral award, situations may arise where a party, despite genuine hardship, is left remediless except by way of recommencing the arbitral process. Such a course inevitably results in unnecessary delay, additional expense, and procedural complexity, thereby frustrating the very object and efficiency of arbitration.

The legislative policy underlying the Arbitration and Conciliation Act, 1996, is to provide for a speedy, cost-effective, and final resolution of disputes outside the conventional court system. However, if the courts are confined only to the power of setting aside an award, and not permitted to modify it even where modification is necessary to cure limited defects, the parties would be compelled to undergo a fresh round of arbitration. This would render the arbitral process not only duplicative but also more cumbersome than traditional litigation, thereby defeating the purpose of adopting arbitration as an alternative dispute resolution mechanism.

In the opinion of the courts, annulment of an arbitral award constitutes a far stricter course of action than its modification, and therefore, where feasible, the award ought to be modified rather than set aside in its entirety. At the same time, the court, while exercising such limited jurisdiction, must refrain from engaging in any fact-finding or reappreciation of evidence.

Modification is to be confined to necessary corrections, including adjustments in respect of costs, and may only be undertaken where the error is apparent on the face of the award and leaves no room for doubt or uncertainty.

Lastly, it is pertinent to examine the additional award granted by the Madras High Court to Gayatri Balasamy. The subsequent reduction of this additional award by the Division Bench of the High Court arose from the latter's view that the amount of Rs. 1.6 crore granted by the single bench was arithmetically illogical and constituted a computational error. Consequently, the Division Bench modified the award, reducing the amount to Rs. 50,000. This factual scenario gave rise to the pivotal question of whether a court possesses the jurisdiction to modify an arbitral award, and if so, to what extent such modification may be exercised without transgressing the limits of judicial intervention.

In conclusion, the Court's decision is sound as it recognizes a limited and controlled power to modify arbitral awards, ensuring that courts can intervene under Section 34 only where necessary. At the same time, it affirms that the Court may exercise its powers under Article 142 of the Constitution with caution and within constitutional limits, working alongside the corrective jurisdiction under Section 37 of the Act. This approach strikes a balance between judicial oversight and the finality of arbitration, preserving the efficiency and purpose of the arbitral process.
